

Passed by both Houses



New South Wales

# Agricultural Tenancies Amendment Bill 2012

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2012*



New South Wales

## **Agricultural Tenancies Amendment Bill 2012**

Act No , 2012

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*An Act to amend the *Agricultural Tenancies Act 1990* and the *Consumer, Trader and Tenancy Tribunal Act 2001* with respect to the resolution of disputes and to confer jurisdiction relating to agricultural tenancies on the Consumer, Trader and Tenancy Tribunal; and for other purposes.*

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Agricultural Tenancies Amendment Act 2012*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Repeal**

The *Agricultural Tenancies Regulation 2006* is repealed.

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## **Schedule 1      Amendment of Agricultural Tenancies Act 1990 No 64**

**[1] Long title**

Omit “determination by mediation or arbitration”. Insert instead “resolution”.

**[2] Section 3 Objects**

Omit section 3 (c) and (d). Insert instead:

- (c) to provide a mechanism for settling disputes between parties to agricultural tenancies through applications to the Consumer, Trader and Tenancy Tribunal.

**[3] Section 4 Definitions**

Omit the definition of *Director-General* from section 4 (1).

**[4] Section 4 (1), definition of “Tribunal”**

Insert in alphabetical order:

*Tribunal* means the Consumer, Trader and Tenancy Tribunal established under the *Consumer, Trader and Tenancy Tribunal Act 2001*.

**[5] Section 5 Agreements to be in writing**

Omit “arbitration” from section 5 (2). Insert instead “the Tribunal”.

**[6] Section 6 Improvements carried out by tenants with consent**

Omit “arbitration” from section 6 (4). Insert instead “the Tribunal”.

**[7] Section 7 Improvements carried out by tenants without consent**

Omit “arbitration” wherever occurring. Insert instead “the Tribunal”.

**[8] Section 8 Improvements carried out by owner with consent**

Omit “arbitration” from section 8 (4). Insert instead “the Tribunal”.

**[9] Section 9 Improvements carried out by owners without consent**

Omit “arbitration” wherever occurring. Insert instead “the Tribunal”.

**[10] Section 12 Record of condition of farm**

Omit section 12 (3) and (4).

**[11] Section 18 Compensation for general improvement to farm**

Omit “awarded by arbitration” from section 18 (2).

Insert instead “determined by the Tribunal”.

**[12] Part 4**

Omit the Part. Insert instead:

**Part 4    Dispute resolution and remedies**

**20    Applications to Tribunal relating to disputes**

- (1) An owner or tenant may apply to the Tribunal for determination of any of the following:
  - (a) a dispute relating to a right or obligation conferred by this Act,
  - (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,
  - (c) any other matter that may be determined by the Tribunal under this Act.
- (2) An application to the Tribunal must be made not later than 3 months after the relevant dispute or other matter arises or the end of the tenancy, whichever is the later.

**21    Orders that may be made by Tribunal**

- (1) The Tribunal may, on application by an owner or tenant under this Act, or in any proceedings under this Act, make one or more of the following orders:
  - (a) an order giving effect to a determination that may be made by the Tribunal under this Act,
  - (b) an order that a record of the condition of a matter under section 12 must be amended or is not required to be amended,
  - (c) an order that restrains any action in breach of a term of a tenancy,
  - (d) an order that requires an action in performance of a tenancy,
  - (e) an order for the payment of an amount of money,
  - (f) an order as to compensation,

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- (g) an order that an owner or tenant perform such work or take such other steps as the order specifies to remedy a breach of a term of the tenancy,
  - (h) an order directing an owner, an owner's agent or a tenant to comply with a requirement of this Act or the regulations,
  - (i) an order terminating a tenancy or an order for the possession of a farm,
  - (j) an order directing an owner or owner's agent to give a former tenant or a person authorised by the former tenant access to a farm for the purposes of recovering goods or fixtures that the former tenant is entitled to remove.
- (2) An order under subsection (1) (c) or (d) may be made even though it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such a remedy would not otherwise be available.
- (3) The Tribunal must not make an order for:
- (a) the payment of an amount that exceeds \$500,000 or such other amount as may be prescribed by the regulations for the purposes of this section, or
  - (b) the performance of work or the taking of steps the cost of which is likely to or will exceed \$500,000 or such other amount as may be prescribed by the regulations for the purposes of this section.
- (4) The Tribunal may, in any proceedings before it under this Act, make any one or more of the following orders:
- (a) an order that varies or sets aside, or stays or suspends the operation of, any order made in proceedings or earlier proceedings,
  - (b) any ancillary order the Tribunal thinks appropriate,
  - (c) an interim order.
- (5) A provision of this Act that enables an owner or tenant to apply for a determination by the Tribunal and the Tribunal to determine a matter or make an order also applies, where appropriate, to a former owner or former tenant.
- (6) This section does not limit the Tribunal's powers under the *Consumer, Trader and Tenancy Tribunal Act 2001*.

**22 Matters to be dealt with by alternative dispute resolution at first instance**

- (1) An application by an owner or tenant or former owner or tenant to the Tribunal for a determination under this Act must be dealt with by the Tribunal under Division 1 of Part 5 of the *Consumer, Trader and Tenancy Tribunal Act 2001*.
- (2) If a settlement of a matter the subject of any such application is not reached, the Tribunal must refer the matter for mediation or neutral evaluation under Division 2 of Part 5 of the *Consumer, Trader and Tenancy Tribunal Act 2001*.
- (3) The Tribunal may determine proceedings for any such matter only if it is satisfied that a settlement or agreement or arrangement in relation to the matter has not been and is not likely to be reached.
- (4) Despite any other provision of this section, the Tribunal may at any time direct that an inquiry be held under section 16 of the *Consumer, Trader and Tenancy Tribunal Act 2001* into an issue in proceedings under this Act.

**23 Amount awarded to be charge on land of trustees**

- (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.
- (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.
- (3) The tenant is entitled to the charge while the trustee owner fails to pay to the tenant the amount due to the tenant.
- (4) The charge may be registered in the General Register of Deeds under section 187 of the *Conveyancing Act 1919*.
- (5) The amount due is not recoverable personally from the trustee owner.

**[13] Section 27A Delegation**

Omit the section.

**[14] Section 28 Service of documents**

Insert at the end of section 28 (1) (c):

, or

- (d) by sending the document by facsimile transmission to the facsimile number of that person.

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**[15] Section 28 (3)**

Insert “the *Consumer, Trader and Tenancy Tribunal Act 2001* or any other” after “service provided by”.

**[16] Section 29 Regulations**

Omit section 29 (2).

**[17] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 2 (1):

*Agricultural Tenancies Amendment Act 2012*

**[18] Schedule 2, clause 5**

Insert after clause 4:

**5 Continuation of arbitration provisions**

This Act and the *Agricultural Tenancies Regulation 2006*, as in force immediately before the substitution of Part 4 of this Act by the *Agricultural Tenancies Amendment Act 2012*, continue to apply to a dispute or other matter the subject of an application for arbitration made but not finally determined before that substitution.

**Schedule 2      Amendment of Consumer, Trader and Tenancy Tribunal Act 2001 No 82**

**[1]      Section 5 Establishment of Consumer, Trader and Tenancy Tribunal**

Insert in appropriate order in the note:

*Agricultural Tenancies Act 1990*

**[2]      Schedule 1 Divisions of the Tribunal**

Insert after clause 1 (b) (iii):

(iv)      matters arising under the *Agricultural Tenancies Act 1990*,