

Important information for performer representatives in the entertainment industry about your obligations under the Entertainment Industry Act 2013.

What is a performer representative?

A performer representative provides services to a performer for financial benefit, under an Entertainment Industry Agreement or an Entertainment Industry Managerial Agreement. Previously performer representatives were known as agents or managers.

What services does a performer representative provide?

A performer representative provides one or more of the following services to a performer, for financial benefit:

- Seeking or finding work opportunities for the performer.
- Negotiating terms of an agreement for, and the conditions of, a performance.
- Finalising arrangements relating to the payment of the performer.
- Negotiating arrangements relating to the attendance of the performer at a performance.
- Administering the agreement between the performer and an entertainment industry hirer.
- Making arrangements for publicity attendances and related publicity responsibilities of the performer.

What are entertainment industry agreements?

There are two types of agreements. There is a 'standard' entertainment industry agreement, under which a performer representative provides one or more of the services listed above. This agreement can be verbal or in writing. Fees can be charged but cannot exceed the 'capped' amounts set out in the regulations.

The other type of agreement is an entertainment industry managerial agreement, which must be in writing. It must set out the additional services being provided (that is, services additional to those set out above). Those additional services must relate to the management of the reputation, career or career development of the performer. Higher fees can be charged but must be specified in the agreement. Both parties are required to sign a managerial agreement, which acknowledges the additional services being provided for the additional fee.

Managerial agreements must provide a 3 day cooling off period. The performer can waive this cooling off period. A performer can also terminate a managerial agreement prior to the end of the cooling off period. **See our fact sheet on managerial agreements for more detailed information.**

What fees can be charged?

The Entertainment Industry Act 2013 and Regulations fix (cap) the fees that can be charged for providing services under a 'standard' entertainment industry agreement. Additional fees in excess of the capped amount can only be charged under a managerial agreement, which must set out the additional fees and the additional services to which they relate. The additional services must be provided to the performer in order to exceed the cap for fees charged. A performer representative cannot charge joining fees or audition fees or retention fees.

Existing agreements

All new entertainment industry agreements (whether 'standard' or managerial) signed after 1 March 2014 must comply with the Act. Existing agreements (that is, agreements entered into prior to 1 March 2014) will expire at the end of the term (if included in agreement) or will expire on 1 March 2015. All agreements after 1 March 2015 must comply with the Act.

Trust accounts and financial statements

Performer representatives who receive money on behalf of performers are required to hold that money in a general trust account at an authorised deposit-taking institution in New South Wales. Money held on behalf of a performer must be disbursed as directed by the performer within 14 days of being received.

A performer representative must keep accounting records that disclose at all times the true position concerning money received on behalf of a performer and be kept at the principal place of business of the performer representative.

As soon as practicable after receiving money a performer representative must provide financial statements to the performer, any other entertainment industry representative who has carried out activities on behalf of the performer (in connection with the performance for which the money has been received) and the entertainment industry hirer by whom (or on whose behalf) the money was paid (see s.7 of the Act).

Records to be kept by performer representatives

Accounting and other records are required to be held for at least five years at the performer representative's principal place of business. Records required to be held are accounting records in respect of money received on behalf of a performer, copies of financial statements and a copy of each written agreement the representative has entered into with a performer (or with another person on behalf of a performer).

A performer representative must provide copies of any records requested by a performer.

Venue representatives

A venue representative acts on behalf of an entertainment industry hirer to arrange one or more performances by a performer at a particular venue. There are specific accounting and record keeping requirements on venue representatives, which must be fulfilled. (See s.15, s.16 and s.17 of the Act.)

Entertainment industry hirers

An entertainment industry hirer is a person who engages or contracts any performer for the purposes of a performance. There are specific accounting and record keeping requirements on entertainment industry hirers, which must be fulfilled. (See s.18 and s.19 of the Act.)

Information performer representatives must provide

Performer representatives, when entering into an agreement with a performer (whether in writing or not) must also provide an information statement to that performer. The information statement is available on the NSW Industrial Relations website at: http://www.industrialrelations.nsw.gov.au/biz_re/s/oirwww/pdfs/Fact_sheet_for_performers.pdf

Duty of Disclosure

A performer representative who is also a venue representative must disclose and provide written notice of that fact to both the performer and the entertainment industry hirer, in respect of a performance.

Special provisions for child performers

A performer representative must, before entering into an agreement with a performer who is a child, provide the parents of the child with any information required by the regulations relating to the conditions of employment of minors under the Children and Young Persons (Care and Protection) Act 1998 or any other Act or law. This includes providing the fact sheet from Children's Guardian, available at:

<http://www.kidsguardian.nsw.gov.au/Working-with-children/Children-s-employment/information-for-talent-agents>

Code of Conduct

Schedule 1 of the Entertainment Industry Act 2013 contains a Code of Conduct, which performer representatives are required to adhere to. Breaches of the Code of Conduct can result in the imposition of civil penalties.

Further information

www.industrialrelations.nsw.gov.au

Fact sheets:

- Information for Performers
- A Guide for Performer Representatives
- Entertainment Industry Managerial Agreements
- Entertainment Industry Managerial Agreement Checklist
- Parents Fact Sheet explaining the Code of Practice

Webinar:

- Entertainment Industry Act 2013

NSW IR contact details

Should you have any questions about your rights and the obligations of performer representatives in the entertainment industry please contact NSW Industrial Relations on 131 628.