

AGRICULTURAL HOLDINGS ACT.

Act No. 55, 1941.

George VI.
No. 55, 1941. An Act to provide for the payment of compensation to tenant farmers for improvements to holdings and for certain other matters; to provide for the extension of tenancies of certain rural holdings; to provide for the determination of certain disputes between tenant farmers and their landlords; to repeal the Rural Tenants' Improvements Act, 1916, and the Agricultural Lessees Relief Act, 1931; to amend certain Acts; and for purposes connected therewith. [Assented to, 13th November, 1941.]

BE

BE it enacted by the King's Most Excellent Majesty, No. 55, 1941.
by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Agricultural Holdings Act, 1941." Short title.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act is divided into Parts as follows :—

Division
into Parts.

PART I.—PRELIMINARY.

PART II.—TRANSITORY PROVISIONS.

PART III.—COMPENSATION.

DIVISION 1.—*Compensation for improvements on holdings.*

DIVISION 2.—*Compensation in respect of increased or diminished value of holding.*

DIVISION 3.—*Compensation for disturbance.*

DIVISION 4.—*Compensation in case of tenancy under mortgagor.*

DIVISION 5.—*Arbitration.*

PART IV.—FIXTURES AND BUILDINGS.

PART V.—EXTENSION OF TENANCIES AND NOTICES TO QUIT.

PART VI.—MISCELLANEOUS RIGHTS OF LANDLORD AND TENANT.

PART VII.—GENERAL.

SCHEDULES.

3. (1) The Rural Tenants' Improvements Act, 1916, and the Agricultural Lessees Relief Act, 1931, are hereby repealed. Repeal and savings.

(2)

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(2) The repeal enacted by subsection one of this section shall not, unless otherwise expressly provided in this Act, affect—

- (a) any right accrued or obligation incurred under any enactment so repealed;
- (b) the validity or invalidity or any operation, effect or consequence, of any instrument (including an agreement) executed or made or of anything done or suffered under any enactment so repealed;
- (c) any action, proceeding or thing pending or uncompleted at the commencement of this Act.

(3) Every such action, proceeding or thing may be carried on and completed as if the repeal had not been enacted.

(4) The generality of this section shall not be affected by any saving in any other provision of this Act, nor shall this section limit any saving in the Interpretation Act of 1897.

Interpre-
tation.

cf. 13 & 14,
Geo. V., c. 9,
s. 57;
Act No. 57,
1916, s. 2.

4. (1) In this Act, unless the context or subject-matter otherwise indicates or requires—

“Agreement” includes an agreement arrived at by means of valuation or otherwise, and “agreed” has a corresponding meaning.

“Agricultural committee” means an agricultural committee constituted under this Act.

“Contract of tenancy” means a letting of or agreement for letting land for a term of years, or for lives, or for lives and years, or from year to year, and includes a letting of land under a tenancy at will.

“Holding” means any parcel of land being not less than two acres in area held by a tenant which is used or intended to be used for purposes which are either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, and which is not let to the tenant during his continuance in any office, appointment or employment held under the landlord, but does not include any land cultivated as a garden.

“Landlord”

“Landlord” means any person for the time being ^{No. 55, 1941.} entitled to receive the rents and profits of any land, but shall not include the Crown or any statutory body representing the Crown.

“Manuring” means any of the improvements numbered twenty, twenty-one and twenty-two in Part III of the First Schedule to this Act.

“Pastoral purposes” includes dairying.

“Prescribed” means prescribed by this Act or by the regulations.

“Regulations” means regulations made under this Act.

“Rules of good husbandry” means (due regard being had to the character of the holding) so far as is practicable having regard to its character and position—

- (a) the maintenance of the land (whether arable or pasture) clean and in a good state of cultivation and fertility and in good condition; and
- (b) the adoption of farming methods to mitigate or prevent soil erosion;
- (c) the maintenance and clearing of drains, embankments and ditches; and
- (d) the maintenance and proper repair of fences and gates; and
- (e) the execution of repairs to buildings, being repairs which are necessary for the proper cultivation and working of the land on which they are to be executed; and
- (f) such rules of good husbandry as are generally recognised as applying to holdings of the same character and in the same neighbourhood as the holding in respect of which the expression is to be applied:

Provided that the foregoing definition shall not imply an obligation on the part of any person to maintain or clear drains, embankments
or

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or ditches, if and so far as the execution of the works required is rendered impossible (except at prohibitive or unreasonable expense) by reason of subsidence of any land or the blocking of outfalls which are not under the control of that person, or, in its application to land in the occupation of a tenant, imply an obligation on the part of the tenant—

- (i) to maintain or clear drains, embankments or ditches, or to maintain or properly repair fences or gates where such work is not required to be done by him under his contract of tenancy; or
- (ii) to execute repairs to buildings which are not required to be executed by him under his contract of tenancy.

“Tenant” means the holder of land under a contract of tenancy, and includes the executors, administrators, assigns, guardian, committee of the estate or trustee in bankruptcy of a tenant or other person deriving title from a tenant.

(2) The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation.

(3) Where the tenant of a holding before receiving notice that the person theretofore entitled to receive the rents and profits of the holding (hereinafter referred to as “the original landlord”) has ceased to be so entitled, and also notice of the name and address of the person who has become entitled to receive such rents and profits, serves on the original landlord any notice, request, demand or other instrument, such notice, request, demand or other instrument shall be deemed to have been served upon the landlord of such holding.

Application
of Act to
share-farm-
ing agree-
ments.

5. (1) This Act shall (except where otherwise expressly provided) apply to and in respect of share-farming agreements and the parties to any such agreement in like manner as it applies to contracts of tenancy and the parties to any such contract.

(2)

(2) In this section the expression “share-farming agreement” means an agreement made between a person (in this section referred to as the “owner”) for the time being entitled to the rents and profits of any land and another person (in this section referred to as the “share-farmer”) whereby—

- (a) the owner grants a license to the share-farmer to use and occupy the whole or any part of the land (being not less than two acres in area) for agricultural or pastoral purposes or partly for agricultural and partly for pastoral purposes; and
- (b) the share-farmer undertakes to provide labour either with or without materials or stock for the working of the land to which the agreement relates; and
- (c) the owner and the share-farmer agree that the produce of the land to which the agreement relates, derived during the currency of the agreement, or the proceeds of the sale of such produce, shall be divided between the parties in specified proportions or shares.

(3) In the application of this Act to and in respect of a share-farming agreement and the parties thereto—

- (a) a reference to a contract of tenancy shall be construed as a reference to a share-farming agreement;
- (b) a reference to a tenancy shall be construed as a reference to the use and occupation of land by a share-farmer;
- (c) a reference to a landlord shall be construed as a reference to an owner who is a party to a share-farming agreement;
- (d) a reference to a tenant shall be construed as a reference to a share-farmer;
- (e) a reference to a holding shall be construed as a reference to land which a share-farmer is authorised to use and occupy pursuant to a share-farming agreement;

(f)

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- (f) a reference to rent shall be construed as a reference to that proportion or share of the produce of land to which a share-farming agreement relates derived during the currency of the agreement or of the proceeds of the sale of such produce to which, in accordance with the provisions of the agreement, the owner is entitled.

PART II.

TRANSITORY PROVISIONS.

Right of
tenant to
compensation
for improve-
ments under
the repealed
Acts.

6. (1) Where a tenant of a holding has made thereon any improvement comprised in the First Schedule to the Rural Tenants' Improvements Act, 1916, as amended by subsequent Acts, he shall, subject as in this Act mentioned, and whether the improvement was or was not an improvement which he was required to make by the terms of his tenancy, be entitled, at the termination of the tenancy on quitting his holding, to obtain from the landlord as compensation for the improvement, such sum as fairly represents the value of the improvement to an incoming tenant.

This subsection shall apply only in a case where the tenant quits his holding after the commencement of this Act.

This subsection shall apply in respect of any such improvement—

- (a) which was made before the commencement of this Act;
- (b) which is made after such commencement where notice of intention to make the improvement was given by the tenant to the landlord before such commencement,

and no determination that the improvement was not necessary has been made pursuant to section five of the Rural Tenants' Improvements Act, 1916, as amended by subsequent Acts.

(2)

(2) Where an agreement has been made under the Rural Tenants' Improvements Act, 1916, as amended by subsequent Acts, between the landlord and the tenant relating to the terms as to compensation or otherwise on which the improvement is to be executed, any compensation payable under the agreement shall be substituted for the compensation under this Act. No. 55, 1941.

(3) If the tenant of a holding claims to be entitled to compensation under this section, and if the landlord and tenant fail to agree as to the amount and time and mode of payment of the compensation, the difference shall be settled by arbitration under this Act.

(4) A tenant shall not be entitled to compensation under this section as well as under any other provision of this Act in respect of the same improvement.

PART III.

COMPENSATION.

DIVISION 1.—*Compensation for improvements on holdings.*

7. (1) Where a tenant of a holding has after the commencement of this Act made thereon any improvement comprised in the First Schedule to this Act he shall, subject as in this Act mentioned, and whether the improvement was or was not an improvement which he was required to make by the terms of his tenancy, be entitled, at the termination of the tenancy, on quitting his holding to obtain from the landlord as compensation for the improvement such sum as fairly represents the value of the improvement to an incoming tenant. Right of tenant to compensation for improvements. cf. 13 & 14 Geo. V, c. 9, s. 1; Act No. 57, 1916, s. 3.

This subsection shall apply to a case where the contract of tenancy was made before the commencement of this Act, as well as to a case where the contract of tenancy is made after such commencement.

(2) In the ascertainment of the amount of the compensation payable to a tenant under this section there shall be taken into account—

- (a) any benefit which the landlord has given or allowed to the tenant in consideration of the tenant

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tenant executing the improvement, whether expressly stated in the contract of tenancy to be so given or allowed or not; and

- (b) as respects manuring as defined by this Act, the value of the manure required by the contract of tenancy or by custom to be returned to the holding in respect of any crops grown on and sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, not exceeding the value of the manure which would have been produced by the consumption on the holding of the crops so sold off or removed.

(3) Nothing in this section shall prejudice the right of a tenant to claim any compensation to which he may be entitled under custom, agreement, or otherwise, in lieu of any compensation provided by this section.

Notice to
landlord.
cf. 13 & 14
Geo. V, c. 9,
s. 3;
Act No. 57,
1916, s. 5.

8. (1) Compensation under this Act shall not be payable in respect of any improvement comprised in Part I or Part II of the First Schedule to this Act and made after the commencement of this Act unless the tenant of the holding has, not more than three nor less than two months before beginning to execute the improvement, given to the landlord notice in writing of his intention so to do, and of the manner in which he proposes to do the intended work and, upon such notice being given, the landlord and the tenant may agree on the terms as to compensation or otherwise on which the improvement is to be executed.

(2) If any agreement made under subsection one of this section secures to the tenant fair and reasonable compensation, having regard to the circumstances existing at the time of making the agreement, for any such improvement, the compensation so secured shall, as respects that improvement, be substituted for compensation under this Act.

(3) Where the notice given by the tenant to the landlord relates to any improvement comprised in Part I of the First Schedule to this Act, the landlord may within one month from the giving of such notice serve upon the tenant a dissent in writing to such intended

intended improvement and require the matter in difference to be referred to arbitration under this Act. **No. 55, 1941.**

If in any such arbitration the agricultural committee is satisfied that such improvement will not be a suitable and desirable improvement it shall make an award accordingly, and the tenant shall not, if he executes such improvement, be entitled to any compensation in respect thereof.

(4) In default of any agreement under this section or if, in respect of an improvement comprised in Part I of the First Schedule, an award under subsection three of this section has not been made, the landlord may, unless the notice of the tenant is previously withdrawn, execute the improvement in any reasonable and proper manner which he thinks fit, and recover from the tenant as rent a sum not exceeding five per centum per annum on the outlay incurred:

Provided that, if the landlord fails to execute the improvement within a reasonable time, the tenant may execute the improvement and shall, in respect thereof, be entitled to compensation under this Act.

The Minister may from time to time by notification published in the Gazette substitute such percentage as he thinks fit for the percentage mentioned in this subsection, having due regard to the current rates of interest.

(5) The landlord and the tenant may, by the contract of tenancy or otherwise, agree to dispense with any notice under this section, and any such agreement may provide for anything for which an agreement after notice under this section may provide, and in such case shall be of the same validity and effect as such last-mentioned agreement.

9. Where any agreement in writing entered into before the commencement of this Act secures to the tenant of a holding for any improvement comprised in Part III of the First Schedule to this Act fair and reasonable compensation, having regard to the circumstances existing at the time of making the agreement, the compensation so secured shall, as respects that improvement, be substituted for compensation under this Act.

Agreements.
cf. 13 & 14
Geo. V, c. 9,
s. 4;
Act No. 57,
1916, s. 7.

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Determina-
tion of
claims to
compensa-
tion.

cf. 13 & 14
Geo. V, c. 9,
s. 5;
Act No. 57,
1916, s. 9.

Right of
tenant who
has paid
compensa-
tion to out-
going
tenant.

cf. 13 & 14
Geo. V, c. 9,
s. 6;
Act No. 57,
1916, s. 10.

Change of
tenancy.

cf. 13 & 14
Geo. V, c. 9,
s. 7;
Act No. 57,
1916, s. 11.

Increased
value by
adoption of
special
system of
farming.

cf. 13 & 14
Geo. V, c. 9,
s. 9.

10. If the tenant of a holding claims to be entitled to compensation, whether under this Act or under custom or agreement or otherwise, in respect of any improvement comprised in the First Schedule to this Act and made after the commencement of this Act, and if the landlord and tenant fail to agree as to the amount and time and mode of payment of the compensation, the difference shall be settled by arbitration under this Act.

11. Where an incoming tenant of a holding has, with the consent in writing of his landlord, paid to an outgoing tenant any compensation payable under or in pursuance of this Act or any Act repealed by this Act in respect of the whole or part of any improvement, the incoming tenant shall be entitled on quitting the holding to claim compensation in respect of the improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if he had remained tenant of the holding, and quitted it at the time at which the incoming tenant quits it.

12. A tenant who has remained in his holding during two or more tenancies shall not, on quitting his holding, be deprived of his right to claim compensation under this Act in respect of improvements by reason only that the improvements were not made during the tenancy on the termination of which he quits the holding.

DIVISION 2.—*Compensation in respect of increased or diminished value of holding.*

13. (1) Where a tenant on quitting a holding proves to the satisfaction of an agricultural committee in an arbitration under this Act that the value of the holding to an incoming tenant has been increased during the tenancy by the continuous adoption of a standard of farming or a system of farming which has been more beneficial to the holding than the standard or system (if any) required by the contract of tenancy, the agricultural committee shall award to the tenant such compensation as in its opinion represents the value to an incoming tenant of the adoption of that standard or system:

Provided that—

- (a) this section shall not apply in any case unless a record of the condition of the holding has been made

made under this Act or in respect of any matter arising before the date of the record so made; and

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- (b) compensation shall not be payable under this section unless the tenant has, before the termination of the tenancy, given notice in writing to the landlord of his intention to claim such compensation; and
- (c) in the arbitration the agricultural committee when assessing the value to an incoming tenant shall make due allowance for any compensation agreed or awarded to be paid to the tenant for any improvement specified in the First Schedule to this Act which has caused or contributed to the benefit.

(2) Nothing in this section shall entitle a tenant to recover in respect of an improvement specified in the First Schedule to this Act any compensation which he would not have been entitled to recover if this section had not been passed.

(3) The continuous adoption of such a beneficial standard or system of farming as aforesaid shall be treated as an improvement for the purpose of the provisions of this Act relating to the determination of the rent properly payable in respect of a holding.

14. Where a landlord proves to the satisfaction of an agricultural committee in an arbitration under this Act, on the termination of the tenancy of a holding, that the value of the holding has been deteriorated during the tenancy by the failure of the tenant to cultivate the holding according to the rules of good husbandry or the terms of the contract of tenancy, the agricultural committee shall award to the landlord such compensation as in its opinion represents the deterioration of the holding due to such failure:

Deterioration of holding. cf. 13 & 14 Geo. V, c. 9, s. 10.

Provided that—

- (a) compensation shall not be payable under this section unless the landlord has, before the termination of the tenancy, given notice in writing to the tenant of his intention to claim such compensation; and

(b)

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- (b) nothing in this section shall prevent a landlord from claiming compensation for dilapidations or for the deterioration of the holding under the contract of tenancy.

DIVISION 3.—*Compensation for disturbance.*

Compensation for disturbance, cf. 13 & 14 Geo. V, c. 9, s. 12.

15. (1) Where the tenancy of a holding under a contract of tenancy for a term of less than five years, whether made before or after the commencement of this Act, terminates by reason of a notice to quit given by the landlord after the commencement of this Act, and in consequence of such notice the tenant quits the holding, then, unless the tenant—

- (a) was not at the date of the notice cultivating the holding according to the rules of good husbandry; or
- (b) had, at the date of the notice, failed to comply within a reasonable time with any notice in writing by the landlord served on him requiring him to pay any rent due in respect of the holding, or to remedy any breach, being a breach which was capable of being remedied, of any term or condition of the tenancy consistent with good husbandry; or
- (c) had, at the date of the notice, materially prejudiced the interests of the landlord by committing a breach which was not capable of being remedied of any term or condition of the tenancy consistent with good husbandry; or
- (d) was at the date of the notice a person who had become bankrupt or compounded with his creditors; or
- (e) has, after the commencement of this Act, refused, or within a reasonable time failed, to agree to a demand made to him in writing by the landlord for arbitration under this Act as to the rent to be paid for the holding as from the next ensuing date at which the tenancy could have been terminated by notice to quit given by the landlord at the date of the said demand; or
- (f) had, at the date of the notice, unreasonably refused, or within a reasonable time failed to comply

comply with a demand made to him in writing by the landlord requiring him to execute at the expense of the landlord an agreement setting out the existing terms of the tenancy; No. 55, 1941.

and unless the notice to quit states that it is given for one or more of the reasons aforesaid, compensation for the disturbance shall be payable by the landlord to the tenant in accordance with the provisions of this section:

Provided that compensation shall not be payable under this section in any case where the landlord has made to the tenant an offer in writing to withdraw the notice to quit and the tenant has unreasonably refused or failed to accept the offer.

(2) The landlord of a holding may at any time make a demand in writing upon the tenant for arbitration under this Act as to whether the tenant is cultivating the holding according to the rules of good husbandry. If in such arbitration the agricultural committee is satisfied that the tenant is not cultivating the holding according to the rules of good husbandry it shall make an award accordingly. Cultivation not according to good husbandry.

(3) Where the landlord of a holding refuses, or within a reasonable time fails to agree to a demand made to him in writing by the tenant for arbitration under this Act as to the rent to be paid for the holding as from the next ensuing date at which the tenancy could have been terminated by notice to quit given by the tenant at the date of the said demand, and by reason of the refusal or failure the tenant exercises his power of terminating the tenancy by a notice stating that it is given for that reason, the tenant shall be entitled to compensation in the same manner as if the tenancy had been terminated by notice to quit given by the landlord: Determination as to rent payable.

Provided that such compensation shall not be payable if the circumstances are such that a notice to quit could have been given by the landlord for any of the reasons mentioned in paragraph (a), paragraph (b) or paragraph (c) of subsection one of this section.

(4) The provisions of this section relating to demands for arbitration as to the rent to be paid for a holding shall not apply where the demand is so made that the increase or reduction of the rent would take effect

No. 55, 1941. effect at some time before the expiration of two years from the commencement of the tenancy of the holding or from the date on which a previous increase or reduction of the rent (made after the commencement of this Act) took effect.

(5) (a) Where a demand in writing for an arbitration as to the rent to be paid for the holding has been made for the purposes of this section and has been agreed to, whether in writing or otherwise, the question as to the rent shall be referred to arbitration under this Act.

(b) In the arbitration the agricultural committee when determining for the purpose of this section what rent is properly payable in respect of a holding, shall not take into account any increase in the rental value which is due to improvements which have been executed thereon so far as they were executed wholly or partly by and at the expense of the tenant without any equivalent allowance or benefit made or given by the landlord in consideration of their execution and have not been executed by him under an obligation imposed by the terms of his contract of tenancy, or fix the rent at a higher amount than would have been properly payable if those improvements had not been so executed, and shall not fix the rent at a lower amount by reason of any dilapidation or deterioration of land or buildings made or permitted by the tenant.

Amount of
compensation.

(6) The compensation payable under this section shall be a sum representing such loss or expense directly attributable to the quitting of the holding as the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding, and shall include any expenses reasonably incurred by him in the preparation of his claim for compensation (not being costs of an arbitration to determine the amount of the compensation); but for the avoidance of disputes, such sum shall, except where the tenant is a sharefarmer, for the purpose of this Act, be computed at an amount equal to one year's rent of the holding, unless it is proved that the loss and expenses so incurred exceed an amount equal to one year's rent of the holding, in which case the
sum

sum recoverable shall be such as represents the whole loss and expenses so incurred up to a maximum amount equal to two years' rent of the holding. No. 55, 1941.

(7) Compensation shall not be payable under this section— Conditions
of com-
pensation.

- (a) in respect of the sale of any goods, implements, fixtures, produce or stock unless the tenant has before the sale given the landlord a reasonable opportunity of making a valuation thereof; or
- (b) unless the tenant has, not less than one month before the termination of the tenancy, given notice in writing to the landlord of his intention to make a claim for compensation under this section; or
- (c) where the tenant with whom the contract of tenancy was made has died within three months before the date of the notice to quit; or
- (d) if in a case in which the tenant, under section twenty-five of this Act, accepts a notice to quit part of his holding as a notice to quit the entire holding, the part of the holding affected by the notice given by the landlord, together with any other part of the holding affected by any previous notice given under that section by the landlord to the tenant, is less than one-fourth part of the original holding, or the holding as proposed to be diminished is reasonably capable of being cultivated or worked as a separate holding, except compensation in respect of the part of the holding to which the notice to quit related; or
- (e) where a written contract of tenancy has been entered into (whether before or after the commencement of this Act) for the letting by the landlord to the tenant of a holding, which at the time of the creation of the tenancy had then been for a period of not less than twelve months in the occupation of the landlord, upon the express terms that if the landlord desires to resume that occupation before the expiration of a specified term not exceeding seven years the landlord should be entitled to give notice to quit

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quit without becoming liable to pay to the tenant any compensation for disturbance, and the landlord desires to resume occupation within the specified period, and such notice to quit has been given accordingly.

(8) Compensation payable under this section shall be in addition to any compensation to which the tenant may be entitled in respect of improvements, and may be determined and recovered in the same manner as such compensation.

DIVISION 4.—*Compensation in case of tenancy under mortgagor.*

Compensation to tenants when mortgagor takes possession.
cf. Act No. 57, 1916, s. 13; 13 & 14 Geo. V, c. 9, s. 15.

16. Where a person occupies a holding under a contract of tenancy with a mortgagor, which is not binding on the mortgagee, then—

- (a) the occupier shall, as against the mortgagee who takes possession, be entitled to any compensation which is, or would but for the mortgagee taking possession, be due to the occupier from the mortgagor as respect crops, improvements, tillages, or other matters connected with the holding, whether under this Act or custom or an agreement authorised by this Act;
- (b) if the contract of tenancy is for a tenancy from year to year or for a term of years, not exceeding five, at a rack-rent the mortgagee shall, before he deprives the occupier of possession otherwise than in accordance with the contract of tenancy, give to the occupier six months' notice in writing of his intention so to do and, if he so deprives him, compensation shall be due to the occupier for his crops, and for any expenditure upon the land which he has made in the expectation of remaining in the holding for the full term of his contract of tenancy, in so far as any improvement resulting therefrom is not exhausted at the time of his being so deprived;
- (c) if the mortgagee and the occupier fail to agree as to the amount and time and mode of payment of the compensation, the difference shall be settled by arbitration under this Act;
- (d)

- (d) any sum ascertained to be due to the occupier No. 55, 1941. for compensation or for any costs connected therewith, may be set off against any rent or other sum due from him in respect of the holding, but unless so set off shall, as against the mortgagee, be charged and recovered in accordance with the provisions of this Act relating to the recovery of compensation due from a landlord who is a trustee.

DIVISION 5.—*Arbitration.*

17. (1) Any question, difference, dispute or other matter whatsoever which by or under this Act is required or permitted to be referred to arbitration shall, notwithstanding any agreement under the contract of tenancy or otherwise providing for a different method of determination, be determined by an agricultural committee as arbitrators in accordance with the provisions set out in the Second Schedule to this Act.

Procedure for determining disputes. cf. 13 & 14 Geo. V, c. 9, s. 16.

(2) Any claim to compensation under this Act shall cease to be enforceable after the expiration of two months from the termination of the tenancy unless particulars thereof have been given by the landlord to the tenant or by the tenant to the landlord, as the case may be, before the expiration of that period:

Provided that, where a tenant lawfully remains in occupation of part of a holding after the termination of the tenancy, particulars of a claim relating to that part of the holding may be given within two months from the termination of the occupation.

(3) Where a claim for compensation has been referred to arbitration and the compensation payable under an agreement is by this Act to be substituted for compensation under this Act, such compensation as is to be so substituted shall be awarded in respect of any improvement provided by the agreement.

(4) If in any arbitration under this Act the agricultural committee states a case for the opinion of the district court on any question of law, the opinion of the court on any question so stated shall be final.

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(5) Any party to an arbitration under this Act may appear before such committee either personally or by his representative who shall not be a barrister or solicitor.

Awards.

cf. 13 & 14
Geo. V, c. 9,
s. 17 (2).

18. On an arbitration under this Act an agricultural committee—

- (a) shall state separately in its award the amounts awarded in respect of the several claims referred to it; and
- (b) may, if it thinks fit, make an interim award for the payment of any sum on account of the sum to be finally awarded.

Compensation in the case of divided holdings.
Ibid. s. 18.

19. Where a holding has become vested in more than one person in several parts and the rent payable by the tenant of the holding has not been apportioned with his consent or under any statute, the tenant shall be entitled to require that any compensation payable to him under this Act shall be determined as if the holding had not been divided, and in any arbitration under this Act as to such compensation the agricultural committee shall, where necessary, apportion the amount awarded between the persons who, for the purposes of this Act, together constitute the landlord of the holding, and any additional costs of the award caused by the apportionment shall be directed by the agricultural committee to be paid by those persons in such proportions as it shall determine.

Recovery of compensation and other sums due.
Ibid. s. 19.

20. Where any sum agreed or awarded under this Act to be paid for compensation costs or otherwise by a landlord or tenant of a holding is not paid within fourteen days after the time when the payment becomes due, it shall, subject as in this Act provided, be recoverable as a debt in any court of competent jurisdiction.

PART IV.

FIXTURES AND BUILDINGS.

Tenant's property in fixtures and buildings.
13 & 14
Geo. V, c. 9,
s. 22;
Act No. 57,
1916, s. 16.

21. Any engine, machinery, fencing or other fixture affixed to a holding by a tenant before or after the commencement of this Act, and any building erected by him thereon for which he is not under this Act or otherwise entitled to compensation and which is not so affixed or erected in pursuance of some obligation in that behalf
or

or instead of some fixture or building belonging to the landlord, shall be the property of and be removable by the tenant before or within a reasonable time after the termination of the tenancy: No. 55, 1941.

Provided that—

- (a) before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the landlord in respect of the holding;
- (b) in the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the holding;
- (c) immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal;
- (d) the tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of his intention to remove it;
- (e) at any time before the expiration of the notice of removal the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay to the tenant the fair value thereof to an incoming tenant of the holding and any dispute as to value shall be determined by arbitration under this Act.

PART V.

EXTENSION OF TENANCIES AND NOTICES TO QUIT.

22. Where by any contract of tenancy made after the commencement of this Act, a tenancy of a holding is expressed to be for a fixed term of less than two years, the contract of tenancy shall have and take effect as if the term of two years were substituted for the fixed term so expressed.

Construction of provision of contracts of tenancy relating to term of tenancy.

This

No. 55, 1941. This section shall not apply to a tenancy of a holding for a term not exceeding one year to be used for the sole purpose of the agistment of stock, where the contract of tenancy is expressed to be made for that purpose.

Extension
of
tenancies
under leases
for a term
of two
years or
upwards.
cf. 13 & 14
Geo. V, c. 9,
s. 23.

23. (1) In the case of a tenancy of a holding for a term of two years or upwards, the tenancy shall not terminate on the expiration of the term for which it was granted, unless not less than one year nor more than two years before the date fixed for the expiration of the term a written notice has been given by either party to the other of his intention to terminate the tenancy, and any notice so given shall be deemed to be a notice to quit for the purposes of this Act.

(2) If no such notice is given, the tenancy shall, as from the expiration of the term for which it was granted, continue as a tenancy from year to year, but otherwise so far as applicable on the terms of the original tenancy.

(3) This section shall apply to any tenancy granted or agreed to be granted after the commencement of this Act.

(4) In any case to which this section shall apply, it shall apply notwithstanding any agreement to the contrary or anything contained in any other Act.

(5) In the application of this section to a tenancy of the nature referred to in section twenty-two of this Act the term of two years therein referred to shall be deemed to be the term for which the tenancy was granted.

Notices to
quit.
Ibid. s. 25.

24. (1) Notwithstanding any provision in a contract of tenancy or in any other Act to the contrary, a notice to quit a holding shall be invalid if it purports to terminate the tenancy before the expiration of twelve months from the end of the then current year of tenancy or where the date of creation of a tenancy is unknown to the person giving the notice, before the expiration of twelve months from the date of the notice.

In the application of this section to a tenancy at will the expression "the then current year of tenancy" shall mean the period of one year (calculated from the date of commencement of the tenancy or the anniversary thereof, as the case may be) current at the date when the notice to quit is given.

(2)

(2) This section shall not apply to—

No. 55, 1941.

- (a) any notice given for any of the reasons specified in paragraphs (a) to (f) both inclusive of subsection one of section fifteen of this Act provided that the notice states that it is given for any one or more of such reasons; or
- (b) any notice given by a tenant to a sub-tenant; or
- (c) any notice given before the commencement of this Act.

25. Where a notice to quit is given by the landlord of a holding to a tenant under a tenancy which is not for a fixed term with a view to the use of land for any of the following purposes:—

Notices to quit part of holding. cf. 13 & 14 Geo. V, c. 9, s. 27.

- (i) the planting of trees;
- (ii) the opening or working of any coal, ironstone, limestone, brick, earth or other mineral or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connection therewith;
- (iii) the making of a watercourse or reservoir;
- (iv) the making of any road, railway, tramroad, siding, or any wharf, pier or other work connected therewith;

and the notice states that it is given with a view to any such use—

- (a) it shall, by virtue of this Act, be no objection to the notice that it relates to part only of the holding; and
- (b) the provisions of this Act respecting compensation shall apply as if the part to which the notice relates were a separate holding; and
- (c) the tenant shall be entitled to a reduction of rent proportionate to the part to which the notice relates and in respect of any depreciation of the value to him of the residue of the holding caused by the severance or by the use to be made of the part severed, and the amount of that reduction shall be settled as in case of compensation under this Act:

Provided that the tenant may, at any time within twenty-eight days after service of the notice to quit, serve on the landlord a notice in writing to the effect that he

No. 55, 1941. he accepts it as a notice to quit the entire holding, to take effect at the expiration of the then current year of tenancy; and the notice to quit shall have effect accordingly.

PART VI.

MISCELLANEOUS RIGHTS OF LANDLORD AND TENANT.

Landlord's
right of entry
to view.
cf. 13 & 14
Geo. V, c. 9,
s. 28; Act No.
57, 1916, s. 17.

26. The landlord of a holding or any person authorised by him may at all reasonable times enter on the holding for the purpose of viewing the state of the holding.

Penal rents
not to give
more than
actual
damage.
cf. 13 & 14
Geo. V, c. 9,
s. 29.

27. Notwithstanding any provision in a contract of tenancy making the tenant of a holding liable to pay a higher rent or other liquidated damages in the event of any breach or non-fulfilment of a term or condition in the contract, a landlord shall not be entitled to recover any sum in consequence of any such breach or non-fulfilment in excess of the damage actually suffered by him in consequence of the breach or non-fulfilment:

Provided that this section shall not apply to any term or condition in a contract against the breaking up of permanent pasture, the grubbing of undergrowth, or the felling, cutting, lopping or the ringbarking or injuring of trees.

Tenant's
right of
free crop-
ping.
Ibid. s. 30.

28. (1) Notwithstanding any custom of the country or the provisions of any contract of tenancy or agreement respecting the method of cropping of arable lands, a tenant of a holding shall have full right to practise any system of cropping of the arable land on the holding without incurring any penalty, forfeiture or liability:

Provided that he shall previously have made or, as soon as may be, shall make suitable and adequate provision to protect the holding from injury or deterioration.

(2) If the tenant exercises his rights under this section in such a manner as to injure or deteriorate the holding or to be likely to injure or deteriorate the holding, the landlord shall, without prejudice to any other remedy which may be open to him, be entitled to recover damages in respect of such injury or deterioration at any

any time and, should the case so require, to obtain an injunction restraining the exercise of the rights under this section in that manner. No. 55, 1941.

(3) In this section the expression "arable land" shall not include land in grass which by the terms of any contract of tenancy is to be retained in the same condition throughout the tenancy.

29. (1) Where the tenant of a holding has during his tenancy stored on the holding any hay, silage, straw, roots, manure or compost he shall, at the termination of the tenancy, on quitting his holding, be entitled to obtain from the landlord as compensation for any such hay, silage, straw, roots, manure or compost so stored at the date of his quitting the holding, the value thereof to an incoming tenant:

Compensation for hay, silage, etc., stored by tenant.

Provided that, in the application of this section to a case where the tenant is a share-farmer the compensation to which he is entitled shall be a proportion or share of such value equivalent to the proportion or share of the produce of the land or the proceeds of the sale thereof, to which, in accordance with the provisions of the share-farming agreement, he is entitled.

(2) Where an incoming tenant of a holding has, with the consent in writing of his landlord, paid to an outgoing tenant any compensation payable under subsection one of this section, the incoming tenant shall be entitled, on quitting the holding, to claim compensation in respect of the hay, silage, straw, roots, manure or compost in like manner, if at all, as the outgoing tenant would have been entitled if he had remained tenant of the holding and quitted it at the time at which the incoming tenant quits it.

(3) If the landlord and the tenant fail to agree as to the amount and time and mode of payment of compensation under this section the difference shall be settled by arbitration under this Act.

30. If the landlord or tenant of a holding at any time during the tenancy so requires, a record of the condition of the buildings, fences, gates, roads, drains, ditches and cultivation of the holding and, if so required by the tenant, a record of any existing improvements executed by the tenant or for which the tenant has with the written consent of his landlord paid compensation to an outgoing

Record of holding to be kept. cf. 13 & 14 Geo. V, c. 9, s. 32.

No. 55, 1941. outgoing tenant and of any fixtures or buildings which under section twenty-one of this Act the tenant is entitled to remove, shall be made by a person to be appointed in default of agreement by the Minister, and in default of agreement the cost of making any such record shall be borne by the landlord and tenant in equal shares.

Extension
of meaning
of holding.
cf. 13 & 14
Geo. V, c. 9,
s. 33.

31. Where the land comprised in a contract of tenancy is not a holding within the meaning of this Act by reason only of the fact that the land so comprised includes land (hereinafter referred to as "the non-statutory land"), which, owing to the nature of the buildings thereon or the use to which it is put, would not, if it had been separately let, be a holding within the meaning of this Act, the provisions of this Act relating to compensation for improvements and disturbances shall, unless otherwise agreed in writing, apply to the part of the land exclusive of the non-statutory land as if that part were a separate holding.

PART VII.

GENERAL.

Provisions
as to
limited
owners.
cf. 13 & 14
Geo. V, c. 9,
s. 40.
cf. Act No.
57, 1916,
s. 18.

32. A landlord of a holding, whatever may be his estate or interest in the holding, may give any consent, make any agreement or do or have done to him any act in relation to improvements or other matters in respect of which compensation is payable under this Act, which he might give or make or do or have done to him if he were owner in fee simple or, if his interest is an interest in a leasehold, were absolutely entitled to that leasehold.

Recovery of
compensa-
tion from
trustee, etc.
cf. 13 & 14
Geo. V, c. 9,
s. 41;
Act No. 57,
1916, s. 19.

33. Where any sum agreed or awarded to be paid for compensation or any sum awarded under this Act to be paid by a landlord is due from a landlord entitled to receive the rents and profits of the holding otherwise than for his own benefit, whether as trustee or in any other character, the sum due shall be charged and recovered as follows and not otherwise (that is to say)—

- (a) The amount so due shall not be recoverable personally against the landlord, nor shall he be under any liability to pay that amount, but it shall be a charge on and recoverable against the holding only.

(b)

- (b) The landlord shall, if he pays to the tenant the amount due to him, be entitled to the charge on the holding. No. 55, 1941.
- (c) If the landlord neglects or fails to pay to the tenant the amount due to him the tenant shall be entitled to the charge on the holding.
- (d) A charge made under this section shall be a charge upon land within the meaning of section one hundred and eighty-seven of the Conveyancing Act, 1919-1939, and may be registered accordingly.

34. In estimating the best rent or reservation in the nature of rent of a holding for the purposes of any Act, deed or other instrument, authorising a lease to be made, provided that the best rent or reservation in the nature of rent is reserved, it shall not be necessary to take into account against the tenant any increase in the value of the holding arising from any improvements made or paid for by the tenant.

Estimation of best rent. cf. 13 & 14 Geo. V, c. 9, s. 42.

35. Subject to the provisions of this Act, any contract (whether under seal or not) made by a tenant of a holding, by virtue of which his right to claim compensation under this Act is taken away or limited, shall to that extent be void.

Avoidance of contract inconsistent with Act. Ibid. s. 50.

36. Any notice, request, demand, or other instrument under this Act may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode or business in or out of New South Wales or by sending it through the post in a registered letter addressed to him at that place of abode or business and in such case service shall be deemed to have been made at the time at which the registered letter would be delivered in the ordinary course of post; and in the case of a notice to a landlord "the person to whom it is to be given" shall include any agent of the landlord entitled or authorised to receive any rent payable to the landlord.

Service of notice. Ibid. s. 53.

37. Except as in this Act expressed, nothing in this Act shall prejudicially affect any power, right or remedy of a landlord, tenant or other person vested in or exercisable by him by virtue of any other Act or law, or under any custom of the country or otherwise in respect of a contract

General saving of rights Ibid. s. 54.

No. 55, 1941. contract of tenancy or other contract or of any improvements, deteriorations, waste, emblements, tillages, away-going crops, fixtures, tax, rate, rent or other thing.

Regulations. **38.** (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of the powers conferred by subsection one of this section regulations may be made for or with respect to—

- (a) the method of constituting an agricultural committee for the purposes of any arbitration under this Act;
- (b) all matters relating to proceedings in any arbitration under this Act, including the initiation of any such proceedings;
- (c) forms to be used for the purposes of this Act or of any arbitration under this Act;
- (d) fees to be paid in connection with any arbitration under this Act or any proceedings in any such arbitration.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in such regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

SCHEDULES.

No. 55, 1941.

FIRST SCHEDULE.

Sec. 7.

PART I.

(1) Erection, alteration or enlargement of buildings, except as provided for in Part III of this Schedule and except in regard to alterations to milking bails.

(2) Erection and construction of silos.

(3) Making of works of irrigation.

(4) Making or improvement of watercourses, ponds, wells or dams or of works for the application of water power or for the supply of water for agricultural or domestic purposes.

(5) Making or removal of permanent boundary fences and the erection of rabbit-proof, dog-proof or marsupial proof fences or the making of fences rabbit-proof, dog-proof or marsupial proof.

(6) Planting of orchards, fruit bushes, banana, sugar-cane, pineapple or cow cane plants, and oil, fodder, timber or firewood trees.

(7) Reclaiming of waste land.

(8) Embankments and sluices against floods, contour banks to mitigate or prevent soil erosion and the planting of trees to mitigate or prevent soil erosion.

(9) Provision of permanent sheep dipping accommodation.

(10) Ringbarking, suckering and the clearing of timber except in the case of cultivation or cropping land.

PART II.

(11) Domestic water supply.

(12) Drainage.

(13) Making or improvement of necessary roads or bridges.

(14) Clearing and removal of stumps and logs from cultivation or cropping and pasture land.

(15) Destruction of prickly-pears, briars, blackberries, lantana.

PART III.

(16) Making of permanent subdivision fences.

(17) Laying down of permanent pastures.

(18) Claying of land or the spreading of sand, loam or bush scrapings.

(19) Liming and the application of other calcium compounds to land.

(20) Application to land of purchased artificial fertilisers or other purchased manures.

(21) Consumption on the holding by cattle, sheep or pigs or by horses other than those regularly employed on the holding of grains, cake or other feeding stuff not produced on the holding.

(22) Consumption on the holding by cattle, sheep or pigs or by horses other than those regularly employed on the holding of grains proved by satisfactory evidence to have been produced and consumed on the holding.

(23)

No. 55, 1941. (23) Laying down temporary pasture with clover, grass or other seeds in so far as the value of the temporary pasture on the holding at the time of quitting exceeds the value of the temporary pasture on the holding at the commencement of the tenancy for which the tenant did not pay compensation.

(24) The growing of green manure crops for the purpose of maintaining or improving soil fertility.

(25) Repairs to buildings being buildings necessary for the proper cultivation or working of the holding, other than repairs which the tenant is himself under an obligation to execute:

Provided that the tenant before beginning to execute any such repairs shall give to the landlord notice in writing of his intention, together with particulars of such repairs, and shall not execute the repairs unless the landlord fails to execute them within a reasonable time after receiving such notice.

(26) Repairs to or re-erection of buildings to meet the requirements of the Dairies Supervision Act, 1901, and any other Acts.

(27) Repairs to and the cleaning of silt from wells, bores, dams and reservoirs.

Sec. 17.

SECOND SCHEDULE.

RULES AS TO DETERMINATION OF DISPUTES.

Appointment of Agricultural Committee.

1. An agricultural committee shall consist of three members.

Of such members—

(a) one shall be an officer of the Department of Agriculture, who shall be appointed by the Minister and who shall be the chairman of the committee;

(b) one shall be a person whose name is on the panel of landlords and shall be appointed by the landlord;

(c) one shall be a person whose name is on the panel of tenants and shall be appointed by the tenant.

In default of an appointment by either a landlord or a tenant within fourteen days after being required so to do by the other party to the dispute, that party may apply to the Minister to appoint on behalf of the other party a person from the appropriate panel and the Minister shall thereupon make such appointment,

Neither party shall have power to revoke the appointment of a member of the agricultural committee without the consent of the other party.

2. The panels of landlords and of tenants shall respectively consist of the names of persons appointed from time to time by the Minister.

3. The Minister may at any time remove any name from any such panel.

4. If a person appointed a member of an agricultural committee dies or is incapable of acting or refuses or fails to act on the agricultural committee, another person shall be appointed in his place as if he had not been appointed.

5.

5. The remuneration of the members of an agricultural committee **No. 55, 1941.** (other than the chairman) shall be such amount as is agreed upon between such person and the landlord or tenant, as the case may be, by whom or on whose behalf the appointment is made, but not exceeding such amount as may be fixed by the Minister, either generally or in any particular case.

6. The remuneration of a member of an agricultural committee (other than the chairman) may be recovered in any court of competent jurisdiction as a debt due to him by the landlord or tenant as the case may be by whom or on whose behalf the appointment was made.

Time for Award.

7. Except where otherwise expressly provided in this Act, the agricultural committee shall make and sign its award within fourteen days after the arbitration or within such longer period as the Minister may (whether the time for making the award has expired or not) direct.

Evidence.

8. The parties to the arbitration, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the agricultural committee, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the agricultural committee all samples, books, deeds, papers, accounts, writings and documents, within their possession or power respectively, which may be required or called for, and do all other things which during the proceedings the agricultural committee may require.

9. The chairman of the agricultural committee shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the chairman of the agricultural committee thinks fit, be examined on oath or affirmation.

Statement of Case.

10. The agricultural committee may at any stage of the proceedings, and shall if so directed by the judge of the District Court (which direction may be given on the application of either party), state in the form of a special case for the opinion of that court any question of law arising in the course of the arbitration.

Award.

11. The agricultural committee shall, on the application of either party, specify the amount awarded in respect of any particular improvement or any particular matter the subject of the award, and the award shall fix a day not later than one month after the delivery of the award for the payment of the money awarded as compensation, costs, or otherwise, and shall be in or to the effect of such form as may be prescribed.

12. The award to be made by the agricultural committee shall be final and binding on the parties and the persons claiming under them respectively.

Hire-purchase Agreements Act.

No. 55, 1941. 13. In the case of any matter coming before an agricultural committee and the members are divided in opinion, the decision of the majority shall be the decision of the agricultural committee.

14. The agricultural committee may correct in an award any clerical mistake or error arising from any accidental slip or omission.

15. Where a member of an agricultural committee has misconducted himself, or an arbitration or an award has been improperly procured, the District Court may set the award aside.

Costs.

16. The costs of and incidental to the arbitration and award shall be in the discretion of the agricultural committee, which may direct to and by whom and in what manner these costs or any part thereof are to be paid, and the costs shall be subject to taxation by the registrar of the District Court on the application of either party, but that taxation shall be subject to review by the judge of the District Court.

17. The agricultural committee shall, in awarding costs, take into consideration the reasonableness or unreasonableness of the claim of either party, either in respect of amount or otherwise, and any unreasonable demand for particulars or refusal to supply particulars, and generally all the circumstances of the case, and may disallow the costs of any witness whom it considers to have been called unnecessarily, and any other costs which it considers to have been incurred unnecessarily.

Interpretation.

18. In this Schedule "District Court" means the District Court having jurisdiction in the district in which is situated the holding to which the arbitration relates.
