

Agricultural Tenancies Act 1990 No 64

[1990-64]



New South Wales

Status Information

Currency of version

Historical version for 1 September 2001 to 27 September 2001 (accessed 18 July 2024 at 22:31)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Agricultural Tenancies Amendment Act 2001 No 14](#), Sch 1 [13] (not commenced — to commence on the commencement of Part 11 of the [Rural Lands Protection Act 1998 No 143](#))

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 3 September 2001

Agricultural Tenancies Act 1990 No 64



New South Wales

Contents

Long title	5
Part 1 Preliminary	5
1 Name of Act	5
2 Commencement	5
3 Objects	5
4 Definitions	6
Part 2 General rights of tenants and owners	7
5 Agreements to be in writing	7
6 Improvements carried out by tenants with consent	7
7 Improvements carried out by tenants without consent	7
8 Improvements carried out by owner with consent	8
9 Improvements carried out by owners without consent	8
10 Tenants' fixtures	8
11 Right of owner to enter farm	9
12 Record of condition of farm	9
13 Accounts	10
14 Termination of tenancy	10
Part 3 Compensation	11
Division 1 Determination of compensation for improvements	11
15 Determination of compensation payable for tenants' improvements	11
16 Determination of compensation payable for owners' improvements	11

17 Fair compensation	11
Division 2 Other rights to compensation	11
18 Compensation for general improvement to farm.....	11
19 Compensation to tenant for stored products	12
19A Compensation for deterioration.....	12
Part 4 Resolution of disputes and other matters	13
Division 1 Preliminary	13
20 Definitions	13
Division 2 Applications for arbitration	13
21 Applications for arbitration	13
22 Jurisdiction of courts	14
23 Application for arbitration.....	14
24 Time limit.....	14
25 Director-General's functions relating to arbitration applications	14
26 Referral of disputes and matters to court.....	15
26A Review of decisions	15
Division 3 Mediation.....	16
26B Referral for mediation	16
26C Mediation to be voluntary	16
26D Costs of mediation	16
26E Mediators.....	16
26F Privilege.....	16
26G Secrecy	17
26H Exoneration from liability for listed mediators	17
Division 4 Arbitration.....	18
26I Arbitrators	18
26J Technical assessors	18
26K Application of Commercial Arbitration Act 1984.....	19
26L Orders.....	19
26M Amount awarded to be charged on land of trustee.....	20

Part 5 General	20
27 Contracting out.....	20
27A Delegation	20
28 Service of documents	20
29 Regulations.....	21
30 Repeal and savings.....	21
Schedule 1 Improvements that a tenant may make as of right	22
Schedule 2 Savings and transitional provisions	22

Agricultural Tenancies Act 1990 No 64



New South Wales

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

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

3 Objects

The objects of this Act are:

- (a) to encourage agricultural landowners and their tenants and sharefarmers to have regard, in farming practices to the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*) insofar as they are capable of applying to those farming practices and, to maintaining sustainable agricultural production and preventing the degradation of the environment, and
- (b) to encourage the use of written agreements for agricultural tenancies and to set out terms that are taken to apply to all agricultural tenancies, including terms setting out rights of the parties, and
- (c) to provide a mechanism for resolution of disputes by the parties to agricultural tenancies themselves through mediation, and
- (d) to provide an arbitration mechanism for settling disputes between parties to agricultural tenancies that is outside the court system (the procedures for such arbitration to be as quick, cheap and free of legal technicality as is consistent with doing justice between the parties).

4 Definitions

(1) 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.

exercise a function includes perform a duty.

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.

function includes a power, authority or duty.

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 on the farm when the tenant first became a tenant, except as provided by this Act.

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

sustainable agricultural production is agricultural production that complies with the following criteria:

- (a) responsiveness to consumer needs for food and fibre products that are healthy and of high quality,
- (b) the taking into account of the cost of production, including environmental costs, and pricing that reflects those costs,
- (c) the protection and restoration of the natural resource base on which agriculture depends,
- (d) the prevention of adverse on-site and off-site impacts on the environment and any sector of the community,
- (e) be flexible in order to accommodate regional differences and changing economic, environmental and social circumstances such as drought or terms of trade,
- (f) financial viability.

These features of sustainable agriculture should be considered as a package, and no single feature should predominate over the others.

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.

(2) Notes included in this Act do not form part of this Act.

Part 2 General rights of tenants and owners

5 Agreements to be in writing

- (1) 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.
- (2) If the owner and the tenant cannot agree on the terms of an agreement that is to be reduced to writing, the terms of the agreement may be determined by arbitration.

6 Improvements carried out by tenants with consent

- (1) It is a term of a tenancy that the 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 fixed 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.
- (4) Compensation payable under this section is payable at the end of the tenancy or at such earlier time as may be agreed or determined by arbitration.

Note—

Division 1 of Part 3 sets out the way compensation is to be determined for the purposes of this Part.

7 Improvements carried out by tenants without consent

- (1) It is a term of a tenancy that the tenant may carry out an improvement on the farm without the consent of the owner only if:
 - (a) the improvement is mentioned in Schedule 1, or
 - (b) the improvement is a work or thing of a kind prescribed by the regulations for the purposes of this section, or
 - (c) the improvement is first determined by arbitration to be suitable and desirable in the circumstances.

- (2) The owner must pay fair compensation to the tenant for an improvement carried out by the tenant and referred to in subsection (1) (a) or (b).
- (3) The owner must pay fair compensation to the tenant for an improvement carried out by the tenant and referred to in subsection (1) (c) if compensation is determined by arbitration to be payable.
- (4) Compensation payable under this section is payable at the end of the tenancy or at such earlier time as may be agreed or determined by arbitration.

8 Improvements carried out by owner with consent

- (1) It is a term of a tenancy that the 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 fixed 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.
- (4) Compensation payable under this section may be paid in instalments together with any rent or other consideration payable in respect of the tenancy or in such other manner as may be agreed or determined by arbitration.

9 Improvements carried out by owners without consent

- (1) It is a term of a tenancy that the owner may carry out an improvement on the farm without the consent of the tenant only if the improvement is first determined by arbitration to be suitable and desirable in the circumstances.
- (2) The tenant must pay fair compensation to the owner for an improvement carried out by the owner if compensation is determined by arbitration to be payable.
- (3) Compensation payable under this section may be paid in instalments together with any rent or other consideration payable in respect of the tenancy or in such other manner as may be agreed or determined by arbitration.

10 Tenants' fixtures

- (1) It is a term of a tenancy that a fixture affixed to a farm by a tenant may be removed by the tenant before or within a reasonable time after the end of the tenancy.
- (2) Subsection (1) does not apply to the following fixtures:
 - (a) a fixture for which the tenant claims or can claim compensation (for example, a fixture that is an improvement),

- (b) a fixture that is affixed under an obligation to do so under a tenancy or other agreement or in place of a fixture belonging to the owner.
- (3) It is a term of a tenancy that a tenant must not remove a fixture affixed to the farm by the tenant without giving reasonable oral or written notice to the owner, and any occupier of the farm for the time being, of the tenant's intention to remove the fixture.
- (4) It is a term of a tenancy that, at any time before the end of the notice period, the owner may serve written notice on 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 is payable under section 7 (2).
- (5) It is a term of the tenancy that:
 - (a) before removing a fixture, the tenant must, as far as practicable, comply with all the tenant's obligations to the owner in respect of the farm, and
 - (b) when removing a fixture, the tenant must not do, or must make good, any damage to any other fixture or other part of the farm.
- (6) In this section:

fixture includes a building.

11 Right of owner to enter farm

- (1) It is a term of the tenancy that the owner, or any person authorised by the owner, may at all reasonable times, after giving reasonable notice, enter the farm for any of the following purposes:
 - (a) to view its condition,
 - (b) to perform a function of the owner under this Act,
 - (c) to carry out an improvement (if permitted by this Act).
- (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.
- (4) Notice under this section may be given orally or may be served in writing.

12 Record of condition of farm

- (1) It is a term of the tenancy that a record of the condition of the following matters 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:

- (a) the land and any cultivation of the land,
- (b) any buildings, fences, gates, roads, drains or other works or things on the farm,
- (c) any other improvements.

- (2) It is a term of the tenancy that a record of any improvement carried out by the tenant or the owner, and a record of any fixture that 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 either the tenant or the owner, 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.

13 Accounts

It is a term of the tenancy that the owner and a tenant each have:

- (a) the duty to keep proper accounts in connection with the tenancy, and
- (b) the right to inspect at all reasonable times, after giving reasonable notice, the accounts kept by the other in connection with the tenancy.

14 Termination of tenancy

- (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 tenancy period.
- (3) In addition to the requirements of subsection (2), a periodic tenancy (other than a tenancy from year to year) cannot be terminated unless written notice of the 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.
- (4) 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 before the end of the tenancy period.

- (5) In addition to the requirements of subsection (4), a tenancy from year to year cannot be terminated unless written notice of termination is served by a party on the other party so that the period of notice ends at least 1 month after the end of the annual cropping program.
- (6) This section does not apply to termination for a breach of the tenancy or where the tenant and the owner have otherwise agreed on the notice to be given.

Part 3 Compensation

Division 1 Determination of compensation for improvements

15 Determination of compensation payable for tenants' improvements

- (1) For the purposes of determining the compensation payable under Part 2 for an improvement carried out by a tenant, the amount of compensation is 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) The value of an improvement to an incoming tenant is to be calculated by taking into account 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).

16 Determination of compensation payable for owners' improvements

For the purposes of determining the compensation payable under Part 2 for an improvement carried out by an owner, the amount of compensation is 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.

17 Fair compensation

In determining what constitutes fair compensation for the purposes of determining the compensation payable under Part 2 for an improvement carried out by a tenant or an owner, regard may be had to the financial resources of the parties, the financial returns that might be expected from the improvement and other factors.

Division 2 Other rights to compensation

18 Compensation for general improvement to farm

- (1) It is a term of a tenancy that the owner must pay fair compensation to the tenant if there has been a general improvement to the 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.

- (2) 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 that caused or contributed to the general improvement.
- (3) In determining what constitutes fair compensation for the purposes of determining the compensation payable for a general improvement carried out by a tenant, regard may be had to the financial resources of the parties, the financial returns that might be expected from the improvement and other factors.

19 Compensation to tenant for stored products

- (1) It is a term of a tenancy that the owner must pay the tenant fair compensation for any products stored by the tenant during the tenancy and left on the farm at the end of the tenancy.
- (2) For the purposes of determining the compensation payable for any products stored by the tenant during the tenancy, the amount of compensation is:
 - (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.
- (3) In this section:

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

19A Compensation for deterioration

- (1) It is a term of a tenancy that 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 manage the farm in accordance with good farm management or the provisions of any agreement creating the tenancy, or both.
- (2) For the purposes of determining the compensation payable for any deterioration of the farm, the amount of compensation is an amount representing the decrease in the value of the farm as a result of the deterioration.
- (3) The compensation is payable when the deterioration is evident.
- (4) 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 the management of the farm (being management that is material to any claim for compensation under this section) is expressly authorised by the agreement.

Part 4 Resolution of disputes and other matters

Division 1 Preliminary

20 Definitions

In this Part:

arbitrator means a single arbitrator or an arbitration committee appointed under this Part.

mediation means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

mediation session means a meeting arranged for the mediation of a matter under Division 3.

mediator means a person to whom the Director-General refers a matter for mediation under Division 3.

Division 2 Applications for arbitration

21 Applications for arbitration

- (1) An application for arbitration of a dispute or matter may be made if it is:
 - (a) a dispute relating to a right or obligation conferred by this Act, or
 - (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, or
 - (c) any other matter that is permitted by this Act to be determined by arbitration.
- (2) Despite subsection (1), the following disputes and matters may not be the subject of an application for arbitration:
 - (a) any dispute where an owner seeks ejectment of a tenant or recovery of rent,
 - (b) any dispute, or any other matter, of a kind prescribed by the regulations.

22 Jurisdiction of courts

- (1) A court has no jurisdiction:
 - (a) in respect of any issue in a dispute or matter relating to a right or obligation conferred by this Act or any other matter referred to in section 21 (1) (c), or
 - (b) in respect of any issue in a dispute or matter that has been referred to arbitration and has not been withdrawn or dismissed for want of jurisdiction.
- (2) If proceedings for the determination of any issue were commenced in a court before a dispute or matter involving that issue was first 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.
- (3) Subsection (2) does not apply to arbitration proceedings relating to an issue in respect of which a court has no jurisdiction.

23 Application for arbitration

- (1) An application for arbitration is to be made to the Director-General in a form approved by the Director-General.
- (2) As soon as practicable after receiving an application for arbitration, the Director-General must cause a copy of the application to be served on the other party (or each other party).

24 Time limit

- (1) An application for arbitration must be made not later than 3 months after the dispute arises or the end of the tenancy, whichever is the later.
- (2) The parties may extend the time by consent.
- (3) The Director-General may, on the application of a party, extend the time.

25 Director-General's functions relating to arbitration applications

The Director-General may exercise one or more of the following functions in relation to an application for arbitration:

- (a) arrange a pre-arbitration conference and determine the manner in which the conference is to be held,
- (b) encourage the parties, if appropriate, to seek mediation in accordance with Division 3,
- (c) request the parties to provide information or documents relating to the application,
- (d) refer the dispute or matter to arbitration and appoint an arbitrator,

- (e) fix the date for hearing of the arbitration,
- (f) appoint a technical assessor.

26 Referral of disputes and matters to court

- (1) The Director-General may, instead of referring a dispute or matter to arbitration, by order in writing, refer the dispute or matter to a court.
- (2) The Director-General may not make an order unless the Director-General is of the opinion that:
 - (a) the court would, apart from section 22, have jurisdiction to determine the dispute, and
 - (b) at least one of the parties consents to the referral, and
 - (c) it is in the public interest or in the interests of the parties to do so.
- (3) An order may be made on the Director-General's initiative or on the application of a party.
- (4) An order for referral takes effect on service of a copy of the order on the registrar of the court or on other notification of the court in accordance with the rules of the court.
- (5) The Director-General must lodge with the registrar of the court a copy of every document or part of a document relating to the dispute or matter that is in the possession, or under the control, of the Director-General that the Director-General considers appropriate.
- (6) The Director-General must cause a copy of an order referring a dispute or matter to a court to be served on each party.
- (7) A dispute or matter referred to a court under this section is to be dealt with by that court as if it were a matter originated in that court.
- (8) Rules of court may be made with respect to procedures for dealing with disputes or matters referred under this section.
- (9) Section 22 does not apply to a dispute or matter referred to a court under this section.

26A Review of decisions

A party to a dispute or matter may apply to the Administrative Decisions Tribunal for a review of any of the following decisions of the Director-General under this Part:

- (a) a decision to extend, or not to extend, the time for making an application for referral of the dispute or matter to arbitration,
- (b) a decision to refer, or not to refer, the dispute or matter to a court.

Division 3 Mediation

26B Referral for mediation

- (1) The Director-General may, at any time before referring a dispute or matter to arbitration, refer it for mediation if:
 - (a) the Director-General considers it appropriate in the circumstances, and
 - (b) the parties consent to the referral, and
 - (c) the parties agree as to who is to be the mediator.
- (2) The mediator may, but need not be, a person whose name is on a list compiled by the Director-General for the purposes of this Part.
- (3) In the event that mediation is unsuccessful, the Director-General may refer the dispute or matter to arbitration.

26C Mediation to be voluntary

- (1) Attendance at and participation in mediation sessions are voluntary.
- (2) A party to a mediation session may withdraw from the session at any time.

26D Costs of mediation

The costs of mediation, including the costs payable to or in respect of the mediator, are to be borne by the parties in such proportions as they may agree among themselves or, failing agreement, in equal shares.

26E Mediators

- (1) The Director-General may compile a list of mediators for the purposes of this Part.
- (2) Different lists may be compiled for different kinds of disputes or matters or to take account of any other factors.
- (3) A person may be included in a list of mediators only if:
 - (a) the person consents to be included in the list, and
 - (b) the person agrees to comply with this Division and any regulations made for the purposes of this Division.
- (4) The Director-General may amend or revoke any list of mediators.

26F Privilege

- (1) Evidence of anything said or of any admission made in a mediation session is not admissible in any arbitration proceedings or proceedings before any court, tribunal or

body.

- (2) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session, or any copy of such a document, is not admissible in evidence in any arbitration proceedings or proceedings before any court, tribunal or body.
- (3) Subsections (1) and (2) do not apply with respect to any evidence or document:
 - (a) if the persons in attendance at, or identified during, the mediation session and, in the case of a document, all persons identified in the document consent to the admission of the evidence or document, or
 - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 26G.

(4) In this section:

mediation session includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.

26G Secrecy

A mediator may disclose information obtained in connection with the administration or execution of this Division only in one or more of the following circumstances:

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of this Division,
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other matter,
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

26H Exoneration from liability for listed mediators

No matter or thing done or omitted to be done by a mediator subjects the mediator to any action, liability, claim or demand if:

- (a) the matter or thing was done in good faith for the purposes of a mediation session under this Division, and

- (b) the mediator's name was included in a list compiled under this Division when the subject-matter of the mediation was referred for mediation.

Division 4 Arbitration

26I Arbitrators

- (1) An arbitration of a dispute or matter is to be conducted by a single arbitrator appointed by the Director-General, except as provided by subsection (3).
- (2) A person is eligible to be appointed as an arbitrator if the person is a legal practitioner within the meaning of the [Legal Profession Act 1987](#).
- (3) The Director-General may, on the Director-General's own initiative or on the application of a party, appoint a committee of 3 persons to arbitrate a dispute or matter if the Director-General is of the opinion that it is appropriate to do so in the circumstances.
- (4) A committee is to consist of the following persons:
 - (a) a legal practitioner within the meaning of the [Legal Profession Act 1987](#), who is to be the presiding member,
 - (b) 2 other members who, in the opinion of the Director-General, have appropriate knowledge and experience and who are not employees of the Department of Agriculture.
- (5) The Director-General must cause the parties to a dispute or matter to be notified in writing of the appointment of the arbitrator and technical assessor (if applicable) and the date, time and place fixed by the Director-General for the hearing of the arbitration.
- (6) The Director-General must cause the arbitrator to be notified in writing of the date, time and place fixed by the Director-General for the hearing of the arbitration. In the case of an arbitration committee, the notice is to be given to the chairperson of the committee.

26J Technical assessors

- (1) The Director-General may appoint a person as a technical assessor to assist the arbitrator in determining a dispute or matter.
- (2) The Director-General may appoint a person as a technical assessor if the Director-General is of the opinion that the person has knowledge and experience that may assist in the arbitration of the dispute or matter.
- (3) A technical assessor may assist and advise the arbitrator, but must not adjudicate on any issue before the arbitrator.

26K Application of [Commercial Arbitration Act 1984](#)

- (1) Subject to this Act and the regulations, the [Commercial Arbitration Act 1984](#) applies to an arbitration under this Act.
- (2) The following provisions of the [Commercial Arbitration Act 1984](#) do not apply to an arbitration under this Act:
 - (a) Part 2,
 - (b) sections 15 (a), 40, 41, 46 and 60.
- (3) The following provisions of the [Commercial Arbitration Act 1984](#) apply to an arbitration under this Act, with the modifications set out below:
 - (a) section 17 (Parties may obtain subpoenas), as if a reference in that section to the Court were a reference to a registrar of a Local Court,
 - (b) section 18 (Refusal or failure to attend before arbitrator or umpire or to produce document), as if a reference in that section to the Court were a reference to a registrar of a Local Court and a reference in that section to the Supreme Court were a reference to a Local Court,
 - (c) section 33 (Enforcement of award), as if a reference in that section to the Court were a reference to a court of competent jurisdiction and leave of the court were not required to proceed to enforcement.
- (4) Section 55 of the [Commercial Arbitration Act 1984](#) does not affect the operation of section 22 of this Act.

Note—

The [Commercial Arbitration Act 1984](#) contains machinery and other provisions applying to arbitrations. The provisions applying to arbitrations under that Act set out the way in which arbitrators are to conduct arbitration proceedings and powers to require evidence to be given, as well as parties' rights to representation and other procedural matters. They also provide that an award by an arbitrator is to be final and provide for enforcement procedures. An appeal to the Supreme Court on a question of law is also available under that Act.

26L Orders

- (1) In addition to an arbitrator's powers in respect of compensation payable under Parts 2 and 3, an 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 on that other party by any of the provisions of sections 5 and 11-14.
- (2) An order under subsection (1) may be made without proof of actual loss or damage.
- (3) In determining any dispute or matter referred to arbitration under this Act, an arbitrator may make ancillary declarations and orders.

26M Amount awarded to be charged on land of trustee

- (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.

Part 5 General

27 Contracting out

- (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 a provision of this Act.

27A Delegation

- (1) The Director-General may delegate to an authorised person any of the functions of the Director-General under this Act (other than this power of delegation).
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Director-General if the delegate is authorised in writing to do so by the Director-General.
- (3) In this section:

authorised person means:

- (a) an officer of the Department of Agriculture, or
- (b) a person of a class of persons prescribed by the regulations.

28 Service of documents

- (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.

29 Regulations

(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 remuneration of persons who are members of committees that conduct arbitrations for the purposes of this Act,
- (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, and
- (e) mediation sessions for the purposes of this Act.

30 Repeal and savings

(1) The *Agricultural Holdings Act 1941* is repealed.

(2) Any regulations in force under that Act are repealed.

(3) Schedule 2 has effect.

Schedule 1 Improvements that a tenant may make as of right

(Section 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 and control of noxious weeds on land.
- 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 management of the farm), other than repairs which the tenant is under an obligation to carry out or repairs referred to in item 10, 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.
- 10 Repairs to or re-erection of buildings to meet the particular requirements of the *Food Production (Safety) Act 1998* 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

(Section 30)

1 Definition

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

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

Agricultural Tenancies Amendment Act 2001

- (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.

3 Existing tenancies

This Act, as amended by the [Agricultural Tenancies Amendment Act 2001](#), extends to a tenancy in existence immediately before the repeal of the former Act or created by the exercise of an option granted before that repeal.

4 Transitional provisions

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.