

INDUSTRIAL ARBITRATION (THEATRICAL AGENTS AND EMPLOYERS) AMENDMENT ACT 1987 No. 198

NEW SOUTH WALES

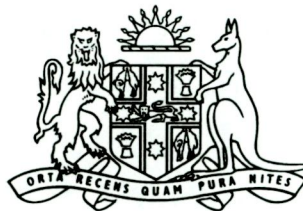


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**INDUSTRIAL ARBITRATION (THEATRICAL AGENTS AND
EMPLOYERS) AMENDMENT ACT 1987 No. 198**

NEW SOUTH WALES



Act No. 198, 1987

An Act to amend the Industrial Arbitration Act 1940 in relation to theatrical agents and employers; and for other purposes. [Assented to 4 December 1987]

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Industrial Arbitration (Theatrical Agents and Employers) Amendment Act 1987.

Commencement

2. This Act shall commence on a day or days to be appointed by proclamation.

Principal Act

3. The Industrial Arbitration Act 1940 is referred to in this Act as the Principal Act.

Amendment of Act No. 2, 1940

4. The Principal Act is amended as set out in Schedules 1–3.

Savings and transitional provisions

5. Schedule 4 has effect.

Amendment of Search Warrants Act 1985 (No. 37), s. 10 (Interpretation)

6. The Search Warrants Act 1985 is amended by inserting in the definition of “search warrant” in section 10 in alphabetical order of Acts the following matter:

section 152E of the Industrial Arbitration Act 1940;

SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS

(Sec. 4)

(1) Part XIV, heading and Division 1—

Omit the heading and the heading relating to Division 1, insert instead:

**PART XIV
THEATRICAL AGENTS AND EMPLOYERS AND PRIVATE
EMPLOYMENT AGENTS**

DIVISION 1—*Theatrical agents and employers*

Definitions

132. (1) In this Division and Division 3—

“approved” means approved by the Secretary;

“employment” includes an engagement;

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SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL
AGENTS AND EMPLOYERS—*continued*

“licence” means a licence in force under this Division;

“licensee” includes a joint licensee;

“model” includes a mannequin, but does not include a person employed for the purposes of a parade or still photography;

“personal manager” means 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;

“Secretary” means the Secretary of the Department of Industrial Relations and Employment;

“theatrical agent” means—

(a) a person who (whether for the purpose of gain or not) carries on, on behalf of theatrical performers, an agency for the employment of theatrical performers; or

(b) a person who (for the purpose of gain) conducts a service providing information about the availability of theatrical performers for employment,

but does not include a personal manager;

“theatrical employer” means—

(a) a person who employs any theatrical performer for the purpose of a theatrical enterprise; and

(b) any agent of such a person;

“theatrical enterprise” means—

(a) the giving of a performance or performances in a place of public entertainment or by the use of any medium for the transmission of sound or images, or both; or

(b) the recording of any performance for the purpose of using the recording in a place of public entertainment or for the transmission of sound or images, or both,

and the main purpose of which is the financial benefit of a theatrical employer or theatrical performer, or both;

“theatrical performer” means any actor, singer, dancer, acrobat, model, musician or performer of any kind employed to give a performance or performances—

(a) in a place of public entertainment; or

(b) involving the use of any medium for the transmission or recording of sound or images,

or both.

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SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS—*continued*

- (2) A person carries on a theatrical agency—
 - (a) if the person represents that the person carries on or is prepared to carry on a theatrical agency; or
 - (b) on any occasion when the person, as the performer's agent, obtains an engagement for a theatrical performer with a theatrical employer.
- (3) A person carries on business as a theatrical employer if the person represents that the person carries on or is prepared to carry on business as a theatrical employer.

Theatrical agents and theatrical employers to be licensed

133. (1) A person shall not—

- (a) carry on any theatrical agency, unless the person is the holder of a theatrical agent's licence; or
- (b) carry on business as a theatrical employer, unless the person is the holder of a theatrical employer's licence.

Penalty: 50 penalty units.

(2) The holder of a licence shall not—

- (a) carry on a theatrical agency; or
- (b) carry on business as a theatrical employer,

at a place other than the place to which the licence relates.

Penalty: 20 penalty units or imprisonment for 3 months.

Exemptions relating to theatrical employers

134. (1) The Minister may by written notice exempt any theatrical employer, for the period specified in the notice, from the operation of section 133 (1) (b) if the Minister is satisfied that the business of the theatrical employer is in all respects being properly carried on.

(2) The Minister may by written notice revoke any exemption given under this section.

Fees etc.

135. (1) A theatrical agent shall not, directly or indirectly—

- (a) demand or receive for or in respect of the engagement of a theatrical performer any fee, charge or other remuneration if it, or it and all other fees, charges and other remuneration received by that theatrical agent (and any other theatrical agent concerned) for the engagement of the performer, exceeds or exceed 10 per cent of the amount payable to the performer in respect of the engagement;

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SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS—*continued*

- (b) take or accept any article in payment (or as security for the payment) of fees, charges or other remuneration or receive or accept any reward or other consideration in addition to the fees, charges and other remuneration referred to in paragraph (a);
- (c) keep as a lodger any person seeking employment as a theatrical performer, or have any share or interest in the keeping of a lodging-house for any such person; or
- (d) give or pay to any theatrical employer, or to the foreman of any theatrical employer, for or in respect of the engagement of any theatrical performer, any share or part of the fees, charges or other remuneration referred to in paragraph (a),

and no such employer or foreman shall directly or indirectly take or receive from any such theatrical agent any share or part of any such fees, charges or other remuneration.

Penalty: 20 penalty units or imprisonment for 3 months.

(2) Any money or anything else received or given in contravention of this section, may, whether or not a penalty for the contravention is imposed, be ordered by an industrial magistrate—

- (a) to be forfeited to the Crown; or
 - (b) if the money or other thing was taken under duress exercised by the person receiving it, to be repaid or redelivered to the person from whom it was taken.
- (3) The fact that any person (who resides with and is related to a theatrical agent)—
- (a) keeps any persons seeking employment as theatrical performers as lodgers; or
 - (b) keeps any lodging-house for persons seeking that kind of employment,

shall be *prima facie* evidence that the theatrical agent keeps those persons as lodgers or has an interest in the keeping of the lodging-house.

(4) Every contract or agreement made between—

- (a) any theatrical agent or person who resides with and is related to a theatrical agent; and

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SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS—*continued*

(b) any other person,

relating to the keeping as lodgers of persons seeking employment as theatrical performers, or to the keeping of a lodging-house for such persons, shall be void for all purposes.

False statements by theatrical agents

136. A theatrical agent shall not publish or cause to be published any false information or make any false promise concerning work or employment to anyone who applies to the agent for employment as a theatrical performer.

Penalty: 10 penalty units or imprisonment for 3 months.

Conviction to be endorsed on licence

137. (1) Every conviction under this Division against the holder of a licence shall be endorsed on the licence—

(a) if the prosecution is brought before an industrial magistrate—by the industrial magistrate; and

(b) if the prosecution is brought before the commission—by the commission.

(2) The industrial magistrate or commission may order the defendant to deliver up his or her licence for endorsement.

(3) If the holder of a licence—

(a) fails to deliver up the licence for endorsement; or

(b) is convicted of a further offence within 3 years of the first conviction,

the licence shall be cancelled, and the registrar shall notify the Secretary for that purpose.

Remittance advice

138. (1) A holder of a theatrical agent's licence who has obtained employment for a theatrical performer shall, forthwith after receipt of any payment from a theatrical employer in respect of the employment, send to the performer advice of—

(a) the amounts received by the agent in respect of the employment; and

(b) such other particulars as may be prescribed.

(2) A theatrical agent shall retain a copy of any advice sent under this section for a period of 6 years from the date on which the advice is sent.

Penalty: 10 penalty units or imprisonment for 3 months.

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SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL
AGENTS AND EMPLOYERS—*continued*

Application for theatrical agent's licence or theatrical employer's licence

139. (1) A person may apply to the Secretary for the issue or renewal of a licence.

(2) An application shall—

(a) be in the approved form;

(b) identify the place at which the applicant intends to carry on—

(i) in the case of an application for a theatrical agent's licence—the theatrical agency; and

(ii) in the case of an application for a theatrical employer's licence—the business of a theatrical employer;

(c) in the case of an application for a theatrical agent's licence, be accompanied by an approved bond or bank guarantee to secure the payment of up to \$10,000 to the Secretary to compensate for losses to which section 145 relates suffered during the currency of the licence, if granted;

(d) state whether or not the applicant already holds any licence;

(e) be accompanied by the approved fee; and

(f) be lodged at the office of the Secretary.

(3) If a licence is required for more than one place of business, a separate application for the grant of a licence in respect of each place shall be lodged with the Secretary.

Investigation of applications

140. (1) The Secretary may cause such inquiries to be made as, in the opinion of the Secretary, are necessary to ensure that—

(a) the applicant for a licence is a fit and proper person to hold the licence; and

(b) the place identified in the application meets the prescribed requirements for places at which a theatrical agency or the business of a theatrical employer may be carried on.

(2) The Secretary may refer an application for a licence to an industrial magistrate for inquiry or request a report from the Commissioner of Police as to whether or not—

(a) the applicant for the licence;

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- (b) a proposed partner of the applicant for the licence in the agency or business for which the licence is applied for;
- (c) a director of a corporation that is an applicant for a licence; or
- (d) a director of a corporation that is a proposed partner of an applicant for a licence in the agency or business for which the licence is applied for,

is, or if he or she were the applicant would be, a fit and proper person to be the holder of a licence.

(3) The industrial magistrate to whom an application is referred shall consider whether the applicant or other person concerned is, from his or her character and previous conduct, a fit and proper person to hold a licence and shall give the Secretary a recommendation on the application.

(4) In conducting an inquiry under this section, an industrial magistrate has the same powers, authorities, duties and functions as if the magistrate were sitting in a Local Court and the inquiry were a matter for hearing and determination in the Local Court.

(5) The applicant and all persons who in the manner prescribed notify their objection to the issue or renewal of a licence shall be given notice of the inquiry and are entitled to be heard personally or by counsel, attorney or agent.

(6) The Commissioner of Police shall cause to be made such inquiries as the Commissioner considers necessary to comply with a request made under this section and shall give a report of the result of the inquiries to the Secretary.

Determination of application

141. (1) The Secretary shall determine the application—

- (a) by granting a licence to the applicant, either unconditionally or subject to conditions; or
- (b) by refusing to grant a licence to the applicant.

(2) The Secretary shall not grant a licence unless the Secretary is satisfied—

- (a) that—
 - (i) the applicant;
 - (ii) if the applicant is a corporation—each director of the corporation;

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SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL
AGENTS AND EMPLOYERS—*continued*

- (iii) each proposed partner (if any) of the applicant in carrying on the theatrical agency or the business of a theatrical employer; and
- (iv) if any such proposed partner is a corporation—each director of the corporation,
is a fit and proper person to hold the licence;
- (b) that—
 - (i) if the applicant is a natural person—the applicant;
 - (ii) if the applicant is a corporation—each director of the corporation;
 - (iii) each proposed partner (if any) of the applicant in carrying on the theatrical agency or the business of a theatrical employer who is a natural person; and
 - (iv) if any such proposed partner is a corporation—each director of the corporation,
is of or above the age of 18 years;
- (c) that the place at which the applicant carries on or intends to carry on the theatrical agency or the business of a theatrical employer meets the prescribed requirements for such a place;
- (d) in the case of an application for a theatrical agent's licence, that—
 - (i) the applicant;
 - (ii) if the applicant is a corporation—a director of the corporation;
 - (iii) a proposed partner (if any) of the applicant in carrying on the theatrical agency; and
 - (iv) if any such proposed partner is a corporation—a director of the corporation,
does not hold a theatrical employer's licence; and
- (e) in the case of an application for a theatrical employer's licence, that—
 - (i) the applicant;
 - (ii) if the applicant is a corporation—a director of the corporation;
 - (iii) a proposed partner (if any) of the applicant in carrying on the business of a theatrical employer; and

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- (iv) if any such proposed partner is a corporation—a director of the corporation,
does not hold a theatrical agent's licence.

(3) In considering whether a person is a fit and proper person to hold a licence, the Secretary shall—

- (a) in the case of a natural person, have regard to the character of the person;
- (b) have regard to any recommendation relating to the person made by an industrial magistrate or any report given by the Commissioner of Police;
- (c) have regard to whether the person has, during the period of 10 years preceding the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence involving fraud or dishonesty; and
- (d) have regard to any other matter the Secretary considers relevant.

(4) If the Secretary refuses to grant a licence, the Secretary shall, as soon as practicable after doing so, cause written notice of the refusal, and of the reason for the refusal, to be served personally or by post on the applicant for the licence.

(5) In the case of an application made by more than one person, it is sufficient if the notice is served on any one of the applicants.

(6) If, at the expiration of 90 days after an application has been made, the Secretary has failed to determine the application, the Secretary shall, for the purposes of any appeal, be deemed to have refused to grant a licence to the applicant.

Conditions of issue of theatrical employer's licences relating to security deposits etc.

142. The Secretary may, as a condition of the issue of a theatrical employer's licence, require the deposit with the Secretary on prescribed terms of an amount of money determined by the Secretary or the giving of some other approved security to secure—

- (a) the payment of salaries or wages owed to theatrical performers or employees; and
- (b) the payment of fares and reasonable incidental expenses of theatrical performers or employees on termination for any cause of their employment,

by the theatrical employer.

**SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL
AGENTS AND EMPLOYERS—*continued***

Form of licences

143. A licence shall—

- (a) be in the approved form;
- (b) identify the person or, if the licence is granted to more than one person, the persons to whom the licence is granted;
- (c) designate the place at which the theatrical agency or business of a theatrical employer will be carried on by the licensee, as identified in the application for the licence;
- (d) specify any conditions to which the licence is subject; and
- (e) specify the date on which the licence is granted.

Duration of licences

144. A licence remains in force for the period of 12 months from the date on which it is granted and may be renewed from time to time.

Licensee to exhibit licence etc.

144A. The holder of a licence shall exhibit at the place specified in the licence—

- (a) the licence; and
- (b) a notice in the prescribed form containing the prescribed particulars,

so as to be clearly visible to persons entering the place.

Penalty: 10 penalty units or imprisonment for 3 months.

Registers to be kept by theatrical agents

144B. (1) The holder of a theatrical agent's licence shall keep as prescribed—

- (a) a register in which shall be entered—
 - (i) the age, sex, occupation, name and address of every person who applies to the licensee for employment as a theatrical performer; and
 - (ii) the name and nature of the employment required by the person;
- (b) a separate register in which shall be entered the name and address of every person who so applies for a theatrical performer and the name and nature of the employment offered;
- (c) a separate register of all engagements made by or through the licensee; and

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- (d) the originals of all letters received by the licensee, or by the agents or employees of the licensee, in connection with the agency for 2 years after their receipt.
- (2) The registers and letters referred to in this section shall, at all reasonable hours, be open to inspection and examination by—
 - (a) any industrial inspector;
 - (b) any officer of an industrial union of employees, authorised in writing in that behalf by the registrar; and
 - (c) any officer of the Department authorised in writing in that behalf by the Secretary.
- (3) A register shall be retained by the licensee for a period of 6 years from the date in which the last entry is made in the register.
- (4) A licensee shall not make or cause to be made any false entries in a register kept under this section.

Penalty: 20 penalty units or imprisonment for 3 months.

Registers to be kept by Secretary

144C. (1) The Secretary shall keep a register, in such form as the Secretary determines, of the issue of licences under this Division and shall record in the register in respect of each licence—

- (a) the matters required to be specified in the licence;
 - (b) particulars of any fees paid, or due but not paid, in respect of the licence;
 - (c) particulars of any amendment of the licence;
 - (d) particulars of any cancellation or suspension of the licence; and
 - (e) such other matters as may be prescribed.
- (2) The Secretary shall keep a register, in such form as the Secretary determines, containing—
- (a) if the Secretary causes a notice of suspension to be served on the licensee under section 145, a note to that effect;
 - (b) if the Secretary causes a notice of cancellation to be served on a licensee on the ground that the licensee or some other person is not or would not be a fit and proper person to continue to be, or to be, the holder of a licence, a note to that effect; and

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- (c) particulars of the result of any appeal against the cancellation of a licence on that ground.

(3) The Secretary may make such alterations in the registers required to be kept under this section as are necessary to ensure that the matters recorded in respect of any licence or person are accurate.

Cancellation of licence

144D. (1) The Secretary may cancel a licence if the Secretary is satisfied—

- (a) that the licence has been improperly obtained;
- (b) that a licensee or a director of a corporation that is a licensee made a statement in or in connection with the application for the grant of the licence that was false or misleading in a material particular;
- (c) that the licensee is not a fit and proper person to continue to be the holder of the licence;
- (d) that a director of a corporation that is a licensee would not, if the director were the holder of the licence, be a fit and proper person to be the holder of the licence;
- (e) that a partner, or a director of a corporation which is a partner, of the licensee would not, if the partner or director were the holder of the licence, be a fit and proper person to be the holder of the licence;
- (f) that the business of the licensee has not been or is not being properly conducted;
- (g) that the place to which the licence relates does not, or has ceased to, meet the prescribed requirements for a place at which a theatrical agency or the business of a theatrical employer may be carried on;
- (h) that the conditions (if any) imposed on the licence have not been complied with; or
- (i) that a licensee has been convicted of an offence against this Part.

(2) In determining whether a licensee is a fit and proper person to continue to hold a licence the Secretary shall take into account any representations made in that respect by the Theatrical Agencies, Employers and Performers Advisory Committee established under the regulations.

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SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL
AGENTS AND EMPLOYERS—*continued*

(3) If the Secretary proposes to cancel a licence, the Secretary shall, except where—

- (a) a request has been made by the licensee or all of the joint licensees for the cancellation; or
- (b) the Secretary is satisfied—
 - (i) that the licensee, being a natural person, has died;
 - (ii) that a partnership being carried on by joint licensees has been dissolved; or
 - (iii) that the licensee, being a corporation, has been wound up,

give the licensee a written notice setting forth the reasons for the proposed cancellation and requiring the licensee, within such period as is specified in the notice, to show cause why the licence should not be cancelled.

(4) If, upon the expiration of the period specified in any such notice, or of such further period as the Secretary may allow, the Secretary cancels a licence, the Secretary shall cause written notice of the cancellation, and of the reasons for it, to be served personally or by post on the licensee.

(5) In the case of a licence issued to joint licensees, it is sufficient if the notice of cancellation is served on any one of the joint licensees.

(6) The cancellation of a licence takes effect upon the expiration of 21 days after the day on which the notice of cancellation is served.

(7) If a licensee appeals against the cancellation of the licence, the cancellation shall have effect—

- (a) only if the commission confirms the cancellation or if the appeal is withdrawn; and
- (b) on the day on which the commission confirms the cancellation, or such later day as the commission orders or, if the appeal is withdrawn, on the day on which it is withdrawn.

(8) A person who was the holder of a licence and who, upon the cancellation of the licence taking effect, fails to forthwith deliver the licence to the Secretary is guilty of an offence.

Penalty: 20 penalty units or imprisonment for 3 months.

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SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL
AGENTS AND EMPLOYERS—*continued*

(9) A person who was a joint licensee is not guilty of an offence referred to in subsection (8) if another of the persons who were joint licensees delivers the licence to the Secretary.

Bonds and guarantees for theatrical agents

145. (1) If a theatrical performer suffers loss by reason of any act by or omission of the holder of a theatrical agent's licence, the Secretary may—

- (a) realise the money secured by the bond or bank guarantee lodged with the Secretary by the theatrical agent in relation to the licence held by the agent;
- (b) apply the money to assist any theatrical performer who has suffered loss by reason of any act or omission by the theatrical agent; and
- (c) require the theatrical agent to lodge with the Secretary, within the time specified in writing by the Secretary, a further approved bond or bank guarantee for the same amount and of the same nature.

(2) If a licensee fails to lodge a further approved bond or bank guarantee within the time specified, the Secretary may suspend the licence until—

- (a) such time as the required bond or guarantee is lodged; or
- (b) the licence expires,

whichever is the earlier.

(3) Before suspending the licence, the Secretary shall give the holder of the licence an opportunity of showing cause why the Secretary should not suspend the licence for failure to lodge the bond or guarantee.

(4) The Secretary shall cause notice of a suspension under this section, and of the date on which it is to take effect, to be served personally or by post on the licensee.

(5) In the case of a licence issued to joint licensees, it is sufficient if the notice of suspension is served on any one of the joint licensees.

(6) A suspension of a licence takes effect 21 days after the date on which notice of the suspension is served on the holder of the licence.

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SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS—*continued*

(7) When the suspension of a licence has effect, the former holder of the licence shall, as soon as practicable, deliver it to the Secretary.

Penalty (subsection (7)): 20 penalty units or imprisonment for 3 months.

- (2) Part XIV, Division 2 (sections 136–145)—
Omit the Division.

SCHEDULE 2—AMENDMENTS RELATING TO PRIVATE EMPLOYMENT AGENTS

(Sec. 4)

- (1) Part XIV, Division 2, heading—
Omit the heading to Division 2A, insert instead:
DIVISION 2—*Private employment agents*
- (2) Section 145A (**Definitions**)—
After the definition of “regulation”, insert:
“Secretary” means Secretary of the Department of Industrial Relations and Employment.
- (3) Section 145D—
Omit the section, insert instead:
Private employment agents to be licensed
145D. (1) A person who carries on the business of a private employment agent shall not demand or receive any fee, charge or other remuneration in respect of the business unless the person is the holder of a licence.
Penalty: 50 penalty units.
(2) The holder of a licence shall not carry on the business of a private employment agent at a place other than the place to which the licence relates.
Penalty: 20 penalty units.
- (4) Sections 145E–145H, 145K–145M, 145O, 145R—
Omit “Under” wherever occurring.
- (5) Section 145E (**Persons to be in charge at each place of business**)—
(a) Section 145E (6)—
Omit “an industrial magistrate”, insert instead “the commission”.

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EMPLOYMENT AGENTS—*continued*

- (b) Section 145E (6)—
Omit “Division”, insert instead “Part”.
- (c) Section 145E (6)—
After “fit”, insert “and proper”.
- (d) Section 145E (9)—
Omit “\$500”, insert instead “20 penalty units”.
- (6) Section 145G (**Inquiries and objections**)—
Section 145G (1)—
After “fit”, insert “and proper”.
- (7) Section 145GA—
After section 145G, insert:
Referral of application to industrial magistrate
145GA. (1) The Secretary may refer an application for a licence to an industrial magistrate for inquiry as to whether or not—
 - (a) an applicant for the licence;
 - (b) a proposed partner of the applicant for the licence in the business in respect of which the licence is applied for;
 - (c) a director of a corporation that is an applicant for the licence;
 - (d) a director of a corporation that is a proposed partner of an applicant for the licence in the business in respect of which the licence is applied for; or
 - (e) a person whose appointment as a person in charge has been notified under section 145E,
 is a fit and proper person to hold a licence.
 - (2) The industrial magistrate to whom an application is referred shall consider whether the applicant or other person concerned is, from his or her character and previous conduct, a fit and proper person to hold a licence and shall give the Secretary a recommendation on the application.
 - (3) In conducting an inquiry under this section, an industrial magistrate has the same powers, authorities, duties and functions as if the magistrate were sitting in a Local Court and the inquiry were a matter for hearing and determination in the Local Court.

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**SCHEDULE 2—AMENDMENTS RELATING TO PRIVATE
EMPLOYMENT AGENTS—*continued***

(4) The applicant and all persons who in the manner prescribed notify their objection to the issue or renewal of a licence shall be given notice of the inquiry and are entitled to be heard personally or by counsel, attorney or agent.

(8) Section 145H (**Disposal of applications for licences**)—

(a) Section 145H (2) (c), (3)—

After “fit” wherever occurring, insert “and proper”.

(b) Section 145H (3)—

After “Police”, insert “and any recommendation relating to the person furnished under section 145GA”.

(9) Section 145I (**Persons from whom licensees may seek remuneration**)—

Omit “\$500”, insert instead “20 penalty units”.

(10) Section 145L (**Notice of changed particulars**)—

Section 145L (4)—

Omit “\$500”, insert instead “20 penalty units”.

(11) Section 145M (**Cancellation of licence**)—

(a) Section 145M (2) (b)–(e)—

After “fit” wherever occurring, insert “and proper”.

(b) Section 145M (8)—

Omit “145N”, insert instead “151”.

(c) Section 145M (8) (a)—

Omit “the industrial magistrate hearing the appeal”, insert instead “the commission”.

(d) Section 145M (8) (b)—

Omit “industrial magistrate” wherever occurring, insert instead “commission”.

(e) Section 145M (10)—

Omit “\$500”, insert instead “20 penalty units”.

(12) Section 145N (**Appeals**)—

Omit the section.

(13) Section 145O (**Registers to be kept**)—

Section 145O (2) (d), (e)—

After “fit” wherever occurring, insert “and proper”.

*Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987***SCHEDULE 2—AMENDMENTS RELATING TO PRIVATE
EMPLOYMENT AGENTS—*continued*****(14) Section 145P (Performance of Under Secretary's functions)—**

Omit the section.

(15) Section 145R (Offences by licensees)—

Section 145R (1)—

Omit "\$500", insert instead "20 penalty units".

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

(Sec. 4)

(1) Section 39 (Definitions)—

After "an Act", insert "or section 152 (4) of this Act".

(2) Section 145R (Offences by licensees)—

Section 145R (2)—

Omit the subsection.

(3) Sections 146–148—

Omit the sections, insert instead:

Definitions

146. In this Division—

"Department" means Department of Industrial Relations and
Employment;

"licence" means licence in force under this Part.

Former holder of licence not qualified to obtain licence147. A person whose licence has been cancelled (except at the
person's own request) shall not be entitled to hold a licence of the
same type until one year after the date of cancellation.**Production of licence**148. A licensee shall not be entitled to recover fees, charges or
other remuneration in a court unless the licensee produces his or
her licence to the court.**(4) Section 149 (Offences)—**

(a) Omit the first paragraph.

(b) Omit "five hundred dollars", insert instead "50 penalty units".

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

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

(5) Sections 149A–152F—

Omit sections 150–152, insert instead:

Loss or destruction of licence

149A. On satisfactory proof of loss or destruction of a licence, the Secretary may, at the request of the licensee, issue a duplicate licence, and the duplicate shall for all purposes be treated as if it were the original licence.

Offences by corporations

150. (1) If a corporation contravenes any provision of this Part or a regulation made under it, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been 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 Part or the regulations.

Appeals

151. (1) An applicant for the grant of a licence may appeal to the commission against the refusal by the Secretary to grant the licence.

(2) A licensee may appeal to the commission against the cancellation by the Secretary of the licence.

(3) If an application for the grant of a licence made by more than one person is refused or a licence held by more than one person is cancelled, an appeal under this section against the refusal or cancellation may be made by any of the applicants or licensees, as the case may be, on behalf of all of the applicants or licensees, or by all of the applicants or licensees jointly, but not otherwise.

(4) Notice of an appeal under this section, specifying the grounds of appeal, shall be lodged with the registrar not later than 21 days after—

- (a) in the case of an appeal against a refusal to grant a licence, the day of service of the notice of refusal; and

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

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

(b) in the case of an appeal against a cancellation of a licence, the day of service of the notice of cancellation.

(5) The registrar shall give notice of the time and place of the hearing of an appeal under this section to the Secretary and to the person or persons appealing and shall state in the notice to the Secretary the grounds of the appeal.

(6) The hearing of an appeal may proceed even though—

(a) a notice of the time and place of the hearing of the appeal contains an omission or error; or

(b) the registrar fails to give such notice,

if the commission is satisfied that any person appealing and the Secretary had knowledge of the time and place of the hearing and were not prejudiced by the omission, error or failure.

(7) If relevant—

(a) a recommendation given to the Secretary by an industrial magistrate under section 140 or 145GA; and

(b) a report furnished to the Secretary by the Commissioner of Police under section 140 or 145G (1),

and certified by the Secretary to have been so given or furnished shall be received in proceedings before the commission under this section as evidence of the contents of the recommendation or report.

(8) The commission shall hear and determine an appeal made to it under this section and may confirm or disallow the refusal or cancellation appealed against.

(9) If a licence is refused or cancelled on the ground that a person is not a fit and proper person to be or continue to be the holder of a licence, the commission shall determine whether or not that person is a fit and proper person to be or continue to be the holder of a licence.

(10) The decision of the commission in respect of an appeal made under this section shall be final and shall be binding on the person or persons appealing and on the Secretary, who shall take such steps as may be necessary to give effect to the decision.

(11) Where regulations are made relating to an appeal under this section, any such appeal shall be instituted, heard and determined in accordance with those regulations.

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

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

Proceedings for offences

152. (1) Proceedings for an offence against this Part or the regulations made under it may be taken only by a person acting with the authority of the Minister.

(2) In proceedings for an offence against this Part or the regulations made under it, a consent to institute the proceedings, purporting to be signed by the Minister, shall be evidence of that consent without proof of the signature of the Minister.

(3) Except as provided by subsection (4), proceedings for an offence against this Part or the regulations made under it shall be disposed of summarily before an industrial magistrate.

(4) Proceedings for an offence against section 133 (1) or 145D (1) shall be prosecuted before the commission.

Order for payment of money owed etc.

152A. (1) If during the course of proceedings before the commission for an offence against section 133 (1) or 145D (1), it appears to the commission that—

- (a) money is due to a theatrical performer from a person who has carried on any theatrical agency or business as a theatrical employer without a licence under Division 1; or
- (b) a person who has carried on the business of a private employment agent without a licence under Division 2 has demanded and received any fee, charge or other remuneration from a person seeking to be employed,

the commission may make an order requiring the unlicensed person concerned to pay the money due to the theatrical performer or to refund the fee, charge or other remuneration received.

(2) An appeal lies to the commission in court session from any order of the commission under this section.

(3) Section 120 applies to an appeal from an order of the commission under this section to the commission in court session in the same way as it applies to an appeal from an order of an industrial magistrate to the commission.

Copy of entries in registers to be evidence

152B. A copy of any entry in any of the registers required to be kept under this Part, being a copy purporting to be signed—

- (a) by the Secretary; or

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

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

(b) by—

- (i) any industrial inspector;
- (ii) any officer of an industrial union of employees; or
- (iii) any officer of the Department authorised by the Secretary in that behalf,

who made the copy,

shall be prima facie evidence of the truth of the matters stated in the copy.

Performance of Secretary's functions

152C. (1) Anything authorised or required by or under this Part to be done by, lodged with or paid to the Secretary may be done by, lodged with or paid to any officer of the Department who is authorised generally or specially in writing by the Secretary in that behalf.

(2) Anything purporting to have been done by, lodged with or paid to an officer so authorised shall be deemed to have been done by, lodged with or paid to the Secretary.

Right of entry and inspection

152D. (1) An industrial inspector, an officer of an industrial union of employees in respect of whom an authority is in force under section 129A or any other officer of the Department who is authorised in writing by the Secretary to do so may—

- (a) enter any place to which a licence relates where the inspector or officer believes, on reasonable grounds, a provision of this Part or the regulations made under this Part has been, or is being, contravened; and
- (b) request a person to produce for examination any books, papers, records or remittance advice required to be kept, made or given under this Part by the person.

(2) An inspector may not exercise the powers conferred by this section in relation to a dwelling except—

- (a) with the permission of the occupier of the dwelling; or
- (b) under the authority conferred by a search warrant issued under section 152E.

Search warrants

152E. (1) In this section—

“authorised justice” means—

- (a) a Magistrate; or

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

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

(b) a justice of the peace employed in the Attorney General's Department.

(2) An inspector may apply to an authorised justice for the issue of a search warrant if the inspector has reasonable grounds for believing that a provision of this Part or the regulations made under it has been or is being contravened in any dwelling.

(3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant, when accompanied by a member of the police force—

(a) to enter the dwelling; and

(b) to search the dwelling for evidence of a contravention of this Part or the regulations.

(4) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

Offences relating to industrial inspectors, officers of industrial unions of employees and authorised officers

152F. (1) A person shall not fail without reasonable excuse, proof of which shall lie on the person, to produce for examination at the request of—

(a) an industrial inspector;

(b) an officer of an industrial union of employees referred to in section 152D; or

(c) an officer authorised under section 152D by the Secretary, any book, paper, record or remittance advice required to be kept or made or given by the person under this Part.

Penalty: 20 penalty units.

(2) A person is not guilty of an offence against this Act because of a failure referred to in subsection (1) unless it is established that the inspector or officer concerned—

(a) identified himself or herself as an inspector or officer to the person; and

(b) warned the person that the failure is an offence.

(6) Section 153 (**Regulations**)—

(a) Section 153 (1) (b), (c)—

Omit “and permits” wherever occurring.

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

- (b) Section 153 (1) (d)—
Omit “and holders of permits”.
- (c) Section 153 (1) (e)—
After “employer’s business”, insert “or private employment agent’s business”.
- (d) Section 153 (1) (h)—
Omit the paragraph, insert instead:
 - (h) regulating the use of bonds and guarantees given by applicants for licences and prescribing the manner in which, and the conditions on which, amounts secured or deposited under this Part may be applied by the Secretary;
- (e) Section 153 (1)—
Omit “\$500”, insert instead “20 penalty units”.

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 5)

Continuation in force of theatrical agent’s licences and theatrical employer’s permits

1. (1) In this clause, references to sections shall be read as references to sections of the Principal Act.

(2) Despite anything in the Principal Act, as amended by this Act, if—

- (a) the holder or holders of a theatrical agent’s licence; or
- (b) the holder or holders of a theatrical employer’s permit,

in force under section 138 at the commencement of this clause applies or apply for a theatrical agent’s licence or theatrical employer’s licence under section 139 (as inserted by this Act) within 28 days after that commencement, the holder or holders may (subject to subclause (3))—

- (c) carry on a theatrical agency as if the licence; or
- (d) carry on the business of a theatrical employer as if the permit,

were still in force until the application is determined.

(3) While a licence or permit continues in force under this clause, the Principal Act, as in force immediately before the commencement of this clause, applies to and in respect of the holder of the licence or permit.

(4) A person is not guilty of an offence under Division 1 of Part XIV of the Principal Act, as amended by this Act, for doing anything authorised by subclause (2).

(5) Nothing in this clause authorises the issue under section 141 (as inserted by this Act) of both a theatrical agent’s licence and a theatrical employer’s licence to the same person.

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

Saving of existing theatrical employers exemptions

2. An exemption granted under section 137 (4) of the Principal Act that is in force at the commencement of this clause shall, on that commencement, be deemed to be an exemption granted under section 134 of that Act as inserted by this Act.

Regulations

3. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the date of assent to this Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, 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 in the Gazette; 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 in the Gazette.

(4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding any other clause of this Schedule.

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.

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- (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.

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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.

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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.

INDUSTRIAL ARBITRATION (THEATRICAL AGENTS AND EMPLOYERS) AMENDMENT BILL 1987

NEW SOUTH WALES



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**INDUSTRIAL ARBITRATION (THEATRICAL AGENTS
AND EMPLOYERS) AMENDMENT BILL 1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Industrial Arbitration Act 1940 in relation to theatrical agents and employers; and for other purposes.

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Industrial Arbitration (Theatrical Agents and Employers) Amendment Act 1987.

5 Commencement

2. This Act shall commence on a day or days to be appointed by proclamation.

Principal Act

3. The Industrial Arbitration Act 1940 is referred to in this Act as the
10 Principal Act.

Amendment of Act No. 2, 1940

4. The Principal Act is amended as set out in Schedules 1–3.

Savings and transitional provisions

5. Schedule 4 has effect.

15 Amendment of Search Warrants Act 1985 (No. 37), s. 10 (Interpretation)

6. The Search Warrants Act 1985 is amended by inserting in the definition of “search warrant” in section 10 in alphabetical order of Acts the following matter:

section 152E of the Industrial Arbitration Act 1940;

20 SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS

(Sec. 4)

(1) Part XIV, heading and Division 1—

25 Omit the heading and the heading relating to Division 1, insert instead:

PART XIV
THEATRICAL AGENTS AND EMPLOYERS AND PRIVATE
EMPLOYMENT AGENTS

DIVISION 1—*Theatrical agents and employers*

30 Definitions

132. (1) In this Division and Division 3—

“approved” means approved by the Secretary;

“employment” includes an engagement;

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL
AGENTS AND EMPLOYERS—*continued*

“licence” means a licence in force under this Division;

“licensee” includes a joint licensee;

“model” includes a mannequin, but does not include a person employed for the purposes of a parade or still photography;

5 “personal manager” means 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;

10 “Secretary” means the Secretary of the Department of Industrial Relations and Employment;

“theatrical agent” means—

(a) a person who (whether for the purpose of gain or not) carries on, on behalf of theatrical performers, an agency for the employment of theatrical performers; or

15 (b) a person who (for the purpose of gain) conducts a service providing information about the availability of theatrical performers for employment,

but does not include a personal manager;

“theatrical employer” means—

20 (a) a person who employs any theatrical performer for the purpose of a theatrical enterprise; and

(b) any agent of such a person;

“theatrical enterprise” means—

25 (a) the giving of a performance or performances in a place of public entertainment or by the use of any medium for the transmission of sound or images, or both; or

(b) the recording of any performance for the purpose of using the recording in a place of public entertainment or for the transmission of sound or images, or both,

30 and the main purpose of which is the financial benefit of a theatrical employer or theatrical performer, or both;

“theatrical performer” means any actor, singer, dancer, acrobat, model, musician or performer of any kind employed to give a performance or performances—

35 (a) in a place of public entertainment; or

(b) involving the use of any medium for the transmission or recording of sound or images,

or both.

**SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL
AGENTS AND EMPLOYERS—*continued***

(2) A person carries on a theatrical agency—

(a) if the person represents that the person carries on or is prepared to carry on a theatrical agency; or

5 (b) on any occasion when the person, as the performer's agent, obtains an engagement for a theatrical performer with a theatrical employer.

(3) A person carries on business as a theatrical employer if the person represents that the person carries on or is prepared to carry on business as a theatrical employer.

10 **Theatrical agents and theatrical employers to be licensed**

133. (1) A person shall not—

(a) carry on any theatrical agency, unless the person is the holder of a theatrical agent's licence; or

15 (b) carry on business as a theatrical employer, unless the person is the holder of a theatrical employer's licence.

Penalty: 50 penalty units.

(2) The holder of a licence shall not—

(a) carry on a theatrical agency; or

20 (b) carry on business as a theatrical employer,
at a place other than the place to which the licence relates.

Penalty: 20 penalty units or imprisonment for 3 months.

Exemptions relating to theatrical employers

25 134. (1) The Minister may by written notice exempt any theatrical employer, for the period specified in the notice, from the operation of section 133 (1) (b) if the Minister is satisfied that the business of the theatrical employer is in all respects being properly carried on.

(2) The Minister may by written notice revoke any exemption given under this section.

30 **Fees etc.**

135. (1) A theatrical agent shall not, directly or indirectly—

35 (a) demand or receive for or in respect of the engagement of a theatrical performer any fee, charge or other remuneration if it, or it and all other fees, charges and other remuneration received by that theatrical agent (and any other theatrical agent concerned) for the engagement of the performer, exceeds or exceed 10 per cent of the amount payable to the performer in respect of the engagement;

*Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987*SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS—*continued*

5 (b) take or accept any article in payment (or as security for the payment) of fees, charges or other remuneration or receive or accept any reward or other consideration in addition to the fees, charges and other remuneration referred to in paragraph (a);

(c) keep as a lodger any person seeking employment as a theatrical performer, or have any share or interest in the keeping of a lodging-house for any such person; or

10 (d) give or pay to any theatrical employer, or to the foreman of any theatrical employer, for or in respect of the engagement of any theatrical performer, any share or part of the fees, charges or other remuneration referred to in paragraph (a),

15 and no such employer or foreman shall directly or indirectly take or receive from any such theatrical agent any share or part of any such fees, charges or other remuneration.

Penalty: 20 penalty units or imprisonment for 3 months.

20 (2) Any money or anything else received or given in contravention of this section, may, whether or not a penalty for the contravention is imposed, be ordered by an industrial magistrate—

(a) to be forfeited to the Crown; or

25 (b) if the money or other thing was taken under duress exercised by the person receiving it, to be repaid or redelivered to the person from whom it was taken.

(3) The fact that any person (who resides with and is related to a theatrical agent)—

(a) keeps any persons seeking employment as theatrical performers as lodgers; or

30 (b) keeps any lodging-house for persons seeking that kind of employment,

shall be prima facie evidence that the theatrical agent keeps those persons as lodgers or has an interest in the keeping of the lodging-house.

35 (4) Every contract or agreement made between—

(a) any theatrical agent or person who resides with and is related to a theatrical agent; and

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS—*continued*

(b) any other person,

relating to the keeping as lodgers of persons seeking employment as theatrical performers, or to the keeping of a lodging-house for such persons, shall be void for all purposes.

False statements by theatrical agents

136. A theatrical agent shall not publish or cause to be published any false information or make any false promise concerning work or employment to anyone who applies to the agent for employment as a theatrical performer.

Penalty: 10 penalty units or imprisonment for 3 months.

Conviction to be endorsed on licence

137. (1) Every conviction under this Division against the holder of a licence shall be endorsed on the licence—

- (a) if the prosecution is brought before an industrial magistrate—by the industrial magistrate; and
- (b) if the prosecution is brought before the commission—by the commission.

(2) The industrial magistrate or commission may order the defendant to deliver up his or her licence for endorsement.

(3) If the holder of a licence—

- (a) fails to deliver up the licence for endorsement; or
- (b) is convicted of a further offence within 3 years of the first conviction,

the licence shall be cancelled, and the registrar shall notify the Secretary for that purpose.

Remittance advice

138. (1) A holder of a theatrical agent's licence who has obtained employment for a theatrical performer shall, forthwith after receipt of any payment from a theatrical employer in respect of the employment, send to the performer advice of—

- (a) the amounts received by the agent in respect of the employment; and
- (b) such other particulars as may be prescribed.

(2) A theatrical agent shall retain a copy of any advice sent under this section for a period of 6 years from the date on which the advice is sent.

Penalty: 10 penalty units or imprisonment for 3 months.

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SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS—*continued*

Application for theatrical agent's licence or theatrical employer's licence

139. (1) A person may apply to the Secretary for the issue or renewal of a licence.

5 (2) An application shall—

(a) be in the approved form;

(b) identify the place at which the applicant intends to carry on—

10 (i) in the case of an application for a theatrical agent's licence—the theatrical agency; and

(ii) in the case of an application for a theatrical employer's licence—the business of a theatrical employer;

15 (c) in the case of an application for a theatrical agent's licence, be accompanied by an approved bond or bank guarantee to secure the payment of up to \$10,000 to the Secretary to compensate for losses to which section 145 relates suffered during the currency of the licence, if granted;

20 (d) state whether or not the applicant already holds any licence;

(e) be accompanied by the approved fee; and

(f) be lodged at the office of the Secretary.

25 (3) If a licence is required for more than one place of business, a separate application for the grant of a licence in respect of each place shall be lodged with the Secretary.

Investigation of applications

140. (1) The Secretary may cause such inquiries to be made as, in the opinion of the Secretary, are necessary to ensure that—

30 (a) the applicant for a licence is a fit and proper person to hold the licence; and

(b) the place identified in the application meets the prescribed requirements for places at which a theatrical agency or the business of a theatrical employer may be carried on.

35 (2) The Secretary may refer an application for a licence to an industrial magistrate for inquiry or request a report from the Commissioner of Police as to whether or not—

(a) the applicant for the licence;

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SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS—*continued*

(b) a proposed partner of the applicant for the licence in the agency or business for which the licence is applied for;

(c) a director of a corporation that is an applicant for a licence; or

5 (d) a director of a corporation that is a proposed partner of an applicant for a licence in the agency or business for which the licence is applied for,

is, or if he or she were the applicant would be, a fit and proper person to be the holder of a licence.

10 (3) The industrial magistrate to whom an application is referred shall consider whether the applicant or other person concerned is, from his or her character and previous conduct, a fit and proper person to hold a licence and shall give the Secretary a recommendation on the application.

15 (4) In conducting an inquiry under this section, an industrial magistrate has the same powers, authorities, duties and functions as if the magistrate were sitting in a Local Court and the inquiry were a matter for hearing and determination in the Local Court.

20 (5) The applicant and all persons who in the manner prescribed notify their objection to the issue or renewal of a licence shall be given notice of the inquiry and are entitled to be heard personally or by counsel, attorney or agent.

25 (6) The Commissioner of Police shall cause to be made such inquiries as the Commissioner considers necessary to comply with a request made under this section and shall give a report of the result of the inquiries to the Secretary.

Determination of application

141. (1) The Secretary shall determine the application—

30 (a) by granting a licence to the applicant, either unconditionally or subject to conditions; or

(b) by refusing to grant a licence to the applicant.

(2) The Secretary shall not grant a licence unless the Secretary is satisfied—

(a) that—

35 (i) the applicant;

(ii) if the applicant is a corporation—each director of the corporation;

*Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987*SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS—*continued*

- (iii) each proposed partner (if any) of the applicant in carrying on the theatrical agency or the business of a theatrical employer; and
 - 5 (iv) if any such proposed partner is a corporation—each director of the corporation,
is a fit and proper person to hold the licence;
- (b) that—
 - (i) if the applicant is a natural person—the applicant;
 - 10 (ii) if the applicant is a corporation—each director of the corporation;
 - (iii) each proposed partner (if any) of the applicant in carrying on the theatrical agency or the business of a theatrical employer who is a natural person; and
 - 15 (iv) if any such proposed partner is a corporation—each director of the corporation,
is of or above the age of 18 years;
- (c) that the place at which the applicant carries on or intends to carry on the theatrical agency or the business of a theatrical employer meets the prescribed requirements for such a place;
- 20 (d) in the case of an application for a theatrical agent's licence, that—
 - (i) the applicant;
 - 25 (ii) if the applicant is a corporation—a director of the corporation;
 - (iii) a proposed partner (if any) of the applicant in carrying on the theatrical agency; and
 - (iv) if any such proposed partner is a corporation—a director of the corporation,
 - 30 does not hold a theatrical employer's licence; and
- (e) in the case of an application for a theatrical employer's licence, that—
 - (i) the applicant;
 - 35 (ii) if the applicant is a corporation—a director of the corporation;
 - (iii) a proposed partner (if any) of the applicant in carrying on the business of a theatrical employer; and

*Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987***SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS—*continued***

(iv) if any such proposed partner is a corporation—a director of the corporation,
does not hold a theatrical agent's licence.

(3) In considering whether a person is a fit and proper person to hold a licence, the Secretary shall—

(a) in the case of a natural person, have regard to the character of the person;

(b) have regard to any recommendation relating to the person made by an industrial magistrate or any report given by the Commissioner of Police;

(c) have regard to whether the person has, during the period of 10 years preceding the making of the application, been convicted of, or served any part of a term of imprisonment for, an offence involving fraud or dishonesty; and

(d) have regard to any other matter the Secretary considers relevant.

(4) If the Secretary refuses to grant a licence, the Secretary shall, as soon as practicable after doing so, cause written notice of the refusal, and of the reason for the refusal, to be served personally or by post on the applicant for the licence.

(5) In the case of an application made by more than one person, it is sufficient if the notice is served on any one of the applicants.

(6) If, at the expiration of 90 days after an application has been made, the Secretary has failed to determine the application, the Secretary shall, for the purposes of any appeal, be deemed to have refused to grant a licence to the applicant.

Conditions of issue of theatrical employer's licences relating to security deposits etc.

142. The Secretary may, as a condition of the issue of a theatrical employer's licence, require the deposit with the Secretary on prescribed terms of an amount of money determined by the Secretary or the giving of some other approved security to secure—

(a) the payment of salaries or wages owed to theatrical performers or employees; and

(b) the payment of fares and reasonable incidental expenses of theatrical performers or employees on termination for any cause of their employment,

by the theatrical employer.

*Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987***SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS—continued****Form of licences**

143. A licence shall—

- (a) be in the approved form;
- 5 (b) identify the person or, if the licence is granted to more than one person, the persons to whom the licence is granted;
- (c) designate the place at which the theatrical agency or business of a theatrical employer will be carried on by the licensee, as identified in the application for the licence;
- 10 (d) specify any conditions to which the licence is subject; and
- (e) specify the date on which the licence is granted.

Duration of licences

144. A licence remains in force for the period of 12 months from the date on which it is granted and may be renewed from time to time.

Licensee to exhibit licence etc.

144A. The holder of a licence shall exhibit at the place specified in the licence—

- (a) the licence; and
 - 20 (b) a notice in the prescribed form containing the prescribed particulars,
- so as to be clearly visible to persons entering the place.

Penalty: 10 penalty units or imprisonment for 3 months.

Registers to be kept by theatrical agents

25 144B. (1) The holder of a theatrical agent's licence shall keep as prescribed—

- (a) a register in which shall be entered—
 - (i) the age, sex, occupation, name and address of every person who applies to the licensee for employment as a theatrical performer; and
 - 30 (ii) the name and nature of the employment required by the person;
- (b) a separate register in which shall be entered the name and address of every person who so applies for a theatrical performer and the name and nature of the employment offered;
- 35 (c) a separate register of all engagements made by or through the licensee; and

*Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987***SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL AGENTS AND EMPLOYERS—*continued***

(d) the originals of all letters received by the licensee, or by the agents or employees of the licensee, in connection with the agency for 2 years after their receipt.

(2) The registers and letters referred to in this section shall, at all reasonable hours, be open to inspection and examination by—

(a) any industrial inspector;

(b) any officer of an industrial union of employees, authorised in writing in that behalf by the registrar; and

(c) any officer of the Department authorised in writing in that behalf by the Secretary.

(3) A register shall be retained by the licensee for a period of 6 years from the date in which the last entry is made in the register.

(4) A licensee shall not make or cause to be made any false entries in a register kept under this section.

Penalty: 20 penalty units or imprisonment for 3 months.

Registers to be kept by Secretary

144C. (1) The Secretary shall keep a register, in such form as the Secretary determines, of the issue of licences under this Division and shall record in the register in respect of each licence—

(a) the matters required to be specified in the licence;

(b) particulars of any fees paid, or due but not paid, in respect of the licence;

(c) particulars of any amendment of the licence;

(d) particulars of any cancellation or suspension of the licence; and

(e) such other matters as may be prescribed.

(2) The Secretary shall keep a register, in such form as the Secretary determines, containing—

(a) if the Secretary causes a notice of suspension to be served on the licensee under section 145, a note to that effect;

(b) if the Secretary causes a notice of cancellation to be served on a licensee on the ground that the licensee or some other person is not or would not be a fit and proper person to continue to be, or to be, the holder of a licence, a note to that effect; and

Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987

SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL
AGENTS AND EMPLOYERS—*continued*

(c) particulars of the result of any appeal against the cancellation of a licence on that ground.

5 (3) The Secretary may make such alterations in the registers required to be kept under this section as are necessary to ensure that the matters recorded in respect of any licence or person are accurate.

Cancellation of licence

144D. (1) The Secretary may cancel a licence if the Secretary is satisfied—

- 10 (a) that the licence has been improperly obtained;
- (b) that a licensee or a director of a corporation that is a licensee made a statement in or in connection with the application for the grant of the licence that was false or misleading in a material particular;
- 15 (c) that the licensee is not a fit and proper person to continue to be the holder of the licence;
- (d) that a director of a corporation that is a licensee would not, if the director were the holder of the licence, be a fit and proper person to be the holder of the licence;
- 20 (e) that a partner, or a director of a corporation which is a partner, of the licensee would not, if the partner or director were the holder of the licence, be a fit and proper person to be the holder of the licence;
- 25 (f) that the business of the licensee has not been or is not being properly conducted;
- (g) that the place to which the licence relates does not, or has ceased to, meet the prescribed requirements for a place at which a theatrical agency or the business of a theatrical employer may be carried on;
- 30 (h) that the conditions (if any) imposed on the licence have not been complied with; or
- (i) that a licensee has been convicted of an offence against this Part.

35 (2) In determining whether a licensee is a fit and proper person to continue to hold a licence the Secretary shall take into account any representations made in that respect by the Theatrical Agencies, Employers and Performers Advisory Committee established under the regulations.

**SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL
AGENTS AND EMPLOYERS—*continued***

(3) If the Secretary proposes to cancel a licence, the Secretary shall, except where—

(a) a request has been made by the licensee or all of the joint licensees for the cancellation; or

(b) the Secretary is satisfied—

(i) that the licensee, being a natural person, has died;

(ii) that a partnership being carried on by joint licensees has been dissolved; or

(iii) that the licensee, being a corporation, has been wound up,

give the licensee a written notice setting forth the reasons for the proposed cancellation and requiring the licensee, within such period as is specified in the notice, to show cause why the licence should not be cancelled.

(4) If, upon the expiration of the period specified in any such notice, or of such further period as the Secretary may allow, the Secretary cancels a licence, the Secretary shall cause written notice of the cancellation, and of the reasons for it, to be served personally or by post on the licensee.

(5) In the case of a licence issued to joint licensees, it is sufficient if the notice of cancellation is served on any one of the joint licensees.

(6) The cancellation of a licence takes effect upon the expiration of 21 days after the day on which the notice of cancellation is served.

(7) If a licensee appeals against the cancellation of the licence, the cancellation shall have effect—

(a) only if the commission confirms the cancellation or if the appeal is withdrawn; and

(b) on the day on which the commission confirms the cancellation, or such later day as the commission orders or, if the appeal is withdrawn, on the day on which it is withdrawn.

(8) A person who was the holder of a licence and who, upon the cancellation of the licence taking effect, fails to forthwith deliver the licence to the Secretary is guilty of an offence.

Penalty: 20 penalty units or imprisonment for 3 months.

SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL
AGENTS AND EMPLOYERS—*continued*

(9) A person who was a joint licensee is not guilty of an offence referred to in subsection (8) if another of the persons who were joint licensees delivers the licence to the Secretary.

Bonds and guarantees for theatrical agents

5 145. (1) If a theatrical performer suffers loss by reason of any act by or omission of the holder of a theatrical agent's licence, the Secretary may—

- 10 (a) realise the money secured by the bond or bank guarantee lodged with the Secretary by the theatrical agent in relation to the licence held by the agent;
- (b) apply the money to assist any theatrical performer who has suffered loss by reason of any act or omission by the theatrical agent; and
- 15 (c) require the theatrical agent to lodge with the Secretary, within the time specified in writing by the Secretary, a further approved bond or bank guarantee for the same amount and of the same nature.

20 (2) If a licensee fails to lodge a further approved bond or bank guarantee within the time specified, the Secretary may suspend the licence until—

- (a) such time as the required bond or guarantee is lodged; or
- (b) the licence expires,

whichever is the earlier.

25 (3) Before suspending the licence, the Secretary shall give the holder of the licence an opportunity of showing cause why the Secretary should not suspend the licence for failure to lodge the bond or guarantee.

30 (4) The Secretary shall cause notice of a suspension under this section, and of the date on which it is to take effect, to be served personally or by post on the licensee.

(5) In the case of a licence issued to joint licensees, it is sufficient if the notice of suspension is served on any one of the joint licensees.

35 (6) A suspension of a licence takes effect 21 days after the date on which notice of the suspension is served on the holder of the licence.

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**SCHEDULE 1—AMENDMENTS RELATING TO THEATRICAL
AGENTS AND EMPLOYERS—*continued***

(7) When the suspension of a licence has effect, the former holder of the licence shall, as soon as practicable, deliver it to the Secretary.

5 Penalty (subsection (7)): 20 penalty units or imprisonment for 3 months.

(2) Part XIV, Division 2 (sections 136–145)—
Omit the Division.

**SCHEDULE 2—AMENDMENTS RELATING TO PRIVATE
EMPLOYMENT AGENTS**

10 (Sec. 4)

(1) Part XIV, Division 2, heading—

Omit the heading to Division 2A, insert instead:

DIVISION 2—Private employment agents

(2) Section 145A (**Definitions**)—

15 After the definition of “regulation”, insert:

“Secretary” means Secretary of the Department of Industrial Relations and Employment.

(3) Section 145D—

Omit the section, insert instead:

20 **Private employment agents to be licensed**

145D. (1) A person who carries on the business of a private employment agent shall not demand or receive any fee, charge or other remuneration in respect of the business unless the person is the holder of a licence.

25 Penalty: 50 penalty units.

(2) The holder of a licence shall not carry on the business of a private employment agent at a place other than the place to which the licence relates.

Penalty: 20 penalty units.

30 (4) Sections 145E–145H, 145K–145M, 145O, 145R—

Omit “Under” wherever occurring.

(5) Section 145E (**Persons to be in charge at each place of business**)—

(a) Section 145E (6)—

Omit “an industrial magistrate”, insert instead “the commission”.

*Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987*SCHEDULE 2—AMENDMENTS RELATING TO PRIVATE
EMPLOYMENT AGENTS—*continued*

- (b) Section 145E (6)—
Omit “Division”, insert instead “Part”.
- (c) Section 145E (6)—
After “fit”, insert “and proper”.
- 5 (d) Section 145E (9)—
Omit “\$500”, insert instead “20 penalty units”.
- (6) Section 145G (**Inquiries and objections**)—
Section 145G (1)—
After “fit”, insert “and proper”.
- 10 (7) Section 145GA—
After section 145G, insert:
Referral of application to industrial magistrate
145GA. (1) The Secretary may refer an application for a licence
to an industrial magistrate for inquiry as to whether or not—
- 15 (a) an applicant for the licence;
(b) a proposed partner of the applicant for the licence in the
business in respect of which the licence is applied for;
(c) a director of a corporation that is an applicant for the
licence;
- 20 (d) a director of a corporation that is a proposed partner of
an applicant for the licence in the business in respect of
which the licence is applied for; or
(e) a person whose appointment as a person in charge has
been notified under section 145E,
- 25 is a fit and proper person to hold a licence.
- (2) The industrial magistrate to whom an application is referred
shall consider whether the applicant or other person concerned is,
from his or her character and previous conduct, a fit and proper
person to hold a licence and shall give the Secretary a
30 recommendation on the application.
- (3) In conducting an inquiry under this section, an industrial
magistrate has the same powers, authorities, duties and functions
as if the magistrate were sitting in a Local Court and the inquiry
were a matter for hearing and determination in the Local Court.

*Industrial Arbitration (Theatrical Agents and Employers) Amendment 1987*SCHEDULE 2—AMENDMENTS RELATING TO PRIVATE
EMPLOYMENT AGENTS—*continued*

(4) The applicant and all persons who in the manner prescribed notify their objection to the issue or renewal of a licence shall be given notice of the inquiry and are entitled to be heard personally or by counsel, attorney or agent.

5 (8) Section 145H (**Disposal of applications for licences**)—

(a) Section 145H (2) (c), (3)—

After “fit” wherever occurring, insert “and proper”.

(b) Section 145H (3)—

10 After “Police”, insert “and any recommendation relating to the person furnished under section 145GA”.

(9) Section 145I (**Persons from whom licensees may seek remuneration**)—

Omit “\$500”, insert instead “20 penalty units”.

(10) Section 145L (**Notice of changed particulars**)—

Section 145L (4)—

15 Omit “\$500”, insert instead “20 penalty units”.

(11) Section 145M (**Cancellation of licence**)—

(a) Section 145M (2) (b)–(e)—

After “fit” wherever occurring, insert “and proper”.

(b) Section 145M (8)—

20 Omit “145N”, insert instead “151”.

(c) Section 145M (8) (a)—

Omit “the industrial magistrate hearing the appeal”, insert instead “the commission”.

(d) Section 145M (8) (b)—

25 Omit “industrial magistrate” wherever occurring, insert instead “commission”.

(e) Section 145M (10)—

Omit “\$500”, insert instead “20 penalty units”.

(12) Section 145N (**Appeals**)—

30 Omit the section.

(13) Section 145O (**Registers to be kept**)—

Section 145O (2) (d), (e)—

After “fit” wherever occurring, insert “and proper”.

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**SCHEDULE 2—AMENDMENTS RELATING TO PRIVATE
EMPLOYMENT AGENTS—*continued***

(14) Section 145P (**Performance of Under Secretary's functions**)—
Omit the section.

(15) Section 145R (**Offences by licensees**)—
Section 145R (1)—

5 Omit "\$500", insert instead "20 penalty units".

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

(Sec. 4)

10 (1) Section 39 (**Definitions**)—

After "an Act", insert "or section 152 (4) of this Act".

(2) Section 145R (**Offences by licensees**)—

Section 145R (2)—

Omit the subsection.

15 (3) Sections 146–148—

Omit the sections, insert instead:

Definitions

146. In this Division—

20 "Department" means Department of Industrial Relations and
Employment;

"licence" means licence in force under this Part.

Former holder of licence not qualified to obtain licence

25 147. A person whose licence has been cancelled (except at the
person's own request) shall not be entitled to hold a licence of the
same type until one year after the date of cancellation.

Production of licence

148. A licensee shall not be entitled to recover fees, charges or
other remuneration in a court unless the licensee produces his or
her licence to the court.

30 (4) Section 149 (**Offences**)—

(a) Omit the first paragraph.

(b) Omit "five hundred dollars", insert instead "50 penalty units".

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

(5) Sections 149A–152F—

Omit sections 150–152, insert instead:

Loss or destruction of licence

5 149A. On satisfactory proof of loss or destruction of a licence, the Secretary may, at the request of the licensee, issue a duplicate licence, and the duplicate shall for all purposes be treated as if it were the original licence.

Offences by corporations

10 150. (1) If a corporation contravenes any provision of this Part or a regulation made under it, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.

15 (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

20 (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Part or the regulations.

Appeals

25 151. (1) An applicant for the grant of a licence may appeal to the commission against the refusal by the Secretary to grant the licence.

(2) A licensee may appeal to the commission against the cancellation by the Secretary of the licence.

30 (3) If an application for the grant of a licence made by more than one person is refused or a licence held by more than one person is cancelled, an appeal under this section against the refusal or cancellation may be made by any of the applicants or licensees, as the case may be, on behalf of all of the applicants or licensees, or by all of the applicants or licensees jointly, but not otherwise.

35 (4) Notice of an appeal under this section, specifying the grounds of appeal, shall be lodged with the registrar not later than 21 days after—

(a) in the case of an appeal against a refusal to grant a licence, the day of service of the notice of refusal; and

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

- (b) in the case of an appeal against a cancellation of a licence, the day of service of the notice of cancellation.
- 5 (5) The registrar shall give notice of the time and place of the hearing of an appeal under this section to the Secretary and to the person or persons appealing and shall state in the notice to the Secretary the grounds of the appeal.
- (6) The hearing of an appeal may proceed even though—
- (a) a notice of the time and place of the hearing of the appeal contains an omission or error; or
- 10 (b) the registrar fails to give such notice,
- if the commission is satisfied that any person appealing and the Secretary had knowledge of the time and place of the hearing and were not prejudiced by the omission, error or failure.
- (7) If relevant—
- 15 (a) a recommendation given to the Secretary by an industrial magistrate under section 140 or 145GA; and
- (b) a report furnished to the Secretary by the Commissioner of Police under section 140 or 145G (1),
- 20 and certified by the Secretary to have been so given or furnished shall be received in proceedings before the commission under this section as evidence of the contents of the recommendation or report.
- (8) The commission shall hear and determine an appeal made to it under this section and may confirm or disallow the refusal or cancellation appealed against.
- 25 (9) If a licence is refused or cancelled on the ground that a person is not a fit and proper person to be or continue to be the holder of a licence, the commission shall determine whether or not that person is a fit and proper person to be or continue to be the holder of a licence.
- 30 (10) The decision of the commission in respect of an appeal made under this section shall be final and shall be binding on the person or persons appealing and on the Secretary, who shall take such steps as may be necessary to give effect to the decision.
- 35 (11) Where regulations are made relating to an appeal under this section, any such appeal shall be instituted, heard and determined in accordance with those regulations.

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

Proceedings for offences

152. (1) Proceedings for an offence against this Part or the regulations made under it may be taken only by a person acting with the authority of the Minister.

5 (2) In proceedings for an offence against this Part or the regulations made under it, a consent to institute the proceedings, purporting to be signed by the Minister, shall be evidence of that consent without proof of the signature of the Minister.

10 (3) Except as provided by subsection (4), proceedings for an offence against this Part or the regulations made under it shall be disposed of summarily before an industrial magistrate.

(4) Proceedings for an offence against section 133 (1) or 145D (1) shall be prosecuted before the commission.

Order for payment of money owed etc.

15 152A. (1) If during the course of proceedings before the commission for an offence against section 133 (1) or 145D (1), it appears to the commission that—

20 (a) money is due to a theatrical performer from a person who has carried on any theatrical agency or business as a theatrical employer without a licence under Division 1; or

(b) a person who has carried on the business of a private employment agent without a licence under Division 2 has demanded and received any fee, charge or other remuneration from a person seeking to be employed,

25 the commission may make an order requiring the unlicensed person concerned to pay the money due to the theatrical performer or to refund the fee, charge or other remuneration received.

30 (2) An appeal lies to the commission in court session from any order of the commission under this section.

(3) Section 120 applies to an appeal from an order of the commission under this section to the commission in court session in the same way as it applies to an appeal from an order of an industrial magistrate to the commission.

Copy of entries in registers to be evidence

35 152B. A copy of any entry in any of the registers required to be kept under this Part, being a copy purporting to be signed—

(a) by the Secretary; or

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**SCHEDULE 3—AMENDMENTS RELATING TO THEATRICAL
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AGENTS—*continued***

(b) by—

- (i) any industrial inspector;
- (ii) any officer of an industrial union of employees; or
- (iii) any officer of the Department authorised by the
Secretary in that behalf,

who made the copy,

shall be prima facie evidence of the truth of the matters stated in the copy.

Performance of Secretary's functions

152C. (1) Anything authorised or required by or under this Part to be done by, lodged with or paid to the Secretary may be done by, lodged with or paid to any officer of the Department who is authorised generally or specially in writing by the Secretary in that behalf.

(2) Anything purporting to have been done by, lodged with or paid to an officer so authorised shall be deemed to have been done by, lodged with or paid to the Secretary.

Right of entry and inspection

152D. (1) An industrial inspector, an officer of an industrial union of employees in respect of whom an authority is in force under section 129A or any other officer of the Department who is authorised in writing by the Secretary to do so may—

- (a) enter any place to which a licence relates where the inspector or officer believes, on reasonable grounds, a provision of this Part or the regulations made under this Part has been, or is being, contravened; and
- (b) request a person to produce for examination any books, papers, records or remittance advice required to be kept, made or given under this Part by the person.

(2) An inspector may not exercise the powers conferred by this section in relation to a dwelling except—

- (a) with the permission of the occupier of the dwelling; or
- (b) under the authority conferred by a search warrant issued under section 152E.

Search warrants

152E. (1) In this section—

“authorised justice” means—

- (a) a Magistrate; or

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**SCHEDULE 3—AMENDMENTS RELATING TO THEATRICAL
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AGENTS—continued**

(b) a justice of the peace employed in the Attorney General's Department.

(2) An inspector may apply to an authorised justice for the issue of a search warrant if the inspector has reasonable grounds for believing that a provision of this Part or the regulations made under it has been or is being contravened in any dwelling.

(3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant, when accompanied by a member of the police force—

(a) to enter the dwelling; and

(b) to search the dwelling for evidence of a contravention of this Part or the regulations.

(4) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

Offences relating to industrial inspectors, officers of industrial unions of employees and authorised officers

152F. (1) A person shall not fail without reasonable excuse, proof of which shall lie on the person, to produce for examination at the request of—

(a) an industrial inspector;

(b) an officer of an industrial union of employees referred to in section 152D; or

(c) an officer authorised under section 152D by the Secretary, any book, paper, record or remittance advice required to be kept or made or given by the person under this Part.

Penalty: 20 penalty units.

(2) A person is not guilty of an offence against this Act because of a failure referred to in subsection (1) unless it is established that the inspector or officer concerned—

(a) identified himself or herself as an inspector or officer to the person; and

(b) warned the person that the failure is an offence.

(6) Section 153 (**Regulations**)—

(a) Section 153 (1) (b), (c)—

Omit “and permits” wherever occurring.

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

(b) Section 153 (1) (d)—

Omit “and holders of permits”.

(c) Section 153 (1) (e)—

After “employer’s business”, insert “or private employment agent’s business”.

(d) Section 153 (1) (h)—

Omit the paragraph, insert instead:

(h) regulating the use of bonds and guarantees given by applicants for licences and prescribing the manner in which, and the conditions on which, amounts secured or deposited under this Part may be applied by the Secretary;

(e) Section 153 (1)—

Omit “\$500”, insert instead “20 penalty units”.

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 5)

Continuation in force of theatrical agent’s licences and theatrical employer’s permits

1. (1) In this clause, references to sections shall be read as references to sections of the Principal Act.

(2) Despite anything in the Principal Act, as amended by this Act, if—

(a) the holder or holders of a theatrical agent’s licence; or

(b) the holder or holders of a theatrical employer’s permit,

in force under section 138 at the commencement of this clause applies or apply for a theatrical agent’s licence or theatrical employer’s licence under section 139 (as inserted by this Act) within 28 days after that commencement, the holder or holders may (subject to subclause (3))—

(c) carry on a theatrical agency as if the licence; or

(d) carry on the business of a theatrical employer as if the permit,

were still in force until the application is determined.

(3) While a licence or permit continues in force under this clause, the Principal Act, as in force immediately before the commencement of this clause, applies to and in respect of the holder of the licence or permit.

(4) A person is not guilty of an offence under Division 1 of Part XIV of the Principal Act, as amended by this Act, for doing anything authorised by subclause (2).

(5) Nothing in this clause authorises the issue under section 141 (as inserted by this Act) of both a theatrical agent’s licence and a theatrical employer’s licence to the same person.

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SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

Saving of existing theatrical employers exemptions

2. An exemption granted under section 137 (4) of the Principal Act that is in force at the commencement of this clause shall, on that commencement, be deemed to be an exemption granted under section 134 of that Act as inserted by this Act.

5 Regulations

3. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the date of assent to this Act or a later date.

10 (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

15 (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 in the Gazette; 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 in the Gazette.

20 (4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding any other clause of this Schedule.