MGZ | employment law

THE ADVOCATE

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Client Services:

- General advice in relation to all employee-related issues
- Resolving Personal Grievances and Workplace Disputes
- Employment Agreements - drafting and negotiation
- Employment Relations Authority/Employment Court and Mediation Representation
- Employment Relations Strategies
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There and back again . . .

On 18 February 2020, the Screen Industry Workers Bill was introduced to Parliament.

In issues 107, 118 and 124 of The Advocate, we covered the case of *Bryson v Three Foot Six Ltd* [2005] NZSC addressing the status of a worker on the production of the Lord of the Rings as it embarked on its quest through the Employment Relations Authority, Employment Court, Court of Appeal to the ultimate conclusion in the Supreme Court of New Zealand.

This case then flowed on into the production of the Hobbit when NZ Equity, the New Zealand Union for Actors, sought to bargain for actors and production workers collectively. This led to the highly public spat between Robyn Malcom and Sir Peter Jackson, with allegations of interference from the Australian Media Entertainment and Arts Alliance thrown in for good measure.

And we all know what happened from there, the then National Government quickly introduced and passed The Employment Relations (Film Production Work) Amendment Bill into law. The changes to the Employment Relations Act 2000 ("***ERA***") excluded film and television production workers from various provisions of the Act … and saved the filming of the Hobbit.

Since then, things have progressed, depending on who you talk to, well for production workers or not so well…

Overall, the fallout, with the involvement of heavy hitters from unions, actors, production company executives and the Government, made for good entertainment. Not as good as the movies, but good entertainment.

And now the sequel!

When elected, the Labour Government undertook to review this law, along with other labour laws. The result, the Bill has been introduced to "*restore collective bargaining rights for screen industry workers, rights that were removed by the controversial 'Hobbit law' under the previous government. It provides further protections than just repealing the 'Hobbit law'*" according to Iain Lees-Galloway.

The core provisions of the Bill are:

(a) Screen production workers are defined as a person involved in the creation of films, programmes, commercials and games. It excludes all support workers (e.g. accountants and lawyers), amateur productions and volunteers.

(b) How a screen production worker is engaged, i.e. as a contractor or an employee, remains unchanged and will still be determined solely by the type of written agreement they have.

(c) Contractors doing screen production work must have written contracts with mandatory terms about contract termination and protection from bullying, discrimination and harassment.

(d) A new duty of good faith will require parties to a contract not to mislead or deceive one another.

(e) Contractors doing screen production work will also be able to bargain collectively in their occupational groups and at the production/ company level.

(f) A tiered dispute resolution system will support parties to resolve issues that may arise, including access to mediation and facilitation.

Disclaimer:

This newsletter is not intended as legal advice but is intended to alert you to current issues of interest. If you require further information or advice regarding matters covered or any other employment law matters, please contact **Raewyn Gibson**, **Peter Zwart**, **Dean Kilpatrick or Jane Taylor.**

Contact Details:

Level 2

71 Cambridge Terrace

PO Box 892, Christchurch

Tel (03) 365 2345

Fax (03) 365 2347

www.mgz.co.nz

Raewyn Gibson
E: raewyn@mgz.co.nz
M: 0274 387 802

Peter Zwart
E: peter@mgz.co.nz
M: 0274 367 757

Dean Kilpatrick
E: dean@mgz.co.nz
M: 027 279 1353

Jane Taylor
E: jane@mgz.co.nz
M: 021 1539 147

Two of the significant proposals allow contractors to bargain collectively and require the bargaining to be conducted in good faith. In addition, collective bargaining can cover occupations, for example set builders, production assistants, musicians and actors, or apply to a single production/company. The ability to have a collective agreement covering occupations seems to have been sourced from the Government's proposals for Fair Pay Agreements. The later, i.e. bargaining with a production company, reflects the current general practice of Collective Agreements applying to one business.

There are also provisions covering minimum terms for contractors. This is perhaps reflective of and sourced from the Governments movement to potentially legislate minimum terms for independent contractors. While not in Bill form or before parliament at the moment, there is the Better Protections for Contractors Discussion Document published in November 2019 that is available for public consultation. The introduction to the Discussion Document sets out that employees "*have some responsibilities to their employer and in exchange receive a number of rights and protections*" and contractors "*have fewer rights and protections than employees, and as a result can experience poor outcomes*". Four key issues have been identified with options in each:

(a) Deter misclassification of employees as contractors;

(b) Make it easier for workers to access a determination of their employment status;

(c) Change who is an employee under New Zealand law; and

(d) Enhance protections for contractors without making them employees.

It is this last point which has been brought into the Screen Industry Workers Bill with the proposed introduction of minimum terms and requirement for written contracts.

The Bill also sets out procedures for addressing disputes.

Where there are contract disputes, the Bill provides that Mediation Services can assist. Significantly the Bill also provides that the Employment Relations Authority can also make a determination to resolve a dispute if necessary.

If there are bargaining disputes, again Mediation Services can assist. Likewise, the parties can request assistance from Authority for facilitation. If mediation and facilitation are unsuccessful, the Authority must fix the terms of the collective under a final offer arbitration process. As an alternative, the parties can agree another method for resolving bargaining differences.

In summary, the Bill proposes to provide essentially the same process provided under the Employment Relations Act (ERA) for bargaining issues and disputes.

Finally, the Bill provides that worker organisations, i.e. unions, can request access to workplaces where screen production work is taking place. However, consistent with access rights under the ERA, production companies can refuse access if it would unreasonably impede operations.

The Bill has passed its first reading and is set to go before a Select Committee. It is anticipated to become law in 2021. Given the borrowing from the proposed Fair Pay Agreements and Contractors Discussion Document, we consider this Bill may be a tester and set the groundwork for changes in these areas. We will update on the progress of the Bill and any developments that may flow into the Fair Pay Agreements and Contractors.

Minimum Wage Order 2020

The Minimum Wage Order 2020 comes into force on 1 April 2020, revoking and replacing the Minimum Wage Order 2019.

This order increases the minimum rates of pay for adult workers, starting-out workers, and trainees. The new minimum hourly rates of pay are as follows:

- $18.90 per hour for adult workers (increased from $17.70 per hour); and
- $15.12 per hour for starting-out workers and trainees (increased from $14.16 per hour).