

Entertainment Industry Regulation 2004

[2004-590]



New South Wales

Status Information

Currency of version

Repealed version for 25 February 2011 to 28 February 2014 (accessed 6 October 2024 at 20:14)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

The Regulation was repealed by sec 47 of the [Entertainment Industry Act 2013 No 73](#) with effect from 1.3.2014.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Entertainment Industry Regulation 2004



New South Wales

1 Name of Regulation

This Regulation is the *Entertainment Industry Regulation 2004*.

2 Commencement

This Regulation commences on 1 September 2004.

Note—

This Regulation replaces the *Entertainment Industry Regulation 1995* which is repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition and notes

(1) In this Regulation:

the Act means the *Entertainment Industry Act 1989*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Fees of entertainment industry representatives

(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) The following amounts (being amounts payable to performers) are to be excluded when calculating the percentage of fees or other remuneration that an entertainment industry agent or manager may demand or receive for or in respect of the engagement of a performer:

- (a) travelling and meal allowances,
- (b) holiday pay,
- (c) any long service leave and superannuation payments,
- (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,
- (e) any award or minimum payments in respect of rehearsals.

(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.

5 Financial statements for money received for performers

(1) As soon as practicable after receiving money on behalf of a performer, an entertainment industry agent or manager must give appropriate financial statements to:

- (a) the performer, and
 - (b) any entertainment industry representative who has represented the performer, or carried out activities on behalf of the performer, in connection with the engagement for which the money has been received, and
 - (c) the entertainment industry employer (or other person) by whom or on whose behalf the money has been paid.
- (2) The appropriate financial statements for the purposes of subclause (1) (a) and (b) are:
- (a) a statement of the amount of money received by the agent or manager on behalf of the performer, and
 - (b) a statement of the amount of money paid to the performer for the engagement.
- (3) The appropriate financial statement for the purposes of subclause (1) (c) is a statement of the amount of money received by the agent or manager on behalf of the performer.
- (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.

- (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.

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.
- (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.

6 Delegation: section 53

The class of persons that consists of the following persons is prescribed for the purposes of section 53 (3) (b) of the Act (that is, the class of persons to whom the Minister may delegate functions):

- (a) the Director-General, Department of Commerce,
- (b) the Executive Director, Office of Industrial Relations, Department of Commerce,
- (c) the Director, Compliance Services, Industrial Relations Service Delivery, Office of Industrial Relations, Department of Commerce.

7 Savings

Any act, matter or thing that, immediately before the repeal of the [Entertainment Industry Regulation 1995](#), had effect under that Regulation continues to have effect under this Regulation.