



INDEPENDENT CONTRACTORS' KIT FOR FARMERS

Disclaimer

The information contained in this kit is for general information only. It is not intended as legal or professional advice. Every individual will have specific and unique circumstances and every person should seek their own legal and professional advice. NFF and its member organisations expressly disclaim all liability for any loss or damage arising from reliance upon the information contained in this kit.

INTRODUCTION TO THE INDEPENDENT CONTRACTORS KIT

Farmers often engage contractors on the farm to help them out in busy times or to do jobs they are unable to do. Many farmers believe that hiring someone as a contractor means that they don't have to worry about the various laws which apply to employment.

This is not always the case.

The law says that just because a person has an ABN and calls themselves a contractor does not necessarily stop them being regarded as an employee - and this means you could be liable for such things as super, workers compensation and taxation.

So how do you decide if the law will support someone's claim to being a contractor?

Sometimes it will be easy to work out, for instance in the case of a contractor who provides a crop spraying service to you and others in the district.

At other times it may not be so clear, for instance if your neighbour comes in and does some tractor work for you.

The law says that if you can **control** the way work is done, where it is done and when it is done, the person is an employee. If not, they are an independent contractor.

Over time the courts have determined a number of tests which can help you to determine what it means to be **in control**, and therefore if the worker is an employee or contractor.

No one test determines the question. Some tests will indicate employment and others will point to independent contracting. The courts weigh up all of the tests and decide if on balance the total picture points to employment or independent contracting.

We have translated these tests into a list of questions which you can ask yourself to help work out whether the person is an employee or not. The **questions** are on **page 2**.

Once you are happy that the control test has been met and the person can be treated as an independent contractor, there are a number of things you should address to protect yourself and to ensure that the person has complied with their obligations under the law.

The **Checklist** on **page 3** provides a list of obligations which can arise when you engage contractors and suggestions as to how you should deal with each issue.

The **Model Contract** on **pages 4 & 5** may be used for all independent contractors. If you are using a Labour Hire firm they may have their own standard form contract which they would prefer to use. If this is the case then you can still use the Model Contract as a reference to ensure the contract covers you for the various obligations listed in the checklist.

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QUESTIONS TO HELP DECIDE THE CONTROL TEST

	QUESTION	YES / NO
1	The person is being employed to achieve an end result. When the job is done they will leave.	
2	The person is paid for doing the job rather than by the hour.	
3	The person can decide how to perform the work so long as the job gets done.	
4	There is no obligation to accept work and the person can reject work if they wish.	
5	The person can determine when they do the work so long as the job gets done.	
6	The person is responsible for any mistakes made and must fix them at their own expense.	
7	The person can delegate some or all of the work to another person so long as the job gets done.	
8	The person can employ workers to perform the work.	
9	The person provides their own tools and machinery and is responsible for their upkeep / fuel etc.	
10	The person is paid on the basis of invoices not wages.	
11	Holiday pay, sick pay and other entitlements are <u>not</u> paid by you.	
12	The person pays their own tax.	
13	The person has an ABN Number.	
14	The person pays their own accident and public liability insurance.	
15	The person works for other people as well as you.	
16	The person says they are an independent contractor and advertises this fact.	

If you answer **NO** to the majority of these questions then the person is more than likely an employee and to be on the safe side you should employ them as such.

CHECKLIST OF OBLIGATIONS WHEN ENGAGING INDEPENDENT CONTRACTORS

OBLIGATION	YOUR RESPONSIBILITY	CONTRACTOR'S RESPONSIBILITY	PERFORM FURTHER CHECKS	ASK TO SEE DOCUMENTARY PROOF	DONE
ABN	YES	YES To provide ABN		Ask for the contractor's ABN before they start work for you	
Superannuation	NO See below***	YES		See below***. Your name should be included when the contractor pays the fund	
Workers Compensation	POSSIBLY State laws vary as to whether you are responsible for contractors. If in doubt include remuneration paid to contractors	YES If the contractor has employees then they are responsible for Workers Compensation for those employees	Check with your local Workers Compensation Authority	If the contractor has employees insist on seeing documentary evidence of coverage	
Public liability	YES In respect of your own property.	YES If the contractor does not have public liability insurance you should not engage them		Ask to see a copy of the policy and ensure it covers the work being done by the contractor	
Occupational Health and Safety	YES You are responsible for having a safe place of work regardless of whether the person is an independent contractor or an employee	YES The contractor has a responsibility to ensure their machinery is safe and operated safely			
Immigration	NO To avoid problems you could insist as part of the contract that the contractor only employ people who can prove they have the right to work in Australia	YES If the contractor is supplying employees it is their responsibility to perform work rights checks	See the Contacts List for details of how to perform work rights checks yourself	If you are uncertain you can ask the contractor to show you copies of work rights checks they have done	
Award Rates & Entitlements	NO But to avoid problems you can insist as part of the contract that award rates and entitlements are paid	YES		You can ask to see timebooks and wages records	

***The definition of employee under the superannuation laws differs from that at common law and the penalties for non compliance are severe. It is therefore suggested that if your contractor hires employees you should insist that when they pay the superannuation contribution to the fund they do so on your behalf as well as on their own behalf. It does not cost the contractor any more and protects you. (SGR93/2)

CONTRACT FOR SERVICES

The **CONTRACTOR** (*full name and trading name of Contractor*)

.....

ABN No.

HEREBY AGREES with the **OWNER** (*full name and trading name of Owner*).....

.....

ABN No. to perform the following **WORK** (*insert clear description of the work*).....

.....

on the **OWNER'S PROPERTY** at (*address of property*).....

.....

at the **PRICE** of (*insert price per acre / lump sum / NOT hourly or weekly rate*).....

.....

1. The **CONTRACTOR AGREES** to carry out the work in a proper and workmanlike manner to the satisfaction of the Owner.
2. The **CONTRACTOR AGREES** to complete the work not later than (*insert completion date*).....
3. The **CONTRACTOR AGREES** to supply all plant materials and labour needed for the work to be completed.
4. The **CONTRACTOR AGREES** that he/she is not an employee of the Owner and that the Owner is not responsible for any workers compensation or superannuation or any employee benefits for the Contractor including paid annual leave, paid public holidays and sick leave.
5. The **CONTRACTOR AGREES** that he/she is responsible for arranging and paying all accident, sickness and income protection insurance he/she requires.

6. The **CONTRACTOR UNDERTAKES** to keep a current public liability policy applicable to the work being carried out on the Owner's property.
7. The **CONTRACTOR AGREES** that he/she is responsible for arranging and paying workers compensation in respect of any employees he/she may employ and the **CONTRACTOR UNDERTAKES** to provide evidence of such payments to the Owner.
8. The **CONTRACTOR AGREES** that he/she is responsible for arranging and paying superannuation contributions in respect of any employees he/she may employ and the **CONTRACTOR UNDERTAKES** to include the Owner as a joint payee on whose behalf payments are made to the superannuation fund.
9. The **CONTRACTOR UNDERTAKES** that any employees employed by him/her have the right to work in Australia and that appropriate visa checks have been made.
10. The **CONTRACTOR UNDERTAKES** to pay wages and entitlements in accordance with the correct industrial award or agreement to any employees he/she may employ and will indemnify the Owner against any claims by or any liability to any of the Contractor's employees.
11. The **CONTRACTOR UNDERTAKES** that before receiving payment for any work done he/she will produce to the Owner wages books showing that all wages have been paid to all employees employed by the Contractor.
12. The **OWNER** agrees to pay the Contractor, at the completion of the work or according to the following progress payment schedule (*insert details of progress payments if applicable*).....
.....
.....

DATED THISday of 200.....

SIGNED.....(CONTRACTOR)

SIGNED.....(OWNER)

SIGNED.....(WITNESS)

CONTACTS LIST FOR INDEPENDENT CONTRACTORS KIT

Organisation	Telephone	Web address
WORKERS COMPENSATION		
Queensland	1300 362 128	www.workcover.qld.gov.au
New South Wales	13 10 50	www.workcover.nsw.gov.au
ACT	(02) 6205 0200	www.workcover.act.gov.au
Victoria	1800 136 089	www.workcover.vic.gov.au
Tasmania	1300 366 322	www.workcover.tas.gov.au
South Australia	13 18 55	www.workcover.com
Western Australia	1300 794 744	www.workcover.wa.gov.au
TAXATION	13 28 66	www.ato.gov.au/businesses
SUPERANNUATION	13 10 20	www.ato.gov.au/super/
IMMIGRATION /WORK RIGHTS	Employer work rights checking line 1800 040 070 Freecall fax-back facility 1800 505 550 8am to 6pm Monday to Friday	www.immi.gov.au/employers/index.htm
AWARD WAGES STATE FARMING ORGANISATIONS		
Queensland	(07) 3236 3100	www.agforceqld.org.au
New South Wales	1300 794 000	www.nswfarmers.org.au
Victoria	1300 882 833	www.vff.org.au
Tasmania	(03) 6343 2244	
Western Australia	(08) 9479 4599	www.pgaofwa.org.au
OCCUPATIONAL HEALTH & SAFETY FARMSAFE AUSTRALIA	(02) 6752 8218 or check with your local farming organisation	www.farmsafe.org.au