



Australian Capital Territory

Common Boundaries Act 1981

A1981-39

Republication No 9

Effective: 1 July 2004 – 31 August 2004

Republication date: 1 July 2004

Last amendment made by A2004-28

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

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 2004. It also includes any amendment, repeal or expiry affecting the republished law to 1 July 2004.

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 does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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 *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Common Boundaries Act 1981

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
Part 2	Dividing fences
Division 2.1	Fences requested by occupiers
2	Definitions for div 2.1 3
2A	When land is a <i>parcel of land</i> 4
2B	When land is not a <i>parcel of land</i> 4
2C	Cost of erecting new fence includes cost of removing existing fence 5
2D	Cost of erecting fence includes fee payable to surveyor 5
4	Determination of questions regarding erection of fences 5
5	Powers of Small Claims Court regarding erection of fences 7
6	Application to Small Claims Court where occupiers unable to agree on repairs 8

R9
01/07/04

Common Boundaries Act 1981
Effective: 01/07/04-31/08/04

contents 1

Contents

		Page
7	Powers of Small Claims Court regarding repair of fences	10
8	Variation of determinations	12
9	Costs	13
11	Contribution by occupier of previously unleased land	14
12	Powers of Small Claims Court regarding erection of fences on previously unleased land	15
15	Application may be heard together	16
18	Service of documents	16
19	Apportionment of liability of joint lessees	17
21	Div 2.3 not affected	18
22	Directions regarding entry by people on land	18
Division 2.2 Fences required by authority		
23	Boundary between leased and unleased land	18
24	Boundary between 2 parcels of leased land	19
25	Notice under div 2.2	19
26	Noncompliance with notice under div 2.2	19
Division 2.3 Damage by fire to fences		
26A	Damage by fire to dividing fence	19
Part 3 Party walls		
27	Meaning of <i>party wall</i> in pt 3	21
28	Erection of party walls	21
Part 4 Miscellaneous		
29	Approved forms	24
Endnotes		
1	About the endnotes	25
2	Abbreviation key	25
3	Legislation history	26
4	Amendment history	29
5	Earlier republications	32
6	Uncommenced amendments	33



Australian Capital Territory

Common Boundaries Act 1981

An Act relating to dividing fences and party walls

Part 1 Preliminary

Section 1

Part 1 Preliminary

1 Name of Act

This Act is the *Common Boundaries Act 1981*.

Part 2 **Dividing fences**

Division 2.1 **Fences requested by occupiers**

U 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—see the building manual as in force from time to time under the *Building Act 1972*, part 2.

basic urban fence—see the building manual as in force from time to time under the *Building Act 1972*, part 2.

conference means a conference under the *Magistrates Court (Civil Jurisdiction) Act 1982*, division 22.6.

conference notice means a notice in the form approved for the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 419 (2).

court means the Small Claims Court.

inquiry means an inquiry in the court.

inquiry notice means a notice in the form approved for the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 426 (2).

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.

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 Determination of questions regarding erection of fences

- (1) Subject to this section, if—
- (a) adjoining parcels of land are not separated by a fence; and
 - (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 Small Claims Court for a determination under section 5.
- (2) For subsection (1), an occupier who fails to comply with a request within 14 days after the date when 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 end of 1 month after

the date when 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 subsection (3).
- (6) On 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 the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 420 would not be significantly advanced by holding a conference—direct the holding of an inquiry into the application.
- (7) 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) serve a copy of the application on the respondent; and
 - (b) serve a conference notice on the parties.
- (8) 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) serve a copy of the application on the respondent; and
 - (b) serve an inquiry notice on the parties.
- (9) This section does not apply to, or in relation to, the erection of a fence if the erection of the fence began before the date of commencement of this division.

5 Powers of Small Claims Court regarding erection of fences

- (1) The Small Claims Court may hold an inquiry on an application under section 4 under a direction of the registrar—
 - (a) under the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 426 or 428; or
 - (b) under this Act, section 4 (6) (b).
- (2) In an inquiry on an application under section 4, the Small Claims Court 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 along which the fence should be erected; and
 - (c) the party who should be responsible for the erection of the fence; and
 - (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) how, 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.
- (3) If, on an application under section 4, a party to the application has requested the Small Claims 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 $\frac{1}{2}$ of the cost of erecting a basic fence between those parcels.
- (4) Subsection (3) does not apply if the Small Claims 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 Small Claims Court where occupiers unable to agree on repairs

- (1) Subject to subsection (3), if—
 - (a) adjoining parcels of land are separated by a fence; and
 - (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 Small Claims Court for a determination under section 7 (3).

- (2) For subsection (1), an occupier who fails to comply with a request within 14 days after the date when 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 end of 1 month after the date when he or she gives to the occupier of the other parcel notice in accordance with form 3.
- (4) If—

- (a) a fence erected between adjoining parcels of land has been damaged or destroyed; and
- (b) it is necessary, 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), if under subsection (4), an occupier of a parcel of land has repaired or replaced a fence, that occupier may make application to the Small Claims Court for a determination under section 7 (5).
- (6) An occupier of a parcel of land is not entitled to make an application under subsection (5) until the end of 14 days after the date when 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 firstmentioned 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, apart from subsection (4), the applicant would have been required to give notice under subsection (3).
- (10) On 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 the *Magistrates Court (Civil*

Jurisdiction) Act 1982, section 420 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) serve a copy of the application on the respondent; and
 - (b) serve a conference notice 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) serve a copy of the application on the respondent; and
 - (b) serve an inquiry notice on the parties.

7 Powers of Small Claims Court regarding repair of fences

- (1) The Small Claims Court may hold an inquiry on an application under section 6 under a direction of the registrar—
 - (a) under the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 426 or 428; or
 - (b) under this Act, section 6 (10) (b).
- (2) In an inquiry on an application under section 6 (1), the Small Claims Court shall determine whether the fence to which the application relates is in need of repair or replacement.
- (3) If, on an application under section 6 (1), the Small Claims 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; and
 - (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; and

- (c) the party who should be responsible for effecting the repair or replacement; and
 - (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) how, 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.
- (4) For the purpose of determining the amount that should be contributed by a party referred to in subsection (3) (d) towards the cost of repairing or replacing a fence, the Small Claims 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.
- (5) In an inquiry on an application under section 6 (5), the Small Claims 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.
- (6) If, on an application under section 6 (5), the Small Claims 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) how, and the time within which, that amount should be paid to the applicant.
- (7) For the purpose of determining, on an application under section 6 (5), the amount that should be contributed by a party to the application to the cost of repairing or replacing a fence, the Small Claims 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 on which a determination was made by the Small Claims Court under section 5 or 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) On 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 the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 420 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) serve a copy of the application on the respondent; and
 - (b) serve a conference notice 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) serve a copy of the application on the respondent; and

- (b) serve an inquiry notice on the parties.
- (7) The Small Claims Court may hold an inquiry on an application under subsection (1) under a direction of the registrar—
 - (a) under the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 426 or 428; or
 - (b) under subsection (4) (b).
- (8) On an application under subsection (1), the Small Claims 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) If the Small Claims 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 the sum in relation to the costs incurred by that party in connection with the application that the court considers proper.
- (2) If—
 - (a) the Small Claims 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 the sum in relation to the costs incurred by the applicant in connection with the application that the court considers proper.

11 Contribution by occupier of previously unleased land

- (1) If—
- (a) the occupier of a parcel of land has begun erecting a fence between that parcel and adjoining land that is not a parcel of land for this division; and
 - (b) within 6 months after the date when the erection of the fence began, the adjoining land becomes a parcel of land for this division;

the person who occupies the firstmentioned parcel of land at the time the adjoining land becomes a parcel of land for this division may apply to the Small Claims Court for a determination under section 12.

- (2) If—
- (a) the occupier of a parcel of land has begun erecting a fence between that parcel and adjoining land that is not a parcel of land for this division; and
 - (b) not earlier than 6 months after the date when the erection of the fence began, the adjoining land becomes a parcel of land for this division;

the person who occupies the firstmentioned parcel of land at the time the adjoining land becomes a parcel of land for this division may apply to the Small Claims 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) On 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 the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 420 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) serve a copy of the application on the respondent; and
 - (b) serve a conference notice 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) serve a copy of the application on the respondent; and
 - (b) serve an inquiry notice on the parties.

12 Powers of Small Claims Court regarding erection of fences on previously unleased land

- (1) The Small Claims Court may hold an inquiry on an application under section 11 (1) or (2) under a direction of the registrar—
 - (a) under the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 426 or 428; or
 - (b) under this Act, section 11 (4) (b).
- (2) In an inquiry on an application under section 11, the Small Claims 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.
- (3) If, on an application under section 11, the Small Claims 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) how, and the time within which, that amount should be paid to the applicant.
- (4) For the purposes of determining the amount that should be contributed under subsection (3) (a), the Small Claims Court shall adopt the principle that—
- (a) for an application under section 11 (1)—the amount should be an amount equal to $\frac{1}{2}$ of the cost of erecting the fence referred to in section 11 (1) (a) or an amount equal to $\frac{1}{2}$ 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) for an application under section 11 (2)—the amount should be a reasonable amount but, in any event, the amount should not exceed $\frac{1}{2}$ of the cost of erecting the fence or $\frac{1}{2}$ 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) If the same person is a party to 2 or more applications to the court under the same section of this division, the Small Claims Court may, if it is satisfied that the circumstances so warrant, direct that the applications be dealt with together.
- (2) If a direction is given under subsection (1), the Small Claims Court shall conduct 1 inquiry in relation to 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) if the occupier is the Territory—by sending the notice by post to the chief executive; 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 his or her address last known to the person sending the document or at the parcel of land.
- (2) If 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 the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 408 and division 22.8.

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 the *Magistrates Court (Civil Jurisdiction) Act 1982*, part 19 in relation to such a determination.
- (2) If 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; and
 - (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 Div 2.3 not affected

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

22 Directions regarding entry by people on land

- (1) If the Small Claims 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 the directions that it considers necessary in relation to the entry of persons on land in connection with the erection, repair or replacement of the fence.
- (2) The Small Claims Court shall not give directions under this section in relation to the entry of persons on land other than land—
- (a) occupied by a party to the application; or
 - (b) occupied by a sublessee, tenant, licensee or other person in possession from a party to the application;
- on which the directions were given.
- (3) If a person has been given a direction under this section, he or she may, at all reasonable times, enter on land in accordance with that direction for the purpose of undertaking the work that may be necessary for the erection, repair or replacement of a fence specified in that 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 shall 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 shall 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) If the occupier of any land clears it of flammable materials for the space of 6m from any fence dividing that land from the land of any other owner or occupier, and the other owner or occupier neglects or omits so to clear his or her land and any damage from fire happens to the dividing fence through that neglect or omission, the owner or occupier so neglecting or omitting to clear shall at his or her own costs and charges cause the fence to be repaired and re-erected

within 1 month after it has been so damaged, or within the extended time that may be allowed by the Small Claims Court.

- (2) Reasonable notice of the application shall be given to the occupier who has cleared his or her land.
- (3) If the owner or occupier so neglecting or omitting to clear refuses or omits to repair or re-erect the fence as prescribed in subsection (1), the owner or occupier of the land contiguous to the fence who has cleared his or her land as prescribed may repair or re-erect the dividing fence.
- (4) All sums of money that are so expended or laid out under the provisions of this section shall be deemed to be money paid to the use of the owner or occupier in default.

Part 3 Party walls

U 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 wholly or partly used for the support of 2 or more buildings, being a wall that was erected in connection with a building in relation to which there is applicable a certificate—
 - (i) of the kind referred to in the *Canberra Building Regulations*, regulation 69A as in force at the time of the issue of the certificate under the *Buildings and Services Act 1924*; or
 - (ii) of the kind referred to in the *Canberra Building Regulations*, regulation 69A as in force at the time of the issue of the certificate under the *Building Act 1972*; or
 - (iii) issued under the *Building Act 1972*, section 53 (2) or (3).

U 28 Erection of party walls

If 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; and
- (b) the lessees of the 2 parcels of land may agree about the lessee by whom the party wall shall be erected and in what proportions the cost of erection shall be borne by them; and
- (c) if 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 beginning the erection of a building on the other parcel of land pay to the firstmentioned 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 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 planning and land authority, 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.

Part 4 Miscellaneous

29 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) In this Act, a reference to a form by a number is a reference to an approved form so numbered.
- (5) If there is not an approved form for a document to be filed in a proceeding in the Small Claims Court, the document must be in a form acceptable to the registrar of the court.

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

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<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 1981 No 39

notified 30 October 1981

commenced 30 October 1981

as amended by

Magistrates Court Ordinance 1985 No 67

notified 19 December 1985

commenced 1 February 1986 (Cwlth Gaz 1986 No G3)

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

notified 14 November 1986

commenced 14 November 1986

Self-Government (Consequential Amendments) Ordinance 1989 No 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 No 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 No 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 No 1 sch 1

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

Bushfire (Amendment) Act 1993 No 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 No 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 No 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 No 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 No 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 No 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 No 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 No 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 No 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 commences 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)

4 Amendment history**Title**

title am 1991 No 118

Preliminary

pt 1 hdg ins 1991 No 118

Name of Act

s 1 sub 1991 No 118

Dividing fences

pt 2 hdg ins 1991 No 118

Fences requested by occupierdiv 2.1 hdg (prev pt 2 div 1 hdg) ins 1991 No 118
renum R5 LA**Definitions for div 2.1**

s 2 am 1985 No 67; 1989 No 38 sch 1; 1998 No 52 sch pt 1; 2000 No 66 sch 1 pt 2; 2001 No 44 amdt 1.771; 2001 No 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 1991 No 118 sch 1 pt 5
 om R8 LA
 def **conference** ins 1997 No 94 sch 3
 def **conference notice** ins 1997 No 94 sch 3
 sub 2001 No 44 amdt 1.769
 def **court** am 1997 No 94 sch 3
 def **inquiry** ins 1997 No 94 sch 3
 def **inquiry notice** ins 1997 No 94 sch 3
 sub 2001 No 44 amdt 1.770
 def **occupier** am 1989 No 38 sch 1
 def **registrar** ins 1997 No 94 sch 3

When land is a *parcel of land*s 2A ins 2001 No 56 amdt 3.12
am 2002 No 39 amdt 1.2**When land is not a *parcel of land***

s 2B ins 2001 No 56 amdt 3.12

Endnotes

4 Amendment history

Cost of erecting new fence includes cost of removing existing fence

s 2C ins 2001 No 56 amdt 3.12

Cost of erecting fence includes fee payable to surveyor

s 2D ins 2001 No 56 amdt 3.12

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

s 3 om 2001 No 44 amdt 1.772

Determination of questions regarding erection of fences

s 4 am 1991 No 44; 1991 No 118; 1997 No 94; ss renum R5 LA

Powers of court regarding erection of fences

s 5 am 1997 No 94; ss renum R5 LA

Application to court where occupiers unable to agree on repair

s 6 am 1991 No 44; 1997 No 94

Powers of court regarding repair of fence

s 7 am 1997 No 94; ss renum R5 LA

Variation of determinations

s 8 am 1991 No 44; 1997 No 94; ss renum R5 LA

Costs

s 9 am 1985 No 67; 1986 No 74; 1991 No 118; 1997 No 94

Orders for payment of contribution

s 10 am 1985 No 67; 1986 No 74; 1991 No 118
om 1997 No 94

Contribution by occupier of previously unleased land

s 11 am 1989 No 38; 1991 No 44; 1991 No 118; 1997 No 94

Powers of court regarding erection of fences on previously unleased land

s 12 am 1997 No 94; ss renum R5 LA

Procedure at inquiry

s 13 am 1991 No 118
om 1997 No 94

Representation of parties

s 14 am 1991 No 118
om 1997 No 94

Application may be heard together

s 15 am 1991 No 118

Court not bound by rules of evidence

s 16 am 1991 No 118
om 1997 No 94

Adjournment of inquiries

s 17 am 1991 No 118
om 1997 No 94

Service of documents

s 18 am 1989 No 38; 1991 No 118; 1994 No 38; 1997 No 94;
paragraphs renum R5 LA

Apportionment of liability of joint lessees

s 19 am 1997 No 94

Ex parte orders may be set aside

s 20 om 1997 No 94

Div 2.3 not affected

s 21 am 1991 No 118; 1993 No 74; 1997 No 7
sub A2004-28 amdt 3.7

Directions regarding entry by people on land

s 22 am 1991 No 118

Fences required by authority

div 2.2 hdg (prev pt 2 div 2 hdg) ins 1991 No 118
renum R5 LA
sub A2002-56 amdt 3.17

Boundary between leased and unleased land

s 23 ins 1991 No 118
am A2002-56 amdt 3.19

Boundary between 2 parcels of leased land

s 24 ins 1991 No 118
am A2002-56 amdt 3.19

Notice under div 2.2

s 25 ins 1991 No 118

Noncompliance with notice under div 2.2

s 26 ins 1991 No 118
am A2002-56 amdt 3.18, amdt 3.19

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

Party walls

pt 3 hdg ins 1991 No 118

Meaning of party wall in pt 3

s 27 ins 1991 No 118
am A2004-13 amdt 2.17

Endnotes

5 Earlier republications

Erection of party walls

s 28 ins 1991 No 118
am A2002-56 amdt 3.19; A2004-13 amdt 2.18

Miscellaneous

pt 4 hdg ins 2001 No 44 amdt 1.773

Approved forms

s 29 ins 2001 No 44 amdt 1.773
(6)-(9) exp 12 September 2002 (s 29 (9))

Schedule

sch am 1985 No 67; 1991 No 44; 1993 No 1; 1997 No 94
om 2001 No 44 amdt 1.774

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. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1991 No 44	30 September 1991
2	Act 1993 No 1	1 March 1993
3	Act 1994 No 38	31 January 1995
4	Act 1997 No 94	1 June 1998
5	Act 2001 No 56	18 January 2002
6	Act 2001 No 56	13 September 2002
7	A2002-39	11 October 2002
8	A2002-56	1 July 2003

6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

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

Part 2.5 Common Boundaries Act 1981

[2.16] Section 2, definitions of *basic rural fence* and *basic urban fence*

substitute

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.

Endnotes

6 Uncommenced amendments

[2.17] Section 27, definition of *party wall*, paragraph (b)

substitute

- (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*.

[2.18] Section 28

omit everything before paragraph (a), substitute

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—

© Australian Capital Territory 2004