



New South Wales

# Entertainment Industry Amendment Regulation 2011

under the

Entertainment Industry Act 1989

The Administrator, with the advice of the Executive Council, has made the following Regulation under the *Entertainment Industry Act 1989*.

PAUL LYNCH, MP  
Minister for Industrial Relations

## Explanatory note

The object of this Regulation is to amend the *Entertainment Industry Regulation 2004* to make provision with respect to the following matters:

- (a) the calculation of the fees and other remuneration of entertainment industry representatives,
- (b) the particulars to be included in the financial statements that must be provided by entertainment industry agents and managers in relation to money they have received on behalf of performers,
- (c) the keeping of certain records, including accounting records, by entertainment industry representatives and employers,
- (d) the provision of copies of those kinds of records to performers and entertainment industry representatives.

This Regulation is made under the *Entertainment Industry Act 1989*, including sections 38 (8), 39 (5) and (6) and 64 (the general regulation-making power).

## **2011 No 91**

Clause 1 Entertainment Industry Amendment Regulation 2011

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# **Entertainment Industry Amendment Regulation 2011**

under the

Entertainment Industry Act 1989

### **1 Name of Regulation**

This Regulation is the *Entertainment Industry Amendment Regulation 2011*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

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## Schedule 1      Amendment of Entertainment Industry Regulation 2004

### [1]    Clause 4 Fees of entertainment industry representatives

Omit clause 4 (1). Insert instead:

- (1) For the purposes of section 38 (1) of the Act, the following percentages are prescribed:
  - (a) in the case of an engagement involving live theatre or a live musical or variety performance (being an engagement that does not involve film, television or electronic media)—10 per cent for any period up to 5 weeks and then 5 per cent for any period after 5 weeks,
  - (b) in all other cases (including an engagement involving film, television or electronic media)—10 per cent or, if the entertainment industry agent and performer concerned have entered into a complying agreement, 15 per cent.
- (1A) An agreement is a complying agreement if it is in writing between an entertainment industry agent and performer and expressly provides for the agent's fee or other remuneration in respect of the performer's engagement to exceed the prescribed maximum percentage otherwise applicable.
- (1B) For the purposes of section 38 (4) of the Act, the following percentages are prescribed:
  - (a) in the case of an engagement involving live theatre or a live musical or variety performance (being an engagement that does not involve film, television or electronic media)—10 per cent for any period up to 5 weeks and then 5 per cent for any period after 5 weeks,
  - (b) in all other cases (including an engagement involving film, television or electronic media)—10 per cent.

**Note.** The percentages prescribed by subclauses (1) and (1B) are maximum percentages only.

### [2]    Clause 4 (2) (d)

Omit the paragraph. Insert instead:

- (d) any overtime or penalty payments that are paid on an irregular basis, other than payments resulting from negotiations undertaken by the agent or manager on the performer's behalf with the relevant entertainment industry employer or venue consultant,

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### [3] Clause 4 (3)

Insert at the end of clause 4:

- (3) An entertainment industry agent or manager must not demand or receive a fee or other form of remuneration from a performer for:
  - (a) the performer joining or being auditioned to join any agency of the agent or manager, or
  - (b) the retention or on-going representation of the performer by the agent or manager.

Maximum penalty: 10 penalty units.

### [4] Clause 5 Financial statements for money received for performers

Insert at the end of the clause:

- (4) The following particulars are to be included in any financial statement provided by an entertainment industry agent or manager under this clause to a performer:
  - (a) the date and other details of the performance to which the statement relates,
  - (b) the licence number of the agent or manager,
  - (c) any business name under which the agent or manager carries on business as an agent or manager,
  - (d) if the agent or manager is a corporation under the *Corporations Act 2001* of the Commonwealth, the corporation's ACN within the meaning of that Act,
  - (e) if the agent or manager has an ABN for his or her business as an agent or manager, the ABN,
  - (f) in the case of a statement of the amount of money paid to the performer for an engagement:
    - (i) the method of payment, and
    - (ii) any deduction from the money received by the agent or manager that has been made for the agent or manager's fee or other remuneration, and
    - (iii) any deductions from the money received by the agent or manager that have been made for expenses incurred by the performer in connection with the performance (such as travel expenses and equipment hire) and paid for by the agent or manager.

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- (5) In this clause, *ABN* means an Australian Business Number registered under the *A New Tax System (Australian Business Number) Act 1999* of the Commonwealth.

**[5] Clauses 5A and 5B**

Insert after clause 5:

**5A Records to be kept by entertainment industry agents and managers**

- (1) An entertainment industry agent or manager must keep the following records at the agent's or manager's principal place of business for at least 5 years after the record is made:
- (a) each accounting record the agent or manager is required to keep under section 39 of the Act in respect of money received on behalf of a performer,
  - (b) a copy of each financial statement provided by the agent or manager under clause 5, and
  - (c) a copy of each written agreement the agent or manager has entered into with a performer or with another person on behalf of the performer.
- (2) An entertainment industry agent or manager who holds any record referred to in subclause (1) (b) or (c) in relation to a performer must, within 3 business days of receiving a request by or on behalf of the performer for a copy of the record:
- (a) make the copy available for collection at the agent's or manager's principal place of business if requested to do so, or
  - (b) send the copy (whether by post or otherwise) to the performer in any other case.
- (3) A person who contravenes this clause is guilty of an offence.  
Maximum penalty: 10 penalty units.

**Note.** There is a maximum penalty of 50 penalty units for failing to keep the accounting records referred to in subclause (1) (a), in accordance with section 39 of the Act and that subclause.

**5B Records to be kept by entertainment industry employers and venue consultants**

- (1) An entertainment industry employer or venue consultant must keep accounting records in respect of money that the employer or consultant pays to an entertainment industry representative for the services of a performer.

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- (2) Without limiting subclause (1), the accounting records must disclose the basis on which the payments are made in addition to any other particulars of the payments.
- (3) The employer or consultant must keep each such accounting record at the employer's or consultant's principal place of business for at least 5 years after it is made.
- (4) A person who contravenes this clause is guilty of an offence.  
Maximum penalty: 10 penalty units.