

BAND PARTNERSHIP AGREEMENT FACT SHEET

REMEMBER TO CHECK OUT THE BAND PARTNERSHIP AGREEMENT CHECKLIST THAT GOES WITH THIS FACT SHEET. THE CHECKLIST OUTLINES KEY TERMS IN A BAND PARTNERSHIP AGREEMENT, AND THIS FACT SHEET PROVIDES MORE DETAILS ON THOSE TERMS.

WHAT IS A PARTNERSHIP?

Many musicians working together are actually operating a partnership (even if they don't realise it). Each state has its own Partnerships Act, and you can be deemed to be in a partnership if you carry on a business in common with a view to making profit. This means that the law sets rules about who owns band property and how it can be dealt with, which may be very different from what the band intends. Further, partners are personally liable for the debts and liabilities incurred in the name of the business by any of the other partners. So, if a band member buys an expensive piece of equipment, charges it to the partnership's account and then takes off overseas, the remaining band members would be liable for the debt. Having something in writing makes sure everyone knows their rights and responsibilities and helps to avoid nasty surprises.

There are many ways in which a band can structure how their income, expenses and rights will flow through to individual band members. Members can contract as individuals, or the band can set up a "service" company, which enters contracts for the band's services, collects income, pays expenses and distributes money to the members. The decision as to whether a band should form a company should be made with reference to each member's current financial situation and should only be made after consulting with a tax accountant familiar with the workings of the music business.

WHEN DO YOU NEED A BAND PARTNERSHIP AGREEMENT?

Band members should enter a band partnership agreement before the band begins receiving income. A band partnership agreement can state the rules under which band members should act and operate throughout the life of the band. These rules can outline the rights each band member has in every song and recording that the band creates, and how much each member will be paid from income the band generates, as well as how to troubleshoot any disagreements that may arise in the life of the band. This helps manage future conflict around individual members receiving greater songwriting credits and royalties. These issues can become very significant in times when a band member quits or is asked to leave, or additional members join the group.

If you wish to be a professional artist in a professional band, agreements such as these are vital in order to protect your rights and your livelihood.

Key Terms of a Band Partnership Agreement

FORM OF AGREEMENT

The band partnership agreement should be signed in the form of a 'deed' rather than a contract. This is because contracts require 'consideration' (some exchange of value or payment) to be legally binding, but deeds do not. In other words, the band partnership agreement is more likely to be legally binding if it is a deed. For more information about deeds, see Arts Law's Information Sheet on Signing Legal Documents [here](#). Generally, for a document to be a deed it must state that it is "executed as a deed" and each party's signature must be witnessed. However, to make this fact sheet easier to understand we will call the relevant document the "band agreement" or the "band partnership agreement".

COMMENCEMENT DATE AND TERM

Band members should agree how long the partnership will last. This can be a fixed period of time, or an open-ended period determined by some event (such as a minimum number of members giving notice), or a combination of a fixed term and a subsequent more open-ended period determined by an event. It is a quirk of the law of partnerships that if you don't have a clear way of expressing how long the partnership will continue, it could be deemed a 'partnership at will' – which means that a single band member can end the partnership at any time by resigning. This can have problematic legal, economic and practical consequences if the band wants to continue operating (because under the applicable legislation the partnership will have to be wound up and its assets liquidated).

BAND NAMES

The band's name is its brand. It carries the reputation and public recognition the band has worked to develop. It is essential for band members to decide who controls the rights to the name. If the band is the brainchild of one member, they might insist on greater rights to the name over other members. There is no hard and fast rule here, but generally in a band where each member contributes equally, rights in the band name are shared equally.

Think about bands like Tame Impala whose line up has changed over time, yet a member has continued to operate under that original name. As you can imagine, things can get complicated when members leave or the band splits up. For example, can the drummer use the band name to promote their solo drum clinics?

The band should decide whether to register the name as a trade mark with IP Australia. This will help build economic value in the band name. By registering a trade mark for specific goods and services, you can stop others from using your band name in connection with the same or similar goods and services. For more information about trade marks, see IP Australia's website [here](#).

Even if the band chooses not to register a trade mark, the reputation that the band has built in its name may still be protected by other laws. For example, the Australian Consumer Law prohibits misleading or deceptive conduct in trade — and this might prohibit someone using the band name when they don't have the authority to do so. This protection is often broader than just booking gigs using the band name. It may also extend to artwork, merchandise and other branding material that is connected with the band's reputation. However, if your brand is registered as a trade mark, it is easier to protect because you don't have to prove market reputation.

Finances and Assets

CAPITAL CONTRIBUTIONS

When setting up a band partnership, each member of the band may agree to give a certain amount of money to the partnership — generally into the band bank account — or contribute equipment or other resources. This initial outlay is known as a "capital contribution".

The need for capital contributions will change over time. For example, at the start of a band, members may only need to outlay enough capital so that they can hire out a rehearsal space. But if the band wants to tour in several months' time, or to record a demo, or pay for promotion, or merchandise, the band agreement might require that each member must contribute more capital to the band account to assist with those payments. Or it might say no further capital contributions are required unless everyone, or a particular majority, agrees.

EQUIPMENT AND INSTRUMENTS

Each band agreement should define which equipment and instrument costs are to be borne by the band partnership and which costs should be taken care of by individual members. As part of this decision, the band should make it clear whether such equipment/instruments are owned by the partnership ('partnership property') or owned by individual members and loaned to the partnership. The same can apply to contributions of capital. They can be characterised as loans that are repayable once the band is in a position to do so.

For example, a guitarist with one guitar may bring that guitar to the partnership as a loan — ie the guitarist loans the partnership the guitar during the term and the partnership pays for all repairs needed to it. But if the guitarist requires a second guitar and the partnership buys it, the guitarist has no right to keep the second guitar when the term ends, unless expressly agreed to by the band. Again, there are no rules around this and the details set out in the band agreement depend on how you choose to operate.

GROUP BANK ACCOUNT

Dealing with money can be complex. Many band disputes begin with errors in accounting, unintentional or otherwise. To transparently deal with the band's income, it is possible to set up a bank account solely for the band to use. This account will keep all capital contributions as well as any other income the band earns in one place. If the band decides to set up an account, you will then need to decide on who can be signatories, or have administration credentials to withdraw funds from the account. For example, does every member need to sign off prior to a withdrawal or is one or two members sufficient?

EXPENSES

Band agreements often detail what sort of expenses the partnership's income will cover, to avoid members using band money for personal expenses. The agreement will usually state that any unforeseen expenses or any costs over a certain amount must be agreed to by all members before that money can be spent.

COPYRIGHT OWNERSHIP

If bands are making recordings, including videos and clips for social media, they are creating assets that are protected by copyright. Those assets are potentially valuable. The band agreement should set out how such copyright is owned, and how any income it generates will be treated.

That copyright could be owned in separate but equal shares (allowing individual band members to 'assign' their share without the consent of the other band members).

Alternatively, the copyright could be owned jointly as an undivided whole (in which case there would be no individual 'shares' to assign).

Income is separate to copyright ownership, and can be treated differently. For example, the band agreement might state that whatever shares copyright is held in, all the income from streaming, sales, licensing and other monetisation of such material goes back to the bank account first, to be applied to any costs or expenses, before being distributed to the members.

If band is making original music, then another potentially valuable copyright is being created – copyright in the music and lyrics (see Arts Law's Information Sheet on Music Copyright and Publishing for Bands and Musicians). This is a separate copyright to the copyright the sound recordings and videos. The band agreement should set out the basic rules about who owns copyright in such original music, and how the income from that copyright will be split.

Under the Copyright Act, the writer is generally the first owner of copyright unless they've agreed otherwise. There is some quite tricky law about what happens if there is more than one writer, depending on the nature and extent of their contribution. Some band agreements (wisely) avoid setting out rules determining who qualifies as a writer, leaving that up to common sense, industry custom and agreement, but they do address how and for how long the writer or writers will share some of their songwriting income with other members of the band.

Such schemes are complex territory and require very sound legal and accounting advice. That said, some bands agree a split under which the non-writer members get a modest share of the writer's publishing income from songs the band records and commercially releases, but only for as long as those non-writers are in the partnership and working with the band. A common rookie error is using APRA registration to reflect agreed income splits rather than agreed writer splits for songs. That practice is highly problematic, not least because it is not compliant with APRA's rules, and it can be very prejudicial to the actual writers.

Members

PARTNERSHIP ROLES AND PRIORITY

It is important for the partnership agreement to define the scope of the project and everyone's roles in it. The project you are embarking on should be described – writing, rehearsing, performing, etc – and specify that the partnership will be ongoing (unless the band is getting together for a one-off project) for an agreed period as discussed above.

Where there are some key members of the band and others who have just joined or are being hired for particular sessions, the group might decide that only the key members will be partners, and the others will be hired as contractors or employees. For the partners, the agreement should set out each partner's responsibilities, how much time they are expected

to spend on the band, and whether it will be a first priority or not. If band members have other full-time jobs that would prevent touring, for example, it is better to know these things upfront. The agreement should cover whether partners are allowed to do work outside the partnership. When this happens, there is a risk that the other work might compete with the partnership.

LEAVING MEMBERS

Band partnerships should deal with the less-fun aspects of being in a band, such as when a band member either quits or is asked to leave. It may be hard to fathom now that such a thing could occur, but it is very important to agree upon a method of dealing with what happens when a member leaves.

It is important to remember that, unless they've agreed otherwise, the leaving member is legally allowed to:

- keep their rights in the songs they wrote and keep earning money from their share of income from songs;
- keep their rights in any other copyright material they own shares in, and keep their share of income from those materials; and
- keep performing the songs recorded by the band, and even make and release recordings of those songs if they've been previously commercially released or if the leaving member is the sole writer.

The band agreement needs to set out a fair way for a band member to resign from the partnership, including how much notice they have to give the other partners, what equipment or other property they can keep, what payments they might get, and what responsibility they'll have for debts or unrecouped advances.

Additionally, do you want it to be possible for the band to expel a member? There might be circumstances where it becomes impossible to work with a certain person (because, for example, they are failing to turn up to events or do the work they have promised to do). If the band wants this freedom, it should include in the partnership agreement how this can be done, and on what grounds.

WINDING UP PROCEDURE

There may come a time when all or a majority of the members agree that it is time to finish up the band. But there may still be rights, assets, income and liabilities to deal with. The band will have to decide on a process for the partnership to be dissolved voluntarily, and how the band's assets and liabilities will be divided. Some bands choose to set up a company to look after their interests moving forward, others might engage a service provider to administer ongoing income. It is critical that the band agrees on some method or structure to do so.

INCOME SPLITS

Bands usually agree to equally split the band profit from sources other than music royalties (see above). "Profit" here is the same as in any other business — it's the money left after the income has been used to pay expenses, taxes, loans, and perhaps keep back a reserve for anticipated future expenses, etc. Sometimes a band with enough financial turnover can afford to pay the members a regular wage or stipend as an overhead of the business, which is all periodically reconciled and any profit left over distributed. Bands should certainly consider engaging an accountant or a bookkeeper to assist with these processes.

As noted above, more nuanced arrangements are generally required for music publishing income.

DISPUTES

As with anything in life, disputes are inevitable — some are easy to fix, others are not. The band agreement should address disputes and set out a process for resolving them to which each member agrees to adhere (or risk being expelled). There are a range of external dispute resolution services and approaches (and model clauses) that can be specified in the agreement if the members can't resolve things themselves. In most situations there are good alternatives to going to court — which is very expensive, stressful and slow. For more information about alternative dispute resolution, the website of the Australian Disputes Centre or see Arts Law's Information Sheet on Alternative Dispute Resolution – Mediation.

For more information, you can speak to your local Industry Association, the Arts Law Centre of Australia or a legal practitioner.



This checklist is an initiative of the Australian Music Industry Network. For more information visit www.amin.org.au.