DRAFT

SUBMISSION - Public Comment on Draft Superannuation Guarantee Ruling SGR 2026/D1 - Superannuation guarantee: work arranged by intermediaries

Date: 26 July 2026

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RE: Draft Superannuation Guarantee Ruling SGR 2026/D1 – Tripartite working arrangements involving intermediaries:
Relevant considerations - Application of Section 12(8)(a) to the Live Music Industry, and legislative restrictions and definitions of the Entertainment Industry Act NSW 2013.
Additional addendum commentary regarding Equipment Capital, Transport, Intellectual Property Realities,

1. Executive Summary and Historical Insight into the NSW Entertainment Industry in Tripartite arrangements.

This submission is made on behalf of The Peak Agency operating as an **Entertainment Industry Representative** carrying on the businesses of **Venue Representative** under Section 15 of the *Entertainment Industry Act 2013 (NSW)* [s 15] and **Performer Representative** (see *Definitions*). and Artist Manager https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2013-073#sec.4

A useful explanatory commentary can be found here:
https://www.artslaw.com.au/information-sheet/agency-agreements/

> As indicated; "*NSW is currently the only state or territory in Australia to have this kind of legislation. It applies to all agents, managers and venue representatives carrying on business within NSW (even if usually resident in another state or territory)*".

The current Entertainment Industry Act streamlined and clarified the Entertainment Industry Act NSW 1989, which it replaced. Similar definitions and relationships were included and the current definitions and historical definitions have been in operation since that time (almost 40 years):
https://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/repealed_act/eia1989288/index.html

Prior to that it was the Theatrical Agencies and Employment Act NSW 1935.

The NSW Entertainment Industry framework is a working example of how most of the Australian Live Music industry also conducts business arrangements.

As "*this draft Ruling provides the Commissioner's views on how the definitions of 'employer' and 'employee' in the SGAA apply to tripartite working arrangements involving an end-user, an intermediary and a worker*", we see it as vital that we address the matters it raises and it's inter-actions with the established norms of the Entertainment Industry, especially in regard to tripartite arrangements.

To provide relevance to the presentation of this Submission I refer to, and address, Draft Ruling footnote 17.

> *There are some limited categories within the extended definition of 'employer' and 'employee' in section 12 of the SGAA that do not depend on the existence of a contract. For example, Members of Parliament: subsection 12(4) and* ***Payments for participation or performance or for the provision of services in relation to participation or performance: subsection 12(8). However, these categories are not addressed in this Ruling since they are not likely to be relevant in practice in the context of intermediary firms.***

And further ATO email communication advice advising as follows:

"subsections 12-1 and 12-3 focus on the contract between the parties in determining the nature of the relationship, whereas subsection 12-8 focuses on the payment made".

While we welcome the Commissioner's efforts in SGR 2026/D1 to clarify the identity of the employer in tripartite arrangements, we hold grave concerns regarding the ruling's failure to adequately address or contemplate the contract framework which Australian live music stakeholders acting as intermediaries work within, and specifically are obligated to work under in NSW. And contend that, Section 12(8) most definitely is "*relevant in practice in the context of intermediary firms*".

The Entertainment Industry is resigned to external parties not really understanding it's inner workings, and additionally, other industries appropriating it's well known industry terms. For example, "agent/agency" or "gig". Gig worker or the gig economy is a classic example and widely used in mainstream media. There is strong argument that the Entertainment Industry pioneered and established the contractual nature of "intermediary" long before the emergence of labour hire agencies and similar labour providers.

> The labour hire industry has existed in Australia since **at least the 1950s**. Initially, labour hire agencies specialised in supplying clerical and administrative staff to workplaces to fill temporary gaps caused by staff absences or short-term peaks of activity. The labour hire industry has since evolved to operate in other parts of the economy, with communications, mining, manufacturing, finance and insurance, property and business services all reporting a high incidence of labour hire usage.
> https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees/Reports/ewrwp/independentcontracting/chapter3

In contrast … The William Morris Agency was founded 1898 in the USA. In Australia; Herbert Cato opened an agency in 1900. William Clay Agency emerged in 1916 and evolved into the Australasian Theatrical Bureau in 1920. The early adaptation of the Entertainment Industry intermediary model is evident.

NSW Parliament introduced definitions for "Theatrical Agents" in 1935.
https://www.parliament.nsw.gov.au/historictabledpapers/files/179439/LATP_1935_0822.pdf
The historical emergence of today's modern day tripartite models were pioneered by the Entertainment Industry.

There is also more recent historical context that the Commissioner understood the Entertainment Industry intermediary roles. (see SGD 93/14, which was in force from 1993 to 2006, at 'Managers/agents' 9, 10, & 11).

In short, the Entertainment Industry has a rightful place at the Draft Ruling table commentary on intermediaries and the focus of the Commissioner on the contract between the parties in determining the nature of the relationship. This submission is presented for your consideration on that basis and the same legal principles outlined in the judgements cited.

The draft ruling heavily relies on precedents such as the liability concepts agitated in *Commissioner of Taxation vs Scone Race Club and Australian Turf Club* which did not need to consider any legislative framework, which in the case of NSW, is a published, enforceable and gazetted Industry standard for tripartite arrangements – the *NSW Entertainment Industry Act 2013*. And also *Australian Turf Club v Commissioner of Taxation* 2024 AATA 2728 (where workers provided no capital equipment or commercial IP), creating a dangerous regulatory blind spot when applied to musicians who supply heavy Public Address (PA) systems, lighting rigs, transport vehicles, and valuable brand assets.

Both of those cases, but *Scone* in particular, provided in depth commentary on the concept of "who is liable to pay" in determining the employer in a tripartite or multiple party arrangement (and not the final payer that is liable). As such, the court's deliberations sought the nature of the contracting parties and not the "payment". This intermediary context is the focus of this submission.

....

We request that the final ruling 2026/D1 incorporate;

An Example which reflects the framework under which entertainment and live music agents (intermediaries) and venues must adhere to and that it provides guidance in line with the construct of all contract arrangements under legislation or in industry nation-wide practice, and

The example should outline the unique nature of intermediaries in a multiple musician or performer agreement and the intermediary amongst them who distributes their gig fees.

And to also accept advice for future 12(8) guidance it may be planning to publish (in the form of Addendum), which is included with this document, which amongst other things outlines a possible specific live music industry example acknowledging that a performance fee can constitute a severable contract for equipment, IP licensing, and labour. (An outline is provided of the high-capital, multi-component nature of independent live music contracting [s 12] and also the industry accepted flow of capital between contracting parties).

for the reasons outlined below.

1. Incompatibility (and unintended commercial absurdity) with Statutory State Legislation Fee Caps, Definitions and Performer Payment flows.

SGR 2026/D1 looks to the nature of the contract when considering tripartite arrangements. In NSW there is a universal framework as how the parties must act, which determines the contract arrangement (by default).

Operating as a Performer Representative in NSW under the *Entertainment Industry Act 2013 (NSW)*, booking intermediaries are strictly regulated by state law [Regulations]. Specifically, the *Entertainment Industry Regulation 2014 (NSW)* caps an agent's commission at **10%** of the performer's base fee.
https://legislation.nsw.gov.au/view/html/inforce/current/sl-2020-0469#sec.4

The current text of SGR 2026/D1, combined with the ATO's frontline public advice, asserts that the physical payment handler bears the 12% superannuation liability by default. This creates an immediate mathematical impossibility.

A state-regulated business (Performer Representative) legally restricted to a **10% gross revenue model** cannot survive a federal tax interpretation that forces them to pay out a **12% superannuation levy** merely for acting as a passing transactional conduit. Putting aside the matter of "liable to pay" the final ruling must explicitly state that statutory fee-capped intermediaries are exempt from being deemed primary employers based purely on financial cash flows.
The intermediary is merely a conduit. It's application is obvious in both practice and in mathematics.

The Entertainment Industry Act NSW also defines '*performance'* as being for "*the financial benefit of an entertainment industry hirer or performer, or both"*.
And at S15 - *In this Act, **a "venue representative"** means a person who, for financial benefit, **acts on behalf of an entertainment industry hirer to arrange a performance by a performer at a particular venue***.

The Act indicates that a "venue representative" is a person who opens negotiations or facilitates agreements "on behalf of" an entertainment industry hirer (the venue owner or operator). "on behalf of" must be considered in it's statutory context and it's application as it actually happens or appears in process of the performance booking. It is the basis of the contract to provide service to the hirer. The venue representative's task is self explanatory.

The Trust Mandate (Section 6 &16): The law establishes that when a venue representative or performer representative receives money (performance fees) meant for a performer, they hold it on behalf of that performer. Under Section 6 & 16, they are legally mandated to disburse those funds to the performer within 14 days. Failing to do so triggers statutory penalties enforced by regulatory bodies like NSW Fair Trading.

https://www.nsw.gov.au/business-and-economy/running-a-business/industry-specific-business-requirements/working-as-a-performer-or-performer-representative-nsw

(Note that both venue representatives and performer representatives are colloquially known as “agents” in the Live Music industry).

By definition the Venue Representative is **“acting on behalf of”** the hirer (mostly hospitality venues). This is not a throw away industry line or self-serving contract construct. It is written into the text of the NSW legislative instrument. When an agent (the venue representative) acts within their authority under Legislation **"on behalf of"** a principal (the hirer), the contract is considered to be between the principal (hirer) and the third party (the performer).

The representative does not personally own the contract rights; they merely act as the legal bridge. They would usually find themselves distributing the venue’s payment of performers from one weekly invoice and usually with clear delineation between itemised fees.

A venue representative’s profit does not rise or fall based on the incomings and outgoings of these performer fees. The fees are never theirs to be treated as income. They simply go in and out of the same clearing account, usually kept separate from trading accounts. Performer Representatives are obligated to establish a “trust account”. This model has also been adopted by venue representatives who sometimes operate as both Venue Representatives and Performer Representatives (albeit with additional restrictions).

The current wording of ATO website advice could or does place Performer Representatives or Venue Representatives in a liability position as they are the last ones paying (which is contrary to the evidence of the contract or implied contract), when said liability (in real terms) should be lying with the hirer (see *Scone*). In other words, the hirer or venue is the one “liable to make the payment”.

There is a clear consideration of who the contracting tripartite parties are in the legislative text of the Entertainment Industry Act NSW 2013. This dictates the how when and why of how the gig came into place and who the parties are:
See Section 4, Definitions, Performance (note “financial benefit”).
https://legislation.nsw.gov.au/view/html/inforce/current/act-2013-073#sec.4

performance means—
(a) a performance that is given in any place or by the use of any medium for the transmission of sound or images, or both, or
(b) a performance that is recorded for the purpose of using the recording in any place or for the transmission of sound or images, or both,
and one of the purposes of which is the financial benefit of an entertainment industry hirer or performer, or both.

At sections 15 & 16

15 Venue representative

In this Act, a ***venue representative*** means a person who, for financial benefit, acts on behalf of an entertainment industry hirer to arrange a performance by a performer at a particular venue, but does not include an entertainment industry hirer or a person who arranges for a performance solely in the capacity of an employee of a venue representative.

16 Venue representative to disburse funds

A venue representative must not, without reasonable excuse, fail to disburse any money received on behalf of a performer to the performer within 14 days of its receipt or otherwise in accordance with the directions of the performer.

Liability to pay is contemplated at Section 18

18 Time for making of payment by entertainment industry hirers

An entertainment industry hirer who is required to make a payment to a performer in relation to a performance must not, without reasonable excuse, fail to make the payment within—

(a) 1 calendar month after the date of the performance,

"disburse any money received on behalf of a performer to the performer" This indicates that the funds are not owned by the Venue representative.

The burden on the hirer *"to make a payment to a performer in relation to a performance"* remains with the hirer even if they elect to pay the performer via a Venue Representative or Performer Representative.

This "nails" liability to the hirer (the venue). The Performer has a direct statutory right to sue the Hirer under Section 18. Or, to initially seek assistance of NSW Fair Trading which is liable against the "hirer".

If the hirer engages a Representative (an "agent") to disburse payments and the Representative defaults, the obligation of the hirer to pay the performer is unchanged.

If the Hirer (venue) defaults and does not transfer funds to their Representative (to forward to the performer), the Hirer remains liable to the Performer.

In our estimation, a court will view this as a textbook example of the legislation working exactly as Parliament intended. The Hirer is the commercial entity, the Representative is their authorized agent facilitating the trade, and the Performer is the protected statutory beneficiary. The court's only job will be to look at the paperwork to ensure the fees, caps, and payment timeframes dictated by the NSW regulations are being precisely met.

It would strictly enforce Section 15 of the Act. The VR is openly acting *"on behalf of the hirer to arrange a performance by a performer".* Likewise, under Section 11(3), the court will deem it automatically unlawful for that VR to receive any percentage, commission, or fee from the Performer's side of the transaction for that specific performance.

The decision makers in *Scone, ATC, Drake* or *Odco* did not have to consider obligations and contract terms governed by Legislation, which dictated the relationship of the participants in a tripartite agreement in those decisions. In the case of *Scone* it was Racing NSW who distributed the payments to the jockeys. They were the final payer and were not liable for the superannuation guarantee. The focus of the court was not the payment but whom the contracting parties were and with whom the liability lied.

The contract and the 'liability' premise is the very foundation of the Australian Entertainment and Live Music Industry, and not the payment.

See Recommendations below and an urgent request for ATO to update their website guidance.

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2. **Incompatible ATO front line advice provides a Superannuation Guarantee escape route for Entertainment Hirers. Tripartite compliance clash. Establishing the 'liable' party will establish the compliance.**

https://www.ato.gov.au/businesses-and-organisations/super-for-employers/work-out-if-you-have-to-pay-super/super-for-sportspeople-performers-film-makers-and-related-activities

Australian Government
Australian Taxation Office

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Work out if you have to pay super

- Super for employees working overseas - certificate of coverage
- Super for independent contractors
- Super for sole traders and partnerships
- Super for sportspeople, performers, film makers and related activities

You calculate super guarantee on the component of the invoice that relates to their work.

Performers

If you pay an individual to perform or present, or to participate in the performance or presentation of, any of the activities listed in the table below (performance categories), that individual will be considered to be your employee for superannuation purposes. As your employee, you will have to pay super guarantee on payments you make to the individual (unless an exception applies).

Table 1: Examples of performers who are considered employees for super guarantee purposes

Performance categories	Examples of individuals performing, presenting or participating in the relevant activity (this is not an exhaustive list)
Music	Singers, instrumentalists, member of a band, DJs
Play	Actors
Dance	Dancers (principal/backup/ensemble)
Entertainment	Stand-up comedians, magicians, party performers (including children's performers such as face painters), film and television actors, television presenters, hosts and guests, circus performers
Sport	Athletes (amateur or professional), fitness, Pilates and yoga instructors who physically demonstrate the movements
Display or promotional activity	Fashion models, social media influencers
An activity similar to those listed above involving the exercise of intellectual, artistic, musical, physical or other personal skills	Guest speakers at events, Esports competitors, live streamers, live art demonstrators (e.g. painting in front of an audience), fitness, Pilates and yoga instructors who physically demonstrate the movements

It is the entity who makes the payment who will have the obligation to pay super.

It does not matter that the individual:

- is not a professional
- has an ABN

> "It is **the entity who makes the payment who will have the obligation** to pay super."
> It does not matter that the individual:
> is not a professional, has an ABN, issues invoices, is engaged on a one-off basis, or
> refers to themselves as an independent contractor.
> An individual's performance, presentation or participation only needs to fall into one performance category, but they may fall into several categories. For example, an actor who is paid to act in a theatre production is considered to be paid to perform a play and paid to perform entertainment.
>
> To meet their super guarantee obligations, payers should make enquiries with those that they engage to properly understand who they are paying and what they are paying them for.

We believe that this advice is incorrect, by omission. Specifically the sentence; ***"****It is the entity* ***who makes the payment*** *who* ***will have the obligation*** *to pay super*."
The additional concern being that it may also be an indication of the Commissioner's view when considering 12(8)a in a tripartite arrangement under the Draft Ruling.

We are aware that nationally recognised Associations of licensed premises are advising their members that if they pay an agent they are not responsible for Superannuation payments. Their advice is silent on the contract and contracting parties.
(Includes a NSW branch of that Association).

Website advice published by Employee Industry bodies'are well wide of the mark and without legal citations.

We know of one specific State capital where advice, erroneous in our opinion, has managed to permeate and establish a pattern that completely acts outside the principles of who is liable to pay. All based on the interpretation of one professional accounting source.

Compliance is fractured as participants scramble to understand their obligations.

ATO website front line advice provides an escape route for Hirers. They are disregarding that the contracting parties are the venue and the performer, and that the "agent" (in music industry nation-wide terms and in NSW, under legislation) is acting merely as a conduit for both the making of that contract between venue and performer, and also distribution of payment. (certainly in NSW).
It is both the ATO published advice and selective 'interpretation' that they are relying on. The hotel managers/owners don't know any better. They will just rely on that information from their Association.

There is an onus on venues claiming an escape or exemption by paying an agent (in NSW especially) to show that they have, and intended to contract outside the scope of the Entertainment Industry Act NSW 2013 definitions and sections, and normal nation-wide practice (whether they could is another subject). In the absence of their ability to do so – they are the liable party to make the payment (even when using a payment conduit). We contend that this same NSW intermediary relationship extends to the national Entertainment and Live Music Industry.

This is in keeping with Superannuation Guarantee Administration Act 1992

> (8) The following are employees for the purposes of this Act:
>
> (a) **a person who is paid to perform or present**, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills **is an employee of the person liable to make the payment**;

We urgently request that the ATO look at this matter with priority and adjust their web site advice at the earliest possible time.
To us; ***"****It is the entity who makes the payment who will have the obligation to pay super*", does not align with *Scone* or with Section 12(8)a, or Tax Ruling TR 2023/4 (s120), which is to find where the liability lies.

*s120. If a person is an employee by virtue of subsection 12(8) applying, then the person **liable** to make the payment is their employer for the purposes of the SGAA*

And,
*Commissioner of Taxation v **Scone Race Club Limited [2019] FCAFC 225 at [10–11], per Griffiths J** (adopted by Steward J at [82] and [84]), whose reasons were agreed with by Derrington J at [80]…* (see below)

***11**. Section 12(8)(a) operates by reference to a person who falls within its terms as being **"an employee of the person liable to make the payment"** (emphasis added). The mere fact that a person makes a payment is not determinative – there has to be a **liability** to make the payment for the purposes of s 12(8)(a).*

"there has to be a liability to make the payment for the purposes of s 12(8)(a)".

The ATO website advice in the link above incorrectly would make Racing NSW liable in *Scone* because they made the last payment.

Steward J at 109, which was also cited in *Aust Turf Club at 159*;
"*The salient factors were that Racing NSW paid the fees on behalf of the taxpayer*".

The omission of "liability to make the payment" is having <u>severe impact</u> within the Entertainment Industry and rendering the giving of guidance to clients impossible. It is also creating fractured work models which have no compatibility with each other or legal principles.
<u>Urgent attention</u> is required on this matter.

…..
In the ending Examples provided in SGD 2026D/1, the nearest example which comes close to how the NSW Entertainment industry works is found at **Example 5** (98-100).
https://www.ato.gov.au/law/view/document?DocID=DSG/SGR2026D1/NAT/ATO/00001&PiT=99991231235958#H98

The front line advice of the ATO for the Australian Entertainment Industry should reflect the Draft Ruling sections 64 to 69 when handling payments (reproduced at the end of this submission for reference).
This includes intermediaries (agents) bound by the obligations of Industry Legislation or Industry practice, and should be extended to include Band Leaders who are elected by the band members of a duo, trio or band to act as their payment conduit. (this could be defined as a group of musicians consisting of two or more members that come together as a partnership and the band leader is appointed their "agent" for purposes of fees distribution).

3. The Administrative Issue of the Partnership and "Bandleader" Exclusions. Bandleaders as intermediaries.

The draft ruling when read with public guidance ignores the partnership structures fundamental to the operation of the live entertainment sector. The *Superannuation Guarantee (Administration) Act 1992* (Cth) governs relationships explicitly between individuals [s 12].
In the live music industry, performers routinely operate as unincorporated associations, joint ventures, informal partnerships or formal partnerships (e.g., a multi-member band booking under a single collective ABN, or in the former, a nominated band member – usually a band leader member's own ABN).

By issuing a blanket public directive stating that *"the entity who makes the payment has the obligation to pay super,"* the website advice (assuming it follows the draft ruling) creates an administrative conflict:

- **The Bandleader Trap:** If a single band member receives a lump-sum performance deposit into a shared or personal/business account and distributes the respective splits to the other partnership members, the strict text of SGR 2026/D1 and it's website interpretation can inadvertently classify that individual musician as the "employer" of their own bandmates (partners).

- **The Legal Entity Disconnect:** A partnership is not an individual worker. SGR 2026/D1 provides no technical guidance on whether a hirer or their intermediary is required to pay a superannuation contribution to a collective business entity or partnership or informal partnership (duo trio band), creating an unworkable compliance landscape.

There is also a practical operations side to this partnership (unique to live music).
A band may consist of a vocalist, a guitar player, a bass player, and a drummer.
A drummer (in isolation) cannot contract out to a venue to provide a 3 set 3 hour performance on their own. A Venue's customers would not sit through 3 hours of drumming, likewise a 3 hour bass solo. There is a unique nature to this partnership arrangement with regard to the coming together of different musical instruments and it should be recognised for those partnership attributes. (A live music band, by it's nature is a vastly different model to a team of carpenters or sportspeople).

The band member appointed by the other members to handle their partnership invoice for services rendered should be viewed as their nominated "agent" to merely act as an intermediary conduit.

Taxation Ruling 2023/4:

> Where a business engages with a non-individual entity
> 79. Where a worker does not contract directly with a business, but instead engages to perform work for the business as a partner of a partnership or through an entity such as a

> company or trust, this may indicate an employment relationship has not been created. This is because there may be no contractual rights and obligations existing between the business and the worker (in their individual capacity).

The same principles are expressed here:
https://www.ato.gov.au/businesses-and-organisations/starting-registering-or-closing-a-business/starting-your-own-business/business-structures-key-tax-obligations

> *“The partners in a partnership are not employees of the partnership, but they are able to employ other workers. Partners are responsible for their own superannuation. However, the partnership is required to pay super for its employees”*.

Albeit, there are other structural and compliance obligations for that formal partnership. Most bands generally do not, and have not, set up a formal partnership with a stand-alone TFN and ABN and Bank Account. It is administratively impractical due to the rapid nature of casual partnerships that arise as musicians draw incomes from multiple income streams. A partnership can form for one gig only as two professional musicians come together for the purposes of providing that performance. They may only work together 3 times a year out of 150 to 250 gigs. One musician may work in 50 or more informal partnerships in a given year. If a member is sick or on leave they will “dep” in a player who then becomes part of that partnership (equal spilt of fees) for the purpose of that replacement performance only. (in other words, a temporary partner). The band member who has to withdraw is commonly tasked with the job of finding their replacement. The incoming casual member receives the same split of income.

It is our contention that **if** the Commissioner’s aim is to wed the individual band members in a collective musical group (informal partnership / joint venture), in which

- they all profit equally
- collectively own their performance and brand
- have un-fettered right to substitute players
- have equal mutuality
- cannot provide a practical individual musical performance with their own instrument

to individual superannuation liabilities for the entity responsible under contract to pay the band, then it needs to use plain language to do so.

There is an information chasm between established general law partnership which is prevalent in the Australian live music industry and ATO guidance including any potential audit burdens.

We submit that the Commissioner’s current framework in Draft Ruling SGR 2026/D1 fails to recognize the unique legal character of live musical performances. Unlike individual subcontracting arrangements in the construction or transport sectors (where individual workers provide distinct, standalone outputs), a live musical performance by a multiple musician format is an indivisible, collective service. No individual band member can deliver "the show" in isolation.
The Administrative Appeals Tribunal’s reliance on commercial records to strike down informal arrangements—as seen in Holman v Commissioner of Taxation [2021] FCA 543—is fundamentally incompatible with the collaborative reality of the arts sector.

In Holman, the partnership claim failed (amongst other reasons) because one party's physical contribution was non-essential and intermittent. In stark contrast, every member of a musical collective must be present and participating simultaneously for the commercial service to exist.

Because a band functions as an indivisible unit to deliver a single performance, a venue enters into a transaction for a holistic commercial product, not a series of individual contracts for personal labour.

Forcing an end-user venue (should this be the intent) to treat an indivisible collective as individual natural person employees—solely because the group has not formalised a formal tax structure—ignores the physical reality of how the labour is performed and the intent, conduct and mutuality of the band. This creates an unworkable compliance structure on many levels.

4. Proposed Additions to the Final Ruling: Example 6 (or an Appendix)

To resolve these industry-wide contradictions, we propose the insertion of a new illustrative example within the text of the final ruling:

Example 6 (The "Rocking Stones" Partnership, Production, and IP Split)

- *Joel, Ted, and Jasmine form an equal, general law partnership holding a valid Partnership ABN trading as the band "The Rocking Stones". The partnership enters into a written or unwritten booking with a Venue represented by a Venue Representative under NSW state law to provide a 3-hour live performance at a local hotel for an all-inclusive lump sum of $1200. The partnership provides a commercial-grade PA system valued at many thousands, lighting, a capable vehicle to transport the equipment, and grants the venue an explicit commercial license to use the band's name and marketing assets across the venue's social media platforms to drive event attendance. Joel is the band's nominated 'band leader' and handles the administration and sends a single invoice under his own ABN. Following the gig, the agent (venue representative) transfers $1200 to the partnership's band leader's nominated account, and Joel distributes the money evenly. The hirer has contracted and hired a partnership. The band nominated Joel to act as intermediary. Joel and the hirer are not liable for Superannuation).*

- *For the purposes of Section 12(8)(a) of the SGAA:*
    - **The Partnership Structure:** Because the contract was formed with a general law partnership and not an individual worker, Section 12(8)(a) cannot apply to the initial $1200 commercial transaction [s 12].
    - **The Bandleader Exemption:** Joel is not the "employer" of Ted and Jasmine. The distribution of funds represents a share of partnership profits, not a payment by Joel for personal labour under an individual tripartite contract.
    - ATO could consider an advice similar to the position it held on withdrawn SGD 93/14 (multiple musician configurations considered to be partnerships – not a "person" at 14).

Alternatively, the Draft Ruling should provide guidance on the hiring of a collective unit that has no practical use as individuals.

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5. Final Policy Recommendations

We urge the Public Advice and Guidance Team to incorporate the following amendments before finalising SGR 2026/D1:

- **Recommendation 1:** Insert a definitive non-liability clause protecting intermediaries whose revenue and operational models are governed and capped by state-based entertainment legislation, ensuring the superannuation debt automatically anchors to the commercial principal (the venue/end-user/hirer).

- **Recommendation 2:** Consider a Class Ruling or a new Determination to provide certainty of operations for the Live Music Industry Australia. Confirm the principle that it is *the entity who is liable to make the payment* as being the entity obligated to pay super.

- **Recommendation 3:** Acknowledge the role played by Venue and Performer Representatives as mere conduits of funds on behalf of Entertainment Industry Hirers. (nationwide application)

- **Recommendation 4**: Acknowledge multiple musician presentations (duo trio band) as partnerships and that payments to the band trio or duo are not payments to an individual. And that payments made to and via a band leader are not subject to Superannuation Guarantee. The distribution of payments by the band leader to the band partners are not subject to Superannuation Guarantee. Or, provide guidance on collective arrangements (a 'band').

- **Recommendation 5:** Urgently update ATO website advice to include definitive wording on "the person liable to make the payment is the employer for the purposes of Superannuation Guarantee" in keeping with SGAA12(8)a, Tax Ruling 2023/4 (120), and the judgements in *Scone & ATC*.
  Further clarify that the final payer in an intermediary relationship acting as a mere conduit for the liable entity and is not the employer under SGAA12(8)a.

Sincerely,

Tim Kirkland-Morris
Director - The Peak Agency

Draft Ruling 2026/D1 – Applicable Agency Sections. (provided for reference ease).

Agency

64. There may be circumstances in tripartite working arrangements where an intermediary is authorised by another party (the principal) to do something on that party's behalf as their agent.

65. At general law, agency is the relationship existing between 2 parties whereby the agent is authorised, either expressly or impliedly, by the principal to do, on the principal's behalf, certain acts which affect the principal's rights and duties in relation to third parties. In cases of actual authority, the relationship between the principal and an agent is a consensual one so that no party can claim to be a principal's agent unless both parties consent to the creation of the agency. Where an agent uses his or her authority to act for a principal, then any act done on behalf of that principal is an act of the principal.

66. In certain situations, the agent is authorised by the principal to bring about a contractual relationship between the principal and a third party. Where the agent acts within the scope of his or her authority and accordingly brings about a contractual relationship between the principal and the third party, the contract is between the principal and the third party. The agent is not a party to the contract but is essentially the intermediary or conduit that brings about the contractual relationship between the principal and the third party.

67. In some tripartite working arrangements, the intermediary may perform an agency role to bring about a contractual relationship between the worker and the end-user. The intermediary may be authorised by the:

- *worker to bring about a contractual relationship for the performance of work or the supply of labour between the worker and the end-user, or*
- *end-user to find suitably qualified workers for the end-user.*

68. Where an agency relationship exists between the intermediary and either the end-user or the worker, and the intermediary brings about a contractual relationship between the end-user and the worker, the worker cannot be an employee of the intermediary. The contract is between the worker and the end-user. The intermediary is not a party to the contract.

69. The manner in which the relationship between the worker, the intermediary and the end-user in a tripartite working arrangement is labelled or described is not conclusive of the nature of the legal relationship between the parties. The nature of the relationship between the parties is determined by an examination of the facts, the actions and conduct of the parties, and other documentary evidence to ascertain whether they give rise to contractual rights and obligations and what those contractual rights and obligations are.

A clause in an agreement which states that an agency relationship exists must be considered with all the other terms of the agreement. Such a clause cannot receive effect according to its terms if it contradicts the effect of the agreement as a whole. The parties to the agreement cannot alter the true substance of the relationship by simply giving it a different label.

ADDENDUM

Addendum to Formal Submission on Draft Ruling SGR 2026/D1 – Superannuation guarantee: tripartite arrangements .
Advice for ATO consideration with regard to any future Industry guidance on Section 12(8)a.

1. Introduction and Purpose of this Addendum
This document serves as an official addendum to our primary submission regarding Draft Superannuation Guarantee Ruling SGR 2026/D1.
We note the advice received from the Australian Taxation Office (ATO), Tax Counsel Network indicating that additional, industry-specific information for the entertainment sector may be released at a later date, and inviting comments at that juncture. However, we respectfully decline to defer our input.
It is our firm view that published interpretations of the current draft contain fundamental misconceptions regarding the operational, legal, and structural realities of the live music and entertainment industry. Submitting these observations now as an immediate addendum is necessary to ensure the Commissioner's core thinking is correctly informed for the prevalent Intermediary relationships of the Entertainment Industry and before any further industry-specific guidance is drafted or finalised.

The ATO would also be aware from major articles in ABC news and other outlets of the confusion causing significant damage in the regional music Festival market.
It is but one chapter, of one episode, of a multiple mega series of issues and confusion current right now in Live Music over the subject of superannuation.

2. Summary
This addendum provides critical evidence regarding the structural reality of tripartite arrangements within the live music and entertainment sector. The matters raised below show the interplay and consistent crossover of the tripartite model into the everyday workings of the music industry.
It demonstrates why ATO website interpretation of the Commissioner's proposed approach in Draft Ruling SGR 2026/D1 incorrectly shifts Superannuation Guarantee (SG) liability away from the ultimate commercial beneficiary (the venue/hirer) and liable super payer.
It is respectfully submitted that by focusing on both the *flow of payment* rather than the *underlying contractual liability to pay*, and the intermediaries of 12(1) and 12(3) (and not 12(8)) the draft ruling directly contradicts established industry customs, historical regulatory precedents, and state-based statutory frameworks.

3. The Legal Error of Conflating "Tools of Trade" with Substantive Capital and Intellectual Property Assets

Paragraphs 117–125 of *Taxation Ruling TR 2023/4* (integrated into the logic of SGR 2026/D1) classify a worker's equipment merely as "tools of trade" which do not override the statutory wording of Section 12(8)(a) [s 12]. While this logic applies soundly to a jockey providing a saddle or an academic providing a laptop, it fundamentally fails the commercial reality of the live music sector.

An independent sole-trader musician working as a Solo Act or Group booked for a standard venue circuit single performance or residency frequently provides a bundled commercial package consisting of:

- **High-Value Capital Production:** A commercial-grade Public Address (PA) audio system (Asset value: $5,000 to $15,000) and an integrated LED performance lighting rig.

- **Logistical Transport Assets:** A dedicated transport vehicle (van or suitable sized vehicle) required to haul production equipment to the venue.

- **Commercial Intellectual Property (IP) Licensing:** The explicit commercial right and license to use the artist's name, branding, likeness, and social media marketing assets across the venue's public promotional channels to drive door and beverage revenue.

The entertainment hirer (the venue) is not merely buying an individual's raw vocal or instrumental labour (and their instrument); they are simultaneously procuring a temporary commercial audio-visual production lease and a commercial brand-licensing agreement. Unlike unadvertised orchestra pit musicians who turn up with an instrument to play the provided musical scores, independent live music artists are booked for their local consumer drawing power and the independence of their on stage performance.

Under established Australian tax principles, a payment for an IP license or brand exploitation is entirely separate from a payment for personal labour. To treat a $10,000 audio system, a transport vehicle, and valuable IP rights (whether trademarked or not) as mere incidental "tools of trade" is a severe distortion of the economic substance of the transaction.

There is an absence of guidance with regard to the deeming provisions of 12(8) for a live music Solo Act Music contractor (as described above) versus a jockey with a saddle, which is not settled by *ATC* and *Scone*. It settles "who the employer is" and "who the employee is" but not whether the payment is wages in total. Read in conjunction with principles of Commissioner of Taxation vs *ZG* (truck drivers with own trucks) I cannot see how the totality of the supply can be deemed labour or skills.

A musician's tool of trade is their instrument only. For a jockey it is a saddle. The jockey doesn't purchase a horse float and have to pick up the horse and take it to the racetrack. The jockey can't ride a horse in the race if it's not at the track. A Solo Music Act needs that PA system and can't perform unless they bring their PA system and have a way to get it to the venue. Likewise a duo or band.

There is a fundamental difference between the live music industry and the other professions captured under 12(8)a. And consequently, the intermediaries who work and engage with them.

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4. Administrative Inconsistency Regarding "Reasonable Market Value of Labour"

The ATO's public guidance for independent contractors explicitly states: *"If you cannot work out the labour part of the contract, you can use a reasonable market value of the labour section."* Furthermore, *Superannuation Guarantee Determination SGD 96/2* confirms that the market value of labour should exclude components for heavy equipment hire or vehicles.

However, under the current draft text and ATO guidance, if a booking intermediary or venue pays an itemised or un-itemised weekly or per-gig lump sum, ATO auditors may routinely treat 100% of the invoice as Qualifying Earnings (QE). This creates a severe administrative contradiction:

- **The Problem:** The live music industry has historically operated on un-itemised, verbal, or basic written quote process and invoicing. If no guidance is provided for an industry wide Labour component calculation it could lead to a myriad of varying calculations.

- **The Consequence:** By defaulting the entirety of an itemised or un-itemised gig fee to Qualifying Earnings, the ATO is actively penalising hirers for the equipment, transport, and IP components of the transaction, applying a 12% federal tax levy to non-labour commercial asset leases.

Considerations:
The Production and IP Severance: If ever required, an ATO auditor reviews the arrangement, they will not classify the entire fee as Qualifying Earnings. They will look to the facts of what was provided under the contract terms.

SGAA 1992 12(8)a identifies the persons who are employees and those that are employers. It is silent as to the matter of what that payment comprises of.

Where liability is found to be due when applying *Superannuation Guarantee Determination SGD 96/2 to* ***Individual Performers*** **(Solo performers)**, or subservient band members to a band "owner" (as opposed to band leaders), the ATO will allow a calculation on the "reasonable market value of labour".

One such reasonable market value could be the baseline rates of the *Live Performance Award 2020* (a national Award instrument) or other Industry standard.
The remainder represents a non-superable payment for capital equipment hire, transport logistics, insurances and the commercial licensing of the Individual's intellectual property and brand assets

Recommendations:

- **Recommendation 1:** Formally state that where an entertainment contract does not itemise production equipment or IP branding vs. performance labour, the ATO will allow taxpayers to calculate SG payable based on a reconstructed market value split, based on the baseline rates of the *Live Performance Award 2020* or similar recognised standard as the maximum superable labour component (Qualifying Earnings).

- **Recommendation 2:** Explicitly clarify that Section 12(8)(a) does not apply to invoices issued by valid multi-member partnerships or collective band entities [s 12]. A band leader distributing equal splits (or equal splits after deduction of agreed partnership admin costs) is a mere conduit of funds to members.

5. Historical Precedent: The Principle of the "End User" Liable to Pay

The principle that the ultimate hirer or "user" retains SG liability when they are contractually liable for the payment is a well-established concept. The Commissioner previously recognized this operational reality in **Superannuation Guarantee Determination SGD 93/14** (withdrawn March 2006).

While SGD 93/14 is no longer active, the underlying operational mechanics of the entertainment industry have not changed. That determination correctly identified that:

- **Paragraphs 4 & 5:** The employer is the person or entity (the hotel, club, or 'user') contractually liable to make the payment to the entertainer for performing at an event.
- **Paragraph 10:** An agency finding work for an entertainer in return for a commission does not become the employer, as they act as a conduit, not the principal party to the service.

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> 4. The employer is the person who is *liable* to make the payment.
>
> Hotel/club/other user - (the 'user')
>
> 5. If a user engages an entertainer to perform at a concert or other event, the user is the employer of the entertainer if the user is liable to make the payment.
>
> 10. If the entertainer has a contract with an agency under which the agency is to find the entertainer work in return for a commission, the agency will not be the employer in most circumstances.
>
> Partnerships
>
> 14. If a contract is with a group of performers (for example, a band operating under a partnership arrangement) there is no Superannuation Guarantee obligation as there is no contract with a 'person' and there is no 'person' paid to perform within the meaning of paragraph 12(8)(a) of the SGAA.

https://www.ato.gov.au/law/view/pdf?DocID=SGD%2FSGD9314%2FNAT%2FATO%2F00001&filename=law/view/pdf/pbr/sgd1993-14.pdf&PiT=19931209000001

The common law employee judgments handed down since 2006 have not altered these core entertainment industry contract structures. The venue remains the principal commercial entity that dictates the terms, fees, and requirements of the engagement via its representatives. Therefore, the venue remains the party "liable to pay" under Section 12(8)(a) of the *Superannuation Guarantee (Administration) Act 1992* (SGAA).

In our view the Commissioner's determination was correct then and is now.

6. Legal Distinction: Distinguishing the *Drake* Precedent

The draft ruling's reliance on general tripartite case law, such as *Drake*, fails to account for the unique contractual inversion present in the entertainment sector.

In *Drake*, Phillips JA noted that there was no direct contractual relationship between the client (the end user) and the temporary worker, meaning the agency was not acting as an intermediary to bring the two into a direct contract.

In stark contrast, the established common ground of the entertainment industry is the exact opposite:

- Booking agents and performer representatives are strictly acting as intermediaries to facilitate a **direct contractual relationship** between the hirer (the venue) and the performer.
- The venue retains total control over the booking criteria, performance times, and the ultimate fee allocation.

7. Statutory Conflict: The *Entertainment Industry Act 2013* (NSW)

The draft ruling creates an unsustainable conflict with existing state legislation, specifically the ***Entertainment Industry Act 2013* (NSW)**. This framework explicitly codifies the relationship between the Performer, the Performer Representative, the Venue Representative, and the Entertainment Industry Hirer:

- The Act establishes that the primary contractual relationship and financial liability rest with the **Entertainment Industry Hirer**.
- **Section 21** of the Act contemplates that while a hirer may utilize a Venue Representative to physically disperse funds to a performer, the statutory liability remains squarely with the hirer.

The ATO's current position—that the entity making the physical payment bears the SG obligation—ignores this statutory framework. In NSW, a venue cannot contract out of these legislated obligations; therefore, any draft ruling asserting otherwise creates severe regulatory misalignment.

8. Systematic Failure of "Specific Arrangement" Advice

The ATO's standard administrative response to inquiries on this matter (See ATO Community) —asserting that application *"depends on the exact facts and contracts in each case"*—is unhelpful in a sector dominated by micro-businesses and independent contractors.

Relying on individual "Private Rulings" isolates performers, agents and venues in an unworkable administrative vacuum. It forces an industry reliant on rapid, standardized bookings to operate based on informal accounting advice or erroneous website interpretations. The ATO has an administrative duty to provide clear, universal, and industry-specific guidance that reflects the sector's tripartite realities, rather than retreating into case-by-case ambiguity.

It only takes one well connected music industry Accountant giving erroneous advice, or a nation-wide hospitality industry Association to provide selective interpretative advice to create an environment that makes compliance impossible.

9. Market Distortion and Regulatory Vulnerability

Allowing the current draft language guidance to stand will create an unlevel playing field, driving compliant operators out of the market. If the ATO focuses strictly on the physical "entity making the payment" rather than the underlying contractual liability, it creates a severe regulatory loophole:

- **The "Wrong Target" Effect:** Venues—the primary commercial beneficiaries—are actively leveraging the ATO's current "whoever pays last" website guidance to shift compliance costs onto micro-business intermediaries (booking agents and band leaders).
- **Exploitation of Non-Compliant Operators:** Venues will inevitably migrate toward non-compliant, un-audited, or under-resourced operators who do not understand or cannot account for these unfunded SG liabilities. Legitimate, compliant agents will lose their client bases and be forced to the wall.

10. The Intermediary Status of Band Leaders

The draft ruling could fail to recognize that a band leader operates fundamentally as an intermediary or conduit, not a primary employer:

- **The Casual Partnership Reality:** In the live music industry, most musical groups operate as casual, unincorporated partnerships. Under established commercial principles, any single member of the band can take personal action against a hirer to retrieve the collective band's funds (or seek assistance from state tribunals like NSW Fair Trading). The band leader does not hold exclusive commercial ownership over the other members.
- **Distinction from Enterprise Entities:** This must be legally distinguished from a structured "band owner" scenario, where a single entity owns all intellectual property (IP), branding, and assets, and contracts backing musicians strictly to support their proprietary business.

  Under standard tripartite custom, a casual band leader is an administrative conduit for a collective entity, not a principal employer.

11. A Collaborative Alternative for Compliance

There is no legal impediment within the *Entertainment Industry Act 2013* (NSW) or federal frameworks that prevents venues from utilizing intermediaries to administer superannuation for the hirer.

- **The Remittance Model:** The ATO should foster a "compliance community" where the legal liability remains squarely with the venue (the hirer), but the venue is permitted to authorize their booking agents or venue representatives to collect and remit the SG contributions on their behalf.
- **Establishing Liability First:**
  The administrative mechanism <u>must</u> follow the law. To make an agent or band leader liable simply because they facilitate a bank transfer is legally flawed. The legal liability must sit with the hirer; the administration can then be safely outsourced to the conduit.
  We don't think we can emphasise this enough. **The "liability to pay" must follow the "law".** Until this is established and published we cannot have meaningful conversations with clients or advise musicians.

12. The Superable Salary Figure and the "Labour Component" Illusion

While the ATO may argue that the calculation of superable earnings falls outside the strict scope of SGR 2026/D1, the Commissioner cannot issue universal advice without addressing how a performer's gross fee is broken down.

- **The Multi-Element Fee Structure:** When a venue books a solo musician for $400, that fee does not represent a pure wage. It covers a complex bundle of inputs necessary for the performance to occur, including capital equipment rental (PA systems, lighting, and instruments), logistics, transport, and intellectual property licensing (promotional imagery and digital co-hosting rights).

- **The "Premium vs. Labour/Skills" Distortion:** If a performer wins a major commercial televised competition (e.g., *The Voice*), their Friday night performance fee may instantly rise from $400 to $5,000. The physical labour performed during that 3-hour set remains completely identical. The venue or hirer is paying a "personal premium" for the commercial value of the performer's brand and IP, not their physical labour. Deeming the entire $5,000 gross fee as "ordinary time earnings" for superannuation purposes is a commercial absurdity.

13. Administrative Solution: A Universal Benchmark Award

The ATO's current public guidance states: *"If you cannot work out the labour part of the contract, you can use a reasonable market value of the labour section."* This vague standard invites arbitrary estimation and compliance confusion.

- **The Live Performance Award Benchmark:** The ATO should introduce a clear, universal calculation standard based on the *Live Performance Award 2020* or established Industry practice. For example, a standard 3-hour performance call (including standard setup/pack-down allowances) has a clearly defined award rate (currently approx. $193).
- **Ease of Audit:** Adopting a recognized national instrument as the default benchmark for the "labour component" under Section 12(8)(a) would provide certainty for venues, protect band leaders (and owners), and streamline the audit process for frontline ATO staff.

If you book a solo musician (he or she) to work in your hotel and pay him $400 and he has to bring his PA system on top of his instrument (tool of trade), provide his/her vehicle to lug it, do their own administration, provide you with images, license that image for promotional use, co-host an event with the venue on Facebook or collaborate on other platforms, you cannot view the total payment as the wage.

An estimate of the labour component using the Musicians Live Performance Award would probably see the labour sitting around $193 for a 3 hour Call. You could add some time or increment for set up and pack down (the musician is in effect then providing services "in connection with" the performance, see 12(8)(b)).
The Award provides a nationwide benchmark (in the absence of anything else) as to how the Super could be calculated.
Musicians Australia (sub section of MEAA) have a perspective on this matter and a recommended minimum fee ($250):
https://musiciansaustralia.org/the-musicians-australia-minimum-fee
They refer to demand factors and expertise as "personal premium".
ATO's public guidance for independent contractors explicitly states: "If you cannot

work out the labour part of the contract, you can use a reasonable market value of the labour section." That invites everyone to “guess”.

14. Factual Inaccuracy of Public Guidance (Example 6)

We strongly urge the Commissioner to review and remove **Example 6** (*"Hiring a band - as individuals"*) from the ATO's current official website advice.

https://www.ato.gov.au/businesses-and-organisations/super-for-employers/work-out-if-you-have-to-pay-super/super-for-sportspeople-performers-film-makers-and-related-activities

Example 6: Hiring a band - as individuals

> *Renee’s Hotel Pty Ltd engages the Rocking Stones band to play at their venue every Friday night for a month for their patrons.*
> *The Rocking Stones band is made up of Joel, Ted and Jasmine and they play together as a band at similar venues.*
> *The members of the Rocking Stones are engaged under an oral contract. Renee's Hotel pays each member of the band $300 for each Friday night performance.*
> *Renee’s Hotel Pty Ltd’s payments to the Rocking Stones are payments to persons to perform music.*
> *As Renee's Hotel Pty Ltd is liable to pay Joel, Ted and Jasmine individually, Renee's Hotel Pty Ltd will have to pay super to each of their nominated super funds.*

The scenario described simply does not exist in the live music industry and introduces severe legal errors:

- **The Scenario Error:** Example 6 outlines a hotel engaging the "The Rocking Stones" members individually via an oral contract and paying each of the three members $300 individually. In our experience of over four decades of industry practice, venues do not pay individual band members. They contract with a collective group ("The Rocking Stones") and pay a lump sum ($900) against a single collective invoice.
- **The Legal Error:** A venue contracts with the collective band, not three separate individuals. A collective band is not a "person" under the definition of paragraph 12(8)(a) of the SGAA.
- **The Correct Interpretation:** The ATO’s current Example 6 directly contradicts the sound view previously established in **SGD 93/14 (Paragraph 14)**, which correctly noted that if a contract is with a group of performers operating under a partnership arrangement, no SG obligation arises because there is no contract with a singular "person".

> Partnerships
> 14. If a contract is with a group of performers (for example, a band operating under a partnership arrangement) there is no Superannuation Guarantee obligation as there is no contract with a 'person' and there is no 'person' paid to perform within the meaning of paragraph 12(8)(a) of the SGAA.

As indicated in our Submission, if ATO seek to establish some other burden, then the industry requires explicit guidance on this matter. The unique attributes of a musical partnership and the subsequent general partnership law could be (or is) conflicting with what ATO seemingly seeks to achieve. The industry needs clarification on how an unwritten general law partnership will be evaluated by on-the-ground auditors especially in light of paragraph 79 – Tax Ruling 2023/4 (see submission), and Tax Ruling 94/8 at paragraphs 12 & 13.

> 12. Mutual assent and intention to act as partners is the essential element in demonstrating the existence of a partnership between two or more persons. We accept a written or an oral agreement as prima facie evidence of such an intention.
>
> 13. A written agreement signed by all parties, although desirable, is not necessary to demonstrate mutual assent and intention. An agreement to act as partners may also be inferred from a course of conduct agreed to by all parties.

15. The Operational and Administrative Impossibility of Applying aspects of 2026/D1 to Live Entertainment under the Payday Super Framework

In the live entertainment industry, a venue routinely deals with a single point of contact—the band leader or booker (agent). The venue buys a "packaged performance" as a single commercial unit. The venue has no visibility over, nor input into, the internal governance of the performance collective.

Without clear guidance there exists an interpretation clash between Tax Rulings noted above and potential audit stumbling blocks as outlined in *Holman*.

The Critical Compliance Friction of the 7-Day Payday Super Mandate

Under the statutory framework enacted by the *Treasury Laws Amendment (Payday Superannuation) Bill 2025*, employers and deemed engagers must clear Superannuation Guarantee (SG) contributions into a worker's chosen fund within seven (7) business days of the qualifying earnings day.

If paragraphs 64 to 69 are applied strictly by auditors to look through an informal band collective, and without industry specific guidance, a venue may be deemed the direct employer of every natural person who took the stage. This creates an unworkable compliance burden to fulfill within the strict 7-day window for the following reasons:

- The Problem of Unfettered Substitution: As recognized by general contract law and the principles reinforced in *Jamsek ,* musical collectives routinely utilise an unfettered right of substitution. A brass player or drummer may become unavailable at the last minute, and a "deputy" or substitute player will take the stage without the venue's prior knowledge. A venue cannot legally clear a Payday Super contribution within 7 business days for an individual whose identity they do not know, whose fund details they do not hold, and with whom they have never directly communicated.
- The Intermediary Accounting Trap: A band leader receiving payment will trigger a 7 day alert as it is a payment to an individual, even though the payment is for proceeds to be split between partners.
- If a venue is held liable - Forcing a venue to audit the internal profit-split of a lump-sum payment handed to a band leader—solely to calculate individual 12% superannuation components for each player—is an egregious administrative imposition. Small business hospitality operators lack the payroll infrastructure to process ad-hoc, multi-party superannuation splits on a weekly basis for

transient, non-regular contractors, all of which have varying input costs (brand advertising, administration charges, PA system cost levels etc).

To prevent severe economic harm to the live entertainment sector—which will inevitably result in venues completely cancelling live music due to the risk of automated compliance penalties—we request that the Commissioner insert a specific Safe Harbour Exception or Entertainment Industry Appendix within the final ruling.

This guidance should dictate that where a venue pays a single commercial lump sum to a band leader or collective group name for a performance, the venue is deemed to have contracted with a distinct business unit, satisfying the "entity" concept intent of paragraph 12.
This would revert compliance back to the previous SGD 93/14 (14).

> *Decision-making is facilitated by the guidance given by an adopted policy, and the integrity of decision-making in particular cases is the better assured if decisions can be tested against such a policy. By diminishing the importance of individual predilection, an adopted policy can diminish the inconsistencies which might otherwise appear in a series of decisions and enhance the sense of satisfaction with the fairness and continuity of the administrative process.*

16. Administrative Inconsistency and the Need for a New Determination

While a minute minority of venues may be attempting to adopt the model described in Example 6, they are doing so out of sheer compliance confusion caused by the ATO's own literature. This creates a deeply fractured marketplace where performers (and agents, and other venues) are left to decipher why a tiny fraction of venues attempt to pay individual superannuation allocations, while the vast majority operate via standard lump-sum group invoices.

Rather than relying on the incomplete website examples, the Commissioner must either delete Example 6 entirely or issue a comprehensive new **Superannuation Guarantee Determination (SGD) or Industry Ruling**. This new determination must explicitly outline the treatment of casual music partnerships and clarify the role of the invoicing band leader as an administrative intermediary.

17. Conclusion: A Whole-of-System Approach to Industry Compliance

The live music industry welcomes the long-overdue enforcement and focus on Section 12(8)(a) of the SGAA. This draft ruling presents a historic opportunity to achieve industry-wide compliance, but it must be targeted at the correct entity: the end-user venue.

To prevent widespread economic damage and the collapse of the live music sector, we respectfully urge the Commissioner to adopt a coordinated, whole-of-system approach to this reform. This must include:

Sequencing and Alignment: Ensuring the ruling does not create a direct regulatory overlap or legal conflict **with** state frameworks like the *Entertainment Industry Act 2013* (NSW).

- **Cumulative Impact Assessments:** Properly evaluating the compliance burden being shifted onto micro-businesses, independent contractors, and creative intermediaries who lack back-office infrastructure.
- **Transitional Pathways:** Designing clear, practical, and long-term transitional pathways to support businesses as they adapt to the new compliance environment.

The ultimate objective of Section 12(8)(a) is to ensure musicians and **entertainers** receive their lawful superannuation entitlements. This can only be achieved through a regulatory environment that supports industry productivity, removes administrative ambiguity, and allows venues to confidently and gainfully hire Australian performers.

Tim Kirkland-Morris
The Peak Agency