



New South Wales

Dividing Fences and Other Legislation Amendment Act 2008 No 72

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New South Wales

Dividing Fences and Other Legislation Amendment Act 2008 No 72

Act No 72, 2008

An Act to amend the *Dividing Fences Act 1991* and the *Crown Lands Act 1989* to make further provision with respect to dividing fences and to amend the *Access to Neighbouring Land Act 2000* to make further provision with respect to costs of an application for an access order. [Assented to 28 October 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Dividing Fences and Other Legislation Amendment Act 2008*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Dividing Fences Act 1991 No 72

The *Dividing Fences Act 1991* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Dividing Fences Act 1991

(Section 3)

[1] Section 3 Definitions

Insert “(except as provided by paragraph (c))” after “retaining wall” in the definition of *fence*.

[2] Section 3, definition of “fencing work”

Insert “(including the trimming, lopping or removal of vegetation)” after “preparation of land” in paragraph (b) of the definition.

[3] Section 7 Contribution as between adjoining owners—generally

Insert after section 7 (2):

- (3) An adjoining owner who desires to carry out the trimming, lopping or removal of vegetation (as referred to in paragraph (b) of the definition of *fencing work* in section 3) for a purpose other than the provision of a sufficient dividing fence is liable for the expenses of carrying out the work to the extent to which those expenses are attributable to work done for that other purpose.

[4] Section 14 Orders as to fencing work

Insert “or the amount that each adjoining owner is liable to pay for that work” after “re-apportioned” in section 14 (1) (c).

[5] Section 24 Recovery of money payable

Insert after section 24 (2):

- (3) A local land board may, on the application of an adjoining owner, make an order determining an amount that the other adjoining owner is required or liable to pay under this Act (other than an amount the subject of an order by the Local Court under this Act).
- (4) The amount (including any costs awarded against the other adjoining owner under section 23) may be certified by the Chairperson of the local land board.
- (5) A certificate given under subsection (4) must identify the person liable to pay the certified amount.
- (6) If a certificate given under subsection (4) is filed in the registry of a court having jurisdiction to give judgment for a debt of the same amount as the amount stated in the certificate, the certificate operates as such a judgment.

[6] Section 26 Act not to affect agreements etc, retaining walls or other Acts

Insert “or fencing work” after “fences” in section 26 (c).

[7] Schedule 1 Savings, transitional and other provisions

Insert before clause 1:

Part 1 Preliminary

1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Dividing Fences and Other Legislation Amendment Act 2008

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

[8] Schedule 1, Part 3

Insert after clause 2:

**Part 3 Provision consequent on enactment of
Dividing Fences and Other Legislation
Amendment Act 2008**

3 Order under section 14 specifying amount to be paid

The amendment made to section 14 (1) (c) by the *Dividing Fences and Other Legislation Amendment Act 2008* extends to proceedings begun before the commencement of that amendment, but not so as to affect any determination of a Local Court or local land board before that commencement.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Access to Neighbouring Land Act 2000 No 2

[1] Section 27 Costs

Omit section 27 (1). Insert instead:

- (1) The costs of an application for an access order are payable by the applicant for the order, subject to any order of the Local Court to the contrary.

[2] Section 27 (2) (a)

Omit section 27 (2) (a) and (b). Insert instead:

- (a) the conduct of the parties, including any attempts by the parties to reach agreement before the proceedings and whether the refusal to consent to access was unreasonable in the circumstances,

[3] Section 39

Insert after section 38:

39 Savings, transitional and other provisions

Schedule 1 has effect.

[4] Schedule 1

Insert after section 40:

Schedule 1 Savings, transitional and other provisions

(Section 39)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Dividing Fences and Other Legislation Amendment Act 2008
(but only to the extent to which it amends this Act)

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- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provision consequent on enactment of Dividing Fences and Other Legislation Amendment Act 2008

2 Costs

Section 27 (1) and (2) (a), as substituted by the *Dividing Fences and Other Legislation Amendment Act 2008*, extend to an application for an access order made before the substitution of those provisions, but not so as to affect any determination of the Local Court made before that substitution.

2.2 Crown Lands Act 1989 No 6

[1] Schedule 2 Powers and procedures of local land boards

Insert at the end of clause 2 (2):

- applications under the *Dividing Fences Act 1991*.

[2] Schedule 2, clause 2 (3)

Insert after clause 2 (2):

- (3) A Chairperson alone may constitute a quorum for the purpose of deciding or otherwise dealing with an application under the *Dividing Fences Act 1991* only if:
- (a) the land to which the application relates is in:
 - (i) the Metropolitan, Penrith, Picton or Windsor land district, or
 - (ii) an area that, in the opinion of the Senior Chairperson, is predominantly residential, and

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Schedule 2 Amendment of other Acts

- (b) in the case of any Chairperson other than the Senior Chairperson—the Senior Chairperson has given his or her written authorisation for a Chairperson to constitute a quorum for that particular application or a class of applications to which the application belongs.

[Agreement in principle speech made in Legislative Assembly on 11 April 2008
Second reading speech made in Legislative Council on 21 October 2008]

BY AUTHORITY