

Queensland



DIVIDING FENCES ACT 1953

**Reprinted as in force on 22 December 1993
(includes amendments up to Act No. 76 of 1993)**

Reprint No. 1

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the Office of the Queensland Parliamentary Counsel
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Information about this reprint

This Act is reprinted as at 22 December 1993. As required by section 5 of the Reprints Act 1992, it—

- shows the law as amended by all amendments that commenced on or before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the Reprints Act 1992, the reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the Reprints Act 1992, to do the following—

- use citations and references permitted by Division 2 of that Act;
- express gender specific provisions in a way consistent with current legislative drafting practice as permitted by section 24 of that Act;
- correct spelling as permitted by section 26(1) of that Act;
- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- use conjunctives and disjunctives consistent with current legislative drafting practice as permitted by section 28 of that Act;
- relocate marginal or cite notes as permitted by section 34 of that Act;
- use aspects of format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;
- omit provisions that are no longer required as permitted by section 36 of that Act;
- omit unnecessary referential words as permitted by section 41 of that Act;
- omit the enacting words as permitted by section 42A of that Act;
- use the numbering and renumbering of provisions and references permitted by section 43 of that Act.

Also see Endnotes for—

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

Queensland



DIVIDING FENCES ACT 1953

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	3
4	Act not to apply to unalienated Crown land	3
5	Act not to affect agreements	4
6	Definitions	4
PART 2—CONSTRUCTION OF DIVIDING FENCES		
7	Liability of owners of adjoining lands to fence	6
8	Service of notice to fence	6
9	Proceedings consequent on notice to fence	7
10	Proceedings on failure to carry out agreement or order	8
11	Cases where owner or whereabouts of owner are not known	9
12	Rights of persons fencing boundaries of certain Crown land	10
13	Proceedings for defining boundary line by registered surveyor	10
PART 3—REPAIR OF EXISTING DIVIDING FENCES		
14	Failure to carry out an order to repair	11
15	Liability of adjoining owners to repair	11
16	Procedure to compel contribution	12
17	Liability of person using fence on further side of road	13
PART 4—GENERAL		
18	Jurisdiction of and proceedings in Magistrates Courts or Small Claims Tribunals	14
19	Recovery of money payable	16
20	Apportionment of contribution between owner and lessee	16
21	Position of person with option to purchase	17

22	Power to enter adjoining land	17
23	Notices	17
24	Regulation making power	19

ENDNOTES

1	Index to Endnotes	20
2	Date to which amendments incorporated	20
3	List of legislation	20
4	List of annotations	21
5	Table of renumbered provisions	22

DIVIDING FENCES ACT 1953

[as amended by all amendments that commenced on or before 22 December 1993²]

An Act relating to the construction and repair of dividing fences between certain lands

PART 1—PRELIMINARY

Short title

- 1.** This Act may be cited as the *Dividing Fences Act 1953*³⁻⁵.

Act not to apply to unalienated Crown land

- 4.(1)** This Act does not apply to unalienated Crown land.

- (2)** However, subsection (1) is subject to—

- (a) paragraph (c) of the definition “**owner**” in section 6; and
 - (b) section 12 (Rights of persons fencing boundaries of certain Crown land); and
 - (c) an express contrary provision of another Act.

(3) None of the following are liable under this Act to join in or contribute to the construction or repair of a dividing fence between unalienated Crown land and other land—

- (a) the State;
 - (b) a person or authority—
 - (i) having the administration, management or control of the Crown land; or
 - (ii) vested with the Crown land.

Act not to affect agreements

5. Nothing in this Act contained shall be deemed or taken to affect any covenant, contract, or agreement in relation to fencing made before or after the coming into operation of this Act between the owners of adjoining lands or between any landlord and tenant.

Definitions

6.(1) In this Act—

“adjoining lands” includes lands separated by a watercourse, lake or other natural or artificial feature insufficient to stop the passage of stock at all times even though the bed and banks of the watercourse, lake or other feature may be Crown property or vested in or under the control of the Primary Industries Corporation or another authority;

“common boundary”, for adjoining lands separated by a watercourse, lake or other natural or artificial feature insufficient to stop the passage of stock at all times, includes the bed and banks of the watercourse, lake or other feature separating the lands;

“dividing fence” means a fence separating the adjoining lands of different owners, whether the adjoining lands are wholly or only partly separated thereby and whether the fence is on the line of or, in an appropriate case, on a line on the common boundary of the adjoining lands or on a line other than the line of or a line on the common boundary, or partly on any one of those lines and partly on the other or others;

“fence” means a structure of posts and boards, palings, rails, galvanised iron, metal, or wire, or a wall, ditch, or embankment, or a combination of any of these, enclosing or bounding land, and includes any foundation, foundation wall, or support reasonably necessary for the support and maintenance of the fence, but does not include a wall which is part of a house or other building;

“lease” includes an original or derivative lease or an underlease or an agreement for a lease;

“owner” includes every person who—

(a) jointly or severally, whether at law or in equity—

- (i) is entitled to land for any estate of freehold in possession; or
 - (ii) is entitled to receive or is in receipt of the rents and profits of any such land, or if the land were let to a tenant would be entitled to receive such rents and profits, whether as beneficial owner, trustee, mortgagee in possession, or otherwise; or
- (b) at the time notice to fence is given by or to the person pursuant to section 8, or at the time the person makes application to a Magistrates Court under section 11(1) or at the time a copy of an order made pursuant to the said section is, under section 11(2), served on the person, or at the time notice is given by or to the person pursuant to section 16, is the holder of a lease of any such land the unexpired term of which is not less than 5 years; or
- (c) at the time any notice, application, or copy of an order as specified in paragraph (b) is given or made by, or given to or served on the person, is the holder of a lease of any land or of any part of any land reserved or set apart for any public purpose within the meaning of the *Land Act 1962*, the unexpired term of which lease is not less than 5 years; or
- (d) is a successor in title to an owner as previously herein defined, but, subject to paragraph (c), does not include any trustees or other persons in whom any land is vested as a public reserve, public park, or for such other public purposes as may be prescribed, or any person who has the care, control, or management of any public reserve, public park or land used for such other public purposes as may be prescribed;

“registered surveyor” means a surveyor within the meaning of the *Surveyors Act 1977*;

“Small Claims Tribunal” means a Small Claims Tribunal constituted under the *Small Claims Tribunals Act 1973*;

“unalienated Crown land” includes any land held by yearly license under any Act relating to the sale or occupation of land belonging to the Crown.

(2) Any reference in this Act to any existing fence shall be taken to be a

reference to an existing fence by whomsoever constructed, and whether constructed before or after the coming into operation of this Act.

PART 2—CONSTRUCTION OF DIVIDING FENCES

Liability of owners of adjoining lands to fence

7. Subject to this Act the owners of adjoining lands not divided by a sufficient fence shall be liable to join in or contribute to the construction of a dividing fence between such lands in equal proportions, whether the adjoining lands are to be wholly or only partly separated thereby.

Service of notice to fence

8.(1) An owner who wants to compel an owner of adjoining land to join in or contribute to the construction of a dividing fence (including the demolition of an existing dividing fence and the erection of a new fence) must serve the owner of the adjoining land with a written notice to fence.

(2) A notice to fence must—

- (a) specify—
 - (i) the common boundary line to be fenced; or
 - (ii) if only part of the common boundary line is to be fenced—the part to be fenced; or
 - (iii) if it is not proposed to construct the fence on the common boundary line for a reason stated in subsection (3)—the line on which it is proposed to construct the fence; and
- (b) specify the kind of fence proposed to be constructed; and
- (c) contain a proposal for the construction of the fence.

(3) If—

- (a) it is impracticable to construct a fence wholly on the common boundary line of the adjoining lands because of physical features;
or

- (b) the adjoining lands are separated by a watercourse, lake, or other natural or artificial feature insufficient to stop the passage of stock at all times;

the notice to fence may propose to construct the fence on a line other than the common boundary fence.

Proceedings consequent on notice to fence

9.(1) If within 1 month after the service of any notice to fence the person serving the notice to fence and the person served with such notice do not agree as to the construction of the proposed fence, the line of the proposed fence, or the kind of that fence, a Magistrates Court or Small Claims Tribunal having jurisdiction as in this Act provided may, upon application of either of such persons, make an order (“**order to fence**”) determining—

- (a) the kind of fence to be constructed; and
- (b) what portion thereof shall be constructed by each person, or, as determined on the merits, that the whole of the fence shall be constructed by the person specified or that 1 person shall pay a greater proportion of the cost of such construction than the other and the amount of that proportion; and
- (c) the time within which it shall be constructed; and
- (d) if necessary, all or any of the following matters, namely—
 - (i) the line upon which such fence is to be constructed; and
 - (ii) the compensation in the shape of an annual payment to be paid to either of the owners of the adjoining lands in consideration of loss of occupation of any land; and
 - (iii) such further or other relief as that court or tribunal considers just;

and, where the demolition of an existing dividing fence and the erection of a new fence in place thereof is in question, may make an order as aforesaid or an order (“**order to repair**”) determining that the existing dividing fence be repaired and, in addition, determining such other matters with respect to the repair of that fence as it thinks fit, including, but without limiting the generality of the foregoing, the period of time within which no further notice to fence with respect to that dividing fence shall, without the prior

consent of a Magistrates Court or Small Claims Tribunal having jurisdiction as in this Act provided, be served under this Act.

(1A) Moreover, in a case where the adjoining lands are wholly or partly separated by a watercourse, lake, or other natural or artificial feature (whether of the same kind or not), the Magistrates Court or Small Claims Tribunal, after considering, where necessary, the sufficiency of that watercourse, lake, or other natural or artificial feature to prevent at all times the passage of stock, may by its order to fence determine that only a portion or portions, as specified therein, of the dividing fence shall be constructed as well as including in that order the things aforementioned.

(2) Where there are 2 or more owners of the adjoining land then any such owner who has not been served with a notice to fence shall, upon application to the Magistrates Court, be entitled to join with the owner served with that notice as a party to the proceedings before that court.

(3) Where it is agreed or an order to fence determines that the fence is to be constructed otherwise than wholly on the line of the common boundary of adjoining lands the occupation of lands on either side of such fence in pursuance or as a result of such agreement or order shall not be deemed adverse possession as against the owner or, in an appropriate case, the Crown, nor affect the title to or possession of the land save for the purposes of this Act.

(4) In making any order under this section the Magistrates Court or Small Claims Tribunal shall take into consideration the kind of fence usual in the locality where it is proposed to construct the fence and the purposes for which the adjoining lands are used.

Proceedings on failure to carry out agreement or order

10. If the person serving the notice to fence and the person served with such notice agree with respect to the construction of the dividing fence, or if in default of such agreement an order to fence of a Magistrates Court or Small Claims Tribunal is made with respect to that fence as aforesaid, and in either case any person bound by that agreement or order fails within the time named in that behalf in such agreement or order, or if no such time is named, within 3 months after the date of such agreement or order, to perform his or her part of such agreement or to comply with such order then the other of the parties thereto may construct the whole fence as agreed

upon or determined by the order, and may recover from the person in default the proportion of the cost of such construction for which the person in default is liable pursuant to the agreement or, as the case may be, order, or, if the whole of the fence was by that agreement or order to be constructed by the person in default, the whole cost of such construction.

Cases where owner or whereabouts of owner are not known

11.(1) Where the owner of any land satisfies a Magistrates Court having jurisdiction as in this Act provided that the owner has made reasonable inquiries and has been unable to find any owner or ascertain the whereabouts of any owner of adjoining land for the purpose of serving notice to fence as required by section 8, the Magistrates Court may proceed ex parte to make an order to fence authorising such first mentioned owner to construct a dividing fence of the kind specified in such order upon the line specified therein.

(2) A person who—

- (a) constructs a dividing fence under an order to fence; and
- (b) later locates a person who owned the adjoining land when the dividing fence was constructed (the “**owner**”); and
- (c) wants the owner to contribute to the construction cost;

must serve the owner with a copy of the order to fence (the “**copy order**”).

(2A) One month after the day of service of the copy order on the owner, the person who constructed the dividing fence may recover from the owner—

- (a) if the copy order is served within 1 year of the day when the construction was completed—50% of the original cost of the fence; or
- (b) if the copy order is served after the time mentioned in paragraph (a) but during the life of the fence—the amount that is lesser of—
 - (i) 50% of the value of the fence on the day the copy order was served; and
 - (ii) 50% of the original cost of the fence.

(3) If the person so served deems the order to fence made inequitable, a Magistrates Court having jurisdiction as in this Act provided may, on the person's application made within 1 month after service of the copy of the order, relieve the complainant from the whole or any portion of the sum claimed and may order that the position of the fence be altered on such terms as it may think fit.

Rights of persons fencing boundaries of certain Crown land

12. Where the owner of land has constructed a dividing fence separating the owner's land from adjoining land that, at the time of the construction of the fence, is such that in relation to it there is no person who is liable, under the provisions of this Act other than this section, to join in or contribute to the construction, that owner may, subject to any Act that modifies the application of this Act to the adjoining land, recover from the person who at that time holds the adjoining land from the Crown or, where the adjoining land is at that time unalienated Crown land, from the person who first becomes the holder of the adjoining land from the Crown one-half the value of the dividing fence assessed as at the date of its construction or as at the date when the holder of the adjoining land becomes liable under this section to contribute to the construction of the fence, whichever is the less amount.

Proceedings for defining boundary line by registered surveyor

13.(1) Where the owners of adjoining lands do not agree as to the accurate position of the common boundary line between their respective lands upon which a dividing fence is desired to be constructed, either one may give notice to the other of his or her intention to have the common boundary line defined by a registered surveyor.

(2) The owner to whom notice is given shall, within 7 days after the service of the notice—

- (a) if satisfied of the accurate position of the common boundary line, define the same by pegs; or
- (b) employ a registered surveyor to define the common boundary line;

and in either case shall notify the adjoining owner in writing of what he or she has done.

(3) If within 1 month from the service of the notice provided for in subsection (1) the owner to whom the notice was given has failed to have the common boundary line defined by a registered surveyor, then the owner who gave such notice may (notwithstanding that the owner to whom the notice was given has defined the common boundary by pegs) have the common boundary line defined by a registered surveyor.

(4) If the common boundary line when defined by a registered surveyor is ascertained to be in the same position as defined by any pegs placed there by the owner receiving the notice given in pursuance of subsection (1), such owner shall be entitled to recover any costs of the survey incurred by him or her from the owner giving such notice, but in all other cases where a registered surveyor has been employed by either such owner all reasonable expenses incurred shall be paid in equal shares by the adjoining owners.

PART 3—REPAIR OF EXISTING DIVIDING FENCES

Failure to carry out an order to repair

14. Where an order to repair is made by a Magistrates Court or Small Claims Tribunal under section 9(1) and any person bound by that order fails within the time named in that behalf in such order, or, if no such time is named, within 3 months after the date of such order, to comply with such order, then the owner of the land separated by the dividing fence the subject of the order from the land of the person in default may repair the whole fence as determined by the order, and may recover from the person in default the proportion of the cost of such repair for which the person in default is liable pursuant to the order, or, if the whole of such repair was by that order required to be carried out by the person in default, the whole of the cost of such repair.

Liability of adjoining owners to repair

15. Subject to section 16 whenever any existing dividing fence is out of repair the owners of land on either side thereof shall be liable to join in or contribute to the repair of such fence in equal proportions.

Procedure to compel contribution

16.(1) An owner, of land separated from adjoining land by an existing dividing fence, who wants to compel an owner of the adjoining land to assist in repairing the fence must serve the adjoining owner with a written notice to assist in repairing the fence (a **“notice to repair”**).

(2) Where the person served with the notice to repair does not within 1 month after such service assist the person serving the notice in repairing the dividing fence the subject of the notice, it shall be lawful for the person serving the notice to repair the fence and demand and recover from the person on whom the notice has been served one-half of the cost of repairing the same.

(2A) However—

- (a) if any dividing fence has been constructed partly by 1 owner and partly by another owner—each shall bear the cost of repairing the part so constructed by him or her but without prejudice to the right of the other owner to repair that part under subsection (1) and to recover the cost thereof;
- (b) if any dividing fence or any portion thereof is damaged or destroyed by flood, fire, lightning, storm, tempest, or accident—the owner of the land on either side may immediately repair the same without any notice to repair to the other owner and shall be entitled to recover half of the cost of so doing from the owner of the adjoining land;
- (c) if any dividing fence has been damaged or destroyed by the withdrawal of any support reasonably necessary for its support and maintenance had by the fence, or by any act of an owner of any of the adjoining lands separated by that fence, or by fire or by the falling of any tree or trees—the owner of the land whereon that support is withdrawn, or by whose act the fence has been damaged or destroyed, or through whose neglect the fire originated or caused injury to the fence or the tree or trees fell, as the case may be, shall be bound to repair the fence so damaged or destroyed as aforesaid and in default the adjoining owner may repair the same and demand and recover from the owner so liable and in default the whole of the cost of such repair;
- (d) if within 14 days after service of the notice to repair the person

served with the notice serves on the person serving that notice a notice to fence under section 8 with respect to that dividing fence, then the repair of such fence shall abide the decision of a Magistrates Court or Small Claims Tribunal having jurisdiction as in this Act provided upon application of either of such persons made at any time after the service of the notice to fence, and the provisions of section 9(1) and all other relevant provisions hereof, with all necessary adaptations thereof, shall apply with respect to that application and any order made thereupon (it being hereby declared that the Magistrates Court or Small Claims Tribunal hearing and determining that application may make an order to repair or, as it thinks fit, an order to fence thereon).

(3) If an owner who is served with a notice to repair pursuant to subsection (1), within 14 days of the receipt of that notice, advises in writing the owner who served the notice that—

- (a) he or she disputes the need for repairing the fence and is not prepared to bear any portion of the cost of repairing the fence; or
- (b) he or she is prepared to join in the repairing of the fence but is not prepared to bear half the cost of the repairs;

the owner who served the notice to repair may apply to the Magistrates Court or Small Claims Tribunal having jurisdiction as in this Act provided for the determination of the matter in dispute, and that court or Small Claims Tribunal upon the application may by order determine whether the fence is in need of repair, and if so, by whom the repairs are to be effected and the proportion of the cost of those repairs to be borne by each owner.

(4) Upon the giving of the advice in writing by the owner on whom the notice to repair is served, the repair of the fence shall abide the order of the court or Small Claims Tribunal upon the matter in dispute.

Liability of person using fence on further side of road

17.(1) If the owner of any land bounded by a road constructs a sufficient fence on the boundary of his or her land and the said road and any other owner of any land afterwards adopts any means whereby his or her land is in any way enclosed by the said fence, or afterwards avails himself or herself of the said fence or renders the same of beneficial use to himself or herself, the last mentioned owner shall, so long as his or her land is so

enclosed or he or she avails himself or herself of the said fence or makes beneficial use thereof, be liable to join in or contribute to the repair of such part of the fence as encloses his or her land or is availed or made beneficial use of by him or her in equal proportions, and the provisions of this Act shall apply accordingly as if that fence were a dividing fence and the lands adjoining lands.

(2) In this section—

“owner” includes any person who at the time of the construction of a fence referred to in this section or who at the time of adopting any means as aforesaid of availing himself or herself of the fence or rendering the same of beneficial use to himself or herself is the holder of a lease the unexpired term of which is not less than 5 years.

PART 4—GENERAL

Jurisdiction of and proceedings in Magistrates Courts or Small Claims Tribunals

18.(1) An application under section 9(1) or section 11(1) for an order to fence, or under section 16(2A)(d) or 16(3) for an order to fence or, as the case may be, repair may be made to a Magistrates Court held at a place appointed for holding Magistrates Courts within any Magistrates Courts district within or within 35 km of the boundary of which the dividing fence or any part of the dividing fence in question is or is proposed to be constructed or, except in relation to section 11, may be made to a Small Claims Tribunal in accordance with the *Small Claims Tribunals Act 1973* and that Court or Small Claims Tribunal shall have jurisdiction to hear and determine that application.

(2) An application for an order under section 11(3) or, where an order to repair with respect to any dividing fence is made under this Act, an application as required by this Act for the consent of the Magistrates Court to the service under this Act with respect to that fence of a notice to fence, shall be made to a Magistrates Court held at the place at which that order to fence, or, as the case may be, repair was made or, if the appointment of that place as a place for holding Magistrates Courts is meanwhile cancelled, to a

Magistrates Court held at a place appointed for holding Magistrates Courts within any Magistrates Courts district within or within 35 km of the boundary of which the dividing fence or any part of the dividing fence in question is situated, or, except in relation to section 11, shall be made to a Small Claims Tribunal in accordance with the *Small Claims Tribunals Act 1973* and that Court or Small Claims Tribunal shall have jurisdiction to hear and determine that application.

(3) In or for the purpose of any proceedings in a Magistrates Court under this Act (not being proceedings for the recovery of any moneys which any person is in pursuance of this Act required or liable to pay)—

- (a) the application shall be commenced by complaint made by the applicant in person or by the applicant's counsel or solicitor or other person authorised in that behalf to a justice of the peace who, in every case other than an application under section 11(1), shall issue his or her summons directed to the other party to those proceedings;
- (b) a Magistrates Court having jurisdiction as in subsections (1) and (2) provided—
 - (i) shall, subject to this Act, have and may exercise all the ordinary powers of a Magistrates Court;
 - (ii) may dismiss the application before it as justice may require or make such order thereon as is prescribed;
 - (iii) may take the best means of informing itself upon the merits of the case;
 - (iv) may, in the case of the making of any order or the dismissing of any application under this Act, in its discretion order the payment by such parties of such costs as to it seems just and reasonable.

(3A) Any decision of a Magistrates Court having jurisdiction as in this Act provided shall be final and conclusive.

(4) Subject to this Act, the *Justices Act 1886* (except the provisions of those Acts relating to appeals from the decisions of justices), shall apply, as far as practicable and with all necessary adaptations thereof, to the constitution, practice, and procedure of a Magistrates Court hearing and determining any application under this Act, and with respect to the service

of summonses, the making of orders, and the payment and recovery of costs ordered to be paid and the transfer of jurisdiction as to enforcement of costs.

Recovery of money payable

19.(1) Any moneys (other than costs ordered to be paid in any proceedings specified in section 18(3)) which any person is in pursuance of this Act required or liable to pay may be sued for and recovered in any court of competent jurisdiction.

(2) In any proceedings for the recovery of moneys as aforesaid the certificate of a clerk of the court or a registrar at the place at which the Magistrates Court or Small Claims Tribunal which made any order under this Act was held as to the making and contents of that order shall be evidence of the matters set forth therein.

Apportionment of contribution between owner and lessee

20.(1) Where, under the provisions of this Act, any fence is constructed or repaired which divides any freehold lands held by any person as tenant of any landlord from any adjoining lands, the contribution payable in respect thereof as between such landlord and tenant shall, unless otherwise agreed upon, be payable in the proportions following—

- (a) in case the interest of the tenant at the time of the construction or repair of the fence is less than for a term of 5 years—the whole contribution shall be payable by the landlord;
- (b) in case the interest of the tenant at such time is for a term of 5 years or more and less than for a term of 7 years—three-quarters of the contribution shall be payable by the landlord and one-quarter of the contribution by the tenant;
- (c) in case the interest of the tenant at such time is for a term of 7 years or more and less than for a term of 12 years—one-half of the contribution shall be payable by the landlord and one-half by the tenant;
- (d) in case the interest of the tenant at such time is for a term of 12 years or upwards—the whole of the contribution shall be

payable by the tenant.

(2) In case either such landlord or such tenant pays more than his or her proper proportion of such contribution he or she may recover the excess from the tenant or landlord and any tenant may set off any sum recoverable by the tenant under this section against any rent payable to the landlord.

(3) Where the provisions of this Act are, by virtue of any enactment including this Act, applied to any lands leased from the Crown, then the term “landlord” in this section shall not include the Crown.

(4) In this section—

“**landlord**” does not include the trustees of any land reserved or set apart for public purposes.

Position of person with option to purchase

21. Where any land in respect of which a contribution has been paid by the owner towards the construction or repair of a dividing fence is at the time of such payment subject to an option to purchase then in the event of the option to purchase being exercised the purchaser shall on completion of the purchase pay to such owner the amount of the contribution paid by such owner.

Power to enter adjoining land

22. Every person engaged in constructing or repairing a fence under this Act and the person’s agents and servants may, at all reasonable times during the construction or repairing, enter upon the lands adjoining the fence and do thereon such acts, matters, and things, as are necessary or reasonably required to carry into effect the construction or repairing of the fence.

Notices

23.(1) Any notice under this Act may be served on any person—

- (a) by delivering the same to such person personally; or
- (b) by delivering the notice at the usual or last known place of abode or business of such person and leaving the same with some

person apparently above the age of 14 years resident or employed thereat; or

- (c) by forwarding the same by post in a prepaid registered letter addressed to such person at the person's usual or last known place of abode or business in which case that notice shall, unless the contrary is proved, be deemed to have been served at the time at which the letter would be delivered in the ordinary course of post.

(2) Proof by affidavit or orally that the notice has been served in accordance with this section shall be conclusive evidence of service.

(3) For the purpose of this section a justice of the peace is hereby authorised to take and receive an affidavit whether any matter to which the affidavit relates is or is not pending in any court or Small Claims Tribunal.

(4) The description of any land, fence, line, or boundary in any notice under this Act need not particularly define the land, fence, line, or boundary provided that it allows no reasonable doubt as to what land, fence, line, or boundary is referred to therein, or if it is proved that the person served with the notice knew that land, fence, line or boundary.

(5) Where with respect to the adjoining land there are 2 or more joint-owners and the person desiring to serve any notice under this Act is unable to serve every such owner with that notice by reason of—

- (a) some of those owners; or
- (b) the whereabouts of some of those owners;

after the person making reasonable inquiries being unknown to the person, then service on such of those owners as under the circumstances the person may reasonably be expected to serve shall for the purposes of this Act be deemed to be service of the notice on all such owners.

(6) Where a Magistrates Court or Small Claims Tribunal makes with respect to any existing dividing fence an order to repair then—

- (a) during the period of time as determined for the purpose by that order; or
- (b) if no such period of time is so determined, during the period of 12 months from the date when that order to repair was made;

any notice to fence with respect to that dividing fence served under this Act,

without the prior consent of a Magistrates Court or Small Claims Tribunal having jurisdiction as in this Act provided, shall be of no force or effect, anything to the contrary in this Act notwithstanding.

Regulation making power

24. The Governor in Council may make regulations under this Act.

ENDNOTES

1 Index to Endnotes

	Page
2 Date to which amendments incorporated	20
3 List of legislation	20
4 List of annotations	21
5 Table of renumbered provisions	22

2 Date to which amendments incorporated

This is the reprint date mentioned in section 5(c) of the Reprints Act 1992. Accordingly, this reprint includes all amendments that commenced operation on or before 22 December 1993. Future amendments of the Dividing Fences Act 1953 may be made in accordance with this reprint under section 49 of the Reprints Act 1992.

3 List of legislation

Dividing Fences Act 1953 2 Eliz 2 No. 7

date of assent 15 October 1953

commenced on date of assent

as amended by—

Dividing Fences Act Amendment Act 1972 No. 13

date of assent 15 December 1972

commenced on date of assent

Dividing Fences Act and Another Act Amendment Act 1982 No. 40 Pt 2

date of assent 15 September 1982

commenced 1 November 1982 (proc pubd Gaz 16 October 1982 p 743)

Small Claims Tribunals and Dividing Fences Acts Amendment Act 1985 No. 77

Pt 3

date of assent 23 October 1985

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 s 3 Sch 1

date of assent 14 December 1993

commenced on date of assent

4 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Chap	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by
amendments not included in reprint, are underlined

Parts of Act

s 2 om (see s 36 RA)

Repeal of 25 Vic. No. 12 and 61 Vic. No. 9

s 3 om 1993 No. 76 s 3 Sch 1

Act not to apply to unalienated Crown land

s 4 sub 1993 No. 76 s 3 Sch 1

Definitions

prov hdg sub 1993 No. 76 s 3 Sch 1

s 6 amd 1993 No. 76 s 3 Sch 1

def “**adjoining lands**” sub 1993 No. 76 s 3 Sch 1

def “**common boundary**” ins 1993 No. 76 s 3 Sch

def “**Magistrates Court**” ins 1972 No. 13 s 2(a)

om 1993 No. 76 s 3 Sch 1

def “**owner**” amd 1972 No. 13 s 2(b); 1993 No. 76 s 3 Sch 1

def “**Person**” om 1993 No. 76 s 3 Sch 1

def “**Prescribed**” om 1993 No. 76 s 3 Sch 1

def “**registered surveyor**” amd 1993 No. 76 s 3 Sch 1

def “**Small Claims Tribunal**” ins 1982 No. 40 s 5

def “**This Act**” om 1993 No. 76 s 3 Sch 1

Service of notice to fence

s 8 sub 1993 No. 76 s 3 Sch 1

Proceedings consequent on notice to fence

s 9 amd 1972 No. 13 s 3; 1982 No. 40 s 6; 1985 No. 77 s 9

Proceedings on failure to carry out agreement or order**s 10** amd 1972 No. 13 s 4; 1982 No. 40 s 7**Cases where owner or whereabouts of owner are not known****s 11** amd 1972 No. 13 s 5; 1993 No. 76 s 3 Sch 1**Rights of persons fencing boundaries of certain Crown land****s 12** sub 1972 No. 13 s 6**Failure to carry out an order to repair****s 14** amd 1972 No. 13 s 7; 1982 No. 40 s 8**Liability of adjoining owners to repair****s 15** amd 1972 No. 13 s 8**Procedure to compel contribution****s 16** amd 1972 No. 13 s 9; 1982 No. 40 s 9; 1993 No. 76 s 3 Sch 1**Jurisdiction of and proceedings in Magistrates Courts or Small Claims
Tribunals****prov hdg** amd 1982 No. 40 s 10(a)**s 18** amd 1972 No. 13 s 10; 1982 No. 40 s 10(b)–(d)**Recovery of money payable****s 19** amd 1972 No. 13 s 11; 1982 No. 40 s 11**Notices****s 23** amd 1972 No. 13 s 12; 1982 No. 40 s 12**Regulation making power****s 24** sub 1993 No. 76 s 3 Sch 1

5 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS
under section 43 of the Reprints Act 1992

Previous	Renumbered as
9(1) (2nd sentence)	9(1A)
16(2) (2nd sentence)	16(2A)
16(3) (2nd sentence)	16(4)
17 (1st sentence)	17(1)
17 (2nd sentence)	17(2)
18(3) (2nd sentence)	18(3A)
20(3) (2nd sentence)	20(4)