

SFA checklist

Between Skipper and Fisherman

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 Skipper and the Fisherman are:

- (a) 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.
- (b) The Fisherman holds a current commercial fishing licence. The Fisherman refers to the party not having 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 business joint venture for the purpose of sharefishing between the Skipper and the Fisherman.
- (d) The Skipper and the Fisherman agree to participate as share fishermen on the vessel.
- (e) The Skipper and the Fisherman agree to sell the catch to the same buyer and share the gross proceeds of the sale of the catch.
- (f) The Skipper and the Fisherman agree to each bear a proportion of the operating expenses of the vessel.
- (g) The Fisherman supplies his own personal accident insurance (evidence to be provided to the Skipper), personal protective equipment, wet weather gear, boots and any other equipment necessary for the Fisherman to carry out his obligations under the SFA.
- (h) The Fisherman may, at his own expense and under agreement with the Skipper, provide a suitable substitute to carry out his obligations from time to time under the SFA.
- (i) The Skipper and the Fisherman acknowledge that they are not in an employment relationship.
- (j) The Fisherman acknowledges that the Skipper is not liable to make payment for, or on behalf of, or provide to the Fisherman annual leave, sick leave, long service leave, superannuation contributions or any similar benefits.
- (k) The Fisherman indemnifies the Skipper for any loss caused by the Fisherman.
- (l) 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 (if necessary) separately on their respective BAS. If the Fisherman has entered into a PAYG voluntary agreement with the Skipper, the Fisherman will not be required to account for GST.
- (e) The Skipper may deal with the entire catch and pay to the Fisherman his agreed share of the gross proceeds of the sale of the catch. This will particularly be the case where there is a PAYG voluntary agreement between the Fisherman and the Skipper.
- (f) 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.