



Australian Capital Territory

Common Boundaries Act 1981

A1981-39

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About this republication

The republished law

This is a republication of the *Common Boundaries Act 1981* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 July 2011. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 July 2011.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Common Boundaries Act 1981

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Australian Capital Territory

Common Boundaries Act 1981

An Act relating to dividing fences and party walls

Part 1 Preliminary

1 Name of Act

This Act is the *Common Boundaries Act 1981*.

1A Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*party wall*, for part 3 (Party walls)—see section 27.' means that the term 'party wall' is defined in that section for part 3.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

1B Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 **Dividing fences**

Division 2.1 **Fences requested by occupiers**

2 **Definitions for div 2.1**

In this division:

Note A definition applies except so far as the contrary intention appears (see Legislation Act, s 155).

basic fence means—

- (a) for a fence to be erected between parcels of land in the city area—a basic urban fence; or
- (b) in any other case—a basic rural fence.

basic rural fence means a wire fence that is 1.2m in height above finished ground level and has—

- (a) for intermediate posts—steel line posts spaced at 4m intervals; and
- (b) for strainer posts—hardwood posts spaced at 40m intervals with hardwood bracing at corners; and
- (c) 3mm galvanised steel wire at the top, bottom and mid-line of the fence; and
- (d) 1060mm wide and 40mm mesh size galvanized wire netting.

basic urban fence means a timber paling fence, that is 1.5m in height above finished ground level and has—

- (a) reinforced spade-end precast concrete posts spaced at 2.4m; and
- (b) a 75mm x 50mm hardwood rail at the top and bottom of the fence that is fixed to the posts; and

(c) 100mm x 12mm hardwood palings nailed to the rails.

new fence determination means a determination of the ACAT under section 10.

occupier, in relation to a parcel of land, means—

- (a) for a parcel held under a lease, other than a weekly or fortnightly tenancy, from the Commonwealth—the person by whom the parcel is so held; or
- (b) for a parcel vested in a person for an estate in fee simple—the person in whom the parcel is so vested; or
- (c) if neither paragraph (a) nor (b) applies—
 - (i) for Territory land—the Territory; and
 - (ii) for national land—the Commonwealth.

registrar means the registrar of the Magistrates Court.

repair cost determination means a determination of the ACAT under section 12.

repair determination means a determination of the ACAT under section 11.

rules means the rules under the *ACT Civil and Administrative Tribunal Act 2008*.

unleased land determination means a determination of the ACAT under section 13.

2A When land is a *parcel of land*

For this division, land is a ***parcel of land*** if—

- (a) the land is held by a person under a lease, other than a weekly or fortnightly tenancy, from the Territory; or
- (b) the land is a block within the meaning of the *Districts Act 2002* on which there is a building other than—

- (i) a bus shelter; or
- (ii) a building consisting only of a public toilet.

2B When land is not a *parcel of land*

For this division, land is not a *parcel of land* if—

- (a) the land is a public park; or
- (b) the land is a reserved area under the *Nature Conservation Act 1980*; or
- (c) the land is a sports ground.

2C Cost of erecting new fence includes cost of removing existing fence

For this division, if a new fence is to be erected in place of an existing fence, the cost of removing the existing fence is taken to be part of the cost of erecting the new fence.

2D Cost of erecting fence includes fee payable to surveyor

For this division, a fee payable to a surveyor to survey the boundary or line along which a fence is to be erected is taken to be included in the cost of erecting the fence or erecting a new fence in place of an existing fence.

4 Application to ACAT—new fence determination

- (1) This section applies if—
 - (a) adjoining parcels of land are not separated by a fence; and
 - (b) the occupier of 1 of the parcels has asked the occupier of the adjoining parcel to join in erecting a fence between the parcels; and
 - (c) either—

- (i) the occupier of the adjoining parcel has refused to join in erecting the fence; or
 - (ii) the occupiers of the parcels are unable to agree about a matter relating to the construction of the fence.
- (2) Either occupier may apply to the ACAT for a new fence determination.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

- (3) However, an occupier must not apply to the ACAT unless—
 - (a) the occupier has given the occupier of the adjoining parcel (the *other occupier*) a notice asking the other occupier to discuss erecting, and paying for, the fencing of the boundary between the parcels; and
 - (b) 1 month has passed since the day the occupier gave the notice to the other occupier.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the notice, the form must be used.

- (4) For subsection (1), an occupier who does not join in erecting a fence within 14 days after the day the occupier is asked to join is taken to have refused to join in erecting the fence.

5 Application to ACAT—repair determination

- (1) This section applies if—
 - (a) adjoining parcels of land are separated by a fence; and
 - (b) the occupier of 1 of the parcels of land has asked the occupier of the adjoining parcel to join in repairing or replacing the fence; and
 - (c) either—

- (i) the occupier of the adjoining parcel has refused to join in repairing or replacing the fence; or
 - (ii) the occupiers of the parcels of land are unable to agree about a matter relating to the repair or replacement of the fence.
- (2) Either occupier may apply to the ACAT for a repair determination.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

- (3) However, the occupier of a parcel must not apply to the ACAT unless—
- (a) the occupier has given the occupier of the adjoining parcel (the *other occupier*) a notice asking the other occupier to discuss the repair or replacement of the fence between the parcels; and
 - (b) 1 month has passed since the day the occupier gave the notice to the other occupier.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the notice, the form must be used.

- (4) For subsection (1), an occupier who does not join in repairing or replacing a fence within 14 days after the day the occupier is asked to join is taken to have refused to join in repairing or replacing the fence.

6 Application to ACAT—repair cost determination

- (1) This section applies if—
- (a) a fence between adjoining parcels of land has been damaged or destroyed; and
 - (b) the fence needs to be repaired or replaced without delay to protect people living in premises on 1 of the parcels or to prevent the escape of animals.

- (2) The occupier of either parcel may, without giving notice to the occupier of the adjoining parcel, repair or replace the fence.
- (3) The occupier who repairs or replaces a fence under subsection (2) may apply to the ACAT for a repair cost determination.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

- (4) However, the occupier must not apply to the ACAT unless—
 - (a) the occupier has given the occupier of the adjoining parcel (the *other occupier*) a notice asking the other occupier to discuss contributing to the cost of repairing or replacing the fence; and
 - (b) 14 days has passed since the day the occupier gave the notice to the other occupier.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the notice, the form must be used.

7 Application to ACAT—unleased land determination

- (1) This section applies if—
 - (a) the occupier of a parcel of land has begun erecting a fence between the parcel and adjoining land that is not a parcel of land for this division; and
 - (b) after the erecting began, the adjoining land becomes a parcel of land for this division.
- (3) The occupier may apply to the ACAT for an unleased land determination.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008*, s 117 for this provision, the form must be used.

8 Parties to applications

The parties to an application are—

- (a) for a new fence determination—the applicant and the person to whom the applicant gives a notice under section 4 (3) (a); and
- (b) for a repair determination—the applicant and the occupier to whom the applicant gives notice under section 5 (3) (a); and
- (c) for a repair cost determination—the applicant and the person to whom the applicant gives the notice under section 6 (4) (a); and
- (d) for an unleased land determination—the applicant and the owner or occupier of the adjoining parcel of land.

9 Dealing with applications

- (1) This section applies if the ACAT is considering an application for a determination under this division.
 - (2) On receiving the application, the ACAT must—
 - (a) decide that a conference may be held between the parties; or
 - (b) if satisfied that there is no reasonable possibility of the parties settling the issues in dispute at a conference—decide to hold a hearing on the application.
 - (3) If the ACAT decides that a conference may be held, the ACAT must—
 - (a) fix a day for the conference; and
 - (b) not later than 10 days before the day fixed for the conference—
 - (i) serve a copy of the application on the respondent; and
 - (ii) serve notice of the conference on the parties.
- Note* For how documents may be served, see s 18.
- (4) If the ACAT decides to hold a hearing, the ACAT must—
 - (a) fix a day for the hearing; and

- (b) not later than 10 days before the day fixed for the hearing—
 - (i) serve a copy of the application on the respondent; and
 - (ii) serve notice of the hearing on the parties.

10 ACAT powers—new fence determination

- (1) This section applies if the ACAT holds a hearing on an application for a new fence determination.
- (2) The ACAT may determine—
 - (a) the nature of the fence that should be erected between the parcels of land occupied by the parties; and
 - (b) the line where the fence should be erected; and
 - (c) the party who should be responsible for erecting the fence; and
 - (d) the amount that should be contributed by the other party to the cost of erecting the fence; and
 - (e) how, and by when, the amount should be paid to the party responsible for erecting the fence.
- (3) If a party asks the ACAT to determine that a basic fence is to be erected between the parcels of land to which the application relates, the ACAT must not require the party to contribute more than $\frac{1}{2}$ the cost of erecting a basic fence between the parcels.
- (4) Subsection (3) does not apply in relation to parcels of land if the ACAT is satisfied that—
 - (a) it is not practicable for a basic fence to be erected between the parcels of land; or
 - (b) there are special circumstances that require a fence, other than a basic fence, to be erected.

11 ACAT powers—repair determination

- (1) This section applies if the ACAT holds a hearing on an application for a repair determination.
- (2) The ACAT must determine if the fence to which the application relates is in need of repair or replacement.
- (3) If the ACAT determines that the fence is in need of repair or replacement, the ACAT may determine—
 - (a) whether the party other than the applicant should be required to contribute to the cost of the repair or replacement of the fence; and
 - (b) the nature of the repair that is required or the nature of the replacement fence that should be erected; and
 - (c) the party who should be responsible for the repair or replacement; and
 - (d) the amount that should be contributed by the other party to the cost of the repair or replacement; and
 - (e) how, and by when, the amount should be paid to the party responsible for the repair or replacement.
- (4) For the purpose of determining the amount that should be contributed under subsection (3) (d), the ACAT must apply the principle that the cost should be borne by the parties in equal proportions unless there are circumstances that make it just that 1 party bears a greater proportion of the cost than the other party.

12 ACAT powers—repair cost determination

- (1) This section applies if the ACAT holds a hearing on an application for a repair cost determination.
- (2) The ACAT must determine whether it is reasonable for the party other than the applicant to be required to contribute to the cost of the repair or replacement by the applicant.

- (3) If the ACAT determines that it is reasonable for the party to be required to contribute to the cost of the repair or replacement, the ACAT must also determine—
 - (a) the amount that should be contributed; and
 - (b) how, and by when, the amount should be paid to the applicant.
- (4) For the purpose of determining the amount that should be contributed under subsection (3) (a), the ACAT must apply the principle that the cost should be borne by the parties in equal proportions unless there are circumstances that make it just that 1 party bears a greater proportion of the cost than the other party.

13 ACAT powers—unleased land determination

- (1) This section applies if the ACAT holds a hearing on an application for an unleased land determination.
- (2) The ACAT must determine whether it is reasonable for the party other than the applicant to be required to contribute to the cost of the applicant erecting the fence.
- (3) If the ACAT determines that it is reasonable for the party to contribute to the cost, the ACAT must also determine—
 - (a) the amount that should be contributed; and
 - (b) how, and by when, the amount should be paid to the applicant.
- (4) For subsection (3) (a), the amount must be—
 - (a) if the adjoining land became a parcel of land for this division less than 6 months after the applicant began erecting the fence—the lesser of the following:
 - (i) 1/2 the cost of erecting the fence;
 - (ii) 1/2 of what it would have cost to erect a basic fence; and
 - (b) if the adjoining land became a parcel of land for this division 6 months or more after the applicant began erecting the

fence—a reasonable amount that is not more than the lesser of the following:

- (i) $\frac{1}{2}$ the cost of erecting the fence;
- (ii) $\frac{1}{2}$ of what it would have cost to erect a basic fence.

14 Applications for variation of certain determinations

- (1) A person who was a party to an application for a determination under this division (other than under section 13) may apply to the ACAT for a variation of the determination.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

- (2) The parties to the application are the applicant and the other party to the application on which the determination was made.

15 Dealing with variations

- (1) This section applies if the ACAT is considering an application for the variation of a determination under section 14.
- (2) On receiving the application, the ACAT must—
 - (a) decide that a conference may be held between the parties; or
 - (b) if satisfied that there is no reasonable possibility of the parties settling the issues in dispute at a conference—decide to hold a hearing on the application.
- (3) If the ACAT decides that a conference may be held, the ACAT must—
 - (a) fix a day for the conference; and
 - (b) not later than 10 days before the day fixed for the conference—
 - (i) serve a copy of the application on the respondent; and

- (ii) serve notice of the conference on the parties.

Note For how documents may be served, see s 18.

- (4) If the ACAT decides to hold a hearing, the ACAT must—
 - (a) fix a day for the hearing; and
 - (b) not later than 10 days before the day fixed for the hearing—
 - (i) serve a copy of the application on the respondent; and
 - (ii) serve notice of the hearing on the parties.
- (5) The ACAT must not vary the determination so that the determination as varied could not have been made on the original application.

18 Service of documents

- (1) A document that is required by this division to be served on the occupier of a parcel of land may be served—
 - (a) if the occupier is the Territory—by sending the notice by post to the director-general; and
 - (b) if the occupier is the Commonwealth—by sending the notice by post to the secretary to the Commonwealth department for the time being responsible for the administration of national land; and
 - (c) in any other case—by sending the document by post addressed to the occupier at the occupier’s address last known to the person sending the document or at the parcel of land.
- (2) If 2 or more people are the occupiers of a parcel of land, a document that has been served on one of them is taken to have been served on all of them.
- (3) This section does not limit the operation of any other territory law (including the rules) that authorises or requires service of a document otherwise than as provided under this section.

19 Apportionment of liability of joint lessees

(1) In this section:

order means—

- (a) a determination of the ACAT under this division; or
 - (b) an order (however described) under the rules in relation to the enforcement of a determination mentioned in paragraph (a).
- (2) If 2 or more people occupy a parcel of land as joint tenants, tenants in common or joint lessees and an order requires them to make a payment—
- (a) they are jointly and severally liable for the payment of the amount payable under the order; and
 - (b) as between themselves, the liability to pay the amount must, in the absence of agreement to the contrary, be borne in equal proportions; and
 - (c) one of them who pays more than his or her proportionate amount may recover the excess as a debt due by the others.

21 Div 2.3 not affected

This division does not affect the operation of division 2.3 (Damage by fire to fences).

22 Directions about entry by people on land

- (1) This section applies if the ACAT makes a determination under this division in relation to erecting, repairing or replacing a fence.
- (2) The ACAT may give the directions that it considers necessary in relation to the entry of people on land to erect, repair or replace the fence.

- (3) However, the ACAT must not give directions under this section in relation to the entry of people on land, other than land occupied by—
- (a) a party to the application; or
 - (b) a sublessee, tenant, licensee or other person in possession from a party to the application.
- (4) If a person is given a direction under this section, the person may enter on land to undertake work necessary to erect, repair or replace the fence stated in the direction—
- (a) at any reasonable time; and
 - (b) in accordance with the direction.

Division 2.2 Fences required by authority

23 Boundary between leased and unleased land

If there is a common boundary between a parcel of leased Territory land and an area of unleased Territory land, the planning and land authority may, by written notice to the lessee of the parcel of leased land, require the lessee to erect a fence on that boundary or any part of it.

24 Boundary between 2 parcels of leased land

If there is a common boundary between 2 parcels of leased Territory land included in different leases, the planning and land authority may, by written notice to each lessee, require them jointly to erect a fence on that boundary or any part of it.

25 Notice under div 2.2

A notice under section 23 or 24 must specify the fence to be erected and the part of the boundary where it is to be erected.

26 Noncompliance with notice under div 2.2

If a fence in compliance with a notice is not erected within 1 month after the date of the notice—

- (a) the planning and land authority may, at the cost of the lessee, cause the fence to be erected; and
- (b) the lessee must pay to the authority, on demand, the amount fixed by the authority as the cost of erecting the fence or as the proportion payable by the lessee of that cost.

Division 2.3 Damage by fire to fences

26A Damage by fire to dividing fence

- (1) This section applies if—
 - (a) the occupier of land (the *clearing occupier*) clears the land of flammable materials for the space of 6m from a fence (a *dividing fence*) dividing the land from the land of another owner or occupier; and
 - (b) the other owner or occupier (the *non-clearer*) neglects or omits to clear the owner or occupier's land; and
 - (c) damage from fire happens to the dividing fence because of the neglect or omission.
- (2) The non-clearer must, at the non-clearer's expense, arrange for the dividing fence to be repaired or replaced within—
 - (a) 1 month after the day it is damaged; or
 - (b) if the ACAT extends the time to repair or replace the fence—the extended time.
- (3) If the non-clearer applies for an extension of time to repair or replace the dividing fence, the non-clearer must give the clearing occupier reasonable notice of the application.

- (4) If the non-clearer refuses or omits to repair or replace the dividing fence within the time required under subsection (2), the clearing occupier may repair or replace the fence.
- (5) An amount incurred by the clearing occupier repairing or replacing the dividing fence is taken to be an amount owing to the clearing occupier by the non-clearer.

Part 3 Party walls

27 Meaning of *party wall* in pt 3

In this part:

party wall—

- (a) means a wall or structure designed for the common use of 2 or more buildings and erected, or to be erected, on a common boundary, or part of such a boundary, between 2 parcels of land, and extending laterally into each of those parcels of land; and
- (b) includes any wall that is completely or partly used to support 2 or more buildings, if the wall was erected in connection with a building for which there is a certificate of occupancy under the *Building Act 2004*.

28 Erection of party walls

If, in a building approval under the *Building Act 2004* for a building to be erected on land that is leased Territory land, a party wall is shown or provided for on the common boundary, or part of that boundary, between 2 parcels of land that are leased Territory land—

- (a) the lessee of each parcel of land may, during the term of the lease—
 - (i) erect, maintain and use a party wall in the position shown on the building plan or design; and
 - (ii) use for the support of the building or buildings provided for in, or shown on, the building plan or design and erected on the parcel of land of which he or she is lessee any party wall so erected; and

- (b) the lessees of the 2 parcels of land may agree about the lessee by whom the party wall is to be erected and in what proportions the cost of erection is to be borne by them; and
- (c) if the lessee of 1 parcel of land (the *first lessee*) has at the lessee's expense erected a party wall—the lessee of the other parcel of land must immediately after beginning to erect a building on the other parcel of land pay to the first lessee a proportion of the cost of the erection of the party wall; and
- (d) in default of agreement between the lessees about the apportionment of the cost of erecting a party wall—the planning and land authority may, at the request of either lessee, determine the cost of erecting the party wall and the proportion of the cost to be borne by each lessee; and
- (e) if any period has elapsed between the date of the completion of a party wall by the lessee of 1 parcel of land and the date of the beginning of the erection of a building on the other parcel of land—a reasonable allowance must be made for depreciation of the party wall in determining the proportion payable by the other lessee of the cost of erection of the party wall; and
- (f) the amount agreed on, or determined by the planning and land authority, as payable by 1 lessee to another lessee under this section is a debt due and recoverable by the other lessee in any court of competent jurisdiction.

Dictionary

(see s 1A)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- director-general (see s 163)
- national land
- territory land
- territory law.

basic fence, for division 2.1 (Fences requested by occupiers)—see section 2.

basic rural fence, for division 2.1 (Fences requested by occupiers)—see section 2.

basic urban fence, for division 2.1 (Fences requested by occupiers)—see section 2.

new fence determination, for division 2.1 (Fences requested by occupiers)—see section 2.

occupier, in relation to a parcel of land, for division 2.1 (Fences requested by occupiers)—see section 2.

parcel of land, for division 2.1 (Fences requested by occupiers)—see section 2A and section 2B.

party wall, for part 3 (Party walls)—see section 27.

registrar, for division 2.1 (Fences requested by occupiers)—see section 2.

repair cost determination, for division 2.1 (Fences requested by occupiers)—see section 2.

repair determination, for division 2.1 (Fences requested by occupiers)—see section 2.

rules, for division 2.1 (Fences requested by occupiers)—see section 2.

unleased land determination, for division 2.1 (Fences requested by occupiers)—see section 2.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

| | |
|--|--|
| A = Act | NI = Notifiable instrument |
| AF = Approved form | o = order |
| am = amended | om = omitted/repealed |
| amdt = amendment | ord = ordinance |
| AR = Assembly resolution | orig = original |
| ch = chapter | par = paragraph/subparagraph |
| CN = Commencement notice | pres = present |
| def = definition | prev = previous |
| DI = Disallowable instrument | (prev...) = previously |
| dict = dictionary | pt = part |
| disallowed = disallowed by the Legislative Assembly | r = rule/subrule |
| div = division | reloc = relocated |
| exp = expires/expired | renum = renumbered |
| Gaz = gazette | R[X] = Republication No |
| hdg = heading | RI = reissue |
| IA = Interpretation Act 1967 | s = section/subsection |
| ins = inserted/added | sch = schedule |
| LA = Legislation Act 2001 | sdiv = subdivision |
| LR = legislation register | SL = Subordinate law |
| LRA = Legislation (Republication) Act 1996 | sub = substituted |
| mod = modified/modification | <u>underlining</u> = whole or part not commenced or to be expired |

Endnotes

3 Legislation history

3 Legislation history

This Act was originally a Commonwealth ordinance—the *Dividing Fences Ordinance 1981* No 39 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day). It was later renamed by the *Land (Planning and Environment) (Consequential Provisions) Act 1991* (see s 20).

Before 11 May 1989, ordinances commenced on notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

Commonwealth legislation

Common Boundaries Act A1981-39

notified 30 October 1981 (Gaz 1981 No S226)

commenced 30 October 1981

as amended by

Magistrates Court Ordinance 1985 Ord1985-67

notified 19 December 1985 (Gaz 1985 No S542)

commenced 1 February 1986 (Cwlth Gaz 1986 No G3)

Magistrates Court (Amendment) Ordinance (No 3) 1986 Ord1986-74

notified 14 November 1986 (Gaz 1986 No S592)

commenced 14 November 1986

Self-Government (Consequential Amendments) Ordinance 1989 Ord1989-38 sch 1

notified 10 May 1989 (Cwlth Gaz 1989 No S160)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 1 commenced 11 May 1989 (s 2 (2) and Cwlth Gaz 1989 No S164)

Legislation after becoming Territory enactment**Magistrates and Coroner's Courts (Registrar) Act 1991 A1991-44 sch 1**

notified 20 September 1991 (Gaz 1991 No S95)
s 1, s 2 commenced 20 September 1991 (s 2 (1))
sch 1 commenced 25 September 1991 (s 2 (2) and Gaz 1991 No S103)

Land (Planning and Environment) (Consequential Provisions) Act 1991 A1991-118 pt 2 div 5, sch 1 pt 5

notified 15 January 1992 (Gaz 1992 No S3)
s 1, s 2 commenced 15 January 1992 (s 2 (1))
pt 2 div 5, sch 1 pt 5 commenced 2 April 1992 (s 2 (2) and Gaz 1992 No 13)

Statute Law Revision (Miscellaneous Provisions) Act 1993 A1993-1 sch 1

notified 1 March 1993 (Gaz 1993 No S23)
commenced 1 March 1993

Bushfire (Amendment) Act 1993 A1993-74 sch 2

notified 22 October 1993 (Gaz 1993 No S215)
commenced 22 October 1993 (s 2)

Public Sector Management (Consequential and Transitional Provisions) Act 1994 A1994-38 sch 1 pt 18

notified 30 June 1994 (Gaz 1994 No S121)
s 1, s 2 commenced 30 June 1994 (s 2 (1))
sch 1 pt 18 commenced 1 July (s 2 (2) and Gaz 1994 No S142)

Land (Planning and Environment) (Amendment) Act 1997 A1997-7 s 10

notified 22 April 1997 (Gaz 1997 No S92)
ss 1-3 commenced 22 April 1997 (s 2 (1))
s 10 commenced 24 June 1997 (s 2 (2))

Magistrates Court (Civil Jurisdiction) (Amendment) Act 1997 A1997-94 sch 3

notified 1 December 1997 (Gaz 1997 No S380)
ss 1-3 commenced 1 December 1997 (s 2 (1))
sch 3 commenced 25 May 1998 (s 2 (2) and Gaz 1998 No S140)

Endnotes

3 Legislation history

Building (Amendment) Act (No 2) 1998 A1998-52 sch pt 1

notified 16 November 1998 (Gaz 1998 No S205)
ss 1-3 commenced 16 November 1998 (s 2 (1))
sch pt 1 commenced 4 January 1999 (s 2 (2) and Gaz 1999 No S1)

Utilities (Consequential Provisions) Act 2000 A2000-66 sch 1 pt 2

notified 20 December 2000 (Gaz 2000 No S68)
s 1, s 2 commenced 20 December 2000 (IA s 10B)
sch 1 pt 2 commences 1 January 2001 (s 2 (1) and Gaz 2000 No S69)

Legislation (Consequential Amendments) Act 2001 A2001-44 pt 68

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 68 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Statute Law Amendment Act 2001 (No 2) 2001 A2001-56 pt 3.8

notified 5 September 2001 (Gaz 2001 No S65)
s 1, s 2 commenced 5 September 2001 (IA s 10B)
amdt 3.11 commenced 12 September 2001 (s 2 (2))
pt 3.8 remainder commenced 5 September 2001 (s 2 (1))

Districts Act 2002 A2002-39 pt 1.2

notified LR 10 October 2002
s 1, s 2 commenced 10 October 2002 (LA s 75 (1))
pt 1.2 commenced 11 October 2002 (s 2)

**Planning and Land (Consequential Amendments) Act 2002 A2002-56
sch 3 pt 3.2**

notified LR 20 December 2002
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))
sch 3 pt 3.2 commenced 1 July 2003 (s 2 and see Planning and Land
Act 2002 A2002-55, s 2)

**Construction Occupations Legislation Amendment Act 2004
A2004-13 sch 2 pt 2.5**

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 2 pt 2.5 commenced 1 September 2004 (s 2 and see Construction
Occupations (Licensing) Act 2004 A2004-12, s 2 and CN2004-8)

Emergencies Act 2004 A2004-28 sch 3 pt 3.4

notified LR 29 June 2004
s 1, s 2 commenced 29 June 2004 (LA s 75 (1))
sch 3 pt 3.4 commenced 1 July 2004 (s 2 (1) and CN2004-11)

Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.10

notified LR 2 September 2004
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))
sch 1 pt 1.10 commenced 10 January 2005 (s 2 and see Court Procedures Act 2004 A2004-59, s 2 and CN2004-29)

Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.21

notified LR 22 March 2007
s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))
sch 3 pt 3.21 commenced 12 April 2007 (s 2 (1))

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.22

notified LR 4 September 2008
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
sch 1 pt 1.22 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.16

notified LR 1 September 2009
s 1, s 2 commenced 1 September 2009 (LA s 75 (1))
sch 3 pt 3.16 commenced 22 September 2009 (s 2)

Statute Law Amendment Act 2011 A2011-3 sch 3 pt 3.9

notified LR 22 February 2011
s 1, s 2 commenced 22 February 2011 (LA s 75 (1))
sch 3 pt 3.9 commenced 1 March 2011 (s 2)

Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.31

notified LR 30 June 2011
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))
sch 1 pt 1.31 commenced 1 July 2011 (s 2 (1))

Endnotes

4 Amendment history

4 Amendment history

| | |
|-------------------------------------|---|
| Title | |
| title | am A1991-118 |
| Preliminary | |
| pt 1 hdg | ins A1991-118 |
| Name of Act | |
| s 1 | sub A1991-118 |
| Dictionary | |
| s 1A | ins A2007-3 amdt 3.104 |
| Notes | |
| s 1B | ins A2007-3 amdt 3.104 |
| Dividing fences | |
| pt 2 hdg | ins A1991-118 |
| Fences requested by occupier | |
| div 2.1 hdg | (prev pt 2 div 1 hdg) ins A1991-118 renum R5 LA |
| Definitions for div 2.1 | |
| s 2 | am Ord1985-67; Ord1989-38 sch 1; A1998-52 sch pt 1; A2000-66 sch 1 pt 2; A2001-44 amdt 1.771; A2001-56 amdt 3.11, amdt 3.12 def basic rural fence sub A2004-13 amdt 2.16 def basic urban fence sub A2004-13 amdt 2.16 def city area ins A1991-118 sch 1 pt 5 om R8 LA def conference ins A1997-94 sch 3 om A2004-60 amdt 1.41 def conference notice ins A1997-94 sch 3 sub A2001-44 amdt 1.769; A2004-60 amdt 1.42 om A2009-20 amdt 3.38 def court am A1997-94 sch 3 om A2007-3 amdt 3.105 def inquiry ins A1997-94 sch 3 sub A2007-3 amdt 3.106 om A2009-20 amdt 3.38 def inquiry notice ins A1997-94 sch 3 sub A2001-44 amdt 1.770; A2004-60 amdt 1.43 om A2009-20 amdt 3.38 def new fence determination ins A2008-37 amdt 1.81 def occupier am Ord1989-38 sch 1 def registrar ins A1997-94 sch 3 def repair cost determination ins A2008-37 amdt 1.81 def repair determination ins A2008-37 amdt 1.81 |

def **rules** ins A2004-60 amdt 1.44
 sub A2009-20 amdt 3.39
 def **unleased land determination** ins A2008-37 amdt 1.81

When land is a *parcel of land*

s 2A ins A2001-56 amdt 3.12
 am A2002-39 amdt 1.2

When land is not a *parcel of land*

s 2B ins A2001-56 amdt 3.12

Cost of erecting new fence includes cost of removing existing fence

s 2C ins A2001-56 amdt 3.12

Cost of erecting fence includes fee payable to surveyor

s 2D ins A2001-56 amdt 3.12

Dividing Fences Act (NSW) to cease to be in force

s 3 om A2001-44 amdt 1.772

Application to ACAT—new fence determination

s 4 am A1991-44; A1991-118; A1997-94; ss renum R5 LA;
 A2004-60 amdts 1.45-1.48; ss renum R11 LA (see A2004-60
 amdt 1.49)
 sub A2008-37 amdt 1.82

Application to ACAT—repair determination

s 5 am A1997-94; ss renum R5 LA; A2004-60 amdt 1.50
 sub A2008-37 amdt 1.82

Application to ACAT—repair cost determination

s 6 am A1991-44; A1997-94; A2004-60 amdts 1.51-1.55;
 ss renum R11 LA (see A2004-60 amdt 1.56)
 sub A2008-37 amdt 1.82

Application to ACAT—unleased land determination

s 7 am A1997-94; ss renum R5 LA; A2004-60 amdt 1.57
 sub A2008-37 amdt 1.82

Parties to applications

s 8 am A1991-44; A1997-94; ss renum R5 LA; A2004-60
 amdts 1.58-1.61; ss renum R11 LA (see A2004-60
 amdt 1.62)
 sub A2008-37 amdt 1.82

Dealing with applications

s 9 hdg sub A2004-60 amdt 1.63
 s 9 am Ord1985-67; Ord1986-74; A1991-118; A1997-94;
 A2004-60 amdt 1.64, amdt 1.65
 reloc to Magistrates Court (Civil Jurisdiction) Rules 2004 pt 18
 as s 257A by A2004-60 amdt 1.66
 ins A2008-37 amdt 1.82

Endnotes

4 Amendment history

ACAT powers—new fence determination

s 10 am Ord1985-67; Ord1986-74; A1991-118
om A1997-94
ins A2008-37 amdt 1.82

ACAT powers—repair determination

s 11 am Ord1989-38; A1991-44; A1991-118; A1997-94; A2004-60
amds 1.67-1.69; ss renum R11 LA (see A2004-60
amdt 1.70)
sub A2008-37 amdt 1.82

ACAT powers—repair cost determination

s 12 am A1997-94; ss renum R5 LA; A2004-60 amdt 1.71
sub A2008-37 amdt 1.82

ACAT powers—unleased land determination

s 13 am A1991-118
om A1997-94
ins A2008-37 amdt 1.82

Applications for variation of certain determinations

s 14 am A1991-118
om A1997-94
ins A2008-37 amdt 1.82

Dealing with variations

s 15 am A1991-118; A2007-3 amdt 3.107
sub A2008-37 amdt 1.82

Court not bound by rules of evidence

s 16 am A1991-118
om A1997-94

Adjournment of inquiries

s 17 am A1991-118
om A1997-94

Service of documents

s 18 am Ord1989-38; A1991-118; A1994-38; A1997-94;
pars renum R5 LA; A2004-60 amdt 1.72; A2011-3
amds 3.103-3.105; A2011-22 amdt 1.97

Apportionment of liability of joint lessees

s 19 am A1997-94; A2004-60 amdt 1.73; A2008-37 amdt 1.83;
A2011-3 amdt 3.106

Ex parte orders may be set aside

s 20 om A1997-94

Div 2.3 not affected

s 21 am A1991-118; A1993-74; A1997-7
sub A2004-28 amdt 3.7

Directions about entry by people on land

s 22 am A1991-118
sub A2008-37 amdt 1.84

Fences required by authority

div 2.2 hdg (prev pt 2 div 2 hdg) ins A1991-118
renum R5 LA
sub A2002-56 amdt 3.17

Boundary between leased and unleased land

s 23 ins A1991-118
am A2002-56 amdt 3.19

Boundary between 2 parcels of leased land

s 24 ins A1991-118
am A2002-56 amdt 3.19

Notice under div 2.2

s 25 ins A1991-118
am A2011-3 amdt 3.107

Noncompliance with notice under div 2.2

s 26 ins A1991-118
am A2002-56 amdt 3.18, amdt 3.19; A2011-3 amdt 3.107

Damage by fire to fences

div 2.3 hdg ins A2004-28 amdt 3.8

Damage by fire to dividing fence

s 26A reloc from Bushfire Act 1936 s 11 by A2004-28 amdt 3.6
sub A2008-37 amdt 1.85

Party walls

pt 3 hdg ins A1991-118

Meaning of party wall in pt 3

s 27 ins A1991-118
am A2004-13 amdt 2.17

Erection of party walls

s 28 ins A1991-118
am A2002-56 amdt 3.19; A2004-13 amdt 2.18; A2011-3 amdts
3.108-3.112

Miscellaneous

pt 4 hdg ins A2001-44 amdt 1.773
om A2004-60 amdt 1.74

Approved forms

s 29 ins A2001-44 amdt 1.773
(6)-(9) exp 12 September 2002 (s 29 (9))
om A2004-60 amdt 1.74

Endnotes

5 Earlier republications

Schedule

sch am Ord1985-67; A1991-44; A1993-1; A1997-94
om A2001-44 amdt 1.774

Dictionary

dict ins A2007-3 amdt 3.108
am A2008-37 amdt 1.86, amdt 1.87; A2011-3 amdt 3.113;
A2011-22 amdt 1.98
def **basic fence** ins A2007-3 amdt 3.108
def **basic rural fence** ins A2007-3 amdt 3.108
def **basic urban fence** ins A2007-3 amdt 3.108
def **conference notice** ins A2007-3 amdt 3.108
om A2009-20 amdt 3.40
def **inquiry** ins A2007-3 amdt 3.108
om A2009-20 amdt 3.40
def **inquiry notice** ins A2007-3 amdt 3.108
om A2009-20 amdt 3.40
def **new fence determination** ins A2008-37 amdt 1.88
def **occupier** ins A2007-3 amdt 3.108
def **parcel of land** ins A2007-3 amdt 3.108
def **party wall** ins A2007-3 amdt 3.108
def **registrar** ins A2007-3 amdt 3.108
def **repair cost determination** ins A2008-37 amdt 1.88
def **repair determination** ins A2008-37 amdt 1.88
def **rules** ins A2007-3 amdt 3.108
def **unleased land determination** ins A2008-37 amdt 1.88

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

| Republication No | Amendments to | Republication date |
|------------------|---------------|--------------------|
| 1 | A1991-44 | 30 September 1991 |
| 2 | A1993-1 | 1 March 1993 |
| 3 | A1994-38 | 31 January 1995 |
| 4 | A1997-94 | 1 June 1998 |

| Republication No | Amendments to | Republication date |
|-------------------------|----------------------|---------------------------|
| 5 | A2001-56 | 18 January 2002 |
| 6 | A2001-56 | 13 September 2002 |
| 7 | A2002-39 | 11 October 2002 |
| 8* | A2002-56 | 1 July 2003 |
| 9 | A2004-28 | 1 July 2004 |
| 10 | A2004-28 | 1 September 2004 |
| 11 | A2004-60 | 10 January 2005 |
| 12 | A2007-3 | 12 April 2007 |
| 13 | A2008-37 | 2 February 2009 |
| 14* | A2009-20 | 22 September 2009 |
| 15 | A2011-3 | 1 March 2011 |

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