

# Artist contracts in the entertainment industry

Paul Carran discusses the important changes in New Zealand in the wake of the  
**Employment Contracts Act**

**T**he entertainment industry is based upon the employment of creative talent, technical and other services. It is the provision of these services by individuals which forms the core activities of the industry. Since 15 May 1991, employment contracts relating to these services have been subject to the *Employment Contracts Act 1991* which has significantly altered the way in which employment contracts will be negotiated and enforced.

The New Zealand Performance and Entertainment Workers Union, which covers performing artists who appear before the public in connection with any production, will now have to compete with other employee organisations which may seek to represent the interests of employees in the entertainment industry. The Act abolishes the union's monopoly bargaining rights and the previous system of registered industrial awards and agreements.

## Recorded Performance Award

**P**rior to the Act, most performing artists were subject to the terms of the New Zealand Recorded Performance Award. That award applied to all performing artists except for persons employed in video, television and film productions whose salary exceeded \$2,310 per week and artists performing in other mediums whose salary exceeded \$1,155 per week. The Recorded Performances Award was registered on 13 May 1991.

By virtue of the Act, the award is now deemed to be a 'collective employment contract' between the employers and employees who were bound by the award on 15 May 1991. It is unlawful for employees to strike in support of any proposed variation during the term of this existing collective employment contract.

Employers in the entertainment industry can negotiate whatever terms and conditions they like with new employees who were not on 15 May 1991 subject to this Award. The only limitation is that employers must ensure that they comply with the statutory minimum terms and conditions in legislation

dealing with such matters as annual holidays and other leave.

In place of the previous system of registered industrial awards and agreements, there is now a new system of individual and collective employment contracts:

- Individual employment contracts are contracts that are binding between one employer and one employee. Such contracts can be negotiated where there is no collective employment contract already covering the particular employee or where there is such an applicable collective employment contract but the terms of the individual contract are not consistent with it.
- Collective employment contracts (such as the Award) are ones which are binding on one or more employers and two or more employees.

Employers and employees now have the right to choose:

- whether they wish to negotiate themselves or be represented during negotiations by a bargaining agent; and
- whether they want an individual or a collective employment contract to govern their relationship.

Bargaining agents will in many cases be the existing union. The employer, subject to very limited exceptions, must recognise the authority of the bargaining agent who has been selected to negotiate on behalf of the employees. There is, however, no obligation upon the employer to negotiate with a selected bargaining agent. Employers can decide whether they are prepared to negotiate with the union or to insist upon negotiating with the employees directly or some other bargaining agent appointed on the employees' behalf.

## Grievance procedure

**A**n important change effected by the Act is the extension of the personal grievance procedure to *all* employees regardless of whether the employee is a member of a union. The procedure can be invoked when employees claim they have been unjustifiably dismissed; that there has been some unjustifiable action by the employers which has affected their

employment to their disadvantage; they have been discriminated against or sexually harassed; or have been subject to duress in relation to membership or non-membership of an employee organisation. Previously only employees who had access to union membership would gain the benefit of the personal grievance procedure.

The parties to an employment contract can agree upon any procedure for resolving a personal grievance that is not inconsistent with the requirements of the Act. Failing agreement, the standard grievance procedure in the Act will apply.

Employers in the entertainment industry may want to consider adopting their own personal grievance procedure, possibly involving a private arbitrator and thereby avoiding the involvement of the Employment Tribunal and Employment Court. In this way, it may be possible to limit the degree of publicity that would otherwise attach to the determination of a personal grievance. Furthermore, by using a private arbitrator, and by carefully drafting the applicable personal grievance procedure, there is scope for limiting the remedies that would otherwise be available to a successful grievant, such as limiting a successful grievant to monetary compensation rather than a right to reinstatement.

The Act confers exclusive jurisdiction on the Employment Tribunal and Employment Court in relation to matters arising out of employment contracts. This raises complex issues in relation to international cast contracts for services to be performed in New Zealand which may, say, have nominated United States law as the governing law of the contract and USA jurisdiction clauses. There is an express provision in the Act prohibiting contracting out of the provisions of the Act.

In negotiating new employment contracts in New Zealand, it is vital that the Act is not overlooked. Appropriate provisions must be inserted in such contracts if the benefits of the Act are to be fully exploited.

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