

Entertainment and Modelling Industry Agents Bill

No.

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SCHEDULE 1

Entertainment and Modelling Industry Licensing Council

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LEGISLATIVE ASSEMBLY

Read 1° 18 September 1991

(Brought in by Mr Pope and Mr Harrowfield)

A BILL

to establish an Entertainment and Modelling Industry Licensing Council, to provide for the licensing of agents, managers and venue consultants in the entertainment and modelling industries, to make consequential amendments to the **Employment Agents Act 1983** and for other purposes

Entertainment and Modelling Industry Agents Act 1991

The Parliament of Victoria enacts as follows:

PART 1—PURPOSES COMMENCEMENT AND DEFINITIONS

1. *Purposes*

The main purposes of this Act are—

- 5 (a) to establish an Entertainment and Modelling Industry Licensing Council; and
- (b) to license and regulate agents and managers and venue consultants in the entertainment and modelling industries.

Section headings appear in bold italics and are not part of the Act (see **Interpretation of Legislation Act 1984**).

2. Commencement

This Act comes into operation on a day to be proclaimed.

3. Definitions

In this Act—

“**commission**” includes fees, charges, reward or other remuneration whether monetary or otherwise; 5

“**Council**” means the Entertainment and Modelling Industry Licensing Council established under this Act;

“**employment**” includes an engagement or other arrangement to employ a person whether or not there is a written contract of employment; 10

“**engagement**” includes rehearsal;

“**industry contract**” means a contract or agreement relating to the entertainment industry or modelling industry the parties to which are managers, performer’s agents or performers; 15

“**licence**” means a performer’s agent’s licence, a manager’s licence, or a venue consultant’s licence in force under this Act; 20

“**manager**” means a person who, for financial benefit, represents a performer and who agrees or purports to agree—

(a) to carry out or arrange to be carried out on behalf of a performer any or all of the activities of a performer’s agent in relation to the performer; and 25

(b) to carry out or arrange to be carried out on behalf of the performer additional activities or duties relating to the management of the performer’s career which are specified in the agreement; 30

“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 for the transmission of sound or images or both; or

(c) any work carried out by a model in demonstrating clothing or posing for photography—

and one of the purposes of which is the financial benefit of a performance employer or a performer or both;

“performance employer” means a person who employs a performer for the purpose of a performance;

“performer” means—

(a) any actor, singer, dancer, acrobat, model or musician; or

(b) any other performer of any kind employed to give a performance;

“performer’s agent” means a person who for financial benefit, carries out any one or more of the following activities on behalf of a performer—

(a) seeking or finding performance 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 a performer with a performance employer—

but does not include a person who carries out these activities solely as an employee of a performer’s agent;

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“relevant financial interest” in relation to a corporation means a financial interest in the corporation, other than—

- (a) in the case of a public company, an interest as a shareholder which does not constitute a controlling interest; or 5
- (b) a prescribed interest;

“venue consultant” means a person who on behalf of a performance employer, for a fee or remuneration paid by that employer, 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 a performance employer. 10

PART 2—ENTERTAINMENT AND MODELLING INDUSTRY LICENSING COUNCIL 15

4. *Establishment of Council*

There is established a Council to be known as the Entertainment and Modelling Industry Licensing Council.

5. *Constitution* 20

The Council shall consist of not more than 13 members appointed by the Governor in Council of whom—

- (a) one shall be nominated by the Minister as chairperson;
- (b) 2 shall be nominated by the Theatrical Agents Association of Victoria; 25
- (c) 2 shall be nominated by the Victorian Professional Entertainment Agents Association (Incorporated);
- (d) 2 shall be nominated by the Minister as representing the interests of agents acting for models and mannequins; 30
- (e) 2 shall be nominated by Actors Equity of Australia, Victoria Division;
- (f) 2 shall be nominated by the Musician’s Union of Australia, Melbourne Branch; 35

- (g) 2 shall be nominated by the Minister as representing the interests of models and mannequins.

6. *Schedule 1 to apply*

5 Schedule 1 has effect with respect to the members of the Council and the procedure of the Council.

7. *Functions of Council*

The Council has the following functions—

- 10 (a) to issue, renew, vary, suspend or cancel licences;
(b) to administer the licensing system;
(c) to keep a register of licences;
(d) to prepare codes of practice;
(e) to recommend maximum commission rates to be charged by agents;
15 (f) to recommend the initiation of proceedings for a breach of this Act or the regulations;
(g) to hear and determine any matters referred to it under this Act;
(h) to carry out any other functions conferred on it by or under this Act.

20 **PART 3—LICENCES**

Division 1—Issue of licences

8. *Licences*

- (1) A person must not carry on (or advertise that the person carries on) the business of, or otherwise act as—
25 (a) a performer’s agent, unless the person is the holder of a performer’s agent’s licence; or
(b) a manager, unless the person is the holder of a manager’s licence; or
30 (c) a venue consultant, unless the person is the holder of a venue consultant’s licence.

Penalty: 60 penalty units.

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

Penalty: 60 penalty units.

- (3) Nothing in this section prevents a person from holding more than one licence.

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9. *Application for licence*

- (1) An application for a licence must 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

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- (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

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- (e) state whether or not the applicant already holds a licence; and

- (f) in the case of an application by a corporation, specify the names of the directors of the corporation and any person having a relevant financial interest in the corporation; and

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- (g) contain any other particulars that are prescribed or that are required by the approved form; and

- (h) be accompanied by the application fee determined by the Governor in Council for the licence concerned.

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10. *Qualifications for licence*

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

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- (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

5 (d) the person is able to conduct a business in the entertainment industry or modelling industry (as the case requires) in a proper and businesslike manner; and

10 (e) the person has a knowledge of, or experience in, the entertainment industry or the modelling industry (as the case requires) or in a related area.

11. *Investigation of application*

15 The Council may cause any inquiries to be made that it considers necessary to ensure that the applicant is qualified to hold a licence.

12. *Determination of application for licence*

(1) The Council must determine an application for a licence—

20 (a) by issuing a licence to the applicant; or

(b) by refusing the application.

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

13. *Notice of refusal*

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

30 (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 to have determined to refuse to issue the licence concerned.

14. *Conditions of licence*

- (1) A licence may be issued subject to the conditions specified in the licence. 5
- (2) The Council may, by notice in writing served on the holder of a licence, at any time amend the licence by varying any conditions specified in the licence or by adding to or omitting from the licence any conditions.
- (3) A variation, addition or omission takes effect as provided by section 52. 10
- (4) On a 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. 15

15. *Licence fees*

- (1) The Governor in Council may, subject to the regulations (if any), determine the fees payable for licences or renewals of licences.
- (2) Different fees may be determined for different types of licences. 20

16. *Form of licence*

- (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 25
 - (c) specify any conditions to which the licence is subject; and
 - (d) specify the date on which the licence is issued; and 30
 - (e) specify the type of licence issued;
 - (f) 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.

17. *Duration of licence*

5 Except during any period while is it suspended, a licence continues in force for a period of 12 months from the date on which it is issued or renewed unless it is sooner cancelled or surrendered.

18. *Renewal of licence*

10 (1) The holder of a licence may, on or before each anniversary of the date on which the licence was issued, apply to the Council for the renewal of the licence.

(2) An application for the renewal of a licence must—

(a) be in a form approved by the Council; and
15 (b) be accompanied by the fee determined by the Governor in Council for the renewal of the licence; and

(c) contain any particulars that are prescribed by the regulations or required by the approved form.

20 (3) If an application for the renewal of a licence is lodged before the licence expires, the licence continues in operation until the application is granted or refused.

(4) The Council must determine the application for renewal of a licence and—

(a) renew the licence; or
25 (b) refuse the application if the Council is satisfied that the applicant is no longer qualified to hold the licence.

(5) Sections 14, 16 and 17 apply to a renewal of a licence.

Division 2—Cancellation or suspension of licences**19. *Inquiry into licence holder***

- (1) The Council on its own initiative or on the complaint of any person may inquire into a licence holder's fitness to hold a licence. 5
- (2) Schedule 2 has effect with respect to an inquiry under this Division.

20. *Cancellation or suspension of licence*

The Council may cancel or suspend a licence if after an inquiry under this Division the Council is satisfied that— 10

- (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 renewal of the licence that was false or misleading in a material particular; or 15
- (c) the licensee is not a fit and proper person to continue to be the holder of a licence;
- (d) a director of, or a person having a relevant financial interest 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 20
- (e) the business of the licensee has not been or is not being conducted in a proper and businesslike manner; or 25
- (f) the conditions (if any) imposed on the licence have not been complied with; or
- (g) the licensee has been convicted of an offence against this Act or the regulations. 30

21. *Notice of cancellation or suspension*

- (1) 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.

- (2) The notice is to state the particulars of the grounds on which the Council has cancelled or suspended the licence.

22. *When does the suspension or cancellation take effect?*

- 5 (1) The cancellation or suspension of a licence takes effect as provided by section 52.
- (2) 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.

Penalty: (subsection (2)): 5 penalty units.

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Division 3—General

23. *Joint licence*

- (1) A licence may be issued jointly to 2 or more persons who carry on business in partnership.
- 15 (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.

24. *Duplicate licence*

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

25. *Licensee to exhibit licence*

25 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.

Penalty: 5 penalty units.

26. *Register of licences*

- 30 (1) The Council must keep a register of licences and must record in the register in respect of each licence—

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- (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 in respect of the licence; and 5
 - (d) particulars of any renewal, cancellation or suspension of the licence; and
 - (e) any other matters it thinks fit.
- (2) The register may be inspected during ordinary office hours, and copies of all or any part of any entry in the register may be taken— 10
- (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 Governor in Council, by any other person. 15

27. Surrender of licence

A holder of a licence may surrender it by delivering it to the Council with a notification in writing that the licence is surrendered. 20

PART 4—CONDUCT OF LICENSED BUSINESS

Division 1—Duties of managers and performer’s agents

28. Managers and agents

A manager or performer’s agent when acting for a performer must conduct his or her business in the best interests of the performer. 25

29. Management agreement to be in writing

A person must not enter into a contract or agreement to act as the manager of a performer unless the contract or agreement— 30

- (a) is in writing; and

- (b) sets out the rate of commission payable by the performer under the contract or agreement.

Penalty: 60 penalty units.

Division 2—Codes of practice

5 30. *Codes of practice*

The Council may prepare codes of practice for the purpose of providing practical guidance on compliance with this Act to licence holders and other persons subject to this Act.

10 31. *Recommendation*

- (1) Once a code of practice is prepared, the Council may recommend the code to the Minister for approval.
- (2) A recommendation can only be made if an absolute majority of the members of the Council vote in favour of the recommendation.

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32. *Consideration by Minister*

The Minister must consider a code of practice recommended by the Council and may—

- (a) approve the code; or
- (b) refuse to approve the code; or
- (c) return the code to the Council for further consideration with or without alteration.

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33. *Notice and commencement of approved code*

- (1) The Minister must cause notice of an approved code of practice to be published in the Government Gazette.
- (2) An approved code of practice comes into operation on the day notice of it is published in the Government Gazette or on a later day specified in the notice.

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34. Use of codes of practice in proceedings

If in any proceedings under this Act it is alleged that a person has contravened or failed to comply with a provision of this Act or the regulations in relation to which an approved code of practice was in effect at the time of the alleged contravention or failure— 5

(a) the approved code of practice shall be admissible in evidence in those proceedings; and

(b) if the court is satisfied in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention or failure that— 10

(i) any provision of the approved code of practice is relevant to that matter; and

(ii) the person failed at any material time to observe that provision of the approved code of practice— 15

that matter must be taken as proved unless the court is satisfied that in respect of that matter the person complied with the provision of this Act or the regulations otherwise than by observing the provision of the approved code of practice. 20

Division 3—Commission rates**35. Charging of commission by performer's agent**

A performer's agent must not demand or receive any commission for or in respect of the employment of a performer if that commission together with any other commission received by that agent and any other performer's agent in respect of that employment exceeds the maximum prescribed rate of commission applying under this Act in respect of that class of agent and that class of employment. 25 30

Penalty: 60 penalty units.

36. *Venue consultants not to demand fees from performers*

- 5 (1) A venue consultant must not demand or receive any fee or other remuneration for or in respect of the employment of a performer, from any person other than a performance employer.
- (2) If a performer's agent also acts as a venue consultant in respect of a particular performance, the agent is entitled to demand or receive a fee or remuneration only as a venue consultant for the performance.
- 10 (3) A performance employer must not include in a venue consultant's fee or other remuneration any payment by the employer of money owing to a performer.
- (4) A person who contravenes this section is guilty of an offence.
- 15 Penalty: 60 penalty units.

37. *Procedure for determining commission rates*

- (1) The Council may from time to time consider—
- 20 (a) the commission rates to be prescribed for the purposes of section 35; and
- (b) the components of a performer's remuneration to which the commission rate will apply.
- (2) Different commission rates may be determined with respect to—
- 25 (a) different classes of agents; and
- (b) different classes of employment.
- (3) Before determining a commission rate the Council must—
- 30 (a) give public notice of the proposed commission rate; and
- (b) call for written submissions from interested people on that rate.
- (4) In determining a commission rate, the Council must take into account—
- (a) any written submissions received; and

(b) any applicable commission rates in other States.

38. Recommendation

- (1) Once a commission rate is determined the Council may recommend the rate to the Minister.
- (2) A recommendation can only be made if an absolute majority of the members of the Council vote in favour of the recommendation. 5
- (3) A recommendation must be accompanied by a statement setting out the Council's decision on each submission made under section 37. 10

39. Decision of Minister

The Minister must within 30 days after receiving a recommendation—

- (a) accept the recommendation; or
- (b) reject the recommendation and direct the Council to reconsider it. 15

40. Order in Council

- (1) If the Minister accepts a recommendation, he or she may recommend that commission rate to the Governor in Council. 20
- (2) The Governor in Council may by Order prescribe the recommended commission rate as a rate of commission applying under this Act.

Division 4—Unfair, harsh or unconscionable contracts

41. Complaint 25

- (1) Any person may complain to the Council about a provision of an industry contract that is unfair, harsh or unconscionable.
- (2) A complaint must be in writing and give particulars of the matter which is the subject of the complaint. 30

- (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) inquire into and hear the complaint.
- (4) Schedule 2 has effect with respect to the conduct and procedure of an inquiry by the Council.

42. *Decision of Council*

- 10 (1) If the Council, after an inquiry under section 41, finds that the provision of the contract which is the subject of the inquiry is unfair, harsh or unconscionable, it may by an order declare the provision to be void.
- 15 (2) An order under this section has effect according to its tenor.
- (3) A provision of a contract which has been fully executed may not be declared void under this section.

Division 5—Trust accounts and bonds

43. *Money held on behalf of performer*

- 20 If a performer’s agent or a manager receives money from any person on behalf of a performer, the agent or manager must:
- (a) hold the money on trust for the performer; and
 - (b) ensure that the requirements of this Division and the regulations are complied with in relation to the money.
- 25

Penalty: 10 penalty units.

44. *Trust account to be established*

- 30 (1) Money received on behalf of a performer by a performer’s agent or a manager which is not paid to the performer or model immediately (or within the prescribed period (if any)) must—

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- (a) be paid into a bank to a trust account in the name of the agent or manager and be held in accordance with the regulations (if any); and
 - (b) be paid out as directed by the performer within the required time after the performer becomes entitled to receive the money. 5
- (2) A trust account under this section must be kept exclusively for the purpose of money received on behalf of performers.
- (3) In this section “**required time**” means the time (not exceeding 14 days) determined by the Council either generally or in a particular case. 10

45. Accounts

- (1) A performer’s agent or a manager must keep accounting records in respect of money received on behalf of a performer. 15
- (2) The 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 agent or manager; and 20
 - (c) be otherwise kept in accordance with the regulations.
- (3) The regulations may make provision for the administration of trust accounts under this section and, in particular, the keeping of documents and records by performer’s agents and managers. 25

46. Statements by performer’s agents or managers

- (1) A performer’s agent or a manager must give the statements specified in sub-section (2), to the following persons— 30
- (a) the performer;
 - (b) any other performer’s agent, manager or venue consultant who has represented or carried out activities on behalf of the performer for or in respect 35

of the employment for which the performer has been paid.

(2) The statements to be given are—

5 (a) a statement of the amount received by the agent or manager on behalf of the performer; and

(b) a statement of the amount paid to the performer by the agent and the amount retained by the agent for the employment.

10 (3) A statement under sub-section (2) (a) must be given as soon as practicable after the agent or manager receives the amount from the performance employer.

(4) A statement under sub-section (2) (b) must be given at the time, or as soon as practicable after, the amount is paid to the performer.

15 **47. *Audit***

(1) The Council may direct that a trust account kept under section 44 be audited in the manner determined by the Council.

20 (2) The performer's agent or manager concerned must ensure that the trust account is audited and the audit report forwarded to the Council within the time specified in the direction which must not be less than 30 days after the agent or manager receives notice in writing of the direction.

25 **48. *Bond to be lodged with Council***

30 (1) If a performer's agent or a manager is required to establish a trust account under section 44, the agent or manager if directed by the Council to do so, must lodge with the Council a bond to cover the payment of money owed (by way of fees or other remuneration) to performers.

(2) A bond must be in the form of a bank guarantee or other security approved by the Council.

(3) The amount secured by a bond under this section is to

be an amount determined, subject to the regulations (if any), by the Council.

- (4) If a performer’s 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 the bond is lodged. 5

49. Application of bond

- (1) If, in the opinion of the Council, a performer suffers loss because of any act or omission of the performer’s agent or manager, the Council may—
 - (a) on behalf of the performer, realise money secured by a bond lodged with the Council by the agent or manager under section 48 and apply it to assist the performer; and 10
 - (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. 15
- (2) If a performer’s agent or a manager fails to lodge a further bond within the time specified, the Council may suspend the licence held by the agent or manager until the further bond is lodged. 20

PART 5—REVIEW OF DECISIONS

50. Review of decisions

An application may be made to the Administrative Appeals Tribunal for the review of a decision of the Council— 25

- (a) to refuse to issue or renew a licence;
- (b) to cancel or suspend a licence;
- (c) to impose a condition on a licence; 30
- (d) to amend a licence;
- (e) under Division 5 of Part 4 in respect of money secured by a bond lodged with the Council.

51. *Time for application*

An application under section 50 must be made within 3 weeks after the decision of the Council is notified to the person concerned.

5 **52. *Effect of decision to cancel, suspend, amend or refuse to renew a licence***

A decision of the Council to cancel, suspend, amend or refuse to renew a licence takes effect—

- 10
- (a) at the end of the period for applying for a review (if no application is made); or
 - (b) if an application is made within that period, on the date the decision is confirmed or the application is withdrawn or on any earlier date the Administrative Appeals Tribunal determines.

15 **53. *Application for review relating to bond***

(1) A decision of the Council under section 49 has no effect until—

- 20
- (a) the end of the period for applying for a review, if no application is made; or
 - (b) if an application is made within that period, on the date the decision is confirmed or the application is withdrawn or on any earlier date the Administrative Appeals Tribunal determines.

25 (2) In determining an application under section 50(e), the Administrative Appeals Tribunal must take into account—

- 30
- (a) any arrangements made between the performer's agent and the performer or the manager and the performer after the decision of the Council; and
 - (b) any additional loss or costs incurred by the performer after the decision of the Council as a result of the application for review.

PART 6—GENERAL**54. Proceedings**

- (1) The Minister or an inspector or any other person authorised by the Minister may bring proceedings for an offence against this Act. 5
- (2) The Council may recommend to the Minister that proceedings be brought under this Act.
- (3) Proceedings may be brought under this Act whether or not the Council has recommended them.

55. Inspectors

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- (1) Every inspector appointed under section 87 of the **Industrial Relations Act 1979** is also an inspector under this Act and has under this Act all the powers of an inspector under the **Industrial Relations Act 1979**.
- (2) In addition to any powers under sub-section (1), an inspector may examine, seize or require copies to be made of any records required to be kept by any person under this Act. 15
- (3) An inspector must not bring proceedings for an offence against this Act without the authority in writing of the Minister given generally or in any particular case. 20
- (4) The Minister may issue to inspectors guidelines with respect to the prosecution of offences generally, but must not issue guidelines or give directions in relation to any particular prosecution. 25
- (5) Any guidelines issued by the Minister under sub-section (4) shall be published in the Government Gazette.

56. Regulations

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by the Act to be prescribed or necessary to be prescribed to give effect to this Act.

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**PART 7—AMENDMENT OF EMPLOYMENT AGENTS ACT
1983**

57. Definitions

5 In section 3 (1) of the **Employment Agents Act 1983** the definitions of “Theatrical agent” “Theatrical employer” “Theatrical enterprise” and “Theatrical performer” are repealed.

58. Regulation of theatrical agents

10 Sections 23, 26 (a) and 26 (4) (b) of the **Employment Agents Act 1983** are repealed.

59. Statute law revision

(1) In section 7 (3) (a) of the **Employment Agents Act 1983**, for “affect” substitute “effect”.

15 (2) In section 11 (3) of the **Employment Agents Act 1983**, for “he” substitute “it”.

SCHEDULE 1

Entertainment and Modelling Industry Licensing Council

PART 1—MEMBERSHIP

1. Term of appointment

A member of the Council holds office for the term (which must not be more than 3 years) specified in the instrument of his or her appointment but is eligible for reappointment.

2. Remuneration and allowances

Each member of the Council is entitled to receive the remuneration and allowances (if any) from time to time fixed by the Governor in Council for that member.

3. Other terms and conditions

The instrument of appointment of a member of the Council may specify other terms and conditions of appointment for the member.

4. Resignation

A member of the Council may resign from it by notice in writing signed by the member and delivered to the Governor in Council.

5. Removal from office

The Governor in Council may at any time remove a member of the Council from office.

6. Deputy members

- (1) The Governor in Council may appoint a deputy member for any member of the Council.
- (2) A deputy member is to be appointed in the same manner and, unless a shorter period is provided for in the instrument of appointment, holds office for the same period as the member for whom he or she is deputy.
- (3) A deputy member is appointed on the terms and conditions set out in the instrument of appointment.
- (4) A deputy member may resign by notice in writing signed by the deputy and delivered to the Governor in Council.
- (5) The Governor in Council may at any time remove a deputy member from office.
- (6) A deputy member may act in the place of the member for whom he or she is deputy if—
 - (a) the member is absent from a meeting of the Council; or
 - (b) the office of the member becomes vacant.
- (7) A deputy member while acting as a member may exercise the powers and carry out the functions of that member.

7. Nomination procedure

If a nominator fails to nominate a person as a member or deputy member of the Council within 30 days after being asked to do so, the Minister may nominate any appropriate person to be a member or deputy member of the Council without that nomination.

PART 2—PROCEDURE

8. Procedure of meetings

- (1) The chairperson must preside at any meeting of the Council at which he or she is present.
- (2) If the chairperson is not present at a meeting, the members present must elect a member to preside at the meeting.
- (3) 7 members of the Council constitute a quorum.
- (4) Subject to the presence of a quorum, the Council may act despite any vacancy in its membership.
- (5) Subject to sections 31 and 38 a question arising at a meeting shall be

determined by a majority of votes of members present and voting on the question.

- (6) In the event of an equality of votes on any question at a meeting the person presiding has a second or casting vote.
- (7) Subject to this Act, the Council may regulate its own proceedings.

9. *Effect of defect or vacancy*

An act or decision of the Council is not invalid by reason only that—

- (a) there is a vacancy in its membership; or
- (b) there is a defect or irregularity in or in connection with the appointment of any of its members; or
- (c) in the case of a deputy member acting as a member, the occasion for acting had not arisen or had ceased.

SCHEDULE 2

Procedure of Council on Inquiry

1. *Procedure generally*

In conducting an inquiry under this Act, the Council—

- (a) must proceed with as little formality and technicality as the proper investigation of the matter allows; and
- (b) is not bound by rules of evidence but may inform itself in any way it thinks fit; and
- (c) may otherwise regulate its own proceedings.

2. *Power to compel attendance and production of document*

Sections 14, 15, 16 and 21A of the **Evidence Act 1958** apply to the Council as if it were a Board appointed by the Governor in Council.

3. *Assistance of committee or other person*

- (1) The Council may authorise any person or any committee of members of the Council to investigate any matter being inquired into by the Council and report to the Council on that matter.
- (2) A report under sub-section (1) may form the basis of an inquiry by the Council.

