



3 September 2012

Vicki Telfer
Executive Director
NSW Industrial Relations
Level 23, McKell Building
2-24 Rawson Place,
Sydney, NSW 2000

By email: NSWIR_Submission@services.nsw.gov.au

Dear Ms Telfer,

Review of draft Code of Conduct (draft Code) included in Final Report, Review of the Entertainment Industry Act 1989 (Act)

In 2009, the Arts Law Centre of Australia (**ALCA**) provided a submission (**first submission**) to the review of the Act undertaken by the Better Regulation Office (**BRO**) and Office of Industrial Relations. As part of ALCA's submissions, we supported the introduction of a mandatory Code for performer representatives, and commend BRO for the inclusion of a draft Code in its Final Report issued in 2010. ALCA is pleased to provide its submission on the draft Code to the NSW Industrial Relations Office and commends the State Government's ongoing commitment to engage with the arts community in this consultation.

In this submission, the numbering of our suggestions corresponds with the order of the fifteen (15) points constituting the draft Code and the underlined words represent our suggested amendments to each point. Our suggestions for further additions or deletions in the draft Code are represented by italicised and underlined words.

Draft Code of Conduct

We support the introduction of a Code of Conduct for all performer representatives, as that term is understood in the Final Report of the Act and the draft Code. We support the content of the draft Code with the following suggested amendments:

6. Performer representatives must not disclose confidential information obtained while acting on behalf of a client. When the agreement between a performer representative and his/her

client terminates, for whatever reason, this obligation continues even though the performer representative has ceased to act for the client.

8. Performer representatives must not profit from representing the client without disclosing to the client their financial or other interests, and the client has consented to continued representation by the performer representative. Full disclosure means disclosure of the exact nature and extent of the performer representative's financial or other interests.
9. Performer representatives must have knowledge and understanding of the laws which relate to the job, including the Entertainment Industry Act, the Children and Young Persons (Care and Protection – Child Employment) Regulation 2005, and fair trading and industrial relations laws. Performer representatives must remain abreast of amendments to existing laws which relate to the job.

Regarding point 9, we also suggest that the Code include a link to a list on BRO's website to relevant laws for clarity.

12. Performer representatives must not falsely represent the provisions of the Entertainment Industry Act, or any other law relating to the provision of performer representatives' services.
13. Performer representatives must ensure their employees comply with the Entertainment Industry Act, this Code of Conduct and all other laws relating to the provision of performer representatives' services.
15. Performer representatives must not refer a client to a service provider where the representative would gain a financial benefit from the referral unless the representative first provides full disclosure to the client. Full disclosure means disclosure of the exact nature of the relationship with the service provider and the value of the financial benefit that would be received.

Additional suggestions for draft Code

Significantly, there is no requirement for performer representatives to hold moneys received on behalf of their performer clients in trust. Often such funds are simply held in the performer representative's own account and should that representative encounter financial difficulty; the performer's funds so held are at risk of being applied in payment of the debts of other creditors. In our view, the agent should hold such funds in a separate account on trust.

Further, although we support the introduction of a Code of Conduct that automatically applies to all performer representatives, and have suggested the above amendments to the draft Code, we believe a Code of Conduct alone is not sufficient to improve the position of performance artists (**artist/s**) as compliance is subjective. We consider the draft Code to be a statement of ethics and an outline of the specific obligations of performer representatives. As stated in our first submission, any Code should additionally:

1. Be accompanied by informational materials which illustrate how these ethics and responsibilities might be met and breached, in simple examples; and
2. List the issues to be agreed on between the artist and the performer representative prior to the commencement of any further activities which fall within the definition of those classed as representatives. The list of things to be agreed upon between artists and performer representatives are:
 - a. The term of the relationship between the artist and the performer representative and any renewal options;
 - b. The scope of the representation, and whether this is exclusive or non-exclusive;
 - c. The obligations of the performer representative i.e. what they agree to do in return for the commissions they will be paid;
 - d. The obligations of the artist for example, their attendance at performances which are booked unless extenuating circumstances prevail;
 - e. How the commissions or fees of the performer representative are calculated and how any additional costs are born; whether performer representatives receive commission on performances which are not the result of the duties of the performer representative;
 - f. How payment is made and how often it is made;
 - g. How the activities of the performer representative are reported back or communicated to the client;

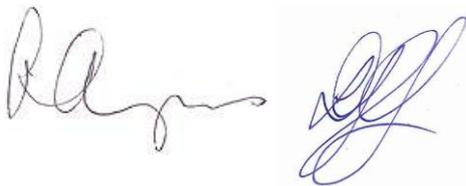
- h. In what circumstances the performer representative can act for the artist (or in the capacity of their artist client);
- i. How often and what form statements or accounting of payment will be provided;
- j. When the relationship may be terminated and what the effect of termination will be, and the type of notice required in the event of termination by the performer representative or artist;
- k. Insurance for performances i.e. who bears responsibility of ensuring the performance is covered by an insurance policy?; and
- l. How the parties will deal with a dispute which arises under the agreement.

Conclusion

We support the Government's objective of amending the legislation and implementing an industry code of conduct in order to provide greater protection for artists. However, in order for legislative changes to achieve any form of practical success it is imperative that artists within the industry are educated about their rights and responsibilities, and that there is effective enforcement of the Act and any Code of Conduct.

We thank the NSW Industrial Relations office for the opportunity to comment on the draft Code.

Yours faithfully,

Two handwritten signatures in blue ink. The first signature is on the left and the second is on the right.

Robyn Ayres
Executive Director

Delwyn Everard
Deputy Director