



Farming on Other People's Land

Guiding Principles for a Landshare Farming Agreement

Note: these principles are provided for discussion purposes only and should not be taken as legal advice. Please contact AFSA's LDF legal advisor if you need tailored advice in relation to a landshare farming arrangement.

Landholder – the party that owns or leases the land on which the landshare farming enterprise will take place

Landshare farmer – the party that will run a farming enterprise on the Landholder's land

1. **Acknowledge** on whose traditional lands parties are/will be farming. Discuss how Landholder and Landshare farmer can contribute to Indigenous sovereignty, land restitution, paying the rent, and decolonising approaches to agriculture. This may be done by stating one's relationship to the Indigenous peoples on whose Lands the farming operation will take place. Build this understanding and practical resolutions throughout the document as appropriate.
2. For **context**, define the background of both parties, setting out what resources and skills each party is bringing to the landsharing relationship. This can be set out up front in the agreement as Recitals, or could be included in an annexure if the objectives are lengthy.
3. Who are the **parties** to the agreement? Are they individuals, businesses or incorporated associations for instance?
4. Clearly **define the landshare farming enterprise** to be undertaken (eg horticulture, pasture-raised animals, dairy).
5. What is the **term** of the agreement? Consider extensions (eg initial year with annual renewals).

6. Clearly define the **geographical area** that will be landshare farmed (eg through the inclusion of a map).
7. Detail how the farm enterprise **income will be shared** (often expressed as a percentage, eg 80% landshare farmer, 20% landholder), when it will be paid, whether there will be deductions for use of equipment etc.
8. Detail **how the farm produce will be farmed** if methods are important to the parties – eg agroecologically, regeneratively, organically, biodynamically. This is an important factor if inputs are to be used. Also how are the products to be marketed – a farmgate operation is more significant for a landshare farming arrangement than, say, delivery at farmers markets.
9. Define who is **responsible** for what – the day to day roles, but also who has the authority on decisions (eg if equipment breaks, can the landshare farmer incur expenditure having it repaired or does the equipment owner solely make that call – and in what timeframe if the landshare farmer is dependent on that equipment).
10. Consider if it is an **exclusive** arrangement or whether other landshare farmers may also be present on the land, and if so, how this is expected to work in practical terms (eg landshare farmers must work cooperatively and collaboratively together).
11. Clearly define (even in table format) what is to be **paid for and/or owned** by the **landholder** and what is to be paid for/owned by the **landshare farmer** – eg the produce, plant/equipment, land rates, water, fencing etc.
12. **Regulatory** matters – the parties should conduct a detailed investigation regarding what regulatory approvals or permits may be necessary (i.e Local Laws, Planning, NLIS for livestock, PIC number) and agree on a plan for compliance or considered non-compliance, including determining who is responsible for which actions.
13. Include a **communication and decision-making protocol** – valuing open communication, honesty, and consensus for instance. This leads into the dispute resolution procedure below.
14. Include a practical **dispute resolution** procedure and the types of disputes that will activate it, noting this should also cover multiple landshare farmers if applicable.
15. As the **ATO** views income from landshare farming as taxable (primary production income) it may be prudent to have a clause in the agreement that the landshare farmer is responsible for their own taxation and may need to set themselves up as a business or independent contractor (with an ABN). Otherwise there is a risk they could be construed as employed farmers which would bring in all the tax/legal obligations in the employer/employee relationship.
16. Likewise it would be worth checking off the arrangement with **Workcover** to ascertain whether workers compensation insurance needs to be obtained (eg due to work exchange arrangements where either the farmer or the landholder provide regular labour for each other).
17. Consider **insurance** responsibilities – public liability, third party etc. Will the landshare farmer itself have employees it will need to arrange WorkCover for?
18. **Branding and associations** – consider issues such as how “visible” the landowner will be, sometimes they are retiring farmers with an existing brand that will be taken on by

the landshare farmer, other times they just wish to be a “silent” partner. Consider advertising material and promotions – what are the parties’ positions on these?

19. Detail what happens when the landshare farmer is **sick/absent**, a clause on providing a competent replacement preferably in advance is a good idea.
20. Is there any **residential tenancy** involved, i.e. will the landshare farmer live onsite and what are the terms of that arrangement?
21. Include a **conclusion of the agreement clause**, acknowledging that most landshare farming arrangements will end either by design or by mutual agreement when one or both decide it is time. Build a **custodial ethic** into this clause that acknowledges the need for continued care of the Land and each other as the agreement dissolves, with appropriate timeframes that reflect this ethic. Further considerations might include: If the landshare farmer has made improvements to the property, how will this be dealt with? In what condition must the land be relinquished (e.g. “in good and substantial repair”).
22. **Assignment** – can the landshare farmer assign this agreement (for instance because they sell or assign their farming business)? If so, on what conditions can assignment occur (eg with the consent of the landholder which shall not be unreasonably withheld)?