

ENTERTAINMENT INDUSTRY ACT

New South Wales Only

A lecture discussing the roles of agents and managers, and how this role is regulated by the Entertainment Industry Act in NSW. Included is a sample management agreement checklist.

Regulates some aspects of management and agency roles and relationships in the entertainment industry.

Applies only in New South Wales.

AGENTS

1. In Australia

- * Can be very important for live performance work
- * smaller and more specialised agencies than in, say, U.S.A.
- * tend to represent performers and “employers” or “venues” -
PROBLEM
- * **Entertainment Industry Act (NSW)** - Helps with this problem by providing that an Agent can't be paid by the Venue and also take a commission from the performer.
- * can be very useful if you are a performing artist without a Manager Or managing your own affairs.
- * Good Agents will work hard, stay in contact with their performers, check arrangements carefully with their performers, ensure that all bookings by venues are properly and promptly confirmed with both performer and venue.
- **AGENT'S FEE/COMMISSION** for Booking Live Work - Usual **10% of the gross fee** paid by the employer/venue.

Entertainment Industry Act (NSW) provides rules which must be followed before an Agent can charge more than 10%.

2. Agent's Function - What an Agent does for its Commission

* Main Function - To find, negotiate and conclude/confirm ("wrap up") contracts for the professional performance services of performers which they represent (i.e. that are on their books).

- Offers for "gigs" to be submitted to the Performer for **prior approval** (if possible).

Especially, the amount of the **Performance Fee**, the type of permitted **publicity** etc.

- An Agent can sign performer agreements on behalf of the Performer

UNLESS the Agreement with the Agent limits the Agent's power (i.e. says that Performer (or their manager) only can sign agreements for performances by the Performer.

After all, YOU have to perform the contract in the end!

- Territory and Term of Agency Agreement (eg. for Sydney Metropolitan Area Only/ For 2 Years)

Exclusive? If at all, then only for limited and discreet aspects, if at all. May require performer to refer all inquiries for the performer's act to the Agent.

- Limited to particular areas and types of entertainment work (Depends on the Agency's specialised knowledge and contacts)
- ENSURE a right to terminate with simple notice

* Secondary Functions - Can include,

- receiving fees and security deposits for engagements;

3.

- arranging publicity for the performer (at who's cost)
- keeping proper books and records in relation to the work obtained for that performer
- accounting to the performer for payments made
- providing career advice

Any limitations on the Agent's powers should be express.

Also, any special requirements of the Agent (eg. for secondary additional functions) should also be express.

CONFIRM IN WRITING - Another Contract!

THE MANAGER

1. Selecting Your Manager

The musician's search for the perfect manager is never over.

This person is supposed to be an amalgam of snake oil seller, Tangiers rug trader, kick-boxer, parent, spouse, friend, confessor, psychologist, fall-guy, punching-bag and garbage tin.

He or she will be on a first name basis with the big-hitters of the business throughout three continents; enjoy an independent source of income and have a love of your music and a bulletproof belief in your future.

There are probably **half a dozen top managers in Australia.**

There are quite **a lot of competent ones** who may well become top managers but there are **hundreds of untrained, unqualified, inexperienced and unduly confident managers** who will probably never make it.

Qualifications - To Be A Manager

Managers do not have a reputation for being intellectuals. After all, music management has traditionally been one of the few ways that anyone could drag themselves out of the gutter and make a fortune, without having to step into a boxing ring.

No degree course will guarantee that you can manage anything.

The proof of this is the impact that MBA graduates have had on business and politics in Australia. Nevertheless, it is no longer true that the best university for a manager is the university of hunger and hard knocks.

The music business is becoming increasingly sophisticated and **successful managers are having to possess much higher levels of skill than they did in the past.**

Increasingly, the younger managers have **backgrounds in accountancy, marketing or administration.**

They know how to put together a proficient marketing campaign, they run efficient offices, can prepare as well as read a balance sheet and understand that accrual accounting is not just the work of "a cruel accountant".

The Perfect Manager?

The artist looking for the perfect manager is, of course, **doomed to disappointment.**

Even the best, like all professionals, have their **strengths and weaknesses.**

The important thing is that there be a **reasonable match between the musician's needs and the talents of the manager.**

Functions of the Manager

(i) Finding work - Fundamental Role

- * **To find the musician work that is suited to his or her talents and career direction.**

Some of the "**standard**" **management agreements** floating around specify that the manager "has not offered or attempted or promised to obtain employment or engagements for the artist and is not obligated, authorised or expected to do so".

Managers who have this clause in their contract are either trying to contract out of one of the basic tasks of a manager in Australia or merely have a lawyer who has plagiarised an American precedent without knowing the custom of the local industry. (**American** management agreements contain this clause because of local legislation requiring people doing such work to be licensed).

In Australia, if the manager of a young band is not prepared to get out and find the musicians work, both the manager and the musicians are going to have very little to eat.

Some do this themselves but **in most cases** it is a priority of the manager's job to **find an experienced agent to do the job.**

Even getting onto the books of a powerful booking agent is no easy task. The competition is considerable because there are more acts than there are venues and gigs.

(ii) Scope of management

A manager usually becomes responsible for all of the musician's **entertainment industry activities.**

The management contract will probably provide that the management will encompass:

"All of the Artist's entertainment industry activities, in particular:

- (a) the making of audio and audio-visual recordings in every medium for commercial manufacture and sale and for promotional purposes;
- (b) personal live appearances before an audience whether public or private, paying or not;
- (c) personal recorded appearances for video and/or television recording and/or broadcast including, where applicable, performance as a TV program presenter and in cinematograph films in any medium;
- (d) the writing of lyrics and/or the composing of music including (but not limited to) songs for records, commercial jingles, TV or cinematograph film theme or background music and for any other use;
- (e) acting as the engineer or producer or director of audio or audio/visual recordings of the Artist's own performances or the performances of others;
- (f) merchandising and making commercial use of the Artist's name, likeness and reputation by way of licence or otherwise in

connection with products or services and sponsorship, product endorsement or otherwise;

- (g) any other activity service or performance by the Artist in connection with any of the above as may be agreed between the parties from time to time."

As you can see, such a clause covers all of the musician's entertainment industry activities. The scope is wide because the manager is presumably, at least partly, responsible for establishing the profile and success of the musician that leads to film and television work, the autobiography, the advertising opportunities, the merchandising deals and so on.

Moreover, **the manager is usually expected to assist in the negotiation and administration of these associated areas of work,**

AND

The manager **will expect to share in the income from these sources** because while the musician is acting or writing books, rather than performing or recording, the term of the manager's contract is ticking away without reward.

Important to:-

- question the appropriate scope of the manager's activities;
- specifically spell out in the agreement any of your activities which you wish to remain outside the ambit of the relationship.

For Example - Some musicians already have an acting career (and an agent who already looks after that side of the business), some have a jingle business, others work in a music store or teach an instrument. Whatever this existing work may be, you should discuss it with your would-be manager and come to a mutually acceptable arrangement. When this is done up front there is rarely a problem.

If there is a problem, it is best to find out before you commit yourself.

(iii) Exclusivity

All management agreements provide that the musician will have **no other manager.**

Managers have to demand exclusivity otherwise, as soon as the dollars start flowing, the vultures will start circling in the hope of juicy pickings.

N.B. The manager can usually look after more than one act.

Even established managers tend to look after more than one act.

There are at least **two good reasons for this:**

- First they are able to amortise to cost of their administration services across a greater income base and
- Secondly, because the shelf-life of many acts is so short, they can develop new acts at the same time as looking after the affairs of the established one, thus ensuring a continuity in their business.

This obviously can create a **conflict of interests** between the musicians who want the maximum attention from their manager and the managers who need to maximise their cost effectiveness and profitability.

For this reason many management contracts which allow the manager to look after more than one artist will provide that this is subject to the proviso that:

"the Manager shall not devote so much time to other business activities as to jeopardise the Artist's career and interests."

(iv) Territory

All managers would **prefer** to be the manager for **the world**. If a band gets a break overseas, its income and consequently the manager's income, can prodigiously multiply.

As the musician, you must ask whether your manager has the skills necessary , (or the potential to develop the skills) to create that international opportunity and then adequately manage your affairs in that tough competitive arena. Not many Australian managers have a proven record of success overseas although more and more are starting to actively seek the overseas experience and contacts that are so important.

(v) Duration

- * **LENGTH OF INITIAL PERIOD**
- * **OPTIONS:**
 - (a) **number**
 - (b) **length**
 - (c) **performance triggers**

(vi) Manager's REMUNERATION

- * **commission:**
- * **exclusions:**
 - (i) **sound recording costs?**
 - (ii) **live performance costs?**
 - (iii) **film score composing fees and royalties?**
 - (iv) **income from any pre-existing agreements?**
 - (vii) **Services to be Provided By Manager**
 - (viii) **Powers of Manager**

(ix) **Limitations to Manager's Powers**

(x) **Arrangements for Banking and Accounting**

(xi) CONTINUING REMUNERATION UPON TERMINATION

(a) **recording**

(b) **publishing**

(c) **live work**

(d) **other**

(xii) PERIOD OF POST-TERMINATION REMUNERATION

x years after termination (other than where terminated for breach by Manager).

MANAGEMENT AGREEMENT CHECKLIST is at page 86 of "Music Business"

WORKSHOP QUESTION

MANAGEMENT AGREEMENT CHECKLIST

1. NAME OF MANAGER

(a) TELEPHONE

(b) ADDRESS

2. NAME(S) AND ADDRESS(ES) OF ARTIST(S)

3. TERRITORY

4. LENGTH OF INITIAL PERIOD

5. OPTIONS:

(a) number

(b) length

(c) performance triggers

6. TERRITORY

7. REMUNERATION

(a) commission:

(b) exclusions:

(i) sound recording costs?

(ii) live performance costs?

8. SERVICES OF MANAGER

9. POWERS OF MANAGER

10. LIMITATIONS TO MANAGER'S POWERS

11. ARRANGEMENTS FOR BANKING AND ACCOUNTING

12. REMUNERATION UPON TERMINATION

(a) recording

(b) publishing

(c) live work

(d) other

13. PERIOD OF POST-TERMINATION REMUNERATION

x years after termination (other than where terminated for breach by Manager).