



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
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- (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.

**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.