NEW SOUTH WALES – AGRICULTURAL TENANCIES ACT 1990

The Agricultural Tenancies Act 1990 applies to all agricultural tenancies in New South Wales. The Act regulates aspects of the rights between agricultural landowners and their tenants and sharefarmers. It applies to a "tenancy" of a "farm".

- "Farm" is defined as a piece of land not less than 1 hectare in area occupied or used by a tenant, and which is wholly or mostly used in intended to be used for "agricultural purposes": s 4(1)
- "Agricultural purposes" is broadly defined to mean "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": s 4(1)
- "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: s 4(1)

Relevant provisions:

- Section 14 sets out the notice requirements for terminating a tenancy of a "farm". However, these requirements do not apply to termination of a tenancy for breach, or where the parties have otherwise agreed on the notice to be given.
- Part 4 provides a mechanism for resolution of disputes by the parties themselves (outside the court system), through mediation or arbitration. The procedures for arbitration aim to be quick and cheap with minimal legal technicality.
- Section 10 gives a tenant of a "farm" limited rights to remove fixtures which they have installed and for which they do not claim, or are not entitled to claim, compensation.
- Sections 6-8 gives the tenant of a "farm" rights to compensation for "improvements" the tenant has carried out during the course of the tenancy. An "improvement" is any work or thing that would be of value to an incoming tenant: s 4(1). However, this

> statutory right to compensation does not apply where the tenant has made the improvements under an agreement which itself proved for recompense.[1]

The Act does not have the power to enable recovery of outstanding rent or lease payments. Such matters should be directed to the Local Court.

The Act is administered by the Director-General of the NSW Department of Primary Industries who can assist parties with proceedings under the Act, including finding a mediator and commencing proceedings. General Information on the Act is published on their website.

Other relevant legislation includes the Agricultural Tenancies Regulation 2006 and the Commercial Arbitration Act 1984 No 160.

To date, no other Australian jurisdiction has adopted legislation to regulate the rights between agricultural landowners, their tenants and sharefarmers equivalent to that in New South Wales. However, most states have legislation that regulates agricultural leases to varying extents. For example, **Queensland** has the Property Law Act 1974 (Part 8, Division 6), **Tasmania** has the Landlord and Tenant Act 1935, **South Australia** has the Landlord and Tenant Act 1936, and **Victoria** has the Landlord and Tenant Act 1958.

The content of each of these Acts is generally similar, yet distinct from the more modern and comprehensive New South Wales Act. Indeed, unlike NSW, these statutes are not limited to agricultural leases, yet they do include general provisions relating to the construction and/or improvement of fixtures by a tenant, and the tenant's right to compensation at the completion of the tenancy.

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[1] *Lismore City Council v Green Gro Pty Ltd* (2003) 56 NSWLR 204 at 209.