

Agricultural Tenancies Act

Agfact M3.5, first edition 1991
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This Agfact is a guide to the Agricultural Tenancies Act 1990, which took effect on 1 May 1991. Therefore, this information only applies to agricultural tenancies begun or renewed *on and after* 1 May 1991. Any such actions taken before 1 May 1991 are still bound by the Agricultural Holdings Act 1941 (*see box*).

The new Act updates and extends the principles set out in the Agricultural Holdings Act. It gives the owner and the tenant greater freedom to make a tenancy agreement tailored to meet the particular needs of both, and to deal with the realities of present-day agricultural practices.

OBJECTS OF THE ACT

1. It encourages the tenant and the owner to

- preserve and upgrade the farm;
- put their tenancy agreement in writing;
- reach agreed terms on the owner's right of entry and compensation for the tenant's fixtures, and include these terms in their tenancy agreement.
- reach agreed terms on the termination of the tenancy, and include these terms in their tenancy agreement, or, at least make sure that they know how to terminate their agreement and know what conditions it would set.

2. It provides

- fair and reasonable terms covering the owner and the tenant, where a tenancy agreement does not cover such terms;
- compulsory arbitration outside the court system, if there is a dispute between the owner and the tenant. The arbitration process is (as far as possible) quick, cheap and free of legal technicalities.



Old farmhouse, Glenn Innes

FARMS COVERED BY THE ACT

- one hectare or larger;
- used for agricultural purposes;
- occupied or used by a tenant under a tenancy agreement made *on or after* 1 May 1991.

THE AGRICULTURAL HOLDINGS ACT WHAT IT STILL GOVERNS

The Agricultural Holdings Act 1941, as amended in 1989, continues to apply to any agricultural tenancy begun or renewed *before* 1 May 1991.

For a general outline of its laws, see Agfact M3.3, *Agricultural Holdings Act*. Order it from your local NSW Agriculture office or (*1991 only*):

Publication Sales
 NSW Agriculture
 PO Box K220 (Rawson Place)
 Haymarket 2000
 (02) 217 6142/6143

The Act is also discussed in section 30 and Schedule 2 of the Agricultural Tenancies Act.

COMPENSATION TO TENANT

(part 2, division 1)

- Compensation (section 5) : for any improvements made by the tenant is based on the benefit that the improvements would bring to the next tenant. However, the estimate must take account of any allowances (whether in cash or kind) from the owner for the tenant to make the improvements, the financial resources of the owner and the tenant, and other matters. Sharefarming arrangements do not apply.
- Compensation for tenant improvements made with owner consent (section 6) : must be paid to the tenant in an agreed amount, unless the amount is judged as unfair. If there is no agreed amount, the owner must make a fair payment. (The Act does not define 'fair'; the negotiating parties are expected to decide between them, or seek arbitration.)
- Tenant improvements made without owner consent (section 7) : are permitted only if those improvements:
 - are listed in Schedule 1 of the Act (see box); or,
 - are approved by Regulations to the Act (to date there are none approved); or,
 - are first determined by arbitration to be suitable and desirable.
Only then may the owner be required to compensate the tenant (as per section 6).
- Compensation for a general improvement made by tenant (section 8) : must be paid by the owner if the tenant has managed the farm better than is required under the tenancy agreement or better than similar farms in the area are managed.
For example, increased milk production on a dairy farm may be evidence of a general improvement to the farm.
If the owner has already paid compensation for a particular improvement (such as those listed in Schedule 1) which has then contributed to the general improvement, the amount of compensation paid for that particular improvement is deducted from any compensation for the general improvement.
- Compensation for stored products (section 9) : must be paid by the owner at the end of the tenancy. 'Products' are any useful commodities, whether or not a product of the soil—grain, hay, fertiliser, machinery, pesticides, herbicides, etc.

SCHEDULE 1 IMPROVEMENTS

- drainage;
- making or improving necessary roads or bridges;
- clearing and removing stumps and logs;
- destroying noxious animals;
- destroying noxious weeds;
- making permanent subdivision fences;
- sowing pastures;
- applying fertilisers, liming materials and trace elements in accordance with the Fertilizers Act;
- making building repairs that the tenant thinks are necessary for the proper working of the farm—but only after the tenant has told the owner (i) what repairs are necessary, and (ii) that the tenant could do them, and the owner does not offer to make the repairs within a reasonable time. Such building repairs do not, of course, include those that the tenant is obliged to make under the tenancy agreement.
- repairing or re-erecting buildings to meet the requirements of the Dairy Industry Act 1979 or any other Act;
- repairing wells, bores, dams, reservoirs and ground tanks; and removing the silt.

COMPENSATION TO OWNER

(part 2, division 2)

- Compensation (section 10) : for any improvements made by the owner is based on the benefit that the improvements would bring to the tenant. However, the estimate must take account of any allowances (whether in cash or kind) from the tenant to the owner for the improvements made by the owner, the financial resources of the tenant and the owner, and other matters.
- Compensation for owner improvements made with tenant consent (section 11) : must be paid to the owner in an agreed amount, unless the amount is judged as unfair. If there is no agreed amount, the tenant must make a fair payment. (The Act does not define 'fair'; the negotiating parties are expected to decide between them, or seek arbitration.)
- Owner improvements made without tenant consent (section 12) : are permitted only if they are first determined by arbitration to be suitable and desirable; only then may the tenant be required to compensate the owner (as per section 11).

- **Compensation for deterioration of farm (section 13)** : must be paid to the owner if the tenant has not managed the farm to the standard required under a tenancy agreement or to the standard of similar farms in the area.

For example, decreased milk production on a dairy farm may be evidence of deterioration of the farm.

Compensation is based on the estimated fall in the property value, but is to be paid when the deterioration is first noted.

However, the owner cannot claim compensation if that option is *specifically disallowed* in the tenancy agreement, or if



the agreement *specifically allows* the use or practice (eg, a ploughing method) that caused the deterioration.

RIGHTS OF OWNERS AND TENANTS

(part 3)

- **The tenant's fixtures (section 14)** : that are not subject to a compensation claim by the tenant or the owner, or that cannot be subject to a compensation claim, may normally be taken by a departing tenant before leaving the farm or reasonably soon after.

However, the tenant may not take any fixture that replaced an owner's fixture, or any fixture the tenant was obliged to supply under a tenancy agreement or some other agreement.

The tenant must give reasonable notice to the owner (and any new tenant) before taking a fixture, as the owner has the right to buy the fixture but only if the tenant is told before the tenant's notice expires.

The tenant must not take any fixtures before satisfactorily completing all the agreed responsibilities as tenant. The fixtures must be removed without damage to other property, or any damage must be repaired. A 'fixture' includes a building.

- **The owner's right of entry (section 15)** : does not include the farm residence, unless the tenant agrees. The owner, or anyone authorised by the owner, may inspect the farm or undertake a duty or improvement, but must give reasonable advance notice, and visit at a reasonable time.

The Act does not affect any right of entry which the owner may have under any other law or in the tenancy agreement.

- **A record of the farm's condition (section 16)** : must be kept by the tenant and the owner if either requests it. A record of the tenant's improvements and removable fixtures must also be made by the tenant and the owner if either requests it.

Alternatively, they may ask the Director-General to appoint someone else to make and update the records(s), each paying half (or some other agreed proportion) of the service charge.

The records would usually be made at the start of the tenancy and at reasonable intervals throughout it, and must describe the condition of the land, buildings, fences, gates, roads, drains, cultivation, and must detail any improvements.

- **Accounts (section 17)** : must be kept (separately) by the tenant and the owner, and be a proper record of all money matters related to the tenancy. Tenant and owner may inspect each other's accounts, but must give reasonable advance notice and make the inspection at a reasonable time.
- **A tenancy agreement in writing (section 18)** : is the right of the tenant or the owner. Both need to sign the agreement.
- **Written notice of termination (section 19)** : is required of the tenant or the owner for all but a fixed term tenancy with no holding-over clause.

IMPORTANT NOTE

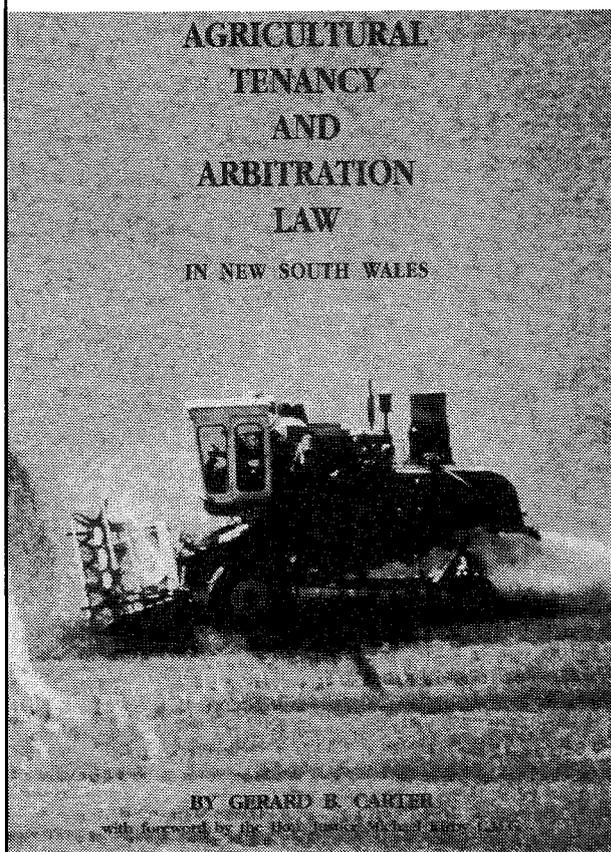
This Agfact gives only a general summary of some of the rights of owners and tenants under the Agricultural Tenancies Act 1990. Further information can be obtained from the:

- Agricultural Tenancies Act 1990;
- Agricultural Tenancies Regulation 1991;
- Commercial Arbitration Act 1984.

Copies of these may be bought from the:
NSW Government Bookshop
Goodsell Building, Chifley Square
Sydney 2000 Telephone (02) 228 8922

Nor does this Agfact give legal or other advice. Seek your lawyer's advice if you are proposing to enter into an agricultural tenancy; make improvements under an existing tenancy, or if you are involved in a dispute.

FURTHER READING



Agricultural tenancy and arbitration law in New South Wales,
by Gerald Carter,
Blackstone Press*
Sydney 1991

* 1/104 Ebley Street
Bondi Junction, NSW 2022
DX 12047 Bondi Junction
(02) 389 7677, fax (02) 369 1812

Gerald Carter, BEc LLB, presents a complete commentary on the applicable laws, procedures and forms for both the Agricultural Tenancies Act and the Agricultural Holdings Act. The relevant legislation is also reprinted.



All other tenancies cannot be terminated without at least a month's written notice; in the case of a sharecropping tenancy, the month's notice must commence only when the year's cropping program is complete. A tenancy from year to year requires a minimum notice of six months, and termination of a periodic tenancy (quarterly,

month to month, etc) requires notice of at least equal length as the period. For example, a tenancy from month to month would require one month's notice.

None of this applies (including the month's notice) if the tenancy is terminated for a breach of the tenancy agreement, or if there is another agreed period of notice.

ARBITRATION

(part 4)

- **Arbitration of disputes (section 20)** : over the provisions of the Act, or over a tenancy agreement, is available outside the court system.

A court only has jurisdiction over a dispute that cannot be referred to arbitration—or that has been withdrawn or dismissed from arbitration—because the dispute is beyond the powers of the arbitration committee (as given in the Act).

For example, arbitration does not cover:

- disputes over attempted evictions;
- attempts to recover rent;
- any type of dispute that may be covered in the Regulation under the Act. (To date, none are covered in the Regulation.)

If court hearings begin before the same dispute is referred to arbitration, a party to both proceedings must apply for a halt to arbitration proceedings.

- **The arbitrator(s) (section 21)** : comprise either a committee of three people, for **normal** arbitrations (*see box*), or one person, for **urgent** arbitrations (*see box*).

Arbitration procedures. An application for arbitration, whether normal or urgent, must be in the approved form; specimen applications showing the correct wording are available from the Department's Legal Branch. The completed form is delivered or posted to the Legal Branch for the attention of the Director-General. A copy of the application is also served on the other party to the dispute.

The Director-General then gives written notice to the owner and the tenant requiring both to independently nominate, within 21 days of the date of the notice, a peer committee member from a list of those available. If a nominated person is not available, the nominator has a further 21 days to choose another member.

If the owner or the tenant does not nominate a member within the allowed time, the Director-General may do so. Such nominations are regarded as being made by the defaulting party.

After the committee is nominated, the owner and the tenant are told the hearing date. The matter is usually heard at the court house nearest the farm.

Legal advice and representation. The owner and the tenant are entitled to seek the advice of his/her own solicitor or barrister before, during or after the dispute is heard; and, either may choose (with the chairman's permission) to be represented at the hearing by his/her own solicitor, barrister or agent. Alternatively, of course, both have the right to appear only in person at the hearing.

Awards. The committee's decision is called an 'award', and signed copies of it are given to the owner and the tenant.

If necessary, the award can be enforced through the court system.

NORMAL AND URGENT ARBITRATION

- **Normal** arbitrations are chaired by a solicitor or barrister employed by the Department (NSW Agriculture) and appointed by the Director-General.

The other two committee members are independently nominated by the owner and the tenant in the dispute, from a Departmental list of eligible owners and tenants.

- **Urgent** arbitrations may be heard by a single arbitrator qualified to chair an arbitration committee.

Urgent arbitration is available only for disputes that must be urgently resolved, as determined by the Director-General. For example, some disputes over proposed improvements, and whether they are suitable and desirable, may be considered urgent.

Applications for an urgent hearing must state proper reasons for the request.

Payment of committee members. The chairman's payment is covered by his normal departmental salary, but the owner and the tenant must individually pay the two committee members appointed by them. (Sometimes the arbitration committee may order the unsuccessful party, whether the owner or the tenant, to meet the payment of the other party's appointed member.)

The Minister decides the rate of payment. Current rates are available from the Legal Branch.

- **The time limit for applications (section 22):** is three months after the tenant has left the farm.

It may be extended by the owner and the tenant to an agreed limit, or, by the Supreme Court, but only if just cause is shown. Extra time is *not* readily granted, and applicants should make every effort to apply within the three months.

- **Orders (sections 24 and 25) :** for compensation, damages, or other (such as 'costs' or anything the committee considers appropriate), may be made by the arbitration committee or single arbitrator.

Compensation is awarded for improvements; damages are awarded for breach of duty—and may be awarded to the owner or the tenant for the other's breach of any duties under the Act or tenancy agreement.

Farm held by trustee owner. If the tenant of a trustee-held farm seeks an order for compensation, it is charged on the farm, and may be lodged with the Land Titles Office in the Register of Causes, Writs and Orders.

The charge is in force for as long as the award remains unpaid, and must be released on payment.

Costs. There are no fees payable to the Department for filing a request for arbitration, nor any other charges.

But the arbitration committee may order the unsuccessful party to pay the other party's costs—including payment of the other's nominated committee member, any fees for solicitors, barristers and valuers, and any witnesses' expenses.



- **Orders (section 27) :** are void. Agreements must not waive or annul any right, power or duty created by the Act, or in any way defeat the purposes of the Act.

- **Methods of serving documents (section 28) :** are various. The document may be served in person, on the owner or the tenant; or served on his/her solicitor or agent; or it may be delivered (by prepaid post or by hand) to the last known residence or place of business of the owner or the tenant; or dealt with in other ways permitted by law or as agreed between the owner and the tenant in their tenancy agreement.

DEFINITIONS UNDER THE ACT

- **tenant:** the person granted the right to tenancy of a farm by the owner of the farm; includes a sharefarmer and any person whose right to occupy or use the farm is granted by the tenant of that farm. It does not refer to an employee of the owner.
- **tenancy:** a lease or licence; an agreed lease or licence within a tenancy agreement; a tenancy at will (generally a verbal or 'handshake' agreement); a sharefarming agreement, or any other arrangement giving someone, other than the owner, the right to live on and use the owner's farm.
- **agricultural purposes:** grazing, dairying, pig farming, poultry farming, viticulture, orcharding, beekeeping, horticulture, growing of vegetables or other crops, forestry, or any combination of these.

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