

SFA checklist

Between Owner and Skipper

1 Essential features

The essential features that an SFA should contain to ensure that it does not give rise to an employment relationship between the Owner and the Skipper are:

- (a) The Owner is the owner of the vessel licensed for commercial fishing and the holder of the managed fishing licence. The vessel also meets marine safety laws.
- (b) The Skipper holds all the relevant personal licences and certificates that regulate commercial [type of seafood] fishing and meets the Skipper's duties as defined under the Western Australian Marine Act 1982 or any other law.
- (c) The intention of the SFA is to create a fishing business joint venture between the Owner and the Skipper.
- (d) The Skipper agrees to skipper the vessel and to exercise the legislative rights and privileges of the Owner's managed fishing licence.
- (e) The Owner and the Skipper agree to sell the catch to the same buyer and share the gross proceeds of the sale of the catch.
- (f) The Owner's agreed share is paid directly to the Owner by the buyer of the catch.
- (g) The Skipper's agreed share is paid directly to the Skipper by the buyer of the catch.
- (h) The Owner and the Skipper agree to each bear a proportion of the operating expenses of the vessel.
- (i) The Owner is responsible for the annual refit of the vessel as well as the financing costs associated with the vessel and the managed fishing licence.
- (j) The Skipper supplies his own personal accident insurance (evidence to be provided to the Owner), portable navigational equipment, personal protective equipment, wet weather gear, boots and any other equipment necessary for the Skipper to carry out his obligations under the SFA.
- (k) The Owner and the Skipper acknowledge that they are not in an employment relationship.
- (l) The Skipper acknowledges that the Owner is not liable to make payment for, or on behalf of, or provide to the Skipper annual leave, sick leave, long service leave, superannuation contributions or any similar benefits.
- (m) The Skipper acknowledges that he is responsible for all taxes and levies in respect of all or any payments made to him by the buyer of the catch including income tax, GST and withholding tax.
- (n) The Skipper indemnifies the Owner for any loss caused by the Skipper.
- (o) Either party may terminate the SFA by giving the other party [] days notice in writing of such termination.

2 Conduct of parties

- (a) The SFA must always be current and all parties should have the opportunity to negotiate its terms and conditions.
- (b) The practice and conduct of the parties must accord with the written terms of the SFA.
- (c) The parties must understand that they are carrying on a business joint venture of fishing operations. In other words, each party is in business in his or her own right and **not** in an employment relationship.
- (d) Each party must have an ABN and account for GST separately on their respective BAS. If a GST joint venture is formed between the Owner and the Skipper, different administrative requirements will apply.
- (e) The conduct of the parties is extremely important when a court or tribunal has to decide whether an employment relationship exists.

3 Independent advice

It is essential that parties obtain their own:

- (1) legal advice in negotiating and drafting the SFA; and
- (2) accounting advice concerning their financial, taxation and GST position.