

ENTERTAINMENT INDUSTRY BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are:

- (a) to promote the development and growth of the entertainment industry; and
- (b) to provide for the development of codes of ethics for the entertainment industry; and
- (c) to provide a forum for the hearing and resolution of complaints in the entertainment industry; and
- (d) to develop a framework that will provide for the self-regulation of the entertainment industry.

At present, under the Industrial Arbitration Act 1940, the Minister regulates theatrical agents through the issue of licences and theatrical employers through the issue of permits.

The Bill:

- (a) constitutes an Entertainment Industry Interim Council which is to regulate matters relating to the entertainment industry as well as foster the development of an entertainment industry regulatory body controlled by the members of the industry; and
- (b) provides a licensing scheme for entertainment industry agents, managers and venue consultants; and
- (c) discontinues the regulation of entertainment industry employers by means of a permit system and provides instead for the issue by the Council of directions (as occasion requires) to entertainment industry employers and operators of premises; and
- (d) establishes a Complaints Committee to deal with complaints about the misconduct of persons in the entertainment industry, unfair entertainment industry contracts and money owing to entertainment industry representatives, to entertainment industry employers and to performers; and

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- (e) provides for appeals from decisions of the Council and the Complaints Committee under the proposed Act; and
 - (f) deals with trust accounts, bonds and other matters relating to the entertainment industry; and
 - (g) repeals the provisions of the Industrial Arbitration Act 1940 relating to theatrical agents and employers; and
 - (h) makes consequential amendments to other Acts.
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PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

Clause 3 sets out the objects of the proposed Act.

Clause 4 defines expressions used in the proposed Act. In particular, "entertainment industry representative" is defined to mean an entertainment industry agent, a manager or a venue consultant.

PART 2 - ENTERTAINMENT INDUSTRY INTERIM COUNCIL

Clause 5 constitutes the Entertainment Industry Interim Council which is to be subject to the control and direction of the Minister and which is to consist of part-time members (including a Chairperson) appointed by the Minister.

Clause 6 deals with the general functions of the Council. In particular, the Council is, within 2 years of the commencement of the proposed Act, to foster the development of an industry based self-regulatory body and to report to the Minister on the setting up of such a body and on the consequential changes to be made to the proposed Act.

Clause 7 provides that 3 years after the commencement of the proposed Act, the Council is to be dissolved and, unless the Act has been amended to provide for the proposed self-regulatory body, the functions of the Council are to be taken over by the Minister.

PART 3 - COMPLAINTS

Division 1 - Making and determination of complaints

Clause 8 sets out, for the purposes of the proposed Part, what constitutes misconduct by a person in the entertainment industry.

Clause 9 enables a person to make complaints to the Council about misconduct, unfair entertainment industry contracts or failure to pay an amount owing to an entertainment industry representative, an entertainment industry employer or a performer. A complaint must be in writing and the Council may refer a complaint to the Complaints Committee.

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Clause 10 authorises the Complaints Committee to conduct inquiries into complaints referred to it and provides that the Committee is required, when conducting an inquiry, to call before it any person who is the subject of a complaint to show cause why the person should not be dealt with under the proposed Part.

Clause 11 empowers the Complaints Committee to make certain determinations or orders if it finds that a person is guilty of misconduct, including an order requiring the person to pay a penalty not exceeding \$500 to the Council.

Clause 12 empowers the Complaints Committee to make an order varying an entertainment industry contract if it finds that the contract is unfair, harsh or unconscionable.

Clause 13 empowers the Complaints Committee to make an order requiring the payment of money owing to an entertainment industry representative, an entertainment industry employer or a performer if it finds that a person has failed to pay an amount owing to the representative, employer or performer. The maximum amount that the Complaints Committee can order to be paid is \$20,000.

Clause 14 provides that the Complaints Committee may certify an order for the payment of money owing and such a certificate may be filed at a Local Court and entered as a judgment.

Clause 15 relates to the payment of any penalty ordered by the Council to be paid.

Division 2 - Complaints Committee

Clause 16 constitutes the Complaints Committee which is to consist of at least 3 members (including a Chairperson) appointed by the Minister.

Clause 17 provides for the constitution of the Complaints Committee for the purpose of conducting inquiries. More than one inquiry by the Complaints Committee may be conducted at any one time.

PART 4 - REGULATION OF THE ENTERTAINMENT INDUSTRY

Division 1 - Licences

Clause 18 makes it an offence for a person to carry on (or advertise that the person carries on) the business of, or otherwise to act as, an entertainment industry agent, a manager or a venue consultant unless the person holds the particular type of licence which authorises the activity.

Clause 19 provides for the making of applications for licences to the Council and the matters to be included in applications.

Clause 20 sets out the qualifications for a licence, including a requirement that the applicant is a fit and proper person to hold a licence.

Clause 21 enables the Council to make inquiries to ensure that an applicant is a fit and proper person to hold a licence, including a request for a police report as to the character of the applicant.

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Clause 22 provides for the determination by the Council of licence applications. In general, a licence is not to be issued unless the applicant meets the qualifications prescribed by or under the proposed Act.

Clause 23 requires the Council to give notice to persons whose applications for licences are refused and provides that the Council may refund any fees paid in respect of the applications.

Clause 24 provides for the issuing of provisional licences (which may be cancelled or suspended by the Council at any time) to certain applicants.

Clause 25 provides that a licence may be issued subject to conditions and that the Council may amend the licence by varying its conditions or by adding or omitting conditions.

Clause 26 enables the Council, subject to the regulations, to determine licence fees for different types of licences.

Clause 27 provides for the form in which a licence is to be issued.

Clause 28 provides that a licence continues in force until it is cancelled or surrendered but each year the licensee is required to apply to continue the licence.

Clause 29 enables the Council to cancel or suspend a licence on certain grounds, including the ground that the licence has been improperly obtained or that the licensee has failed to apply for a continuation of the licence. Also the Council may cancel or suspend a licence if the Complaints Committee determines that the licensee is guilty of misconduct and recommends the cancellation or suspension of the licence.

Clause 30 provides that a licence may be issued jointly to 2 or more persons.

Clause 31 provides for the issue of duplicate licences.

Clause 32 requires the holder of a licence to exhibit it at the holder's principal place of business.

Clause 33 requires the Council to keep a register of licences and provides for the inspection of the register.

Clause 34 enables a licence to be surrendered to the Council.

Division 2 - Conduct of entertainment industry business

Clause 35 enables the Council to develop codes of ethics dealing with the standards of conduct and practice to be adopted by entertainment industry representatives, entertainment industry employers and performers. A breach of a code of ethics may be the subject of a complaint to the Complaints Committee.

Clause 36 enables the Council to issue directions to entertainment industry employers and to operators of premises concerning any matter relating to the employment of performers and provides that an employer or an operator who fails to comply (without reasonable excuse) with a direction will be guilty of an offence. An employer or an operator will have the opportunity to show cause why the direction should not be complied with.

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Clause 37 enables the Council, if the employer or operator to whom a direction has been issued cannot be served with the direction or fails to comply with a direction, to issue a direction to the owner of any premises to which the direction to the employer or operator relates. Any such owner will have an opportunity to show cause why the direction should not be complied with.

Clause 38 specifies the maximum fees or other remuneration payable to entertainment industry representatives and makes other provisions regulating such fees or remuneration.

Clause 39 requires an entertainment industry agent or a manager who receives money from any person on behalf of a performer to establish a trust account in respect of the money.

Clause 40 provides that an entertainment industry agent or a manager who is required to establish a trust account is also required to lodge with the Council a bond to cover the payment of money owed to performers.

Clause 41 enables the Council to apply bond money to assist a performer if the performer suffers a loss by reason of any act or omission by an entertainment industry agent or a manager.

PART 5 - APPEALS

Clause 42 confers on a person a right of appeal to an industrial magistrate against certain decisions, including the refusal of the Council to issue a licence to the person, the issuing of a direction to the person by the Council and a determination or an order of the Complaints Committee in respect of the person.

Clause 43 provides that certain decisions of the Council or the Complaints Committee that can be appealed against have effect on a date not earlier than 21 days after service of the notice of the decision or when the decision is confirmed on appeal.

Clause 44 provides for procedures on appeals to an industrial magistrate under the proposed Act.

Clause 45 sets out the determinations which may be made by an industrial magistrate on an appeal.

Clause 46 provides for an appeal against the decision of an industrial magistrate to the Industrial Commission (constituted by a judicial member sitting alone), but only on a point of law.

PART 6 - FINANCE

Clause 47 establishes, in the Special Deposits Account in the Treasury, the Entertainment Industry Fund.

Clause 48 sets out the money which is to be paid into the Entertainment Industry Fund.

Clause 49 sets out the payments which may be made from the Entertainment Industry Fund.

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Clause 50 provides for the financial year of the Council.

Clause 51 sets out the Council's investment powers.

PART 7 - GENERAL

Clause 52 makes it an offence, except in certain specified circumstances, to disclose relevant information (for example, information about the business or financial affairs of a person) obtained in connection with the administration or execution of the proposed Act.

Clause 53 empowers the Council to delegate its functions.

Clause 54 exculpates from personal liability the members of the Council or the Complaints Committee and any person acting under the direction of the Council or the Complaints Committee, for any matter or thing done in good faith for the purposes of executing the proposed Act.

Clause 55 provides that the proposed Act prevails despite any stipulation to the contrary in any contract or agreement.

Clause 56 empowers the Council to require information from any entertainment industry representative or entertainment industry employer in connection with the person's business and makes it an offence to fail to comply with any such requirement.

Clause 57 empowers an authorised person to enter premises for the purposes of investigating alleged contraventions of the proposed Act.

Clause 58 provides for the issue of search warrants authorising the entry of premises for the purposes of investigating alleged contraventions of the proposed Act.

Clause 59 creates an offence relating to the obstruction of an authorised person acting under proposed section 57 or 58.

Clause 60 is an evidentiary provision that enables a certificate to be given for the purpose of proving, in proceedings, that a person was the holder of a licence under the proposed Act or that a licence was cancelled or suspended.

Clause 61 provides for the service of documents under the proposed Act, including the service of documents on the Council or the Complaints Committee.

Clause 62 empowers the Council to recover a penalty or other money owed to it as a debt in a court of competent jurisdiction.

Clause 63 provides that proceedings for offences against the proposed Act or the regulations are to be dealt with summarily before an industrial magistrate.

Clause 64 empowers the Governor to make regulations under the proposed Act for certain purposes.

Clause 65 gives effect to Schedule 3 which contains savings, transitional and other provisions.

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Clause 66 gives effect to Schedule 4 which contains amendments to other Acts.

Clause 67 repeals certain legislation.

Schedule 1 contains provisions relating to the members, staff and procedure of the Council. In particular, the Schedule requires members to disclose pecuniary interests at meetings (clause 6), provides for the employment of staff to enable the Council to exercise its functions (clause 14) and enables the Council to establish committees (clause 15).

Schedule 2 contains provisions relating to the conduct and procedure of inquiries by the Complaints Committee. In particular, the Complaints Committee may require a person to attend an inquiry to answer questions related to the inquiry, with the proviso that a person may refuse to answer a question if the answer could incriminate the person (clause 4).

Schedule 3 contains savings, transitional and other provisions, including a provision enabling the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act (clause 1). The Schedule also makes provision for the continuation of current theatrical agent's licences and certain other licences issued under Part 14 of the Industrial Arbitration Act 1940.

Schedule 4 amends certain Acts as a consequence of the enactment of the proposed Act. In particular, the provisions of the Industrial Arbitration Act 1940 relating to theatrical agents and employers are repealed.
