

Second Reading

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [4.10 p.m.]: I move:
That this bill be now read a second time.

I seek leave to incorporate my second reading speech in *Hansard*.

Leave granted.

I am very pleased to introduce the Agricultural Tenancies Amendment Bill 2011. The purpose of the bill is to amend the Agricultural Tenancies Act 1990 and the Consumer, Trader and Tenancy Tribunal Act 2001 to confer jurisdiction for the resolution of agricultural tenancy disputes on the Consumer, Trader and Tenancy Tribunal. This will establish a new process for the resolution of agricultural tenancy disputes that will be provided by the Tribunal.

In June this year, the Agricultural Tenancies Act 1990 was transferred from Primary Industries to the Fair Trading portfolio. The Act is a good fit with the other tenancy-related responsibilities within the Fair Trading portfolio.

Honourable members may be interested to know that agricultural tenancy laws have been in operation in New South Wales since 1916. These laws were first introduced to address the power imbalance between land owners and tenants, and also to help prevent the degradation of agricultural land that resulted from poor farming practices.

The laws have been amended over time to keep up with developments in agricultural practices and the changing circumstances of tenant farmers.

These matters are now dealt with by the Agricultural Tenancies Act 1990, which regulates the rights and responsibilities of landowners, tenants and sharefarmers in relation to agricultural tenancies. The Act applies to land used for grazing, dairying, pig farming, viticulture, orcharding, bee-keeping, growing vegetables or other crops, forestry, or any combination of these activities.

The Act also provides an arbitration process for resolving disputes that may arise during a tenancy. These disputes can involve matters such as land misuse, weed growth or the financial benefits flowing to the tenant or the land owner from the use of the land or the making of improvements.

Under the current terms of the Act, the Director General of the Department of Primary Industries is responsible for the arbitration of disputes. However, it would be neither logical nor practical to transfer administrative responsibility for the Act to Fair Trading without also transferring responsibility for the dispute resolution role.

It is also commonsense to integrate this isolated, single-issue dispute arbitration service into the Tribunal's responsibilities. New South Wales has numerous dispute resolution services, ranging from the Consumer, Trader and Tenancy Tribunal to small health tribunals that deal with a specific profession.

While the change to the agricultural tenancy dispute resolution process is a relatively minor administrative change, this will help reduce the scattered duplication of dispute resolution services in New South Wales. The proposed changes in this Amendment bill will contribute to the development of more cost effective system for the resolution of disputes.

In regard to reducing the duplication of services, a Legislative Council inquiry is currently underway which is exploring the possibility of a 'super tribunal' to replace many of the existing dispute resolution bodies.

Interested parties have been invited to provide submissions to the inquiry, and public hearings were held in December last year.

While the final report of the inquiry is not due until 29 February, the need for dispute resolution services is not going to vanish overnight. It will be appropriate to maintain the provision of this vital service in rural and regional parts of the State.

I understand that at the Department of Primary Industries the arbitration process is handled by a paralegal officer working in the Department's Legal Services Division. This is quite different from the level of service that the Tribunal can provide, and obviously places limits on the extent of the dispute resolution services. Bringing the dispute resolution role into the Tribunal brings the opportunity to broaden the range of disputes that can be resolved outside of the court system, and I will touch on this in more detail shortly.

I note that during the Lower House debate on this bill, concerns were raised that the transfer of agricultural tenancy dispute resolution to the Tribunal could mean job losses at Primary Industries.

Apart from the fact that only one officer is involved in the provision of the dispute resolution service, I am also advised that this role only takes up a small part of that officer's workload. So I can assure honourable members that there will be no job losses as a result of the transfer of the dispute resolution role.

Currently, most of the agricultural tenancy dispute applications received by the Department of Primary Industries are resolved by mediation or conciliation, and there are only a few formal arbitration hearings each year. In comparison, the Tribunal provides dispute resolution services to tens of thousands of people every year, and has extensive experience in a whole gamut of tenancy and commercial matters.

The Tribunal has eight registries, including three in rural and regional areas, and conducts hearings in over 70 locations around the State. This widespread choice of venues will make it that much easier for hearings to be held in a convenient location for the parties to a dispute.

Existing provisions in the Consumer, Trader and Tenancy Tribunal Act cover virtually all procedural matters currently provided for in the Agricultural Tenancies Act. The bill therefore proposes to remove the duplicate provisions from the Agricultural Tenancies Act.

Not only will the Amendment bill streamline the Agricultural Tenancies Act significantly, it will also repeal the Agricultural Tenancies Regulation, which will be made redundant by the amendments.

This is completely in keeping with the O'Farrell-Stoner Government's commitment to cutting red tape by 20 per cent reduction in our first term. Streamlining of legislation and red tape

reduction will improve business confidence and help boost the State economy.

Turning now to the substance of the Agricultural Tenancies Amendment bill, I can assure you that the bill is brief and straightforward.

Firstly, the bill proposes to amend the objectives and definitions of the Agricultural Tenancies Act to reflect that the dispute resolution service is to be provided by the Tribunal. This will also mean that the current functions of the Director General of the Department of Primary Industries will become redundant and will be omitted from the Act.

Part 2 of the current Act sets out the general rights of tenants and owners, including the right to have matters determined by arbitration. The Amendment bill proposes to delete all references to the current arbitration process in Part 2 of the Act and replace them with references to the Tribunal.

Part 2 of the Act will be otherwise unchanged, and will still cover the general rights of tenants and owners in regard to:

- improvements to land undertaken by tenants or owners;
- tenants' fixtures;
- owners' rights of entry;
- recording a farm's condition;
- keeping of accounts; and
- termination of tenancies.

Part 3 of the current Act concerns the determination of compensation payable for improvements that have been made to the land. This includes improvements made by either a tenant or an owner.

Part 3 also provides for tenants to be compensated for stored products that are left behind when they leave the farm, and for owners to be compensated for any deterioration in the condition of the farm.

As is the case with Part 2 of the Act, for Part 3 of the Act the Amendment bill proposes to replace references to arbitration with references to the Tribunal.

The current power for the Director General of Primary Industries to appoint someone to make a record of the condition of a farm under section 12 will be omitted. However, tenants and owners will instead be able to apply for Tribunal orders in relation to a dispute about a record of condition.

The existing provisions in Part 4 of the Act concern the current system for arbitrating disputes and the application of the Commercial Arbitration Act 2010. Similar procedural and administrative provisions are contained in the Tribunal's Act and apply to all matters within its jurisdiction.

Accordingly, the Amendment bill proposes to replace Part 4 of the Act.

The new Part 4 to be inserted into the Act will provide for a handful of procedural and administrative matters that are not already covered in the Tribunal's Act. Some of the provisions in the current Part 4 will be carried over and retained.

Proposed section 20 in the new Part 4 of the Act gives tenants and owners the right to apply to the Tribunal for resolution of agricultural tenancy disputes. As I noted earlier, it is also proposed to expand the types of disputes that can be determined.

Under the existing arbitration process, applications cannot be made for disputes concerning rental arrears or evictions. These matters must currently be heard in the courts. Under the proposed bill, parties to these kinds of disputes will be able to apply to the Tribunal for dispute resolution at a much lower cost.

The current time limit for applying for arbitration of disputes is three months after the dispute arises or after the end of the tenancy, whichever is the latest. Proposed section 20 retains the same time limit for the Tribunal process. The Tribunal's Act also allows for an extension of time to be granted where appropriate.

Proposed section 21 will list the range of orders that the Tribunal can make under the Act. The Tribunal will be able to make orders to:

- give effect to a dispute determination;
- restrain any action that breaches a term of a tenancy;
- amend or not amend a record of the condition of a farm;
- require an action to be performed;
- require payment of money or compensation;
- direct a tenant or owner to undertake work to remedy a breach of a term of a tenancy;
- direct an owner, an owner's agent or a tenant to comply with the Act or Regulation;
- terminate a tenancy and return possession; and
- require an owner to allow a tenant to recover goods or fixtures.

Proposed section 21 will also establish the Tribunal's financial jurisdiction. Currently, the financial limit for matters that can be determined by the Director General of Primary Industries is \$100,000. It is proposed to increase this limit so that the Tribunal can determine matters and make orders involving amounts of up to \$500,000.

Given that the amounts involved with agricultural tenancy disputes can add up to millions of dollars, a limit of \$500,000 for the Tribunal is considered appropriate. Increasing the monetary jurisdiction will mean a wider range of disputes can be determined in the lower cost Tribunal instead of the courts. Disputes involving larger amounts will continue to be heard in the courts.

Tribunal hearings are required to be run as informally and inexpensively as possible. This

means that, in most cases, the disputing parties represent themselves and lawyers do not participate. Some exceptions apply. For example, in home building matters involving amounts higher than \$30,000 or for disputes where complex legal issues are expected to arise, the parties are able to be represented. It is proposed that agricultural tenancy disputes will be treated in the same way.

Under the current arbitration system, case management and mediation have proven to be effective in resolving many matters, and there is no reason why this should not continue to be the case. Tribunal members are highly experienced in alternative dispute resolution methods. Mediation of disputes reduces the costs for all parties involved, and can deliver a very quick result.

Accordingly, proposed section 22 will require the Tribunal to promote conciliation and use its best endeavours to bring the parties to an agreed settlement. Matters that are not able to be settled will be referred to mediation. The details of the mediation process are already covered under Part 5 of the Tribunal's Act. If mediation is unsuccessful, then the Chairperson can direct that the matter be subject to an inquiry by an assessor, or the matter can proceed to a hearing.

Existing provisions in the Agricultural Tenancies Act provide for a charge to be placed on land in order to secure amounts that have been ordered to be paid to a tenant. The charge is released once the owner pays the tenant the amounts in question. The charge on land is being retained in proposed section 23 of the Amendment bill.

Section 27 of the current Act voids any agreements that seek to waive or cancel any of the rights, powers and duties under the Act. This important provision is being retained.

The current procedures for serving documents and basic regulation making powers will also be retained.

The current section 7 and schedule 1 to the Act concern a tenant's right to make improvements to a farm. Section 7 states that, without the owner's consent, a tenant is only allowed to carry out improvements to a farm if:

- the improvement is listed in schedule 1 to the Act; or
- the improvement is prescribed by regulation; or
- the improvement has been determined as suitable and desirable.

The improvements listed in schedule 1 are crucial to the operation of a farm. The list includes drainage, roads, bridges, and repairs to essential farm buildings. The schedule also includes important activities such as destruction of pests, destruction of prickly pear and noxious weed control. The Amendment bill proposes to retain schedule 1 in its current form.

Schedule 2 of the current Act contains the savings and transitional provisions that are required to deal with administrative matters. The Amendment bill proposes to update that schedule to provide for management of any dispute applications that were lodged but have not been finalised before the new dispute resolution process comes into effect.

The final proposals in the Amendment bill concern minor changes to the Consumer, Trader and Tenancy Tribunal Act that will be required to give the Tribunal jurisdiction to determine

agricultural tenancy disputes. The bill proposes amendments to section 5 of the Tribunal's Act that will add the Agricultural Tenancies Act to the list of Acts that confer jurisdiction on the Tribunal.

The Tribunal has nine divisions that are listed in schedule 1 of its Act. Each division covers a different area of the Tribunal's responsibilities for dispute resolution. The bill proposes to amend schedule 1 of the Tribunal's Act so that agricultural tenancy disputes are dealt with in the Commercial Division.

A memorandum of understanding will be entered into so that the Tribunal can obtain expert advice or technical assistance from the Department of Primary Industries, as required.

The key stakeholder for agricultural tenancies is the New South Wales Farmers Association. The Association was consulted before and during the drafting of the Amendment bill and supports the introduction of the new dispute resolution process.

In summary, the Agricultural Tenancies Amendment bill only contains the measures that are required to confer jurisdiction over agricultural tenancy disputes on the Consumer, Trader and Tenancy Tribunal which is the direct result of the transfer of the Agricultural Tenancies Act to the Fair Trading portfolio.

Following its introduction, the ongoing impact of the new dispute resolution process will be monitored by the Tribunal, New South Wales Fair Trading the Minister for Fair Trading's office. The Minister for Fair Trading, Mr Anthony Roberts, has already made it quite clear that he will be happy to take action if necessary to address any problems that arise in practice.

The bill will ensure that farm owners, share farmers and farm tenants will have ongoing access to an affordable and accessible dispute resolution service.

I commend the bill to the House.