

# AGRICULTURAL TENANCIES ACT 1990 No. 64

## NEW SOUTH WALES



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**AGRICULTURAL TENANCIES ACT 1990 No. 64**

**NEW SOUTH WALES**



**Act No. 64, 1990**

An Act to regulate the rights of agricultural landowners, tenants and sharefarmers and to provide for the determination by arbitration of disputes between them; to repeal the Agricultural Holdings Act 1941; and for other purposes. [Assented to 26 October 1990]

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

**PART 1 - PRELIMINARY**

**Short title**

1. This Act may be cited as the Agricultural Tenancies Act 1990.

**Commencement**

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

**Objects**

3. The objects of this Act are:
  - (a) to require and encourage agricultural landowners and their tenants and sharefarmers to make suitable and adequate provision to protect their farming properties from deterioration; and
  - (b) to encourage the parties to put their leases and sharefarming or other agreements in writing and to give a party the right to have the provisions of a lease or any such agreement reduced to writing; and
  - (c) to permit and encourage the parties to make their own agreements regarding compensation for stored products, for tenants' fixtures and other matters, regarding the landowner's right of entry, the making of records of the condition of the farm, the keeping and inspection of accounts and the service of documents and regarding other rights and procedures; and
  - (d) where they fail to make their own agreement, or where their agreement is unreasonable, to provide basic provisions that are to be considered fair and reasonable as between the parties; and
  - (e) to permit and encourage the parties to make their own agreement as to adequate notice of termination of a lease or sharefarming or other agreement but, if they fail to agree, to prescribe the period of notice adequate for a particular class of case; and
  - (f) to provide for compulsory arbitration outside the court system for resolving by an arbitration committee all disputes relating to leased and sharefarmed agricultural land and other agricultural



tenancies (the procedures for such arbitration to be as quick, cheap and free of legal technicality as is consistent with doing justice between the parties).

### **Definitions**

#### **4. In this Act:**

**"agricultural purposes"** means grazing, dairying, pig-farming, poultry farming, viticulture, orcharding, bee-keeping, horticulture, vegetable growing, the growing of crops of any kind, forestry, or any combination of any of those things;

**"Director-General"** means the Director-General of the Department of Agriculture and Fisheries, and includes a Deputy Director-General;

**"farm"** means a piece of land not less than 1 hectare in area occupied or used by a tenant and which is wholly or mostly used or intended to be used for agricultural purposes;

**"improvement"** means any work or thing carried out on a farm in the course of a tenancy, being a work or thing that would be of value to an incoming tenant, but does not include the repair or replacement of any work or thing already on the farm, except as provided by this Act;

**"owner"** means any person for the time being entitled to the rents and profits of a farm;

**"tenancy"** means a lease or licence, an agreement for a lease or licence, a tenancy at will or a sharefarming arrangement or any other arrangement by which a person who is not the owner of the farm has a right to occupy or use it;

**"tenant"** includes a sharefarmer and any person whose right of occupancy or use of a farm is derived from the tenant, but does not include a tenant employed by the owner.

## **PART 2 - COMPENSATION FOR IMPROVEMENTS ETC.**

### **Division 1 - Compensation to tenants**

#### **Compensation for tenants' improvements**

5. (1) In this Division (section 9 excepted), **"compensation"** for an improvement means the value of the improvement to an incoming

tenant, taking into account the value of any consideration or benefit given by the owner to the tenant for carrying out the improvement.

(2) A reference in this Division to the value of an improvement or product to an incoming tenant is a reference to 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).

(3) In determining what constitutes fair compensation for the purposes of this Division, regard may be had to the financial resources of the parties, the financial returns that may be expected from the improvement and other factors.

(4) If compensation is required to be paid to a tenant in accordance with this Division, it is payable when the tenant leaves the farm or at such earlier time as may be agreed or as may be determined by arbitration.

#### **Improvement carried out by consent**

6. (1) A tenant may carry out any improvement on the farm with the consent of the owner.

(2) If an amount of compensation to the tenant for the improvement is fixed by agreement, the owner must pay the tenant the agreed amount, unless the agreed amount is unfair.

(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.

#### **Improvement carried out without consent**

7. (1) Without the owner's consent, a tenant may carry out an improvement on the farm only if:

- (a) it is an improvement mentioned in Schedule 1 or a work or thing prescribed by the regulations for the purposes of this section; or
- (b) the improvement is first determined by arbitration to be suitable and desirable.

(2) The owner must pay fair compensation to the tenant for the improvement:

- (a) if it is an improvement referred to in subsection (1) (a); or
- (b) if it is an improvement referred to in subsection (1) (b) and compensation is determined by arbitration to be payable.



### **General improvement**

8. (1) If there has been a general improvement to a farm by the adoption of better farm management by the tenant:

- (a) than is normally practised on farms of the same character, and in the same neighbourhood, as the farm concerned; or
- (b) than is required by any agreement,

the owner must pay fair compensation to the tenant.

(2) In the case of a dairy farm, any increase in the milk quota for the farm is one kind of evidence of general improvement to the farm.

(3) 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 which caused or contributed to the general improvement.

### **Compensation to tenant for stored products**

9. (1) The owner must pay the tenant fair compensation for any products stored by the tenant during the tenancy and left on the farm when the tenant leaves.

(2) In this section:

"**compensation**" means:

- (a) except in the case of a sharefarming arrangement, the value of the products to an incoming tenant; or
- (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;

"**products**" means grain, hay, silage, fertiliser or any other useful commodity, whether or not a product of the soil.

## **Division 2 - Compensation to owners**

### **Compensation for owners' improvements**

10. (1) In this Division (section 13 excepted), "**compensation**" for an improvement means 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.

(2) In determining what constitutes fair compensation for the purposes of this Division, regard may be had to the financial resources of the parties, the financial returns that may be expected from the improvement and other factors.

(3) If compensation is required to be paid to an owner in accordance with this Division, it may be paid in instalments together with any rent payable in respect of the tenancy or in such other manner as may be agreed or as may be determined by arbitration.

#### **Improvement carried out by consent**

11. (1) An owner may carry out any improvement on the farm with the consent of the tenant.

(2) If an amount of compensation to the owner for the improvement is fixed by agreement, the tenant must pay the owner the agreed amount, unless the agreed amount is unfair.

(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.

#### **Improvement carried out without consent**

12. (1) Without the tenant's consent, an owner may carry out an improvement on the farm only if the improvement on the farm is first determined by arbitration to be suitable and desirable.

(2) The tenant must pay fair compensation to the owner for the improvement if compensation is determined by arbitration to be payable.

#### **Compensation for deterioration**

13. (1) 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 cultivate the farm in accordance with good farm management and the provisions of any agreement creating the tenancy.

(2) In the case of a dairy farm, any decrease in the milk quota for the farm is one kind of evidence of deterioration of the farm.

(3) In this section, "compensation" means an amount representing the decrease in the value of the farm as a result of the deterioration.



- (4) The compensation is payable when the deterioration is evident.
- (5) The rights of an owner under this section are displaced by an agreement:
  - (a) to the extent that those rights are expressly waived by the agreement; or
  - (b) to the extent that every use (being a use that is material to any claim for compensation under this section) to which the tenant puts the farm is expressly authorised by the agreement.

### **PART 3 - RIGHTS OF OWNERS AND TENANTS**

#### **Tenants' fixtures**

14. (1) A fixture affixed to a farm by a tenant for which the tenant does not or cannot claim compensation (and which is not affixed under some obligation or instead of some fixture belonging to the owner) may be removed by the tenant before or within a reasonable time after the tenant leaves the farm, except as provided by this section.

(2) The tenant must not remove a fixture affixed to the farm by the tenant without giving reasonable notice to the owner, and to any occupier for the time being of the farm, of the tenant's intention to remove it.

(3) At any time before the expiration of the notice, the owner may give notice to 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 was payable under Division 1 of Part 2.

(4) Before removing a fixture, the tenant must comply with all the tenant's obligations to the owner in respect of the farm.

(5) When removing a fixture, the tenant must not do any damage to any other fixture or other part of the farm.

(6) Immediately after the removal of a fixture, the tenant must make good all damage occasioned to any other fixture or other part of the farm by the removal.

(7) In this section:

"**fixture**" includes a building.

### **Owners' right of entry**

15. (1) The owner, or any person authorised by the owner, may at all reasonable times, with prior reasonable notice, enter the farm for the purpose of viewing its condition, or to perform a duty of the owner under this Act or (subject to this Act) to carry out an improvement.

(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.

(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.

### **Record of condition of farm**

16. (1) A record of the condition of the land and of any buildings, fences, gates, roads, drains and cultivation of a farm, and of any improvements, 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) A record of any improvement carried out by the tenant, and a record of any fixture which 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.

(3) At the request of the parties, the Director-General may appoint a person to make a record under this section.

(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.

### **Accounts**

17. An owner and a tenant each have the duty to keep proper accounts in connection with the tenancy, and each has the right to inspect at all reasonable times, with prior reasonable notice, the accounts kept by the other in connection with the tenancy.

**Lease or agreement to be reduced to writing**

18. 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.

**Notice of termination of tenancy**

19. (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.

(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 term.

(3) 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.

(4) In addition to the requirements of subsections (2) and (3), a tenancy cannot be terminated unless written notice of termination is served by a party on the other party so as to give notice of at least:

- (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
- (b) in any other case - a period of 1 month.

(5) This section does not apply to termination for a breach of the tenancy or where the parties have otherwise agreed on the notice to be given.

**PART 4 - ARBITRATION**

**Arbitration**

20. (1) A dispute arising out of anything contained in this Act, and any other dispute arising from an agreement creating a tenancy, may be referred to arbitration.

(2) Subsection (1) does not apply:

- (a) to any dispute where an owner seeks ejection of a tenant or recovery of rent; or



(b) to any dispute, or in any circumstances, of a kind prescribed by the regulations.

(3) A court has no jurisdiction:

(a) in respect of any issue in a dispute arising out of anything contained in this Act, except to the extent that it cannot be referred to arbitration; or

(b) in respect of any issue in a dispute that has been referred to arbitration and has not been withdrawn or dismissed for want of jurisdiction.

(4) Subject to subsection (3), if proceedings for the determination of any issue were commenced in a court before a dispute involving that issue was 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.

### **Arbitrators**

21. (1) An arbitration for the purposes of this Act is to be conducted by a committee of 3 persons selected in accordance with the regulations or by a single arbitrator in accordance with subsection (3).

(2) The presiding member of an arbitration committee must be a barrister or solicitor and must satisfy any other requirements of the regulations with respect to qualifications or experience.

(3) If the Director-General is of the opinion that the circumstances of a particular dispute require an urgent resolution of it, the Director-General may make arrangements for arbitration of the dispute, in accordance with the regulations, by a single arbitrator, being a person qualified to be the presiding member of an arbitration committee.

(4) The regulations may make provision for or with respect to:

(a) precluding the application of subsection (3) to any dispute of a kind mentioned in the regulations; and

(b) requirements to be observed in connection with the application of that subsection in any case or class of cases.

(5) A single arbitrator has, subject to the regulations, the same powers, authorities, duties and functions as a committee conducting an arbitration for the purposes of this Act.



**Time limitation**

22. (1) An application for arbitration must be made in accordance with the regulations not later than 3 months after the date the tenant left the farm.

(2) The parties may extend the time by consent.

(3) The Supreme Court may extend the time if just cause is shown by the applicant.

**Application of Commercial Arbitration Act 1984**

23. (1) Subject to this Act and the regulations, the Commercial Arbitration Act 1984 (except Part 2 of that Act) applies to an arbitration for the purposes of this Act.

(2) Section 55 of the Commercial Arbitration Act 1984 does not affect the operation of section 20.

**Order for compensation in the nature of damages**

24. (1) In addition to its powers in respect of compensation payable under Part 2, a committee or 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 by any of the provisions of sections 14-19 on that other party.

(2) Such an order may be made without proof of actual loss or damage.

**Other orders**

25. In determining any matter referred to arbitration under this Act, a committee or arbitrator may make ancillary declarations and orders.

**Amount awarded to be charged on land of trustee**

26. (1) An amount ordered to be paid under this Act to a tenant and which 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 Register of Causes, Writs, and Orders under section 187 of the Conveyancing Act 1919.

(5) The amount due is not recoverable personally from the trustee owner.

## **PART 5 - GENERAL**

### **Contracting out**

27. (1) Any agreement purporting to waive or abrogate any right, power or duty created by this Act, or otherwise to defeat the purposes of this Act, is to that extent void.

(2) Nothing in this section precludes a waiver of rights in accordance with section 13 (5).

### **Service of documents**

28. (1) Any document required or permitted to be served on a person for the purposes of this Act or the regulations may be served:

- (a) by delivering the document to that person; or
- (b) by leaving the document at the last known place of residence or business of that person; or
- (c) by sending the document by post, with the postage prepaid, in an envelope addressed to that person at the usual or last known place of residence or business of that person.

(2) Service on a solicitor or agent currently acting for a person is also sufficient.

(3) Nothing in this section precludes the use of any other means of service provided by law or by agreement between the parties.

### **Regulations**

29. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, regulations may be made for or with respect to:

- (a) the constitution of committees to conduct arbitrations for the purposes of this Act and the remuneration of the members of any such committee; and

- (b) proceedings in any arbitration for the purposes of this Act; and
- (c) forms to be used for the purposes of this Act; and
- (d) fees to be paid in connection with any arbitration for the purposes of this Act.

**Repeal and savings**

- 30. (1) The Agricultural Holdings Act 1941 is repealed.
- (2) Any regulations in force under that Act are repealed.
- (3) Schedule 2 has effect.

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**SCHEDULE 1 - IMPROVEMENTS THAT A TENANT MAY  
MAKE AS OF RIGHT**

(Sec. 7 (1))

- 1. Drainage.
- 2. Making or improvement of necessary roads or bridges.
- 3. Clearing and removal of stumps and logs.
- 4. Destruction of rabbits and other noxious animals.
- 5. Destruction of prickly pear, blackberry and other noxious weeds.
- 6. Making of permanent subdivision fences.
- 7. Laying down of pastures.
- 8. Application to land of fertilisers, liming materials and trace element products within the meaning of the Fertilizers Act 1985.
- 9. Repairs to buildings (being buildings necessary for the proper cultivation or working of the farm), other than repairs which the tenant is under an obligation to carry out, but only if:
  - (a) before beginning to carry out the repairs, the tenant gives notice to the owner of the tenant's intention, together with particulars of the repairs; and
  - (b) the owner fails to carry out the repairs within a reasonable time after receiving the notice.



**SCHEDULE 1 - IMPROVEMENTS THAT A TENANT MAY  
MAKE AS OF RIGHT - *continued***

10. Repairs to or re-erection of buildings to meet the particular requirements of the Dairy Industry Act 1979 or any other Act.

11. Repairs to and the cleaning of silt from wells, bores, dams, reservoirs and ground tanks.

**SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 30)

**Definition**

1. In this Schedule, the "former Act" means the Agricultural Holdings Act 1941.

**Regulations**

2. (1) The regulations may contain provisions of a saving or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Savings**

3. (1) Nothing in this Act affects any right, power or duty exercisable or to be performed under the former Act in respect of a tenancy.



SCHEDULE 2 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

- (a) created before the repeal of the former Act; or
- (b) created by the exercise of an option granted before that repeal, and the former Act, and the regulations under that Act, are to be taken to continue to apply to a tenancy so created, to the exclusion of this Act and any regulations under this Act.

(2) This clause has effect subject to clause 4 and any regulation made pursuant to clause 2.

**Transitional provisions**

4. If a matter arising under the former Act is referred to arbitration after the commencement of this clause, the arbitration is to be conducted under and according to the provisions of this Act.

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[*Minister's second reading speech made in -  
Legislative Assembly on 2 May 1990  
Legislative Council on 13 September 1990*]

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FIRST PRINT

## AGRICULTURAL TENANCIES BILL 1990

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to provide a new code for regulating the respective rights of agricultural landowners and their sharefarmers and other tenants. At present these rights are regulated by the Agricultural Holdings Act 1941 which will be repealed by the proposed Act.

The Bill re-enacts, in simpler language, the more important principles of the 1941 Act and extends those principles in certain respects.

The enactment in 1984 of the Commercial Arbitration Act provided a system for the resolution of disputes by conciliation and arbitration. The system applies in cases where an Act or private agreement specifies that disputes are to be settled by arbitration. The Bill applies this system to disputes between agricultural landowners and their tenants.

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### PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

Clause 3 states the principal objects of the proposed Act.

Clause 4 defines "agricultural purposes", "farm", "improvement", "owner", "tenancy" and other terms used in the proposed Act.

**PART 2 - COMPENSATION FOR IMPROVEMENTS ETC.**

**Division 1 - Compensation to tenants**

Clause 5 defines "compensation" for the purposes of the proposed Division and states the time at which compensation is payable to tenants. In deciding on a fair amount of compensation, regard may be had to the means of the landowner and the tenant as well as the expected return on the improvement and other relevant matters.

Clause 6 provides that if a tenant, with the agreement of the landowner, carries out an improvement on the farm, the tenant is entitled to be paid compensation for the improvement. The compensation can be an agreed amount but, in default of agreement, it is to be an amount representing the value of the improvement.

Clause 7 addresses the case of an improvement carried out by a tenant without agreement with the landowner. In such a case, the tenant is generally entitled to be paid compensation based on the value of the improvement if the improvement falls into a category specified in Schedule 1 to the proposed Act or in the regulations, or if the improvement is first determined by arbitration to be a suitable and desirable one.

Clause 8 provides a tenant with a right to compensation for a general improvement to the farm that is due to the tenant's superior farm management.

Clause 9 provides a tenant with a right to compensation for grain, hay and other useful products left on the farm at the conclusion of a tenancy.

**Division 2 - Compensation to owners**

Clause 10 defines "compensation" for the purposes of the proposed Division and states the time and manner of payment of compensation to an owner.

Clause 11 provides for the payment of compensation by a tenant to an owner in respect of an improvement carried out by the owner with the consent of the tenant.

Clause 12 provides for compensation payable by a tenant to the owner for an improvement carried out by the owner without the tenant's consent. The owner is entitled to be paid in respect of the increased value of the farm to the tenant, if the improvement is first determined by arbitration to be a suitable and desirable one.

Clause 13 provides an owner with a right to compensation by a tenant when the tenant allows the farm to deteriorate.

**PART 3 - RIGHTS OF OWNERS AND TENANTS**

Clause 14 provides for the disposition of tenants' fixtures at the conclusion of their tenancies. The owner has the right to buy a tenant's fixture at a fair price. If the owner does not want it, the tenant is entitled to take it away.

Clause 15 allows the owner or an agent of the owner to come on to the farm to inspect it. Reasonable notice must be given to the tenant.

Clause 16 provides for a record to be made of the condition of the farm and its buildings, fences and other features and of any improvements. The record must, at



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the request of either party, be made at the commencement of the tenancy and at reasonable intervals thereafter.

Clause 17 imposes a duty on both the owner and the tenant to keep proper accounts. On reasonable notice, each party may inspect the records of the other.

Clause 18 provides that the owner and tenant are each entitled to insist that any agreement creating the tenancy should be reduced to writing.

Clause 19 specifies the notice that either party must give the other in order to terminate a tenancy. The required notice may be varied by agreement between the owner and the tenant.

### **PART 4 - ARBITRATION**

Clause 20 requires the parties to resort to arbitration to settle disputes arising from anything contained in the proposed Act and enables the referral to arbitration of disputes arising out of an agreement creating the tenancy. In cases where arbitration may be resorted to, but is not compulsory, proceedings to resolve a dispute may be taken before arbitrators or before the courts (but not before both in respect of the same matter).

Clause 21 provides for the appointment of arbitrators. An arbitration for the purposes of the proposed Act is generally to be conducted by a committee of 3 persons (one of whom must be legally qualified) selected in accordance with the regulations. Provision is also made for the resolution of disputes in urgent cases by a single arbitrator (who must be legally qualified).

Clause 22 provides that an application for arbitration must be made, in accordance with the regulations, within 3 months after the tenant quits the farm. The parties, however, can extend the time limit and so can the Supreme Court.

Clause 23 applies the relevant provisions of the Commercial Arbitration Act 1984 to an arbitration for the purposes of the proposed Act.

Clause 24 allows arbitrators to enforce specified rights under the proposed Act by an order for compensation in the nature of damages.

Clause 25 allows arbitrators to make ancillary declarations and orders.

Clause 26 provides that, where a farm is in the hands of a trustee, any amount awarded by arbitration to the tenant is a charge on the farm until the tenant is paid.

### **PART 5 - GENERAL**

Clause 27 prevents persons from contracting out of the proposed Act.

Clause 28 provides for the means by which a document may be appropriately served for the purposes of the proposed Act.

Clause 29 enables the making of regulations under the proposed Act.

Clause 30 provides for the repeal of the Agricultural Holdings Act 1941 and regulations in force under that Act. The clause also gives effect to a Schedule of savings and transitional provisions.

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**Schedule 1** specifies improvements to a farm which, if made by the tenant, allow the tenant (in accordance with proposed section 7) a right to compensation without the necessity of determining by arbitration their suitability and desirability.

**Schedule 2** enacts appropriate savings and transitional provisions. Rights, powers and duties under the Agricultural Holdings Act 1941 are preserved in respect of tenancies created under that Act or created pursuant to an option granted under that Act.

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FIRST PRINT

**AGRICULTURAL TENANCIES BILL 1990**

NEW SOUTH WALES



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**AGRICULTURAL TENANCIES BILL 1990**

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No. , 1990

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**A BILL FOR**

An Act to regulate the rights of agricultural landowners, tenants and sharefarmers and to provide for the determination by arbitration of disputes between them; to repeal the Agricultural Holdings Act 1941; and for other purposes.

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

**PART 1 - PRELIMINARY**

**Short title**

1. This Act may be cited as the Agricultural Tenancies Act 1990.

**Commencement**

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

**Objects**

3. The objects of this Act are:

- (a) to require and encourage agricultural landowners and their tenants and sharefarmers to make suitable and adequate provision to protect their farming properties from deterioration; and
- (b) to encourage the parties to put their leases and sharefarming or other agreements in writing and to give a party the right to have the provisions of a lease or any such agreement reduced to writing; and
- (c) to permit and encourage the parties to make their own agreements regarding compensation for stored products, for tenants' fixtures and other matters, regarding the landowner's right of entry, the making of records of the condition of the farm, the keeping and inspection of accounts and the service of documents and regarding other rights and procedures; and
- (d) where they fail to make their own agreement, or where their agreement is unreasonable, to provide basic provisions that are to be considered fair and reasonable as between the parties; and
- (e) to permit and encourage the parties to make their own agreement as to adequate notice of termination of a lease or sharefarming or other agreement but, if they fail to agree, to prescribe the period of notice adequate for a particular class of case; and
- (f) to provide for compulsory arbitration outside the court system for resolving by an arbitration committee all disputes relating to leased and sharefarmed agricultural land and other agricultural tenancies (the procedures for such arbitration to be as quick,

cheap and free of legal technicality as is consistent with doing justice between the parties).

#### **Definitions**

##### **4. In this Act:**

"**agricultural purposes**" means grazing, dairying, pig-farming, poultry farming, viticulture, orcharding, bee-keeping, horticulture, vegetable growing, the growing of crops of any kind, forestry, or any combination of any of those things;

"**Director-General**" means the Director-General of the Department of Agriculture and Fisheries, and includes a Deputy Director-General;

"**farm**" means a piece of land not less than 1 hectare in area occupied or used by a tenant and which is wholly or mostly used or intended to be used for agricultural purposes;

"**improvement**" means any work or thing carried out on a farm in the course of a tenancy, being a work or thing that would be of value to an incoming tenant, but does not include the repair or replacement of any work or thing already on the farm, except as provided by this Act;

"**owner**" means any person for the time being entitled to the rents and profits of a farm;

"**tenancy**" means a lease or licence, an agreement for a lease or licence, a tenancy at will or a sharefarming arrangement or any other arrangement by which a person who is not the owner of the farm has a right to occupy or use it;

"**tenant**" includes a sharefarmer and any person whose right of occupancy or use of a farm is derived from the tenant, but does not include a tenant employed by the owner.

## **PART 2 - COMPENSATION FOR IMPROVEMENTS ETC.**

### **Division 1 - Compensation to tenants**

#### **Compensation for tenants' improvements**

5. (1) In this Division (section 9 excepted), "**compensation**" for an improvement means the value of the improvement to an incoming tenant, taking into account the value of any consideration or benefit given by the owner to the tenant for carrying out the improvement.



(2) A reference in this Division to the value of an improvement or product to an incoming tenant is a reference to 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).

(3) In determining what constitutes fair compensation for the purposes of this Division, regard may be had to the financial resources of the parties, the financial returns that may be expected from the improvement and other factors.

(4) If compensation is required to be paid to a tenant in accordance with this Division, it is payable when the tenant leaves the farm or at such earlier time as may be agreed or as may be determined by arbitration.

#### **Improvement carried out by consent**

6. (1) A tenant may carry out any improvement on the farm with the consent of the owner.

(2) If an amount of compensation to the tenant for the improvement is fixed by agreement, the owner must pay the tenant the agreed amount, unless the agreed amount is unfair.

(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.

#### **Improvement carried out without consent**

7. (1) Without the owner's consent, a tenant may carry out an improvement on the farm only if:

- (a) it is an improvement mentioned in Schedule 1 or a work or thing prescribed by the regulations for the purposes of this section; or
- (b) the improvement is first determined by arbitration to be suitable and desirable.

(2) The owner must pay fair compensation to the tenant for the improvement:

- (a) if it is an improvement referred to in subsection (1) (a); or
- (b) if it is an improvement referred to in subsection (1) (b) and compensation is determined by arbitration to be payable.



**General improvement**

8. (1) If there has been a general improvement to a farm by the adoption of better farm management by the tenant:

- (a) than is normally practised on farms of the same character, and in the same neighbourhood, as the farm concerned; or
- (b) than is required by any agreement,

the owner must pay fair compensation to the tenant.

(2) In the case of a dairy farm, any increase in the milk quota for the farm is one kind of evidence of general improvement to the farm.

(3) 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 which caused or contributed to the general improvement.

**Compensation to tenant for stored products**

9. (1) The owner must pay the tenant fair compensation for any products stored by the tenant during the tenancy and left on the farm when the tenant leaves.

(2) In this section:

"compensation" means:

- (a) except in the case of a sharefarming arrangement, the value of the products to an incoming tenant; or
- (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;

"products" means grain, hay, silage, fertiliser or any other useful commodity, whether or not a product of the soil.

**Division 2 - Compensation to owners**

**Compensation for owners' improvements**

10. (1) In this Division (section 13 excepted), "compensation" for an improvement means 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.

(2) In determining what constitutes fair compensation for the purposes of this Division, regard may be had to the financial resources of the parties, the financial returns that may be expected from the improvement and other factors.

(3) If compensation is required to be paid to an owner in accordance with this Division, it may be paid in instalments together with any rent payable in respect of the tenancy or in such other manner as may be agreed or as may be determined by arbitration.

#### **Improvement carried out by consent**

11. (1) An owner may carry out any improvement on the farm with the consent of the tenant.

(2) If an amount of compensation to the owner for the improvement is fixed by agreement, the tenant must pay the owner the agreed amount, unless the agreed amount is unfair.

(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.

#### **Improvement carried out without consent**

12. (1) Without the tenant's consent, an owner may carry out an improvement on the farm only if the improvement on the farm is first determined by arbitration to be suitable and desirable.

(2) The tenant must pay fair compensation to the owner for the improvement if compensation is determined by arbitration to be payable.

#### **Compensation for deterioration**

13. (1) 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 cultivate the farm in accordance with good farm management and the provisions of any agreement creating the tenancy.

(2) In the case of a dairy farm, any decrease in the milk quota for the farm is one kind of evidence of deterioration of the farm.

(3) In this section, "**compensation**" means an amount representing the decrease in the value of the farm as a result of the deterioration.



- (4) The compensation is payable when the deterioration is evident.
- (5) The rights of an owner under this section are displaced by an agreement:
  - (a) to the extent that those rights are expressly waived by the agreement; or
  - (b) to the extent that every use (being a use that is material to any claim for compensation under this section) to which the tenant puts the farm is expressly authorised by the agreement.

### **PART 3 - RIGHTS OF OWNERS AND TENANTS**

#### **Tenants' fixtures**

14. (1) A fixture affixed to a farm by a tenant for which the tenant does not or cannot claim compensation (and which is not affixed under some obligation or instead of some fixture belonging to the owner) may be removed by the tenant before or within a reasonable time after the tenant leaves the farm, except as provided by this section.

(2) The tenant must not remove a fixture affixed to the farm by the tenant without giving reasonable notice to the owner, and to any occupier for the time being of the farm, of the tenant's intention to remove it.

(3) At any time before the expiration of the notice, the owner may give notice to 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 was payable under Division 1 of Part 2.

(4) Before removing a fixture, the tenant must comply with all the tenant's obligations to the owner in respect of the farm.

(5) When removing a fixture, the tenant must not do any damage to any other fixture or other part of the farm.

(6) Immediately after the removal of a fixture, the tenant must make good all damage occasioned to any other fixture or other part of the farm by the removal.



(7) In this section:

"fixture" includes a building.

#### **Owners' right of entry**

15. (1) The owner, or any person authorised by the owner, may at all reasonable times, with prior reasonable notice, enter the farm for the purpose of viewing its condition, or to perform a duty of the owner under this Act or (subject to this Act) to carry out an improvement.

(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.

(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.

#### **Record of condition of farm**

16. (1) A record of the condition of the land and of any buildings, fences, gates, roads, drains and cultivation of a farm, and of any improvements, 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) A record of any improvement carried out by the tenant, and a record of any fixture which 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.

(3) At the request of the parties, the Director-General may appoint a person to make a record under this section.

(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.

#### **Accounts**

17. An owner and a tenant each have the duty to keep proper accounts in connection with the tenancy, and each has the right to inspect at all reasonable times, with prior reasonable notice, the accounts kept by the other in connection with the tenancy.

**Lease or agreement to be reduced to writing**

18. 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.

**Notice of termination of tenancy**

19. (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.

(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 term.

(3) 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.

(4) In addition to the requirements of subsections (2) and (3), a tenancy cannot be terminated unless written notice of termination is served by a party on the other party so as to give notice of at least:

- (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
- (b) in any other case - a period of 1 month.

(5) This section does not apply to termination for a breach of the tenancy or where the parties have otherwise agreed on the notice to be given.

**PART 4 - ARBITRATION**

**Arbitration**

20. (1) A dispute arising out of anything contained in this Act, and any other dispute arising from an agreement creating a tenancy, may be referred to arbitration.

(2) Subsection (1) does not apply:

- (a) to any dispute where an owner seeks ejection of a tenant or recovery of rent; or



(b) to any dispute, or in any circumstances, of a kind prescribed by the regulations.

(3) A court has no jurisdiction:

(a) in respect of any issue in a dispute arising out of anything contained in this Act, except to the extent that it cannot be referred to arbitration; or

(b) in respect of any issue in a dispute that has been referred to arbitration and has not been withdrawn or dismissed for want of jurisdiction.

(4) Subject to subsection (3), if proceedings for the determination of any issue were commenced in a court before a dispute involving that issue was 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.

#### **Arbitrators**

21. (1) An arbitration for the purposes of this Act is to be conducted by a committee of 3 persons selected in accordance with the regulations or by a single arbitrator in accordance with subsection (3).

(2) The presiding member of an arbitration committee must be a barrister or solicitor and must satisfy any other requirements of the regulations with respect to qualifications or experience.

(3) If the Director-General is of the opinion that the circumstances of a particular dispute require an urgent resolution of it, the Director-General may make arrangements for arbitration of the dispute, in accordance with the regulations, by a single arbitrator, being a person qualified to be the presiding member of an arbitration committee.

(4) The regulations may make provision for or with respect to:

(a) precluding the application of subsection (3) to any dispute of a kind mentioned in the regulations; and

(b) requirements to be observed in connection with the application of that subsection in any case or class of cases.

(5) A single arbitrator has, subject to the regulations, the same powers, authorities, duties and functions as a committee conducting an arbitration for the purposes of this Act.



**Time limitation**

22. (1) An application for arbitration must be made in accordance with the regulations not later than 3 months after the date the tenant left the farm.

(2) The parties may extend the time by consent.

(3) The Supreme Court may extend the time if just cause is shown by the applicant.

**Application of Commercial Arbitration Act 1984**

23. (1) Subject to this Act and the regulations, the Commercial Arbitration Act 1984 (except Part 2 of that Act) applies to an arbitration for the purposes of this Act.

(2) Section 55 of the Commercial Arbitration Act 1984 does not affect the operation of section 20.

**Order for compensation in the nature of damages**

24. (1) In addition to its powers in respect of compensation payable under Part 2, a committee or 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 by any of the provisions of sections 14-19 on that other party.

(2) Such an order may be made without proof of actual loss or damage.

**Other orders**

25. In determining any matter referred to arbitration under this Act, a committee or arbitrator may make ancillary declarations and orders.

**Amount awarded to be charged on land of trustee**

26. (1) An amount ordered to be paid under this Act to a tenant and which 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 Register of Causes, Writs, and Orders under section 187 of the Conveyancing Act 1919.

(5) The amount due is not recoverable personally from the trustee owner.

## **PART 5 - GENERAL**

### **Contracting out**

27. (1) Any agreement purporting to waive or abrogate any right, power or duty created by this Act, or otherwise to defeat the purposes of this Act, is to that extent void.

(2) Nothing in this section precludes a waiver of rights in accordance with section 13 (5).

### **Service of documents**

28. (1) Any document required or permitted to be served on a person for the purposes of this Act or the regulations may be served:

- (a) by delivering the document to that person; or
- (b) by leaving the document at the last known place of residence or business of that person; or
- (c) by sending the document by post, with the postage prepaid, in an envelope addressed to that person at the usual or last known place of residence or business of that person.

(2) Service on a solicitor or agent currently acting for a person is also sufficient.

(3) Nothing in this section precludes the use of any other means of service provided by law or by agreement between the parties.

### **Regulations**

29. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) In particular, regulations may be made for or with respect to:
- (a) the constitution of committees to conduct arbitrations for the purposes of this Act and the remuneration of the members of any such committee; and

- (b) proceedings in any arbitration for the purposes of this Act; and
- (c) forms to be used for the purposes of this Act; and
- (d) fees to be paid in connection with any arbitration for the purposes of this Act.

**Repeal and savings**

- 30. (1) The Agricultural Holdings Act 1941 is repealed.
- (2) Any regulations in force under that Act are repealed.
- (3) Schedule 2 has effect.

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**SCHEDULE 1 - IMPROVEMENTS THAT A TENANT MAY  
MAKE AS OF RIGHT**

(Sec. 7 (1))

- 1. Drainage.
- 2. Making or improvement of necessary roads or bridges.
- 3. Clearing and removal of stumps and logs.
- 4. Destruction of rabbits and other noxious animals.
- 5. Destruction of prickly pear, blackberry and other noxious weeds.
- 6. Making of permanent subdivision fences.
- 7. Laying down of pastures.
- 8. Application to land of fertilisers, liming materials and trace element products within the meaning of the Fertilizers Act 1985.
- 9. Repairs to buildings (being buildings necessary for the proper cultivation or working of the farm), other than repairs which the tenant is under an obligation to carry out, but only if:
  - (a) before beginning to carry out the repairs, the tenant gives notice to the owner of the tenant's intention, together with particulars of the repairs; and
  - (b) the owner fails to carry out the repairs within a reasonable time after receiving the notice.



**SCHEDULE 1 - IMPROVEMENTS THAT A TENANT MAY  
MAKE AS OF RIGHT - *continued***

10. Repairs to or re-erection of buildings to meet the particular requirements of the Dairy Industry Act 1979 or any other Act.

11. Repairs to and the cleaning of silt from wells, bores, dams, reservoirs and ground tanks.

**SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 30)

**Definition**

1. In this Schedule, the "former Act" means the Agricultural Holdings Act 1941.

**Regulations**

2. (1) The regulations may contain provisions of a saving or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Savings**

3. (1) Nothing in this Act affects any right, power or duty exercisable or to be performed under the former Act in respect of a tenancy.

SCHEDULE 2 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

- (a) created before the repeal of the former Act; or
- (b) created by the exercise of an option granted before that repeal, and the former Act, and the regulations under that Act, are to be taken to continue to apply to a tenancy so created, to the exclusion of this Act and any regulations under this Act.

(2) This clause has effect subject to clause 4 and any regulation made pursuant to clause 2.

**Transitional provisions**

4. If a matter arising under the former Act is referred to arbitration after the commencement of this clause, the arbitration is to be conducted under and according to the provisions of this Act.

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