ENTERTAINMENT INDUSTRY BILL 2013

Bill introduced on motion by Mr Ray Williams, on behalf of Mr Mike Baird, read a first time and printed.

Second Reading

Mr RAY WILLIAMS (Hawkesbury—Parliamentary Secretary) [10.09 a.m.], on behalf of Mr MIke Baird: I move:

That this bill be now read a second time.

I am pleased to introduce the Entertainment Industry Bill 2013. The bill, which repeals and replaces the Entertainment Industry Act 1989, specifically implements the recommendations of the 2010 final report from the 2009 review into the Entertainment Industry Act 1989. The review, which was jointly conducted by the Better Regulation Office and NSW Industrial Relations, canvassed the views of individuals and organisations representing a broad spectrum of views in the New South Wales entertainment industry. It focussed on the appropriate regulation of relations between performers and the agents and managers who represent them and help them to find work and develop their careers. A key conclusion of the review was that the licensing of entertainment industry representatives is neither cost efficient nor necessary to secure effective regulation of the industry. It recommended that licensing should be removed but only if strong protections for performers are implemented and are working efficiently and effectively.

The bill achieves this by legislating these protections in a balanced and responsible fashion, which take into account the interests of the performers and the need to support the ongoing commercial viability of the industry. The entertainment industry generates economic activity for the State worth hundreds of millions of dollars each year, and makes an important contribution to the vibrant cultural life of New South Wales. Stakeholders advise that the New South Wales legislation covers half of those working in the arts and entertainment industries in Australia. The bill before the House is the product of extensive consultations to ensure that it is targeted to the contemporary needs of the industry and delivers reform in the most effective manner. Most of the recommendations of the final report were supported by industry stakeholders who expressed a strong commitment to implementing effective penalties and other compliance measures for the proper regulation of the industry and the protection of performers.

The current Act provides a framework for the protection of performers in their commercial and professional dealings with entertainment industry agents, managers and venue consultants. The proposed legislative reforms are aimed at streamlining and improving the way the entertainment industry is regulated. Red tape will be reduced by removing the current licensing regime and the requirements to lodge monetary bonds. The bill also omits obsolete provisions dealing with defunct industry-based regulatory bodies and dispute resolution mechanisms. I will now deal with each of the key elements of the bill in turn. The first is the single definition for "performer representative". The bill removes the separate definitions of "agent" and "manager" in the current Act and replaces them with the single definition of a "performer representative". However, the additional value provided by managers will continue to be recognised in the area of fees.

In line with the current Act, the bill provides for maximum fees that can be charged by

representatives when entering into agreements with performers. The fee caps will be set as a percentage amount of the remuneration due to the performer for a performance. At this stage I can advise that the prescribed caps will be broadly in line with the current fee arrangements. However, when management services are provided fee caps can be exceeded if a written managerial agreement has been entered into. The managerial agreement must include an additional fee acknowledgement which makes it clear that the performer understands that the agreement will allow the performer representative to receive fees that exceed the relevant capped amount in return for the provision of managerial services.

It is important to emphasise that this ability to charge more for managerial services is consistent with current industry practice. The new measures are designed to increase transparency for performers and representatives in their commercial dealings with one another based on the informed agreement of the performer. An additional protection for performers who enter into managerial agreements will be a right to a statutory cooling-off period. This protection will allow performers to terminate a managerial agreement within three days of it being signed. This will give performers time to obtain appropriate advice concerning the arrangement they have entered into. If they wish, a performer can give a notice to the representative waiving their right to a cooling-off period at the time they enter into a managerial agreement.

One of the main recommendations made in the 2010 report into the entertainment industry was the development of a code of conduct. The code in the bill will provide performer representatives with clear guidance on the standards of service required to ensure professional and ethical conduct when providing services to performers. The code has been the subject of considerable consultation and input from industry stakeholders and the Government appreciates their insights and input. The code will impose a general duty of care, due diligence and honesty on performer representatives in their dealings with performers. I am confident that the code will be an important means of enhancing transparency in the way the industry operates by educating representatives in their responsibilities and making performers more aware of their rights.

As I noted earlier, the 2009 review recommended that licensing in the entertainment industry should be removed, but only—and I stress "only"—if strong effective protections for performers are established. The new compliance regime outlined in the bill provides a comprehensive framework to ensure that key performer protections can be enforced, such as fees, money handling and information disclosure requirements. In terms of penalty notices and enforceable undertaking, this includes the use of penalty notices by inspectors for specified criminal matters as an alternative to taking costly prosecution action, as well as the ability to accept enforceable undertakings where breaches of civil penalty offences are involved. It is expected that the use of enforceable undertakings will be particularly useful in managing compliance with the requirements of the code of conduct in a targeted and effective manner.

In the absence of licensing persons as "fit and proper" to act as entertainment industry agents and managers, prohibition orders will be introduced. These orders will give the Supreme Court the power to make orders which could lead to temporary or permanent exclusion from the industry for those representatives who engage in unlawful conduct through repeated breaches of entertainment industry laws. It is expected that these orders will be used only in exceptional circumstances. When they are used, the bill provides important safeguards to ensure procedural fairness. A representative will be given an opportunity to show cause why

an application for a prohibition order should not proceed and, where it does, they will also have the right to a full judicial hearing on the merits of their individual case. Another important part of the effective compliance regime is the establishment of a public register of information about breaches of entertainment industry laws. Importantly, its integrity and fairness is to be maintained by requiring the removal of information relating to a conviction that has been quashed or annulled, or if two years have elapsed since the conviction.

The bill also retains the existing provisions requiring performer representatives who receive moneys on behalf of a performer to hold the moneys exclusively for the performer and pay the funds into a general trust account. These types of financial record-keeping and disclosure requirements are integral to the protection of performer's interests and to ensure a level playing field for all participants in the industry. The 2010 final report also identified the problems faced by some performers when money due to them has not been paid within a reasonable time frame. The bill addresses this problem by requiring entertainment industry hirers, performer and venue representatives to disburse moneys due to a performer within strict time frames.

To enhance transparency in the industry, performer representatives will be required to provide important information to performers concerning their rights and statutory protections. This is particularly important for child performers who will specifically be protected by requirements that a performer representative must, before entering into an agreement to represent a child, provide the parents of that child with any information about the conditions of employment of minors under relevant legislation. Relevant information will be prepared by the Children's Guardian, who has responsibility for this area of employment. To ensure that the new regulatory regime under the bill is working effectively for performers and their representatives, regulations will be drafted by Parliamentary Counsel's Office. As part of the ongoing comprehensive consultation process associated with the development of the bill, I intend to provide a copy of the draft regulations to industry stakeholders for their comment and feedback.

In conclusion, the bill before the House removes obsolete regulation and unnecessary red tape in the form of licensing and monetary bonds for agents and managers in the entertainment industry. However, in line with the 2009 review, the bill also implements a suite of reforms to ensure that the new laws will operate effectively and efficiently and provide comprehensive protections to performers in the industry. I commend the bill to the House.

Debate adjourned on motion by Mr Nathan Rees and set down as an order of the day for a later hour.