

AUSTRALIAN CAPITAL TERRITORY
DIVIDING FENCES ORDINANCE 1981
EXPLANATORY STATEMENT

No.39 of 1981

The Dividing Fences Ordinance provides a means whereby fencing disputes between lessees of adjoining parcels of land may be resolved. The legislation constitutes a code establishing the respective rights and liabilities of neighbours relating to the erection, repair or replacement of dividing fences.

Sections 1 and 2 of the Ordinance deal with interpretation provisions.

Section 3 renders the Dividing Fences Act 1902 (N.S.W.) inoperative in the A.C.T.

Section 4 permits an occupier of a parcel of land to apply to the Court of Petty Sessions ("the Court") for a determination to be made regarding the erection of a dividing fence. The Court will consider an application after an occupier of a parcel of land has requested the occupier of an adjoining parcel of land to join in the erection of a dividing fence and the latter has either refused to agree to the erection of the fence, or the parties cannot agree on a matter relating to its construction. Upon receipt of an application made pursuant to the proposed section, the Clerk of the Court is required to fix a date, time and place for the determination of the application and to notify the parties accordingly.

Section 5 empowers the Court to consider an application and determine the nature of the fence to be constructed, its location, the party to be responsible for its construction and the amount of and the manner in which the other party should contribute towards costs. Sections 5(2) and 5(3) ensure that where one of the parties to an application requires that a basic fence be erected, rather than a more elaborate and expensive one, then that party's liability will not exceed an amount that would have been payable had a basic fence been erected.

Section 6 empowers the Court to consider an application made by an occupier of a parcel of land where a dividing fence is in need of repair or replacement. The Court will consider an application provided an occupier has either refused to join in the repair or replacement of a dividing fence when requested by an adjoining occupier or where both occupiers cannot agree upon a matter relating to the repair or replacement as the case may be. The section also provides that in order to prevent the escape of animals, an occupier may effect repairs or replacement immediately without serving the necessary notice on the occupier of the adjoining parcel. Once an application made

pursuant to section 6 is received by the Clerk of the Court, a date, time and place for the determination of the application will be fixed and the parties notified accordingly.

Section 7 provides that when an application is made pursuant to section 6, the Court will determine whether the fence requires repair or replacement, and, if so, which party or parties should contribute towards the cost of repairs or replacement, the amount to be contributed, the nature of the fence, which party should be responsible for effecting the repair or replacement, and the manner of payment. In determining costs, the Court will be required to adopt the principle that the cost of repairing or replacing the fence should be borne by the parties in equal proportions unless the circumstances render it just that one party bear a greater proportion of the cost than the other party.

Section 8 of the Ordinance provides a procedure whereby a variation of a determination may be made. An occupier seeking a variation need only submit an application to the Court which will then conduct an inquiry into the facts and circumstances of the matter.

Section 9 empowers the Court to make an order respecting costs where the Court is satisfied that the application for a determination by the Court was occasioned by the unreasonable conduct of the party other than the applicant.

Section 10 provides that where the Court has determined that a person contribute to the cost of erecting, repairing or replacing a fence, and the time for making the contribution has expired without payment being made, the person entitled to receive the contribution may obtain a further order from the Court requiring payment to be made. The person entitled to payment will then be able to obtain those costs as if they were a debt recoverable under the Court of Petty Sessions Ordinance 1930.

Section 11 provides that where an occupier has erected a fence and the adjoining parcel of land subsequently becomes a parcel of land within the meaning of the Ordinance, the occupier who erected the fence may make an application to the Court for a determination to be made. Upon receipt of an application, the Clerk of the Court will fix a date, time and place for the determination of the application, and advise the parties accordingly.

In considering an application, the Court is required by section 12 to determine whether it is reasonable that a contribution be made towards the erection of the fence, and, if so, the amount to be contributed, and the

manner in which and the time within which the amount should be paid to the applicant.

Section 13 provides that in holding an inquiry under the Ordinance, the procedures adopted will be at the discretion of the Court. Section 13 also requires that the Court provide each party with an opportunity to be heard. However, where a party fails to attend at the stipulated time, the matter may be heard ex parte, provided the Court is satisfied that the proper notice indicating the date, time and place of inquiry was served on that person.

Section 14 allows a party to have legal representation or be represented by an agent.

Sections 15 to 21 deal with interpretation and procedural matters.

Section 22 enables the Court when making a determination under the Ordinance, to also give appropriate directions in relation to the entry of persons upon land for the purpose of undertaking the necessary erection, repair or replacement of a dividing fence.

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