



# Submission on Screen Industry Workers Bill

## About the New Zealand Council for Civil Liberties

1. The New Zealand Council for Civil Liberties is a watchdog for rights and freedoms in New Zealand. The Council is a voluntary not-for-profit organization that works through education and advocacy to promote a rights-based society and prevent the erosion of civil liberties.

## Introduction

2. The Council has considered this Bill in respect of Human Rights and Civil Liberties. The measures in this bill are broadly speaking an improvement over those introduced by the Employment Relations (Film Production Work) Amendment Act (2010).
3. The Council is however opposed to a person's rights being adjusted according to their employment. With the notable exception of a few state sector officials, a person's employment should have no impact on their rights.
4. Additionally the Council is concerned that this Bill codifies rules for a new class of workers with fewer rights than employees, and with less independence over hours and conditions of work than self-employed contractors.<sup>1</sup>

## Analysis

5. Freedom of association, including the right to belong to a union, is a basic human right protected by section 17 of the New Zealand Bill of Rights Act (1990)<sup>2</sup>. This Bill reduces but does not eliminate a limitation of this right. The Council doubts the judiciary would find that this bill's limitation of section 17 is justified.

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<sup>1</sup><https://www.employment.govt.nz/starting-employment/who-is-an-employee/difference-between-a-self-employed-contractor-and-an-employee>

<sup>2</sup> <http://www.legislation.govt.nz/act/public/1990/0109/latest/whole.html#DLM225516>



6. The Council agrees with the principle, as MBIE phrases it, that while “*New Zealand has not ratified the International Labour Organization’s (ILO’s) Freedom of Association and Protection of the Right to Organise Convention 1948 (Convention No. 87) as an ILO member we are expected to abide by its principles. New Zealand has ratified ILO Convention No. 98 Right to Organise and Collective Bargaining Convention 1949.*”
7. These fundamental ILO conventions<sup>3</sup> set forth the right for workers and employers to establish and join organizations of their own choosing without previous authorization, and provides that workers have the right to collective bargaining.
8. As reported in the *ITUC Surveys of Trade Union Rights Violations in 2011 and 2015*<sup>4</sup>, the Employment Relations (Film Industry) Amendment Act 2010 denied film and computer game industry workers the opportunity to bargain for a collective employment agreement, or to be represented by a union in employment negotiations. The law meant that such workers were deemed contractors and unable to participate in collective bargaining with employers or take industrial action in pursuit of a collective agreement. This Bill falls short of restoring those rights.
9. Under the Bill, no industrial action may be taken during bargaining. Once established, a collective contract would remain in force from its commencement date for no less than 3 years. A period of up to 12 months is provided for bargaining to replace a contract that has expired. Industrial action to prevent completion of individual workers' contract work is prohibited.
10. Many contracts for screen work are of short duration and would have concluded before a new contract would be negotiated. This effectively negates any practical ability to take collective action in relation to negotiations. Shorter contract and bargaining terms may be warranted.
11. The legal creation of a class of workers midway between contractors for service and employees sets up a model of work that could encourage others to use this

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<sup>3</sup><https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/lang--en/index.htm>

<sup>4</sup><https://survey.ituc-csi.org/New-Zealand.html?lang=en#tabs-3>



as a model for a range of contract work. If the provisions are fair they could be a model for others in similar situations.

12. On the other hand if the provisions aren't fair, the Bill could be seen as legitimizing exploitation. This could result in weakening the case for recognition of rights of other workers in similar situations, as with the recent Court case involving a courier driver<sup>5</sup>.

## Recommendations

13. The New Zealand Council for Civil Liberties recommends that the provisions added by Employment Relations (Film Production Work) Amendment Act (2010) be struck from the Employment Relations Act (2000) so that legislation acknowledges the universality of human rights.
14. The Council recommends that the Bill include the relevant Employment Relations Act references and full definitions of Good Faith and re-establish workers' rights to collective bargaining and Industrial freedom of association.
15. The Council further recommends that New Zealand lifts our reservations on the following international human rights agreements relating to trade unions:
  - a. article 8 of the International Covenant on Economic Social and Cultural Rights<sup>6</sup>.
  - b. article 22 of the International Covenant on Civil and Political Rights<sup>7</sup>.

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<sup>5</sup><https://www.rnz.co.nz/news/national/416158/courier-contractor-ruling-could-open-way-for-action-against-other-employers>

<sup>6</sup> <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

<sup>7</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>