

# **IN CONFIDENCE**

## **Employment Relations (Film Production Work) Amendment Bill**

Government Bill

### **Explanatory note**

#### **General policy statement**

This Bill amends the Employment Relations Act 2000 so that workers involved with film production work will be independent contractors rather than employees, unless they choose to be employees by entering into an agreement that provides that they are employees. Film production work includes production work for video games, but not production work on programmes initially intended for television.

The Bill reflects common practice for film-related work. The Bill provides clarity and certainty about the status of workers in the film industry; it provides assurance that workers involved in the film industry can be independent contractors, and will help prevent unnecessary litigation.

#### **Regulatory impact statement**

The Department of Labour has not had sufficient time to prepare a regulatory impact statement for this Bill.

#### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

*Clause 3* provides that the Bill amends the Employment Relations Act 2000.

*Clause 4* amends section 6, which relates to the meaning of employee. *Subclause (1)* adds *new subsection (1)(d)*, which provides that the meaning of employee excludes the following persons in relation to a film production:

- a person engaged in film production work as an actor, voice-over actor, stand-in, body double, stunt performer, extra, singer, musician, dancer, or entertainer;
- a person engaged in film production work in any other capacity.

*Subclause (2)* inserts *new subsection (1A)*, which provides that *new subsection (1)(d)* does not apply if the person is a party to, or covered by, an employment agreement that provides that the person is an employee.

*Subclause (3)* adds *new subsection (7)*, which defines the terms film, film production, film production work, video game, and video recording.

*Subclause (4)* clarifies, to avoid doubt, that the amendments made by this clause do not affect an employment agreement entered into before the commencement of this clause.

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*Hon Kate Wilkinson*

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Employment Relations (Film Production Work) Amendment Act **2010**.
- 2 Commencement**  
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act amended**  
This Act amends the Employment Relations Act 2000.
- 4 Meaning of employee**  
(1) Section 6(1) is amended by adding “; and” and also by adding the following paragraph:

- “(d) excludes, in relation to a film production, any of the following persons:
- “(i) a person engaged in film production work as an actor, voice-over actor, stand-in, body double, stunt performer, extra, singer, musician, dancer, or entertainer:
  - “(ii) a person engaged in film production work in any other capacity.”
- (2) Section 6 is amended by inserting the following subsection after subsection (1):
- “(1A) However, **subsection (1)(d)** does not apply if the person is a party to, or covered by, an employment agreement that provides that the person is an employee.”
- (3) Section 6 is amended by adding the following subsection:
- “(7) In this section,—
- “**film** means a cinematograph film, a video recording, and any other material record of visual moving images that is capable of being used for the subsequent display of those images; and includes any part of any film, and any copy or part of a copy of the whole or any part of a film
  - “**film production** means the production of a film or video game
  - “**film production work**—
- “(a) means the following work performed, or services provided, in relation to a film production:
- “(i) work performed, or services provided, by an actor, voice-over actor, stand-in, body double, stunt performer, extra, singer, musician, dancer, or entertainer (whether as an individual or not):
  - “(ii) pre-production work or services (whether on the set or off the set):
  - “(iii) production work or services (whether on the set or off the set):
  - “(iv) post-production work or services (whether on the set or off the set):
  - “(v) promotional or advertising work or services (whether on the set or off the set) by a person referred to in **subparagraph (1)**; but

“(b) excludes work performed, or services provided, in respect of the production of any programme intended initially for broadcast on television

“**video game** means any video recording that is designed for use wholly or principally as a game

“**video recording** means any disc, magnetic tape, or solid state recording device containing information by the use of which 1 or more series of visual images may be produced electronically and shown as a moving picture.”

- (4) To avoid doubt, the amendments made by this section do not affect an employment agreement entered into before the commencement of this section.