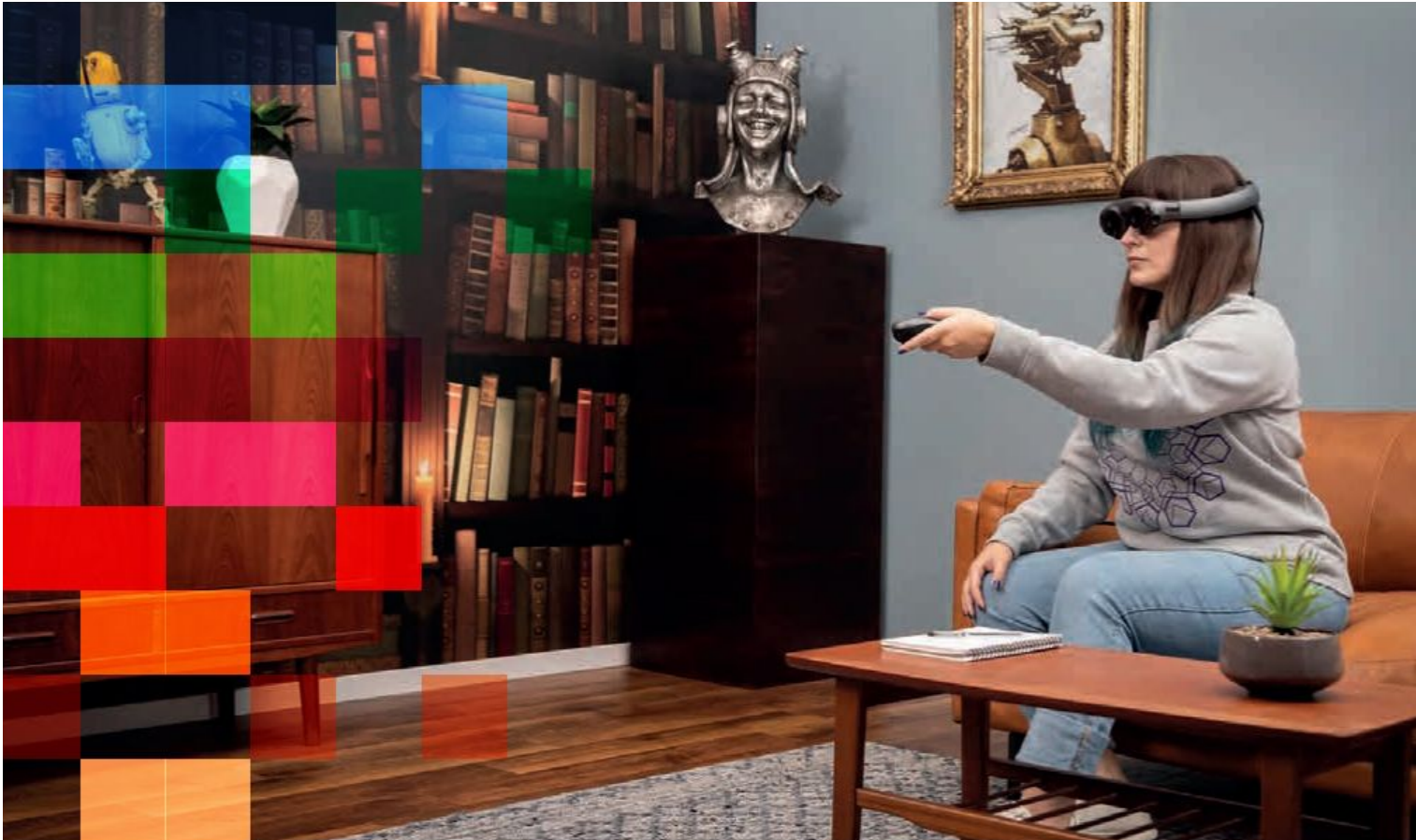


NZGDA

NEW ZEALAND
GAME DEVELOPERS
ASSOCIATION



Interactive and Game Screen Workers Rights

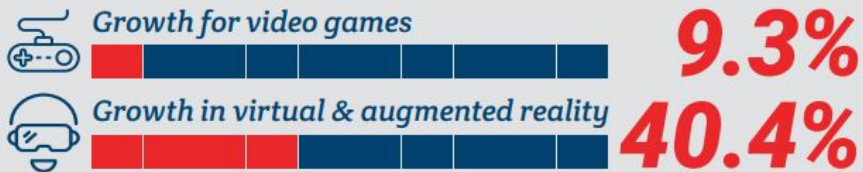
**SUBMISSION ON SCREEN INDUSTRY WORKERS BILL
BY THE NEW ZEALAND GAME DEVELOPERS ASSOCIATION
MAY 2020**

Interactive media such as video games, apps, augmented reality, virtual reality and esports is New Zealand's fastest growing creative industry and already a significant screen export earner. However, the sector is still young and workers' rights need to be protected.

We wish to appear before the select committee to speak to this submission.

Aotearoa's Interactive Opportunity

Interactive media is the world's largest and fastest growing media.



\$258B

Total
Addressable
Market in
2021



Interactive media and gaming is now one of
New Zealand's largest creative sectors.

\$143m
interactive
entertainment and
games revenues
in FY2018



annual growth for
the last six years



of NZ video game revenues
are pure digital exports



NEW ZEALAND
GAME DEVELOPERS
ASSOCIATION

About New Zealand's fast-growing Interactive Screen Industry

With 39 percent annual growth, interactive media is New Zealand's fastest growing creative industry and already earns more export revenue than our local music and local film sectors.

New Zealanders spent over \$548 million on video games and interactive media in the 2018¹. New Zealand interactive creators and video game developers earned over \$200 million in the financial year to 31 March 2019². These figures are in addition to the Statistics NZ Screen Industry Survey which valued our film and TV screen sector at \$3.27 billion in 2018.

For more information about the jobs, export, educational and cultural potential of this sector see the Interactive Aotearoa report published by the NZGDA with support from MBIE, WeCreate and NZ Tech in August 2019.

About the NZ Game Developers Association

The New Zealand Game Developers Association (NZGDA) is an incorporated not-for-profit industry association founded in 2001. It represents New Zealand creators of interactive content and promotes the business, craft and art of creating interactive content. Our members create video games, apps, augmented reality, virtual reality, educational games, serious games and games for social change.

The NZGDA's membership is very inclusive – it includes contractors, freelancers, students, hobbyists, permanent employees and studio employers. In this submission we have aimed to consider the viewpoints of both contractors and employers.

The Association runs several programmes including the New Zealand Game Developers Conference, the Kiwi Game Starter startup programme, a business mentoring programme, diversity scholarships and monthly meetups in five cities.

The Association is not funded as a screen guild and is not a trade union, and has not made any decisions about what role it might play in any future collective bargaining.

For more information see www.nzgda.com or email info@nzgda.com.

¹ <https://igea.net/2019/05/new-zealanders-appetite-for-video-games-continues-to-skyrocket/>

² NZ Game Developers Industry Survey 2019. <https://nzgda.com/news/survey2019/>



£° ' A° M M X 1 , b I b ° ° N Z < M a n ° ° . b Z °

The NZ Game Developers Association supports this Bill

The NZGDA supports the intent of this Bill to improve contractor and freelance game developers' rights.

In particular, we think contractors, freelancers and recent graduates are particularly vulnerable to possible bad practices. Although the law doesn't affect permanent employees, we think it will send a strong signal about best practices.

The requirements asked of employers are reasonable or best practices to be encouraged. The feedback we have received from established New Zealand game studios is that they have no concerns formalising these practices.

However, New Zealand's interactive media industry has no history or experience of collective bargaining. Nor does it receive screen guild funding. It is likely that contractors as well as SMEs, startups or "indie" studios will need education and support about the new obligations.

Are Interactive Games part of the Screen Sector?

Yes. In common with film and TV, interactive game developers create screen entertainment and story experiences with the aim of attracting an audience, often with the involvement of publishers, investors and media partners.

90% of New Zealand homes have a device on which games have been played. Interactive games are played by diverse audiences. 67% of Kiwis play video games, 47% of them are female and they are 34 years old on average³.

Interactive screen workers are both highly creative and technically skilled. Many screen workers such as composers, audio engineers, writers, voice actors, post-production technicians, VFX artists, animators, producers, production assistants work on both film, TV and interactive productions.

The interactive industry employs a number of business models. Some of these are in common with traditional film and TV such as doing projects commissioned by local or international media companies. However, New Zealand's games industry has had particular success with developing our own original products and self-publishing them digitally to global audiences. 96% of the industry's earnings came from exports. As a result, the majority of interactive workers on large interactive projects are permanent employees working for New Zealand-owned companies. The ten largest studios earned 93% of the industry revenue and employed 77% of the workforce⁴.

However, the number of contractors, freelancers and specialists is increasing in our sector. There is also overlap with interactive education, training and advertising which are more likely to hire people for fixed-term projects.

³ Digital New Zealand 2020. <https://igea.net/2019/09/digital-new-zealand-2020-dnz20/>

⁴ NZ Game Developers Industry Survey 2019. <https://nzdga.com/news/survey2019/>



(/ MxXbM '2 NOMB {ZxNt'fZ' y'nxT 'Mdu'Ut' 2 Z{bM' {ZxNt'fZ'a'

Workplace relationships and individual contracts

We support Part Two of this Bill. While there will be some compliance costs, the requirements asked of employers are reasonable or best practices to be encouraged.

In particular we support:

- the mandatory terms required for individual contracts,
- the requirement to have clear complaints processes about bullying, discrimination, or harassment,
- the clarification that the Human Rights Act 1993 applies,
- the clarification that the Health and Safety at Work Act 2015 applies, including a duty of good faith on all parties to a contract.

These support the rights of particularly vulnerable workers who may not feel confident raising issues with employers, such as those with disabilities, neurodiversity or little work experience.

Collective bargaining

We cautiously support Part Three of this Bill. New Zealand's interactive media industry has no previous history or experience of collective bargaining. As a result many of our members had queries about the practical implementation of collective bargaining, possible loopholes and the role of the Authority to ensure fair and reasonable bargaining and we recommend reviewing the implementation of the Act after three years.

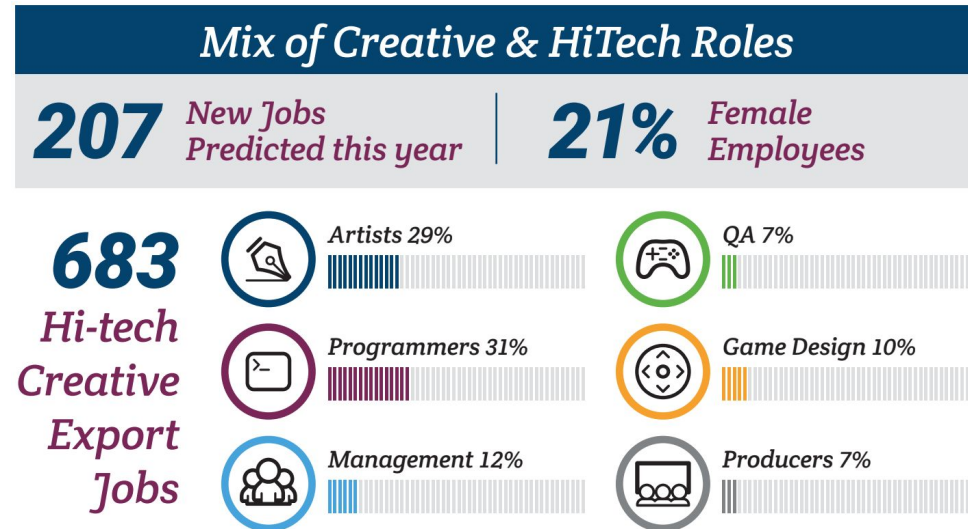
In particular we support:

- creating a framework for workers and engagers in the screen industry to use if they wish to bargain collectively,
- the mandatory collective contract terms,
- the ability to bargain at the occupation level for all "game developers",
- the ability to bargain at enterprise level,
- that collective contracts will effectively set minimum terms for all the work they cover which can be improved on in workers' individual contracts.

Recommendations on Occupational Group definitions

The games industry in New Zealand employs a range of creative and technical roles as shown in Figure 1. The workers in these roles may move between film, TV and interactive productions throughout their careers.

' b | xZ Ü© k ujntk ZI { 'b '3Z, 'LZM'X-y(Nk Zy'† X| y(xt'



Source: NZ Game Developers Industry Survey 2019.

We recommend a production-based not role-based definition of Game Developer

Schedule 3 currently defines “game developer” by breaking it into several component parts (eg “computer animation, audio, video, and graphic image files..”). However, a different more flexible approach is proposed for the two Technician (Production and Post-Production) Occupational Groups, which defines them as “individuals who work on, or contribute to, screen productions during the (production or post-production) phase, and who do not fall within the description of any other occupational group in this schedule.”

H Z xZVnk k ZI XZX' | yb ` 'Myk bM'uxnX| V{bnl 'UMYZX XZ_b b{bnl 'MIX XZ_b b ` :- Nk Z XZfZjnuZx®My' -b XbTX| Ny', an' , nxi 'nl \$nxVhl {xW| {Z {n\$Vnk u| {Zx' ZI ZxMZX` Nk Z'uxnX| V{bnl ySMIX', an Xn' l n{ _Mj', Qab {aZ XZYWu{bnl 'n_Mi' n{aZx'nW| uM{bnl Mj' xn| u'b {aby'WaZX| jZ^{a®}

The benefits of this definition are that:

- It is more flexible
- It is future-proofed, which is especially important in the highly innovative games industry
- recognises that games are multi-disciplinary productions and involve a wide range of creative workers
- is comparable with the Technician (Production) and Technician (Post-production) definitions
- avoids the definition becoming a long awkward list
- ensures all contractors working on a production have the collective contract standards.

In preparing this submission we received much feedback from game workers that the current itemised definition didn't clearly include their own role such as programming, quality assurance, narrative design or community management. Adding each of these (and future roles yet to be invented) would make the definition longer yet still not future-proofed.

Alternative recommendation: A more detailed definition of Game Developer

We recommend adopting the above production-based definition. However, if the current role-based definition was to be adopted it should be amended to include the following key roles.

Schedule 3 currently defines “Game developer” as “individuals who create and manipulate computer animation, audio, video, and graphic image files into multimedia programmes to produce data and content for games.”

5 | x'uxnunyZX'XZ_b b'nl 'n_-(Nk Z'XZfZjnuZx@by©-b Xb'fX| Mj', an'VxMZSk M'bu| jMz'nx'VhnXb MZ'Vnk u| {Zx' M'k M'nl S'M'XbnS'fXZnSy'Wu{yS' x'M'ab'k MZ' b'Zy'b {n'k | j{k Z'Xb'M'uxn' x'Nk k Zy{n'uxnX| VZ'Vnk u| {Zx'VhXZSXM'M M'X'Vh| ZI { 'nx' Nk Zy^a

We believe this more clearly includes the key game developer roles of programmer, producer, interactive writer and quality assurance. It excludes support roles like accounting, advertising and customer support.

H Z'xZVnk k ZI X'N'X'X'b ` -aaa{n'uxnX| VZ'Vnk u| {Zx'VhXZ'aaa@{n' {aby'XZ_b b'nl 'n'VhfZx' Nk Z'uxn' x'Nk k Zy^a It is unclear whether the definition would include game programmers, who make up 31% of all games industry workers in New Zealand⁵. Adding “code” alongside “data and content for games” would make this clear.

The games industry considers game programmer as a key creative role, not just a technical role. However, this is not always apparent to people without industry knowledge.

H Z'xZVnk k ZI X'N'X'X'b ` -aaa'nx'VhnXb MZ'...@{n' {aby'XZ_b b'nl 'n'VhfZx'uxnX| VZxy^a It is unclear whether the definition would include producers and production assistants who organise teams, schedule work and ensure the delivery of productions on time and on schedule. We consider them as key contributors to any production. We do not consider them to be “support services” as defined in Clause 11.2.

We note that producers and production assistants for film and TV are not well defined in the other occupational groups. We assume they are covered as Technicians as “individuals who work on, or contribute to ” productions. Either a similar wording could be added to the game developer definition, or the game developer definition amended to “individuals who create, manipulate and coordinate ”

We assume that general managers are unlikely to be contractors so would not be accidentally covered by this.

H Z'xZVnk k ZI X'N'X'X'b ` -aa'y'Wu{y@{n' {aZ'XZ_b b'nl 'n_ Nk Z'XZfZjnuZx'M'X'N'X'X'b ` -M'X', an'Xn' l n{ 'Nj', b'ab {aZ' XZy'Wu{b'nl 'n_M' t'n{aZ'x'nW| u'M'nl Nj' xn| u'b {aby'VaZX| jZ@{n' {aZ'XZ_b b'nl 'n_ x'qZ^a Interactive Writers should be included in the Game Developer Occupational Group.

A writer is defined as “individuals who write, edit, contribute to, and evaluate scripts and stories for screen productions”. Schedule 2 defines a computer-generated game as “a screen production that is a game generated by a computer, where the way in which the game proceeds depends on the decisions, inputs, and direct involvement of the player.”

In an interactive production, an interactive writer has to consider those player decisions, inputs and direct involvement. In particular, this requires producing “data .. for games” and in some cases even computer code. Job titles commonly used in our industry for this role include narrative designer and interactive writer rather than script writer.

⁵ NZ Game Developers Industry Survey 2019. <https://nzgda.com/news/survey2019/>

H Z'xZVnk k ZI X'VjM₀t₀b` n'x'uxn₇f₀X₀b` n`_b₀M₀J₀i` | bXMI VZ'nl` 'yuZV₀b₀V₀xnjZyM₀X'hmU' {k₀jZyV₀h₀fZ₀xZ₀X₀a'

Many of our members have expressed concern that the game developer Occupational Group definition is unclear to them. We recommend that MBIE or ERA publish guidance and examples on the interpretation of the Occupational Groups to make it clear to workers with these job titles that the Act applies to them.

Common job titles in the interactive industry include:

Programmer: Gameplay, Backend, Graphics

Designer: Game Designer, Level Designer, Narrative Designer

Quality Assurance: Game Testers, Support

Artist: Concept Artist, Game Artist (2D/3D), Visual Effects Artist, Texture Artist

Animation: Animator, Rigging

Production: Producer, Project Manager, Production Assistant

<Zx_nxk Zx'5W| uM₀l₀nl M₀J₀i' (xn| u'

We support the definition of “performer” as “individuals who portray roles in screen productions, including stunt persons, narrators, voice-over actors, extras, singers, musicians, and dancers” and note that this covers performers whose performance is motion-captured or voice-acted for video games.

An emerging trend is the rise of esports and whether esports athletes should be considered as performers. However, Schedule 2 defines that this Act does not apply to sports programmes. We recommend considering adding “esports programmes” to the exclusions in Schedule 2 to clarify this.

† nk unyZx'5W| uM₀l₀nl M₀J₀i' (xn| u'

We support the definition of a “composer” as “individuals who create or modify musical compositions for screen productions” and note that this covers composers who work on both film, TV and interactive productions.

° | X₀h₀"₀I` b ZZxy'k n₀fZ'UZ{, ZZI '5W| uM₀l₀nl M₀J₀i' (xn| uy'

We note that audio engineers, recording technicians and sound engineers would be treated as “game developers” when they work on game productions. However, they would switch to “Technician (post-production)” when they work on film and TV productions.

Screen productions to which the Act does not apply

H Z'xZVnk k ZI X'xZk nfb` {aZ'Z.M| ynl 'n_-Vnk u| {Zx' ZI ZxMZX` Nk Zy'_nxZX| VMlml MjS(xNB b` SMIX'NkfZx{byb` ' u| xunyZy®_xnk '@aZX| jZ'Ysf jM|yZ'Y'a

The NZGDA originally recommended this exception to MBIE officials to provide certainty in situations where interactive design and gaming expertise was applied to other industries.

However, we recommend that the provision in Section 11.3 is sufficient. It states that “an entity does not primarily engage in screen production work if the entity (a) derived less than 50% of its average annual gross income from work relating to the creation of screen productions in the previous 3 financial years.”

This ensures that interactive developers working regularly on, for example, interactive training simulations are covered by this Act. They are likely to also work on entertainment games during their career and we consider them part of the game developer profession.

' b | xZ'Y©<nu| jMk' n_ZX| VMlml Mj` Nk Zy'b` 3Z, 'LZNMIX'yWannjyMIX', nxi ujMZY'



> | Zyl'1AZH ak@Ml` Mk Zl {NjtaZMj(a MuUt° | V jMIX'2 ZXBMj@aannj'MIX'1 (MZ Z'a

Resources to educate Workers and Employers

H Z'xZVnk k Zl X {aM'ywZZl ~ | bX' | I Xb ` nx'ytb bM'UZ'uxn'fXZX' {n' {aZ'3L' (MZ Z'ž ZfZjnuZxy° yynVbMbl {n'ZX| VMZ' , nxi Zxy'MIX'Zk ujntZxy'nl {aZ'° V{MIX'ky'bk ujZk Zl {Mbl a'

Unlike the other Occupational Groups, game developers in New Zealand have no history or experience with collective bargaining. This Act is a new model for many in the screen industry, but is completely new to the interactive sector. It is likely that contractors as well as SMEs, startups or “indie” studios will need education and support about the new obligations.

Unlike existing screen guilds, the NZ Film Commission does not currently provide any operational or industry development funding to the NZ Game Developers Association that could be used to provide employment law education. This could be introduced or alternatively any resources developed by MBIE should pay particular attention to the interactive sector.

Á

Á

Exploitation of unpaid labour

We note that this Act does not cover amateur productions, student coursework productions and unpaid student internships. However, these productions can be particularly vulnerable to bullying, harassment, discrimination and exploitation of work and even intellectual property rights.

We hope that education around the Act's obligations will raise awareness of workers rights and best practices across the sector.

In addition, we believe a lack of government screen funding for interactive productions encourages bad actors who may rely on unpaid internships for labour, not provide written contractors or renege on agreed terms.

Á