

SOUTH AUSTRALIA

**THE AGRICULTURAL HOLDINGS ACT, 1891**

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**THE AGRICULTURAL HOLDINGS ACT, 1891**

being

The Agricultural Holdings Act, 1891, No. 521 of 1891  
[Assented to 19 December 1891]

**An Act to amend the law relating to agricultural holdings.**

BE IT ENACTED by the Governor of the Province of South Australia, by and with the advice and consent of the Legislative Council and House of Assembly, in this present Parliament assembled, as follows:

PART I  
PRELIMINARY

**Short title**

1. This Act may be cited for all purposes as *The Agricultural Holdings Act, 1891*.

**Division of Act into parts**

2. This Act shall be divided into four parts, relating to the following subject matters:—

PART I.	Preliminary—Sections 1 to 5.
PART II.	Compensation for Improvements—Sections 6 to 22.
PART III.	Sales of Holdings—Sections 23 to 26.
PART IV.	General Provisions—Sections 27 to 34.

**Interpretation**

3. In this Act and in the regulations for the time being in force thereunder, unless the context or subject matter requires a different construction, the following words in inverted commas shall have the meanings hereinafter respectively assigned to them, that is to say—

"compensation" shall mean compensation payable under this Act:

"determination of tenancy" shall mean the cesser of a tenancy by effluxion of time, or from any other cause:

"holding" shall mean any parcel of land held by a tenant under a landlord:

"improvements" shall mean any useful improvements which are suitable and desirable, and increase the value of a holding to an incoming tenant:

"judge" shall mean a judge of the Supreme Court:

"landlord" shall mean the immediate landlord, or the person for the time being entitled to receive the rents and profits or take possession of the holding, or the owner of the holding; and includes the successors in title to a landlord, and his or their attorney or agent residing within the province of South Australia:

"local court" shall mean the local court of full jurisdiction nearest to the holding in respect of which any proceedings under this Act arise; and in case there shall be two or more such courts substantially equidistant from such holding, then such one of such courts as the party having the right under this Act to apply to a court shall select:

"prescribed" shall mean prescribed by the regulations for the time being in force under this Act:

3.

"tenant" shall mean a person occupying land under a contract of tenancy, commencing after the coming into operation of this Act, and shall include the executors, administrators, assigns, legatees, devisees, next of kin, guardian, committee of the estate in lunacy, official receiver, or trustee in insolvency, and trustee under a statutory deed of assignment for the benefit of his creditors of a tenant, and any person deriving title from a tenant; and the right to compensation for improvements and to sell his tenancy, conferred upon a tenant by this Act, shall enure for the benefit of such executors, administrators, assigns, and other persons aforesaid.

**Act to apply to certain lands only**

4. This Act shall apply only to lands alienated in fee simple from the Crown, and which are wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or are in whole or in part cultivated as market gardens, orchards, or vineyards.

**Act not to apply to tenancies over twenty-one years**

5. This Act shall not apply to any tenancy under a lease for a term of more than twenty-one years at a fixed rent.

PART II  
COMPENSATION FOR IMPROVEMENTS

**General right of tenant to compensation for improvements**

6. Subject as in this Act mentioned, where a tenant shall make any improvements on his holding, he shall be entitled, on quitting his holding at the determination of his tenancy, to obtain from the landlord as compensation for such improvements, such sum as fairly represents the value of the improvements to an incoming tenant.

**Tenant to give notice of intended improvements**

7. (1) Compensation shall not be payable unless the tenant has, not more than three months nor less than two months before beginning to execute such improvements, given to the landlord the prescribed notice of his intention to make the improvements. And the landlord may, within one month from the giving of such notice, deliver to the tenant a dissent, in writing, to such intended improvements, and require the matter in difference to be referred to arbitration, and thereupon a reference may be had in manner provided by this Act.

**Necessity of improvements to be decided by arbitration**

(2) If the referees or umpire shall determine that the improvements specified in the tenant's notice, or some of them, will increase the value of the holding to an incoming tenant, and be a suitable and desirable improvement to the holding, they shall make an award accordingly, and the tenant shall be entitled to compensation for the improvements which he shall make in accordance with such award.

**Improvements disallowed by arbitrators not to be paid for**

(3) If the referees or umpire shall determine that such improvements, or some of them, will not increase the value of the holding to an incoming tenant, and are unsuitable and undesirable improvements to the holding, the tenant shall not, if he executes any improvements which have been disallowed, be entitled to any compensation therefor.

**Parties may agree as to terms on which improvements are to be made**

8. If the landlord and tenant agree on the terms as to compensation on which the improvements are to be executed, then the compensation so agreed upon shall be deemed to be substituted for compensation under this Act.

**If no agreement come to, landlord may execute improvements and charge tenant rent**

9. If no such agreement shall be come to within one month after such award, or where there is no such reference as in section 7 provided, then, within one month after the notice shall have been given, the landlord may, unless the notice is previously withdrawn, undertake to execute the improvements himself, and may execute the same accordingly in any reasonable and proper manner, and may charge the tenant interest after the rate of five dollars per centum per annum on the outlay incurred in executing the improvements, such interest to be payable and recoverable as rent, in the same manner and at the same times as the rent in respect of the holding is payable and recoverable.

**In default tenant may execute same**

10. In default of any such undertaking by the landlord within two months after the notice or award shall have been given, and also in the event of the landlord failing to comply with his undertaking with all reasonable dispatch, the tenant may execute the improvements himself, and shall, in that case, be entitled to compensation in respect thereof.

**Allowances to landlord against improvements**

11. In ascertaining the amount of compensation payable to the tenant in respect of improvements, there shall be taken into account against such improvements—

- (a) any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvements; and
- (b) any sum due to the landlord from the tenant for rent, or otherwise, and compensation to the landlord by way of damages for any waste and for any breach of covenant, contract, or agreement connected with the tenancy, committed or permitted by the tenant, and also any rates, taxes, or assessments due in respect of the holding, to which the tenant is liable as between him and the landlord:

**But no allowances for waste or breach committed more than two years**

But a landlord shall not be entitled to have taken into account against compensation any waste or breach by the tenant in relation to a matter of husbandry or cultivation committed or permitted more than two years before the determination of the tenancy.

**Notice of claim and counter claim**

12. A tenant claiming compensation shall give the prescribed notice to the landlord of his intention to make such claim. Where a tenant gives such notice, the landlord may, in the prescribed manner, give a counter notice to the tenant of his intention to make a counter claim in respect of any matters which he is under the last preceding section entitled to have taken into account against improvements.

**Differences to be settled by arbitration**

13. If the landlord and tenant do not, within one month after the determination of the tenancy, agree on the amount and mode and time of payment of the compensation to be paid by either party to the other in respect of such claims, the difference shall be settled by a reference. The reference may be to either one referee or two referees and an umpire, who shall be appointed and shall proceed and make the award in the prescribed manner and within the prescribed time.

**Submission not to be revoked**

14. The delivery to a referee of his appointment shall be deemed a submission to a reference by the party or parties appointing him, and neither party shall have power to revoke a submission or the appointment of a referee without the consent of the other.

**Referees may call for witnesses and evidence**

15. The referee, or referees, or umpire may call for the production of any sample, voucher, document, or writing or other evidence, matter, or thing in the possession or power of either party, and which, to the referee, or referees, or umpire shall seem necessary for the determination of the matters referred; and may take the examination of the parties and witnesses on oath or affirmation, and may administer oaths and take affirmations; and if any person so sworn or affirming wilfully and corruptly gives false evidence he shall be guilty of perjury.

**Costs to be in discretion of arbitrators, but to be limited by regulation**

16. The costs of and attending the reference, including the remuneration of the referee, or referees and umpire, and all other proper expenses, shall be borne and paid by either party wholly or in part, or by the parties in such proportion as the referee, referees, or umpire shall direct, but shall not exceed the prescribed scale of costs.

**Award**

17. The award shall be made within the prescribed time, and shall not award a sum generally for compensation, but shall, so far as possible, specify—

- (a) the several improvements in respect whereof compensation is awarded, and the several acts, matters, and things taken into account against such compensation:
- (b) the time at which each improvement, act, matter, or thing was done, executed, committed, or permitted, or became due:
- (c) the sum awarded in respect of each improvement, act, matter, or thing:

and shall fix a day not sooner than one month after delivery of the award for the payment of the money awarded for compensation, costs, or otherwise.

**Award not to be removed into Supreme Court**

18. A submission or award shall not be made a rule of the Supreme Court, or be removable by any process into such court, and an award shall not be questioned by any court of law.

**Compensation and costs, how recoverable**

19. Where any money agreed or awarded to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it was agreed or awarded to be paid, it shall be recoverable by action in any court of competent jurisdiction.

**Trustees not to be personally responsible**

20. Where the landlord is a person entitled to receive the rents and profits of any holding as trustee, or otherwise than for his own benefit, the amount due from such landlord in respect of compensation, costs, or otherwise under this Act, shall be charged and recovered as follows, and not otherwise:—

- (a) The amount so due shall not be recoverable personally against such landlord, nor shall he be under any liability to pay such amount, but the same shall be a charge on and recoverable against the holding:
- (b) If the landlord shall not, within one month after the time when the compensation was agreed, awarded, or ordered to be paid, pay to the tenant the amount due to him, then after the expiration of such one month the tenant shall be entitled, on application to the local court, to obtain from the court, in favour of the tenant, a charge on the holding to the amount of the sum due and of the costs of obtaining the charge:
- (c) The local court shall, on proof of the tenant's title to have a charge made in his favour, make an order charging the holding or any part thereof with payment of the amount of the charge, including costs, with such interest, and by such instalments, and within such time, and with such directions for giving effect to the charge and the due payment thereof, as the court may think fit.

**Order, how enforceable**

21. Every such order shall, on default being made in complying with the terms thereof, be enforceable in accordance with the directions contained in such order.



**Change of tenancy not to affect right to compensation**

**22.** A tenant who has remained on his holding during a change of tenancy shall not thereafter, on quitting his holding at the determination of tenancy, be deprived of his right to compensation in respect of improvements by reason only that such improvements were made during a former tenancy, and not during the tenancy at the determination of which he is quitting.

PART III  
SALES OF HOLDINGS

**Tenants to have right of sale of holdings**

23. The tenant for the time being of any holding may, notwithstanding any covenant, condition, or agreement to the contrary, and without incurring any forfeiture or other penalty by so doing, sell his tenancy, subject to the following conditions:—

- (a) Except with the consent of the landlord, the holding shall not be subdivided:
- (b) The tenant shall give the prescribed notice to the landlord of his intention to sell his tenancy, and if he fails to do so he shall not be entitled to the benefit of this part of this Act:
- (c) On receiving such notice the landlord may elect to purchase the tenancy for the consideration agreed to be paid by the proposed purchaser, or the landlord may refer the question as to the amount to be paid by him for the tenancy to arbitration, and in either case shall be entitled to set off against such consideration the same allowances as under Part II of this Act he is entitled to have taken into account against improvements on a tenant quitting his holding on the determination of his tenancy:
- (d) Where the landlord does not within the prescribed period elect to exercise his right of purchase, the sale may (subject to the landlord's right of refusal hereinafter mentioned) be completed:

**Landlord may give notice of objection**

- (e) The landlord may on reasonable grounds refuse to accept the proposed purchaser as tenant, and shall give the tenant the prescribed notice of such refusal, and in case of dispute the reasonableness of the landlord's refusal shall, on the application of either party, be decided by arbitration.

**Landlord may give notice of claim**

24. The landlord, in case he does not elect himself to purchase the tenancy, may within the prescribed period give the tenant notice of any sum which he claims for rent or otherwise and for compensation by way of damages for any injury he shall have sustained or may sustain in respect of waste or breach of covenant, agreement, or condition of or relating to the tenancy.

**Disputes to be settled by reference**

25. In case any difference shall arise as to the amount of the allowances to a landlord, or as to any claim by a landlord, under this part of this Act, the same shall be settled by a reference in the same manner as is provided for the settlement of disputes by reference under Part II of this Act.

**Landlord's claim to be settled before sale completed**

26. In no case shall the tenant without the consent of the landlord be entitled to complete the sale unless the landlord's claim shall have been adjusted, and the amount (if any) agreed upon, awarded, or ordered to be paid, shall have been paid.

PART IV  
GENERAL PROVISIONS

**Guardian may be appointed**

27. Where the landlord or tenant is an infant without a guardian, or is of unsound mind, not so found by inquisition, the Supreme Court or local court, on the application of any person interested, may appoint a guardian of the infant or person of unsound mind, for the purposes of this Act, and may change the guardian if and as occasion requires.

**Incoming tenant's claim for compensation reserved**

28. Where an incoming tenant has paid to an outgoing tenant any consideration for improvements in respect of which a landlord would be liable under this Act to pay compensation on the determination of the tenancy, such incoming tenant shall be entitled, on quitting or selling the holding, to obtain compensation in respect of such improvements in like manner (if at all) as the outgoing tenant would have been entitled if he had remained tenant of the holding and quitted the holding at the time at which the incoming tenant quits the same.

**Contract in avoidance of Act to be illegal**

29. Every covenant, contract, agreement, or condition made or entered into, in avoidance of, or whereby a tenant may be deprived of his right to claim compensation for improvements, or prohibited from or restricted in making improvements on his holding, shall, so far as it provides for such avoidance, deprivation, evasion, prohibition, or restriction, be absolutely void.

**Reservation of rights and contracts**

30. Except as in the last preceding section expressed, nothing in this Act contained shall take away, abridge, or prejudicially affect any power, right, or remedy of a landlord, tenant, or other person, vested in or exercisable by him by virtue of any other Act or law, or under or in respect of any contract, or of any waste emblements, tillages, fixtures, rent, rates, taxes, assessments, or other things.

**Costs may be taxed**

31. All costs payable under this Act shall be subject to taxation by the Master of the Supreme Court, or the clerk of the local court, on the application of either party, and every such taxation shall be subject to review.

**Fees payable**

32. The prescribed fees shall be payable in respect of proceedings in court or before a judge relating to matters arising under this Act.

**Regulations in schedule to be regulations to this Act**

33. The regulations in the schedule hereto shall be the regulations to this Act until the same are rescinded or amended.

**Power to make and alter regulations**

34. The Governor may, from time to time, by proclamation in the *Government Gazette*, make, rescind, amend, alter, or add to regulations for the purposes of this Act to regulate and prescribe—

- (a) the appointment of referees and umpires, the procedure for and the conduct of references, the representation of parties thereon, and the making and delivery of awards:
- (b) the proceedings on applications to the local court:

10.

- (c) the mode of service, including substituted service, of notices:
- (d) the proceedings in appeals:
- (e) the proceedings on special cases stated for the decision of the Supreme Court:
- (f) the forms to be used for the purposes of this Act:
- (g) the scale of costs and fees to be charged or allowed in respect of any matter or proceeding whatsoever, whether to the parties to any proceeding or to the referee, or referees, or umpire, or to any witnesses, experts, or persons whomsoever, and the taxation and review of such costs and fees:
- (h) the attendance of witnesses before the referee, or referees, or umpire, and upon applications to the court, and upon appeals:
- (i) any other matters or things in respect to which it may be expedient to make regulations for the purpose of carrying this Act into effect:

**Proviso:**

**Regulations to be laid before Parliament**

Provided that no regulations made in pursuance of this Act shall be of any force or effect until the same shall have been laid before Parliament for thirty days.

SCHEDULE  
REGULATIONS

*Notices before Reference*

1. Every notice by a tenant of his intention to make improvements on his holding shall specify the improvements intended to be made, the manner in which he proposes to do the intended work, and the estimated cost thereof.
2. Every notice of claim for compensation by a tenant shall be given to the landlord two months at least before the determination of the tenancy.
3. Every notice of counter claim by the landlord, on the tenant quitting his holding on the determination of his tenancy, shall be given to the tenant before the determination of the tenancy or within fourteen days thereafter.
4. Every notice by a tenant of his intention to sell his holding shall state the name, address, and occupation of the intended purchaser, and the consideration agreed to be paid.
5. Notice by the landlord of his election to purchase a tenancy, or of his refusal to accept the proposed purchaser as his tenant, shall be given to the tenant within ten days after the service of the tenant's notice of his intention to sell. The notice of refusal shall state the grounds of refusal, and no objection not so stated shall be entertained by the local court.
6. Every notice of claim by a landlord on the tenant selling his holding shall be given to the tenant within seven days after the expiration of the time during which the landlord may elect to purchase the tenancy, or after the determination against him of the reasonableness of his refusal to accept the proposed purchaser as his tenant.
7. All notices of claim and counter claim shall state as far as reasonably may be the particulars and amount of each item of the claim or counter claim.

*The Reference*

8. If the parties so agree, the reference may be to a single referee, to be appointed by them jointly.
9. If before award the single referee dies or becomes incapable of acting, or for seven days after notice from either party requiring him to act fails to act, the proceedings for reference shall begin afresh as if no referee had been appointed.
10. If the parties do not agree to a single referee, each of them shall appoint a referee.
11. If before award one of two referees dies or becomes incapable of acting, or, for seven days after notice from either party requiring him to act, fails to act, the party appointing him shall appoint another referee.
12. Notice of every appointment of a referee by either party shall be given to the other party within seven days after the appointment.
13. If for fourteen days after notice by one party to the other to appoint a referee, or another referee, the other party fails to do so, then, on the application of the party giving the notice, the local court shall, within fourteen days, appoint a competent and impartial person to be a referee.
14. The Governor in Council shall, immediately upon the passing of this Act, appoint one or more person or persons to be an official umpire or umpires.
15. The official umpire residing nearest to the holding in respect of which any reference arises shall be the umpire upon such reference.
16. The referee, or referees, or umpire shall appoint a time and place for proceeding with the reference, and may from time to time adjourn any reference, and whenever necessary make a fresh appointment, and shall give at least one clear day's notice of any appointment to both parties. No notice need be given of any adjournment. The evidence adduced upon every reference shall be reduced into writing, and certified by the referee, or referees, or umpire, and either party shall be entitled to a certified copy thereof on payment of five cents per folio of seventy-two words.

12.

17. If after notice given either party shall fail to attend on a reference, the referee, or referees, or umpire may proceed *ex parte*.

*The Award*

18. A single referee shall make his award in writing, ready for delivery within twenty-one days after his appointment.

19. Two referees shall make their award in writing, ready for delivery within twenty-one days after the appointment of the last appointed of them, or within such extended time (if any) as they from time to time jointly fix by writing, but so that they make their award ready for delivery within a time not exceeding in the whole one month after the appointment of the last appointed of them.

20. Where two referees are appointed, and act, if they cannot agree, or if they fail to make their award within the time aforesaid, then on the delivery of notice by them or either of them to the umpire that they cannot agree, or if no such notice be previously given, then upon the expiration of the time hereinbefore limited for making their award their authority shall cease, and thereupon the matters referred to them shall stand referred to the umpire.

21. The umpire shall make his award in writing, ready for delivery within twenty-one days after the matters referred became referred to him, or within such extended time (if any) as the local court on the application of the umpire or of either party shall from time to time appoint.

22. The referee, referees, or umpire shall forthwith, after the award is ready for delivery, give notice thereof to both parties.

*Charging Orders*

23. Seven days' notice at the least shall be given by the party intending to apply for the order to the other of them, and also to the clerk of the local court, of his intention to apply for an order charging any money upon a tenancy.

*General*

24. All applications to the local court to appoint a referee or guardian, or to extend the time for making an award, or to decide the reasonableness of a landlord's refusal to accept a proposed purchaser as his tenant, shall be made upon notice specifying the nature of the application, and the time and place at which it is intended to make the same. Every such notice shall be served upon the opposite party and the clerk of the court seven clear days at least before the time specified.

25. The power of the local court to appoint referees, and to extend the time for making awards, may be exercised by the special magistrate of the court, and may, by consent of the parties, be exercised by the clerk of the court.

26. Every notice, appointment, request, demand, or other instrument under the foregoing Act or these regulations shall be in writing, and may be served on the person to whom it is to be given personally or by leaving it for him at his last known place of abode or business in South Australia, or by sending it through the post office in a prepaid letter addressed to his place of abode or business (wherever situate). Where service is effected through the post, service shall be deemed to be made at the time when the document would be delivered in the ordinary course of post. A certificate purporting to be under the hand of the Postmaster-General of South Australia, stating the time when a document posted on a named day at a named place would, in the ordinary course of post, be delivered at any other place, shall be *prima facie* evidence of the fact certified. Service in manner aforesaid upon the attorney or agent authorized to receive the rents and profits of the holding shall be deemed service upon his principal, if such principal be absent from the province at the time of such service.

*Costs*

27. The costs of reference and the remuneration of the referee, referees, and umpire, and of witnesses, shall not exceed the following:—

*Referee, Referees, and Umpire*

	\$ c
Each referee and umpire for each day whilst engaged upon any reference . . . . .	2.10
Mileage (one way) per mile . . . . .	0.05

13.

*Witnesses*

Labourers, per day .....	0.70
Women and children under 16, per day .....	0.50
All other witnesses per day .....	0.90
Mileage to each witness per mile (one way) .....	0.05

SOLICITORS' CHARGES

*\*Reference*

Where the amount allowed for compensation for improvements or for damages, and the amount (if any) allowed against compensation shall

not exceed \$200 .....	5 per cent on such amount
On the next \$400 .....	2½ " "
On the next \$400 .....	1 " "
On any excess above \$1 000 .....	½ " "

\* The above scale shall be inclusive of all counsel's fees, but exclusive of allowances to referees, umpires, and witnesses, and of court fees.

COURT FEES

	\$ c
On every application to appoint a referee, or umpire, or guardian, or to extend the time for making an award .....	0.50
On every charging order .....	1.00
On taxation or review of costs .....	0.50
On executions (besides mileage of 10c per mile one way) .....	1.00