



COVERSHEET

Minister	Hon Michael Wood	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Employment Relations Authority (Screen Industry Workers) Amendment Regulations 2022 and Screen Industry Workers (Registrar Functions and Other Prescribed Matters) Regulations 2022	Date to be published	15 December 2022

List of documents that have been proactively released

Date	Title	Author
November 2022	Employment Relations Authority (Screen Industry Workers) Amendment Regulations 2022 and Screen Industry Workers (Registrar Functions and Other Prescribed Matters) Regulations 2022	Office of the Minister for Workplace Relations and Safety
10 November 2022	Employment Relations Authority (Screen Industry Workers) Amendment Regulations 2022 and Screen Industry Workers (Registrar Functions and Other Prescribed Matters) Regulations 2022 LEG-22-MIN-0190 Minute	Cabinet Office

Information redacted

NO

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Office of the Minister for Workplace Relations and Safety
Cabinet Legislation Committee

Employment Relations Authority (Screen Industry Workers) Amendment Regulations 2022 and Screen Industry Workers (Registrar Functions and Other Prescribed Matters) Regulations 2022

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the:
 - 1.1 Employment Relations Authority (Screen Industry Workers) Amendment Regulations 2022; and
 - 1.2 Screen Industry Workers (Registrar Functions and Other Prescribed Matters) Regulations 2022.

Policy

- 2 The Employment Relations Authority (Screen Industry Workers) Amendment Regulations 2022 and the Screen Industry Workers (Registrar Functions and Other Prescribed Matters) Regulations 2022 are made under the Screen Industry Workers Act 2022.

Background

- 3 On 30 September 2022, the Screen Industry Workers Act received Royal assent. The following day, section 98 of the Act came into force, which allows regulations to be made under the Act. The rest of the Act commences on 30 December 2022 (ie three months after Royal assent).
- 4 The Act gives effect to Cabinet's decision in 2019 to create a collective bargaining system for contractors in the screen industry (DEV-19-MIN-0140). In addition to creating a framework for collective bargaining, the Act provides:
 - 4.1 Certainty about the employment status of screen production workers;
 - 4.2 New rules for individual contracts; and
 - 4.3 A default dispute resolution system for parties in the industry.
- 5 Both sets of proposed regulations support regulators to efficiently carry out their functions under the Act. They relate to the roles of the Employment Relations Authority and the Registrar of Screen Industry Organisations.

- 6 Below I have outlined the three categories of proposed regulations. These are necessary to support regulators' decisions about registering bargaining parties, the initiation of occupational bargaining and providing dispute resolution services.

Registration of worker organisations and engager organisations

- 7 The Act outlines criteria an incorporated society must meet to be registered as a worker organisation or engager organisation. Worker organisations and engager organisations play a key role in the Act's collective bargaining system, as they are the only organisations which can represent workers and engagers in bargaining. Once an organisation has been registered, the Registrar must provide them with a certificate of registration. Registered organisations must also submit an annual return of members to the Registrar.
- 8 The proposed Screen Industry Workers (Registrar Functions and Other Prescribed Matters) Regulations 2022 prescribe:
- 8.1 How an application to the Registrar must be made and the contact information the applicant must provide;
 - 8.2 The information to be contained on the registration certificate provided by the Registrar; and
 - 8.3 The information a worker organisation or engager organisation must submit in their annual return of members.

Applications for approval to initiate occupational bargaining

- 9 One of the types of collective bargaining possible under the Act is occupational bargaining. Occupational bargaining produces occupational contracts, which set minimum terms and conditions for all work done by a particular occupational group of workers.
- 10 The Act outlines how and when occupational bargaining may be initiated. Occupational bargaining can only be initiated if approved by the Employment Relations Authority. When an application to initiate occupational bargaining is received, the Authority must assess whether there is sufficient support to initiate bargaining. As part of this assessment, the Authority must invite submissions from the public.
- 11 The proposed Employment Relations Authority (Screen Industry Workers) Amendment Regulations 2022 prescribe:
- 11.1 How an application to initiate occupational bargaining must be made;
 - 11.2 The information the applicant organisation must provide about itself and any other proposed bargaining party; and
 - 11.3 The information public submitters must provide to the Authority when submitting on whether bargaining should be initiated. This information

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will vary according to the class of submitter (eg whether the submitter is a worker or an engager).

Applications to the Authority for dispute resolution services

- 12 The Authority provides several types of dispute resolution services under the Act. Two such services are making binding determinations on disputes, and making binding determinations using final offer arbitration. The latter is only for disputes about what a particular term in a collective contract should be. The Act states that these services can only be accessed if parties lodge an application in the prescribed manner and pay the prescribed fee.
- 13 The Employment Relations Authority (Screen Industry Workers) Amendment Regulations 2022 prescribe:
 - 13.1 How an application must be lodged and the contact information parties must provide; and
 - 13.2 The information parties must provide about the dispute. This includes how they wish the dispute to be resolved and what steps they have taken to resolve the dispute.

Decisions made during the drafting process

- 14 In 2019, Cabinet authorised the Minister for Workplace Relations and Safety to make decisions on any issues that arise during the drafting process, consistent with the overall policy intent in the relating paper (DEV-19-MIN-1040). The majority of the regulations' content stems directly from the Act, prescribing operational detail for processes in the Act. I therefore only made two decisions under this delegated authority from 2019.
- 15 First, I decided that worker organisations and engager organisations must include information about which occupational contracts apply (or could potentially apply) to their members in their annual returns. Organisations must also provide an estimated number of their members covered (or potentially covered) by each occupational contract. This will assist the Authority in deciding which organisations should be bargaining parties for an occupational contract.
- 16 In addition, I have decided the fee for applications to the Authority for determinations under the Act, including for final offer arbitration. The Authority currently makes similar determinations in relation to disputes under the Employment Relations Act 2000, with an application fee prescribed in the Employment Relations Authority Regulations 2000. Given determinations made under the Screen Industry Workers Act 2022 will largely involve a similar role for the Authority, I have decided to prescribe the same fee for those applications. To future proof the fees specified in the Employment Relations Authority Regulations 2000, the amendment regulations will change all application fees from GST inclusive to GST exclusive amounts.

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Timing and 28-day rule

- 17 The regulations will be notified in the Gazette the week they are made by the Governor-General in Executive Council. They will come into force on 30 December 2022.
- 18 I am not seeking a waiver of the 28-day rule.

Compliance

- 19 The regulations comply with:
- 19.1 The principles of the Treaty of Waitangi;
 - 19.2 The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 19.3 The principles and guidelines set out in the Privacy Act 2020;
 - 19.4 Relevant international standards and obligations;
 - 19.5 The Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 20 There are no grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 21 The draft regulations have been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact analysis

- 22 The Treasury's Regulatory Impact Analysis team has determined that the proposal to create the following categories of regulations under the Screen Industry Workers Act are exempt from providing a Regulatory Impact Statement (RIS) on the grounds that they have no or only minor impacts on businesses, individuals and not-for-profit entities, in the context of the broader set of policy changes supported by the previous RIS ("Impact Statement: A collective bargaining framework for screen production workers", DEV-19-MIN-0140 refers):
- 22.1 Registration of worker organisations and engager organisations;
 - 22.2 Applications to the Employment Relations Authority for approval to initiate occupational bargaining; and

- 22.3 Applications to the Employment Relations Authority for dispute resolution services.

Publicity

- 23 The Ministry of Business, Innovation and Employment (MBIE) will notify stakeholders when the regulations have been made.

Proactive release

- 24 I intend to proactively release this paper within 30 business days of Cabinet confirming decisions.

Consultation

- 25 MBIE consulted stakeholders in the screen industry, the Treasury, the Employment Court, the Employment Relations Authority and the Companies Office (which will house the Registrar of Screen Industry Organisations) on an exposure draft of the regulations.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note Cabinet agreed to create a new workplace relations regime for contractors in the screen industry in 2019 (DEV-19-MIN-1040 refers);
- 2 note the Screen Industry Workers Act 2022 gives effect to the decision referred to in paragraph 1, and will come into force on 30 December 2022;
- 3 note section 98 of the Screen Industry Workers Act 2022 came into force on 1 October 2022, allowing regulations to now be made under the Act,
- 4 note Cabinet authorised the Minister for Workplace Relations and Safety to make decisions, consistent with the policy intent, on any issues that may arise during the drafting process (DEV-19-MIN-1040 refers);
- 5 note under the authority referred to in paragraph 4, the Minister for Workplace Relations and Safety decided during drafting of regulations that:
 - 5.1 worker organisations and engager organisations must include information about their members' coverage by existing or potential occupational contracts in their annual returns; and
 - 5.2 the application fee for all determinations under the Act should be the same as the application fee for determinations under the Employment Relations Authority Regulations 2000;
- 6 note the Employment Relations Authority (Screen Industry Workers) Amendment Regulations 2022 and the Screen Industry Workers (Registrar Functions and Other Prescribed Matters) Regulations 2022 will give effect to the decisions referred to in paragraphs 1 and 5 above;

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- 7 authorise the submission to the Executive Council of the Employment Relations Authority (Screen Industry Workers) Amendment Regulations 2022 and the Screen Industry Workers (Registrar Functions and Other Prescribed Matters) Regulations 2022;
- 8 note the Employment Relations Authority (Screen Industry Workers) Amendment Regulations 2022 and the Screen Industry Workers (Registrar Functions and Other Prescribed Matters) Regulations 2022 will come into force on 30 December 2022.

Authorised for lodgement

Hon Michael Wood
Minister for Workplace Relations and Safety

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