

Agricultural tenancy

An agricultural tenancy is any arrangement giving someone who is not the owner of a farm the right to use the farm for agricultural purposes. In some instances they may also live on the farm.

Where the predominant use of a property is for the purpose of agriculture the *Agricultural Tenancies Act 1990* applies to the tenancy. The *Residential Tenancies Act 2010* does not apply to such tenancies.

Do agricultural tenancy laws apply to all farms?

Agricultural tenancy laws only apply to farms that are:

- 1 hectare or larger, and
- used for agricultural purposes, and
- occupied or used by a tenant or intended to be occupied or used by a tenant.

Types of agricultural tenancies

Agricultural tenancies can be used for grazing, dairying, pig farming, poultry farming, viticulture, orcharding, bee-keeping, horticulture, growing of vegetables or other crops of any kind, forestry, or any combination of these activities.

Agricultural tenancies can involve:

- a lease or licence
- an agreed lease or licence within a tenancy agreement
- a tenancy at will (a verbal or 'handshake' agreement)
- a sharefarming agreement, or
- any other arrangement by which a person who is not the owner of the farm has the right to occupy or use it.

What is sharefarming?

The basis of a sharefarming agreement is the owner supplying the land and assets, but often not the machinery. The sharefarmer provides the labour, expertise, fertiliser if necessary, the machinery and the marketing.

The appeal in this type of agreement is that the owner of the land benefits from receiving income for no work. If the season or prices are bad, the share farmer as well as the owner will suffer a reduction in income.

Generally the term of a sharefarming agreement is at least 1 year and often longer, but it is possible to have a shorter term agreement such as a hay-making arrangement.

Everything in this type of agreement is negotiable, such as the types of bales the hay is made into, the proportion of the crop for each party and whether the share farmer is to stack the bales.

Each type of sharefarming agreement has its strengths and weaknesses and it is important to seek the advice of an experienced professional before signing an agreement.

Rights of agricultural tenants and land owners

The Agricultural Tenancies Act sets out the general rights and responsibilities of parties to agricultural tenancies. Knowing your rights and responsibilities can help you to avoid or resolve disputes about a tenancy.

Written tenancy agreements

Tenants and land owners have the right to have the terms of the tenancy agreement put into writing. The use of written agreements by tenants and owners is strongly encouraged. This is because the greater clarity and certainty they provide can help prevent disputes arising during the tenancy.

If the parties cannot agree on the terms, either party may apply to the NSW Civil and Administrative Tribunal (NCAT) to have the terms of the tenancy determined.

Improvements made by tenants

There are situations where a tenant can make improvements to a farm with or without the owner's consent.

If the owner consents to the improvements, the tenant and land owner can reach agreement about compensation for the tenant. There is a general obligation to pay fair compensation for improvements.

The improvements that a tenant can make without the owner's consent are listed in Schedule 1 of the Agricultural Tenancies Act, as follows:

- drainage
- making or improving necessary roads or bridges
- clearing and removing stumps and logs
- destroying noxious animals
- destroying pests (within the meaning of the *Rural Lands Protection Act 1998*)
- making permanent subdivision fences
- sowing pastures
- applying fertilisers, liming materials and trace element products (within the meaning of the *Fertilisers Act 1985*)
- repairs to buildings (notice must be given to the owner)
- repairs to or re-erection of buildings to meet the requirements of the *Food Act 2003* or other laws
- repairs to and the cleaning of silt from wells, bores, dams, reservoirs and ground tanks.

The NCAT can also approve tenants' improvements if they are determined to be suitable and desirable.

Improvements made by owners

Like tenant improvements, there are situations where the owner can make improvements with or without the tenant's consent.

If the tenant consents to the improvements, the tenant and land owner can reach agreement about compensation for the owner. The compensation can be fixed by agreement, but a tenant cannot be made to pay an unfair amount.

The owner is only able to make improvements without the tenant's consent if the NCAT has determined the improvement to be suitable and desirable in the circumstances.

Compensation

Both tenants and owners can be eligible for compensation.

If a tenant makes improvements to a farm, compensation is based on the value of the improvement to an incoming tenant. If an owner makes improvements to a farm, compensation is based on the value of the improvement to the current tenant.

The tenant is entitled to compensation where there has been a general improvement to the farm due to the adoption of better farm management practices by the tenant. The owner is entitled to compensation for any deterioration of the farm because the tenant didn't manage the farm properly.

The tenant is entitled to compensation for any products they stored and left on the farm at the end of the tenancy, such as grain, hay, silage, fertiliser or any other useful commodity. The tenant is also entitled to compensation for fixtures they have installed if they do not remove the fixtures at the end of the tenancy.

Right of entry

The owner, or a person authorised by the owner, can enter the farm at a reasonable time to:

- view the condition of the farm
- perform a legal duty or function, or
- carry out any permitted improvement.

The tenant must be given reasonable notice (verbal or in writing). An owner cannot enter any part of the farm used for residential purposes without the tenant's consent.

Record of condition of farm and accounts

If considered necessary, a record of the condition of the farm can be made when the tenancy starts, or at reasonable intervals during the tenancy. This must be done jointly by the owner and tenant.

The record of condition can cover the following matters:

- the land and any cultivation of the land
- any buildings, fences, gates, roads, drains or other works or things on the farm

- any improvements
- any removable fixtures.

Tenants and owners have a duty to keep proper accounts regarding the tenancy, and have the right to inspect each others accounts provided reasonable notice is given.

Termination

A tenancy for a fixed term terminates at the end of the fixed term and no notice of termination is required.

To terminate a periodic tenancy the tenant must be served with written notice. The length of notice must be at least equivalent to the length of the tenancy period. This means the period for which rent is paid, for example monthly or quarterly. In the case of sharefarming arrangements for crop growing, the notice period is 1 month, but the period of notice must end at least 1 month after the end of the current annual cropping program. To terminate any other arrangements, a notice period of at least 1 month is required.

A tenancy from year to year cannot be terminated unless at least 6 months notice is given to the other party before the end of the tenancy period. The period of notice must end at least 1 month after the end of the annual cropping program.

These notice periods do not apply to termination for breach of the tenancy, or where the tenant and the owner have otherwise agreed on the amount of notice to be given.

Resolution of disputes

The NSW Civil and Administrative Tenancy Tribunal is an independent body which has the power to resolve disputes about agricultural tenancy. It uses alternative dispute resolution methods and is obligated to use its best endeavours to achieve a mutually acceptable agreement to any dispute.

The Act requires that applications be lodged at the NCAT within 3 months of the dispute arising, or within 3 months

of the end of the tenancy. However, applicants may request an extension of time when applying to the NCAT.

The NCAT cannot resolve disputes that involve amounts in excess of \$500,000. In these circumstances, parties should seek independent legal advice about their options.

Useful contacts

NSW Civil and Administrative Tribunal
Tel: 1300 00NCAT (1300 006228)
www.cc.ncat.nsw.gov.au

NSW Farmers' Association
Tel: 1300 794 000
www.nswfarmers.org.au

LawAccess NSW
Tel: 1300 888 529
www.lawaccess.nsw.gov.au