



New South Wales

Dividing Fences and Other Legislation Amendment Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Dividing Fences Act 1991* (***the Principal Act***):
 - (i) to enable an adjoining owner to seek a contribution for the carrying out of work to a retaining wall, where the wall is necessary for the support and maintenance of a dividing fence, and to enable orders relating to that work to be made under the Principal Act, and
 - (ii) to clarify that an adjoining owner may seek a contribution for the preparation of land involving the trimming, lopping or removal of vegetation, for the purpose of the provision of a dividing fence, and that orders relating to that work may be made under the Principal Act, and
 - (iii) to ensure that an owner who desires to carry out such work for a purpose other than a sufficient dividing fence is liable for the expenses of carrying out the work that are attributable to work done for that other purpose, and

- (iv) to enable a local land board to make an order specifying a fixed amount that an adjoining owner is required or liable to pay under the Principal Act, and
 - (v) to enable such an order, when its particulars are certified by a Chairperson of the local land board and the certificate is filed with a court of competent jurisdiction, to be enforced as a judgment of that court,
- (b) to amend the *Access to Neighbouring Land Act 2000* to provide that the costs of an application for an access order under that Act are payable by the applicant for the order, subject to any contrary order of the Local Court,
- (c) to amend the *Crown Lands Act 1989* to enable a Chairperson of a local land board alone to constitute a quorum for the purpose of dealing with an application under the Principal Act where the area to which the application relates is in the Metropolitan, Penrith, Picton or Windsor land district or a predominantly residential area.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Dividing Fences Act 1991* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to other Acts set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Dividing Fences Act 1991

Schedule 1 [1] amends the definition of *fence* to provide for a retaining wall to be treated as part of a fence, for the purposes of the Principal Act, where the wall is necessary for the support and maintenance of the fence. As a result, such a retaining wall also becomes a *dividing fence*, for the purposes of the Principal Act, where it separates the land of adjoining owners. The proposed amendment gives effect to paragraph (a) (i) of the objects referred to in the Overview.

Schedule 1 [2] amends the definition of *fencing work* in the Principal Act to clarify that fencing work comprising the preparation of land for the purpose of the provision of a dividing fence includes the trimming, lopping or removal of vegetation. This gives effect to paragraph (a) (ii) of the objects referred to in the Overview.

Schedule 1 [3] inserts proposed section 7 (3) into the Principal Act. The proposed new subsection ensures that an adjoining owner who desires to carry out the preparation of land comprising the trimming, lopping or removal of vegetation 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 that those expenses are attributable to work done for that other purpose.

Schedule 1 [4] amends section 14 of the Principal Act to enable a Local Court or local land board to make an order determining the amount of money that each adjoining owner must pay for fencing work as an alternative to an order determining the manner in which contributions for the work are to be apportioned.

Schedule 1 [5] amends section 24 of the Principal Act to enable a local land board to make an order, on the application of an adjoining owner, determining an amount that the other adjoining owner is required or liable to pay under that Act. The proposed amendment also enables such an order, when its particulars are certified by a Chairperson of the local land board and the certificate is filed with a court of competent jurisdiction, to be enforced as a judgment of that court.

Schedule 1 [6] clarifies that the provisions of the Principal Act do not override provisions of or under other Acts relating to fencing work. Examples of such provisions include provisions in Acts or instruments requiring development consent or another kind of authorisation for the carrying out of work relating to retaining walls or the trimming or removal of trees.

Schedule 1 [7] and [8] enact savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Access to Neighbouring Land Act 2000*.

Currently, section 27 of the *Access to Neighbouring Land Act 2000* provides that the costs of an application for an access order under that Act are payable at the Local Court's discretion. **Schedule 2.1 [1] and [2]** amend section 27 of that Act:

- (a) to provide that 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, and
- (b) to clarify that when determining whether any costs of an application for an access order are payable by a party, the Court may consider the conduct of the parties.

Schedule 2.1 [3] and [4] enact savings and transitional provisions consequent on the enactment of the proposed Act.

Dividing Fences and Other Legislation Amendment Bill 2008

Explanatory note

Schedule 2.2 amends the *Crown Lands Act 1989*. In particular, **Schedule 2.2** amends Schedule 2 to that Act to enable a Chairperson of a local land board alone to constitute a quorum for the purpose of dealing with an application under the *Dividing Fences Act 1991* where the area to which the application relates is in the Metropolitan, Penrith, Picton or Windsor land district or a predominantly residential area.

First print



New South Wales

Dividing Fences and Other Legislation Amendment Bill 2008

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Dividing Fences Act 1991 No 72	2
4 Amendment of other Acts	2
5 Repeal of Act	2
Schedule 1 Amendment of Dividing Fences Act 1991	3
Schedule 2 Amendment of other Acts	6



New South Wales

Dividing Fences and Other Legislation Amendment Bill 2008

No. , 2008

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Dividing Fences and Other Legislation Amendment Act 2008</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Dividing Fences Act 1991 No 72	7
The <i>Dividing Fences Act 1991</i> is amended as set out in Schedule 1.	8
4 Amendment of other Acts	9
The Acts specified in Schedule 2 are amended as set out in that Schedule.	10 11
5 Repeal of Act	12
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	13 14
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	15 16

Schedule 1	Amendment of Dividing Fences Act 1991	1
	(Section 3)	2
[1]	Section 3 Definitions	3
	Insert “(except as provided by paragraph (c))” after “retaining wall” in the definition of <i>fence</i> .	4 5
[2]	Section 3, definition of “fencing work”	6
	Insert “(including the trimming, lopping or removal of vegetation)” after “preparation of land” in paragraph (b) of the definition.	7 8
[3]	Section 7 Contribution as between adjoining owners—generally	9
	Insert after section 7 (2):	10
	(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 <i>fencing work</i> 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.	11 12 13 14 15 16
[4]	Section 14 Orders as to fencing work	17
	Insert “or the amount that each adjoining owner is liable to pay for that work” after “re-apportioned” in section 14 (1) (c).	18 19
[5]	Section 24 Recovery of money payable	20
	Insert after section 24 (2):	21
	(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).	22 23 24 25
	(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.	26 27 28
	(5) A certificate given under subsection (4) must identify the person liable to pay the certified amount.	29 30
	(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.	31 32 33 34

Dividing Fences and Other Legislation Amendment Bill 2008

Schedule 1 Amendment of Dividing Fences Act 1991

[6] Section 26 Act not to affect agreements etc, retaining walls or other Acts	1
Insert “or fencing work” after “fences” in section 26 (c).	2
[7] Schedule 1 Savings, transitional and other provisions	3
Insert before clause 1:	4
Part 1 Preliminary	5
1A Regulations	6
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	7
	8
	9
<i>Dividing Fences and Other Legislation Amendment Act 2008</i>	10
(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.	11
	12
(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:	13
	14
	15
(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	16
	17
	18
(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.	19
	20
	21
Part 2 Provisions consequent on enactment of this Act	22
	23

[8] Schedule 1, Part 3	1
Insert after clause 2:	2
Part 3 Provision consequent on enactment of Dividing Fences and Other Legislation Amendment Act 2008	3 4 5
3 Order under section 14 specifying amount to be paid	6
The amendment made to section 14 (1) (c) by the <i>Dividing Fences and Other Legislation Amendment Act 2008</i> 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.	7 8 9 10 11

Schedule 2	Amendment of other Acts	1
	(Section 4)	2
2.1	Access to Neighbouring Land Act 2000 No 2	3
[1]	Section 27 Costs	4
	Omit section 27 (1). Insert instead:	5
	(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.	6 7 8
[2]	Section 27 (2) (a)	9
	Omit section 27 (2) (a) and (b). Insert instead:	10
	(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,	11 12 13 14
[3]	Section 39	15
	Insert after section 38:	16
	39 Savings, transitional and other provisions	17
	Schedule 1 has effect.	18
[4]	Schedule 1	19
	Insert after section 40:	20
Schedule 1	Savings, transitional and other provisions	21 22
	(Section 39)	23
Part 1	General	24
1	Regulations	25
	(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	26 27 28
	<i>Dividing Fences and Other Legislation Amendment Act 2008</i>	29
	(but only to the extent to which it amends this Act)	30

(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.	1 2
(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:	3 4 5
(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	6 7 8
(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.	9 10 11
Part 2	Provision consequent on enactment of Dividing Fences and Other Legislation Amendment Act 2008	12 13 14
2	Costs	15
	Section 27 (1) and (2) (a), as substituted by the <i>Dividing Fences and Other Legislation Amendment Act 2008</i> , 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.	16 17 18 19 20
2.2	Crown Lands Act 1989 No 6	21
[1]	Schedule 2 Powers and procedures of local land boards	22
	Insert at the end of clause 2 (2):	23
	• applications under the <i>Dividing Fences Act 1991</i> .	24
[2]	Schedule 2, clause 2 (3)	25
	Insert after clause 2 (2):	26
(3)	A Chairperson alone may constitute a quorum for the purpose of deciding or otherwise dealing with an application under the <i>Dividing Fences Act 1991</i> only if:	27 28 29
(a)	the land to which the application relates is in:	30
(i)	the Metropolitan, Penrith, Picton or Windsor land district, or	31 32
(ii)	an area that, in the opinion of the Senior Chairperson, is predominantly residential, and	33 34

Dividing Fences and Other Legislation Amendment Bill 2008

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.s
- 1
2
3
4
5