



## SUBMISSION of LIVE PERFORMANCE AUSTRALIA

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### LEGISLATION: INDEPENDENT CONTRACTORS BILL 2006

**ACTION PROPOSED:** To exempt entertainment industry professionals from the provisions of the Independent Contractors Bill 2006 (the "Proposed Bill") or, in the alternative, that

- a. Part 3, Section 11 (1)(b) be amended to remove the reference to work performed by a director or family member of the body corporate by placing a full stop after the word "party" and eliminating the balance of the section beginning with the word "unless". Section 11(2) should then be eliminated as redundant; or
- b. Part 3, Section 11 (1)(b)(i) and (ii) be amended to state "(i) a director of the body corporate who is not a entertainment professional; or (ii) a member of the family of a director of the body corporate who is not an entertainment professional"

and that Part 1, Section 4 be amended to include the following definition of "entertainment industry professional": someone who is engaged as a performer (including, but not limited to actor, musician, singer, dancer, comedian, clown mime, stunt person, body-double, or juggler); creative (including, but not limited to choreographer, director, set designer, costumer, composer, lighting designer, or conductor) or practical (including, but not limited to stage managers, technical directors, camera operators, sound engineers, or publicists) in the entertainment industry.

**SHORT REASON:** The Proposed Bill would negatively impact the legitimate financial and operational affairs of entertainment industry professionals by preventing them from being hired through their loan-out companies: under the Proposed Bill, contracts between their loan-out company and a producer are rendered "sham arrangements". A corresponding effect could be rendering Australia less attractive both to visiting world-class performers and creatives and to the sizable community of ex-patriot Australian performers and creatives who might otherwise perform in Australia, thus decreasing the level of performances available to the citizens of Australia.

### DISCUSSION:

1. Live Performance Australia (LPA), also known as the Australia Entertainment Industry Association (AEIA) is a registered organisation of employers under the Workplace relations Act 1996 and acts as the peak body of the live entertainment and performing arts industry. Among its members are producers of commercial and subsidized theatrical productions, community theatre organizations, rock-and-roll promoters, festivals and major Australian arts institutions and venues. Our members engage, inter alia, performing artists, creatives, and practicals (collectively "Entertainment Industry Professionals" or "EIP"s")
2. EIPs rarely have steady regular long-term employment. Rather, when things go well, they may work for several principals and/or on different projects or productions in a given year. When things go less well, they may spend most of the year without work in the entertainment industry. Compensation for work varies significantly and may depend on such factors as: the type of project, the Entertainer's then current celebrity status, the manner of payment, the prestige of the project and/or the effectiveness of the Entertainer's agent. EIPs may work in several countries in one year and solely in Australia the next. Many EIPs engage agents, publicists, business managers, stylists, and/or personal assistants.
3. To deal with the financial and operational complexities that arise from the vagaries of working in the entertainment industry, EIPs often form corporations, also known as "loan-out companies" (LOCs). LOCs enter into personal services agreements ("PSCs") with producers to provide the EIS's services for a fee. For example, when Cate Blanchett appeared in Australia last year, the producer of Hedda Gabbler entered into a PSC with her LOC. The LOC provided Ms Blanchett's

services to the producer and received the corresponding payment. Ms Blanchett's payment came through the LOC. In virtually all cases, the Entertainer or a family member is a director of his/her LOC. Persons who work for the Entertainer, such as personal assistants, are usually hired and paid by the LOC. Moreover, LOCs are not "shams" but legitimate entities that allow an EIP to manage the business of being an EIP: LOCs not only pay the EIP's salary, they pay for business expenses such as workers compensation, superannuation, publicity, third-party insurance, agents fees, employees, lawyers, etc.

4. Producers do not hire EIPs based on whether or not they work through LOCs. LOCs are merely devices employed by EIPs for managing their business and finances. Whether the EIP is hired through a PSC or as an employee has no bearing on the amount he/she earns or on the importance of his/her role in the project: the star may be an employee, while a supporting player is on a PSC through his/her LOC..
5. Many EIPs hired through LOCs could be considered employees under the test endorsed by the proposed legislation; thus PSCs would be deemed "sham arrangements", subjecting the parties to civil remedies of up to 300 penalty units. Part 3, Section 11 (1)(b) is intended to prevent the exploitation of persons forced to become corporations by employers: that is not present here.
6. The inability to be hired through an LOC and the resultant financial and operational effect might render working in Australia less attractive to Australian EIPs who live abroad but might wish to perform here (as Cate Blanchette did last year) and/or to world-class EIPs who might strike Australia from their tours. Accordingly, the legislation might have the unintended effect of denying Australians the first-class entertainment that they deserve and to which they have become accustomed.
7. We hereby respectfully request that the proposed legislation be amended to exempt performing artists and creatives in the entertainment industry from its provisions.
8. In the alternative, we respectfully request that
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Respectfully submitted,



Brendan Hughes Schwab  
Live Performance Australia  
20 July 2006