SCREEN INDUSTRY WORKERS ACT 2022

EXPANDED GUIDE

DEGANZ THANKS THE SCREEN INDUSTRY GUILD OF AOTEAROA NEW ZEALAND (SIGANZ) AND WATTERSON ENTERTAINMENT & LEGAL FOR THE INFORMATION INCLUDED BELOW.

Changing how you have a say on your terms & conditions of work.

I. INTRODUCTION

With the Screen Industry Workers Act (SIWA) being passed, **DEGANZ will be seeking to negotiate collective agreements** with the Screen Production and Development Association for directors, editors and assistant editors.

This collective bargaining will result in a baseline "Collective Contract" called an **"Occupational Contract"** for designated **occupational groups** that will set up:

- **terms of engagement**
- **working conditions**
- **minimum pay rates**

Any individual contract you receive cannot — with few exceptions — present any conditions that are below or less advantageous than what was collectively agreed.

You can and should negotiate any individual contract upwards from this baseline "Occupational Contract," based on what talent, experience or leverage you bring to that production.

RELEVANT TO DEGANZ MEMBERS:

Feature film (documentary and narrative), TV drama, Factual and Entertainment, and Advertising and Marketing content (under five minutes) are all covered under SIWA.

II. HAVE YOUR SAY

TELL US WHAT TO NEGOTIATE ON YOUR BEHALF

We need to know what you want and what you don't want in regard to **minimum rates and terms and conditions in your contract**, because they are going to be locked in place for a minimum of three years.

JOIN THE GUILD

The best way to do that is for every director, editor, and assistant editor in New Zealand to **be a member of DEGANZ**. This way, we can easily communicate with you, and you can easily communicate with us, throughout the whole process of preparing for negotiation, during negotiation, and after collective agreements are in place.

If you are a member of DEGANZ, we will step in for you, and stand up for you. We are a membership organisation and union that will represent our members to the best of our ability.

III. WHY THE CHANGE?

OUT WITH THE OLD

Screen industry workers have had inadequate workers' rights for decades, exacerbated since the **'Hobbit Law'** was passed in 2010. While the history of this legislation is convoluted, its effect was not: **if you worked in film, you were not an employee, unless explicitly stated in an employment contract.**

This seemingly minor change had the dramatic effect that film industry workers could no longer challenge their employment status in the Employment Court. And as for their Guilds and Unions - they were now legally prohibited from any bargaining for collective contracts, or taking any collective strike action to encourage bargaining.

Effectively, as **a contractor in the screen industry,** which unfortunately included those who worked in other parts of the screen industry, such as TV, you were left to your own devices **with few protections** in regards to **how much you were paid** and **the conditions under which you worked.**

IN WITH THE NEW

The introduction of SIWA on 30 December, 2022 **changed this.** SIWA grants workers who are contractors within the screen industry the opportunity to come together to engage in collective bargaining — something that for contractors was illegal to do before.

This collective bargaining will result in a baseline contract called an "Occupational Contract" that will set the **terms of engagement, working conditions** and **minimum pay rates** for designated Occupational Groups.

If you are in one of the Occupational Groups performing work that is covered by the Act and an agreement comes into force that has been collectively agreed, the Individual Contract you receive on any production you work on cannot — with few exceptions — present any conditions that are below or less advantageous than what was collectively agreed.

IV. NEW VS EXISTING CONTRACTS

Under SIWA, all new contracts from 31 December 2022 forward in the screen industry must:

- Be in writing
- Have a term requiring compliance with the **Health and Safety at Work Act 2015** and the **Human Rights Act 1993**
- Have plain language explanations of:
  - The process for making a complaint about bullying, discrimination, or harassment, and how the engager (production company/producer) will respond to the complaint. Individual contracts must also state that this complaint process will not prevent the worker from making a complaint about bullying, discrimination or harassment under any Act
  - The processes to resolve any dispute
- In relation to termination of the individual contract, have:
  - A term stating whether parties need to give each other notice to terminate the contract, and if so, how much notice must be given
  - A term stating whether compensation is payable to a worker if the engager terminates the contract, and if so, what that compensation is

Engagers (production company/producer) have 12 months before any existing contract is required to include the above.

V. WHO IS COVERED BY SIWA?

SIWA applies to all "**screen production workers**".

This means you if:

- you're contributing to the creation of one of the following "screen productions" in New Zealand:
  - computer-generated games;
  - films; or
  - programmes
- and you are not one of these three excluded workers:
  - volunteer;
  - you provide "support services" only (e.g. legal, accounting, marketing, representation, or similar services that make a "peripheral contribution" to the creation of a screen production);
  - you're engaged to do the work by a person/company whose primary business isn't contributing to the creation of screen productions.
- your contract doesn't say "**employee**". (If it says you're an employee, then SIWA does NOT apply to you).

The Act does NOT apply to the following screen productions, which are expressly excluded:

- advertising programmes longer than 5 min
- amateur productions
- game shows
- live events
- music and dance
- news and current affairs
- recreation and leisure
- religious
- sports
- talk shows
- training and instructional
- variety shows

Q: WHY ARE SOME PRODUCTIONS EXCLUDED?

The Film Industry Working Group originally recommended the Act apply to all screen production work. When reviewing the recommendations, however, Cabinet preferred a more conservative scope and therefore excluded certain productions from the Act. These tended to be the parts of the sector that didn't have an entertainment purpose, or where employee-based hiring models were more common, or where it was thought workers could be disadvantaged by being brought within the Bill's coverage.

If in doubt:

- The words "**screen production**" have a very broad meaning. They mean: a record captured in any medium from which a moving image may be produced for distribution by any means (including cinema, TV, internet streaming, or download).
- Note that "**programme**" is also given a broad meaning. It includes: a combination of sounds and visual images, intended to inform, enlighten, or entertain, or promote any product, or service, or the interests of any person (other than a film or computer game). This makes it very important to check the exclusions table above.

VI. HOW DO COLLECTIVE CONTRACTS WORK?

THEY CREATE A 'BOTTOM FLOOR' WHEN NEGOTIATING YOUR INDIVIDUAL CONTRACT.

Once a Collective Contract has been negotiated and agreed, it creates a legal "bottom floor". Think of it like a safety net: a guaranteed minimum set of terms and conditions which your Individual Contract legally cannot go below.

This safety net effect is mostly automatic!

If a Collective Contract applies to you or the type of work you do, then:

- The Act 'deems' that your Individual Contract INCLUDES many of those minimum terms
- As a safety precaution, should your Individual Contract include any terms that are less favourable than a CC, then these become legally unenforceable
- As an added bonus, if any terms in your Individual Contract are more favourable to you, then the more favourable terms prevail.

VII. OCUPATIONAL VS ENTERPRISE COLLECTIVE CONTRACTS

THE ACT CREATES TWO TYPES OF COLLECTIVE CONTRACTS THAT COULD APPLY TO YOU:

1. **Occupation Level Collective Contracts** create an occupation-wide bottom-line. They apply to:
    - every worker who does the work of the "occupational group" specified in the contract (whether you choose to be a union or guild member or not!); and
    - every engager who engages workers to do that work.

2. **Enterprise Level Collective Contracts** create a shared bottom-line tailored for workers working on a specific production or for a specific production company. They only apply to you if:

- you're a member of the union or guild that signs the Collective Contract and you do the work specified in the Contract; but

- if you aren't a member of the union or guild that signed, then it only applies to you if you (and everyone else) consents.

WHO ARE THE "OCCUPATIONAL GROUPS"?

Currently, the "Occupational Groups" are listed as:

- Composers
- Directors
- Game Developers
- Performers
- Writers
- Technicians (production)
- Technicians (post production)

There is a process for modifying the groupings after the Act is enacted if there are shifts in the screen industry workforce over time.

If an Occupation level Collective Contract applies to you or your work, then any Enterprise level Collective Contract that applies to you CANNOT contain terms that are less favourable to you than the Occupation level Collective Contract!

So the Occupation level Collective Contracts are still the most important for establishing mandatory 'bottom-lines'. These trump any Enterprise level Collective Contract, and any Individual Contract.

What this means is that when you come to negotiate your own Individual Contract, it legally must be 'above' the terms contained in any Occupation level Collective Contract and any Enterprise level Collective Contract that applies to you or your work.

VIII. WHAT IS IN A COLLECTIVE CONTRACT?

SIWA SAYS A COLLECTIVE CONTRACT MUST CREATE TERMS REGARDING SUCH THINGS AS:

- **RATES!** Either the exact rates payable, or the minimum rates payable, or the method for calculating rates, for certain types of work or workers! (Yes, you read that right. You get a say, if you choose, in bargaining for **mandatory minimum rates** applicable to your type of work!)

- whether or not you get minimum entitlements to **breaks**;

- whether or not there is a max number of **hours**, and whether (and how) OT and other loadings are calculated;

- whether or not you can be required to **make yourself available** (with no guarantee of work) beyond the contractually agreed hours; and if so whether you must be compensated;

- whether or not you can be required to work on **public holidays**, and if so whether additional compensation must apply;

- the process, notice, and compensation applicable if your contract is **terminated**;

- minimum procedural requirements for resolving **disputes** about your contract or workplace relationship, or raising complaints about bullying, discrimination or harassment

IX. HOW DOES BARGAINING FOR COLLECTIVE CONTRACTS WORK?

Process	Occupation Level Collective Contract	Enterprise Level Collective Contract
1. Participate in Bargaining	You must be registered as a "worker organisation" (e.g. DEGANZ) or an "engager organisation (e.g. SPADA).	You must be a registered worker organisation or an engager (such as a studio or production company). Engagers may choose to use an engager organisation (such as SPADA) to act as their agent in the bargaining.
2. Initiate Bargaining	The worker organisation or engager organisation must first obtain a majority vote from its members (by secret ballot) in favour of initiating bargaining. The worker organisation or engager organisation must next apply to the Authority to allow bargaining to be initiated. The Authority will give public notice and invite submissions on the application (to ensure representation).	A worker organisation or engager gives a bargaining notice to another party. **Unlike with Occupation-Level Collective Contracts:** • The Authority is not involved in initiating bargaining • Bargaining can only be initiated if all parties give free consent!

Process	Occupation Level Collective Contract	Enterprise Level Collective Contract
2. Initiate Bargaining (cont.)	If there is "sufficient support" for the application from the initiating side, then the Authority must approve the application to initiate bargaining and publish this decision. (If a worker organisation applies to initiate bargaining then "sufficient support" means that there are more workers of that occupational group who want to bargain than those who don't). The parties are then obliged to bargain.	*See previous page.*
3. Bargaining Parties	If approved by the Authority to initiate bargaining, the Bill deems the bargaining parties to include: • all worker organisations who have members who do the work of the occupational group specified, and • all engager organisations who have members who engage such workers	Only parties who received the bargaining notice and agreed to bargain.

Process	Occupation Level Collective Contract	Enterprise Level Collective Contract
4. Obligation to Conclude Bargaining	Once initiated (as per above) parties MUST conclude an Occupation-Level Collective Contract.	If initiated (i.e., consented to by the parties), parties cannot withdraw their consent, and MUST conclude an Enterprise-Level Collective Contract.
5. Bargaining Conditions	Once initiated, parties must act in good faith. This means adhering to at least 9 requirements during bargaining. All collective contracts must contain mandatory terms, including pay, hours of work, breaks and termination processes.	Same apply.
6. Bargaining Disputes	For general bargaining disputes, bargaining parties may access mediation and facilitated bargaining services. If either of those fail (or other factors such as urgency require), a party may apply to the Authority for a determination.	Same apply.

Process	Occupation Level Collective Contract	Enterprise Level Collective Contract
6. Bargaining Disputes (cont.)	However, if conclusion of a Collective Contract is being prevented by a standstill between the bargaining parties about 1 or more terms (& sufficient efforts have been made through mediation and facilitation), then any determination by the Authority must use a process called "final offer arbitration" to "fix" terms of a collective contract. Industrial action is now allowed.	*See previous page.*

X. HOW DO I GET A SAY?

GET ON BOARD

Collective Contracts are a first for NZ's screen industry. DEGANZ and other guilds and unions are working hard, getting ready to bargain about exactly what and how these minimum terms and conditions should be designed.

Getting them right is crucial work. They will produce **legally binding industry bottom lines** that will affect almost every worker (that's you!) working in the industry, and last for a **minimum of 3 years**.

If you are a director, editor, or assistant editor in feature film (documentary and narrative), TV drama, Factual and Entertainment, and Advertising and Marketing content (under five minutes), **DEGANZ is going to negotiate an Occupational Collective Contract on your behalves**, with engager organisations like SPADA.

But we can't do it without hearing from you about what you want to see.

TELL US YOUR VIEWS NOW!

Although DEGANZ will try to get the best Collective Contract it can for all directors, editors and assistant editors (whether members or not), to ensure DEGANZ can get the most out of these negotiations, and to achieve the best possible Collective Contract for you and your fellow workers, we are going to need your voice!

In addition to the host of benefits that come with being a member, **becoming a member now** will give you the added advantage of **increased awareness, participation, and influence over how DEGANZ approaches the SIWA negotiations**. We will be actively meeting with members to explain in more depth about the Screen Industry Workers Act. We will also be surveying you to understand what you want in regard to rates and minimum terms and conditions for your occupation.

VOTE!

Once a draft Occupational-Level Collective Contract has been negotiated by bargaining parties (e.g. DEGANZ and SPADA), then all workers in the occupational group have the opportunity to vote.

A simple majority of votes will approve the Contract into law.

XI. ARE THERE ANY EXEMPTIONS TO THE NEW CONTRACT SAFETY NET?

There is a limited exemption that permits an engager to negotiate some terms in an individual contract that go 'below' the occupational-level collective contract in limited circumstances.

The exemption can only apply if:

- It does not reduce the Worker's rates payable under the Collective Contract; and
- It only relates to one particular screen production; and
- Compliance with the Collective Contract would cause the production significant cost or disruption; and
- The Worker consents (only after being given an opportunity to get advice, and only after responding in good faith to any issues the Worker raises); and
- If work to which the exemption relates has not yet commenced, then the engager must obtain the consent of all signatories to the Collective Contract (after being provided with certain mandatory information).

Penalties apply if an engager breaches these restrictions.

XII. DISPUTE RESOLUTION

The Act introduces a default tiered dispute resolution system to help workers and their engagers when dealing with disputes relating to a "workplace relationship", or an individual or collective contract, or collective bargaining.

The default system involves Employment Mediation Services providing a free voluntary mediation service. If that fails, or other factors such as urgency require, a party may apply to the Employment Relations Authority to make a binding determination. (If the dispute is about collective bargaining, the parties may also attempt 'facilitated bargaining' before applying for a determination).

Individual and Collective Contracts must either use this default system, or another system agreed. If parties can't agree, the default system applies. In any case, Individual and Collective Contracts must include a clear explanation of the processes available for resolving disputes.

For your added support, the Act gives you the right to ask your worker organisation (e.g. DEGANZ) to act on your behalf for the purposes of resolving a dispute about your individual contract.

XIII. BACKGROUND INFORMATION

THE HOBBIT LAW

The Employment Relations (Film Production Work) Amendment Act, known colloquially as **'The Hobbit Law'**, was passed in 2010 following a dispute between the Screen Actors Guild (SAG) and the Warner Brothers over actors' pay. At the time, Peter Jackson had just signed on to direct *The Hobbit* following the international success of *The Lord of the Rings* trilogy, and New Zealand actors were becoming increasingly **frustrated with their poor pay and employment conditions which seemed to be worsening** despite the growth of our film sector.

In response to mounting discontent, Equity New Zealand, together with the Australian union Media, Entertainment and Arts Alliance (MEAA), **demanded that New Zealand actors be allowed to engage in collective bargaining like their counterparts in America and Britain**. This demand was supported by the International Federation of Actors, who decided to **boycott *The Hobbit*** in solidarity.

The boycott was not well received by Warner Brothers, however, and threats to film *The Hobbit* in an alternative country soon followed. Fearing the loss of business and impact this would have on our relationship with Hollywood, New Zealanders turned on the actor's union. Helen Kelly, President of the New Zealand Council of Trade Unions (CTU), was tasked with dealing with the fall out, and CTU reached an agreement with Warner Bros that Equity and the Screen Production and Development Association (SPADA) could **negotiate a collective agreement**.

However, while both sides of the dispute were satisfied and the boycott called off, this decision was not made public.

As a result, hysteria over potential job losses caused by the boycott (that was no longer happening) continued to rise, inciting an anti-union march and Peter Jackson to put out a statement that Warner Brothers was making arrangements to pull production of *The Hobbit*.

In a move to undermine the New Zealand union movement, Warner Brothers lobbyists and executives met with Prime Minister at the time, John Key and **The Hobbit Law was passed overnight.**

It later came to light that while the public did not know an agreement had been reached between CTU and Warners prior and the boycotts called off, the National Government was aware of this information and chose to withhold it in order to pass the law.

In other words, New Zealanders' misunderstanding of the situation was exploited to lessen resistance to **legislation that catastrophically weakened screen industry workers' rights.**

THE FORMATION OF THE FILM INDUSTRY WORKING GROUP

In 2018, the Minister of Workplace Relations, Iain Lees-Galloway, formed the Film Industry Working Group (FIWG). The FIWG was convened to **address the Government's concerns posed by the Hobbit Law**, which had stripped screen industry workers of the right to collectively bargain, and address the power imbalances generated therein. The FIWG comprised DEGANZ, the NZ Writers Guild, the Screen Production and Development Association, The Stunt Guild of NZ, Ngā Aho Whakaari, Equity New Zealand and other screen industry representatives alongside the Council of Trade Unions and Business NZ.

The FIWG's objective was to put forward recommendations to the government aimed at restoring collective bargaining rights of screen industry workers, while also:

- Allowing screen production workers to continue to be engaged as contractors,
- Providing certainty to encourage continued investment in New Zealand by screen production companies, and;
- Maintaining competition between businesses offering screen production services to promote a vibrant, strong and world-leading screen industry.

Following a series a meetings in Auckland and Wellington across two years, the FIWG was unanimous on its recommendations to Government.

The key elements were:

- A recognition that screen industry workers can agree to work either as employees or contractors.
- All screen industry workers engaged as contractors are to be covered by a stand-alone statute that provides the protection of a set of principles and the option of collectively agreed minima.

The key elements were (cont.):

- Recognition that the screen industry is not like any other industry, and therefore distinct labour laws are both required and recommended.
- A set of principles underpinning the labour relations system for all contractors working in the screen industry.
- Each sub-industry group within the wider screen industry can negotiate collectively in the form of sub-industry collective contracts.
- Any opt-out from the standards set in sub-industry collective contracts can only be by agreement of all parties, in exceptional circumstances, and in keeping with the underpinning principles.
- Contractors who could be covered by a sub-industry collective contract agree not to strike during bargaining of any sub-industry collective contract.
- Any person working in the screen industry who, by agreement, opts to be an employee rather than a contractor, will continue to be subject to the employment relations and employment standards system.
- All parties participating in the FIWG support this package of recommendations and urge the Government to adopt it in its totality.

The Government took the recommendations and drafted the proposed legislation, which did undergo some modifications before coming into force as the **Screen Industry Workers Act** on 30 December 2022.

MBIE's Recommendations of the Film Industry Working Group to the Government

Beehive's 2018 Announcement of FIWG

XIV. FURTHER READING

HISTORY OF THE HOBBIT DISPUTE:

Helen Kelly, President, NZ Council of Trade Unions in 2011, explains The Hobbit dispute that divided an industry, and resulted in the infamous 'Hobbit Law' being passed overnight.

SIWA OFFICIAL LINKS:

Official Full Text of the Act.

Official Parliamentary history and progress of the Act (including Public Submissions made, and Select Committee Reports).

HISTORY OF SIWA:

For a short timeline of the Act's history, from Film Working Group to Select Committee Report, see the bottom of NZWG's Summary here.

For links to official reports and recommendations, MBIE have background information here.

OTHER SUMMARIES OF SIWA:

MBIE's Quick Guide for a short summary of SIWA and why change is needed.

BRYSON VS THREE FOOT SIX:

The actual Supreme Court **Decision**.

Wikipedia **summary** of the Decision.

THE 'HOBBIT LAW' OFFICIAL TEXT:

Official text of the 'Hobbit Law' legislation (i.e. the **Employment Relations (Film Production Work) Amendment Act 2010**).

XVI. ADDITIONAL COMMENTARY LINKS

IN FAVOUR OF SIWA:

The Screen Industry Workers Bill is good for our industry by Jennifer Ward-Lealand (President of NZ Equity).

LEGAL CRITIQUE OF SIWA AND THE HOBBIT LAW:

Human Rights and the Making of a Bad Sequel by Dawn Duncan (lecturer in labour law at the University of Otago Faculty of Law).

Some notable extracts are quoted on the following pages.

Re: the Hobbit Law

"A key thing to remember is that, if not for the Hobbit law, many of these workers would be employees. The Hobbit law removed these workers' legal rights without consultation or due democratic process ...

.. Continuing the Hobbit law legacy, the Screen Industry Workers Bill, if it is passed, will create an even larger group of workers who are declared independent contractors, with no regard to the reality of their working situation and leaving them without the full protections of employment law."

Re: SIWA

"... while some workers in the newly expanded category of 'screen production workers' will have greater rights than they had under the Hobbit law, they will not have equal rights to other workers in the labour market, and they will not have the full rights they are entitled to in the human rights instruments that New Zealand has adopted.

... It creates a watered-down good faith regime, with no right to strike, that falls far short of what is anticipated in ILO conventions 87 and 98.

... the creation of the Screen Industry Workers Bill sets a dangerous precedent. It indicates a political willingness to slice out segments of the workforce to exclude from the protections of employment law on the basis that it may be more convenient for certain industries."

Re: Removal of the Right to Strike

"While the right to strike is often unpopular with employers and governments (the government itself being a very large employer), it is a fundamentally important human right, core to the [United Nations] ILO decent work agenda and the 2030 United Nations Sustainable Development Goals, operating as a civil and political right at the heart of a democratic society and a social and economic right to counter the abusive exercises of economic power (ILO, 2021; Novitz, 2019)."

"Screen Industry Workers Bill 2020 - a welcome addition to employment law?" *by Professor Gordon Anderson (Faculty of Law, Victoria University of Wellington).*

Extract Re: Removal of the Right to Strike

"The right to strike, other than in very limited circumstances, is an internationally recognised fundamental right of all workers. The convenience of one, non- essential, industry [does] not justify such an exception. Apart from depriving workers in the screen industry of a fundamental right, the removal of the right to strike sets an unwelcome precedent."

Visit **our website** for more information.

Inquiries to admin@deganz.co.nz