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AUSTRALIAN CAPITAL TERRITORY

COMMON BOUNDARIES ACT 1981

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 1 June 1998

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AUSTRALIAN CAPITAL TERRITORY

COMMON BOUNDARIES ACT 1981

An Act relating to dividing fences and party walls

PART I—PRELIMINARY

1. Short title

This Act may be cited as the *Common Boundaries Act 1981*.¹

PART II—DIVIDING FENCES

Division 1—Fences requested by occupiers

2. Interpretation

(1) In this Division, unless the contrary intention appears—

“basic fence” means—

- (a) in the case of a fence to be erected between parcels of land in the City Area—a basic urban fence; and
- (b) in any other case—a basic rural fence;

“basic rural fence” and “basic urban fence” have the same meanings respectively as in the Building Manual as in force from time to time under Part II of the *Building Act 1972*;

“City Area” means the area that was the City Area for the purposes of the *City Area Leases Act 1936* immediately before that Act was repealed;

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“conference” means a conference under Division 6 of Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982*;

“Conference Notice” means a notice in the form of Form 4 in Schedule 2 to the *Magistrates Court (Civil Jurisdiction) Act 1982*;

“Court” means the Small Claims Court;

“inquiry” means an inquiry in the Court;

“Inquiry Notice” means a notice in the form of Form 5 in Schedule 2 to the *Magistrates Court (Civil Jurisdiction) Act 1982*;

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

- (a) in the case of a parcel held under a lease, not being a weekly or fortnightly tenancy, from the Commonwealth—the person by whom the parcel is so held;
- (b) in the case of a parcel vested in a person for an estate in fee simple—the person in whom the parcel is so vested; and
- (c) where neither paragraph (a) nor (b) applies—
 - (i) in the case of Territory Land—the Territory; and
 - (ii) in the case of National Land—the Commonwealth;

“Registrar” means the Registrar of the Magistrates Court.

- (2) Land is a parcel of land for the purposes of this Division if—
 - (a) the land is held by a person under a lease, not being a weekly or fortnightly tenancy, from the Commonwealth;
 - (b) the land is vested in a person for an estate in fee simple; or
 - (c) the land is a block within the meaning of the *Districts Act 1966* and there is upon the land a building, other than—
 - (i) a building used by the Australian Capital Territory Electricity and Water Authority in the reticulation of electricity in the Territory;
 - (ii) a building at a place that is a stopping place within the meaning of the *Motor Omnibus Services Act 1955*, being a building made available by the Commonwealth for use by persons waiting to make journeys on motor omnibus services provided under that Act; and
 - (iii) a building consisting solely of a lavatory or lavatories to which the public have access.
- (3) Land is not a parcel of land for the purposes of this Division if—
 - (a) the land is a public park within the meaning of the *Public Parks Act 1928*;

- (b) the land is a reserved area within the meaning of the *Nature Conservation Act 1980*; or
 - (c) the land is a sports ground.
- (4) For the purposes of this Division, where a new fence is to be erected in place of an existing fence, the cost of removing the existing fence shall be taken to be part of the cost of erecting the new fence.
- (5) For the purposes of this Division, the following fees shall be taken to be included in the cost of erecting a fence or erecting a new fence in place of an existing fence:
- (a) fees payable to a surveyor in connection with the ascertainment of the boundary or line along which a fence is to be erected;
 - (b) fees payable to the Building Controller in respect of an application under the *Building Act 1972* for the approval of plans or for the grant of a building permit.
- (6) A reference in this Division to a form by number shall be read as a reference to the form so numbered in the Schedule.

3. Dividing Fences Act (N.S.W.) to cease to be in force

The *Dividing Fences Act, 1902* of the State of New South Wales shall cease to be in force in the Territory.

4. Determination of questions regarding erection of fences

- (1) Subject to this section, where—
- (a) adjoining parcels of land are not separated by a fence;
 - (b) the occupier of one of the parcels has requested the occupier of the other parcel to join in the erection of a fence between the parcels; and
 - (c) either—
 - (i) the occupier to whom that request was made has refused to comply with the request; or
 - (ii) the occupiers of the parcels are unable to agree with regard to a matter relating to the construction of the fence;

either of the occupiers may make application to the Court for a determination under section 5.

- (2) For the purposes of subsection (1), an occupier who fails to comply with a request within 14 days after the date on which the request was made shall be deemed to have refused to comply with the request.
- (3) The occupier of one of 2 adjoining parcels of land is not entitled to make application under subsection (1) until the expiration of a period of 1

month after the date on which he or she gives to the occupier of the other parcel notice in accordance with Form 1.

(4) An application under subsection (1) shall be in writing in accordance with Form 2.

(5) The parties to an application under this section shall be the applicant and the person to whom notice has been given for the purpose of subsection (3).

(6) Upon receipt of an application under subsection (1) the Registrar shall—

- (a) direct the holding of a conference between the parties; or
- (b) if the Registrar is satisfied that in the circumstances the objectives referred to in section 420 of the *Magistrates Court (Civil Jurisdiction) Act 1982* would not be significantly advanced by holding a conference—direct the holding of an inquiry into the application.

(6A) If the Registrar directs a conference to be held, he or she shall, not later than 10 days before the day fixed for the conference—

- (a) cause a copy of the application to be served on the respondent; and
- (b) cause a Conference Notice to be served on the parties.

(6B) If the Registrar directs an inquiry to be held, he or she shall, not later than 10 days before the day fixed for the inquiry—

- (a) cause a copy of the application to be served on the respondent; and
- (b) cause an Inquiry Notice to be served on the parties.

(7) This section does not apply to, or in relation to, the erection of a fence if the erection of the fence commenced before the date of commencement of this Division.

5. Powers of Court regarding erection of fences

(1A) The Court may hold an inquiry on an application under section 4 pursuant to a direction of the Registrar—

- (a) under section 426 or 428 of the *Magistrates Court (Civil Jurisdiction) Act 1982*; or
- (b) under paragraph 4 (6) (b) of this Act.

(1) In an inquiry on an application under section 4, the Court may determine—

- (a) the nature of the fence that should be erected between the parcels of land occupied by the parties;
- (b) the line along which the fence should be erected;
- (c) the party who should be responsible for the erection of the fence;

- (d) the amount that should be contributed by the party other than the party referred to in paragraph (c) towards the cost of erecting the fence; and
 - (e) the manner in which, and the time within which, an amount referred to in paragraph (d) should be paid to the party responsible for the erection of the fence.
- (2) Where, on an application under section 4, a party to the application has requested the Court to determine that a basic fence should be erected between the parcels of land to which the application relates, the Court shall not determine that that party should contribute towards the cost of erecting a fence between those parcels an amount exceeding one-half of the cost of erecting a basic fence between those parcels.
- (3) Subsection (2) does not apply where the Court is satisfied—
- (a) that it is not practicable for a basic fence to be erected between the parcels of land in question; or
 - (b) that there are special circumstances that require the erection of a fence of a kind other than a basic fence.

6. Application to Court where occupiers unable to agree on repairs

- (1) Subject to subsection (3), where—
- (a) adjoining parcels of land are separated by a fence;
 - (b) the occupier of one of the parcels of land has requested the occupier of the other parcel to join in repairing the fence or constructing a new fence in place of the existing fence; and
 - (c) either—
 - (i) the occupier to whom the request was made has refused to comply with the request; or
 - (ii) the occupiers of the parcels of land are unable to agree with regard to a matter relating to the repair or replacement of the fence;

either of the occupiers may make application to the Court for a determination under subsection 7 (1).

(2) For the purposes of subsection (1), an occupier who fails to comply with a request within 14 days after the date on which the request was made shall be deemed to have refused to comply with the request.

(3) The occupier of one of 2 adjoining parcels of land is not entitled to make application under subsection (1) until the expiration of a period of 1 month after the date on which he or she gives to the occupier of the other parcel notice in accordance with Form 3.

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- (4) Where—
- (a) a fence erected between adjoining parcels of land has been damaged or destroyed; and
 - (b) it is necessary, in order to protect persons residing in premises situated on one of the parcels or to prevent the escape of animals, that the fence be repaired or replaced, as the case may be, without delay;

the occupier of either of the parcels may, without giving notice to the occupier of the other parcel, repair or replace the fence.

(5) Subject to subsection (6), where in pursuance of subsection (4), an occupier of a parcel of land has repaired or replaced a fence, that occupier may make application to the Court for a determination under subsection 7 (4).

(6) An occupier of a parcel of land is not entitled to make an application under subsection (5) until the expiration of a period of 14 days after the date on which he or she requests the occupier of the adjoining parcel of land to contribute to the cost of the repair or replacement effected by the first-mentioned occupier.

(7) An application under subsection (1) shall be in writing in accordance with Form 4.

(8) An application under subsection (5) shall be in writing in accordance with Form 5.

(9) The parties to an application under this section shall be the applicant and the occupier to whom notice has been given under subsection (3) or to whom, but for subsection (4), the applicant would have been required to give notice under subsection (3).

(10) Upon receipt of an application under subsection (1) or (5) the Registrar shall—

- (a) direct the holding of a conference between the parties; or
- (b) if the Registrar is satisfied that in the circumstances the objectives referred to in section 420 of the *Magistrates Court (Civil Jurisdiction) Act 1982* would not be significantly advanced by holding a conference—direct the holding of an inquiry into the application.

(11) If the Registrar directs a conference to be held, he or she shall, not later than 10 days before the day fixed for the conference—

- (a) cause a copy of the application to be served on the respondent; and
- (b) cause a Conference Notice to be served on the parties.

(12) If the Registrar directs an inquiry to be held, he or she shall, not later than 10 days before the day fixed for the inquiry—

- (a) cause a copy of the application to be served on the respondent; and
- (b) cause an Inquiry Notice to be served on the parties.

7. Powers of Court regarding repair of fences

(1A) The Court may hold an inquiry on an application under section 6 pursuant to a direction of the Registrar—

- (a) under section 426 or 428 of the *Magistrates Court (Civil Jurisdiction) Act 1982*; or
- (b) under paragraph 6 (10) (b) of this Act.

(1) In an inquiry on an application under subsection 6 (1), the Court shall determine whether the fence to which the application relates is in need of repair or replacement.

(2) Where, on an application under subsection 6 (1), the Court determines that a fence is in need of repair or replacement, the Court may determine—

- (a) whether the party or parties other than the applicant should be required to contribute to the cost of the repair or replacement of the fence;
- (b) the nature of the repair that is required or the nature of the fence that should be erected in place of the existing fence;
- (c) the party who should be responsible for effecting the repair or replacement;
- (d) the amount that should be contributed by the party other than the party referred to in paragraph (c) towards the cost of the repair or replacement; and
- (e) the manner in which, and the time within which, an amount referred to in paragraph (d) should be paid to the party responsible for effecting the repair or replacement.

(3) For the purpose of determining the amount that should be contributed by a party referred to in paragraph (2) (d) towards the cost of repairing or replacing a fence, the Court shall adopt the principle that the cost should be borne by the parties in equal proportions unless there are circumstances that render it just that one party bear a greater proportion of the cost than the other party.

(4) In an inquiry on an application under subsection 6 (5), the Court shall determine whether it is reasonable that the party to the application other than the applicant be required to contribute to the cost of the repair or replacement effected by the applicant.

(5) Where, on an application under subsection 6 (5), the Court determines that it is reasonable that a person be required to contribute to the cost of the repair or replacement of a fence, the Court shall also determine—

- (a) the amount that should be contributed; and
- (b) the manner in which, and the time within which, that amount should be paid to the applicant.

(6) For the purpose of determining, on an application under subsection 6 (5), the amount that should be contributed by a party to the application to the cost of repairing or replacing a fence, the Court shall adopt the principle that the cost of repairing or replacing the fence, as the case may be, should be borne by the parties to the application in equal proportions unless there are circumstances that render it just that one party bear a greater proportion of the cost than the other party.

8. Variation of determinations

(1) An occupier of a parcel of land who was a party to an application upon which a determination was made by the Court under section 5 or section 7 may apply to the Court for a variation of the determination.

(2) An application under subsection (1) shall be in writing in accordance with Form 6.

(3) The parties to an application under subsection (1) shall be the applicant and the other party to the application on which the determination was made.

(4) Upon receipt of an application under subsection (1) the Registrar shall—

- (a) direct the holding of a conference between the parties; or
- (b) if the Registrar is satisfied that in the circumstances the objectives referred to in section 420 of the *Magistrates Court (Civil Jurisdiction) Act 1982* would not be significantly advanced by holding a conference—direct the holding of an inquiry into the application.

(4A) If the Registrar directs a conference to be held, he or she shall, not later than 10 days before the day fixed for the conference—

- (a) cause a copy of the application to be served on the respondent; and
- (b) cause a Conference Notice to be served on the parties.

(4B) If the Registrar directs an inquiry to be held, he or she shall, not later than 10 days before the day fixed for the inquiry—

- (a) cause a copy of the application to be served on the respondent; and
- (b) cause an Inquiry Notice to be served on the parties.

(5) The Court may hold an inquiry on an application under subsection (1) pursuant to a direction of the Registrar—

- (a) under section 426 or 428 of the *Magistrates Court (Civil Jurisdiction) Act 1982*; or
- (b) under paragraph (4) (b) of this section.

(6) On an application under subsection (1), the Court shall not vary a determination in such a way that the determination, as varied, is a determination that could not have been made on the original application.

9. Costs

(1) Where the Court is satisfied that the making of an application for a determination, or for the variation of a determination, under this Division was unreasonable, whether or not it makes the determination or variation, the Court may make an order that the applicant pay to the other party to the application such sum in respect of the costs incurred by that party in connection with the application as the Court thinks proper.

(2) Where—

- (a) the Court makes or varies a determination under this Division; and
- (b) the Court is satisfied that the making of the application for the determination or for the variation of the determination, as the case may be, was occasioned by the unreasonable conduct of the party other than the applicant;

the Court may make an order that that party pay to the applicant such sum in respect of the costs incurred by the applicant in connection with the application as the Court thinks proper.

11. Contribution by occupier of previously unleased land

(1) Where—

- (a) the occupier of a parcel of land has commenced erecting a fence between that parcel and adjoining land that is not a parcel of land for the purpose of this Division; and
- (b) within 6 months after the date on which the erection of the fence commenced, the adjoining land becomes a parcel of land for the purposes of this Division;

the person who occupies the first-mentioned parcel of land at the time at which the adjoining land becomes a parcel of land for the purposes of this Division may apply to the Court for a determination under section 12.

(2) Where—

- (a) the occupier of a parcel of land has commenced erecting a fence between that parcel and adjoining land that is not a parcel of land for the purposes of this Division; and

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- (b) not earlier than 6 months after the date on which the erection of the fence commenced, the adjoining land becomes a parcel of land for the purposes of this Division;

the person who occupies the first-mentioned parcel of land at the time at which the adjoining land becomes a parcel of land for the purposes of this Division may apply to the Court for a determination under section 12.

(3) An application under subsection (1) or (2) shall be in writing in accordance with Form 7.

(4) Upon receipt of an application under subsection (1) or (2) the Registrar shall—

- (a) direct the holding of a conference between the parties; or
- (b) if the Registrar is satisfied that in the circumstances the objectives referred to in section 420 of the *Magistrates Court (Civil Jurisdiction) Act 1982* would not be significantly advanced by holding a conference—direct the holding of an inquiry into the application.

(5) If the Registrar directs a conference to be held, he or she shall, not later than 10 days before the day fixed for the conference—

- (a) cause a copy of the application to be served on the respondent; and
- (b) cause a Conference Notice to be served on the parties.

(6) If the Registrar directs an inquiry to be held, he or she shall, not later than 10 days before the day fixed for the inquiry—

- (a) cause a copy of the application to be served on the respondent; and
- (b) cause an Inquiry Notice to be served on the parties.

12. Powers of Court regarding erection of fences on previously unleased land

(1A) The Court may hold an inquiry on an application under subsection 11 (1) or (2) pursuant to a direction of the Registrar—

- (a) under section 426 or 428 of the *Magistrates Court (Civil Jurisdiction) Act 1982*; or
- (b) under paragraph 11 (4) (b) of this Act.

(1) In an inquiry on an application under section 11, the Court shall determine whether it is reasonable that the party to the application other than the applicant be required to contribute to the cost of the erection of the fence by the applicant.

(2) Where, on an application under section 11, the Court determines that it is reasonable that a person be required to contribute to the cost of the erection of a fence, the Court shall also determine—

- (a) the amount that should be contributed; and
 - (b) the manner in which, and the time within which that amount should be paid to the applicant.
- (3) For the purposes of determining the amount that should be contributed under paragraph (2) (a) the Court shall adopt the principle that—
- (a) in the case of an application under subsection 11 (1), the amount should be an amount equal to one-half of the cost of erecting the fence referred to in paragraph 11 (1) (a) or an amount equal to one-half of the amount that would have represented the cost of erecting that fence if that fence had been a basic fence, whichever is the less; and
 - (b) in the case of an application under subsection 11 (2), the amount should be a reasonable amount but, in any event, the amount should not exceed one-half of the cost of erecting the fence or one-half of the amount that would have represented the cost of erecting the fence if the fence had been a basic fence, whichever is the less.

15. Application may be heard together

- (1) Where the same person is a party to 2 or more applications to the Court under the same section of this Division, the Court may, if it is satisfied that the circumstances so warrant, direct that the applications be dealt with together.
- (2) Where a direction is given under subsection (1), the court shall conduct 1 inquiry in respect of all of the applications to which the direction relates.

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) where the occupier is the Territory—by sending the notice by post to the Chief Executive;
 - (aa) where the occupier is the Commonwealth—by sending the notice by post to the Secretary to the Department of the Commonwealth for the time being responsible for the administration of National Land; and
 - (b) in any other case—by sending the document by post addressed to the occupier at his or her address last-known to the person sending the document or at the parcel of land.
- (2) Where 2 or more persons are the occupiers of a parcel of land, a document that has been served on one of those persons shall be deemed to have been served on both or all of those persons, as the case may be.

(3) This section is to be read together with section 408 and Division 8 of Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982*.

19. Apportionment of liability of joint lessees

(1) In this section—

“order” means—

- (a) a determination made under section 5, 7 or 12; or
- (b) an order under Part XIX of the *Magistrates Court (Civil Jurisdiction) Act 1982* in relation to such a determination.

(2) Where 2 or more persons occupy a parcel of land as joint tenants, tenants in common or joint lessees and an order requires those persons to make a payment—

- (a) those persons are jointly and severally liable for the payment of the amount payable under the order;
- (b) as between themselves, the liability to pay the amount shall, in the absence of agreement to the contrary, be borne in equal proportions; and
- (c) one of those persons who pays more than his or her proportionate amount may recover the excess as a debt due by the other person or persons.

21. Other Act not affected

Nothing in this Division affects the operation of section 11 of the *Bushfire Act 1936*.

22. Directions regarding entry by tradesmen upon land

(1) Where the Court makes a determination under this Division in relation to the erection, repair or replacement of a fence, the Court may, by its determination, give such directions as it thinks necessary in relation to the entry of persons upon land in connection with the erection, repair or replacement of the fence.

(2) The Court shall not give directions under this section in relation to the entry of persons upon land other than land—

- (a) occupied by a party to the application; or
- (b) occupied by a sub-lessee, tenant, licensee or other person in possession from a party to the application;

on which the directions were given.

(3) Where a person has been given a direction under this section he or she may, at all reasonable times, enter upon land in accordance with that direction for the purpose of undertaking such work as may be necessary for the erection, repair or replacement of a fence specified in that direction.

Division 2—Fences required by Minister

23. Boundary between leased and unleased land

Where there is a common boundary between a parcel of leased Territory Land and an area of unleased Territory Land the Minister may, by notice in writing 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

Where there is a common boundary between 2 parcels of leased Territory Land included in different leases, the Minister may, by notice in writing to each lessee, require them jointly to erect a fence on that boundary or any part of it.

25. Notice

A notice under section 23 or 24 shall specify the fence to be erected and the portion of the boundary on which it is to be erected.

26. Non-compliance

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

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

PART III—PARTY WALLS

27. Interpretation

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 wholly or partly used for the support of 2 or more buildings, being a wall that was erected in connection with a building in respect of which there is applicable a certificate—
 - (i) of the kind referred to in regulation 69A of the Canberra Building Regulations as in force at the time of the issue of the certificate under the *Buildings and Services Act 1924* or under that Act as subsequently amended;

- (ii) of the kind referred to in regulation 69A of the Canberra Building Regulations as in force at the time of the issue of the certificate under the *Building Act 1972*; or
- (iii) issued under subsection 53 (2) or (3) of the *Building Act 1972*.

28. Erection of party walls

Where in any building plan or design prepared or approved by the proper authority, or in plans and specifications approved by the Building Controller, for buildings 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 continuance of his or her 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;
- (b) the lessees of the 2 parcels of land may agree as to the lessee by whom the party wall shall be erected and in what proportions the cost of erection shall be borne by them;
- (c) where the lessee of 1 parcel of land has at his or her own expense erected a party wall—the lessee of the other parcel of land shall forthwith after commencing the erection of a building on the other parcel of land pay to the first-mentioned lessee a proportion of the cost of the erection of the party wall;
- (d) in default of agreement between the lessees as to the apportionment of the cost of erecting a party wall—the Minister 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;
- (e) where 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 commencement of the erection of a building on the other parcel of land—a reasonable allowance shall 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 Minister, as payable by 1 lessee to another lessee under this section shall be a debt due and recoverable by the other lessee in any court of competent jurisdiction.

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SCHEDULE

FORM 1

Subsection 4 (3)

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To *(name and address)*

You are hereby invited to discuss the erection of, and payment for, the fencing of the boundary between the land occupied by you at *(address)* and the adjoining land situated at *(address)* with a view to reaching agreement on those matters.

2. If an agreement cannot be reached within 1 month from the date of receipt of this notice an application will be made to the Small Claims Court for a determination under section 5 of the *Common Boundaries Act 1981* in relation to the fencing of the boundary between the parcels of land referred to above.

Dated _____, 19 ____ .

(Signature and address)

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SCHEDULE—continued

FORM 2

Subsection 4 (4)

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In the Small Claims Court,
Canberra.

(Name of applicant)
Applicant

(Name of respondent)
Respondent

Application under subsection 4 (1) of the *Common Boundaries Act 1981*

Application is made by *(full name)*, of *(address)*, for a determination under section 5 of the *Common Boundaries Act 1981*.

2. The respondent to this application is *(full name)*, of *(address)*.
3. The applicant is the occupier of land situated at *(address)* being block _____, section _____, Division of _____.
4. The respondent is the occupier of land situated at *(address)*, being block _____, section _____, Division of _____.
5. There is no fence separating the respondent's land from the land occupied by the applicant.
6. The fence proposed would consist of *(here insert details)*.
- *7. The fence proposed would follow the boundary of the land occupied by the applicant.
- *7 The fence proposed would not be constructed along the boundary of the land occupied by the applicant but along a line as follows:
8. The cost of the proposed fence would be \$ _____.
9. The applicant, on _____, 19 _____, gave to the respondent a notice in writing with a view to settling the matter by agreement.
- ‡10. The respondent has refused to join in the construction of a fence between the respondent's land and the land occupied by the applicant.
- ‡10. The applicant and respondent have not been able to agree upon the following matters:
Dated _____, 19 _____.

*(Signature of applicant
or his or her
representative)*

‡The applicant is represented by *(name and address of representative)*.

* *Strike out whichever is inappropriate*

† *Strike out whichever is inappropriate*

‡ *Strike out if inappropriate*

Common Boundaries Act 1981
SCHEDULE—continued

FORM 3

Subsection 6 (3)

Common Boundaries Act 1981

To *(name and address)*

You are hereby invited to discuss the repair *(or replacement)* of the fence between the land occupied by you at *(address)* and the adjoining land situated at *(address)* with a view to reaching agreement concerning that work and contribution to the cost of it.

2. If agreement cannot be reached within 1 month from the date of receipt of this notice an application will be made to the Small Claims Court for a determination under subsection 7 (1) of the *Common Boundaries Act 1981* in relation to the repair *(or replacement)* of the fence between the parcels of land referred to above.

Dated _____, 19 ____ .

(Signature and address)

FORM 4

Subsection 6 (7)

Common Boundaries Act 1981

In the Small Claims Court,
Canberra.

(Name of applicant)

Applicant

(Name of respondent)

Respondent

Application under subsection 6 (1) of the *Common Boundaries Act 1981*.

Application is made by *(full name)*, of *(address)*, for a determination under subsection 7 (1) of the *Common Boundaries Act 1981*.

2. The respondent to this application is *(full name)* of *(address)*.

3. The applicant is the occupier of land situated at *(address)*, being block _____, section _____, Division of _____.

4. The respondent occupies adjoining land, being block _____, section _____, Division of _____.

5. It is proposed that the fence separating the respondent's land from that occupied by the applicant be repaired *(or replaced)*. Particulars of the proposed repair *(or of the fence proposed in place of the existing fence)* are as follows:

6. The proposed repairs *(or replacement)* would cost \$ _____. It is proposed that the respondent contribute \$ _____.

7. The applicant, on _____, 19 _____, gave to the respondent a notice in writing with a view to settling the matter by agreement.

*8. The respondent has refused to join in any repair or replacement of the fence.

*8. The applicant and respondent have not been able to agree upon the following matters:

Dated _____, 19 ____ .

*(Signature of applicant
or his or her
representative)*

†The applicant is represented by *(name and address of representative)*.

* Strike out whichever is inappropriate

† Strike out if inappropriate

Common Boundaries Act 1981
SCHEDULE—continued

FORM 5

Subsection 6 (8)

Common Boundaries Act 1981

In the Small Claims Court,
Canberra.

(*Name of applicant*)
Applicant

(*Name of respondent*)
Respondent

Application under subsection 6 (5) of the *Common Boundaries Act 1981*.

Application is made by (*full name*), of (*address*), for a determination under subsection 7 (4) of the *Common Boundaries Act 1981*.

2. The respondent to this application is (*full name*) of (*address*).
3. The applicant is the occupier of land situated at (*address*), being block _____, section _____, Division of _____.
4. The respondent occupies adjoining land, being block _____, section _____, Division of _____.
5. The fence separating the land of the respondent from that of the applicant was, on _____ 19____, damaged (*or destroyed*) as a result of _____.
- *6. It was necessary that the fence be repaired (*or replaced*) without delay in order to protect persons residing on the land of the applicant (*or the respondent*).
- *6. It was necessary that the fence be repaired (*or replaced*) without delay in order to prevent the escape of animals from the land of the applicant (*or the respondent*).
7. The applicant repaired (*or replaced*) the fence at a cost of \$ _____.
8. The applicant, on _____ 19____, gave to the respondent a notice in writing requesting the respondent to contribute to the cost of the repair (*or replacement*) of the fence.

Dated _____, 19____.

(*Signature of applicant
or his or her
representative*)

†The applicant is represented by (*name and address of representative*).

* *Strike out whichever is inappropriate*

† *Strike out if inappropriate*

Common Boundaries Act 1981
SCHEDULE—continued

FORM 6

Subsection 8 (2)

Common Boundaries Act 1981

In the Small Claims Court,
Canberra.

(Name of applicant)

Applicant

(Name of respondent)

Respondent

Application for variation of Determination

Application is made by *(full name)*, of *(address)*, for a variation of the determination made by the Court on 19 and relating to the erection *(or repair)* of a fence between blocks and , section , Division of .

2. Particulars of the variation sought are as follows:

Dated , 19 .

(Signature of applicant

or representative)

* The applicant is represented by *(name and address of representative)*.

* *Strike out if inappropriate*

Common Boundaries Act 1981
SCHEDULE—continued

FORM 7

Section 11

Common Boundaries Act 1981

In the Small Claims Court,
Canberra.

(Name of applicant)
Applicant
(Name of respondent)
Respondent

Application under section 11 of the *Common Boundaries Act 1981*.

Application is made by (*full name*), of (*address*), for a determination under section 12 of the *Common Boundaries Act 1981*.

2. The respondent to this application is (*full name*) of (*address*).

3. The applicant is the occupier of land situated at (*address*), being block , section , Division of .

*4. The respondent occupied adjoining land, being block , section , Division of within 6 months after the date on which the applicant commenced the erection of a fence on the land specified in clause 3.

*4. The respondent occupied adjoining land being block , section , Division of no earlier than 6 months after the date on which the applicant commenced the erection of a fence on the land specified in clause 3.

5. The parcel of land specified in clause 4 is a parcel of land for the purposes of the Act.

*6. The fence erected was a basic fence which cost \$.

*6. The fence erected was not a basic fence and cost \$. The estimated cost of a basic fence would have been \$.

7. It is proposed that the respondent contribute \$.

*8. The respondent has refused to contribute to the erection of the fence.

*8. The applicant and the respondent have not been able to agree upon the following matters:

Dated , 19 .

(Signature of applicant
or his or her
representative)

† The applicant is represented by (*name and address of representative*).

* *Strike out whichever is inappropriate*

* *Strike out whichever is inappropriate*

* *Strike out whichever is inappropriate*

† *Strike out if inappropriate*

Common Boundaries Act 1981

NOTES

1. The *Common Boundaries Act 1981* as shown in this reprint comprises Act No. 39, 1981 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

2. The *Legislation (Republication) Act 1996* (No. 51, 1996) authorises the Parliamentary Counsel in preparing a law for republication, to make certain editorial and other formal amendments in accordance with current legislative drafting practice. Those amendments make no change in the law. Amendments made pursuant to that Act do not appear in the Table of Amendments but details may be obtained on request from the Parliamentary Counsel's Office.

Table 1

Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Dividing Fences Ordinance 1981</i>	39, 1981	30 Oct 1981	30 Oct 1981	—
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (<i>see Gazette 1986, No. G3, p. 265</i>)	—
<i>Magistrates Court (Amendment) Ordinance (No. 3) 1986</i>	74, 1986	14 Nov 1986	14 Nov 1986	—
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (<i>see s. 2 (2) and Gazette 1989, No. S164</i>)	—

Self-Government day 11 May 1989

Common Boundaries Act 1981

NOTES—continued

Table 2

Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Magistrates and Coroner's Courts (Registrar) Act 1991</i>	44, 1991	20 Sept 1991	Ss. 1 and 2: 20 Sept 1991 Remainder: 25 Sept 1991 (<i>see Gazette</i> 1991, No. S103, p. 2)	—
<i>Land (Planning and Environment) (Consequential Provisions) Act 1991</i>	118, 1991	15 Jan 1992	Ss. 1 and 2: 15 Jan 1992 Ss. 3-8, 17-27 and 32-44: 2 Apr 1992 (<i>see Gazette</i> 1992, No. 13, p. 478) Remainder: 15 July 1992	Ss. 25-27
<i>Statute Law Revision (Miscellaneous Provisions) Act 1993</i>	1, 1993	1 Mar 1993	1 Mar 1993	—
<i>Bushfire (Amendment) Act 1993</i>	74, 1993	22 Oct 1993	22 Oct 1993	—
<i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i>	38, 1994	30 June 1994	Ss. 1 and 2: 30 June 1994 Remainder: 1 July (<i>see Gazette</i> 1994, No. S142, p. 2)	Ss. 3, 5-12, 15 and 19
(Reprinted as at 31 January 1995)				
<i>Land (Planning and Environment) (Amendment) Act 1997</i>	7, 1997	22 Apr 1997	Ss. 1-3: 22 Apr 1997 Remainder: 24 June 1997 (<i>see s. 2 (2)</i>)	—
<i>Magistrates Court (Civil Jurisdiction) (Amendment) Act 1997</i>	94, 1997	1 Dec 1997	Ss. 1-3: 1 Dec 1997 Remainder: 25 May 1998 (<i>see Gazette</i> 1998, No. S140)	—

Common Boundaries Act 1981

NOTES—continued

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
Long title	am. Act No. 118, 1991
Heading to Part I.....	ad. Act No. 118, 1991
S. 1.....	rs. Act No. 118, 1991
Heading to Part II.....	ad. Act No. 118, 1991
Heading to Div. 1 of Part II	ad. Act No. 118, 1991
S. 2.....	am. No. 67, 1985; No. 38, 1989; Act No. 118, 1991; No. 94, 1997
S. 4.....	am. Acts Nos. 44 and 118, 1991; No. 94, 1997
S. 5.....	am. Act No. 94, 1997
S. 6.....	am. Act No. 44, 1991; No. 94, 1997
S. 7.....	am. Act No. 94, 1997
S. 8.....	am. Act No. 44, 1991; No. 94, 1997
S. 9.....	am. No. 67, 1985; No. 74, 1986; Act No. 118, 1991; No. 94, 1997
S. 10.....	am. No. 67, 1985; No. 74, 1986; Act No. 118, 1991 rep. No. 94, 1997
S. 11.....	am. No. 38, 1989; Acts Nos. 44 and 118, 1991; No. 94, 1997
S. 12.....	am. Act No. 94, 1997
Ss. 13, 14.....	am. Act No. 118, 1991 rep. No. 94, 1997
S. 15.....	am. Act No. 118, 1991
Ss. 16, 17.....	am. Act No. 118, 1991 rep. No. 94, 1997
S. 18.....	am. No. 38, 1989; Act No. 118, 1991; No. 38, 1994; No. 94, 1997
S. 19.....	am. Act No. 94, 1997
S. 20.....	rep. Act No. 94, 1997
S. 21.....	am. Act No. 118, 1991; No. 74, 1993; No. 7, 1997
S. 22.....	am. Act No. 118, 1991
Div. 2 of Part II (ss. 23-26)	ad. Act No. 118, 1991
Ss. 23-26.....	ad. Act No. 118, 1991
Part III (ss. 27, 28).....	ad. Act No. 118, 1991
Ss. 27, 28.....	ad. Act No. 118, 1991
Schedule.....	am. No. 67, 1985; Act No. 44, 1991; No. 1, 1993; No. 94, 1997

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