

Legal obligations relevant to engagement of a share farmer

Residential tenancy laws

Residential tenancy laws lay down notice periods for ending the tenancy, whether bonds can be required and how much can be charged, rules regarding repairs and inspection, and agreements with specific terms. Breaches of these laws attract fines.

Whilst residential tenancy laws can protect both the tenant and the landlord, the notice periods for ending the tenancy can be problematic when accommodation has been part of a package. Notice periods will continue to apply which can be up to 60 days.

In WA, NSW, SA and TAS residential tenancy laws do not usually apply where the tenancy is not 'for consideration' or 'for value' which means that no rent is paid for the accommodation. In VIC and QLD, residential tenancy laws may apply to accommodation on farms where the accommodation is not a part of the wider lease of the farming property.

New South Wales Agricultural Tenancies Act

The NSW Agricultural Tenancies Act requires that share farming agreements be in writing. It also provides a mechanism for settling disputes that may arise during the term of the agreement and has specific notice requirements for termination. If the agreement is for a fixed term no notice is required.

If your share farming agreement does not have a fixed termination date, but rolls on from year to year, the notice period for termination is 6 months unless the agreement specifically states otherwise. It is recommended that all agreements be for a fixed term and be renewed appropriately at the end of the term.

For further information, visit

<https://www.fairtrading.nsw.gov.au/housing-and-property/renting/agricultural-tenancy>

Superannuation

The federal Superannuation Guarantee legislation requires all employers to make superannuation contributions, currently 9.5% of ordinary time earnings, for all employees. Under this legislation, some independent contractors are taken to be employees and the contract principal (the owner) is therefore required to pay superannuation contributions, regardless of whether the common law 'control test' has been met.

If all 3 of the following criteria apply to the contractor then the contractor will be regarded as an employee for superannuation laws:

- the person is paid wholly or principally for their labour and skills (the contract can be for labour and supply of materials or goods but the superannuation laws will apply if the labour component is the main part of the contract);
- the person is required by the contract to perform the work personally and cannot delegate the task to other workers, and
- the person is not paid to produce a result.

If the independent contractor trades as a company, a trust or partnership, the contract will not be regarded as a contract for a person's labour or skills under the superannuation laws and there will be no liability for superannuation payments.

If the test applies to the person you have engaged, you must pay superannuation contributions at the rate of 9.5% of the labour component of the contract to a complying superannuation fund.

Seek advice on superannuation - the penalties for breach of superannuation requirements are severe and professional advice should be obtained if you have any doubts about whether the law applies.

What about the contractor's employees and superannuation?

Where a contractor employs workers to do the contract work, it can be difficult to decide whether you or the contractor will be taken to be the employer and therefore liable for superannuation contributions. To avoid possible penalties, it is suggested you insist that the contractor notify the relevant superannuation fund that the contributions for these employees are on your behalf, as well as on the contractor's behalf. It does not cost the contractor anymore and protects you.

Workers compensation

Workers compensation is the responsibility of state and territory governments. Every state and territory has its own legislation which has different rules as to who is responsible to take out insurance cover for workers compensation.

The responsibility for workers compensation depends upon how the term 'worker' is defined by the relevant state or territory legislation.

In some cases this will mean that a contractor (or share farmer) which meets the common law 'control test' will nevertheless be regarded as a 'worker' (or employee) and the contract principal (the owner) as an employer and therefore responsible and liable under workers compensation laws.

While some states (VIC and QLD) have special laws about share farmers, this does not mean that other state laws about independent contractors do not apply to share farmers.

Farmers intending to enter into a share farming arrangement should check with their state or territory workers compensation authority before work begins. Note: these laws may change. Before entering into any contracts, check for changes to legislation through your state or territory workers compensation authority.