



New South Wales

# Entertainment Industry Act 2013 No 73

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Entertainment Industry Act 2013*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are:

- (a) to provide effective, fair and consistent regulation of the entertainment industry, and
- (b) to provide protections for performers.

### 4 Definitions

(1) In this Act:

*authorised officer*—see section 26.

*business day* means a day that is not a Saturday, a Sunday or a public holiday throughout New South Wales.

*capped amount*—see section 9.

*civil penalty order* means an order under section 43.

*code of conduct* means the code of conduct for performer representatives set out in Schedule 1.

*director* of a corporation means a person who is a director of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

*entertainment industry agreement* means an agreement between a performer and a performer representative for the performer representative to provide one or more of the services referred to in section 5.

*entertainment industry hirer* means a person who engages or contracts any performer for the purpose of a performance.

*entertainment industry managerial agreement*—see section 10.

*entertainment industry prohibition order*—see section 25 (2).

*entertainment industry representative* means a performer representative or a venue representative.

*function* includes a power, authority or duty and *exercise* a function includes perform a duty.

*industrial court* means an industrial court within the meaning of Part 1 of Chapter 7 of the *Industrial Relations Act 1996*.

*performance* means:

- (a) a performance that is given in any place or by the use of any medium for the transmission of sound or images, or both, or
- (b) a performance that is recorded for the purpose of using the recording in any place or for the transmission of sound or images, or both,

and one of the purposes of which is the financial benefit of an entertainment industry hirer or performer, or both.

**performer** means any actor, singer, dancer, acrobat, model, musician or other performer of any kind who enters an entertainment industry agreement with a performer representative.

**performer representative**—see section 5.

**Secretary** means the Secretary of the Treasury.

**show cause notice** means a notice served by the Secretary under section 24.

**unlawful conduct** means conduct by a performer representative that constitutes:

- (a) a breach of the code of conduct, or
- (b) a breach of a term of an undertaking given by the performer representative under section 21, or
- (c) a contravention of a provision of this Act or the regulations, whether or not any proceedings have been brought in respect of the contravention.

**venue representative**—see section 15.

- (2) In this Act, a reference to an **award** or **industrial agreement** is a reference to an award or industrial agreement relating to the employment of performers in the entertainment industry.
- (3) Notes included in this Act do not form part of this Act.

## Part 2 Entertainment industry obligations

### Division 1 Performer representatives

#### 5 Performer representative

In this Act, a *performer representative* means a person who, for financial benefit, provides or agrees to provide one or more of the following services to a performer (whether or not the agreement also provides for other services to be provided):

- (a) seeking or finding work opportunities for the performer,
- (b) negotiating terms of an agreement for, and the conditions of, a performance,
- (c) finalising arrangements relating to the payment of the performer,
- (d) negotiating arrangements relating to the attendance of the performer at a performance,
- (e) administering the agreement between the performer and an entertainment industry hirer,
- (f) making arrangements for publicity attendances and related publicity responsibilities of the performer,

but does not include a person who does so solely as an employee of any such representative.

#### 6 Trust accounts to be established by performer representatives

- (1) A performer representative who receives money on behalf of a performer, from any person, must:
  - (a) hold the money exclusively for the performer, and
  - (b) ensure that the requirements of this Act and the regulations under this Act are complied with in relation to the money.
- (2) Money received on behalf of a performer by a performer representative that is not paid to the performer immediately (or within such period as may be prescribed by the regulations) must:
  - (a) be paid to the credit of a general trust account at an authorised deposit-taking institution in New South Wales and be held in accordance with the regulations, and
  - (b) be disbursed as directed by the performer within 14 days after the performer representative receives the money.

**Note.** Section 43 provides that the industrial court or Local Court may order a person to pay a pecuniary penalty not exceeding \$10,000 for a contravention of paragraph (b).
- (3) A trust account under this section must be kept exclusively for the purpose of money received on behalf of a performer.
- (4) A performer representative must keep accounting records in respect of money received on behalf of a performer.
- (5) The accounting records must:
  - (a) disclose at all times the true position concerning the money received, and
  - (b) be kept at the principal place of business of the performer representative, and
  - (c) be otherwise kept in accordance with the regulations.
- (6) The regulations may make provision for or with respect to the administration of trust accounts under this section, in particular:
  - (a) the establishment of trust accounts, and

(b) the keeping of documents and records by performer representatives.

- (7) A person who, without reasonable excuse, contravenes a provision of this section (other than subsection (2) (b)) or the regulations under this section is guilty of an offence.

Maximum penalty: 75 penalty units.

## 7 Financial statements for money received for performers

- (1) An entertainment industry representative who receives money on behalf of a performer must, as soon as practicable after receiving the money, give a financial statement to the following persons:

- (a) the performer,
- (b) any other entertainment industry representative who has represented the performer, or carried out activities on behalf of the performer, in connection with the performance for which the money has been received,
- (c) the entertainment industry hirer (or other person) by whom or on whose behalf the money has been paid.

- (2) A financial statement required to be given to another entertainment industry representative must include:

- (a) a statement of the amount of money received on behalf of the performer by the representative giving the statement, and
- (b) a statement of the amount of money paid to the performer for the performance.

- (3) A financial statement required to be given to a performer must include:

- (a) a statement of the amount of money received on behalf of the performer by the representative giving the statement, and
- (b) a statement of the amount of money paid to the performer for each performance, including the following particulars:
  - (i) the method of payment,
  - (ii) any deduction from the money received by the representative that has been made for the representative's fee or other remuneration,
  - (iii) any deduction from the money received by the representative that has been made for expenses incurred by the performer in connection with the performance (such as for travel expenses and equipment hire) and paid for by the representative, and
- (c) the date and details of any performance to which the statement relates, and
- (d) any business name under which the representative carries on business as a representative, and
- (e) if the representative is a corporation under the *Corporations Act 2001* of the Commonwealth, the corporation's ACN within the meaning of that Act, and
- (f) if the representative has an ABN for his or her business as a representative, the ABN.

- (4) A person must not, without reasonable excuse, fail to provide a financial statement required by this section.

**Note.** Section 43 provides that the industrial court or Local Court may order a person to pay a pecuniary penalty not exceeding \$10,000 for a contravention of this subsection.

- (5) In this section, **ABN** means an Australian Business Number registered under the *A New Tax System (Australian Business Number) Act 1999* of the Commonwealth.

## 8 Duty of disclosure

- (1) A performer representative who is both a performer representative and venue representative in respect of a performance is, by instrument in writing, to give notice of that fact to both the performer and the entertainment industry hirer.
- (2) A person must not, without reasonable excuse, fail to give notice under this section.  
Maximum penalty: 40 penalty units.

## 9 Capped amount of performer representative fees

- (1) The *capped amount* for the fees and other remuneration of a performer representative is:
  - (a) the percentage, prescribed by the regulations, of the total amount payable to the performer for any performances in respect of which the performer representative provided services under an entertainment industry agreement, or
  - (b) if there are no performances in respect of which the performer representative provided a service under an entertainment industry agreement, the amount determined in accordance with the regulations.
- (2) The regulations may make provision for or with respect to the fees and other remuneration referred to in this section and, in particular:
  - (a) may prescribe different percentages of fees or other remuneration in respect of different kinds of performances or services provided by performer representatives, or other matters, and
  - (b) may prescribe the amounts (being amounts payable to performers) that are to be excluded when calculating such fees or other remuneration, and
  - (c) may prescribe the manner in which the capped amount for fees or other remuneration is to be determined under an entertainment industry agreement when there are no performances in respect of which the performer representative provides a service.

## 10 Entertainment industry managerial agreement

- (1) An *entertainment industry managerial agreement* is an entertainment industry agreement:
  - (a) that is in writing, and
  - (b) under which the performer representative agrees to provide services in relation to the management of the reputation, career or career development of the performer that are in addition to the services referred to in section 5, and
  - (c) that fixes the fees payable by the performer in respect of the services specified in the agreement, and
  - (d) that includes an additional fee acknowledgement.
- (2) An *additional fee acknowledgement* means an acknowledgement by the performer that:
  - (a) the performer understands that the written agreement will allow the performer representative to demand or receive fees or other remuneration that exceeds the capped amount, and
  - (b) the performer understands that a cooling-off period applies in respect of the agreement, and
  - (c) the performer representative has provided the performer with the information required to be provided under section 13.

## 11 Fees of performer representatives

- (1) A performer representative must not demand or receive a fee or other remuneration from a performer under an entertainment industry agreement that exceeds the capped amount, unless the agreement is an entertainment industry managerial agreement and the additional services under the agreement are provided.

Maximum penalty: 100 penalty units.

- (2) A performer representative must not demand or receive fees or other remuneration from a performer for:
- (a) the performer joining or auditioning to join or enter into a contract with the performer representative, or
  - (b) the retention or on-going representation of the performer by the performer representative.

Maximum penalty: 100 penalty units.

- (3) A performer representative must not demand or receive a fee or other remuneration from a performer under an entertainment industry agreement for any performance in respect of which the performer representative is also the venue representative (unless the agreement is an entertainment industry managerial agreement and the additional services under the agreement are provided).

Maximum penalty: 100 penalty units.

## 12 Cooling-off period for agreements including additional fee acknowledgment

- (1) There is to be a cooling-off period for every entertainment industry managerial agreement.
- (2) The cooling-off period ends at 5pm on the third business day after the day on which the entertainment industry managerial agreement was entered into.
- (3) A performer may terminate an entertainment industry managerial agreement before the end of the cooling-off period, by notice in writing to the performer representative (*a notice of termination*).
- (4) If a performer gives a performer representative a notice of termination before the end of the cooling-off period:
- (a) the entertainment industry managerial agreement is taken to be terminated at the time the notice is given (subject to this section), and
  - (b) the performer representative is entitled to payment, in respect of any services provided in accordance with the agreement before its termination, of fees or other remuneration not exceeding the capped amount.
- (5) If at the time of the termination of the agreement the performer is not engaged for a performance, the performer representative is entitled to payment by the performer of the reasonable costs incurred by the representative in providing services to the performer in accordance with the agreement before the notice of termination was given.
- (6) If the entertainment industry managerial agreement so provides, the agreement remains in force after the notice of termination is given to the extent that it requires:
- (a) the performer to pay any fee or other remuneration that does not exceed the capped amount, and
  - (b) the performer representative to provide one or more services specified in the agreement as being services that the representative will provide if notice of termination is given.

- (7) A performer may waive the cooling-off period provided by this section, at the time of entering into an agreement, by notice in writing to the performer representative.
- (8) Notice of termination and notice of the waiver of the cooling-off period must be in the form approved by the Secretary.

### **13 Performer representatives to provide information to performers**

- (1) A performer representative must, before entering into an entertainment industry agreement with a performer or prospective performer, provide the performer with the information or documents, if any, prescribed by the regulations relating to this Act or the regulations under this Act or to the entertainment industry generally.
- (2) Without limiting subsection (1), the prescribed information or documents may relate to:
  - (a) the cooling-off period referred to in section 12 (including the waiver of the cooling-off period), and
  - (b) the effect of entering into an entertainment industry managerial agreement.
- (3) A performer representative must, before entering into an agreement with a performer who is a child, provide the parents of the child with the information, if any, required by the regulations relating to the conditions of employment of minors under the *Children and Young Persons (Care and Protection) Act 1998* or any other Act or law.
- (4) A performer representative must not, without reasonable excuse, fail to comply with a requirement imposed under this section.

**Note.** Section 43 provides that the industrial court or Local Court may order a person to pay a pecuniary penalty not exceeding \$10,000 for a contravention of this subsection.

### **14 Records to be kept by performer representatives**

- (1) A performer representative must keep the following records at the representative's principal place of business for at least 5 years after the records are made:
  - (a) each accounting record the representative is required to keep under section 6 (4) in respect of money received on behalf of a performer,
  - (b) a copy of each financial statement provided by the representative under section 7,
  - (c) a copy of each written agreement the representative has entered into with a performer or with another person on behalf of the performer.
- (2) A performer representative who holds any record referred to in subsection (1) (b) or (c) in relation to a performer must, after receiving a request by or on behalf of the performer for a copy of the record:
  - (a) make the copy available for collection at the representative's principal place of business if requested to do so within 3 days or such other time as may be agreed, or
  - (b) send the copy (whether by post or otherwise) to the performer within 14 days.
- (3) A person who, without reasonable excuse, contravenes this section is guilty of an offence.

Maximum penalty: 20 penalty units.

## **Division 2 Venue representatives**

### **15 Venue representative**

In this Act, a *venue representative* means a person who, for financial benefit, acts on behalf of an entertainment industry hirer to arrange a performance by a performer at

a particular venue, but does not include an entertainment industry hirer or a person who arranges for a performance solely in the capacity of an employee of a venue representative.

#### **16 Venue representative to disburse funds**

A venue representative must not, without reasonable excuse, fail to disburse any money received on behalf of a performer to the performer within 14 days of its receipt or otherwise in accordance with the directions of the performer.

**Note.** Section 43 provides that the industrial court or Local Court may order a person to pay a pecuniary penalty not exceeding \$10,000 for a contravention of this section.

#### **17 Records to be kept by venue representatives**

- (1) A venue representative must keep accounting records in respect of money that the representative pays to a performer representative for the services of a performer.
- (2) Without limiting subsection (1), the accounting records must disclose the basis on which the payments are made in addition to any other particulars of the payments.
- (3) The venue representative must keep each such accounting record at the representative's principal place of business for at least 5 years after the record is made.
- (4) A venue representative who holds any such record must, after receiving a request by or on behalf of a performer for a copy of the record:
  - (a) make the copy available for collection at the representative's principal place of business if requested to do so within 3 days or such other time as may be agreed, or
  - (b) send the copy (whether by post or otherwise) to the performer within 14 days.
- (5) A person who, without reasonable excuse, contravenes this section is guilty of an offence.

Maximum penalty: 20 penalty units.

### **Division 3 Entertainment industry hirers**

#### **18 Time for making of payment by entertainment industry hirers**

An entertainment industry hirer who is required to make a payment to a performer in relation to a performance must not, without reasonable excuse, fail to make the payment within:

- (a) 1 calendar month after the date of the performance, or
- (b) such other period as may be specified in an agreement between the performer and the hirer in writing.

**Note.** Section 43 provides that the industrial court or Local Court may order a person to pay a pecuniary penalty not exceeding \$10,000 for a contravention of this section.

#### **19 Records to be kept by entertainment industry hirers**

- (1) An entertainment industry hirer who engages or contracts with a performer for a performance must keep accounting records in respect of any money paid to an entertainment industry representative for the services of the performer.
- (2) Without limiting subsection (1), the accounting records must disclose the basis on which the payments are made in addition to any other particulars of the payments.
- (3) An entertainment industry hirer who is required to keep records under this section must keep the record, at the hirer's principal place of business, for at least 5 years after it is made.

- (4) An entertainment industry hirer who, without reasonable excuse, contravenes this section is guilty of an offence.  
Maximum penalty: 20 penalty units.

#### **Division 4      Disputes arising between performer and entertainment industry representatives**

##### **20 Disputes may be resolved by Industrial Relations Commission**

- (1) If a question, dispute or difficulty arises between a performer and an entertainment industry representative or entertainment industry hirer, the performer, or an industrial organisation acting on behalf of a performer, may apply to the Industrial Relations Commission to have the matter determined by conciliation and, if necessary, arbitration.
- (2) The Industrial Relations Commission may conduct such a dispute resolution process in such manner as the Commission considers appropriate.
- (3) The Industrial Relations Commission may make such orders in relation to such a question, dispute or difficulty as the Commission considers fair and reasonable in the circumstances.
- (4) A person who fails to comply with an order of the Industrial Relations Commission under this section is guilty of an offence.  
Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

## Part 3 Enforcement

### Division 1 Undertakings

#### 21 Secretary may accept undertakings

- (1) The Secretary may accept (by written notice) a written undertaking given by an entertainment industry representative or entertainment industry hirer, relating to the carrying on of the business of the entertainment industry representative or hirer, if the Secretary reasonably believes that the entertainment industry representative or hirer has contravened:
  - (a) in the case of a performer representative:
    - (i) the code of conduct, or
    - (ii) section 6 (2) (b), 7 (4) or 13 (4), or
  - (b) in the case of a venue representative, section 16, or
  - (c) in the case of an entertainment industry hirer, section 18.
- (2) The representative or hirer may withdraw or vary the undertaking at any time but only with the Secretary's written consent.
- (3) The Secretary must not accept an undertaking given by an entertainment industry representative or entertainment industry hirer if proceedings for a civil penalty have been instituted in relation to the alleged contravention.

#### 22 Enforcement of undertakings

- (1) The Secretary may apply to an industrial court or the Local Court for an order under subsection (2) against a person if the Secretary considers that the person has breached an undertaking given under this Part.
- (2) An industrial court or the Local Court may make all or any of the following orders if it is satisfied that the person has breached an undertaking:
  - (a) an order directing the person to comply with the term of the undertaking concerned,
  - (b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
  - (c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,
  - (d) any other order that the Court considers appropriate.

### Division 2 Entertainment industry prohibition orders

#### 23 Definition

In this Division, *director of a corporation* includes a person who is concerned in the management of the corporation.

#### 24 Secretary may require person to show cause

- (1) The Secretary may, if of the opinion that a performer representative or the director of a corporation that carries on the business of a performer representative has engaged in unlawful conduct, serve on the representative or director a show cause notice.
- (2) A show cause notice issued by the Secretary is to require the performer representative or director on whom the notice was served to show cause why the representative or director should not, for the reason specified in the notice:

- (a) in the case of a performer representative, be prevented from continuing to carry on the business of a performer representative, or
  - (b) in the case of a person who is a director of a corporation that carries on the business of a performer representative, be prevented from being a director of such a corporation.
- (3) The notice must:
  - (a) be in writing, and
  - (b) specify the period (being at least 14 days after the notice is served) in which the person may show cause.
- (4) The person on whom a notice to show cause has been served under this section may, within the period specified in the notice, make a written submission to the Secretary in relation to the matters to which the notice relates.
- (5) The Secretary:
  - (a) is to consider any submission made within the period specified in the notice, and
  - (b) may conduct such inquiries, or make such investigations, in relation to the matters to which the notice relates as the Secretary thinks appropriate.

## 25 Entertainment industry prohibition orders

- (1) The Secretary may, after serving a show cause notice on a person under this Part and taking into consideration any submissions made in relation to the matter, apply to the Supreme Court for an order under this section in respect of the person if the Secretary is of the opinion that:
  - (a) the person is likely to engage again, or continue to engage, in unlawful conduct, or
  - (b) if the person is a director of a corporation that carries on the business of a performer representative, the person is likely to knowingly authorise or permit the corporation to engage again, or continue to engage, in unlawful conduct.
- (2) The Supreme Court may, on the application of the Secretary, make an order (an *entertainment industry prohibition order*) prohibiting the person from carrying on the business of a performer representative or being a director of a corporation that carries on the business of a performer representative for an indefinite period or for a period specified in the order and may make such other orders as the Court considers appropriate in relation to:
  - (a) the carrying on of the business of a performer representative by the person, or
  - (b) if the person is a director of a corporation that carries on the business of a performer representative, the conduct of a person as a director of such a corporation.
- (3) The Supreme Court may also, if the Court is satisfied that a person has sustained loss or damage as a result of the unlawful conduct of the person against whom the order is made, order the person to compensate the other person for the loss or damage.
- (4) The Supreme Court may amend or revoke an order made under this section, on the application of the Secretary or of the person who is subject to the order concerned, if the Court is satisfied that there are reasonable grounds for doing so.

## **Division 3      Authorised officers**

### **26    Definition**

In this Act, *authorised officer* means:

- (a) a person appointed as an inspector for the purposes of the *Industrial Relations Act 1996*, or
- (b) any other person eligible to be appointed as an inspector under that Act who is authorised, in writing, by the Secretary or the Minister to exercise the functions of an authorised officer.

### **27    Authorised officer's powers**

- (1) An authorised officer may exercise powers under this section only for the purpose of investigating possible unlawful conduct.
- (2) An authorised officer may, at any reasonable time, enter and inspect any premises that the officer has reasonable grounds to suspect are the premises of an entertainment industry representative or entertainment industry hirer, and inspect any work being done there and, while on any premises entered under this section:
  - (a) require any person employed or engaged at the premises to produce to the authorised officer such records or other documents as are required to be kept under this Act or the regulations and are in the custody or under the control of the person so employed or engaged, and
  - (b) question any entertainment industry representative, entertainment industry hirer, or employee of a representative or hirer, as to any matter concerning the possible unlawful conduct.
- (3) An authorised officer may, at any time:
  - (a) require an entertainment industry representative or entertainment industry hirer to produce for the authorised officer's examination, at such time and place as the officer may reasonably specify, any specified records required to be kept under this Act (and retain any such record for such period as may be necessary in order to take copies of or extracts from it), and
  - (b) require an entertainment industry representative or entertainment industry hirer to deliver to the authorised officer, within such time and to such place as the officer may reasonably specify, any specified information concerning possible unlawful conduct, and
  - (c) make such other examinations and inquiries as the authorised officer thinks necessary to ascertain whether the requirements of this Act or the regulations are being or have been contravened.
- (4) A requirement of an authorised officer under this section may be made personally or by notice in writing served by post.
- (5) An authorised officer who enters premises under this section may seize anything that the officer reasonably considers to be evidence of a contravention of this Act or the regulations.
- (6) An authorised officer must not exercise the powers conferred by this section in relation to any part of any premises used for residential purposes except:
  - (a) with the permission of the occupier of the premises, or
  - (b) under the authority conferred by a search warrant issued under section 28.

## 28 Search warrants

- (1) An authorised officer may apply to an issuing officer for a search warrant if the applicant has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened on premises.
- (2) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the authorised officer named in the warrant, when accompanied by a police officer, and any other person named in the warrant:
  - (a) to enter the premises concerned, and
  - (b) to search the premises for evidence of a contravention of this Act, the regulations or the code of conduct.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:  
*issuing officer* means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## 29 Offence to obstruct etc authorised officer

A person must not, without reasonable excuse:

- (a) obstruct or hinder an authorised officer in the exercise by the authorised officer of any function under this Division or when executing a search warrant under section 28, or
  - (b) fail to comply with a requirement of an authorised officer under this Division.
- Maximum penalty: 50 penalty units.

## Part 4 Disclosure of information about contraventions

### 30 Secretary may keep register

- (1) The Secretary may keep a register (the *register*) of information about the following:
  - (a) offences committed against this Act or the regulations,
  - (b) undertakings given to the Secretary by entertainment industry representatives or entertainment industry hirers,
  - (c) entertainment industry prohibition orders,
  - (d) civil penalty orders.
- (2) The register may contain any of the following information in relation to a person who has been convicted of an offence under this Act or the regulations, who has given an undertaking or who is the subject of an entertainment industry prohibition order or civil penalty order:
  - (a) the name of the person,
  - (b) the name and address of the usual place of business (if any) of the person,
  - (c) the trade name (if any) under which the person trades,
  - (d) if the person is a corporation, the names of the chief executive officer and any director of the corporation,
  - (e) if the person has committed an offence:
    - (i) a description of the nature and circumstances of the offence, the decision of the court and the penalty imposed, and
    - (ii) the enforcement agency or other body under the direction of which, or on behalf of whom, the relevant prosecution was conducted,
  - (f) if the person has given an undertaking, a copy of the undertaking,
  - (g) if the person is the subject of an entertainment industry prohibition order, a copy of the order,
  - (h) if the person is the subject of a civil penalty order, a copy of the order.
- (3) Information relating to a particular offence is not to be published on the register until:
  - (a) if no appeal is made, after the last day on which an appeal may be made against the conviction, or
  - (b) if an appeal is made, after a final order has been made on appeal affirming the conviction.
- (4) The register may be kept in such form as the Secretary considers appropriate.
- (5) For the purposes of this Part, an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in relation to an offence is taken to be a conviction for the offence.

### 31 Publication of information on register

- (1) The register is to be made available for public inspection on the website of the Treasury.
- (2) Information contained in the register may be provided to members of the public in any other manner approved by the Secretary.
- (3) Without limiting subsection (2), the Secretary may publish any information contained in the register in the *Gazette* or in a newspaper circulating in this State.

### **32 Correction of register**

- (1) The Secretary must correct any error or omission in information in the register as soon as practicable after becoming aware of the error or omission.
- (2) The Secretary may correct any error in, or omission from, the register on the Secretary's own initiative or on an application by a person under this Part.

### **33 Removal of information from register**

- (1) The Secretary may remove any information from the register.
- (2) The Secretary must remove information about a conviction for a particular offence from the register as soon as practicable after becoming aware that:
  - (a) the conviction has been quashed or annulled, or
  - (b) an appeal has been made against the conviction, or
  - (c) a period of 2 years has elapsed since the end of the period during which an appeal could have been made against the conviction, or if an appeal was made against the conviction, the date on which a final order was made affirming the conviction.
- (3) The Secretary must remove information about a civil penalty order being made in relation to a person as soon as practicable after becoming aware that:
  - (a) an appeal has been lodged against the making of the order, or
  - (b) the order has been overturned, or
  - (c) a period of 2 years has elapsed since the end of the period during which an appeal could have been made against the making of the order, or if an appeal was made against the making of the order, the date on which a final order was made affirming the order.
- (4) However, in a case where the Secretary removes information from the register because an appeal is made against a conviction for an offence or the making of a civil penalty order, the Secretary may restore information regarding the offence or order to the register if satisfied that any such appeal was unsuccessful.
- (5) The Secretary must remove information about an undertaking being given by an entertainment industry representative or entertainment industry hirer as soon as practicable after becoming aware that the undertaking has expired or has otherwise ceased to be in force.
- (6) The Secretary must remove information about an entertainment industry prohibition order being made in relation to a person as soon as practicable after becoming aware that the person is no longer subject to a prohibition order.
- (7) The Secretary may remove any information about an undertaking, entertainment industry prohibition order, civil penalty order or conviction for an offence from the register if it is appropriate in the circumstances to remove the information from the register.
- (8) The Secretary may remove information from the register on the Secretary's own initiative or on an application by a person under this Part.

## Part 5 General

### 34 Disclosure of relevant information

- (1) A person must not disclose any relevant information obtained in connection with the administration or execution of this Act or the regulations unless the disclosure is made:
  - (a) with the consent of the person from whom the information was obtained, or
  - (b) in connection with the administration or execution of this Act, or
  - (c) for the purposes of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings, or
  - (d) to the Children's Guardian in connection with the engagement of child performers, or
  - (e) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
  - (f) with any other lawful excuse.

Maximum penalty: 40 penalty units.

- (2) In this section:

**relevant information** means:

- (a) information concerning the business or financial affairs of the person from whom the information is obtained, or
- (b) information concerning any investigation under Division 3 of Part 3.

### 35 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.

- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

### **36 Delegation**

The Secretary may delegate any function of the Secretary under this Act (other than this power of delegation) to:

- (a) any member of staff of the Treasury, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

### **37 Personal liability**

- (1) A matter or thing done or omitted to be done by the Secretary or any person acting under the direction of the Secretary, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this or any other Act, does not subject the Secretary or a person so acting personally to any action, liability, claim or demand.
- (2) However, any such liability attaches instead to the Crown.

### **38 Liability of directors and managers of corporations**

- (1) If a corporation contravenes, whether by act or omission, a provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have engaged in the same unlawful conduct if the person knowingly authorised or permitted the unlawful conduct.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

### **39 Contracting out void**

The provisions of this Act and the regulations have effect despite any stipulation to the contrary and no contract or agreement made or entered into before or after the commencement of this section operates to annul, vary or exclude any of the provisions of this Act or the regulations.

### **40 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:
  - (a) in the case of a natural person:
    - (i) delivering it to the person personally, or
    - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) sending it by facsimile transmission to the facsimile number of the person, or

- (b) in the case of a body corporate:
  - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
  - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

#### **41 Service of documents on the Secretary**

- (1) A document may be served on the Secretary by leaving it at, or by sending it by post to:
  - (a) the office of the Treasury, or
  - (b) if the Treasury has more than one office, any one of its offices.
- (2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Secretary in a manner not provided for by subsection (1).

#### **42 Proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations may be taken and prosecuted by any person acting with the authority of the Secretary.
- (2) Proceedings for an offence under this Act or the regulations are to be commenced not more than 12 months after the date of the alleged offence.
- (3) Proceedings for an offence under this Act or the regulations are to be dealt with summarily before an industrial court or the Local Court.
- (4) In a prosecution for an offence under this Act or the regulations, an authority to prosecute, purporting to have been signed by the Secretary, is evidence of such authority without proof of the signature of the Secretary.

#### **43 Civil penalty for breaches**

- (1) An industrial court or the Local Court may order the person to pay a pecuniary penalty not exceeding \$10,000 (a *civil penalty*) if the Court is satisfied that a person has contravened one of the following:
  - (a) section 6 (2) (b),
  - (b) section 7 (4),
  - (c) section 13 (4),
  - (d) section 16,
  - (e) section 18,
  - (f) the code of conduct.

**Note.** Section 21 of the *Interpretation Act 1987* provides that the expression “contravene” in an Act includes a failure to comply.
- (2) Proceedings for a civil penalty may be instituted by any of the following:
  - (a) an authorised officer or any other person authorised by or under this Act or the regulations to institute proceedings for offences,
  - (b) if the contravention is alleged to have been committed by a performer representative, a performer who, at the time of the alleged contravention, was a party to an entertainment industry agreement with the representative.

- (3) Proceedings for a civil penalty may only be instituted within 6 years after the contravention.
- (4) To avoid doubt, the rules of evidence apply to proceedings for a civil penalty.
- (5) Evidence given in proceedings for the recovery of money is not admissible in proceedings for a civil penalty.
- (6) In any proceedings for a civil penalty, the court may award costs to either party and assess the amount of those costs. Costs cannot be awarded against the prosecutor except in the circumstances in which costs can be awarded against the prosecutor in criminal proceedings.
- (7) If the court orders a person to pay a pecuniary penalty, the penalty is payable to the State.
- (8) The provisions of any Act relating to the recovery of penalties imposed for an offence apply to the recovery of a pecuniary penalty imposed under a civil penalty order.
- (9) If, at the time of making a civil penalty order in respect of a contravention of section 6 (2) (b), 7 (4), 16 or 18, the Court is satisfied that the amount required to be paid under the section concerned remains outstanding, the Court may make such orders with respect to the payment of the outstanding amount as the Court considers appropriate.

#### **44 Double jeopardy**

- (1) A person is not liable to be both convicted of an offence under this Act and the subject of a civil penalty in respect of essentially the same act or omission.
- (2) Payment of a penalty in respect of an alleged offence under section 35 (Penalty notices) is to be treated as a conviction for the offence for the purposes of this section. The making of an order by the court under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of an offence is also to be treated as a conviction for the offence for the purposes of this section.

#### **45 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the form and content documents or records required to be kept by entertainment industry representatives and entertainment industry hirers, and
  - (b) the fees or other remuneration of entertainment industry representatives, and
  - (c) the fees chargeable or payable for doing any act or providing any service for the purposes of the regulations, and
  - (d) the exclusion of a class of persons from the operation of this Act.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

#### **46 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 8 years from the commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 8 years.
- (4) In addition, the Minister is to cause an interim review of the Act to be carried out, as soon as possible after the period of 3 years from the commencement of this Act.
- (5) A report on the outcome of the interim review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

**47 Repeal of Act and regulation**

The *Entertainment Industry Act 1989* and the *Entertainment Industry Regulation 2004* are repealed.

## **Schedule 1 Code of conduct**

### **1 Objectives**

The objectives of this code of conduct are:

- (a) to set out the principles, values and behaviour expected of performer representatives, and
- (b) to promote and encourage a high standard of ethical practice by performer representatives and their employees in their dealings with performers, entertainment industry hirers and other performer representatives, and
- (c) to promote efficient and transparent transactions within the entertainment industry, and
- (d) to ensure that performer representatives act honestly, fairly and professionally in the best interests of their clients.

### **2 Conduct of performer representatives**

- (1) A performer representative must carry out the functions of a performer representative with the degree of care, diligence and honesty that a reasonable person would exercise as a performer representative carrying out the same functions in the same circumstances.
- (2) A performer representative must not act or purport to act on behalf of a performer without the authority of the performer.
- (3) A performer representative must, in representing a performer, act in accordance with the instructions of the performer unless doing so would be a breach of any law or this code of conduct.
- (4) A performer representative must not enter into an agreement to represent a performer if the representative is aware of any conflict of interest, or apparent conflict of interest, between the interests of the representative and the performer, unless the performer representative has:
  - (a) notified the performer of that fact, and
  - (b) disclosed the full nature and extent of the conflict of interest.
- (5) As soon as practicable after a performer representative becomes aware of any conflict of interest, or apparent conflict of interest, that has arisen between the interests of the representative and a performer represented by the representative, the representative:
  - (a) must notify the performer of that fact, and disclose the full nature and extent of the conflict of interest, and
  - (b) must not continue to represent the performer unless the performer consents to continued representation by the representative.
- (6) A performer representative must not refer a performer to any other performer representative or service provider if the representative making the referral receives any financial benefit or reward from the referral unless the representative first discloses to the performer the full nature and extent of the reward or benefit.
- (7) A performer representative must not, at any time, use or disclose any confidential information obtained while acting for or on behalf of a performer unless:
  - (a) the client authorises the disclosure, or
  - (b) the representative is required or compelled by law to disclose the information.

- (8) A performer representative must use the representative's best endeavours to ensure that employees of the representative:
  - (a) comply with this Act and the regulations, and
  - (b) this code.
- (9) A performer representative must not knowingly or recklessly make a false or misleading representation about the obligations, rights or responsibilities of any person under this Act or the regulations.

### **3 Other legal obligations of performer representatives**

This Act and the regulations impose additional obligations on performer representatives, including:

- (a) the keeping of records of money received on behalf of performers (see section 7), and
- (b) complying with requests for information from performers (see section 14), and
- (c) providing performers with certain information relating to the Act, the regulations and the entertainment industry generally (see section 13), and
- (d) if a performer representative proposes to enter into an entertainment industry agreement with a child, providing the parents of the child with the information, if any, required by the regulations relating to the employment of minors (see section 13).

## **Schedule 2 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Definitions**

In this Part:

*1989 Act* means the *Entertainment Industry Act 1989*, as in force immediately before its repeal by this Act.

#### **3 Refund of bonds**

- (1) A person who was required, under section 40 of the 1989 Act, to lodge with the Secretary a bond to cover the payment of money owed (by way of fees and other remuneration) to performers is, on the repeal of that Act, entitled to be refunded any money secured by a bond lodged under that section and which is standing to the credit of the person.
- (2) Any such refund is to be paid only if the Secretary is satisfied that all liabilities of the person under the 1989 Act (including any amount owing to a performer under an award, industrial agreement or entertainment industry contract) have been discharged or adequately provided for.
- (3) If an application for a refund is made by a person other than the person who was required to pay a bond under section 40 of the 1989 Act, or by 2 or more such persons, the Secretary may determine whether the person or which of the persons is entitled to receive the refund.
- (4) If a determination is made by the Secretary under subclause (3), the refund is to be paid to the person so determined.

#### **4 Refund of licence fees**

- (1) A person who, immediately before the repeal of the 1989 Act, was the holder of a licence (within the meaning of the 1989 Act) is entitled to a refund of a portion of any licence fee paid during the 12 months immediately before that repeal.
- (2) The portion of the licence fee that is to be refunded is that part of the licence fee that bears the same proportion to the licence fee as the part of the year for which the

licence fee was paid that was remaining on the repeal of the 1989 Act bears to the whole of the year for which the licence fee was paid.

- (3) If an application for a refund is made by a person other than the person who paid the licence fee, or by 2 or more such persons, the Secretary may determine whether the person or which of the persons is entitled to receive the refund.
- (4) If a determination is made by the Secretary under subclause (3), the refund is to be paid to the person so determined.
- (5) In this clause, *licence fee* means a fee required to accompany an application for a licence under section 19 of the 1989 Act or an application for the continuation of a licence under section 28 of that Act.

## 5 Existing entertainment industry contracts

- (1) Section 38 of the 1989 Act and clause 4 of the *Entertainment Industry Regulation 2004*, as in force immediately before the repeal of that Act, continue to apply in respect of an existing entertainment industry contract that was in force immediately before that repeal.
- (2) Section 10 of this Act does not apply in respect of an existing entertainment industry contract.
- (3) An existing entertainment industry contract ceases to be an existing entertainment industry contract on the earlier of:
  - (a) the end of the term of that contract (not including any period of renewal or extension provided for in that contract), or
  - (b) the day that is 12 months after the date on which this Act commences.
- (4) The regulations may require a performer representative to provide each performer with whom the representative had an existing entertainment industry contract immediately before the repeal of the 1989 Act with the information or documents prescribed by the regulations relating to this Act, the regulations under this Act, the repeal of the 1989 Act or the entertainment industry generally.
- (5) In this clause:  
*existing entertainment industry contract* means an entertainment industry contract (within the meaning of the 1989 Act) entered into before the repeal of that Act.

## 6 Existing records

- (1) A reference in this Act to a record that is required to be kept under this Act or the regulations includes a reference to a record that was required to be kept under the 1989 Act or the regulations under that Act.
- (2) Clauses 5A and 5B of the *Entertainment Industry Regulation 2004*, as in force immediately before the commencement of this Act, continue to apply in respect of any such records.

## **Schedule 3 Amendment of other Acts**

### **3.1 Fair Trading Act 1987 No 68**

#### **Section 48 Interpretation**

Omit section 48 (3) (b). Insert instead:

- (b) an entertainment industry representative within the meaning of the *Entertainment Industry Act 2013*, or

### **3.2 Industrial Relations Act 1996 No 17**

#### **Section 382 Jurisdiction of Chief and other Industrial Magistrates**

Omit “*Entertainment Industry Act 1989*” from section 382 (1).

Insert instead “*Entertainment Industry Act 2013*”.

### **3.3 Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009 No 32**

#### **Schedule 2 Amendment of other legislation**

Omit Schedule 2.9. Insert instead:

#### **2.9 Entertainment Industry Act 2013**

##### **Section 41 Proceedings for offences**

Omit “an industrial court or Local Court” from section 42 (3).

Insert instead “the Industrial Relations Commission in Court Session”.

### **3.4 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

#### **Schedule 2 Search warrants under other Acts**

Omit “*Entertainment Industry Act 1989*, section 58”.

Insert instead “*Entertainment Industry Act 2013*, section 28”.

[Second reading speech made in—

Legislative Assembly on 14 August 2013

Legislative Council on 11 September 2013]