SUPERANNUATION FOR MULTIPLE PLAYER LIVE MUSIC ACTS.
ATO web guidance Examples not representative of live music market.

The Administrative & Contract Issue of the Partnership and "Bandleader"
General Law Partnerships in the Live Music Industry
Submission for further ATO guidance – 4 Sept 2026

This submission is provided to the Australian Tax Office to consider further implications of the latest web page guidance (updated 28 August 2026).

Feedback is sought with regard to matters concerning informal partnerships which are formed under general partnership law.

The ATO public guidance ignores the general law partnership structures fundamental to the operation of the live entertainment sector.
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

The *Superannuation Guarantee (Administration) Act 1992* (Cth) governs relationships explicitly between individuals [‘a person’].
There does not appear to be a reference in the SGAA to a group, band or collective.

In the live music industry, performers routinely operate as unincorporated associations, joint ventures or informal general law partnerships.
There is also a percentage which operate under formal (tax entity) partnerships or incorporated entity - not subject to this submission.

My first concern with the new guidance is that there is a lack of reference to the ‘contract’. On one hand ATO create scenarios but then focus on the payment as the principle determination of when and where a superannuation liability arises without confirming what the contract to perform was for, and the conduct that follows.

Turning to the ATO web guidance (updated 28 August) …

Example 7: hiring a group of performers - as individuals

Renee’s Hotel Co. engages a band, the Quiet Rivets, to play at their venue.

The Quiet Rivets is made up of Joel, Ted and Jasmine.

Renee’s Hotel Co. engages the members of Quiet Rivets under a verbal contract. Joel arranges for Renee's Hotel Co. to directly pay the members of the band $280 each for the performance, inclusive of super.

As Renee's Hotel Co. is liable to pay Joel, Ted and Jasmine individually for the performance, it will have to:

- collect super fund details for each of them, and
- pay super guarantee on the amount for each of Joel, Ted and Jasmine, calculated as 12% of $250 (being the super inclusive amount of $280 divided by 1.12) to each of their nominated super fund.

The balance of $250 is to be paid to each of Joel, Ted and Jasmine.

Renee’s Hotel would never have any connection with anyone but the band leader or the band’s agent. It would not even know who the other players are. Their names and details would never be discussed. As far as Renee’s hotel is concerned they purchased a commercial product known as Quiet Rivets. This group likely has it’s own stand alone Musician Facebook Page or an Instagram site. The ‘contract’ is for Quiet Rivets, and not Joel Ted and Jasmine.

Example 10: hiring a group of performers – paying a lump sum to one member who is acting as an agent

Neisha performs sometimes as a solo act and sometimes with other musicians. Neisha operates as a sole trader and has an ABN.

The Young Elm Pub engages Neisha to play at their venue for a one-off event under a verbal contract.

Neisha asks Fatima and Mohammed to perform with her for this event.

Neisha agrees with Fatima and Mohammed that she will act as the agent for the group in relation to their performance at The Young Elm Pub.

Neisha makes it clear to The Young Elm Pub that they can deal with her on behalf of the 3 performers. She agrees with The Young Elm Pub that she, Fatima and Mohammed will perform.

All parties understand that:

- the Young Elm Pub will pay a gig-fee of $980 for the performance to Neisha as the agent for the group
- the gig-fee is inclusive of super (this was negotiated by Neisha and The Young Elm Pub and agreed to by Fatima and Mohammed).
- Neisha will be entitled to $420 (minus super)
- Fatima and Mohammed are entitled to $280 each (minus super), and Neisha will facilitate their performance payments.

The Young Elm Pub's payment to Neisha is a payment to a person to perform music. However, The Young Elm Pub has the legal responsibility to pay super for Neisha, Fatima and Mohammed in the proportions agreed, even though all parties agree that Neisha will facilitate the performance payments to Fatima and Mohammed.

This leaves the reader open to making some assumptions.

Firstly - There is no Band name. There is not a commercial band being engaged. It is an agreement with Neisha. Young Elm Pub would never know who Neisha was hiring. If she has superannuation liabilities to others then that's her problem not the Pub's, albeit the Pub may have a liability to Neisha for her fee and they would need to ask her for an itemised Invoice to indicate her component of labour and skills (for her only).

Secondly – Neisha as a band leader more likely contacts two other players and let's them know she's got a trio gig option. They are all available and agree on equal splits because the contract was to buy a trio. The members may say to Neisha that she can pocket $80 if she sets up the PA and they all pocket $300 each. This scenario is far closer to the rapid turnover environment of the live music industry. It is a once off partnership of performers. A general law partnership but a partnership nonetheless.

Example 12: hiring a group of performers – paying a lump sum to one member who is not acting as an agent

Sophie is a singer who sometimes performs as a solo act and sometimes with other musicians. Sophie operates as a sole trader and has an ABN.

The Old Oak Inn engages Sophie to play at their venue for a one-off event under a verbal contract. They agree to pay Sophie $900 for the performance.

Sophie:

- decides she will ask Ryan, a guitarist, and Amelia, a keyboardist, to perform with her.
- does not operate a performance business with Ryan and Amelia in partnership or in any other legal form.
- agrees separately with Ryan and Amelia that she will pay them $200 each for their performance. The Old Oak Inn is not aware that Ryan and Amelia will be performing with Sophie.

The Old Oak Inn's lump sum payment to Sophie is a payment to a person to perform music. The Old Oak Inn will have to pay super guarantee to Sophie's nominated super fund for the entire $900. It should ensure it has collected Sophie's super fund details.

Sophie's payments to Ryan and Amelia are also payments for the performance of music. Sophie has engaged Ryan and Amelia directly and must pay them for their performance. She will need to pay super guarantee to Ryan and Amelia's nominated super funds when she pays them the agreed upon $200 each if she is to avoid super guarantee charge.

Again, was the contract for a band/trio, or was it to hire Sophie as a solo?
The guidance is silent on this matter, and the contract is determinative.
'Sophie decides she will ask Ryan, a guitarist, and Amelia, a keyboardist, to perform with her'.

'The Old Oak Inn is not aware that Ryan and Amelia will be performing with Sophie.'
So, the agreement was for Sophie as a solo act, or, the Old Oak knew it would be a trio but didn't know who Sophie would book? Which is it?

If the Old Oak Inn is engaging Sophie because they are buying her popular brand then ATO scenario makes sense. It is then Sophie who has a superannuation liability (hence why she's getting paid more) to the other players. But, I contend that the Inn should only be paying superannuation on Sophie's component labour and skills (or on the $500+gst). Sophie can cover the Super for the other two players by herself. The Old Oak Inn has no interaction whatsoever with the other players on a contract basis.

Sophie should ensure she has collected the super fund details for Ryan and Amelia.

This outcome would be different if Sophie had:

- organised for The Old Oak Inn to engage the performers as individuals, rather than only agreeing to engage Sophie, or
- made an agreement with Ryan and Amelia to act as agent for the group, and explain that to The Old Oak Inn.

In both of those scenarios, The Old Oak Inn would be liable to pay super guarantee for all three performers.

The Old Oak Inn would never hire them as Individuals.

If the trio was a commercial entity set up to work as a trio with equal splits (see above notes) it's an informal partnership.

Again it comes back to what did the Old Oak Inn contract for?
A Sophie solo show, or a Sophie Trio show or something else?

The reality under this Example is, if the Old Oak Inn required a Trio for an event they would not hire Sophie if they encountered all these liabilities. They would look for a trio that marketed itself as a commercial trio with it's own branding and contract with the trio.
But most likely, the exact same scenario I have outlined for Neisha would apply here. A rapid fire formation of 3 players agreeing to equal splits for a commercial gig. This is what happens day in and day out across Australia, especially in duo formations.

To be clear on this scenario – **They Are Performers Sharing Revenue.**

By issuing blanket public guidance without reference to the contracts is not assisting.
In an informal partnership ...

- **The Bandleader Trap:** If a single band member receives a lump-sum performance fee into a personal/business account and distributes the respective splits to the other partnership members, the strict adherence to 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. ATO web page advice 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.

"Because a band (or duo) 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".

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. A group of jockeys can't ride the same horse in one race. A professional football team don't sell their services as a collective team to a team owner. Team owners buy and sell individual players to create their teams.

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 entity. Most bands generally do not, and have not, set up a formal tax entity 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. **But, it also needs to explain why**.

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 guidance 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 (or duo) 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.

The venue is not the owner of the band auditioning and selecting players to form a band. This simply does not happen in a live music venue. It does in the theatre, orchestra and opera worlds.

For what it's worth it is this author's opinion that this is why 12(8)(a) was written in the first place. It was meant to cover those standard employment scenarios. It should have never been introduced into a live music venue world where musicians consider themselves to be as independent as plumbers, electricians and carpenters. Unfortunately, the legislation wasn't written that way so moot point I know, but worth saying nonetheless.

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. It also ignores the Contract. This creates an unworkable compliance structure on many levels.

<u>The ‘Not A Person’ Principle</u>

The core contention is that the guidance fails to adequately distinguish between an individual natural person and a collective multi-member unit (such as a duo or band) operating as a **General Law Partnership**. It is submitted that:

1. A multi-member collective is **not a "person"** for the purposes of the deeming provisions in s 12(8)(a).
2. Where a multi-member unit operates on an equal split of income and revenue, they are carrying on a business in common under general law partnership principles, placing the arrangement outside the scope of s 12(8)(a).
3. The factual reality of modern venue bookings lacks the requisite element of operational control required to establish a contract of service or individual labour supply.

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2. Statutory Construction: A Collective is Not a "Person" under Section 12(8)(a)

Section 12(8)(a) of the SGAA states:

*“a **person** who is paid to perform or present… is an employee of the person liable to make the payment.”*

The word "person" in the context of s 12(8)(a) must be interpreted consistently with the broader framework of employment law and the SGAA, which contemplates the supply of an individual’s personal labour.

- **The "Individual" Constraint:** s 12(8)(a) explicitly deems a relationship to be that of *employer and employee*. An employer-employee relationship fundamentally requires an individual natural person to perform the labour.
- **Contracts with a Collective Unit:** When a hospitality venue executes a booking confirmation with a duo or a four-piece band as a collective entity (e.g., "The XYZ Band"), the venue is contracting with a multi-member commercial unit—not an individual natural person. The venue's legal obligation is to pay a single lump-sum fee to the collective entity for the delivery of an entertainment service, rather than paying an individual for their personal time or labour. Therefore, the collective unit cannot be deemed an "employee" under s 12(8)(a).

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3. The Multi-Member Unit as a General Law Partnership

Where a multi-member musical group enters into an agreement together, shares risk, and operates on an equal split of gross revenue/income, the arrangement satisfies the definition of a partnership under state-based partnership legislation (e.g., *Partnership Act 1892* (NSW) s 1(1)): *"the relation which subsists between persons carrying on a business in common with a view of profit."*

- **Distinction from Mere Agency:** The ATO's updated guidance frequently attempts to view multi-member bands through an "agency" lens (e.g., a band leader acting as an agent for individual performers). However, an equal-revenue split model goes beyond simple agency. It represents a joint commercial enterprise.
- **Asset and Brand Ownership:** A general law partnership band commonly shares ownership of capital assets (PA systems, Props, Social Media, transport) and jointly holds the intellectual property of the band brand name.
- **No Individual Liability to Superannuation:** A venue paying a lump-sum invoice to a general law partnership is interacting with a business entity. It is legally impossible for a partnership entity to be an "employee" under the SGAA. The distribution of the profit split within the partnership is an internal matter of the partnership's business structure and does not trigger s 12(8)(a) for the paying venue.

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4. The Factual Reality of Control: Application of *Palais de Danse* to Modern Venues

The historic benchmark case establishing collective musicians as employees, *Performing Right Society Ltd v Mitchell & Booker (Palais de Danse) Ltd* [1924] 1 KB 762, relied on an extreme degree of day-to-day operational control that is entirely absent in modern live music bookings.

In *Palais de Danse*, the venue owner exercised strict rights regarding:

1. **Sartorial Control:** Dictating exactly what the band wore.
2. **Artistic Control:** Controlling the specific setlist and repertoire.
3. **Exclusivity:** Explicitly banning the musicians from performing at any other venue during the contract period.

The Contrast with Modern Live Music Gigs:
Modern live music venues do not exercise these controls.

- **Artistic and Visual Autonomy:** Venues hire specific duos or bands precisely *because* of their unique style, original music, or established repertoire. The band retains total autonomy over what they wear and what they play.
- **Scheduling is Not Control:** While a venue dictates performance times (e.g., 8:00 PM – 11:00 PM), this is merely a coordinate arrangement for the use of physical space—functionally identical to an independent freight contractor being given a delivery time slot at a loading dock. It does not constitute employer-level control.
- **Non-Exclusivity:** Modern bands operate as fluid commercial entities, playing at Venue A on Friday, Venue B on Saturday, and a private corporate function on Sunday. They are independent operators juggling multiple clients.

Consistent with the High Court's ruling in *Construction Forestry Maritime Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1, courts must look at the actual rights and obligations established under the contract. Where a contract leaves playlist control, wardrobe, and non-exclusivity in the hands of the band, the legal relationship cannot be characterized as an employment relationship under general law.

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5. The Mechanism of Debt Recovery Proves Joint Partnership Rights

The non-entity status of a standalone band name does not allow the relationship to be split into individual employee segments under s 12(8)(a). If an entertainment hirer defaults on a lump-sum payment to an unregistered multi-member band, any subsequent recovery action (such as under the *Entertainment Industry Act 2013* (NSW)) must be initiated in the individual names of the constituent musicians trading under that joint style (e.g., *"Joel Smith, Ted Jones, and Jasmine Doe trading as 'The Rocking Stones' v Venue"*).

When evaluating such a claim, a court views the contract as a joint commercial debt owed to a General Law Partnership, not several individual claims for wages. The partners sue jointly to recover a single, indivisible partnership asset (the lump-sum fee). The fact that procedural law requires partners to sue in their own names underscores the reality that the contract is with a collective partnership unit. The deeming provisions of s 12(8)(a) cannot logically apply to a transaction where the right to payment is entirely joint and indivisible under general law.

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6. Conclusion and Requested Amendment

By failing to explicitly exempt multi-member bands operating on equal-split revenue models, the ATO’s current web page guidance creates an unworkable administrative burden for the live music sector and fundamentally mischaracterises general law partnerships.

Requested Change:
The ATO should amend the guidance to include a clear, safe-harbor example stating that where a venue pays a lump sum to a multi-member group (such as a duo or band) that operates under a joint name, shares commercial risks, and utilizes an equal-revenue or profit-sharing split, the payment is made to a partnership entity for an entertainment service, and **section 12(8)(a) does not apply**.

. . . .

Proposed Additions to the ATO guidance:

Proposed Additions to the ATO Guidance
To resolve industry-wide ambiguity regarding collective multi-member bookings and to align this guidance with the commissioner’s historical position, the following illustrative examples are proposed for inclusion in the final guidance:

Example #: The "Rocking Stones" Partnership, Production, and IP Allocation

- **Facts:**
  Joel, Ted, and Jasmine carry on a business in common as professional musicians under the registered trading name "The Rocking Stones". They operate as an equal General Law Partnership, sharing all commercial risks, capital assets, and profits. The partnership enters into a verbal or written agreement with a local hotel (the Hirer) via the hotel's entertainment agent to provide a three-hour, three-set live musical performance. The contract is explicitly executed between the Hirer and the partnership entity, "The Rocking Stones", for an all-inclusive lump-sum fee of $1,200.The partnership provides its own commercial-grade PA system, lighting infrastructure, and a transport vehicle. The agreement grants the Hirer a commercial license to utilize the band’s intellectual property (name, logos, and marketing assets) on social media to promote event attendance. Joel is nominated by the partnership as the "band leader" to manage administrative tasks. Joel issues a single tax invoice to the Hirer using his sole trader ABN on behalf of the partnership. Upon receiving the $1,200 payment into his account, Joel retains a minor administrative

allocation for joint expenses and distributes the remaining revenue equally among the three partners.

- **Superannuation Guarantee (SG) Outcomes:**
  - **The Hirer's Liability:** The Hirer has no SG liability under section 12(8)(a) of the *Superannuation Guarantee (Administration) Act 1992* (SGAA). The Hirer contracted with a collective business entity (a General Law Partnership) for the provision of an integrated entertainment product and service—**not with an individual natural person for their personal labour**. Because a partnership is not a "person" paid to perform under s 12(8)(a), the deeming provision does not trigger.
  - **The Band Leader's Liability:** Joel has no SG liability as an employer of Ted and Jasmine. Joel acts as an administrative intermediary and partner distributing a share of partnership profits. This transaction is a distribution of business revenue, not a tripartite employment payment for individual personal labour.
  - **Note on Substitutes:** This position aligns with the principles previously set out in **paragraph 14 of the withdrawn Superannuation Guarantee Determination SGD 93/14**, which recognized that contracts with partnership-configured bands fall outside s 12(8)(a) due to the absence of an individual contract. “not a person”.

    (Note: If the partnership directly engages an external session musician or substitute who does not share in equal partnership profits/losses, the partnership entity itself may hold superannuation obligations for that individual).

Example ##: Performers Sharing Revenue (The Ad-Hoc Duo)

- **Facts:**
  Herb and Burt are independent, full-time professional solo vocalists and musicians. While they primarily operate separate individual businesses, they occasionally perform together under a joint arrangement when venues require a duo act. The South RSL Club suffers a last-minute cancellation and puts a call out for a replacement duo seeking an emergency booking for a duo performance. Herb contacts Burt, who agrees to collaborate for the event. The Club accepts the booking of the "HerbBurt Duo" for a flat fee. Herb and Burt agree to split the performance revenue equally. Following the performance, Herb issues a tax invoice, receives the lump-sum payment from the Club, and transfers the agreed split to Burt.

- **Superannuation Guarantee (SG) Outcomes:**
    - **The Hirer's Liability:** The South RSL Club has no SG liability. The commercial reality of the transaction is that the Club contracted with a joint commercial unit ("HerbBurt Duo") to resolve a scheduling vacancy via the delivery of an entertainment service. The Club did not contract with an individual "person" to provide personal labour under s 12(8)(a).
    - Herb and Burt are **Performers Sharing Revenue** in a joint venture capacity. Herb serves as a mere conduit for the collection of joint business income. The subsequent transfer of half the fee to Burt does not constitute an employment relationship or a tripartite labour arrangement.

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