

Act No. 198

INDUSTRIAL ARBITRATION (THEATRICAL AGENTS AND EMPLOYERS) AMENDMENT BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are to amend the Industrial Arbitration Act 1940—

- (a) to update and tighten the provisions of the Act regulating the carrying on of business by theatrical agents and employers so as to provide increased protection for persons engaged in the theatrical industry;
- (b) to empower the Industrial Commission to hear and determine appeals relating to the licensing of theatrical agents and employers and private employment agents and to dispose of proceedings for certain criminal offences under that Act; and
- (c) to increase the monetary penalties for certain offences by theatrical agents and employers and private employment agents,

and to amend that Act in certain other related respects.

This Bill also amends the Search Warrants Act 1985 so as to apply that Act to search warrants issued under proposed section 152E of the Principal Act.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be appointed by proclamation.

Clause 3 defines the Principal Act.

Clause 4 is a formal provision giving effect to the Schedules of amendments to the Principal Act.

Clause 5 gives effect to a Schedule of savings and transitional provisions.

Clause 6 adds to the definition of "search warrant" in section 10 of the Search Warrants Act 1985 a reference to a search warrant issued under proposed section 152E of the Principal Act.

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND
THEATRICAL EMPLOYERS

Schedule 1 omits the present Division 2 of Part XIV of the Principal Act and inserts a proposed Division 1 of that Part (proposed sections 132–145). The proposed Division establishes a system of regulation of theatrical agents and theatrical employers through the issue, by the Secretary of the Department of Industrial Relations and Employment, of licences. The proposed Division will modify the present system under which the Minister regulates theatrical agents through the issue of licences and theatrical employers through the issue of permits. A person will be able to hold only one kind of licence but must hold separate licences of the same kind for each place at which the person carries on an agency or business.

- (a) Proposed section 132 modifies the definitions of “theatrical agency”, “theatrical enterprise” and “theatrical performer” presently contained in section 136 of the Principal Act—
- (i) to make it clear that “theatrical agent” does not include a “personal manager” (which is defined to mean a person employed by, or who acts in partnership with, another person for the purpose of pursuing the financial benefit of the other person as a theatrical performer);
 - (ii) to include within the definition of “theatrical agent” persons conducting information services in relation to the availability for employment of theatrical performers;
 - (iii) to widen the ambit of the definitions of “theatrical enterprise” and “theatrical performer” so as to take account of expansion of the theatrical industry and encompass radio, television, audio and visual recording and films; and
 - (iv) to include within the definition of “theatrical performer” musicians and models, including mannequins (other than those employed for parade and still photographic work).
- (b) Sections 137 and 149 of the Principal Act presently provide a maximum penalty of \$500 for opening or carrying on a theatrical agency without a licence or carrying on business as a theatrical employer without a permit.

Proposed section 133 (1) provides that it will be an offence to do either of these things without a licence and increases the penalty to a maximum of 50 penalty units (\$5,000).

Proposed section 133 (2) creates a new offence, with a maximum penalty of 20 penalty units (\$2,000) or imprisonment for 3 months, if a licensee carries on an agency or business at a place of business other than the place to which the licence held by the licensee relates. (The new offence is similar to that contained in section 145D (1) (b) of the Principal Act in relation to private employment agents).

- (c) Proposed section 134 preserves the power of the Minister (presently contained in section 137 (4) of the Principal Act) to exempt theatrical employers from the requirement to be licensed.
- (d) Proposed section 135 regulates the remuneration that may be received by a theatrical agent. It modifies the present provision contained in section 141 of the Principal Act to make it clear that a theatrical agent cannot receive remuneration of any kind in respect of the engagement of a theatrical performer if it and all other remuneration received by the agent (and any other agent concerned) for the engagement exceeds 10 per cent of the wages payable to the performer for that engagement.

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

- (e) Proposed sections 136 (False statements by theatrical agents) and 137 (Conviction to be endorsed on licence) re-enact, with necessary consequential modifications, provisions presently contained in sections 143 and 144 of the Principal Act.
- (f) Proposed section 138 makes it an offence, with a maximum penalty of 10 penalty units (\$1,000) or imprisonment for 3 months, for a theatrical agent to fail to provide a theatrical performer with immediate advice of any amounts received by the agent in respect of employment obtained by the agent for the performer or to fail to retain a copy of the advice for a period of 6 years from the date on which the advice is sent.
- (g) Proposed section 139 provides for the making of applications for the issue or renewal of a theatrical agent's licence or theatrical employer's licence. A separate application must be made in respect of each place of business. An application for a theatrical agent's licence must be accompanied by a bond or bank guarantee approved by the Secretary to secure the payment of \$10,000 to the Secretary during the currency of the licence.
- (h) Proposed section 140 enables the Secretary to investigate an application to ensure that the applicant for the licence is a fit and proper person to hold the licence and that the place at which the agency or business of the applicant is to be carried on meets the prescribed requirements for such places. The Secretary may request an industrial magistrate to make a recommendation as to whether the applicant is a fit and proper person to hold the licence in a similar way to that in which the Minister may presently make such a request under section 138 of the Principal Act. The Secretary may also request the Commissioner of Police to give a report as to whether the applicant is a fit and proper person in the same way as a report may presently be obtained in respect of a private employment agent under section 145G of the Principal Act.
- (i) Proposed section 141 provides for the determination by the Secretary of applications for licences. A licence shall be refused—
 - (i) if the applicant is not a fit and proper person (or, if the licence is to be held jointly with other persons, they are not fit and proper persons) to hold the licence or is (or are) not of or above the age of 18 years;
 - (ii) if the place at which the agency or business is to be carried on does not meet the prescribed requirements for such places; or
 - (iii) if the applicant for a theatrical agent's licence (or, if the licence is to be held jointly with other persons, any of the other persons) already holds a theatrical employer's licence or the applicant for a theatrical employer's licence already holds a theatrical agent's licence.

In determining whether a licensee is a fit and proper person, the Secretary is required to take into consideration any representation made in that respect by the Theatrical Agencies, Employers and Performers Advisory Committee and to take into account any conviction for an offence involving fraud or dishonesty in the 10 years preceding the making of the application.

- (j) Proposed section 142 enables the Secretary to require an applicant for a theatrical employer's licence to deposit with the Secretary on prescribed terms an amount of money determined by the Secretary (or to give some other security approved by the Secretary) to secure the payment of salaries, wages or fares of theatrical performers, as a condition of the issue of the licence.
- (k) Proposed section 143 states the form licences issued under the proposed Division shall take.

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

- (l) Proposed section 144 provides for a licence issued under the proposed Division to remain in force for the period of 12 months from the date on which it is granted and for the renewal of licences.
- (m) Proposed section 144A requires the holder of a licence issued under the proposed Division to exhibit the licence and a notice in the prescribed form at the place to which the licence relates.
- (n) Proposed section 144B requires theatrical agents to keep certain specified registers and to retain each register for a period of 6 years from the date in which the last entry is made in the register. The registers are to be open to inspection and examination by certain specified inspectors and officers.
- (o) Proposed section 144C requires the Secretary to keep registers of information necessary to administer the licence system to be established under the proposed Division.
- (p) Proposed section 144D enables the Secretary to cancel a licence issued under the proposed Division on certain specified grounds, including the ground that the licensee is not a fit and proper person to continue to hold the licence.
- (q) Proposed section 145 enables the Secretary to realise an amount secured by an approved bond or bank guarantee lodged with the Secretary and to apply the amount to benefit theatrical performers who have suffered loss by reason of an act or omission of the theatrical agent who lodged the bond or guarantee. The section will enable the Secretary to require such a theatrical agent to lodge a further approved bond or bank guarantee and to suspend the licence if the agent fails to do so.

SCHEDULE 2—AMENDMENTS RELATING TO PRIVATE EMPLOYMENT AGENTS

Schedule 2 (1) and (6) contain amendments by way of statute law revision.

Schedule 2 (2) contains a consequential amendment inserting a definition of “Secretary”.

Schedule 2 (3) substitutes section 145D of the Principal Act—

- (a) to increase the maximum penalty for the offence of receiving any fee, charge or other remuneration in respect of carrying on the business of a private employment agent when not being the holder of a private employment agent’s licence from \$500 to 50 penalty units (\$5,000); and
- (b) to increase the maximum penalty for the offence of carrying on the business of a private employment agent at a place other than the place to which that or another licence held by the offender relates from \$500 to 20 penalty units (\$2,000).

Schedule 2 (4) and (6) make consequential amendments to various sections.

Schedule 2 (5) amends section 145E (Persons to be in charge at each place of business) to increase the maximum penalty for a failure to comply with the provisions of the section from \$500 to 20 penalty units (\$2,000) and to make certain consequential amendments.

Schedule 2 (7) inserts proposed section 145GA which enables the Secretary to request an industrial magistrate to report as to whether applicants for private employment agents’ licences or persons appointed as persons in charge of places of business of private employment agents are or would be fit and proper persons to hold private employment agents’ licences.

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

Schedule 2 (8) makes certain consequential amendments to section 145H.

Schedule 2 (9) amends section 145I to increase the maximum penalty for demanding or receiving any fee, charge or other remuneration in respect of carrying on the business of a private employment agent without a licence from \$500 to 20 penalty units (\$2,000).

Schedule 2 (10) amends section 145L to increase the maximum penalty for failure by a licensed private employment agent to notify the Secretary of specified changed particulars relating to the business carried on by the agent from \$500 to 20 penalty units (\$2,000).

Schedule 2 (11) amends section 145M to increase the maximum penalty for failure to deliver a cancelled licence to the Secretary from \$500 to 20 penalty units (\$2,000) and makes consequential amendments.

Schedule 2 (12) repeals section 145N (Appeals). Provision for such appeals is made by proposed section 151.

Schedule 2 (13) makes consequential amendments to section 145O.

Schedule 2 (14) repeals section 145P as a consequence of the insertion of proposed section 152C into the Principal Act.

Schedule 2 (15) amends section 145R (Offences by licensees) to increase the maximum penalty for an offence against the section from \$500 to 20 penalty units (\$2,000).

SCHEDULE 3—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS AND PRIVATE EMPLOYMENT AGENTS

Schedule 3 (1) amends section 39 (Interpretation) of the Principal Act as a consequence of the conferment of criminal jurisdiction on the Industrial Commission under proposed section 152.

Schedule 3 (2) repeals section 145R (2) as a consequence of the insertion of proposed section 150 into the Principal Act.

Schedule 3 (3) substitutes sections 146–148 in Division 3 of Part XIV of the Principal Act. Of the proposed sections:

- (a) Section 146 includes an interpretation provision for the purposes of the Division.
- (b) Sections 147 and 148 re-enact sections 146 and 147, respectively, of the Principal Act in a more modern form.

Schedule 3 (4) omits from section 149 (Offences) of the Principal Act a provision that would duplicate the offences to be contained in proposed section 133 (1) and increases the maximum monetary penalty applicable if a defendant is found guilty of fraud or certain other prohibited activities (or of conniving or colluding with another person in these respects) in carrying on a theatrical agency or business as a theatrical employer from \$500 to 50 penalty units (\$5,000).

Schedule 3 (5) inserts sections 149A–152F into Division 3 of Part XIV of the Principal Act. Of the proposed sections:

- (a) Section 149A provides for the issue of a duplicate licence on proof of loss or destruction of the original licence.
- (b) Section 150 provides that, if an offence is committed by a corporation, the directors of the corporation may be proceeded against in respect of the offence.

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

- (c) Section 151 provides for appeals to be made to the Industrial Commission against the refusal to grant, or cancellation of, theatrical agents' and employers' and private employment agents' licences.
- (d) Section 152 provides—
 - (i) that proceedings for an offence against Part XIV or the regulations made under it may be taken only with the authority of the Minister;
 - (ii) that proceedings for an offence against the Part (other than section 133 (1) or 145D (1)) or the regulations shall be disposed of summarily before an industrial magistrate; and
 - (iii) that proceedings for an offence against section 133 (1) or 145D (1) shall be prosecuted before the Industrial Commission. (Sections 39–43 of the Principal Act make provision for the prosecution of criminal offences before the commission. By the operation of those provisions the commission's jurisdiction will only be exercisable by a judicial member. The commission will have all the powers, authorities, duties and functions of an industrial magistrate in respect of these criminal proceedings and appeals may be made from a decision of the commission in criminal proceedings to the commission in court session).
- (e) Section 152A enables the Industrial Commission to make orders as to the payment of money if it appears, in the course of proceedings before it for an offence against section 133 (1) or 145D (1), that—
 - (i) the money is due to a theatrical performer from a person who has, without a licence, carried on a theatrical agency or the business of a theatrical employer; or
 - (ii) the money has been paid as a fee, charge or other remuneration by a person seeking employment from a person who has carried on the business of a private employment agent without a licence.
- (f) Section 152B provides that a copy of an entry in a register required to be kept under the Part, signed by the Secretary or other specified persons, is evidence of the matters stated in the copy.
- (g) Section 152C provides that an authorised officer of the Department of Industrial Relations and Employment may carry out any of the Secretary's functions under the Part.
- (h) Section 152D confers specified powers on an industrial inspector, officer of an industrial union of employees in respect of whom an authority is in force under section 129A of the Principal Act or officer of the Department authorised in writing by the Secretary. The inspectors or officers will have the power to enter and search the place to which a licence under the Part relates. In the exercise of their powers, inspectors and officers will be empowered to examine books, papers, records or remittance advices required to be kept, made or given under the Part if they believe, on reasonable grounds, that an offence against Part XIV of the Principal Act or the regulations made under it has been or is being committed.
- (i) Section 152E provides that an inspector or officer may obtain a search warrant from an authorised justice to authorise the entry of a dwelling in certain circumstances.
- (j) Section 152F creates certain offences to ensure that the powers of inspectors and officers granted under section 152D may be exercised and that certain requirements made by them in the exercise of those powers shall be complied with.

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

Schedule 3 (6) contains consequential amendments to section 153 (Regulations) of the Principal Act. Schedule 3 (6) (c) enables regulations to be made under section 153 (1) (e) to regulate any premises used for the purposes of, or in connection with, any private employment agent's business.

Schedule 3 (6) (d) makes provision for the application of money and securities lodged with the Secretary under the Part.

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

Clause 1 enables the holder of a theatrical agent's licence or theatrical employer's permit who, within 28 days of the commencement of the proposed clause applies for a licence under section 139 of the Principal Act, as inserted by this Act, to continue to carry on a theatrical agency or the business of a theatrical employer as if that licence or permit were in force (under the Act as in force before that commencement) until the application is determined.

Clause 2 continues in force exemptions granted under section 137 of the Principal Act before the commencement of that clause.

Clause 3 enables savings and transitional regulations to be made.
