



New South Wales

# Entertainment Industry Bill 2013

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are:

- (a) to regulate the entertainment industry, and
- (b) to provide protections for performers.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** sets out the objects of the proposed Act.

**Clause 4** defines certain words and expressions used in the proposed Act including the terms *performer representative*, *venue representative*, *performer* and *entertainment industry agreement*.

## Part 2 Entertainment industry obligations

### Division 1 Performer representatives

**Clause 5** defines *performer representative* for the purposes of the proposed Act. A performer representative is defined as a person who, for financial benefit, provides or agrees to provide one or more of the following services to a performer:

- (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.

**Clause 6** requires a performer representative who receives money on behalf of a performer to hold that money in trust for the performer and to disburse the money in accordance with the performer's directions.

**Clause 7** requires an entertainment industry representative to keep certain financial statements in relation to money received on behalf of a performer and to provide copies of those statements to specified persons.

**Clause 8** imposes a duty on a person who acts as both a performer representative and a venue representative for a performance to inform both the performer and entertainment industry hirer concerned of that fact.

**Clause 9** defines the *capped amount* payable to a performer representative by a performer as being the percentage, prescribed by the regulations, of the remuneration payable to the performer.

**Clause 10** defines *entertainment industry managerial agreement* as 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 contains an acknowledgment by the performer of the following:
  - (i) that the performer understands the effect of the acknowledgment,
  - (ii) that the performer understands the cooling-off period provided by the proposed Act,
  - (iii) that the performer has received the information required to be provided by the performer representative under the proposed Act.

**Clause 11** prohibits a performer representative from demanding fees or remuneration that exceeds the capped amount, demanding joining or audition fees or a retention or retainer fee or, if the performer representative is also a venue representative in respect of a performance, demanding remuneration from the performer in certain circumstances. The fees or remuneration payable may exceed the capped amount if the parties have entered into an entertainment industry managerial agreement.

**Clause 12** provides for a cooling-off period for entertainment industry managerial agreements during which the performer may terminate the agreement. The agreement may provide for certain services to continue to be provided to the performer, subject to the fee cap, if the performer gives notice of termination during the cooling-off period. The proposed provision also provides for the remuneration of the performer representative in respect of services provided before notice of

termination during the cooling-off period and for the waiver of the cooling-off period by a performer.

**Clause 13** requires a performer representative to provide certain information to a performer or prospective performer before entering into an entertainment industry agreement.

**Clause 14** requires a performer representative to keep certain records with respect to the performer representative's business as such for a period of 5 years from the making of any such record.

## **Division 2 Venue representatives**

**Clause 15** defines *venue representative* for the purposes of the proposed Act. A venue representative is a person who, for financial benefit, arranges a performance by a performer on behalf of an entertainment industry hirer.

**Clause 16** requires a venue representative to disburse any money received for a performer within 14 days after receiving the money.

**Clause 17** requires a venue representative to keep certain records with respect to the venue representative's business as such for a period of 5 years from the making of any such record.

## **Division 3 Entertainment industry hirers**

**Clause 18** requires an entertainment industry hirer to make a payment to a performer within 1 calendar month of the performance, or such other period as may be agreed between the performer and entertainment industry hirer.

**Clause 19** requires an entertainment industry hirer to keep certain records with respect to payments made to entertainment industry representatives for the services of performers for a period of 5 years from the making of the record.

# **Part 3 Enforcement**

## **Division 1 Undertakings**

**Clause 20** provides that the Secretary of the Treasury (the *Secretary*) may accept an undertaking from an entertainment industry representative or entertainment industry hirer if the Secretary reasonably believes that the representative or hirer has failed to disburse funds as required by the proposed Act or, in the case of a performer representative, has breached the code of conduct.

**Clause 21** allows the Local Court to make certain orders with respect to the breach of a term of an undertaking. The orders may include orders requiring the person to comply with the undertaking, to pay an amount to the State not exceeding the financial benefit obtained from the breach and to pay compensation to any person who suffered loss or damage as a result of the breach.

## **Division 2 Entertainment industry prohibition orders**

**Clause 22** provides that, for the purposes of the proposed Division, a *director of a corporation* includes a person who is concerned in the management of the corporation.

**Clause 23** authorises the Secretary to require a performer representative or the director of a corporation that carries on the business of a performer representative, to show cause why the performer representative or director should not be prohibited from carrying on the business of a performer representative or from being a director of such a corporation. The Secretary may impose such a requirement only if of the opinion that the performer representative or director has engaged in unlawful conduct.

**Clause 24** authorises the Secretary, after asking a performer representative or director of a corporation that carries on the business of a performer representative to show cause why the performer representative or director should not be prohibited from carrying on the business of a performer representative or being a director of such a corporation, to seek an order from the

Supreme Court prohibiting the representative or director from carrying on the business of a performer representative or from being a director of such a corporation.

### **Division 3      Authorised officers**

**Clause 25** defines *authorised officer*, for the purposes of the proposed Act, as:

- (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 by the Secretary or the Minister to exercise the functions of an authorised officer under the proposed Act.

**Clause 26** enables an authorised officer to enter and inspect premises which the officer believes to be premises at which a person carries on the business of an entertainment industry hirer or entertainment industry representative and, while on the premises, to exercise certain functions for the purpose of determining whether an entertainment industry representative or entertainment industry hirer has engaged in unlawful conduct.

**Clause 27** enables an authorised officer to apply for a search warrant for premises if the authorised officer has reasonable grounds for believing that a provision of the proposed Act or the regulations has been or is being contravened.

**Clause 28** makes it an offence for a person, without reasonable excuse to:

- (a) obstruct or hinder an authorised officer in the exercise of a function under the proposed Division, or
- (b) fail to comply with a requirement of an authorised officer under the proposed Division.

### **Part 4      Disclosure of information about contraventions**

**Clause 29** authorises the Secretary to keep a register of information about offences against the proposed Act or the regulations, undertakings or entertainment industry prohibition orders and orders of the Local Court for a breach of a civil penalty provision of the proposed Act.

**Clause 30** provides that the register is to be made available for public inspection on the website of the Treasury.

**Clause 31** provides for the correction of any error or omission in the information in the register.

**Clause 32** provides for the removal of certain information from the register, including information relating to a conviction that has been quashed or annulled or information relating to a conviction if 2 years have elapsed since the conviction.

### **Part 5      General**

**Clause 33** provides that a person must not disclose information obtained in connection with the administration or execution of the proposed Act except in certain circumstances.

**Clause 34** provides for the issuing of penalty notices for offences under the proposed Act or the regulations.

**Clause 35** allows the Secretary to delegate his or her functions under the proposed Act.

**Clause 36** provides that persons exercising functions under the proposed Act do not incur personal liability for acts done or omitted to be done in good faith under the proposed Act.

**Clause 37** provides that the directors and other persons engaged in the management of a corporation that contravenes a provision of the proposed Act or the regulations are taken to have engaged in the same contravention and may be prosecuted or convicted in respect of that conduct.

**Clause 38** provides that the provisions of the proposed Act have effect despite any contract or agreement to the contrary.

**Clause 39** provides for the service of documents under the proposed Act.

**Clause 40** provides for the service of documents on the Secretary under the proposed Act.

**Clause 41** provides that proceedings for an offence under the proposed Act may be taken and prosecuted by any person acting with the authority of the Secretary and are to be dealt with in the Local Court.

**Clause 42** identifies the contravention of certain provisions of the proposed Act or of the code of conduct as being contraventions that will incur a civil penalty. The contravention of such a provision is not an offence and the rules of court applying to civil proceedings are to apply to proceedings for a contravention.

**Clause 43** makes it clear that a person cannot be both convicted of an offence and the subject of a civil penalty in respect of essentially the same act or omission.

**Clause 44** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 45** provides for a review of the proposed Act in 8 years and an interim review to be conducted in 3 years.

**Clause 46** provides for the repeal of the *Entertainment Industry Act 1989* and the *Entertainment Industry Regulation 2004*.

## **Schedule 1 Code of conduct**

**Schedule 1** sets out the code of conduct for performer representatives.

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

**Schedule 2** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

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

**Schedule 3** makes consequential amendments to the Acts specified in the Schedule.