

Version No. 065
Fences Act 1968
No. 7733 of 1968

Version incorporating amendments as at 1 July 2010

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Version No. 065
Fences Act 1968
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An Act to consolidate and amend the Law relating to Dividing
and Vermin-proof Fences, and for other purposes.

**BE IT ENACTED by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative Council
and the Legislative Assembly of Victoria in this present
Parliament assembled and by the authority of the same as
follows (that is to say):**

1 Short title and commencement

This Act may be cited as the **Fences Act 1968** and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

S. 1
amended by
Nos 9863 s. 2,
41/1987
s. 103(Sch. 4
item 20.1).

2 Schedule of repeals

- (1) The Acts mentioned in the Schedule to the extent thereby expressed to be repealed are hereby repealed accordingly.
- (2) Except as in this Act expressly or by necessary implication provided—
 - (a) all persons things and circumstances appointed or created by or under the repealed Acts or existing or continuing under the repealed Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if the repealed Acts had not been so repealed;

s. 3

(b) in particular and without affecting the generality of the foregoing paragraph such repeal shall not disturb the continuity of status operation or effect of any proclamation order decision power determination agreement award reference certificate proceeding charge notice liability or right made effected issued granted given presented passed fixed accrued incurred or acquired or existing or continuing by or under the repealed Acts before the commencement of this Act.

Nos 6249 s. 3,
6432 s. 2.

3 Definitions

In this Act, unless inconsistent with the context or subject-matter—

S. 3 def. of *Court of petty sessions* amended to read *Magistrates' Court* by Nos 9019 s. 2(1)(Sch. item 67), 16/1986 s. 30, repealed by No. 57/1989 s. 3(Sch. item 70.1).

* * * * *

dividing fence means a fence separating the lands of different occupiers;

S. 3 def. of *municipality* repealed by No. 12/1989 s. 4(1)(Sch. 2 item 43.1).

* * * * *

occupier includes any person who is—

in the actual occupation of or entitled as owner to occupy any land purchased from the Crown under contract of sale or alienated from the Crown by grant lease or licence; and

the holder of a right to occupy a residence area in respect of land under the **Land Act 1958** whether covered by a mining licence under the **Mineral Resources (Sustainable Development) Act 1990** or not—

but does not include—

- (a) any person in the occupation of or entitled to occupy land under a licence under the **Mineral Resources (Sustainable Development) Act 1990**; or
- (b) any person in the occupation of land held by yearly licence under any Act relating to the sale and occupation of Crown lands which has been in force or comes into force;

to repair includes to trim keep and maintain a live fence.

S. 3 def. of *occupier* amended by Nos 92/1990 s. 128(Sch. 1 item 10(a)(b)), 63/2006 s. 61(Sch. item 14).

PART I—CONSTRUCTION OF DIVIDING FENCES

No. 6249 s. 5.

4 Liability of occupiers of adjoining lands to fence despite agreements

- (1) The occupiers of adjoining lands not divided by a fence sufficient for the purposes of both occupiers shall be liable to construct, or join in or contribute to the construction of, a dividing fence sufficient for the purposes of both occupiers between the adjoining lands in accordance with the following provisions—
- (a) in cases where land is occupied for agricultural or pastoral purposes, and the adjoining land is occupied for residential purposes—
 - (i) where the adjoining lands are not divided by any dividing fence, or are divided by a dividing fence which is of a kind sufficient only for the purposes of the occupier of the land occupied for agricultural or pastoral purposes and which is out of repair—the occupier of the land occupied for agricultural or pastoral purposes shall be liable to join in or contribute only to the extent of one-half of the cost of a dividing fence sufficient for the purposes for which he occupies the land, and the occupier of the adjoining land shall be liable to join in or contribute to the extent of the balance;
 - (ii) where the adjoining lands are divided by a dividing fence which is sufficient only for the purposes of the occupier of the land occupied for agricultural or pastoral purposes and which is in repair—the occupier of the land
-

adjoining the land used for agricultural or pastoral purposes shall be liable to construct the whole of the new dividing fence;

- (b) in other cases—the occupiers of the adjoining lands shall be liable to join in or contribute in such proportions as are agreed upon or, in the absence of agreement, are determined by the Magistrates' Court under this Act.

S. 4(1)(b) amended by Nos 9019 s. 2(1)(Sch. item 68), 57/1989 s. 3(Sch. item 70.2).

- (2) Save as otherwise expressly provided in this Part, the provisions of this Part shall have effect notwithstanding any stipulation to the contrary whether made before or after the commencement of this Act, and no contract or agreement made or entered into either before or after the commencement of this Act shall operate to annul or vary or exclude any of the provisions of this Part, or to indemnify any person against any claims made under this Part.

5 Where watercourse is natural boundary, occupiers may agree on line of fence

No. 6249 s. 6.

- (1) Where a waterway forms the boundary between adjoining lands but is not capable of resisting the trespass of cattle, the occupiers of the adjoining lands may agree upon such a line of fence on either side of the waterway as will secure a fence from the action of floods.

S. 5(1) amended by No. 81/1989 s. 3(Sch. item 15.1).

- (2) If the occupiers fail to agree upon a line of fence, either occupier may call in the nearest magistrate who shall—

S. 5(2) amended by Nos 16/1986 s. 30, 57/1989 s. 3(Sch. item 70.3(a)).

- (a) determine the line of fence; and
(b) decide whether any compensation in the shape of an annual payment shall be paid to either of the occupiers in consideration of

loss of occupation of land, and if any, the amount of the compensation.

S. 5(3)
amended by
Nos 16/1986
s. 30, 57/1989
s. 3(Sch.
item 70.3(b)).

- (3) The magistrate shall be entitled to receive from the occupiers in equal proportions the actual cost of his travelling expenses (if any) incurred in visiting and inspecting the ground.
- (4) The occupation of lands on either side of the line of fence shall not be deemed to be adverse possession, and shall not affect the title to or possession of any of the adjoining lands, except for the purposes of this Act.

No. 6249 s. 7.

6 Service of notice to fence

Any person desiring to compel any other person to construct or join in or contribute to the construction of a dividing fence may serve on the other person a notice to fence which shall—

- (a) be in writing or in print, or partly in writing and partly in print;
- (b) specify the boundary to be fenced;
- (c) contain a proposal for fencing the boundary; and
- (d) specify the kind of fence proposed to be constructed.

No. 6249 s. 8.

7 In default of agreement, Court or arbitrator may decide

S. 7(1)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.4(a)).

- (1) If within one month after the service of a notice to fence the person serving and the person served with the notice do not agree upon the construction of a fence, the kind of fence to be constructed, or the proportions in which they are to join in or contribute to the construction of the fence, the Magistrates' Court on the complaint of either of them may make an order prescribing—

-
- (a) the kind of fence to be constructed;
- (b) the portion of the fence to be constructed by each person, or the proportion of the cost of constructing the fence to be contributed by each person; and
- (c) where such further order is necessary, the position of the fence.
- (2) The Court may refer the determination of the matters to be prescribed by the order to the award of an arbitrator who shall be appointed by an order of the Court.
- (3) The arbitrator shall within the time stipulated in the order appointing him (if any) deliver his award to the Court.
- (4) The award of the arbitrator shall have the same effect as, and be deemed to be, an order of the Court.
- (5) Where an arbitrator—
- (a) neglects or declines to act;
- (b) becomes incapable of acting; or
- (c) dies—
- the Court may appoint in his place another arbitrator who shall have the same powers and duties.
- (6) In making the order or award, the Court or arbitrator (as the case may be) shall be guided as to the kind of fence to be constructed by the kind of fence usually constructed in the place where it is proposed to construct the fence.

S. 7(3)
amended by
No. 57/1989
s. 3(Sch.
item 70.4(b)).

No. 6249 s. 9.

8 Person may construct fence and recover contribution

S. 8(1)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.5).

(1) Where—

S. 8(1)(a)
amended by
No. 57/1989
s. 3(Sch.
item 70.5).

- (a) the person serving and the person served with a notice agree concerning the construction of a fence, or in the absence of agreement an order of the Magistrates' Court or an award of an arbitrator is made; and
- (b) either person fails to perform his part of the agreement or to comply with the order or award within the time named in the agreement order or award or, where no time is named, within three months of the agreement order or award—

the other person may construct the whole fence in compliance with the agreement order or award and may recover the proportion of the cost agreed upon ordered or awarded before the Magistrates' Court.

- (2) No proceedings for the recovery of a proportion of the cost of construction of a fence shall fail on the ground that the fence was not constructed in compliance with an agreement order or award unless the agreement order or award was not complied with in a respect or to an extent which was material.

9 Notice to fence when occupier unavailable

Nos 6249
s. 10, 6550
s. 2.

- (1) When the occupier of any land is absent from Victoria or cannot be found or any land is unoccupied, the occupier of any adjoining land may—
 - (a) insert in a newspaper circulating in the neighbourhood of the land a notice addressed to the occupier describing him as the occupier of the land requiring him to contribute to the construction of a dividing fence; or
 - (b) where the case allows, send such a notice by registered post to the occupier of the land at his address as shown in the rate records of the municipal council within whose municipal district the land is situated.
- (2) The occupier of the adjoining land may then proceed ex parte to obtain from the Magistrates' Court or an arbitrator appointed by the Court an order or award (as hereinbefore provided in the case of persons not agreeing as to the construction of a fence, the kind of fence to be constructed, or the proportions in which they are to join in or contribute to the construction of a fence)—
 - (a) authorizing the construction of a fence sufficient for the purposes of both occupiers;
 - (b) specifying the kind of fence to be constructed;
 - (c) specifying what proportion of the cost of constructing the fence is to be contributed by each occupier; and
 - (d) specifying the position of the fence.
- (3) The occupier of the adjoining land may construct a fence in compliance with the order or award.

S. 9(1)(b)
amended by
No. 12/1989
s. 4(1)(Sch. 2
item 43.2).

S. 9(2)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.6).

- (4) If during the continuance of the fence any person occupies the land, the occupier of the adjoining land may within one month thereafter serve any person who if the fence was not in existence would be liable to contribute to the construction of a dividing fence with a copy of the order or award.
- (5) The occupier of the adjoining land shall after the expiration of one month from the date of such service be entitled to recover the same proportion of the existing value of the fence as was originally ordered or awarded against the occupier of the land in relation to the cost of its construction.
- (6) No proceedings for the recovery of a proportion of the value of the fence shall fail on the ground that the fence was not constructed in compliance with the order or award unless the order or award was not complied with in a respect or to an extent which was material.
- (7) If in the opinion of any person liable to contribute to the construction of the fence the order or award made ex parte is inequitable, he may make a complaint within one month after the service of the order or award in the Magistrates' Court.
- (8) The Court may—
 - (a) relieve the complainant from the whole or any portion of the sum claimed as the value of the fence; or
 - (b) order that the line of the fence be altered on such terms as are just.

S. 9(7)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.6).

No. 6249 s. 11.

10 Apportionment of cost of fencing between landlord and tenant

- (1) Where any fence is constructed under the provisions of this Act dividing any lands held by any person as tenant of any landlord from any adjoining lands, the cost thereof as between such

landlord and tenant shall subject to subsection (4) be payable in the proportions following—

- (a) where the interest of the tenant at the time of the construction of the fence is less than for a term of three years, the whole cost shall be payable by the landlord;
 - (b) where the interest of the tenant is for a term of three years and less than for a term of six years, three-fourths of such cost shall be payable by the landlord and one-fourth of the cost by the tenant;
 - (c) where the interest of the tenant is for a term of six years and less than for a term of twelve years, one-half of the cost shall be payable by the landlord and one-half by the tenant;
 - (d) where the interest of the tenant is for a term of twelve years or upwards, the whole of the cost shall be payable by the tenant.
- (2) If either the landlord or the tenant pays under the provisions of this Act more than his proper proportion of the cost, he may recover the excess before the Magistrates' Court from his landlord or tenant (as the case may be) and any tenant may set off any sum recoverable by him under this section against any rent payable to his landlord.
- (3) Where a tenant is served with a notice order award or certificate under this Act relating to the construction of a fence, he shall within fourteen days serve a copy of the notice order award or certificate by registered post on—
- (a) his landlord at his last known address;
 - (b) the person to whom he pays his rent; or

S. 10(2)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.7).

(c) any person who he has reason to believe is authorized to accept service of notices on behalf of his landlord.

(4) Where the tenant fails to comply with subsection (3), the whole cost of the construction of the fence shall be payable by the tenant.

No. 6249 s. 12.

11 Tenant to pay certain sums to landlord

Any tenant having a right to purchase any land occupied by him at a fixed rate shall on the completion of the purchase pay to his landlord, in augmentation of and as part of the purchase money, any sum paid by such landlord under the last preceding section, together with interest on the same at the rate of eight per centum per annum.

No. 6249 s. 13.

12 Recovery of one-half of value of fence dividing unalienated land

(1) Where any person has constructed on the boundary of his land a dividing fence sufficient for the purposes for which he occupies the land and the land adjoining is unalienated Crown land, the occupier of the land shall be entitled to claim and recover from the person who afterwards becomes the first occupier of the adjoining land one-half of the then actual value of the dividing fence.

S. 12(2)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.8).

(2) The value of the fence shall be ascertained as soon as practicable after the adjoining land has become so occupied and in default of agreement between the parties the value may on the complaint of either of them be determined by the Magistrates' Court.

- (3) Any sum recoverable under this section may be recovered in the Magistrates' Court.

S. 12(3)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.8).

13 Occupier may construct fence on boundary with road

No. 6249
ss 14, 15.

- (1) If the occupier of any land bounded by a road within a municipal district desires to plant a live fence on the common boundary of his land and the road and for that purpose to construct a temporary fence upon such road he shall give notice in writing of his desire to the municipal council for that municipal district describing the proposed fence and its proposed position.

S. 13(1)
amended by
No. 12/1989
s. 4(1)(Sch. 2
items 43.3,
43.4).

- (2) The Magistrates' Court, within one month after the service of any notice on a municipal council under subsection (1), on the complaint of and good and sufficient cause shown by the municipal council, may order the occupier serving such notice not to proceed with the construction of the temporary fence.

S. 13(2)
amended by
Nos 7876
s. 2(3),
12/1989
s. 4(1)(Sch. 2
items 43.5,
43.6), 57/1989
s. 3(Sch.
item 70.9(a)).

- (3) If within one month after the service of such notice the occupier is not served with an order of the Magistrates' Court prohibiting the construction of the temporary fence, the occupier may at any time not exceeding six months after the service of the notice proceed to construct the temporary fence in compliance with the following conditions—

S. 13(3)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.9(b)).

- (a) no part of the temporary fence shall be more than 1.83 metres distant from the nearest point on the boundary of his land; and

S. 13(3)(a)
amended by
S.R. No.
154/1974
reg. 2(a)(i).

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s. 13

S. 13(3)(b)
amended by
S.R. No.
154/1974
reg. 2(a)(ii).

(b) the width of the road available for traffic after the construction of the temporary fence shall not in any place where the road is reduced by the construction of the temporary fence be less than 9·15 metres.

S. 13(4)
amended by
No. 12/1989
s. 4(1)(Sch. 2
item 43.7).

(4) If the occupier after the construction of the temporary fence forthwith proceeds to plant a live fence on the boundary of his land and the road, and afterwards constantly and with all proper diligence protects it from injury, he may maintain the temporary fence on the road for a period not exceeding four years, or such longer period as the municipal council in writing allows, until the live fence becomes a fence sufficient for the purposes of the occupier.

PART II—MAINTENANCE AND REPAIRS OF FENCES

14 Occupiers to repair dividing fence

No. 6249
ss 16, 17.

Where a dividing fence which is of a kind sufficient for the purposes of both the occupiers of lands separated by the dividing fence is out of repair, the occupiers shall be liable to repair, or join in or contribute to the repair of, the dividing fence in accordance with the following provisions—

- (a) where the dividing fence has been destroyed or damaged by fire or by the falling of a tree through the neglect of an occupier—the occupier shall be liable to repair the entire fence or the damaged portion of it (as the case may be);
- (b) in any other case—each occupier shall be liable to join in or contribute to the repairing of the fence in such proportions as shall be agreed upon or, in default of agreement, determined by the Magistrates' Court under this Part.

S. 14(b)
amended by
Nos 9019
s. 2(1)(Sch.
item 68),
57/1989
s. 3(Sch.
item 70.10).

15 Procedure for compelling repairs, or contribution to repairs

No. 6249 s. 17.

- (1) Where an occupier of land desires the occupier of adjoining lands to repair, or join in or contribute to the repairing of, a dividing fence, he may serve a notice on the occupier of the adjoining lands requiring him to repair, or join in or contribute to the cost of the repairing of, the fence (as the case may be).
- (2) If the occupier served with the notice refuses or neglects to repair or join in or contribute to the cost of repairing the fence (as the case may be) for the space of one week after service of the notice, the occupier serving the notice may repair the

S. 15(2)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.11).

s. 16

fence and demand and recover from the occupier of the adjoining lands the cost of repairing the fence or the proportion of the cost of repairing the fence which is agreed upon or in default of agreement, determined by the Magistrates' Court under this Part.

S. 15(3)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.11).

- (3) Notwithstanding anything to the contrary in subsections (1) and (2), if a dividing fence or any portion of a dividing fence is destroyed by accident either occupier may immediately repair the fence without any notice, and demand and recover from the other occupier the proportion of the cost of repairing the fence which is agreed upon, or in default of agreement, determined by the Magistrates' Court under this Part.

16 In default of agreement, Court may determine contributions

S. 16
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.12).

Where a fence is repaired under this Part, and the occupiers of the land separated by the dividing fence do not agree upon the proportions which they are to be liable to contribute to the cost of repairing the fence, the Magistrates' Court may on the complaint of either of them make an order prescribing the proportions in which they are to be liable to contribute to the cost of repairs.

**PART III—SPECIAL PROVISIONS RELATING TO VERMIN
PROOF FENCES**

17 Definition of *vermin-proof fence*

In this Part *vermin-proof fence* means a fence of one of the following kinds—

- (a) a wire net fence 1·47 metres in height consisting of wire netting constructed in accordance with the following provisions—
 - (i) the lower portion of the netting shall be not less than 91 centimetres in width and of a mesh not exceeding 41 millimetres, shall be 15 centimetres in the ground or shall have 15 centimetres thereof properly secured to the surface of the ground, and shall be 76 centimetres above the ground;
 - (ii) above such wire netting shall be placed other wire netting not less than 61 centimetres in width and of a mesh not exceeding 10 centimetres;
 - (iii) the whole of such wire netting shall be attached by wire or staples to substantial posts stakes or iron standards, which posts stakes or iron standards shall be at least 2·06 metres in height, placed 56 centimetres in the ground, and not more than 3 metres apart;
 - (iv) 10 centimetres above the netting there shall be a barbed wire stapled to each post stake or standard and drawn through straining posts 2·5 metres in length of which 91 centimetres shall be in the ground (which straining posts

No. 6249 s. 18.
S. 17
amended by
S.R. No.
154/1974
reg. 2(b),
No. 41/1987
s. 103(Sch. 4
item 20.2).

shall be not more than 100 metres apart);

- (b) a wire net fence 1·02 metres in height made of wire netting which shall—
- (i) not be less than 1·06 metres in width;
 - (ii) be of a mesh not exceeding 41 millimetres;
 - (iii) be 15 centimetres in the ground or shall have 15 centimetres thereof properly secured to the surface of the ground; and
 - (iv) be attached by a wire or staples to substantial posts stakes or iron standards with a barbed wire extending from one post stake or standard to another and placed 10 centimetres above the netting;
- (c) a post and rail or paling fence of substantial material firmly erected not less than 1·06 metres in height—
- (i) having three wires tightly stretched or two wires and top rail in either case with posts or standards of iron or durable wood not more than 3·70 metres apart;
 - (ii) having galvanized wire netting not less than 1·06 metres wide of 1·4 millimetres diameter and not larger than a 38 millimetre mesh firmly affixed thereto, and sunken in the ground not less than 15 centimetres; and

- (d) a post and rail or paling or wire fence or portion or portions of a fence of any of the descriptions in subparagraphs (i) (ii) and (iii) of this paragraph to which is firmly affixed galvanized wire netting not less than 1·06 metres wide and of 1·4 millimetres diameter and not larger than a 38 millimetre mesh sunken into the ground not less than 15 centimetres—
- (i) a post and rail fence at least 1·06 metres in height of substantial material firmly erected with no greater distance between the rails or the bottom rail and the ground than 30 centimetres unless there is a wire inserted between the rails and the posts not more than 2·75 metres apart;
 - (ii) a substantial paling or picket fence at least 1·06 metres in height with no greater distance between the palings or pickets than 10 centimetres;
 - (iii) a substantial wire fence at least 1·06 metres in height having wires tightly stretched with no greater distance between each of the three lowest wires or the bottom wire and the ground than 15 centimetres and the posts or standards or binding wires of which are not more than 3·35 metres from each other with straining posts not more than 365 metres apart;

S. 17(d)(iii)
amended by
No. 9019
s. 2(1)(Sch.
item 69).

* * * * *

S. 17(e)
repealed by
No. 41/1987
s. 103(Sch. 4
item 20.2).

No. 6249 s. 19.

18 Power to Governor in Council to proclaim vermin-proof fence

The Governor in Council may by Order proclaim any fence described in such Order to be a vermin-proof fence within the meaning of this Part either throughout Victoria or within any portion thereof specified in such Order and may at any time revoke any Order made under this section or paragraph (e) of the last preceding section or any corresponding previous enactment.

Nos 6249
s. 20, 7228
s. 7.

19 Liability for contribution respecting vermin-proof dividing fence

S. 19(1)
amended by
Nos 10087
s. 3(1)(Sch. 1
item 59(a)(b)),
46/1998
s. 7(Sch. 1).

- (1) Notwithstanding anything in this Act, where any adjoining lands are not divided by a vermin-proof fence and the Minister on consideration of a recommendation or report by any officer of the Department of Natural Resources and Environment made after a personal inspection by such officer certifies in writing that a vermin-proof fence is necessary, each of the occupiers of the adjoining lands shall subject to subsections (2) and (3) be liable to contribute in equal proportions—
 - (a) towards constructing a vermin-proof fence between such lands; or
 - (b) towards making vermin-proof any fence previously constructed between such lands; or
 - (c) towards maintaining and repairing any vermin-proof fence previously constructed between such lands.
- (2) A copy of the certificate shall be served on each occupier personally or by post.

- (3) Any person who feels aggrieved by the certificate of the Minister may within fourteen days of being served with a copy of the certificate lodge with the Minister a statement of his objections thereto and the Minister upon consideration of the objections may cancel or confirm the certificate.
- (4) This section does not apply to—
- (a) Crown lands; or
 - (b) any land vested in—
 - (i) the Roads Corporation within the meaning of section 3 of the **Transport Integration Act 2010**; or
 - (ii) Victorian Rail Track within the meaning of section 3 of the **Transport Integration Act 2010**; or
 - (iii) V/Line Corporation within the meaning of section 3 of the **Transport Integration Act 2010**; or
 - (iv) a passenger transport company within the meaning of the **Transport (Compliance and Miscellaneous) Act 1983**; or
 - (v) any "Authority" under the **Water Act 1989**.

S. 19(4)
amended by
Nos 9019
s. 2(1)(Sch.
item 70), 9921
s. 255, 44/1989
s. 41(Sch. 2
item 15),
81/1989
s. 3(Sch.
item 15.2),
104/1997 s. 47,
12/2004 s. 156,
substituted by
No. 6/2010
s. 203(1)(Sch. 6
item 22).

20 Notice to fence to specify proposed kind of vermin-proof fence

No. 6249 s. 21.

- (1) Where a person desires to compel any other person to contribute to the construction of a dividing fence and desires that such fence shall be a vermin-proof fence he shall in the notice to be served on the person pursuant to section 6 distinctly specify the kind of vermin-proof fence proposed to be constructed.

s. 21

- (2) Where such notice distinctly specifies the kind of vermin-proof fence proposed to be constructed the power of the Court or of any arbitrator to prescribe or award the kind of fence to be constructed shall be limited to prescribing or awarding the particular kind of vermin-proof fence to be constructed.

No. 6249 s. 22.

21 Making a fence vermin-proof to be deemed constructing a vermin-proof fence

For the purposes of this Part the making of any dividing fence vermin-proof shall be deemed to be the construction of a vermin-proof fence, and all the provisions of this Act enabling any person to compel any other person to contribute to the construction of a vermin-proof fence shall equally apply to compelling persons to contribute to the making of any fence so constructed vermin-proof and such provisions with such substitutions as may be necessary for such purpose shall be read and construed accordingly.

No. 6249 s. 23.

S. 22
amended by
S.R. No.
154/1974
reg. 2(c),
No. 9019
s. 2(1)(Sch.
item 71).

22 No contribution in case of certain kinds of fence

Notwithstanding anything to the contrary in this Act, where any person has (whether before or after the commencement of this Act) constructed on the boundary of his land a fence of any of the kinds specified in paragraphs (c) and (d) of section 17 but having wire netting the mesh of which is larger than 38 millimetres and not larger than 41 millimetres the occupier of any adjoining land shall not be entitled to compel any such person to contribute towards constructing a vermin-proof fence of another kind in place of such fence or on the ground merely of the size of the mesh to contribute towards making such fence vermin-proof.

No. 6249 s. 24.

23 Recovery of one-half of value of vermin-proof fence dividing unalienated land

- (1) Where any person constructs on the boundary of his land a vermin-proof fence and the land immediately adjoining is unalienated Crown land, the occupier of the land shall be entitled to claim and recover from the person who afterwards becomes the first occupier of the adjoining land one-half of the then actual value of the vermin-proof fence forming the dividing fence.
- (2) The value of the fence shall be ascertained as soon as practicable after the adjoining land has become so occupied and in default of agreement between the parties the value may on the complaint of either of them be determined by the Magistrates' Court.
- (3) In ascertaining or determining for the purposes of this section the value of any fence containing wire netting, there shall be deducted from the value of the fence any proportion of the value of the wire netting which is attributable to assistance provided under the **Wire Netting Act 1958**.
- (4) Any sum recoverable under this section may be recovered before the Magistrates' Court.

S. 23(2)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.13).

S. 23(4)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.13).

24 Proportion of contribution to vermin-proof fence a charge on land until paid

No. 6249 s. 25.

- (1) If any person served with a notice requiring him to contribute towards the construction of a vermin-proof fence or the making of any dividing fence vermin-proof proves to the satisfaction of the Magistrates' Court upon the hearing of a complaint under section 7 that he is unable to contribute his proportion of the cost of such construction or of the work of making the fence

S. 24(1)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.14(a)).

already constructed vermin-proof the Court may make an order that the person giving such notice shall be at liberty to construct the whole of the fence or do the whole of the work.

- (2) Upon the construction or work being completed the proportion of the cost for which the person serving the notice is liable shall become and until paid be and remain a charge upon the land, and the owner of the land until he pays the amount of such proportion shall pay annually to the person so constructing the fence or doing such work interest upon such amount at the rate of six per centum per annum.
- (3) If default is made in respect to any such annual payment of interest the payment may be enforced at any time by the person entitled to receive the interest in a summary way before the Magistrates' Court or by proceeding in any court of competent jurisdiction.
- (4) Every mortgagee or lienee of or over any land shall be at liberty when any sum has pursuant to this Act become a charge upon such land to pay the amount of such charge, and such payment when so made shall be deemed a part of the principal sum secured by such mortgage or lien respectively and be subject to the provisions powers and trusts thereof.
- (5) When any order is made by the Magistrates' Court under this section the amount which any person is liable to contribute as his proportion of the cost of constructing a vermin-proof fence or of making vermin-proof any fence previously constructed, may be determined by the Court at the time of making such order, or if not then determined it may on the complaint of either party or of the owner for the time being be determined by the Magistrates' Court at any time subsequent to the

S. 24(3)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.14(b)).

S. 24(5)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch. item
70.14(c)(i)(ii)).

construction of such fence or the doing of such work.

- (6) If the complaint is not the complaint of the owner for the time being the Court may direct that the owner be made a party to and served with a copy of the complaint and may adjourn the hearing to enable the owner to appear.

25 Part II to apply to vermin-proof fences

No. 6249 s. 26.

The provisions of Part II of this Act shall apply to the maintenance and repairs of fences constructed or made vermin-proof under the provisions of this Part or any corresponding previous enactment.

26 Penalty for destroying etc. another person's vermin-proof fence

No. 6249 s. 27.

Every person who wilfully destroys or breaks down or injures or removes any vermin-proof fence belonging to another person or any portion thereof, or cuts, detaches or removes any netting forming part thereof shall in addition to paying the amount of the injury done be liable on conviction before the Magistrates' Court—

S. 26
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.15).

- (a) for a first offence to a penalty of 5 penalty units;
- (b) for a second or subsequent offence to imprisonment for a term of not less than three nor more than twelve months.

S. 26(a)
amended by
No. 9554
s. 2(2)(Sch. 2
item 70).

S. 26(b)
amended by
No. 9945
s. 3(3)(Sch. 2
item 18).

s. 27

Nos 6249
s. 28, 6961
s. 2.

**27 Penalty for setting traps etc. for hares or rabbits
within 11 metres of vermin-proof fence**

S. 27(1)
amended by
No. 7876
s. 2(3), S.R.
No. 154/1974
reg. 2(d),
No. 57/1989
s. 3(Sch.
item 70.16).

- (1) Every person who, on any land within 11 metres from any vermin-proof fence, or on any road sets or uses any snare, trap, engine or contrivance for the taking of hares or rabbits shall be liable on conviction before the Magistrates' Court—

S. 27(1)(a)
amended by
No. 9554
s. 2(2)(Sch. 2
item 71).

- (a) for a first offence to a penalty of 1 penalty unit;

S. 27(1)(b)
amended by
No. 9554
s. 2(2)(Sch. 2
item 72).

- (b) for a second or subsequent offence to a penalty of 5 penalty units.

- (2) In the case of any such land (other than a road) the foregoing provisions of this section shall not apply to—

- (a) the owner or occupier of any such land or any person acting under his written authority; or

S. 27(2)(b)
amended by
Nos 41/1987
s. 103(Sch. 4
item 20.3),
52/1994
s. 97(Sch. 3
item 9).

- (b) any person appointed as an authorised officer under the **Conservation, Forests and Lands Act 1987** for the purposes of the **Catchment and Land Protection Act 1994**.

**PART IV—PROCEEDINGS FOR THE RECOVERY OF
CONTRIBUTIONS**

28 From whom moneys recoverable under this Act

No. 6249 s. 29.

- (1) Where any person serves a notice to fence or repair or a copy of an ex parte order or award the person serving the notice may recover all moneys recoverable under this Act in respect of the construction or repairing of the fence from—
 - (a) any person who is liable to contribute to the cost of constructing or repairing the fence who is served with notice to fence or repair or the ex parte order or award; or
 - (b) any person who comes in and defends under the provisions of this Act any proceedings consequent upon the notice or the service of the order or award.
- (2) If any moneys are recoverable by the person served with notice he may recover them from the person serving the notice or any person liable to contribute to the construction or repair of the fence as tenant of whom the person serving the notice holds the lands bounded by the fence.

29 Proceedings to be before Magistrates' Court

Nos 6249
s. 30, 6432
s. 2.

- (1) All proceedings for orders and for the recovery of sums of money shall be before the Magistrates' Court.

S. 29(1)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 70.17(a)).

Fences Act 1968
No. 7733 of 1968

Part IV—Proceedings for the Recovery of Contributions

s. 29

S. 29(2)
amended by
No. 7876
s. 2(3),
repealed by
No. 57/1989
s. 3(Sch.
item 70.17(b)).

* * * * *

- (3) The costs of every complaint shall be in the discretion of the court but where a court appoints an arbitrator the court may if it thinks fit refer the costs of the reference to the award of the arbitrator.

PART V—GENERAL PROVISIONS

30 Act not to interfere with agreements etc.

No. 6249 s. 31.

Except as in this Act provided, nothing in this Act shall be deemed or taken to affect any covenant contract or agreement made or hereafter to be made relative to fencing between landlord and tenant or between occupiers of adjoining land.

31 Act not to apply to unalienated Crown lands

Nos 6249
s. 32, 7228
s. 7.
S. 31
amended by
Nos 10087
s. 3(1)(Sch. 1
item 60),
46/1998
s. 7(Sch. 1),
74/2000
s. 3(Sch. 1
item 46).

This Act except as is in sections 12 and 23 otherwise provided shall not apply to any unalienated Crown lands; nor shall the Crown the Governor the Minister administering section 19 nor any public officer appointed by the Governor or by the Governor in Council for the administration management or control of the Crown lands or public works or who by virtue of his office however styled has any such management or control be liable under this Act to make any contribution towards the construction or repairing of any dividing fence between the land of any occupier and any Crown land.

32 Persons constructing or repairing fences can enter upon adjoining lands

No. 6249 s. 33.

Every person engaged in constructing or repairing a fence under this Act and his servants and agents may with or without horses or cattle or carts carriages or other vehicles at all reasonable times enter upon the adjoining lands and do thereon such acts matters and things as are necessary or reasonably required to carry into effect the construction or repairing of the fence.

s. 33

No. 6249 s. 34.

33 Landlord may defend proceeding against tenant

Any landlord may come in and defend any proceeding under this Act against his tenant in consequence of which the landlord may ultimately incur any liability, and any defence which the tenant might set up shall be available to the landlord.

Pt 6 (Heading and ss 34–37) amended by S.R. No. 154/1974 reg. 2(e), repealed by No. 9863 s. 2.

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SCHEDULE

Section 2

REPEALS

<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Repeal</i>
6249	Fences Act 1958	The whole
6432	Fences (Amendment) Act 1958	The whole
6550	Fences (Amendment) Act 1959	The whole

ENDNOTES

1. General Information

The **Fences Act 1968** was assented to on 2 December 1968 and came into operation on 1 March 1969: Government Gazette 5 February 1969 page 238.

2. Table of Amendments

This Version incorporates amendments made to the **Fences Act 1968** by Acts and subordinate instruments.

Justices (Amendment) Act 1969, No. 7876/1969

Assent Date: 25.11.69
Commencement Date: All of Act (except ss 3, 5, 6, 7(k)(m)–(o)) on 1.4.70;
ss 3, 5, 6, 7(k)(m)–(o) on 1.7.70: Government Gazette
25.2.70 p. 463
Current State: All of Act in operation

Statute Law Revision Act 1977, No. 9019/1977

Assent Date: 17.5.77
Commencement Date: 17.5.77: subject to s. 2(2)
Current State: All of Act in operation

Penalties and Sentences Act 1981, No. 9554/1981

Assent Date: 19.5.81
Commencement Date: S. 2(2)(Sch. 2 items 70–72) on 1.9.81: Government
Gazette 26.8.81 p. 2799
Current State: This information relates only to the provision/s
amending the **Fences Act 1968**

Statute Law Revision (Repeals) Act 1982, No. 9863/1982

Assent Date: 5.1.83
Commencement Date: 5.1.83
Current State: All of Act in operation

Transport Act 1983, No. 9921/1983

Assent Date: 23.6.83
Commencement Date: S. 255 on 1.7.83: s. 1(2)(c)
Current State: This information relates only to the provision/s
amending the **Fences Act 1968**

Penalties and Sentences (Amendment) Act 1983, No. 9945/1983

Assent Date: 20.9.83
Commencement Date: S. 3(3)(Sch. 2 item 18) on 20.12.83: Government
Gazette 14.12.83 p. 4035
Current State: This information relates only to the provision/s
amending the **Fences Act 1968**

Statute Law Revision Act 1984, No. 10087/1984

Assent Date: 22.5.84
Commencement Date: 22.5.84: subject to s. 3(2)
Current State: All of Act in operation

Courts Amendment Act 1986, No. 16/1986

Assent Date: 22.4.86
Commencement Date: S. 30 on 1.7.86: Government Gazette 25.6.86 p. 2180
Current State: This information relates only to the provision/s
amending the **Fences Act 1968**

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Conservation, Forests and Lands Act 1987, No. 41/1987

Assent Date: 19.5.87
Commencement Date: S. 103(Sch. 4 items 20.1–20.3) on 1.7.87: Government Gazette 24.6.87 p. 1694
Current State: This information relates only to the provision/s amending the **Fences Act 1968**

Local Government (Consequential Provisions) Act 1989, No. 12/1989

Assent Date: 9.5.89
Commencement Date: S. 4(1)(Sch. 2 items 43.1, 43.3–43.7) on 1.11.89: Government Gazette 1.11.89 p. 2798; Sch. 2 item 43.2 on 1.10.92: Government Gazette 23.9.92 p. 2789
Current State: This information relates only to the provision/s amending the **Fences Act 1968**

Transport (Amendment) Act 1989, No. 44/1989

Assent Date: 6.6.89
Commencement Date: S. 41(Sch. 2 item 15) on 1.7.89: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fences Act 1968**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Water (Consequential Amendments) Act 1989, No. 81/1989

Assent Date: 5.12.89
Commencement Date: 1.11.90: Government Gazette 15.8.90 p. 2473
Current State: All of Act in operation

Mineral Resources Development Act 1990, No. 92/1990

Assent Date: 18.12.90
Commencement Date: S. 128(Sch. 1 item 10) on 6.11.91: Government Gazette 30.10.91 p. 2970
Current State: This information relates only to the provision/s amending the **Fences Act 1968**

Catchment and Land Protection Act 1994, No. 52/1994

Assent Date: 15.6.94
Commencement Date: S. 97(Sch. 3 item 9) on 15.12.94: s. 2(3)
Current State: This information relates only to the provision/s amending the **Fences Act 1968**

Rail Corporations (Amendment) Act 1997, No. 104/1997

Assent Date: 16.12.97
Commencement Date: S. 47 on 31.3.98: Special Gazette (No. 23) 31.3.98 p. 1
Current State: This information relates only to the provision/s amending the **Fences Act 1968**

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Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Fences Act 1968**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 46) on 22.5.95: s. 2(2)(h)
Current State: This information relates only to the provision/s amending the **Fences Act 1968**

Road Management Act 2004, No. 12/2004

Assent Date: 11.5.04
Commencement Date: S. 156 on 1.7.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **Fences Act 1968**

Mineral Resources Development (Sustainable Development) Act 2006, No. 63/2006

Assent Date: 29.8.06
Commencement Date: S. 61(Sch. item 14) on 30.8.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Fences Act 1968**

Transport Integration Act 2010, No. 6/2010

Assent Date: 2.3.10
Commencement Date: S. 203(1)(Sch. 6 item 22) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Fences Act 1968**

Metric Conversion (Fences Act) Regulations 1974, S.R. No. 154/1974

Date of Making: 7.5.74
Date of Commencement: 1.6.74: reg. 1

Endnotes

3. Explanatory Details

No entries at date of publication.