

# ENTERTAINMENT INDUSTRY ACT 1989 No. 230

## NEW SOUTH WALES



### TABLE OF PROVISIONS

#### PART 1 - PRELIMINARY

1. Short title
2. Commencement
3. Objects of Act
4. Definitions

#### PART 2 - ENTERTAINMENT INDUSTRY INTERIM COUNCIL

5. Constitution of Council
6. General functions of Council
7. Transfer of functions of Council after 3 years

#### PART 3 - COMPLAINTS

##### Division 1 - Making and determination of complaints

8. "Misconduct"
9. Making of complaints
10. How Complaints Committee is to deal with complaints
11. Determination of Complaints Committee - misconduct
12. Determination of Complaints Committee - unfair etc. contracts
13. Determination of Complaints Committee - payment of money owing
14. Enforcement of order - payment of money owing
15. Provisions relating to penalties

##### Division 2 - Complaints Committee

16. Entertainment Industry Complaints Committee
17. Constitution of Complaints Committee for purposes of inquiries

PART 4 - REGULATION OF THE ENTERTAINMENT INDUSTRY

Division 1 - Licences

18. Entertainment industry representatives to be licensed
19. Applications for licences
20. Qualifications for a licence
21. Investigation of applications
22. Determination of applications for licences
23. Notice of refusal
24. Provisional licences
25. Conditions of licences
26. Licence fees
27. Form of licences
28. Duration of licence and application to continue licence
29. Cancellation or suspension of licences
30. Joint licences
31. Duplicate licences
32. Licensee to exhibit licence
33. Register of licences
34. Surrender of licences

Division 2 - Conduct of entertainment industry business

35. Codes of ethics
36. Directions by Council to employers and operators of premises
37. Directions by Council to owners of premises
38. Fees of entertainment industry representatives etc.
39. Trust accounts to be established by agents and managers
40. Bond to be lodged with Council
41. Application etc. of bond lodged with Council

PART 5 - APPEALS

42. Right to appeal
43. Effect of decisions subject to appeal
44. Conduct of appeal
45. Determination of appeal
46. Appeal to Industrial Commission on point of law

PART 6 - FINANCE

47. Entertainment Industry Fund
48. Payments into the Fund
49. Payments from the Fund
50. Financial year
51. Investment



PART 7 - GENERAL

- 52. Disclosure of relevant information
- 53. Delegation
- 54. Personal liability of members etc.
- 55. Contracting out void
- 56. Council may require information
- 57. Power of entry and inspection
- 58. Search warrants
- 59. Offence to obstruct etc. authorised person
- 60. Evidentiary certificates
- 61. Service of documents
- 62. Recovery of charges etc. by Council
- 63. Proceedings for offences
- 64. Regulations
- 65. Savings, transitional and other provisions
- 66. Amendment of Acts
- 67. Repeal of legislation

SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS, STAFF AND  
PROCEDURE OF THE COUNCIL

SCHEDULE 2 - CONDUCT AND PROCEDURE OF INQUIRIES BY THE  
COMPLAINTS COMMITTEE

SCHEDULE 3 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

SCHEDULE 4 - AMENDMENT OF ACTS

---



# ENTERTAINMENT INDUSTRY ACT 1989 No. 230

## NEW SOUTH WALES



### Act No. 230, 1989

An Act relating to the regulation of the entertainment industry, to amend and to repeal certain legislation; and for other purposes.  
[Assented to 21 December 1989]

**The Legislature of New South Wales enacts:**

**PART 1 - PRELIMINARY**

**Short title**

1. This Act may be cited as the Entertainment Industry Act 1989.

**Commencement**

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

**Objects of Act**

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

**Definitions**

4. (1) In this Act:
  - "**code of ethics**" means a code of ethics developed by the Council under section 35;
  - "**Complaints Committee**" means the Complaints Committee established under Part 3;
  - "**Council**" means the Entertainment Industry Interim Council constituted under section 5;
  - "**director**" has the same meaning as in the Companies (New South Wales) Code;
  - "**employment**" includes an engagement or other arrangement, whether or not constituting a contract of employment;
  - "**entertainment industry agent**" means a person who, for financial benefit, carries out any one or more of the following entertainment industry activities on behalf of a performer:



- (a) seeking or finding work opportunities for the performer;
- (b) negotiating the terms of an agreement for, and the conditions of, a performance;
- (c) finalising arrangements concerning the payment of the performer;
- (d) negotiating arrangements relating to the attendance of the performer at a performance;
- (e) administering the contract of the performer with an entertainment industry employer,

but does not include a person who carries out those activities solely as an employee of any such agent;

**"entertainment industry contract"** means a contract relating to the entertainment industry, the parties to which are entertainment industry representatives, entertainment industry employers or performers;

**"entertainment industry employer"** means a person who employs any performer for the purpose of a performance;

**"entertainment industry representative"** means an entertainment industry agent, a manager or a venue consultant;

**"licence"** means an entertainment industry agent's licence, a manager's licence or a venue consultant's licence in force under this Act, and includes a provisional licence;

**"manager"** means a person (whether called a personal representative or a personal manager, or otherwise) who, for financial benefit, represents a performer and who agrees, pursuant to a written agreement, to carry out or arrange to be carried out any or all of the activities of an entertainment industry agent and other additional activities or duties specified in the agreement on behalf of the performer, but does not include a person who carries out those activities or duties solely as an employee of any such manager;

**"performance"** means:

- (a) a performance that is given in any place or by the use of any medium for the transmission of sound or images, or both; or
- (b) a performance that is recorded for the purpose of using the recording in any place or for the transmission of sound or images, or both,

and one of the purposes of which is the financial benefit of an entertainment industry employer or performer, or both;

**"performer"** means any actor, singer, dancer, acrobat, model, musician or other performer of any kind employed to give a performance, but does not include persons of a class exempted by the Council under subsection (2);

**"venue consultant"** means a person who acts on behalf of an entertainment industry employer, for a fee or remuneration paid by any such employer, and who arranges for a performance by a performer at a particular venue, but does not include a person who arranges for a performance solely as an employee of a venue consultant or an employer.

(2) The Council may, by notification published in the Gazette and with the authority of the Minister, exempt classes of performers from the operation of this Act.

(3) In this Act, a reference to an award or industrial agreement is a reference to an award or industrial agreement relating to the employment of performers in the entertainment industry.

(4) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **PART 2 - ENTERTAINMENT INDUSTRY INTERIM COUNCIL**

### **Constitution of Council**

5. (1) There is constituted by this Act a corporation with the corporate name of the Entertainment Industry Interim Council.

(2) The Council is subject to the control and direction of the Minister.

(3) The Council is to consist of such part-time members as are appointed by the Minister.

(4) Of the members, one is (in and by the member's instrument of appointment or a subsequent instrument executed by the Minister) to be appointed as Chairperson of the Council.



(5) The Chairperson is not to be an entertainment industry representative, an entertainment industry employer, a performer or a person who has a direct financial interest in an entertainment industry business.

(6) The regulations may make provision for or with respect to the size and composition of the Council and nominations for appointments.

(7) Schedule 1 has effect with respect to the members, staff and procedure of the Council.

### **General functions of Council**

6. (1) The Council:

- (a) has the functions conferred or imposed on it by or under this or any other Act; and
- (b) is to advise the Minister on all matters relating to the entertainment industry.

(2) The Council is, within 2 years of the commencement of this Part:

- (a) to foster the development of an entertainment industry regulatory body which is controlled by the members of that industry; and
- (b) to assist in developing the guidelines and principles to be adopted by such a body in regulating the entertainment industry; and
- (c) to report to the Minister, in writing, on the establishment, composition and functions of such a body and the consequential changes to be made to this Act.

### **Transfer of functions of Council after 3 years**

7. On the expiration of 3 years after the commencement of this Part, the following provisions have effect (unless an Act otherwise provides):

- (a) the Council is dissolved;
- (b) the functions of the Council under this or any other Act are to be exercised by the Minister;
- (c) a reference in this or any other Act or in any instrument under any Act or in any other document to the Council or a member of the Council is to be read as a reference to the Minister in his or her capacity as the Minister administering this Act;

- (d) the assets, rights, liabilities and obligations of the Council become the assets, rights, liabilities and obligations of the Minister.

### **PART 3 - COMPLAINTS**

#### **Division 1 - Making and determination of complaints**

##### **"Misconduct"**

8. For the purposes of this Part, a person is guilty of misconduct if the person:

- (a) breaches a code of ethics; or
- (b) does anything which, although not a breach of a code of ethics, is unfair or dishonest or otherwise unacceptable having regard to the previous published rulings (if any) of the Complaints Committee or to any standards of conduct generally accepted in the entertainment industry, or to both; or
- (c) being an entertainment industry representative, does or fails to do anything in respect of which a licence may be cancelled or suspended under this Act; or
- (d) fails to pay an amount owing to an entertainment industry representative, an entertainment industry employer or a performer under (or otherwise breaches) an award, industrial agreement or entertainment industry contract.

##### **Making of complaints**

9. (1) Complaints may be made by any person to the Council about any of the following matters:

- (a) misconduct by an entertainment industry representative, an entertainment industry employer or a performer;
- (b) an entertainment industry contract or a provision of such a contract that is unfair, harsh or unconscionable;
- (c) the failure of a person to pay an amount owing to an entertainment industry employer, an entertainment industry representative or a performer under an award, industrial agreement or entertainment industry contract.

(2) A complaint must be in writing and give particulars of the matter the subject of the complaint.



(3) The Council may:

- (a) dismiss a complaint without further action if, in the opinion of the Council, it is frivolous or vexatious or if it is not accompanied by sufficient particulars; or
- (b) refer the complaint to the Complaints Committee.

(4) The Council may itself make a complaint under this section and refer it to the Complaints Committee.

### **How Complaints Committee is to deal with complaints**

10. (1) The Complaints Committee is authorised to conduct inquiries into complaints referred to it by the Council.

(2) The Chairperson of the Complaints Committee may, after referral of a complaint, authorise a person to investigate the complaint and to report to the Complaints Committee on the matter concerned.

(3) Such a report may form the basis of an inquiry by the Complaints Committee.

(4) When conducting an inquiry, the Complaints Committee is required to call before it any person who is the subject of a complaint or an investigation to show cause why the person should not be dealt with under this Part.

(5) Schedule 2 has effect with respect to the conduct and procedure of an inquiry by the Complaints Committee.

### **Determination of Complaints Committee - misconduct**

11. If the Complaints Committee after an inquiry conducted by it finds that an entertainment industry representative, an entertainment industry employer or a performer is guilty of misconduct, the Complaints Committee may make any one or more of the following determinations or orders:

- (a) the Complaints Committee may determine that no further action be taken against the person;
- (b) the Complaints Committee may caution or reprimand the person;
- (c) the Complaints Committee may make an order requiring the person to pay to the Council, as a penalty, an amount not exceeding 5 penalty units;

- (d) the Complaints Committee may make a recommendation to the Council that the Council suspend or cancel, or vary a condition of, a licence held by the person;
- (e) the Complaints Committee may make such recommendations (including a recommendation that the matter be dealt with by an appropriate authority) as it considers necessary to resolve the complaint.

**Determination of Complaints Committee - unfair etc. contracts**

12. (1) If the Complaints Committee after an inquiry conducted by it finds that an entertainment industry contract or a provision of such a contract is unfair, harsh or unconscionable, it may make an order that the contract or provision be varied in the manner specified in the order.

(2) Any such order operates to vary the contract accordingly.

(3) In determining whether an entertainment industry contract or a provision of such a contract is unfair, harsh or unconscionable, the Complaints Committee is to have regard to the public interest and to all of the circumstances of the complaint concerned.

(4) An entertainment industry contract or a provision of such a contract which has been fully executed may not be varied under this section.

**Determination of Complaints Committee - payment of money owing**

13. (1) If:

- (a) the Complaints Committee after an inquiry conducted by it finds that a person has failed to pay an amount owing to an entertainment industry representative, an entertainment industry employer or a performer under an award, industrial agreement or entertainment industry contract; and
- (b) the parties agreed to be bound by the Committee's determination at the commencement of the inquiry,

the Complaints Committee may make an order requiring the person to pay the amount (or any part of the amount) owing to the representative, employer or performer.

(2) The maximum amount that the Complaints Committee may order to be paid under this section is \$20,000.



(3) If the parties agreed to be bound by the Complaints Committee's determination at the commencement of the inquiry and the amount alleged to be owing does not exceed \$20,000, proceedings may not be brought in any court for the recovery of that amount.

(4) If:

- (a) the Complaints Committee after an inquiry conducted by it finds that a person has failed to pay an amount owing to an entertainment industry representative, an entertainment industry employer or a performer under an award, industrial agreement or entertainment industry contract; and
- (b) the Complaints Committee does not make an order as to the payment of the amount owing,

the Complaints Committee may issue a certificate to the representative, employer or performer containing the findings of the Committee as to the fact that the person concerned has failed to pay the amount owing.

(5) Any such certificate is prima facie evidence of that fact and is admissible in proceedings in a court of competent jurisdiction to recover the amount owing.

#### **Enforcement of order - payment of money owing**

14. (1) If the Complaints Committee makes an order under section 13 requiring a person to pay an amount to an entertainment industry representative, an entertainment industry employer or a performer, the Complaints Committee is required to issue a certificate to the representative, employer or performer specifying the amount owed by the person.

(2) The representative, employer or performer may file the certificate with the Clerk of any Local Court.

(3) The Clerk of the Local Court with whom a certificate has been filed is to enter up judgment for the representative, employer or performer for the amount specified in the certificate together with all fees paid for filing the certificate and entering up judgment.

#### **Provisions relating to penalties**

15. (1) If the Complaints Committee makes an order requiring a person to pay an amount to the Council as a penalty, the penalty becomes due for payment on the date on which the order takes effect

as provided by section 43 or on such later date as the Council may allow.

(2) If a penalty imposed on a person is not paid by the due date, any licence held by the person is (if not otherwise cancelled or suspended) suspended until such time as the amount of the penalty is paid to the Council.

## **Division 2 - Complaints Committee**

### **Entertainment Industry Complaints Committee**

16. (1) There is to be an Entertainment Industry Complaints Committee.

(2) The Complaints Committee is to consist of at least 3 members appointed by the Minister.

(3) One of the members is to be appointed as Chairperson of the Complaints Committee (being the Chairperson of the Council or another person appointed by the Minister).

(4) A member:

- (a) is to be appointed for such period, not exceeding 2 years, as is specified in the instrument of appointment (but is eligible for re-appointment); and
- (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member; and
- (c) may be removed from office as a member by the Minister at any time.

### **Constitution of Complaints Committee for purposes of inquiries**

17. (1) The Complaints Committee, for the purposes of conducting and determining an inquiry under this Part, is to be constituted by any 3 of its members, of whom one is to be the Chairperson.

(2) The Chairperson is to determine which of the members of the Complaints Committee is to constitute the Committee for any particular inquiry.

(3) Despite subsection (1), the Complaints Committee may be constituted by the Chairperson alone, but only if both parties to the



inquiry concerned agree to the Complaints Committee being so constituted.

(4) More than one inquiry by the Complaints Committee may be conducted at any one time.

(5) For the purposes of subsection (4), the Chairperson of the Complaints Committee is authorised to appoint a member of the Committee as Chairperson for a particular inquiry.

(6) A decision of the Complaints Committee when constituted by 3 members must be supported by at least 2 members of the Committee.

## **PART 4 - REGULATION OF THE ENTERTAINMENT INDUSTRY**

### **Division 1 - Licences**

#### **Entertainment industry representatives to be licensed**

18. (1) A person must not carry on (or advertise that the person carries on) the business of, or otherwise act as:

- (a) an entertainment industry agent unless the person is the holder of an entertainment industry agent's licence; or
- (b) a manager unless the person is the holder of a manager's licence; or
- (c) a venue consultant unless the person is the holder of a venue consultant's licence.

Maximum penalty: 50 penalty units.

(2) A person must not hold himself or herself out as a holder of a licence if the person does not hold the licence.

Maximum penalty: 50 penalty units.

#### **Applications for licences**

19. (1) Applications for licences are to be made to the Council.

(2) An application must:

- (a) be in a form approved by the Council; and
- (b) specify the type of licence sought; and
- (c) specify the principal place, or other places, from which the applicant intends to carry on business; and

- (d) specify the type of business to be carried on by the applicant; and
- (e) state whether or not the applicant already holds a licence or has held or applied for a licence or permit under Part 14 of the Industrial Arbitration Act 1940; and
- (f) in the case of an application made by a corporation, specify the names of the directors of the corporation and any person having a relevant financial interest (within the meaning of section 20) in the corporation; and
- (g) contain such other particulars as may be prescribed by the regulations or required by the approved form; and
- (h) be accompanied by the fee determined by the Council for the licence concerned.

#### **Qualifications for a licence**

**20. (1)** A person is qualified to hold a licence if the Council is satisfied that:

- (a) the person is a fit and proper person to hold a licence; and
- (b) in the case of a corporation, each director of, or each person having a relevant financial interest in the corporation is a fit and proper person to hold a licence; and
- (c) the person (not being a corporation) is of or above the age of 18 years; and
- (d) the person is able to conduct a business in the entertainment industry in a proper and business-like manner; and
- (e) the person has a knowledge of, or experience in, the entertainment industry or in a related area.

**(2)** In this section:

**"relevant financial interest"** means a financial interest in the corporation concerned, other than:

- (a) in the case of a public company, an interest as a shareholder which does not constitute a controlling interest; or

- (b) a prescribed interest.

### **Investigation of applications**

21. (1) The Council may cause such inquiries to be made as it considers necessary to ensure that the applicant for a licence is a fit and proper person to hold a licence.

(2) The Council may request a report from the Commissioner for Police as to whether or not:

- (a) the applicant for the licence; or
- (b) a director of, or any person having a relevant financial interest (within the meaning of section 20) in a corporation that is an applicant for a licence,

is a fit and proper person to be the holder of a licence.

(3) The Commissioner of Police may cause to be made such inquiries as the Commissioner considers necessary to comply with a request made under this section and is required to give a report of the result of the inquiries to the Council.

### **Determination of applications for licences**

22. (1) The Council is required to determine an application for a licence:

- (a) by issuing a licence to the applicant; or
- (b) by refusing the application.

(2) The Council is not to issue a licence unless it is of the opinion that the applicant meets the qualifications prescribed by or under this Act.

(3) For the purposes of determining whether a person is a fit and proper person to hold a licence, the Council is to have regard to:

- (a) any report given by the Commissioner of Police under this Act; and
- (b) any other matter the Council considers relevant.

### **Notice of refusal**

23. (1) If the Council refuses to issue a licence, the Council is required to cause notice of the refusal, and of the grounds for the refusal, to be served on the applicant.



(2) 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.

(3) If, at the expiration of 90 days after an application has been made the Council has failed to determine the application, the Council is to be taken, for the purposes of any appeal under this Act, to have refused the application concerned.

(4) If an application for a licence is refused, the Council may (having regard to any costs incurred by it in respect of the application) refund the whole or part of any fees paid in respect of the application.

### **Provisional licences**

24. (1) The first licence issued:

- (a) to a person who has not held a licence under this Act on any previous occasion; or
- (b) to a person who did not hold a permit or any licence under Part 14 of the Industrial Arbitration Act 1940 during the period of 12 months before the commencement of this section,

is to be issued as a provisional licence.

(2) The first licence issued to a person after the cancellation of a previous licence of the person is to be issued as a provisional licence.

(3) A provisional licence remains in force for the period of 12 months from the date on which it is issued.

(4) The Council may cancel or suspend a provisional licence at any time.

### **Conditions of licences**

25. (1) A licence may be issued subject to such conditions as are specified in the licence.

(2) The Council may, by notice in writing served on the holder of a licence, amend the licence by varying any conditions specified in the licence or by adding to or omitting from the licence any conditions.

(3) Any such variation, addition or omission takes effect as provided by section 43.

(4) On any such variation, addition or omission taking effect, the condition as so varied or added is to be taken to be a condition



specified in the licence or the condition omitted is to be taken not to be a condition so specified.

### **Licence fees**

26. (1) The Council may, subject to the regulations, determine the fees payable for licences.

(2) Different fees may be determined for different types of licences.

### **Form of licences**

27. (1) A licence must:

- (a) be in a form approved by the Council; and
- (b) identify the person or, if the licence is issued to more than one person, the persons to whom the licence is issued; and
- (c) specify any conditions to which the licence is subject; and
- (d) specify the date on which the licence is issued; and
- (e) specify the place of business in respect of which the licence is issued.

(2) Two or more types of licences may be included on the same form.

### **Duration of licence and application to continue licence**

28. (1) Except during any period while it is suspended, a licence continues in force from the date on which it is issued until it is cancelled or surrendered.

(2) The holder of a licence may, before each anniversary of the date on which the licence was issued, apply to the Council for the continuation of the licence.

(3) An application for the continuation of a licence must:

- (a) be in a form approved by the Council; and
- (b) be accompanied by the fee determined by the Council for the continuation of the licence; and
- (c) contain such particulars as may be prescribed by the regulations or required by the approved form.

### **Cancellation or suspension of licences**

29. (1) The Council may cancel or suspend a licence (other than a provisional licence) if the Council is satisfied that:

- (a) the licence has been improperly obtained; or
  - (b) the licensee or a director of a corporation that is the licensee made a statement in or in connection with the application for the licence or for the continuation of the licence that was false or misleading in a material particular; or
  - (c) the licensee is not a fit and proper person to continue to be the holder of a licence; or
  - (d) a director of, or a person having a relevant financial interest (within the meaning of section 20) in a corporation that is the licensee would not, if the director or the person were the holder of a licence, be a fit and proper person to be the holder of a licence; or
  - (e) the business of the licensee has not been or is not being conducted in a proper and business-like manner; or
  - (f) the conditions (if any) imposed on the licence have not been complied with; or
  - (g) the licensee has failed to apply for a continuation of the licence; or
  - (h) the licensee has been convicted of an offence against this Act or the regulations.
- (2) The Council may also cancel or suspend a licence if the Complaints Committee determines under Part 3 that the licensee is guilty of misconduct and recommends the cancellation or suspension of the licence.
- (3) If the Council cancels or suspends a licence, it must cause a notice of the cancellation or suspension to be served on the holder of the licence.
- (4) Any such notice is to state the particulars of the grounds on which the Council has cancelled or suspended the licence.
- (5) The cancellation or suspension of a licence takes effect as provided by section 43.
- (6) When the cancellation or suspension of a licence has effect, the person to whom the licence was issued must, as soon as practicable, deliver it to the Council.

Maximum penalty (subsection (6)): 20 penalty units.

### **Joint licences**

**30. (1)** A licence may be issued jointly to 2 or more persons who carry on business in partnership.

**(2)** A reference in this Act to the licensee or holder of the licence is a reference to any one of the licensees or holders of the licence.

### **Duplicate licences**

**31. (1)** If the Council is satisfied that a licence has been lost or destroyed, the Council may, at the request of the licensee, issue a duplicate licence.

**(2)** A duplicate licence is for all purposes to be treated as if it were the original licence.

### **Licensee to exhibit licence**

**32.** The holder of a licence must exhibit it at the holder's principal place of business so as to be clearly visible to persons entering the place.

Maximum penalty: 20 penalty units.

### **Register of licences**

**33. (1)** The Council is required to keep a register, in such form as it determines, of licences and is required to record in the register in respect of each licence:

- (a) the matters required to be specified in the licence; and
- (b) particulars of any amendment of the licence; and
- (c) particulars of any fees paid (or due but not paid) in respect of the licence; and
- (d) particulars of any cancellation or suspension of the licence; and
- (e) such other matters as it thinks fit.

**(2)** The Council may cause to be made such alterations in the register as are necessary to ensure that the matters recorded in the register are accurate.

**(3)** The register may, at all reasonable hours, be inspected, and copies of all or any part of any entry in the register taken:

- (a) without payment, by a member of the Council or other person authorised by the Council; or



- (b) with the consent of the Council and on payment of any fee determined by the Council, by any other person.

### **Surrender of licences**

**34.** A holder of a licence may surrender it by delivering it to the Council with a notification in writing that the licence is surrendered.

## **Division 2 - Conduct of entertainment industry business**

### **Codes of ethics**

**35. (1)** The Council is to develop codes of ethics which deal with the standards of conduct and practice to be adopted by entertainment industry representatives, entertainment industry employers and performers.

**(2)** A code of ethics may:

- (a) be developed for a particular section or part of a section of the entertainment industry; and
- (b) be amended by the Council from time to time.

**(3)** In developing or amending a code of ethics, the Council is:

- (a) to consult with persons and sections of the entertainment industry that have, in the opinion of the Council, an interest in the content of the code of ethics; and
- (b) to refer to the published rulings (if any) of the Complaints Committee.

**(4)** A breach of a code of ethics may be the subject of a complaint to the Council for reference to the Complaints Committee under Part 3.

**(5)** The Council is required to publish in the Gazette any code of ethics or amendment of any code of ethics.

**(6)** In this section, a reference to the amendment of a code of ethics includes a reference to the substitution of the code of ethics.

### **Directions by Council to employers and operators of premises**

**36. (1)** The Council may, by written notice served on an entertainment industry employer, issue a direction to the employer concerning any matter relating to the employment of performers by that employer, including a direction as to the employer's obligations



under any award, industrial agreement or entertainment industry contract to a performer or an entertainment industry representative.

(2) The Council may, by written notice served on the operator of any premises at which a performer is employed to give a performance, issue a direction to the operator concerning any matter relating to the employment of performers at the premises.

(3) An entertainment industry employer or an operator is only required to comply with any such direction to the extent that it is within the employer's or operator's capacity to comply with the direction.

(4) An entertainment industry employer or an operator who is served with a notice under this section is entitled, within 7 days of receiving the notice or within such further time as the Council may allow, to show cause to the Council why the employer or operator should not comply with the direction concerned.

(5) If:

- (a) the entertainment industry employer or operator fails to show cause within that 7 days; or
- (b) the entertainment industry employer or operator shows cause but the Council confirms the direction (with or without any variation),

the employer or operator is, subject to Part 5 (Appeals), required to comply with the direction.

(6) An entertainment industry employer or an operator who, without reasonable excuse, fails to comply with a direction is guilty of an offence.

Maximum penalty: 50 penalty units.

(7) In this section:

"operator", in relation to premises, means a person (not being an entertainment industry employer or the owner or lessor of the premises) who is in charge of the day to day operation or management of the premises.

**Directions by Council to owners of premises**

**37. (1) If:**

- (a) an entertainment industry employer or an operator to whom the Council has issued a direction fails to comply with the direction; or
- (b) the Council is unable to serve the direction on the employer or operator,

the Council may, by written notice served on the owner concerned, issue a direction to the owner of any premises to which the direction to the employer or operator relates.

(2) Any such direction to the owner may require the owner to take specified steps to ensure that the employer or operator concerned complies with the direction to the employer or operator.

(3) An owner who is served with such a notice is entitled, within 7 days of receiving the notice or within such further time as the Council may allow, to show cause to the Council why the owner should not comply with the direction concerned.

**(4) If:**

- (a) the owner fails to show cause within that 7 days; or
- (b) the owner shows cause but the Council confirms the direction (with or without any variation),

the owner is, subject to Part 5 (Appeals), required to comply with the direction.

(5) An owner who, without reasonable excuse, fails to comply with a direction is guilty of an offence.

Maximum penalty: 50 penalty units.

**(6) In this section:**

"operator" has the same meaning as in section 36;

"owner" includes a lessor.

**Fees of entertainment industry representatives etc.**

**38. (1)** An entertainment industry agent may not demand or receive for or in respect of the engagement of a performer any fee or other remuneration if it, or it and all other fees and other remuneration received by that agent (and any other entertainment industry agent

concerned) for the engagement of the performer, exceeds the prescribed percentage of the amount payable to the performer in respect of the engagement.

(2) A venue consultant may not demand or receive any fee or other remuneration, for or in respect of the engagement of a performer, from any person other than an entertainment industry employer.

(3) If an entertainment industry agent also acts as a venue consultant in respect of a particular performance, the agent is entitled to demand or receive a fee only as a venue consultant for the performance.

(4) If the fee or other remuneration of a manager is not fixed by a written agreement between the manager and the performer concerned, the manager may not demand or receive, for or in respect of an engagement of the performer, any fee or other remuneration which exceeds the prescribed percentage of the amount which is payable to the performer in respect of the engagement.

(5) If a manager also acts as a venue consultant in respect of a particular performance, the manager is entitled, in addition to his or her fee or other remuneration as a manager, to demand or receive a fee as a venue consultant for the performance, but only if the manager and the performer concerned have agreed in writing to such an arrangement in respect of the performance.

(6) An entertainment industry employer may not include in a venue consultant's fee or other remuneration any payment by the employer of money owing to a performer.

(7) A person who contravenes any provision of this section is guilty of an offence.

Maximum penalty: 50 penalty units.

(8) The regulations may make provision for or with respect to the fees and other remuneration referred to in this section and, in particular:

- (a) may prescribe different percentages of fees or other remuneration in respect of different kinds of engagements or categories of entertainment industry representatives, or other matters; and
- (b) may determine the amounts (being amounts payable to performers) that are to be excluded when calculating such fees or other remuneration.



**Trust accounts to be established by agents and managers**

**39. (1)** If an entertainment industry agent or a manager receives money from any person on behalf of a performer, the agent or manager must:

- (a) hold the money exclusively for the performer; and
- (b) ensure that the requirements of this section and the regulations under this section are complied with in relation to the money.

**(2)** Money received on behalf of a performer by an entertainment industry agent or a manager which is not paid to the performer immediately (or within such period as may be prescribed) must:

- (a) be paid to the credit of a general trust account at a bank in New South Wales and be held in accordance with the regulations; and
- (b) be disbursed as directed by the performer within such time as may be determined by the Council (but not exceeding 14 days) after the performer becomes entitled to receive the money.

**(3)** A trust account under this section must be kept exclusively for the purpose of money received on behalf of a performer.

**(4)** An entertainment industry agent or a manager must keep accounting records in respect of money received on behalf of a performer.

**(5)** Such accounting records must:

- (a) disclose at all times the true position concerning the money received; and
- (b) be kept at the principal place of business of the entertainment industry agent or manager; and
- (c) be otherwise kept in accordance with the regulations.

**(6)** The regulations may make provision for the administration of trust accounts under this section and, in particular, the keeping of documents and records by entertainment industry agents and managers.

**(7)** A person who contravenes a provision of this section or the regulations under it is guilty of an offence.

Maximum penalty: 50 penalty units.



**Bond to be lodged with Council**

**40. (1)** If an entertainment industry agent or a manager is required to establish a trust account under section 39, the agent or manager is required to lodge with the Council a bond to cover the payment of money owed (by way of fees or other remuneration) to performers.

**(2)** Any such bond is to be in the form of a deposit of money, a bank guarantee or other security approved by the Council.

**(3)** If an entertainment industry agent or a manager who is required to lodge a bond under this section is the holder of a provisional licence, the amount of or secured by the bond is to be \$2,000 unless otherwise determined by the Council.

**(4)** In any other case, the amount of or secured by a bond under this section is to be an amount determined, subject to the regulations, by the Council.

**(5)** If an entertainment industry agent or a manager fails to lodge a bond under this section, the Council may suspend the licence held by the agent or manager until such time as the bond is lodged.

**Application etc. of bond lodged with Council**

**41. (1)** If, in the opinion of the Council, a performer suffers loss because of any act or omission of an entertainment industry agent or a manager, the Council may:

- (a)** realise money secured by a bond lodged with the Council by the agent or manager under section 40 and apply it to assist the performer; and
- (b)** require the agent or manager to lodge with the Council, within the time specified in writing by the Council, a further bond under that section for the same amount as the Council has applied to assist the performer.

**(2)** If an entertainment industry agent or a manager fails to lodge that further bond within the time specified, the Council may suspend the licence held by the agent or manager until such time as the further bond is lodged.

**(3)** If an entertainment industry agent or a manager ceases to be the holder of a licence, the agent or manager is entitled to be refunded any money secured by a bond lodged with the Council and which is standing to the credit of the agent or manager.

(4) Any such refund is to be paid only if the Council is satisfied that all liabilities of the agent or manager under this Act (including any amount owing to a performer under an award, industrial agreement or entertainment industry contract) have been discharged or adequately provided for.

## **PART 5 - APPEALS**

### **Right to appeal**

- 42. (1)** A person may appeal to an industrial magistrate against:
- (a) the refusal of the Council to issue a licence to the person; or
  - (b) the cancellation or suspension by the Council of a licence issued to the person; or
  - (c) a condition subject to which a licence is issued to the person or the amendment of such a licence; or
  - (d) a determination or order by the Complaints Committee in respect of the person; or
  - (e) a decision of the Council under section 41 in respect of the application of money secured by a bond lodged with the Council; or
  - (f) a direction to the person issued by the Council under section 36 or 37.
- (2)** An appeal must be made:
- (a) within 21 days after the day on which notice of the decision being appealed against was served on the person making the appeal; or
  - (b) in the case of a direction by the Council under section 36 or 37, within 21 days after the direction is required by that section to be complied with.

**(3)** An appeal must be made in a form approved by, and be lodged with, the industrial registrar.

### **Effect of decisions subject to appeal**

**43. (1)** A decision of the Council to cancel, suspend or amend a licence, or a decision of the Complaints Committee (other than a recommendation), takes effect:



- (a) on the date specified in the notice served on the person in respect of whom the decision is made (being a date not earlier than 21 days after the notice is served on the person); or
- (b) if an appeal is made within that 21 days, on the date the decision is confirmed or the appeal is withdrawn, or on such earlier date as the industrial magistrate otherwise orders.

(2) On the making of an appeal relating to a direction by the Council under section 36 or 37, the industrial magistrate may suspend the direction pending the hearing of the appeal.

### **Conduct of appeal**

44. (1) An appeal to an industrial magistrate under this Part is to be by way of a new hearing and new evidence or new information may be given on the appeal.

(2) An industrial magistrate has, for the purpose of determining an appeal, all the functions and discretions that the Council or the Complaints Committee had in respect of the matter the subject of the appeal.

(3) An industrial magistrate hearing an appeal may conduct the appeal in such manner as the industrial magistrate sees fit and is not bound by the rules of or practice as to evidence but may be informed of any matter in such manner as the industrial magistrate sees fit.

### **Determination of appeal**

45. (1) An industrial magistrate may determine an appeal:

- (a) by dismissing it and by confirming the decision appealed against; or
- (b) by upholding the appeal and by directing the Council or the Complaints Committee to take such action under this Act or the regulations as the industrial magistrate thinks appropriate.

(2) The decision of an industrial magistrate on an appeal is final and binding on the parties.

### **Appeal to Industrial Commission on point of law**

46. (1) Despite section 45 (2), an appeal against the decision of an industrial magistrate may be made in accordance with the Industrial Arbitration Act 1940 to the Industrial Commission constituted by a judicial member sitting alone, but on a point of law only.



(2) On any such appeal, the Industrial Commission may make such order or decision as it thinks appropriate, including referring the matter back to an industrial magistrate with a direction to deal with the matter in such manner as the Industrial Commission thinks appropriate.

(3) A determination under subsection (2) is not subject to an appeal to the Industrial Commission in court session within the meaning of the Industrial Arbitration Act 1940.

## **PART 6 - FINANCE**

### **Entertainment Industry Fund**

47. There is to be established in the Special Deposits Account in the Treasury an Entertainment Industry Fund.

#### **Payments into the Fund**

48. There is to be paid into the Entertainment Industry Fund:

- (a) all money received by or on account of the Council; and
- (b) all money borrowed by or advanced to the Council or appropriated by Parliament for the purposes of the Council; and
- (c) all other money required by or under this or any other Act to be paid into the Fund.

#### **Payments from the Fund**

49. There is to be paid from the Entertainment Industry Fund:

- (a) all amounts required to meet expenditure incurred in the administration or execution of this Act; and
- (b) all payments made on account of the Council or otherwise required to meet expenditure incurred in relation to the functions of the Council; and
- (c) any allowances paid to the Chairperson of the Council; and
- (d) all other payments required by or under this or any other Act to be paid from the Fund.

#### **Financial year**

50. (1) The financial year of the Council is the year commencing on 1 July.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

### **Investment**

**51.** The Council may invest its funds:

- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or
- (b) if that Act does not confer power to invest those funds:
  - (i) in accordance with and subject to the Trustee Act 1925; and
  - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

## **PART 7 - GENERAL**

### **Disclosure of relevant information**

**52. (1)** A person must not disclose any relevant information obtained in connection with the administration or execution of this Act or the regulations unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units.

**(2)** In this section:

**"relevant information"** means:

- (a) information concerning the business or financial affairs of the person from whom the information is obtained; or
- (b) information concerning any inquiry or report under section 21.

### **Delegation**

**53. (1)** The Council may delegate to an authorised person any of the functions of the Council, other than this power of delegation.

(2) A delegate may sub-delegate to an authorised person any function delegated by the Council if the delegate is authorised in writing to do so by the Council.

(3) In this section:

"authorised person" means:

- (a) a member or officer of the Council; or
- (b) a person of a class prescribed by the regulations.

### **Personal liability of members etc.**

**54.** A matter or thing done by the Council or the Complaints Committee, a member of the Council or the Complaints Committee or any person acting under the direction of the Council or the Complaints Committee does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

### **Contracting out void**

**55.** The provisions of this Act and the regulations have effect despite any stipulation to the contrary and no contract or agreement made or entered into before or after the commencement of this section operates to annul, vary or exclude any of the provisions of this Act or the regulations.

### **Council may require information**

**56. (1)** The Council may, by notice in writing, require any entertainment industry representative or entertainment industry employer to furnish to the Council, within such period as may be specified in the notice, such information in connection with the business of any such person as may be so specified and is within the person's knowledge or in the person's custody or under the person's control.



- (2) A person must comply with any such requirement.

Maximum penalty: 20 penalty units.

(3) Any information furnished pursuant to any such requirement is not, if the person furnishing the information objected at the time of furnishing it to doing so on the ground that it may tend to incriminate the person or might be used in any inquiry concerning the person under Part 3, admissible in evidence in any criminal proceedings against the person (other than under subsection (2)) or in any such inquiry.

### **Power of entry and inspection**

57. (1) A person authorised in writing by the Council or by the Minister may, for the purpose of ascertaining whether a person is contravening or has contravened this Act or the regulations:

- (a) enter any premises which the authorised person has reasonable grounds for believing are premises at which the second-mentioned person carries on business as an entertainment industry representative or an entertainment industry employer; and
- (b) exercise in the premises the functions specified in subsection (2).

(2) The functions that may be exercised in premises entered by an authorised person are as follows:

- (a) the authorised person may require any person employed or engaged at the premises to produce to the authorised person such records or other documents as are required to be kept under this Act or the regulations and are in the custody or under the control of the person so employed or engaged; and
- (b) the authorised person may take copies of any such records or other documents; and
- (c) the authorised person may examine with respect to matters under this Act or the regulations any person employed or engaged at the premises; and
- (d) the authorised person may make such other examinations and inquiries as the authorised person thinks necessary to ascertain whether the requirements of this Act or the regulations are being or have been contravened.

(3) An authorised person may not exercise the powers conferred by this section in relation to any part of any premises used for residential purposes except:

- (a) with the permission of the occupier of the premises; or
- (b) under the authority conferred by a search warrant issued under section 58.

### **Search warrants**

**58. (1)** In this section:

**"authorised justice"** means:

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

(2) A person authorised in writing by the Council or the Minister may apply to an authorised justice for the issue of a search warrant if the person has reasonable grounds to believe that a provision of this Act or the regulations has been or is being contravened in any premises.

(3) An authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a person named in the warrant, when accompanied by a member of the Police Force:

- (a) to enter the premises; and
- (b) to exercise in the premises the functions of an authorised person under section 57.

(4) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

### **Offence to obstruct etc. authorised person**

**59.** A person must not, without reasonable excuse, obstruct or hinder an authorised person in the exercise by the authorised person of any function under section 57 or when executing a search warrant under section 58.

Maximum penalty: 20 penalty units.

### **Evidentiary certificates**

**60. (1)** If in any legal proceedings it is proved that on a certain day or during any period a person was the holder of a licence, it is to be presumed, in the absence of proof to the contrary, that the person was carrying on the business of, or otherwise acting as, an entertainment industry representative on that day or during that period.

**(2)** A certificate purporting to be signed by the Chairperson of the Council or an officer authorised by the Council for the purposes of this section certifying:

- (a) that a person was or was not on a specified date a holder of a licence; or
- (b) that particulars specified in the certificate were on a specified date the particulars specified in a licence; or
- (c) that a licence specified in the certificate was on or during any specified period or date cancelled or suspended; or
- (d) that a direction under section 36 or 37 specified in the certificate was on a specified date issued in the specified manner to the person,

is admissible in evidence in any proceedings and is evidence of the matters stated in the certificate.

### **Service of documents**

**61. (1)** Any notice or other instrument issued, made or given for the purposes of this Act or the regulations may be served:

- (a) by delivering it personally to the person to whom it is addressed; or
- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there with some person apparently of or above the age of 16 years for the person to whom it is addressed; or
- (c) by post.

**(2)** Any such notice or instrument addressed to the holder of a licence at the place last entered in the records of the Council as the holder's place of residence or business is to be taken to be properly addressed for the purposes of section 76 of the Interpretation Act 1987.



(3) A document may be served on the Council or the Complaints Committee by leaving it at, or by sending it by post to:

- (a) the office of the Council or the Committee; or
- (b) if either the Council or the Committee has more than one office - any one of its offices.

(4) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on any person, the Council or the Complaints Committee in any other manner.

### **Recovery of charges etc. by Council**

62. Any charge, fee, penalty or money due to the Council may be recovered by the Council as a debt in a court of competent jurisdiction.

### **Proceedings for offences**

63. (1) Proceedings for an offence against this Act or the regulations may be taken and prosecuted by any person acting with the authority of the Minister, of the Chairperson of the Council or of a prescribed officer.

(2) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before an industrial magistrate or a Local Court constituted by a Magistrate sitting alone.

(3) In a prosecution for an offence against this Act or the regulations, an authority to prosecute, purporting to have been signed by the Minister, the Chairperson of the Council or a prescribed officer, is evidence of such authority without proof of the signature of the Minister, the Chairperson or the prescribed officer, as the case may be.

### **Regulations**

64. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to:

- (a) any matter relating to licences, including qualifications for holding licences; and

- (b) the documents and other records to be kept by entertainment industry representatives and entertainment industry employers; and
- (c) the fees or other remuneration of entertainment industry representatives; and
- (d) the fees chargeable or payable for doing any act or providing any service for the purposes of the regulations or in connection with the Council's functions under this Act.

(3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

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

65. Schedule 3 has effect.

#### **Amendment of Acts**

66. The Acts specified in Schedule 4 are amended as set out in that Schedule.

#### **Repeal of legislation**

67. (1) The following Acts are repealed:

- (a) the Industrial Arbitration (Theatrical Agents and Employers) Amendment Act 1987 No. 198;
- (b) the Industrial Arbitration (Revocation of Proclamation) Act 1988 No. 49.

(2) The Theatrical Agencies, Employers and Performers Advisory Committee Regulation 1952 is repealed.

---

### **SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS, STAFF AND PROCEDURE OF THE COUNCIL**

(Sec. 5 (7))

#### **Chairperson of the Council**

1. (1) The Minister may remove a member from the office of Chairperson at any time.

(2) The Chairperson vacates office as Chairperson if the Chairperson:

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS,  
STAFF AND PROCEDURES OF THE COUNCIL - *continued***

- (a) is removed from that office by the Minister; or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

**Deputies**

2. (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

(2) In the absence of a member, a member's deputy:

- (a) is, if available, to act in the place of the member; and
- (b) while so acting, has all the functions of the member and is to be taken to be a member.

(3) The deputy of a member who is the Chairperson does not have the member's functions as Chairperson.

(4) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

**Terms of office of members**

3. Subject to this Schedule, a member is to hold office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

4. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.



**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS,  
STAFF AND PROCEDURES OF THE COUNCIL - *continued***

**Vacancy in office of member**

5. (1) The office of a member becomes vacant if the member:
- (a) dies; or
  - (b) completes a term of office and is not re-appointed; or
  - (c) resigns the office by instrument in writing addressed to the Minister; or
  - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
  - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings; or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
  - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS,  
STAFF AND PROCEDURES OF THE COUNCIL - *continued*

(2) The Minister may remove a member from office at any time.

**Disclosure of pecuniary interests**

6. (1) If:

- (a) a member of the Council has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Council; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure by a member of the Council at a meeting of the Council that the member:

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded by the Council in a book kept for the purpose and that book is to be open at all reasonable hours for inspection by any person.

(4) After a member of the Council has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Council otherwise determines:

- (a) be present during any deliberation of the Council with respect to the matter; or
- (b) take part in any decision of the Council with respect to the matter.



**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS,  
STAFF AND PROCEDURES OF THE COUNCIL - *continued***

(5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Council for the purpose of making the determination; or
- (b) take part in the making by the Council of the determination.

(6) A contravention of this clause does not invalidate any decision of the Council.

(7) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises merely because the member is an entertainment industry representative, an entertainment industry employer or a performer.

**Filling of vacancy in office of member**

7. If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

**Effect of certain other Acts**

8. (1) The Public Sector Management Act 1988 does not apply to the appointment of a member and a member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.



**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS,  
STAFF AND PROCEDURES OF THE COUNCIL - *continued***

**General procedure**

9. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

**Quorum**

10. The quorum for a meeting of the Council is a majority of the members for the time being.

**Presiding member**

11. (1) The Chairperson of the Council or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.

(2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

12. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

**Transaction of business outside meetings or by telephone etc.**

13. (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is to be taken to be a decision of the Council.

(2) The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter being considered at the meeting can be heard by the other members.

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS,  
STAFF AND PROCEDURES OF THE COUNCIL - *continued***

(3) For the purposes of:

(a) the approval of a resolution under subclause (1); or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each member of the Council have the same voting rights they have at an ordinary meeting of the Council.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the Council.

(5) Papers may be circulated among members of the Council for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**Staff of Council**

14. (1) Such staff as may be necessary to enable the Council to exercise its functions may be employed under Part 2 of the Public Sector Management Act 1988.

(2) The Council may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

**Committees**

15. (1) The Council may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Council.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.

**First meeting**

16. The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

**SCHEDULE 2 - CONDUCT AND PROCEDURE OF INQUIRIES  
BY THE COMPLAINTS COMMITTEE**

(Sec. 10 (5))

**Procedure generally**

1. (1) When conducting an inquiry under Part 3, the Complaints Committee is not bound to observe rules of law governing the admission of evidence but may inform itself of any matter in such manner as it sees fit.

(2) An inquiry is to be conducted with as little formality and legal technicality as the circumstances of the case permit.

(3) An inquiry is to be conducted in the absence of the public.

**Representation**

2. A party to an inquiry is not entitled to be represented by a barrister or solicitor except with the consent of the Complaints Committee.

**Attendance etc. at inquiries**

3. (1) The Complaints Committee:

(a) may require a person:

(i) to attend an inquiry for the purpose of giving evidence;  
or

(ii) to produce to the Complaints Committee any document  
that is relevant to the inquiry,

at a time, date and place specified in a notice served on the person; and

(b) may require a person who attends an inquiry to be sworn for the purpose of giving evidence on oath; and

(c) may administer an oath to a person who attends an inquiry for the purpose of giving evidence.

(2) The Complaints Committee may retain possession of a document produced to it under this clause for such period as it considers necessary for the purpose of completing the inquiry.



**SCHEDULE 2 - CONDUCT AND PROCEDURE OF INQUIRIES  
BY THE COMPLAINTS COMMITTEE - *continued***

**Requirement to answer questions**

4. (1) The Complaints Committee may require a person who attends an inquiry to answer any question that is reasonably related to the inquiry.

(2) A person may refuse to answer a question on the ground that the answer might tend to incriminate the person.

**Refusal to attend or to answer questions etc.**

5. (1) A person:

- (a) must not fail to comply with a requirement to attend an inquiry, or to produce a document or to answer a question, to the extent to which the person is lawfully able to comply with the requirement; and
- (b) must not, in purported compliance with a requirement to answer a question, make a statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 5 penalty units.

(2) Subclause (1) (b) does not apply to statements made on oath.

**Adjournments**

6. The Complaints Committee may from time to time adjourn on inquiry to such time, date and place, and for such reasons, as it considers fit.

**Misconduct**

7. A person must not misconduct himself or herself at an inquiry.

Maximum penalty: 5 penalty units.

**SCHEDULE 3 - SAVINGS, TRANSITIONAL  
AND OTHER PROVISIONS**

(Sec. 65)

**Part 1 - Preliminary**

**Savings and transitional provisions**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect on 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; 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.

**Part 2 - Provisions consequent on enactment of this Act**

**Definition**

2. In this Part:

"current licence" means:

- (a) a theatrical agent's licence issued under Division 2 of Part 14 of the Industrial Arbitration Act 1940; or
- (b) a licence issued under Division 2A of Part 14 of that Act in respect of a model agency,

in force, or in the process of being renewed, immediately before the commencement of the amendments to the Industrial Arbitration Act 1940 contained in Schedule 4.

**SCHEDULE 3 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued***

**Saving of current licences**

**3. A current licence:**

- (a) is to be treated as a licence issued under this Act; and
- (b) authorises the holder of the licence to carry on the business of, or otherwise act as, any one or all of the following:
  - (i) an entertainment industry agent;
  - (ii) a manager;
  - (iii) a venue consultant; and
- (c) is to continue in force, unless it is sooner cancelled or surrendered, for the remainder of the term for which it was issued or until it is next due for continuation.

**SCHEDULE 4 - AMENDMENT OF ACTS**

(Sec. 66)

**Industrial Arbitration Act 1940 No. 2:**

- (1) Part 14, Division 2 (sections 136-145):  
Omit the Division.

- (2) Before section 146, insert:

**Application of Part**

146A. The provisions of this Part do not apply:

- (a) to any model or model agency; or
- (b) to a licensee under the Entertainment Industry Act 1989.

- (3) Omit sections 148 (a), 149, 152, 153 (1) (e) and (f).

**Public Finance and Audit Act 1983 No. 152:**

**Schedule 2 (Statutory Bodies):**

Insert, in alphabetical order:

Entertainment Industry Interim Council.



SCHEDULE 4 - AMENDMENT OF ACTS - *continued*

**Search Warrants Act 1985 No. 37:**

Section 10, definition of "search warrant":

Insert, in alphabetical order of Acts:

section 58 of the Entertainment Industry Act 1989;

---

[*Minister's second reading speech made in -  
Legislative Assembly on 15 November 1989  
Legislative Council on 23 November 1989*]

FIRST PRINT

## ENTERTAINMENT INDUSTRY BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The objects of this Bill are:

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

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

The Bill:

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

## *Entertainment Industry 1989*

---

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

### **PART 1 - PRELIMINARY**

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 sets out the objects of the proposed Act.

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

### **PART 2 - ENTERTAINMENT INDUSTRY INTERIM COUNCIL**

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

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

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

### **PART 3 - COMPLAINTS**

#### **Division 1 - Making and determination of complaints**

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

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



## *Entertainment Industry 1989*

---

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

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

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

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

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

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

### **Division 2 - Complaints Committee**

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

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

## **PART 4 - REGULATION OF THE ENTERTAINMENT INDUSTRY**

### **Division 1 - Licences**

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

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

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

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

## *Entertainment Industry 1989*

---

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

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

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

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

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

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

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

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

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

**Clause 31** provides for the issue of duplicate licences.

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

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

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

### **Division 2 - Conduct of entertainment industry business**

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

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



## *Entertainment Industry 1989*

---

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

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

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

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

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

### **PART 5 - APPEALS**

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

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

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

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

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

### **PART 6 - FINANCE**

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

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

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



**Clause 50** provides for the financial year of the Council.

**Clause 51** sets out the Council's investment powers.

**PART 7 - GENERAL**

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

**Clause 53** empowers the Council to delegate its functions.

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

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

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

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

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

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

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

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

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

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

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

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

## *Entertainment Industry 1989*

---

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

**Clause 67** repeals certain legislation.

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

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

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

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

---





FIRST PRINT

## ENTERTAINMENT INDUSTRY BILL 1989

NEW SOUTH WALES



### TABLE OF PROVISIONS

#### PART 1 - PRELIMINARY

1. Short title
2. Commencement
3. Objects of Act
4. Definitions

#### PART 2 - ENTERTAINMENT INDUSTRY INTERIM COUNCIL

5. Constitution of Council
6. General functions of Council
7. Transfer of functions of Council after 3 years

#### PART 3 - COMPLAINTS

##### Division 1 - Making and determination of complaints

8. "Misconduct"
9. Making of complaints
10. How Complaints Committee is to deal with complaints
11. Determination of Complaints Committee - misconduct
12. Determination of Complaints Committee - unfair etc. contracts
13. Determination of Complaints Committee - payment of money owing
14. Enforcement of order - payment of money owing
15. Provisions relating to penalties

##### Division 2 - Complaints Committee

16. Entertainment Industry Complaints Committee
17. Constitution of Complaints Committee for purposes of inquiries

PART 4 - REGULATION OF THE ENTERTAINMENT INDUSTRY

Division 1 - Licences

18. Entertainment industry representatives to be licensed
19. Applications for licences
20. Qualifications for a licence
21. Investigation of applications
22. Determination of applications for licences
23. Notice of refusal
24. Provisional licences
25. Conditions of licences
26. Licence fees
27. Form of licences
28. Duration of licence and application to continue licence
29. Cancellation or suspension of licences
30. Joint licences
31. Duplicate licences
32. Licensee to exhibit licence
33. Register of licences
34. Surrender of licences

Division 2 - Conduct of entertainment industry business

35. Codes of ethics
36. Directions by Council to employers and operators of premises
37. Directions by Council to owners of premises
38. Fees of entertainment industry representatives etc.
39. Trust accounts to be established by agents and managers
40. Bond to be lodged with Council
41. Application etc. of bond lodged with Council

PART 5 - APPEALS

42. Right to appeal
43. Effect of decisions subject to appeal
44. Conduct of appeal
45. Determination of appeal
46. Appeal to Industrial Commission on point of law

PART 6 - FINANCE

47. Entertainment Industry Fund
48. Payments into the Fund
49. Payments from the Fund
50. Financial year
51. Investment

PART 7 - GENERAL

- 52. Disclosure of relevant information
- 53. Delegation
- 54. Personal liability of members etc.
- 55. Contracting out void
- 56. Council may require information
- 57. Power of entry and inspection
- 58. Search warrants
- 59. Offence to obstruct etc. authorised person
- 60. Evidentiary certificates
- 61. Service of documents
- 62. Recovery of charges etc. by Council
- 63. Proceedings for offences
- 64. Regulations
- 65. Savings, transitional and other provisions
- 66. Amendment of Acts
- 67. Repeal of legislation

SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS, STAFF AND  
PROCEDURE OF THE COUNCIL

SCHEDULE 2 - CONDUCT AND PROCEDURE OF INQUIRIES BY THE  
COMPLAINTS COMMITTEE

SCHEDULE 3 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

SCHEDULE 4 - AMENDMENT OF ACTS

---





# **ENTERTAINMENT INDUSTRY BILL 1989**

**NEW SOUTH WALES**



No. , 1989

---

## **A BILL FOR**

**An Act relating to the regulation of the entertainment industry; to amend and to repeal certain legislation; and for other purposes.**

---

**The Legislature of New South Wales enacts:**

**PART 1 - PRELIMINARY**

**Short title**

1. This Act may be cited as the Entertainment Industry Act 1989.

**Commencement**

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

**Objects of Act**

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

**Definitions**

4. (1) In this Act:

"code of ethics" means a code of ethics developed by the Council under section 35;

"Complaints Committee" means the Complaints Committee established under Part 3;

"Council" means the Entertainment Industry Interim Council constituted under section 5;

"director" has the same meaning as in the Companies (New South Wales) Code;

"employment" includes an engagement or other arrangement, whether or not constituting a contract of employment;

"entertainment industry agent" means a person who, for financial benefit, carries out any one or more of the following entertainment industry activities on behalf of a performer:



- (a) seeking or finding work opportunities for the performer;
- (b) negotiating the terms of an agreement for, and the conditions of, a performance;
- (c) finalising arrangements concerning the payment of the performer;
- (d) negotiating arrangements relating to the attendance of the performer at a performance;
- (e) administering the contract of the performer with an entertainment industry employer,

but does not include a person who carries out those activities solely as an employee of any such agent;

**"entertainment industry contract"** means a contract relating to the entertainment industry, the parties to which are entertainment industry representatives, entertainment industry employers or performers;

**"entertainment industry employer"** means a person who employs any performer for the purpose of a performance;

**"entertainment industry representative"** means an entertainment industry agent, a manager or a venue consultant;

**"licence"** means an entertainment industry agent's licence, a manager's licence or a venue consultant's licence in force under this Act, and includes a provisional licence;

**"manager"** means a person (whether called a personal representative or a personal manager, or otherwise) who, for financial benefit, represents a performer and who agrees, pursuant to a written agreement, to carry out or arrange to be carried out any or all of the activities of an entertainment industry agent and other additional activities or duties specified in the agreement on behalf of the performer, but does not include a person who carries out those activities or duties solely as an employee of any such manager;

**"performance"** means:

- (a) a performance that is given in any place or by the use of any medium for the transmission of sound or images, or both; or
- (b) a performance that is recorded for the purpose of using the recording in any place or for the transmission of sound or images, or both,

and one of the purposes of which is the financial benefit of an entertainment industry employer or performer, or both;

**"performer"** means any actor, singer, dancer, acrobat, model, musician or other performer of any kind employed to give a performance, but does not include persons of a class exempted by the Council under subsection (2);

**"venue consultant"** means a person who acts on behalf of an entertainment industry employer, for a fee or remuneration paid by any such employer, and who arranges for a performance by a performer at a particular venue, but does not include a person who arranges for a performance solely as an employee of a venue consultant or an employer.

(2) The Council may, by notification published in the Gazette and with the authority of the Minister, exempt classes of performers from the operation of this Act.

(3) In this Act, a reference to an award or industrial agreement is a reference to an award or industrial agreement relating to the employment of performers in the entertainment industry.

(4) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **PART 2 - ENTERTAINMENT INDUSTRY INTERIM COUNCIL**

### **Constitution of Council**

5. (1) There is constituted by this Act a corporation with the corporate name of the Entertainment Industry Interim Council.

(2) The Council is subject to the control and direction of the Minister.

(3) The Council is to consist of such part-time members as are appointed by the Minister.

(4) Of the members, one is (in and by the member's instrument of appointment or a subsequent instrument executed by the Minister) to be appointed as Chairperson of the Council.



(5) The Chairperson is not to be an entertainment industry representative, an entertainment industry employer, a performer or a person who has a direct financial interest in an entertainment industry business.

(6) The regulations may make provision for or with respect to the size and composition of the Council and nominations for appointments.

(7) Schedule 1 has effect with respect to the members, staff and procedure of the Council.

#### **General functions of Council**

6. (1) The Council:

- (a) has the functions conferred or imposed on it by or under this or any other Act; and
- (b) is to advise the Minister on all matters relating to the entertainment industry.

(2) The Council is, within 2 years of the commencement of this Part:

- (a) to foster the development of an entertainment industry regulatory body which is controlled by the members of that industry; and
- (b) to assist in developing the guidelines and principles to be adopted by such a body in regulating the entertainment industry; and
- (c) to report to the Minister, in writing, on the establishment, composition and functions of such a body and the consequential changes to be made to this Act.

#### **Transfer of functions of Council after 3 years**

7. On the expiration of 3 years after the commencement of this Part, the following provisions have effect (unless an Act otherwise provides):

- (a) the Council is dissolved;
- (b) the functions of the Council under this or any other Act are to be exercised by the Minister;
- (c) a reference in this or any other Act or in any instrument under any Act or in any other document to the Council or a member of the Council is to be read as a reference to the Minister in his or her capacity as the Minister administering this Act;



- (d) the assets, rights, liabilities and obligations of the Council become the assets, rights, liabilities and obligations of the Minister.

### **PART 3 - COMPLAINTS**

#### **Division 1 - Making and determination of complaints**

##### **"Misconduct"**

8. For the purposes of this Part, a person is guilty of misconduct if the person:

- (a) breaches a code of ethics; or
- (b) does anything which, although not a breach of a code of ethics, is unfair or dishonest or otherwise unacceptable having regard to the previous published rulings (if any) of the Complaints Committee or to any standards of conduct generally accepted in the entertainment industry, or to both; or
- (c) being an entertainment industry representative, does or fails to do anything in respect of which a licence may be cancelled or suspended under this Act; or
- (d) fails to pay an amount owing to an entertainment industry representative, an entertainment industry employer or a performer under (or otherwise breaches) an award, industrial agreement or entertainment industry contract.

##### **Making of complaints**

9. (1) Complaints may be made by any person to the Council about any of the following matters:

- (a) misconduct by an entertainment industry representative, an entertainment industry employer or a performer;
- (b) an entertainment industry contract or a provision of such a contract that is unfair, harsh or unconscionable;
- (c) the failure of a person to pay an amount owing to an entertainment industry employer, an entertainment industry representative or a performer under an award, industrial agreement or entertainment industry contract.

(2) A complaint must be in writing and give particulars of the matter the subject of the complaint.

- (3) The Council may:
  - (a) dismiss a complaint without further action if, in the opinion of the Council, it is frivolous or vexatious or if it is not accompanied by sufficient particulars; or
  - (b) refer the complaint to the Complaints Committee.
- (4) The Council may itself make a complaint under this section and refer it to the Complaints Committee.

**How Complaints Committee is to deal with complaints**

10. (1) The Complaints Committee is authorised to conduct inquiries into complaints referred to it by the Council.

(2) The Chairperson of the Complaints Committee may, after referral of a complaint, authorise a person to investigate the complaint and to report to the Complaints Committee on the matter concerned.

(3) Such a report may form the basis of an inquiry by the Complaints Committee.

(4) When conducting an inquiry, the Complaints Committee is required to call before it any person who is the subject of a complaint or an investigation to show cause why the person should not be dealt with under this Part.

(5) Schedule 2 has effect with respect to the conduct and procedure of an inquiry by the Complaints Committee.

**Determination of Complaints Committee - misconduct**

11. If the Complaints Committee after an inquiry conducted by it finds that an entertainment industry representative, an entertainment industry employer or a performer is guilty of misconduct, the Complaints Committee may make any one or more of the following determinations or orders:

- (a) the Complaints Committee may determine that no further action be taken against the person;
- (b) the Complaints Committee may caution or reprimand the person;
- (c) the Complaints Committee may make an order requiring the person to pay to the Council, as a penalty, an amount not exceeding 5 penalty units;



- (d) the Complaints Committee may make a recommendation to the Council that the Council suspend or cancel, or vary a condition of, a licence held by the person;
- (e) the Complaints Committee may make such recommendations (including a recommendation that the matter be dealt with by an appropriate authority) as it considers necessary to resolve the complaint.

**Determination of Complaints Committee - unfair etc. contracts**

12. (1) If the Complaints Committee after an inquiry conducted by it finds that an entertainment industry contract or a provision of such a contract is unfair, harsh or unconscionable, it may make an order that the contract or provision be varied in the manner specified in the order.

(2) Any such order operates to vary the contract accordingly.

(3) In determining whether an entertainment industry contract or a provision of such a contract is unfair, harsh or unconscionable, the Complaints Committee is to have regard to the public interest and to all of the circumstances of the complaint concerned.

(4) An entertainment industry contract or a provision of such a contract which has been fully executed may not be varied under this section.

**Determination of Complaints Committee - payment of money owing**

13. (1) If:

- (a) the Complaints Committee after an inquiry conducted by it finds that a person has failed to pay an amount owing to an entertainment industry representative, an entertainment industry employer or a performer under an award, industrial agreement or entertainment industry contract; and
- (b) the parties agreed to be bound by the Committee's determination at the commencement of the inquiry,

the Complaints Committee may make an order requiring the person to pay the amount (or any part of the amount) owing to the representative, employer or performer.

(2) The maximum amount that the Complaints Committee may order to be paid under this section is \$20,000.



(3) If the parties agreed to be bound by the Complaints Committee's determination at the commencement of the inquiry and the amount alleged to be owing does not exceed \$20,000, proceedings may not be brought in any court for the recovery of that amount.

(4) If:

- (a) the Complaints Committee after an inquiry conducted by it finds that a person has failed to pay an amount owing to an entertainment industry representative, an entertainment industry employer or a performer under an award, industrial agreement or entertainment industry contract; and
- (b) the Complaints Committee does not make an order as to the payment of the amount owing,

the Complaints Committee may issue a certificate to the representative, employer or performer containing the findings of the Committee as to the fact that the person concerned has failed to pay the amount owing.

(5) Any such certificate is prima facie evidence of that fact and is admissible in proceedings in a court of competent jurisdiction to recover the amount owing.

**Enforcement of order - payment of money owing**

14. (1) If the Complaints Committee makes an order under section 13 requiring a person to pay an amount to an entertainment industry representative, an entertainment industry employer or a performer, the Complaints Committee is required to issue a certificate to the representative, employer or performer specifying the amount owed by the person.

(2) The representative, employer or performer may file the certificate with the Clerk of any Local Court.

(3) The Clerk of the Local Court with whom a certificate has been filed is to enter up judgment for the representative, employer or performer for the amount specified in the certificate together with all fees paid for filing the certificate and entering up judgment.

**Provisions relating to penalties**

15. (1) If the Complaints Committee makes an order requiring a person to pay an amount to the Council as a penalty, the penalty becomes due for payment on the date on which the order takes effect

as provided by section 43 or on such later date as the Council may allow.

(2) If a penalty imposed on a person is not paid by the due date, any licence held by the person is (if not otherwise cancelled or suspended) suspended until such time as the amount of the penalty is paid to the Council.

## **Division 2 - Complaints Committee**

### **Entertainment Industry Complaints Committee**

16. (1) There is to be an Entertainment Industry Complaints Committee.

(2) The Complaints Committee is to consist of at least 3 members appointed by the Minister.

(3) One of the members is to be appointed as Chairperson of the Complaints Committee (being the Chairperson of the Council or another person appointed by the Minister).

(4) A member:

- (a) is to be appointed for such period, not exceeding 2 years, as is specified in the instrument of appointment (but is eligible for re-appointment); and
- (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member; and
- (c) may be removed from office as a member by the Minister at any time.

### **Constitution of Complaints Committee for purposes of inquiries**

17. (1) The Complaints Committee, for the purposes of conducting and determining an inquiry under this Part, is to be constituted by any 3 of its members, of whom one is to be the Chairperson.

(2) The Chairperson is to determine which of the members of the Complaints Committee is to constitute the Committee for any particular inquiry.

(3) Despite subsection (1), the Complaints Committee may be constituted by the Chairperson alone, but only if both parties to the



inquiry concerned agree to the Complaints Committee being so constituted.

(4) More than one inquiry by the Complaints Committee may be conducted at any one time.

(5) For the purposes of subsection (4), the Chairperson of the Complaints Committee is authorised to appoint a member of the Committee as Chairperson for a particular inquiry.

(6) A decision of the Complaints Committee when constituted by 3 members must be supported by at least 2 members of the Committee.

#### **PART 4 - REGULATION OF THE ENTERTAINMENT INDUSTRY**

##### **Division 1 - Licences**

##### **Entertainment industry representatives to be licensed**

18. (1) A person must not carry on (or advertise that the person carries on) the business of, or otherwise act as:

- (a) an entertainment industry agent unless the person is the holder of an entertainment industry agent's licence; or
- (b) a manager unless the person is the holder of a manager's licence; or
- (c) a venue consultant unless the person is the holder of a venue consultant's licence.

Maximum penalty: 50 penalty units.

(2) A person must not hold himself or herself out as a holder of a licence if the person does not hold the licence.

Maximum penalty: 50 penalty units.

##### **Applications for licences**

19. (1) Applications for licences are to be made to the Council.

(2) An application must:

- (a) be in a form approved by the Council; and
- (b) specify the type of licence sought; and
- (c) specify the principal place, or other places, from which the applicant intends to carry on business; and



- (d) specify the type of business to be carried on by the applicant; and
- (e) state whether or not the applicant already holds a licence or has held or applied for a licence or permit under Part 14 of the Industrial Arbitration Act 1940; and
- (f) in the case of an application made by a corporation, specify the names of the directors of the corporation and any person having a relevant financial interest (within the meaning of section 20) in the corporation; and
- (g) contain such other particulars as may be prescribed by the regulations or required by the approved form; and
- (h) be accompanied by the fee determined by the Council for the licence concerned.

**Qualifications for a licence**

20. (1) A person is qualified to hold a licence if the Council is satisfied that:

- (a) the person is a fit and proper person to hold a licence; and
- (b) in the case of a corporation, each director of, or each person having a relevant financial interest in the corporation is a fit and proper person to hold a licence; and
- (c) the person (not being a corporation) is of or above the age of 18 years; and
- (d) the person is able to conduct a business in the entertainment industry in a proper and business-like manner; and
- (e) the person has a knowledge of, or experience in, the entertainment industry or in a related area.

(2) In this section:

**"relevant financial interest"** means a financial interest in the corporation concerned, other than:

- (a) in the case of a public company, an interest as a shareholder which does not constitute a controlling interest; or

- (b) a prescribed interest.

#### **Investigation of applications**

21. (1) The Council may cause such inquiries to be made as it considers necessary to ensure that the applicant for a licence is a fit and proper person to hold a licence.

(2) The Council may request a report from the Commissioner for Police as to whether or not:

- (a) the applicant for the licence; or
- (b) a director of, or any person having a relevant financial interest (within the meaning of section 20) in a corporation that is an applicant for a licence,

is a fit and proper person to be the holder of a licence.

(3) The Commissioner of Police may cause to be made such inquiries as the Commissioner considers necessary to comply with a request made under this section and is required to give a report of the result of the inquiries to the Council.

#### **Determination of applications for licences**

22. (1) The Council is required to determine an application for a licence:

- (a) by issuing a licence to the applicant; or
- (b) by refusing the application.

(2) The Council is not to issue a licence unless it is of the opinion that the applicant meets the qualifications prescribed by or under this Act.

(3) For the purposes of determining whether a person is a fit and proper person to hold a licence, the Council is to have regard to:

- (a) any report given by the Commissioner of Police under this Act; and
- (b) any other matter the Council considers relevant.

#### **Notice of refusal**

23. (1) If the Council refuses to issue a licence, the Council is required to cause notice of the refusal, and of the grounds for the refusal, to be served on the applicant.



(2) 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.

(3) If, at the expiration of 90 days after an application has been made the Council has failed to determine the application, the Council is to be taken, for the purposes of any appeal under this Act, to have refused the application concerned.

(4) If an application for a licence is refused, the Council may (having regard to any costs incurred by it in respect of the application) refund the whole or part of any fees paid in respect of the application.

#### **Provisional licences**

24. (1) The first licence issued:

- (a) to a person who has not held a licence under this Act on any previous occasion; or
- (b) to a person who did not hold a permit or any licence under Part 14 of the Industrial Arbitration Act 1940 during the period of 12 months before the commencement of this section,

is to be issued as a provisional licence.

(2) The first licence issued to a person after the cancellation of a previous licence of the person is to be issued as a provisional licence.

(3) A provisional licence remains in force for the period of 12 months from the date on which it is issued.

(4) The Council may cancel or suspend a provisional licence at any time.

#### **Conditions of licences**

25. (1) A licence may be issued subject to such conditions as are specified in the licence.

(2) The Council may, by notice in writing served on the holder of a licence, amend the licence by varying any conditions specified in the licence or by adding to or omitting from the licence any conditions.

(3) Any such variation, addition or omission takes effect as provided by section 43.

(4) On any such variation, addition or omission taking effect, the condition as so varied or added is to be taken to be a condition



specified in the licence or the condition omitted is to be taken not to be a condition so specified.

**Licence fees**

26. (1) The Council may, subject to the regulations, determine the fees payable for licences.

(2) Different fees may be determined for different types of licences.

**Form of licences**

27. (1) A licence must:

- (a) be in a form approved by the Council; and
- (b) identify the person or, if the licence is issued to more than one person, the persons to whom the licence is issued; and
- (c) specify any conditions to which the licence is subject; and
- (d) specify the date on which the licence is issued; and
- (e) specify the place of business in respect of which the licence is issued.

(2) Two or more types of licences may be included on the same form.

**Duration of licence and application to continue licence**

28. (1) Except during any period while it is suspended, a licence continues in force from the date on which it is issued until it is cancelled or surrendered.

(2) The holder of a licence may, before each anniversary of the date on which the licence was issued, apply to the Council for the continuation of the licence.

(3) An application for the continuation of a licence must:

- (a) be in a form approved by the Council; and
- (b) be accompanied by the fee determined by the Council for the continuation of the licence; and
- (c) contain such particulars as may be prescribed by the regulations or required by the approved form.

**Cancellation or suspension of licences**

29. (1) The Council may cancel or suspend a licence (other than a provisional licence) if the Council is satisfied that:

- (a) the licence has been improperly obtained; or
- (b) the licensee or a director of a corporation that is the licensee made a statement in or in connection with the application for the licence or for the continuation of the licence that was false or misleading in a material particular; or
- (c) the licensee is not a fit and proper person to continue to be the holder of a licence; or
- (d) a director of, or a person having a relevant financial interest (within the meaning of section 20) in a corporation that is the licensee would not, if the director or the person were the holder of a licence, be a fit and proper person to be the holder of a licence; or
- (e) the business of the licensee has not been or is not being conducted in a proper and business-like manner; or
- (f) the conditions (if any) imposed on the licence have not been complied with; or
- (g) the licensee has failed to apply for a continuation of the licence; or
- (h) the licensee has been convicted of an offence against this Act or the regulations.

(2) The Council may also cancel or suspend a licence if the Complaints Committee determines under Part 3 that the licensee is guilty of misconduct and recommends the cancellation or suspension of the licence.

(3) If the Council cancels or suspends a licence, it must cause a notice of the cancellation or suspension to be served on the holder of the licence.

(4) Any such notice is to state the particulars of the grounds on which the Council has cancelled or suspended the licence.

(5) The cancellation or suspension of a licence takes effect as provided by section 43.

(6) When the cancellation or suspension of a licence has effect, the person to whom the licence was issued must, as soon as practicable, deliver it to the Council.

Maximum penalty (subsection (6)): 20 penalty units.



**Joint licences**

30. (1) A licence may be issued jointly to 2 or more persons who carry on business in partnership.

(2) A reference in this Act to the licensee or holder of the licence is a reference to any one of the licensees or holders of the licence.

**Duplicate licences**

31. (1) If the Council is satisfied that a licence has been lost or destroyed, the Council may, at the request of the licensee, issue a duplicate licence.

(2) A duplicate licence is for all purposes to be treated as if it were the original licence.

**Licensee to exhibit licence**

32. The holder of a licence must exhibit it at the holder's principal place of business so as to be clearly visible to persons entering the place.

Maximum penalty: 20 penalty units.

**Register of licences**

33. (1) The Council is required to keep a register, in such form as it determines, of licences and is required to record in the register in respect of each licence:

- (a) the matters required to be specified in the licence; and
- (b) particulars of any amendment of the licence; and
- (c) particulars of any fees paid (or due but not paid) in respect of the licence; and
- (d) particulars of any cancellation or suspension of the licence; and
- (e) such other matters as it thinks fit.

(2) The Council may cause to be made such alterations in the register as are necessary to ensure that the matters recorded in the register are accurate.

(3) The register may, at all reasonable hours, be inspected, and copies of all or any part of any entry in the register taken:

- (a) without payment, by a member of the Council or other person authorised by the Council; or



- (b) with the consent of the Council and on payment of any fee determined by the Council, by any other person.

#### **Surrender of licences**

**34.** A holder of a licence may surrender it by delivering it to the Council with a notification in writing that the licence is surrendered.

### **Division 2 - Conduct of entertainment industry business**

#### **Codes of ethics**

**35. (1)** The Council is to develop codes of ethics which deal with the standards of conduct and practice to be adopted by entertainment industry representatives, entertainment industry employers and performers.

(2) A code of ethics may:

- (a) be developed for a particular section or part of a section of the entertainment industry; and
- (b) be amended by the Council from time to time.

(3) In developing or amending a code of ethics, the Council is:

- (a) to consult with persons and sections of the entertainment industry that have, in the opinion of the Council, an interest in the content of the code of ethics; and
- (b) to refer to the published rulings (if any) of the Complaints Committee.

(4) A breach of a code of ethics may be the subject of a complaint to the Council for reference to the Complaints Committee under Part 3.

(5) The Council is required to publish in the Gazette any code of ethics or amendment of any code of ethics.

(6) In this section, a reference to the amendment of a code of ethics includes a reference to the substitution of the code of ethics.

#### **Directions by Council to employers and operators of premises**

**36. (1)** The Council may, by written notice served on an entertainment industry employer, issue a direction to the employer concerning any matter relating to the employment of performers by that employer, including a direction as to the employer's obligations

under any award, industrial agreement or entertainment industry contract to a performer or an entertainment industry representative.

(2) The Council may, by written notice served on the operator of any premises at which a performer is employed to give a performance, issue a direction to the operator concerning any matter relating to the employment of performers at the premises.

(3) An entertainment industry employer or an operator is only required to comply with any such direction to the extent that it is within the employer's or operator's capacity to comply with the direction.

(4) An entertainment industry employer or an operator who is served with a notice under this section is entitled, within 7 days of receiving the notice or within such further time as the Council may allow, to show cause to the Council why the employer or operator should not comply with the direction concerned.

(5) If:

- (a) the entertainment industry employer or operator fails to show cause within that 7 days; or
- (b) the entertainment industry employer or operator shows cause but the Council confirms the direction (with or without any variation),

the employer or operator is, subject to Part 5 (Appeals), required to comply with the direction.

(6) An entertainment industry employer or an operator who, without reasonable excuse, fails to comply with a direction is guilty of an offence.

Maximum penalty: 50 penalty units.

(7) In this section:

"operator", in relation to premises, means a person (not being an entertainment industry employer or the owner or lessor of the premises) who is in charge of the day to day operation or management of the premises.



**Directions by Council to owners of premises**

**37. (1) If:**

- (a) an entertainment industry employer or an operator to whom the Council has issued a direction fails to comply with the direction; or
- (b) the Council is unable to serve the direction on the employer or operator,

the Council may, by written notice served on the owner concerned, issue a direction to the owner of any premises to which the direction to the employer or operator relates.

(2) Any such direction to the owner may require the owner to take specified steps to ensure that the employer or operator concerned complies with the direction to the employer or operator.

(3) An owner who is served with such a notice is entitled, within 7 days of receiving the notice or within such further time as the Council may allow, to show cause to the Council why the owner should not comply with the direction concerned.

**(4) If:**

- (a) the owner fails to show cause within that 7 days; or
- (b) the owner shows cause but the Council confirms the direction (with or without any variation),

the owner is, subject to Part 5 (Appeals), required to comply with the direction.

(5) An owner who, without reasonable excuse, fails to comply with a direction is guilty of an offence.

Maximum penalty: 50 penalty units.

**(6) In this section:**

"operator" has the same meaning as in section 36;

"owner" includes a lessor.

**Fees of entertainment industry representatives etc.**

**38. (1)** An entertainment industry agent may not demand or receive for or in respect of the engagement of a performer any fee or other remuneration if it, or it and all other fees and other remuneration received by that agent (and any other entertainment industry agent



concerned) for the engagement of the performer, exceeds the prescribed percentage of the amount payable to the performer in respect of the engagement.

(2) A venue consultant may not demand or receive any fee or other remuneration, for or in respect of the engagement of a performer, from any person other than an entertainment industry employer.

(3) If an entertainment industry agent also acts as a venue consultant in respect of a particular performance, the agent is entitled to demand or receive a fee only as a venue consultant for the performance.

(4) If the fee or other remuneration of a manager is not fixed by a written agreement between the manager and the performer concerned, the manager may not demand or receive, for or in respect of an engagement of the performer, any fee or other remuneration which exceeds the prescribed percentage of the amount which is payable to the performer in respect of the engagement.

(5) If a manager also acts as a venue consultant in respect of a particular performance, the manager is entitled, in addition to his or her fee or other remuneration as a manager, to demand or receive a fee as a venue consultant for the performance, but only if the manager and the performer concerned have agreed in writing to such an arrangement in respect of the performance.

(6) An entertainment industry employer may not include in a venue consultant's fee or other remuneration any payment by the employer of money owing to a performer.

(7) A person who contravenes any provision of this section is guilty of an offence.

Maximum penalty: 50 penalty units.

(8) The regulations may make provision for or with respect to the fees and other remuneration referred to in this section and, in particular:

- (a) may prescribe different percentages of fees or other remuneration in respect of different kinds of engagements or categories of entertainment industry representatives, or other matters; and
- (b) may determine the amounts (being amounts payable to performers) that are to be excluded when calculating such fees or other remuneration.

**Trust accounts to be established by agents and managers**

39. (1) If an entertainment industry agent or a manager receives money from any person on behalf of a performer, the agent or manager must:

- (a) hold the money exclusively for the performer; and
- (b) ensure that the requirements of this section and the regulations under this section are complied with in relation to the money.

(2) Money received on behalf of a performer by an entertainment industry agent or a manager which is not paid to the performer immediately (or within such period as may be prescribed) must:

- (a) be paid to the credit of a general trust account at a bank in New South Wales and be held in accordance with the regulations; and
- (b) be disbursed as directed by the performer within such time as may be determined by the Council (but not exceeding 14 days) after the performer becomes entitled to receive the money.

(3) A trust account under this section must be kept exclusively for the purpose of money received on behalf of a performer.

(4) An entertainment industry agent or a manager must keep accounting records in respect of money received on behalf of a performer.

(5) Such accounting records must:

- (a) disclose at all times the true position concerning the money received; and
- (b) be kept at the principal place of business of the entertainment industry agent or manager; and
- (c) be otherwise kept in accordance with the regulations.

(6) The regulations may make provision for the administration of trust accounts under this section and, in particular, the keeping of documents and records by entertainment industry agents and managers.

(7) A person who contravenes a provision of this section or the regulations under it is guilty of an offence.

Maximum penalty: 50 penalty units.



**Bond to be lodged with Council**

40. (1) If an entertainment industry agent or a manager is required to establish a trust account under section 39, the agent or manager is required to lodge with the Council a bond to cover the payment of money owed (by way of fees or other remuneration) to performers.

(2) Any such bond is to be in the form of a deposit of money, a bank guarantee or other security approved by the Council.

(3) If an entertainment industry agent or a manager who is required to lodge a bond under this section is the holder of a provisional licence, the amount of or secured by the bond is to be \$2,000 unless otherwise determined by the Council.

(4) In any other case, the amount of or secured by a bond under this section is to be an amount determined, subject to the regulations, by the Council.

(5) If an entertainment industry agent or a manager fails to lodge a bond under this section, the Council may suspend the licence held by the agent or manager until such time as the bond is lodged.

**Application etc. of bond lodged with Council**

41. (1) If, in the opinion of the Council, a performer suffers loss because of any act or omission of an entertainment industry agent or a manager, the Council may:

- (a) realise money secured by a bond lodged with the Council by the agent or manager under section 40 and apply it to assist the performer; and
- (b) require the agent or manager to lodge with the Council, within the time specified in writing by the Council, a further bond under that section for the same amount as the Council has applied to assist the performer.

(2) If an entertainment industry agent or a manager fails to lodge that further bond within the time specified, the Council may suspend the licence held by the agent or manager until such time as the further bond is lodged.

(3) If an entertainment industry agent or a manager ceases to be the holder of a licence, the agent or manager is entitled to be refunded any money secured by a bond lodged with the Council and which is standing to the credit of the agent or manager.



(4) Any such refund is to be paid only if the Council is satisfied that all liabilities of the agent or manager under this Act (including any amount owing to a performer under an award, industrial agreement or entertainment industry contract) have been discharged or adequately provided for.

## **PART 5 - APPEALS**

### **Right to appeal**

**42. (1)** A person may appeal to an industrial magistrate against:

- (a) the refusal of the Council to issue a licence to the person; or
- (b) the cancellation or suspension by the Council of a licence issued to the person; or
- (c) a condition subject to which a licence is issued to the person or the amendment of such a licence; or
- (d) a determination or order by the Complaints Committee in respect of the person; or
- (e) a decision of the Council under section 41 in respect of the application of money secured by a bond lodged with the Council; or
- (f) a direction to the person issued by the Council under section 36 or 37.

**(2)** An appeal must be made:

- (a) within 21 days after the day on which notice of the decision being appealed against was served on the person making the appeal; or
- (b) in the case of a direction by the Council under section 36 or 37, within 21 days after the direction is required by that section to be complied with.

**(3)** An appeal must be made in a form approved by, and be lodged with, the industrial registrar.

### **Effect of decisions subject to appeal**

**43. (1)** A decision of the Council to cancel, suspend or amend a licence, or a decision of the Complaints Committee (other than a recommendation), takes effect:

- (a) on the date specified in the notice served on the person in respect of whom the decision is made (being a date not earlier than 21 days after the notice is served on the person); or
- (b) if an appeal is made within that 21 days, on the date the decision is confirmed or the appeal is withdrawn, or on such earlier date as the industrial magistrate otherwise orders.

(2) On the making of an appeal relating to a direction by the Council under section 36 or 37, the industrial magistrate may suspend the direction pending the hearing of the appeal.

#### **Conduct of appeal**

44. (1) An appeal to an industrial magistrate under this Part is to be by way of a new hearing and new evidence or new information may be given on the appeal.

(2) An industrial magistrate has, for the purpose of determining an appeal, all the functions and discretions that the Council or the Complaints Committee had in respect of the matter the subject of the appeal.

(3) An industrial magistrate hearing an appeal may conduct the appeal in such manner as the industrial magistrate sees fit and is not bound by the rules of or practice as to evidence but may be informed of any matter in such manner as the industrial magistrate sees fit.

#### **Determination of appeal**

45. (1) An industrial magistrate may determine an appeal:

- (a) by dismissing it and by confirming the decision appealed against; or
- (b) by upholding the appeal and by directing the Council or the Complaints Committee to take such action under this Act or the regulations as the industrial magistrate thinks appropriate.

(2) The decision of an industrial magistrate on an appeal is final and binding on the parties.

#### **Appeal to Industrial Commission on point of law**

46. (1) Despite section 45 (2), an appeal against the decision of an industrial magistrate may be made in accordance with the Industrial Arbitration Act 1940 to the Industrial Commission constituted by a judicial member sitting alone, but on a point of law only.



(2) On any such appeal, the Industrial Commission may make such order or decision as it thinks appropriate, including referring the matter back to an industrial magistrate with a direction to deal with the matter in such manner as the Industrial Commission thinks appropriate.

(3) A determination under subsection (2) is not subject to an appeal to the Industrial Commission in court session within the meaning of the Industrial Arbitration Act 1940.

## **PART 6 - FINANCE**

### **Entertainment Industry Fund**

47. There is to be established in the Special Deposits Account in the Treasury an Entertainment Industry Fund.

#### **Payments into the Fund**

48. There is to be paid into the Entertainment Industry Fund:

- (a) all money received by or on account of the Council; and
- (b) all money borrowed by or advanced to the Council or appropriated by Parliament for the purposes of the Council; and
- (c) all other money required by or under this or any other Act to be paid into the Fund.

#### **Payments from the Fund**

49. There is to be paid from the Entertainment Industry Fund:

- (a) all amounts required to meet expenditure incurred in the administration or execution of this Act; and
- (b) all payments made on account of the Council or otherwise required to meet expenditure incurred in relation to the functions of the Council; and
- (c) any allowances paid to the Chairperson of the Council; and
- (d) all other payments required by or under this or any other Act to be paid from the Fund.

#### **Financial year**

50. (1) The financial year of the Council is the year commencing on 1 July.



(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

**Investment**

**51.** The Council may invest its funds:

- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or
- (b) if that Act does not confer power to invest those funds:
  - (i) in accordance with and subject to the Trustee Act 1925; and
  - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

**PART 7 - GENERAL**

**Disclosure of relevant information**

**52. (1)** A person must not disclose any relevant information obtained in connection with the administration or execution of this Act or the regulations unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units.

(2) In this section:

"relevant information" means:

- (a) information concerning the business or financial affairs of the person from whom the information is obtained; or
- (b) information concerning any inquiry or report under section 21.

**Delegation**

**53. (1)** The Council may delegate to an authorised person any of the functions of the Council, other than this power of delegation.

**(2)** A delegate may sub-delegate to an authorised person any function delegated by the Council if the delegate is authorised in writing to do so by the Council.

**(3)** In this section:

**"authorised person" means:**

- (a)** a member or officer of the Council; or
- (b)** a person of a class prescribed by the regulations.

**Personal liability of members etc.**

**54.** A matter or thing done by the Council or the Complaints Committee, a member of the Council or the Complaints Committee or any person acting under the direction of the Council or the Complaints Committee does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

**Contracting out void**

**55.** The provisions of this Act and the regulations have effect despite any stipulation to the contrary and no contract or agreement made or entered into before or after the commencement of this section operates to annul, vary or exclude any of the provisions of this Act or the regulations.

**Council may require information**

**56. (1)** The Council may, by notice in writing, require any entertainment industry representative or entertainment industry employer to furnish to the Council, within such period as may be specified in the notice, such information in connection with the business of any such person as may be so specified and is within the person's knowledge or in the person's custody or under the person's control.



(2) A person must comply with any such requirement.

Maximum penalty: 20 penalty units.

(3) Any information furnished pursuant to any such requirement is not, if the person furnishing the information objected at the time of furnishing it to doing so on the ground that it may tend to incriminate the person or might be used in any inquiry concerning the person under Part 3, admissible in evidence in any criminal proceedings against the person (other than under subsection (2)) or in any such inquiry.

**Power of entry and inspection**

57. (1) A person authorised in writing by the Council or by the Minister may, for the purpose of ascertaining whether a person is contravening or has contravened this Act or the regulations:

- (a) enter any premises which the authorised person has reasonable grounds for believing are premises at which the second-mentioned person carries on business as an entertainment industry representative or an entertainment industry employer; and
- (b) exercise in the premises the functions specified in subsection (2).

(2) The functions that may be exercised in premises entered by an authorised person are as follows:

- (a) the authorised person may require any person employed or engaged at the premises to produce to the authorised person such records or other documents as are required to be kept under this Act or the regulations and are in the custody or under the control of the person so employed or engaged; and
- (b) the authorised person may take copies of any such records or other documents; and
- (c) the authorised person may examine with respect to matters under this Act or the regulations any person employed or engaged at the premises; and
- (d) the authorised person may make such other examinations and inquiries as the authorised person thinks necessary to ascertain whether the requirements of this Act or the regulations are being or have been contravened.



(3) An authorised person may not exercise the powers conferred by this section in relation to any part of any premises used for residential purposes except:

- (a) with the permission of the occupier of the premises; or
- (b) under the authority conferred by a search warrant issued under section 58.

#### **Search warrants**

**58. (1)** In this section:

**"authorised justice"** means:

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

(2) A person authorised in writing by the Council or the Minister may apply to an authorised justice for the issue of a search warrant if the person has reasonable grounds to believe that a provision of this Act or the regulations has been or is being contravened in any premises.

(3) An authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a person named in the warrant, when accompanied by a member of the Police Force:

- (a) to enter the premises; and
- (b) to exercise in the premises the functions of an authorised person under section 57.

(4) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

#### **Offence to obstruct etc. authorised person**

**59.** A person must not, without reasonable excuse, obstruct or hinder an authorised person in the exercise by the authorised person of any function under section 57 or when executing a search warrant under section 58.

Maximum penalty: 20 penalty units.

**Evidentiary certificates**

**60. (1)** If in any legal proceedings it is proved that on a certain day or during any period a person was the holder of a licence, it is to be presumed, in the absence of proof to the contrary, that the person was carrying on the business of, or otherwise acting as, an entertainment industry representative on that day or during that period.

**(2)** A certificate purporting to be signed by the Chairperson of the Council or an officer authorised by the Council for the purposes of this section certifying:

- (a) that a person was or was not on a specified date a holder of a licence; or
- (b) that particulars specified in the certificate were on a specified date the particulars specified in a licence; or
- (c) that a licence specified in the certificate was on or during any specified period or date cancelled or suspended; or
- (d) that a direction under section 36 or 37 specified in the certificate was on a specified date issued in the specified manner to the person,

is admissible in evidence in any proceedings and is evidence of the matters stated in the certificate.

**Service of documents**

**61. (1)** Any notice or other instrument issued, made or given for the purposes of this Act or the regulations may be served:

- (a) by delivering it personally to the person to whom it is addressed; or
- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there with some person apparently of or above the age of 16 years for the person to whom it is addressed; or
- (c) by post.

**(2)** Any such notice or instrument addressed to the holder of a licence at the place last entered in the records of the Council as the holder's place of residence or business is to be taken to be properly addressed for the purposes of section 76 of the Interpretation Act 1987.



(3) A document may be served on the Council or the Complaints Committee by leaving it at, or by sending it by post to:

- (a) the office of the Council or the Committee; or
- (b) if either the Council or the Committee has more than one office - any one of its offices.

(4) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on any person, the Council or the Complaints Committee in any other manner.

#### **Recovery of charges etc. by Council**

62. Any charge, fee, penalty or money due to the Council may be recovered by the Council as a debt in a court of competent jurisdiction.

#### **Proceedings for offences**

63. (1) Proceedings for an offence against this Act or the regulations may be taken and prosecuted by any person acting with the authority of the Minister, of the Chairperson of the Council or of a prescribed officer.

(2) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before an industrial magistrate or a Local Court constituted by a Magistrate sitting alone.

(3) In a prosecution for an offence against this Act or the regulations, an authority to prosecute, purporting to have been signed by the Minister, the Chairperson of the Council or a prescribed officer, is evidence of such authority without proof of the signature of the Minister, the Chairperson or the prescribed officer, as the case may be.

#### **Regulations**

64. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to:

- (a) any matter relating to licences, including qualifications for holding licences; and



- (b) the documents and other records to be kept by entertainment industry representatives and entertainment industry employers; and
- (c) the fees or other remuneration of entertainment industry representatives; and
- (d) the fees chargeable or payable for doing any act or providing any service for the purposes of the regulations or in connection with the Council's functions under this Act.

(3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

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

65. Schedule 3 has effect.

#### **Amendment of Acts**

66. The Acts specified in Schedule 4 are amended as set out in that Schedule.

#### **Repeal of legislation**

67. (1) The following Acts are repealed:

- (a) the Industrial Arbitration (Theatrical Agents and Employers) Amendment Act 1987 No. 198;
- (b) the Industrial Arbitration (Revocation of Proclamation) Act 1988 No. 49.

(2) The Theatrical Agencies, Employers and Performers Advisory Committee Regulation 1952 is repealed.

---

### **SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS, STAFF AND PROCEDURE OF THE COUNCIL**

(Sec. 5 (7))

#### **Chairperson of the Council**

1. (1) The Minister may remove a member from the office of Chairperson at any time.

(2) The Chairperson vacates office as Chairperson if the Chairperson:

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS,  
STAFF AND PROCEDURES OF THE COUNCIL - *continued***

- (a) is removed from that office by the Minister; or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

**Deputies**

2. (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

(2) In the absence of a member, a member's deputy:

- (a) is, if available, to act in the place of the member; and
- (b) while so acting, has all the functions of the member and is to be taken to be a member.

(3) The deputy of a member who is the Chairperson does not have the member's functions as Chairperson.

(4) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

**Terms of office of members**

3. Subject to this Schedule, a member is to hold office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

4. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS,  
STAFF AND PROCEDURES OF THE COUNCIL - *continued***

**Vacancy in office of member**

5. (1) The office of a member becomes vacant if the member:
- (a) dies; or
  - (b) completes a term of office and is not re-appointed; or
  - (c) resigns the office by instrument in writing addressed to the Minister; or
  - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
  - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings; or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
  - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.



**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS,  
STAFF AND PROCEDURES OF THE COUNCIL - *continued***

- (2) The Minister may remove a member from office at any time.

**Disclosure of pecuniary interests**

6. (1) If:

- (a) a member of the Council has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Council; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure by a member of the Council at a meeting of the Council that the member:

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded by the Council in a book kept for the purpose and that book is to be open at all reasonable hours for inspection by any person.

(4) After a member of the Council has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Council otherwise determines:

- (a) be present during any deliberation of the Council with respect to the matter; or
- (b) take part in any decision of the Council with respect to the matter.

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS,  
STAFF AND PROCEDURES OF THE COUNCIL - *continued***

(5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Council for the purpose of making the determination; or
- (b) take part in the making by the Council of the determination.

(6) A contravention of this clause does not invalidate any decision of the Council.

(7) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises merely because the member is an entertainment industry representative, an entertainment industry employer or a performer.

**Filling of vacancy in office of member**

7. If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

**Effect of certain other Acts**

8. (1) The Public Sector Management Act 1988 does not apply to the appointment of a member and a member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.



**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS,  
STAFF AND PROCEDURES OF THE COUNCIL - *continued***

**General procedure**

9. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

**Quorum**

10. The quorum for a meeting of the Council is a majority of the members for the time being.

**Presiding member**

11. (1) The Chairperson of the Council or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.

(2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

12. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

**Transaction of business outside meetings or by telephone etc.**

13. (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is to be taken to be a decision of the Council.

(2) The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter being considered at the meeting can be heard by the other members.



**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS,  
STAFF AND PROCEDURES OF THE COUNCIL - *continued***

(3) For the purposes of:

(a) the approval of a resolution under subclause (1); or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each member of the Council have the same voting rights they have at an ordinary meeting of the Council.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the Council.

(5) Papers may be circulated among members of the Council for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**Staff of Council**

14. (1) Such staff as may be necessary to enable the Council to exercise its functions may be employed under Part 2 of the Public Sector Management Act 1988.

(2) The Council may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

**Committees**

15. (1) The Council may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Council.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.

**First meeting**

16. The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

**SCHEDULE 2 - CONDUCT AND PROCEDURE OF INQUIRIES  
BY THE COMPLAINTS COMMITTEE**

(Sec. 10 (5))

**Procedure generally**

1. (1) When conducting an inquiry under Part 3, the Complaints Committee is not bound to observe rules of law governing the admission of evidence but may inform itself of any matter in such manner as it sees fit.

(2) An inquiry is to be conducted with as little formality and legal technicality as the circumstances of the case permit.

(3) An inquiry is to be conducted in the absence of the public.

**Representation**

2. A party to an inquiry is not entitled to be represented by a barrister or solicitor except with the consent of the Complaints Committee.

**Attendance etc. at inquiries**

3. (1) The Complaints Committee:

(a) may require a person:

(i) to attend an inquiry for the purpose of giving evidence;  
or

(ii) to produce to the Complaints Committee any document that is relevant to the inquiry,

at a time, date and place specified in a notice served on the person; and

(b) may require a person who attends an inquiry to be sworn for the purpose of giving evidence on oath; and

(c) may administer an oath to a person who attends an inquiry for the purpose of giving evidence.

(2) The Complaints Committee may retain possession of a document produced to it under this clause for such period as it considers necessary for the purpose of completing the inquiry.

**SCHEDULE 2 - CONDUCT AND PROCEDURE OF INQUIRIES  
BY THE COMPLAINTS COMMITTEE - *continued***

**Requirement to answer questions**

4. (1) The Complaints Committee may require a person who attends an inquiry to answer any question that is reasonably related to the inquiry.

(2) A person may refuse to answer a question on the ground that the answer might tend to incriminate the person.

**Refusal to attend or to answer questions etc.**

5. (1) A person:

- (a) must not fail to comply with a requirement to attend an inquiry, or to produce a document or to answer a question, to the extent to which the person is lawfully able to comply with the requirement; and
- (b) must not, in purported compliance with a requirement to answer a question, make a statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 5 penalty units.

(2) Subclause (1) (b) does not apply to statements made on oath.

**Adjournments**

6. The Complaints Committee may from time to time adjourn an inquiry to such time, date and place, and for such reasons, as it considers fit.

**Misconduct**

7. A person must not misconduct himself or herself at an inquiry.

Maximum penalty: 5 penalty units.



**SCHEDULE 3 - SAVINGS, TRANSITIONAL  
AND OTHER PROVISIONS**

(Sec. 65)

**Part 1 - Preliminary**

**Savings and transitional provisions**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act.
- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect on 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; 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.

**Part 2 - Provisions consequent on enactment of this Act**

**Definition**

2. In this Part:

"current licence" means:

- (a) a theatrical agent's licence issued under Division 2 of Part 14 of the Industrial Arbitration Act 1940; or
- (b) a licence issued under Division 2A of Part 14 of that Act in respect of a model agency,

in force, or in the process of being renewed, immediately before the commencement of the amendments to the Industrial Arbitration Act 1940 contained in Schedule 4.

**SCHEDULE 3 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued***

**Saving of current licences**

**3. A current licence:**

- (a) is to be treated as a licence issued under this Act; and
- (b) authorises the holder of the licence to carry on the business of, or otherwise act as, any one or all of the following:
  - (i) an entertainment industry agent;
  - (ii) a manager;
  - (iii) a venue consultant; and
- (c) is to continue in force, unless it is sooner cancelled or surrendered, for the remainder of the term for which it was issued or until it is next due for continuation.

**SCHEDULE 4 - AMENDMENT OF ACTS**

(Sec. 66)

**Industrial Arbitration Act 1940 No. 2:**

- (1) Part 14, Division 2 (sections 136-145):  
Omit the Division.

- (2) Before section 146, insert:

**Application of Part**

146A. The provisions of this Part do not apply:

- (a) to any model or model agency; or
- (b) to a licensee under the Entertainment Industry Act 1989.

- (3) Omit sections 148 (a), 149, 152, 153 (1) (e) and (f).

**Public Finance and Audit Act 1983 No. 152:**

**Schedule 2 (Statutory Bodies):**

Insert, in alphabetical order:

Entertainment Industry Interim Council.

**SCHEDULE 4 - AMENDMENT OF ACTS - *continued***

**Search Warrants Act 1985 No. 37:**

Section 10, definition of "search warrant":

Insert, in alphabetical order of Acts:

section 58 of the Entertainment Industry Act 1989;

---