



New South Wales

Agricultural Tenancies Amendment Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Agricultural Tenancies Act 1990*:

- (a) to simplify and restate the objects of the Act, as well as to include an object relating to the encouragement of sustainable agricultural production and the prevention of the degradation of the environment, and
- (b) to make amendments to clarify provisions of the Act and to rearrange provisions relating to compensation and rights of landlords and tenants, and
- (c) to clarify the matters that may be referred to arbitration, and
- (d) to enable disputes between tenants and owners to be referred to mediation before arbitration proceedings commence, and

- (e) to make procedural changes relating to arbitration of disputes, including clarifying the functions of the Director-General of the Department of Agriculture (the *Director-General*) relating to pre-arbitration conferences and other matters related to arbitration procedures and providing for the appointment of technical assessors, and
- (f) to confer on the Director-General a power to refer a dispute between a tenant and an owner to a court rather than having the matter determined by arbitration, and
- (g) to clarify the application of the provisions of the *Commercial Arbitration Act 1984*, and
- (h) to repeal savings provisions relating to pre-1990 tenancies, and
- (i) to enact consequential provisions of a savings and transitional nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, except in relation to an amendment consequential on the commencement of Part 11 of the *Rural Lands Protection Act 1998*.

Clause 3 is a formal provision giving effect to the amendments to the *Agricultural Tenancies Act 1990* (the *Principal Act*) set out in Schedule 1.

Objects of Act—Schedule 1 [2]

Schedule 1 [2] substitutes section 3, containing the objects of the Principal Act. The new objects simplify the existing objects and contain, for the first time, a reference to encouraging owners and tenants to have regard, in farming practices, to maintaining sustainable agricultural production and preventing the degradation of the environment. They also include the object of attempting to resolve disputes between parties to agricultural tenancies by mediation.

Definition of “improvement”—Schedule 1 [5]

Schedule 1 [5] makes it clear that an improvement does not include anything on a farm when the tenancy commences.

General rights of tenants and owners and rights to compensation—Schedule 1 [7] (proposed Parts 2 and 3)

Currently, the provisions relating to entitlements to compensation and rights to carry out improvements (of both tenants and owners) are both located in Part 2 of the Principal Act, while other rights of tenants and owners are located in Part 3.

Schedule 1 [7] separates these provisions so that the general rights of tenants and owners, including rights related to improvements, are set out in Part 2 (proposed sections 5–14) and rights relating to compensation for improvements and other rights to compensation are set out in Part 3 (proposed Divisions 1 (proposed sections 15–17) and 2 (proposed sections 18–19A), respectively). The purpose of the amendments is to enable all rights to be in one Part and compensation issues to be dealt with separately. The amendments re-enact the existing rights of tenants and owners, with minor clarifications, including the following:

- (a) proposed section 5 (2) makes it clear that the terms of an agreement creating a tenancy may be determined by arbitration if the tenant and owner cannot agree,
- (b) it is provided that rights relating to improvements, keeping and inspection of accounts, fair compensation for general improvement of the farm and other matters are terms of the tenancy,
- (c) a record of the condition of the farm is to include other works and things on the farm in addition to the items currently required to be included,
- (d) the period of notice for a yearly tenancy is to be at least 6 months before the end of the tenancy period.

Disputes between tenants and owners—Schedule 1 [8] (proposed Part 4)

Schedule 1 [8] re-enacts Part 4, which currently relates to arbitration, to include provisions relating to mediation and to expand the Director-General's functions in relation to disputes, as well as to make other changes.

Proposed Division 1 of Part 4 (proposed section 20) contains definitions.

Proposed Division 2 of Part 4 (proposed sections 21–26A) contains provisions relating to applications for arbitration, and re-enacts the provisions of the current Part 4 setting out the matters that may be the subject of an application for arbitration and the matters in which a court has no jurisdiction. It also contains the following additional matters:

- (a) a provision providing for the manner in which an application is to be made (currently in the regulations) (proposed section 23),

- (b) a provision enabling the Director-General rather than the Supreme Court to extend the time for making an application for arbitration (proposed section 24),
- (c) a provision conferring additional functions on the Director-General relating to arbitration, including powers to arrange pre-arbitration conferences, to encourage mediation and to appoint technical assessors (proposed section 25),
- (d) a provision enabling the Director-General, by order in writing, to refer matters to a court rather than for arbitration, if the Director-General is satisfied that the court would have jurisdiction (apart from restrictions in the Principal Act), the parties consent and that it is in the public interest or the interests of justice to do so (proposed section 26),
- (e) a provision conferring on a party to a dispute or matter a right to apply to the Administrative Decisions Tribunal for a review of a decision by the Director-General to extend or not to extend the time for making an application for referral of the dispute or matter for arbitration or a decision to refer or not to refer the dispute or matter to a court (proposed section 26A).

Proposed Division 3 of Part 4 (proposed sections 26B–26H) inserts new provisions setting out mediation processes. The Director-General may, if the Director-General considers it appropriate, refer a matter for mediation with the consent of the parties and if the parties have agreed on a mediator (proposed section 26B). Mediation is to be voluntary and costs are to be borne as agreed or in equal shares (proposed sections 26C and 26D). The Director-General is to compile a list of mediators for disputes but may only include a person if the person consents and agrees to comply with the proposed Division (proposed section 26E). Admissions or statements made in mediation sessions are not admissible in proceedings before any court, tribunal or body and documents prepared for mediation sessions are also not admissible, unless the parties consent or in proceedings relating to a permitted disclosure (proposed section 26F). The circumstances in which a mediator may disclose information obtained in connection with the mediation are limited (proposed section 26G). A mediator is not liable to any action, liability, claim or demand in respect of any matter or thing done or omitted to be done in good faith for the purposes of a mediation session and if the mediator was on a list of mediators under the proposed Division when the matter was referred to mediation (proposed section 26H).

Proposed Division 4 of Part 4 (proposed sections 26I–26M) contains provisions relating to the appointment of arbitrators and the application of the provisions of the *Commercial Arbitration Act 1984*. An arbitration is to be conducted by a single arbitrator (who is to be a legal practitioner within the meaning of the *Legal Profession Act 1987*), rather than the committee of 3 persons currently provided for (proposed section 26I). A committee of arbitrators, consisting of a legal practitioner

and 2 other members having appropriate knowledge and experience, may be appointed if the Director-General is of the opinion that it is appropriate in the circumstances. The Director-General is to notify the parties of the appointment of the arbitrator and any technical assessor. The Director-General may appoint a person as a technical assessor to assist the arbitrator, if of the opinion that the person has knowledge and experience that may assist in the arbitration of a dispute or matter (proposed section 26J). A technical assessor may assist and advise but may not adjudicate on an issue. The provisions of the *Commercial Arbitration Act 1984* are, as they currently do, to apply to the conduct of arbitrations under the Principal Act (proposed section 26K). Clarifications have been made to the application of those provisions. Provisions relating to the power of arbitrators to order the payment of compensation in the nature of damages (proposed section 26L) and making amounts awarded to tenants a charge on the farm (proposed section 26M) have been re-enacted.

Schedule 1 [12] enables regulations to be made for or with respect to mediation sessions for the purposes of the Principal Act.

Delegation by Director-General—Schedule 1 [10]

The Bill inserts a provision enabling the Director-General to delegate any functions of the Director-General to an authorised person under the Act (proposed section 27A). An authorised person is an officer of the Department of Agriculture or a person of a class of person prescribed by regulations.

Savings and transitional provisions—Schedule 1 [16] and [17]

Schedule 1 [16] enables savings and transitional regulations to be made consequent on the enactment of the proposed Act.

Schedule 1 [17] repeals a savings provision that continued the application of the repealed *Agricultural Holdings Act 1941* to tenancies existing when that Act was repealed or created under an option granted before that repeal and replaces it with a provision that applies the provisions of the Principal Act to such tenancies.

Minor, consequential and ancillary provisions—Schedule 1 [1], [3], [4], [6], [9], [11], [13], [14], [15]

Schedule 1 [1] inserts a reference to mediation in the long title to the Principal Act.

Schedule 1 [3] updates the definition of *Director-General* for the purposes of the Principal Act.

Schedule 1 [4] inserts definitions of *exercise* a function and *function* for the purposes of the Principal Act.

Schedule 1 [6] makes it clear that notes included in the Principal Act do not form part of the Act.

Schedule 1 [9] makes it clear that the prohibition against contracting out does not apply where a provision of the Act expressly allows it.

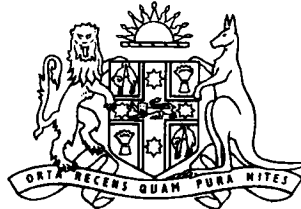
Schedule 1 [11] makes a consequential amendment.

Schedule 1 [13] updates a reference to reflect changes made by the *Rural Lands Protection Act 1998*.

Schedule 1 [14] amends a term for consistency with other expressions in the Principal Act.

Schedule 1 [15] clarifies the operation of a provision.

First print



New South Wales

Agricultural Tenancies Amendment Bill 2001

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Agricultural Tenancies Act 1990 No 64	2
Schedule 1 Amendments	3



New South Wales

Agricultural Tenancies Amendment Bill 2001

No. , 2001

A Bill for

An Act to amend the *Agricultural Tenancies Act 1990* with respect to the objects of the Act, the rights and obligations of tenants and owners, compensation, dispute resolution and delegation of functions; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Agricultural Tenancies Amendment Act 2001</i> .	3
2 Commencement	4
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	5 6
(2) Schedule 1 [13] commences, or is taken to have commenced, on the commencement of Part 11 of the <i>Rural Lands Protection Act 1998</i> .	7 8
3 Amendment of Agricultural Tenancies Act 1990 No 64	9
The <i>Agricultural Tenancies Act 1990</i> is amended as set out in Schedule 1.	10 11

Schedule 1 Amendments

1

(Section 3)

2

[1] Long title

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Insert “mediation or” before “arbitration”.

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[2] Section 3 Objects

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Omit the section. Insert instead:

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3 Objects

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The objects of this Act are:

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(a) to encourage agricultural landowners and their tenants and sharefarmers to have regard, in farming practices, to maintaining sustainable agricultural production and preventing the degradation of the environment, and

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(b) to encourage the use of written agreements for agricultural tenancies and to set out terms that are taken to apply to all agricultural tenancies, including terms setting out rights of the parties, and

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(c) to provide a mechanism for resolution of disputes by the parties to agricultural tenancies themselves through mediation, and

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(d) to provide an arbitration mechanism for settling disputes between parties to agricultural tenancies that is outside the court system (the procedures for such arbitration to be as quick, cheap and free of legal technicality as is consistent with doing justice between the parties).

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[3] Section 4 Definitions

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Omit the definition of *Director-General*. Insert instead:

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Director-General means the Director-General of the Department of Agriculture.

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[4] Section 4	1
Insert in alphabetical order:	2
<i>exercise</i> a function includes perform a duty.	3
<i>function</i> includes a power, authority or duty.	4
[5] Section 4, definition of “improvement”	5
Omit “already on the farm”.	6
Insert instead “on the farm when the tenant first became a tenant”.	7
[6] Section 4 (2)	8
Insert at the end of section 4:	9
(2) Notes included in this Act do not form part of this Act.	10
[7] Parts 2 and 3	11
Omit the Parts. Insert instead:	12
 Part 2 General rights of tenants and owners	 13
5 Agreements to be in writing	14
(1) An owner and a tenant each have the right to have the provisions of any agreement creating the tenancy reduced to writing signed by the other party.	15 16 17
(2) If the owner and the tenant cannot agree on the terms of an agreement that is to be reduced to writing, the terms of the agreement may be determined by arbitration.	18 19 20
6 Improvements carried out by tenants with consent	21
(1) It is a term of a tenancy that the tenant may carry out any improvement on the farm with the consent of the owner.	22 23
(2) If an amount of compensation to the tenant for the improvement is fixed by agreement, the owner must pay the tenant the fixed amount, unless the agreed amount is unfair.	24 25 26

(3) If compensation is not fixed by agreement at a fair amount, or is not fixed at all, the owner must pay fair compensation to the tenant.	1 2 3
(4) Compensation payable under this section is payable at the end of the tenancy or at such earlier time as may be agreed or determined by arbitration.	4 5 6
Note. Division 1 of Part 3 sets out the way compensation is to be determined for the purposes of this Part.	7 8
7 Improvements carried out by tenants without consent	9
(1) It is a term of a tenancy that the tenant may carry out an improvement on the farm without the consent of the owner only if:	10 11 12
(a) the improvement is mentioned in Schedule 1, or	13
(b) the improvement is a work or thing of a kind prescribed by the regulations for the purposes of this section, or	14 15
(c) the improvement is first determined by arbitration to be suitable and desirable in the circumstances.	16 17
(2) The owner must pay fair compensation to the tenant for an improvement carried out by the tenant and referred to in subsection (1) (a) or (b).	18 19 20
(3) The owner must pay fair compensation to the tenant for an improvement carried out by the tenant and referred to in subsection (1) (c) if compensation is determined by arbitration to be payable.	21 22 23 24
(4) Compensation payable under this section is payable at the end of the tenancy or at such earlier time as may be agreed or determined by arbitration.	25 26 27
8 Improvements carried out by owner with consent	28
(1) It is a term of a tenancy that the owner may carry out any improvement on the farm with the consent of the tenant.	29 30
(2) If an amount of compensation to the owner for the improvement is fixed by agreement, the tenant must pay the owner the fixed amount, unless the agreed amount is unfair.	31 32 33

(3) If compensation is not fixed by agreement at a fair amount, or is not fixed at all, the tenant must pay fair compensation to the owner.	1 2 3
(4) Compensation payable under this section may be paid in instalments together with any rent or other consideration payable in respect of the tenancy or in such other manner as may be agreed or determined by arbitration.	4 5 6 7
9 Improvements carried out by owners without consent	8
(1) It is a term of a tenancy that the owner may carry out an improvement on the farm without the consent of the tenant only if the improvement is first determined by arbitration to be suitable and desirable in the circumstances.	9 10 11 12
(2) The tenant must pay fair compensation to the owner for an improvement carried out by the owner if compensation is determined by arbitration to be payable.	13 14 15
(3) Compensation payable under this section may be paid in instalments together with any rent or other consideration payable in respect of the tenancy or in such other manner as may be agreed or determined by arbitration.	16 17 18 19
10 Tenants' fixtures	20
(1) It is a term of a tenancy that a fixture affixed to a farm by a tenant may be removed by the tenant before or within a reasonable time after the end of the tenancy.	21 22 23
(2) Subsection (1) does not apply to the following fixtures:	24
(a) a fixture for which the tenant claims or can claim compensation (for example, a fixture that is an improvement),	25 26 27
(b) a fixture that is affixed under an obligation to do so under a tenancy or other agreement or in place of a fixture belonging to the owner.	28 29 30
(3) It is a term of a tenancy that a tenant must not remove a fixture affixed to the farm by the tenant without giving reasonable oral or written notice to the owner, and any occupier of the farm for the time being, of the tenant's intention to remove the fixture.	31 32 33 34

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| (4) It is a term of a tenancy that, at any time before the end of the notice period, the owner may serve written notice on the tenant of the owner's decision to purchase the fixture. The tenant must then leave the fixture, which becomes the property of the owner, who must pay fair compensation to the tenant as if it were an improvement for which compensation is payable under section 7 (2). | 1
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| (5) It is a term of the tenancy that: | 8 |
| (a) before removing a fixture, the tenant must, as far as practicable, comply with all the tenant's obligations to the owner in respect of the farm, and | 9
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| (b) when removing a fixture, the tenant must not do, or must make good, any damage to any other fixture or other part of the farm. | 12
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| (6) In this section:
<i>fixture</i> includes a building. | 15
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| 11 Right of owner to enter farm | 17 |
| (1) It is a term of the tenancy that the owner, or any person authorised by the owner, may at all reasonable times, after giving reasonable notice, enter the farm for any of the following purposes: | 18
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| (a) to view its condition, | 22 |
| (b) to perform a function of the owner under this Act, | 23 |
| (c) to carry out an improvement (if permitted by this Act). | 24 |
| (2) This section does not authorise the owner to enter any part of the farm used for residential purposes except with the consent of the tenant. | 25
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| (3) Nothing in this section limits any other right of entry conferred on the owner by or under any other Act or law or by an agreement. | 28
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| (4) Notice under this section may be given orally or may be served in writing. | 31
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12	Record of condition of farm	1
(1)	It is a term of the tenancy that a record of the condition of the following matters must be made jointly by the owner and the tenant, if either so requires it, at the commencement of the tenancy and at reasonable intervals during the tenancy:	2
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	(a) the land and any cultivation of the land,	6
	(b) any buildings, fences, gates, roads, drains or other works or things on the farm,	7
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	(c) any other improvements.	9
(2)	It is a term of the tenancy that a record of any improvement carried out by the tenant or the owner, and a record of any fixture that the tenant may remove under this Act, must be made jointly by the owner and the tenant, if either so requires it, at reasonable intervals during the tenancy.	10
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(3)	At the request of either the tenant or the owner, the Director-General may appoint a person to make a record under this section.	15
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(4)	The cost (if any) of making the record must be met by the owner and the tenant in equal shares, unless they come to some other agreement.	18
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13	Accounts	21
	It is a term of the tenancy that the owner and a tenant each have:	22
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	(a) the duty to keep proper accounts in connection with the tenancy, and	24
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	(b) the right to inspect at all reasonable times, after giving reasonable notice, the accounts kept by the other in connection with the tenancy.	26
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14	Termination of tenancy	29
(1)	A tenancy for a fixed term with no provision for holding over terminates at the end of the fixed term without the necessity for any notice.	30
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(2) A periodic tenancy (other than a tenancy from year to year) cannot be terminated unless written notice of termination is served by a party on the other party so as to give notice at least equivalent to the length of the tenancy period.	1 2 3 4
(3) In addition to the requirements of subsection (2), a periodic tenancy (other than a tenancy from year to year) cannot be terminated unless written notice of the termination is served by a party on the other party so as to give notice of at least:	5 6 7 8
(a) in the case of a sharefarming arrangement for crop growing—a period of 1 month, ending at least 1 month after the end of the current annual cropping program, and	9 10 11 12
(b) in any other case—a period of 1 month.	13
(4) A tenancy from year to year cannot be terminated unless written notice of termination is served by a party on the other party so as to give not less than 6 months' notice before the end of the tenancy period.	14 15 16 17
(5) In addition to the requirements of subsection (4), a tenancy from year to year cannot be terminated unless written notice of termination is served by a party on the other party so that the period of notice ends at least 1 month after the end of the annual cropping program.	18 19 20 21 22
(6) This section does not apply to termination for a breach of the tenancy or where the tenant and the owner have otherwise agreed on the notice to be given.	23 24 25
 Part 3 Compensation	 26
 Division 1 Determination of compensation for improvements	 27 28
 15 Determination of compensation payable for tenants' improvements	 29 30
(1) For the purposes of determining the compensation payable under Part 2 for an improvement carried out by a tenant, the amount of compensation is the value of the improvement to an	31 32 33

	incoming tenant, taking into account the value of any consideration or benefit given by the owner to the tenant for carrying out the improvement.	1 2 3
	(2) The value of an improvement to an incoming tenant is to be calculated by taking into account the financial returns that might be expected to accrue to a (hypothetical) incoming tenant on account of the improvement or product, if the farm were to be subject to a further tenancy (not being a sharefarming arrangement).	4 5 6 7 8 9
16	Determination of compensation payable for owners' improvements	10 11
	For the purposes of determining the compensation payable under Part 2 for an improvement carried out by an owner, the amount of compensation is the value of the improvement to the incumbent tenant, taking into account the value of any consideration or benefit given by the tenant to the owner for carrying out the improvement.	12 13 14 15 16 17
17	Fair compensation	18
	In determining what constitutes fair compensation for the purposes of determining the compensation payable under Part 2 for an improvement carried out by a tenant or an owner, regard may be had to the financial resources of the parties, the financial returns that might be expected from the improvement and other factors.	19 20 21 22 23 24
Division 2	Other rights to compensation	25
18	Compensation for general improvement to farm	26
	(1) It is a term of a tenancy that the owner must pay fair compensation to the tenant if there has been a general improvement to the farm by the adoption of better farm management by the tenant:	27 28 29 30
	(a) than is normally practised on farms of the same character, and in the same neighbourhood, as the farm concerned, or	31 32 33
	(b) than is required by any agreement.	34

(2) The compensation is to be reduced by the amount of any compensation paid or agreed to be paid, or awarded by arbitration, for a particular improvement that caused or contributed to the general improvement.	1 2 3 4
(3) In determining what constitutes fair compensation for the purposes of determining the compensation payable for a general improvement carried out by a tenant, regard may be had to the financial resources of the parties, the financial returns that might be expected from the improvement and other factors.	5 6 7 8 9
19 Compensation to tenant for stored products	10
(1) It is a term of a tenancy that the owner must pay the tenant fair compensation for any products stored by the tenant during the tenancy and left on the farm at the end of the tenancy.	11 12 13
(2) For the purposes of determining the compensation payable for any products stored by the tenant during the tenancy, the amount of compensation is:	14 15 16
(a) except in the case of a sharefarming arrangement, the value of the products to an incoming tenant, or	17 18
(b) in the case of a sharefarming arrangement, a proportion of that value equal to the proportion of the farm produce (or value of the farm produce) to which the tenant is entitled under the arrangement.	19 20 21 22
(3) In this section:	23
<i>products</i> means grain, hay, silage, fertiliser or any other useful commodity, whether or not a product of the soil.	24 25
19A Compensation for deterioration	26
(1) It is a term of a tenancy that the tenant must pay the owner fair compensation for any deterioration of the farm during the tenancy owing to the failure of the tenant to manage the farm in accordance with good farm management or the provisions of any agreement creating the tenancy, or both.	27 28 29 30 31
(2) For the purposes of determining the compensation payable for any deterioration of the farm, the amount of compensation is an amount representing the decrease in the value of the farm as a result of the deterioration.	32 33 34 35
(3) The compensation is payable when the deterioration is evident.	36

(4)	The rights of an owner under this section are displaced by an agreement:	1 2
(a)	to the extent that those rights are expressly waived by the agreement, or	3 4
(b)	to the extent that the management of the farm (being management that is material to any claim for compensation under this section) is expressly authorised by the agreement.	5 6 7 8
[8]	Part 4	9
	Omit the Part. Insert instead:	10
	Part 4 Resolution of disputes and other matters	11
	Division 1 Preliminary	12
	20 Definitions	13
	In this Part:	14
	<i>arbitrator</i> means a single arbitrator or an arbitration committee appointed under this Part.	15 16
	<i>mediation</i> means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.	17 18 19
	<i>mediation session</i> means a meeting arranged for the mediation of a matter under Division 3.	20 21
	<i>mediator</i> means a person to whom the Director-General refers a matter for mediation under Division 3.	22 23
	Division 2 Applications for arbitration	24
	21 Applications for arbitration	25
	(1) An application for arbitration of a dispute or matter may be made if it is:	26 27
	(a) a dispute relating to a right or obligation conferred by this Act, or	28 29

(b)	a dispute arising from, or relating to, an agreement creating a tenancy or any other dispute (not being a dispute referred to in paragraph (a)) arising from, or relating to, a tenancy, or	1 2 3 4
(c)	any other matter that is permitted by this Act to be determined by arbitration.	5 6
(2)	Despite subsection (1), the following disputes and matters may not be the subject of an application for arbitration:	7 8
(a)	any dispute where an owner seeks ejection of a tenant or recovery of rent,	9 10
(b)	any dispute, or any other matter, of a kind prescribed by the regulations.	11 12
22	Jurisdiction of courts	13
(1)	A court has no jurisdiction:	14
(a)	in respect of any issue in a dispute or matter relating to a right or obligation conferred by this Act or any other matter referred to in section 21 (1) (c), or	15 16 17
(b)	in respect of any issue in a dispute or matter that has been referred to arbitration and has not been withdrawn or dismissed for want of jurisdiction.	18 19 20
(2)	If proceedings for the determination of any issue were commenced in a court before a dispute or matter involving that issue was first referred to arbitration, the arbitration proceedings are to be terminated on the application of a party to the arbitration who is a party to the court proceedings.	21 22 23 24 25
(3)	Subsection (2) does not apply to arbitration proceedings relating to an issue in respect of which a court has no jurisdiction.	26 27 28
23	Application for arbitration	29
(1)	An application for arbitration is to be made to the Director-General in a form approved by the Director-General.	30 31
(2)	As soon as practicable after receiving an application for arbitration, the Director-General must cause a copy of the application to be served on the other party (or each other party).	32 33 34

24	Time limit	1
(1)	An application for arbitration must be made not later than 3 months after the dispute arises or the end of the tenancy, whichever is the later.	2 3 4
(2)	The parties may extend the time by consent.	5
(3)	The Director-General may, on the application of a party, extend the time.	6 7
25	Director-General's functions relating to arbitration applications	8
	The Director-General may exercise one or more of the following functions in relation to an application for arbitration:	9 10
(a)	arrange a pre-arbitration conference and determine the manner in which the conference is to be held,	11 12
(b)	encourage the parties, if appropriate, to seek mediation in accordance with Division 3,	13 14
(c)	request the parties to provide information or documents relating to the application,	15 16
(d)	refer the dispute or matter to arbitration and appoint an arbitrator,	17 18
(e)	fix the date for hearing of the arbitration,	19
(f)	appoint a technical assessor.	20
26	Referral of disputes and matters to court	21
(1)	The Director-General may, instead of referring a dispute or matter to arbitration, by order in writing, refer the dispute or matter to a court.	22 23 24
(2)	The Director-General may not make an order unless the Director-General is of the opinion that:	25 26
(a)	the court would, apart from section 22, have jurisdiction to determine the dispute, and	27 28
(b)	at least one of the parties consents to the referral, and	29
(c)	it is in the public interest or in the interests of the parties to do so.	30 31
(3)	An order may be made on the Director-General's initiative or on the application of a party.	32 33

(4)	An order for referral takes effect on service of a copy of the order on the registrar of the court or on other notification of the court in accordance with the rules of the court.	1 2 3
(5)	The Director-General must lodge with the registrar of the court a copy of every document or part of a document relating to the dispute or matter that is in the possession, or under the control, of the Director-General that the Director-General considers appropriate.	4 5 6 7 8
(6)	The Director-General must cause a copy of an order referring a dispute or matter to a court to be served on each party.	9 10
(7)	A dispute or matter referred to a court under this section is to be dealt with by that court as if it were a matter originated in that court.	11 12 13
(8)	Rules of court may be made with respect to procedures for dealing with disputes or matters referred under this section.	14 15
(9)	Section 22 does not apply to a dispute or matter referred to a court under this section.	16 17
26A	Review of decisions	18
	A party to a dispute or matter may apply to the Administrative Decisions Tribunal for a review of any of the following decisions of the Director-General under this Part:	19 20 21
(a)	a decision to extend, or not to extend, the time for making an application for referral of the dispute or matter to arbitration,	22 23 24
(b)	a decision to refer, or not to refer, the dispute or matter to a court.	25 26
Division 3	Mediation	27
26B	Referral for mediation	28
(1)	The Director-General may, at any time before referring a dispute or matter to arbitration, refer it for mediation if:	29 30
(a)	the Director-General considers it appropriate in the circumstances, and	31 32
(b)	the parties consent to the referral, and	33
(c)	the parties agree as to who is to be the mediator.	34

(2)	The mediator may, but need not be, a person whose name is on a list compiled by the Director-General for the purposes of this Part.	1 2 3
(3)	In the event that mediation is unsuccessful, the Director-General may refer the dispute or matter to arbitration.	4 5
26C	Mediation to be voluntary	6
(1)	Attendance at and participation in mediation sessions are voluntary.	7 8
(2)	A party to a mediation session may withdraw from the session at any time.	9 10
26D	Costs of mediation	11
	The costs of mediation, including the costs payable to or in respect of the mediator, are to be borne by the parties in such proportions as they may agree among themselves or, failing agreement, in equal shares.	12 13 14 15
26E	Mediators	16
(1)	The Director-General may compile a list of mediators for the purposes of this Part.	17 18
(2)	Different lists may be compiled for different kinds of disputes or matters or to take account of any other factors.	19 20
(3)	A person may be included in a list of mediators only if:	21
(a)	the person consents to be included in the list, and	22
(b)	the person agrees to comply with this Division and any regulations made for the purposes of this Division.	23 24
(4)	The Director-General may amend or revoke any list of mediators.	25 26
26F	Privilege	27
(1)	Evidence of anything said or of any admission made in a mediation session is not admissible in any arbitration proceedings or proceedings before any court, tribunal or body.	28 29 30

(2) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session, or any copy of such a document, is not admissible in evidence in any arbitration proceedings or proceedings before any court, tribunal or body.	1 2 3 4
(3) Subsections (1) and (2) do not apply with respect to any evidence or document:	5 6
(a) if the persons in attendance at, or identified during, the mediation session and, in the case of a document, all persons identified in the document consent to the admission of the evidence or document, or	7 8 9 10
(b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 26G.	11 12 13
(4) In this section:	14
<i>mediation session</i> includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.	15 16 17
26G Secrecy	18
A mediator may disclose information obtained in connection with the administration or execution of this Division only in one or more of the following circumstances:	19 20 21
(a) with the consent of the person from whom the information was obtained,	22 23
(b) in connection with the administration or execution of this Division,	24 25
(c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,	26 27 28 29
(d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other matter,	30 31 32 33 34 35 36

(e)	in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.	1 2 3 4
26H	Exoneration from liability for listed mediators	5
	No matter or thing done or omitted to be done by a mediator subjects the mediator to any action, liability, claim or demand if:	6 7 8
(a)	the matter or thing was done in good faith for the purposes of a mediation session under this Division, and	9 10
(b)	the mediator's name was included in a list compiled under this Division when the subject-matter of the mediation was referred for mediation.	11 12 13
Division 4	Arbitration	14
26I	Arbitrators	15
(1)	An arbitration of a dispute or matter is to be conducted by a single arbitrator appointed by the Director-General, except as provided by subsection (3).	16 17 18
(2)	A person is eligible to be appointed as an arbitrator if the person is a legal practitioner within the meaning of the <i>Legal Profession Act 1987</i> .	19 20 21
(3)	The Director-General may, on the Director-General's own initiative or on the application of a party, appoint a committee of 3 persons to arbitrate a dispute or matter if the Director-General is of the opinion that it is appropriate to do so in the circumstances.	22 23 24 25 26
(4)	A committee is to consist of the following persons:	27
(a)	a legal practitioner within the meaning of the <i>Legal Profession Act 1987</i> , who is to be the presiding member,	28 29 30
(b)	2 other members who, in the opinion of the Director-General, have appropriate knowledge and experience and who are not employees of the Department of Agriculture.	31 32 33 34

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| (5) The Director-General must cause the parties to a dispute or matter to be notified in writing of the appointment of the arbitrator and technical assessor (if applicable) and the date, time and place fixed by the Director-General for the hearing of the arbitration. | 1
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| (6) The Director-General must cause the arbitrator to be notified in writing of the date, time and place fixed by the Director-General for the hearing of the arbitration. In the case of an arbitration committee, the notice is to be given to the chairperson of the committee. | 6
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| 26J Technical assessors | 11 |
| (1) The Director-General may appoint a person as a technical assessor to assist the arbitrator in determining a dispute or matter. | 12
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| (2) The Director-General may appoint a person as a technical assessor if the Director-General is of the opinion that the person has knowledge and experience that may assist in the arbitration of the dispute or matter. | 15
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| (3) A technical assessor may assist and advise the arbitrator, but must not adjudicate on any issue before the arbitrator. | 19
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| 26K Application of Commercial Arbitration Act 1984 | 21 |
| (1) Subject to this Act and the regulations, the <i>Commercial Arbitration Act 1984</i> applies to an arbitration under this Act. | 22
23 |
| (2) The following provisions of the <i>Commercial Arbitration Act 1984</i> do not apply to an arbitration under this Act: | 24
25 |
| (a) Part 2, | 26 |
| (b) sections 15 (a), 40, 41, 46 and 60. | 27 |
| (3) The following provisions of the <i>Commercial Arbitration Act 1984</i> apply to an arbitration under this Act, with the modifications set out below: | 28
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| (a) section 17 (Parties may obtain subpoenas), as if a reference in that section to the Court were a reference to a registrar of a Local Court, | 31
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(b)	section 18 (Refusal or failure to attend before arbitrator or umpire or to produce document), as if a reference in that section to the Court were a reference to a registrar of a Local Court and a reference in that section to the Supreme Court were a reference to a Local Court,	1 2 3 4 5
(c)	section 33 (Enforcement of award), as if a reference in that section to the Court were a reference to a court of competent jurisdiction and leave of the court were not required to proceed to enforcement.	6 7 8 9
(4)	Section 55 of the <i>Commercial Arbitration Act 1984</i> does not affect the operation of section 22 of this Act.	10 11
	Note. The <i>Commercial Arbitration Act 1984</i> contains machinery and other provisions applying to arbitrations. The provisions applying to arbitrations under that Act set out the way in which arbitrators are to conduct arbitration proceedings and powers to require evidence to be given, as well as parties' rights to representation and other procedural matters. They also provide that an award by an arbitrator is to be final and provide for enforcement procedures. An appeal to the Supreme Court on a question of law is also available under that Act.	12 13 14 15 16 17 18 19
26L	Orders	20
(1)	In addition to an arbitrator's powers in respect of compensation payable under Parts 2 and 3, an arbitrator conducting an arbitration may make an order for the payment of compensation in the nature of damages to any party aggrieved by a breach by the other party of a duty imposed on that other party by any of the provisions of sections 5 and 11–14.	21 22 23 24 25 26
(2)	An order under subsection (1) may be made without proof of actual loss or damage.	27 28
(3)	In determining any dispute or matter referred to arbitration under this Act, an arbitrator may make ancillary declarations and orders.	29 30 31
26M	Amount awarded to be charged on land of trustee	32
(1)	An amount ordered to be paid under this Act to a tenant and that is due from a trustee owner is a charge on the farm.	33 34
(2)	The trustee owner is entitled to have the charge released if the trustee owner pays to the tenant the amount due to the tenant.	35 36
(3)	The tenant is entitled to the charge while the trustee owner fails to pay to the tenant the amount due to the tenant.	37 38

(4) The charge may be registered in the General Register of Deeds under section 187 of the <i>Conveyancing Act 1919</i> .	1 2
(5) The amount due is not recoverable personally from the trustee owner.	3 4
[9] Section 27 Contracting out	5
Omit “section 13 (5)” from section 27 (2).	6
Insert instead “a provision of this Act”.	7
[10] Section 27A	8
Insert before section 28:	9
27A Delegation	10
(1) The Director-General may delegate to an authorised person any of the functions of the Director-General under this Act (other than this power of delegation).	11 12 13
(2) A delegate may sub-delegate to an authorised person any function delegated by the Director-General if the delegate is authorised in writing to do so by the Director-General.	14 15 16
(3) In this section:	17
<i>authorised person</i> means:	18
(a) an officer of the Department of Agriculture, or	19
(b) a person of a class of persons prescribed by the regulations.	20 21
[11] Section 29 Regulations	22
Omit section 29 (2) (a). Insert instead:	23
(a) the remuneration of persons who are members of committees that conduct arbitrations for the purposes of this Act,	24 25 26

Agricultural Tenancies Amendment Bill 2001

Schedule 1 Amendments

[12] Section 29 (2) (e)	1
Insert after section 29 (2) (d):	2
, and	3
(e) mediation sessions for the purposes of this Act.	4
[13] Schedule 1 Improvements that a tenant may make as of right	5
Omit item 4. Insert instead:	6
4. Destruction of pests within the meaning of the <i>Rural Lands Protection Act 1998</i> .	7
	8
[14] Schedule 1, item 9	9
Omit “cultivation or working”. Insert instead “management”.	10
[15] Schedule 1, item 9	11
Insert “or repairs referred to in item 10” after “carry out” where firstly occurring.	12
	13
[16] Schedule 2 Savings and transitional provisions	14
Omit clause 2 (1). Insert instead:	15
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	16
this Act	17
<i>Agricultural Tenancies Amendment Act 2001</i>	18
	19
	20

[17] Schedule 2, clause 3	1
Omit the clause. Insert instead:	2
3 Existing tenancies	3
This Act, as amended by the <i>Agricultural Tenancies Amendment Act 2001</i> , extends to a tenancy in existence immediately before the repeal of the former Act or created by the exercise of an option granted before that repeal.	4 5 6 7