Dairy Australia

SHARE DAIRY FARMER OR EMPLOYEE?

FREQUENTLY ASKED QUESTIONS

If the share farmer has no control over the way work is performed, they are likely to be considered at law to be to be an employee regardless of whether they are called a share farmer. This means that the entitlements and responsibilities of an employment relationship will apply, e.g. benefits such as annual leave, personal leave and long service leave.

What is the difference between a share farmer and an employee?

It is essential to determine whether the person you are seeking to engage is a true share farmer or an employee at common law. The distinction is important as the law imposes different rights and obligations on those who engage independent contractors and those who engage employees. An employer is required by law to provide benefits such as annual leave, personal leave and long service leave, whereas there is no such obligation to provide these benefits to an independent contractor.

A true share farmer will:

- be responsible for a fair proportion of the costs of the business bringassets (or have the ability to accrue assets) such asmachinery, mobile plant and stock to the arrangement
- have the ability to increase wealth as a result of the work he or sheperforms under the share farming agreement. (It is important that thisbe recorded in the financial records of each party)
- have the ability to make relevant management decisions
- be able to delegate or employ others to do some or all of the work evenif they do not do so
- be responsible for their mistakes and be required to rectify them attheir own cost
- decide how some or all of the work will be performed and when.

FURTHER READING

The Model Code of Practice for Share Dairy Farming has guidelines and 4 tools for assessing and establishing share farming arrangements.Use this with a dairy advisor - visit **thepeopleindairy.com.au/sharefarming**

Stepping Stones provides information on the different types of career opportunities on a dairy farm, exploring pathways available to both start or progress a dairy career. Visit **thepeopleindairy.com.au/steppingstones**

Learn more about independent contractors. Visit **thepeopleindairy.com.au/engagement-reward/independent- contractor.htm**

Shared equity arrangements - visit **thepeopleindairy.org.au/planning-for-the-future/shared-equity**

What about paying a share of the milk income?

Paying a person a share of the milk income does not make the person a share farmer. A person will be an employee unless they have some control of the farm business, contribute significant capital or assets and have a choice in the way the business is operated.

Employees covered by the award must be paid the award rates of pay and other entitlements.

For more information visit **thepeopleindairy.org.au**
This leaflet is a guide only and professional advice should be sought about your specific circumstances.

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How do I calculate the share?

Discussing and developing a share farming arrangement is best done with the help of a consultant or dairy adviser.

Once an agreement has been reached then get the financial and legal aspects checked by an accountant and solicitor.

Your **state dairy farming organisation** can also provide advice on share farming arrangements: **australiandairyfarmers.com.au/state-dairy-farmer-organisations**

How can I avoid trouble?

The following areas historically seem to create conflict within share farming situations and need to be clarified at the commencement of any arrangement:

- longer term goals and direction of the farm business, egwhich dairy company to supply and decisions onstocking rate;
- general farm presentation and standards;
- responsibility for decision making around dailyactivities, eg what grain mix to feed, which cows to cull,which calves to keep, which bulls to choose, feedingand grazing decisions, when to irrigate;
- expectations about labour provision, especially if theshare farmers are a 'couple';
- expectation on the quality of herd records;
- ownership and payment issues for fodder andfertiliser (also needs to be clarified for termination);
- dealing with stock and machinery upon termination ofthe agreement.

Discussing and developing a share farming arrangement is best done with the help of a consultant or dairy adviser.

The **Model Code of Practice for Share Dairy Farming**. Once an agreement has been reached, ask the financial and legal aspects checked by an accountant and solicitor.

Visit **thepeopleindairy.org.au/sharefarming**

SHARE FARMING AGREEMENT BASIC PRINCIPLES

Make sure at the start that both parties share a common picture of the farm's future
The discussion that occurs between an owner and a share farmer in developing a share arrangement often tests the common understanding about the direction of the farm business and, hence, the potential success of the arrangement.

Make sure that the income and cost splitting arrangement provides a fair and reasonable outcome for both parties
There must be a fair distribution of income and costs between the owner and share farmer so that they each obtain a fair and reasonable return on the resources they are providing and the risks they are taking. Other benefits such as the provision of a house, utilities, calves to rear for their own use, etc. should be valued in the agreement discussions.

Calculate anticipated returns jointly
Having discussed a possible splitting of income and costs, based on what is being provided by both parties, both parties need to calculate jointly the anticipated returns to each party (not just themselves) using long-term milk and supplement prices, and with an expectation of average seasonal conditions.

Model the effect of extremes in price and seasonal variation
Once both parties have examined the potential average returns (if possible from historical actual data), it is important to model the effect of extremes in price and seasonal conditions to get an indication of variation in returns to each party. It is common for disputes regarding the 'fairness' of agreements to arise in difficult years due to the financial pressure on both parties; if the fairness is established at the start it reduces the chance of disputes in difficult years.

Ensure returns on labour and capital are fair
The return to a share farmer for labour should be higher than the amount the share farmer could receive as an employee, since this amount may include superannuation, holidays, personal leave and, in some cases, workers compensation. Some return may be in growth in equity rather than cash return.