

# Agricultural Tenancies Act 1990 No 64

[1990-64]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [Local Land Services Act 2013 No 51](#) (not commenced — to commence on 1.1.2014)
  - [Civil and Administrative Legislation \(Repeal and Amendment\) Act 2013 No 95](#) (not commenced — to commence on 1.1.2014)

### Authorisation

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# 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 resolution 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 settling disputes between parties to agricultural tenancies through applications to the Consumer, Trader and Tenancy Tribunal.
- (d) (Repealed)

### 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.

**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 agricultural 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.

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

(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 the Tribunal.

### **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 the Tribunal.

**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 the Tribunal 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 the Tribunal 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 the Tribunal.

#### **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 the Tribunal.

#### **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 the Tribunal 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 the Tribunal 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 the Tribunal.

#### **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), (4) (Repealed)

### **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 determined by the Tribunal, 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 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.

#### **24-26M (Repealed)**

### **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 (Repealed)**

#### **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, or
  - (d) by sending the document by facsimile transmission to the facsimile number of that person.
- (2) Service on an Australian legal practitioner, or an 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 the *Consumer, Trader and Tenancy Tribunal Act 2001* or any other 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) (Repealed)

## 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 pests within the meaning of the *Rural Lands Protection Act 1998*.
- 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 Act 2003* 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*

*Agricultural Tenancies Amendment Act 2012*

(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.

### 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.