



New South Wales

Agricultural Tenancies Amendment Bill 2011

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Agricultural Tenancies Act 1990* (the **Principal Act**) and the *Consumer, Trader and Tenancy Tribunal Act 2001* to replace the current arbitration system for determining disputes relating to agricultural tenancies with dispute resolution and determination by the Consumer, Trader and Tenancy Tribunal (the **Tribunal**).

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 repeals the *Agricultural Tenancies Regulation 2006*, as a consequence of the change to the dispute resolution system.

Schedule 1 Amendment of Agricultural Tenancies Act 1990 No 64

Schedule 1 [1] amends the long title to omit a reference to arbitration and mediation.

Schedule 1 [2] inserts an object for the Principal Act relating to the provision of a mechanism for settling disputes by applications to the Tribunal.

Schedule 1 [3] omits an unnecessary definition.

Schedule 1 [4] inserts a definition of *Tribunal*.

Schedule 1 [5]–[9] and [11] replace the use of arbitration to resolve certain matters with determination by the Tribunal. The matters relate to the terms of an agricultural tenancy and improvements carried out by owners or tenants and compensation for improvements.

Schedule 1 [10] removes the requirement for the cost of condition reports to be shared and also makes a consequential amendment.

Schedule 1 [12] replaces Part 4 of the Principal Act to confer jurisdiction on the Tribunal to resolve disputes and other matters relating to agricultural tenancies. Proposed section 20 enables an owner or tenant (or former owner or former tenant) to apply to the Tribunal for determination of matters under the Principal Act, including disputes relating to or arising out of agricultural tenancies. Proposed section 21 sets out the orders that may be made by the Tribunal and limits the amount that may be ordered to be paid to \$500,000. Proposed section 22 requires all applications for determinations to be dealt with by the Tribunal under the alternative dispute resolution provisions of the *Consumer, Trader and Tenancy Tribunal Act 2001* and prevents the Tribunal from determining a matter unless it is satisfied there is no prospect of settlement or successful mediation. Proposed section 23 re-enacts a provision relating to amounts payable by trustee owners of farms. **Schedule 1 [16]** makes a consequential amendment.

Schedule 1 [13] omits an unnecessary provision relating to the delegation of functions by the Director-General of the Department of Primary Industries. The current functions of the Director-General are being omitted by the proposed Act.

Schedule 1 [14] enables the service of documents by facsimile.

Schedule 1 [15] makes it clear that documents may be served in the manner permitted by the *Consumer, Trader and Tenancy Tribunal Act 2001*.

Schedule 1 [17] enables savings and transitional provisions to be made consequent on the enactment of the proposed Act.

Schedule 1 [18] continues the application of the current law to matters the subject of an application for arbitration before the commencement of proposed Part 4.

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

Schedule 2 [1] makes an amendment consequential on the conferral of jurisdiction on the Tribunal under the *Agricultural Tenancies Act 1990*.

Schedule 2 [2] assigns to the Commercial Division of the Tribunal the exercise of the Tribunal's jurisdiction under the *Agricultural Tenancies Act 1990*.

First print



New South Wales

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Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Repeal	2
Schedule 1 Amendment of Agricultural Tenancies Act 1990 No 64	3
Schedule 2 Amendment of Consumer, Trader and Tenancy Tribunal Act 2001 No 82	8



New South Wales

Agricultural Tenancies Amendment Bill 2011

No. , 2011

A Bill for

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

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Agricultural Tenancies Amendment Act 2011</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Repeal	6
The <i>Agricultural Tenancies Regulation 2006</i> is repealed.	7

Schedule 1	Amendment of Agricultural Tenancies Act 1990 No 64	1
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[1] Long title		3
	Omit “determination by mediation or arbitration”. Insert instead “resolution”.	4
[2] Section 3 Objects		5
	Omit section 3 (c) and (d). Insert instead:	6
	(c) to provide a mechanism for settling disputes between parties to agricultural tenancies through applications to the Consumer, Trader and Tenancy Tribunal.	7
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[3] Section 4 Definitions		10
	Omit the definition of <i>Director-General</i> from section 4 (1).	11
[4] Section 4 (1), definition of “Tribunal”		12
	Insert in alphabetical order:	13
	<i>Tribunal</i> means the Consumer, Trader and Tenancy Tribunal established under the <i>Consumer, Trader and Tenancy Tribunal Act 2001</i> .	14
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[5] Section 5 Agreements to be in writing		17
	Omit “arbitration” from section 5 (2). Insert instead “the Tribunal”.	18
[6] Section 6 Improvements carried out by tenants with consent		19
	Omit “arbitration” from section 6 (4). Insert instead “the Tribunal”.	20
[7] Section 7 Improvements carried out by tenants without consent		21
	Omit “arbitration” wherever occurring. Insert instead “the Tribunal”.	22
[8] Section 8 Improvements carried out by owner with consent		23
	Omit “arbitration” from section 8 (4). Insert instead “the Tribunal”.	24
[9] Section 9 Improvements carried out by owners without consent		25
	Omit “arbitration” wherever occurring. Insert instead “the Tribunal”.	26
[10] Section 12 Record of condition of farm		27
	Omit section 12 (3) and (4).	28

[11] Section 18 Compensation for general improvement to farm	1
Omit “awarded by arbitration” from section 18 (2).	2
Insert instead “determined by the Tribunal”.	3
[12] Part 4	4
Omit the Part. Insert instead:	5
Part 4 Dispute resolution and remedies	6
20 Applications to Tribunal relating to disputes	7
(1) An owner or tenant may apply to the Tribunal for determination of any of the following:	8
(a) a dispute relating to a right or obligation conferred by this Act,	9
(b) a dispute arising from, or relating to, an agreement creating a tenancy or any other dispute (not being a dispute referred to in paragraph (a)) arising from, or relating to, a tenancy,	10
(c) any other matter that may be determined by the Tribunal under this Act.	11
(2) An application to the Tribunal must be made not later than 3 months after the relevant dispute or other matter arises or the end of the tenancy, whichever is the later.	12
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21 Orders that may be made by Tribunal	17
(1) The Tribunal may, on application by an owner or tenant under this Act, or in any proceedings under this Act, make one or more of the following orders:	18
(a) an order giving effect to a determination that may be made by the Tribunal under this Act,	19
(b) an order that a record of the condition of a matter under section 12 must be amended or is not required to be amended,	20
(c) an order that restrains any action in breach of a term of a tenancy,	21
(d) an order that requires an action in performance of a tenancy,	22
(e) an order for the payment of an amount of money,	23
(f) an order as to compensation,	24
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| (g) | an order that an owner or tenant perform such work or take such other steps as the order specifies to remedy a breach of a term of the tenancy, | 1
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| (h) | an order directing an owner, an owner's agent or a tenant to comply with a requirement of this Act or the regulations, | 4
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| (i) | an order terminating a tenancy or an order for the possession of a farm, | 6
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| (j) | an order directing an owner or owner's agent to give a former tenant or a person authorised by the former tenant access to a farm for the purposes of recovering goods or fixtures that the former tenant is entitled to remove. | 8
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| (2) | An order under subsection (1) (c) or (d) may be made even though it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such a remedy would not otherwise be available. | 12
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| (3) | The Tribunal must not make an order for: | 16 |
| (a) | the payment of an amount that exceeds \$500,000 or such other amount as may be prescribed by the regulations for the purposes of this section, or | 17
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| (b) | the performance of work or the taking of steps the cost of which is likely to or will exceed \$500,000 or such other amount as may be prescribed by the regulations for the purposes of this section. | 20
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| (4) | The Tribunal may, in any proceedings before it under this Act, make any one or more of the following orders: | 24
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| (a) | an order that varies or sets aside, or stays or suspends the operation of, any order made in proceedings or earlier proceedings, | 26
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| (b) | any ancillary order the Tribunal thinks appropriate, | 29 |
| (c) | an interim order. | 30 |
| (5) | A provision of this Act that enables an owner or tenant to apply for a determination by the Tribunal and the Tribunal to determine a matter or make an order also applies, where appropriate, to a former owner or former tenant. | 31
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| (6) | This section does not limit the Tribunal's powers under the <i>Consumer, Trader and Tenancy Tribunal Act 2001</i> . | 35
36 |

22	Matters to be dealt with by alternative dispute resolution at first instance	1 2
(1)	An application by an owner or tenant or former owner or tenant to the Tribunal for a determination under this Act must be dealt with by the Tribunal under Division 1 of Part 5 of the <i>Consumer, Trader and Tenancy Tribunal Act 2001</i> .	3 4 5 6
(2)	If a settlement of a matter the subject of any such application is not reached, the Tribunal must refer the matter for mediation or neutral evaluation under Division 2 of Part 5 of the <i>Consumer, Trader and Tenancy Tribunal Act 2001</i> .	7 8 9 10
(3)	The Tribunal may determine proceedings for any such matter only if it is satisfied that a settlement or agreement or arrangement in relation to the matter has not been and is not likely to be reached.	11 12 13 14
(4)	Despite any other provision of this section, the Tribunal may at any time direct that an inquiry be held under section 16 of the <i>Consumer, Trader and Tenancy Tribunal Act 2001</i> into an issue in proceedings under this Act.	15 16 17 18
23	Amount awarded to be charge on land of trustees	19
(1)	An amount ordered to be paid under this Act to a tenant and that is due from a trustee owner is a charge on the farm.	20 21
(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.	22 23
(3)	The tenant is entitled to the charge while the trustee owner fails to pay to the tenant the amount due to the tenant.	24 25
(4)	The charge may be registered in the General Register of Deeds under section 187 of the <i>Conveyancing Act 1919</i> .	26 27
(5)	The amount due is not recoverable personally from the trustee owner.	28 29
[13]	Section 27A Delegation	30
	Omit the section.	31
[14]	Section 28 Service of documents	32
	Insert at the end of section 28 (1) (c):	33
	, or	34
(d)	by sending the document by facsimile transmission to the facsimile number of that person.	35 36

[15] Section 28 (3)	1
Insert “the <i>Consumer, Trader and Tenancy Tribunal Act 2001</i> or any other”	2
after “service provided by”.	3
[16] Section 29 Regulations	4
Omit section 29 (2).	5
[17] Schedule 2 Savings and transitional provisions	6
Insert at the end of clause 2 (1):	7
<i>Agricultural Tenancies Amendment Act 2011</i>	8
[18] Schedule 2, clause 5	9
Insert after clause 4:	10
5 Continuation of arbitration provisions	11
This Act and the <i>Agricultural Tenancies Regulation 2006</i> , as in	12
force immediately before the substitution of Part 4 of this Act by	13
the <i>Agricultural Tenancies Amendment Act 2011</i> , continue to	14
apply to a dispute or other matter the subject of an application for	15
arbitration made but not finally determined before that	16
substitution.	17

Schedule 2	Amendment of Consumer, Trader and Tenancy Tribunal Act 2001 No 82	1
		2
[1]	Section 5 Establishment of Consumer, Trader and Tenancy Tribunal	3
	Insert in appropriate order in the note:	4
	<i>Agricultural Tenancies Act 1990</i>	5
[2]	Schedule 1 Divisions of the Tribunal	6
	Insert after clause 1 (b) (iii):	7
	(iv) matters arising under the <i>Agricultural Tenancies Act 1990</i> ,	8