

Passed by both Houses



New South Wales

Agricultural Tenancies Amendment Bill 2012

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 |

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

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



New South Wales

Agricultural Tenancies Amendment Bill 2012

Act No , 2012

*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.*

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

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

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

2 Commencement

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

3 Repeal

The *Agricultural Tenancies Regulation 2006* is repealed.

Schedule 1 Amendment of Agricultural Tenancies Act 1990 No 64

[1] Long title

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

[2] Section 3 Objects

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

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

[3] Section 4 Definitions

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

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

Insert in alphabetical order:

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

[5] Section 5 Agreements to be in writing

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

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

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

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

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

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

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

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

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

[10] Section 12 Record of condition of farm

Omit section 12 (3) and (4).

[11] Section 18 Compensation for general improvement to farm

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

Insert instead “determined by the Tribunal”.

[12] Part 4

Omit the Part. Insert instead:

Part 4 Dispute resolution and remedies

20 Applications to Tribunal relating to disputes

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

21 Orders that may be made by Tribunal

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

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

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

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

23 Amount awarded to be charge on land of trustees

- (1) An amount ordered to be paid under this Act to a tenant and that is due from a trustee owner is a charge on the farm.
- (2) The trustee owner is entitled to have the charge released if the trustee owner pays to the tenant the amount due to the tenant.
- (3) The tenant is entitled to the charge while the trustee owner fails to pay to the tenant the amount due to the tenant.
- (4) The charge may be registered in the General Register of Deeds under section 187 of the *Conveyancing Act 1919*.
- (5) The amount due is not recoverable personally from the trustee owner.

[13] Section 27A Delegation

Omit the section.

[14] Section 28 Service of documents

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

, or

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

[15] Section 28 (3)

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

[16] Section 29 Regulations

Omit section 29 (2).

[17] Schedule 2 Savings and transitional provisions

Insert at the end of clause 2 (1):

Agricultural Tenancies Amendment Act 2012

[18] Schedule 2, clause 5

Insert after clause 4:

5 Continuation of arbitration provisions

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

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

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

Insert in appropriate order in the note:

Agricultural Tenancies Act 1990

[2] Schedule 1 Divisions of the Tribunal

Insert after clause 1 (b) (iii):

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