

[AS REPORTED FROM THE LANDS AND AGRICULTURE
COMMITTEE]

House of Representatives, 25 August 1978.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

House of Representatives, 28 September 1978

Words struck out are shown in italics with double black rule at beginning and after last line; words inserted are shown with triple rule before first line and after last line.

Hon. Mr Thomson

FENCING

ANALYSIS

Title
1. Short Title and commencement

PART I

INTERPRETATION AND APPLICATION

2. Interpretation
3. Application of Act

PART II

AGREEMENTS

4. Act not to interfere with agreements
5. Creation and registration of fencing covenants
6. Expiry of registered fencing covenants

PART III

LIABILITY FOR WORK ON A FENCE

7. Adjoining occupiers to share cost of fencing
8. Notice to do work to be given
9. Objections to proposed fence
10. Service of notices
11. Where notices vary
12. Provision for doing work
13. Effect of change of occupier

14. Contribution where immediate work required
15. Liability for damage caused by occupier
16. Person taking advantage of fence
17. Fence erected when occupier of adjoining land exempt from liability therefor
18. Crown tenant's option
19. Give and take fence
20. Where fence to be built
21. Ditch and bank fences

PART IV

PROCEDURE

22. Proceedings to be in accordance with Magistrates' Courts Act 1947
23. Jurisdiction of the Court
24. Power to come in and defend proceedings

PART V

MISCELLANEOUS PROVISIONS

25. Right of persons constructing fences to enter on adjoining land
26. Rules
27. Repeals and savings
Schedules

A BILL INTITULED

An Act to reform the law relating to the erection and repair of dividing fences, and in substitution for the Fencing Act 1908

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Fencing Act (1977) 1978.

(2) This Act shall come into force on the 1st day of (January) April 1979.

PART I

INTERPRETATION AND APPLICATION

2. **Interpretation**—In this Act, unless the context otherwise requires,—

“Adequate fence” means a fence that, as to its nature, condition, and state of repair, is reasonably satisfactory for the purpose that it serves or is intended to serve:

“Adjoining occupiers” means the occupiers of the lands on either side of a common boundary or a common fence:

“Court” means a Magistrate’s Court under the Magistrates’ Courts Act 1947:

Struck Out

“Crown land” means all land whatsoever (irrespective of the purposes for which the land is used and whether or not it is subject to the Land Act 1948 or any other enactment) that is acquired by or vested in the Crown, whether by virtue of Crown prerogative, or by operation of law, or by the provisions of any enactment, or by any other mode of acquisition or vesting whatsoever, being land in respect of which no other person has an estate in fee simple:

“Crown tenant” means any occupier of Crown land other than the Crown:

“Fence” means a fence, whether or not continuous or extending along the whole boundary separating the lands of adjoining occupiers; and includes all gates, culverts, and channels that are part of or are incidental to a fence; and also includes any natural

or artificial watercourse or live fence, or any ditch or channel or raised ground that serves as a dividing fence:

New

5 "Fencing agreement" means a covenant, agreement, or proviso, not being a fencing covenant, that relates in any way whatever to work on a fence between adjoining lands; and includes an agreement not to erect a fence:

10 "Fencing covenant" means a covenant, agreement, or proviso—

Struck Out

15 (a) That a transferee of land may not require the transferor, being the owner of adjoining land, to contribute towards the cost of work on a fence between the land being transferred and that adjoining land; and

New

20 (a) That one party to the covenant, agreement, or proviso may not be required by the other party, being the occupier of adjoining land, to contribute towards the cost of work on a fence between the land occupied by the first party and that adjoining land:

25 (b) That does not enure for the benefit of any subsequent purchaser for value of that adjoining land:
"Occupier"—

(a) In relation to any land, other than a public reserve, means the owner thereof, except that,—

30 (i) Where another person (*including the Crown*) is in occupation of the land under a tenancy granted for a term of not less than 10 years certain or continues to be in occupation of the land after having been in occupation thereof under such a tenancy, that other person shall be the occupier of the land; or

Struck Out

40 (ii) Where no person is an occupier of the land by virtue of subparagraph (i) of this paragraph, but a person (*including the Crown*) is in occupation of the land without lawful authority and has continually occupied the land for a period exceeding 2 years without

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having lawful authority to do so either at the commencement of that continuous period of occupation or at any time thereafter, that last-mentioned person shall be the occupier of the land; or

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(iii) Where no person is an occupier of the land by virtue of subparagraph (i) or subparagraph (ii) of this paragraph, but a person (*including the Crown*) is in occupation of the land as mortgagee in possession, that last-mentioned person shall be the occupier of the land:

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(b) In relation to any public reserve, means the local authority, trustees, or persons in which or whom control of the reserve is vested:

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“Owner”, in relation to any land, means the person for the time being entitled to receive the rack rent thereof, or who would be so entitled if the land were let to a tenant at a rack rent:

20

“Public reserve” has the same meaning as in the Reserves Act 1977:

“Repair” includes trimming, keeping, and maintaining a live fence, keeping an electric fence in working order, and cleaning, deepening, straightening, altering, or enlarging the course of a natural or artificial watercourse or any ditch or channel or raised ground that serves as a fence:

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“Road” means a road within the meaning of section 110 of the Public Works Act 1928; and includes any motorway, limited access road, street, access way, service lane, and other public highway:

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“Work” and “work on a fence” include the erection, replacement, repair, and maintenance of a fence in whole or in part, and the preparation of the land along or on either side of a boundary between adjoining occupiers for any such purpose; and include any survey work necessary to determine that boundary.

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Cf. 1908, No. 61, s. 2

Struck Out

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3. Application of Act—(1) Except as provided in sections 2 and 21 of this Act,—

(a) Nothing in this Act shall apply to—

(i) Crown land in respect of which there is no occupier other than the Crown; and

(ii) Public reserves not vested in a local authority, trustees, or other persons:

Struck Out

- 5 (b) The Crown, the Governor-General, the Land Settlement Board, the Housing Corporation of New Zealand, and any officer, employee, or agent of the Crown having the administration, management, or control of Crown land or public reserves to which this Act does not apply shall not be liable under this Act for work on a fence in respect of the land or reserves.
- 10 (2) Subject to subsection (1) of this section, this Act shall apply to Crown land; and, to the extent expressly provided in the said sections 2 and 21 of this Act, shall bind the Crown.

New

- 15 **3. Application of Act**—(1) Nothing in this Act shall apply in respect of—
- (a) Roads:
- (b) Land forming part of a national park under the National Parks Act 1952:

Struck Out

- 20 (c) Land taken pursuant to section 45 of the Government Railways Act 1949, or the corresponding provisions of any earlier Act, and still held for railway purposes:

New

- 25 (c) Land held for railway purposes, other than for the accommodation of employees of the New Zealand Government Railways Department:
- (d) Crown land reserved from sale or other disposition pursuant to section 58 of the Land Act 1948, or the corresponding provisions of any earlier Act:
- 30 (e) Land reserved pursuant to section 29 (1) of the Counties Amendment Act 1961, or the corresponding provisions of any earlier Act.
- 35 (2) Subject to subsection (1) of this section, this Act binds the Crown.

Cf. 1908, No. 61, s. 5

PART II

AGREEMENTS

- 40 **4. Act not to interfere with agreements**—Except as provided in (sections 5 and 6) section 4B of this Act, nothing in this Act shall affect any covenant, contract, or agreement made between landlord and tenant, or between any adjoining occupiers, or between any other persons, relating to (the cost of work on a fence) work on a fence or to the question of

whether or not any such work should be undertaken; but no such covenant, contract, or agreement shall create an interest in land.

Cf. 1908, No. 61, s. 6

New

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4A. Fencing covenants and agreements registrable—

(1) Fencing covenants and fencing agreements relating to land subject to the Land Transfer Act 1952 may be registered under that Act against the title to that land.

(2) Subject to section 4B of this Act, the burden of any fencing covenant or fencing agreement that is registered against the title to the land to which it relates shall run with the land, whether or not assigns are named in the covenant or agreement.

4B. Registration of fencing covenants to expire after 12 years—(1) Where a fencing covenant is registered under the Land Transfer Act 1952 after the commencement of this Act, or where a covenant, agreement, or proviso (being a fencing covenant within the meaning of this Act) was registered under the Land Transfer Act 1952 before the commencement of this Act by virtue of section 7 of the Fencing Act 1908, the registration of the covenant, agreement, or proviso shall expire after the expiration of 12 years from the date of the registration or the date of the commencement of this Act, whichever is the later.

(2) Nothing in subsection (1) of this section applies in respect of a fencing covenant that protects a local authority from liability to contribute towards any work on a fence between a public reserve vested in or administered by that local authority and any adjoining land.

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5. Creation and registration of fencing covenants—(1) A

New

5. Creation of fencing covenants—Without affecting any other manner in which a fencing covenant may be created,

a
fencing covenant by the transferee of any land may be created by—

(a) The inclusion in the memorandum of transfer of the land to him (whether or not he signs the transfer)

of the words "The transferee shall be bound by a fencing covenant as defined in section 2 of the Fencing Act (1977) 1978 in favour of the transferor" or words to that effect; or

- 5 (b) The inclusion in the memorandum of transfer of the land to him of a covenant or agreement signed by him, or a proviso (whether or not signed by him) that constitutes a fencing covenant as defined in section 2 of this Act.

10 *Struck Out*

(2) No District Land Registrar shall refuse to register a transfer of land solely on the ground that it contains a fencing covenant.

Cf. 1908, No. 61, s. 7

15 *Struck Out*

6. Expiry of registered fencing covenants—(1) Where a fencing covenant is registered under the Land Transfer Act 1952 after the commencement of this Act, or where a covenant, agreement, or proviso was registered under the Land Transfer Act 1952 before the commencement of this Act by virtue of section 7 of the Fencing Act 1908, the covenant, agreement, or proviso, and the registration thereof, shall have no further force or effect after the expiration of 12 years from the date of the registration or the date of the commencement of this Act, whichever is the later.

(2) Until the expiry of the said period of 12 years, the burden of any covenant, agreement, or proviso that is registered against the title to the land to which it relates shall run with the land, whether or not assigns are named in the covenant, agreement, or proviso.

30 *New*

6A. Fence not to encroach without consent or Court Order—(1) Notwithstanding anything in this Act, no person is entitled to erect a fence that encroaches to any degree whatever upon any land of which he is not the occupier, except—

- (a) With the consent of the occupier of that land; or
 (b) Pursuant to an order of the Court made under section 23 of this Act.

40 (2) Where any fence erected otherwise than in accordance with subsection (1) of this section encroaches upon any land of which the person who erected the fence is not the occupier,

New

the occupier of that land may apply to the Court for an order that the fence be removed; and the Court shall order the removal of the fence (at the expense of the person who erected it) unless it is satisfied— 5

- (a) That the degree of encroachment is minimal; and
- (b) That the encroachment in no way adversely affects the use and enjoyment of his land by the applicant.

(3) Nothing in this section applies in respect of a fence erected before the commencement of this Act. 10

PART III

LIABILITY FOR WORK ON A FENCE

7. Adjoining occupiers to share cost of fencing—Subject to the provisions of this Act, and to any order of the Court made under this Act, the occupiers of adjoining lands 15
(*other than roads*) not divided by an adequate fence are liable to contribute in equal proportions to work on a fence.

Cf. 1908, No. 61, s. 11

8. Notice to do work to be given—(1) Any (*person*) occupier 20
who desires to compel any other (*person*) occupier under this Act to contribute to the cost of work on a fence shall serve on him a notice in the form numbered 1 in the First Schedule to this Act or to the like effect.

(2) The notice shall—

(a) Specify the boundary or line of fence, or the parts of 25
the boundary or the line of fence, along which the work is to be done; and

(b) Specify (whether by reference to a fence described in the Second Schedule to this Act or otherwise) the work proposed to be carried out with sufficient 30
particularity to enable the (*person*) occupier on whom the notice is served to—

(i) Comprehend the nature of the work proposed and the materials to be used; and

(ii) Estimate the cost of the work; and 35

(c) Specify the consequences of failure to comply therewith.

(3) If it is proposed that the cost of the work shall be borne otherwise than in equal shares, the notice shall state the shares that are proposed.

(4) Except as provided in section 14 of this Act, in the 40
absence of agreement to the contrary the occupier of any adjoining land shall not be liable to contribute to the cost of any of the following:

- (a) Any part of the work on a fence that is done before notice relating to the work has been duly served on him:
- 5 (b) Any part of the work that is done after the due service of such a notice and before the due service of a cross-notice on the (*person*) occupier who gave the notice or the expiration of 21 days from the date of the service of the notice, whichever first happens:
- 10 (c) Any part of the work that is done after the due service of such notice and cross-notice and while differences between the parties remain to be resolved either by agreement or by the Court.

Cf. 1908, No. 61, s. 12

9. **Objections to proposed fence**—(1) If the (*person*) occupier receiving a notice objects to any of the proposals set out therein, he may, within 21 days after the date of the service of the notice, serve on the (*person*) occupier who gave the notice a cross-notice signifying his objection, and he may make counter-proposals in that cross-notice.
- 20 (2) A cross-notice shall be in the form numbered 2 of the First Schedule to this Act or to the like effect, and any work proposed in a cross-notice to be carried out shall be specified with the same particularity as is required in the case of a notice by subsection (2) of section 8 of this Act.
- 25 (3) If the (*person*) occupier receiving a notice fails to serve a cross-notice within the said period of 21 days, he shall be deemed to have agreed to the proposals set out in the notice served on him.

Cf. 1908, No. 61, s. 13

- 30 10. **Service of notices**—(1) Any notice or cross-notice required or authorised by this Act to be served on any person shall be delivered to that person, and may be delivered to him either personally or by posting it by registered letter addressed to that person at his last known place of abode or business in
- 35 New Zealand. A notice or cross-notice so posted shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered.
- (2) If the person is absent from New Zealand, the notice or cross-notice may be delivered as aforesaid to his agent in
- 40 New Zealand. If he is dead the notice or cross-notice may be delivered as aforesaid to his administrator.
- (3) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no administrator, the notice or cross-notice
- 45 shall be delivered in such manner as may be directed by an order of the Court.

(4) Any notice or cross-notice required or authorised by this Act to be served on or given by any person who is a minor may be served on or given by—

(a) Any person who is the guardian or who has the custody of the minor; or 5

(b) The minor himself in any case where he has the management and control of the land in respect of which the notice or cross-notice is served or given.

(5) Notwithstanding anything in the foregoing provisions of this section, the Court may in any case make an order directing the manner in which any notice or cross-notice is to be delivered, or dispensing with the delivery thereof. 10

Cf. 1908, No. 61, s. 40; 1952, No. 51, s. 152

11. Where notices vary—If a notice and cross-notice have been duly served or if notices to do work have been duly served and the proposals in those notices do not correspond, then (unless within 21 days after the date of the service of the last notice or cross-notice the differences are resolved by agreement) the matters in dispute may be determined by the Court in manner hereafter provided in this Act. 15 20

Cf. 1908, No. 61, s. 14

12. Provision for doing work—(1) Where a person serves notice under this Act in respect of work on a fence, he may proceed to do the work—

(a) After the expiration of 21 days from the date of the service of the notice if he is not duly served with a cross-notice within that period; or 25

(b) If before the expiration of the said period of 21 days he is duly served with such a cross-notice, as soon as all differences between the parties are resolved either by agreement or by the Court. 30

(2) If the person who served the notice fails to commence to do the work within 28 days commencing on the day on which he first became entitled to commence the work or such longer period as may be agreed to by the parties or fixed by the Court (in this section referred to as the prescribed period) either party may thereupon, or at any time within 90 days thereafter, proceed to do the work. 35

(3) If the party who last proceeded to do the work fails for a period of 28 days to carry out the work with due diligence, the other party may proceed to complete the work. 40

(4) If for any period of 90 days after the expiration of the prescribed period and before the completion of the work neither party does any part of the work, all notices, cross-notices, agreements, and orders relating to the work (other than agreements and orders to which subsection (5) 45

of this section applies) shall, in relation to the uncompleted part of the work, lapse and become of no effect, but nothing in this subsection shall restrict the giving of further notices and cross-notices or the making of further agreements or
5 orders.

(5) At any time before or after the expiration of any period of ~~(3 months)~~ 90 days to which subsection (2) or subsection (4) of this section applies, the period may be extended either
10 by agreement of the parties or order of the Court.

(6) Where in accordance with this section either party does any work on a fence, he may recover from the other party as a debt the other party's proportion of the cost of the work done.

Cf. 1908, No. 61, s. 17

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13. Effect of change of occupier—Where a notice or cross-notice is duly given by the occupier of any land to the occupier of any other land in accordance with this Act,—

(a) If the giver of the notice or cross-notice thereafter
20 ceases to be the occupier of the land of which he was the occupier when he gave the notice or cross-notice, that notice or cross-notice shall have effect as if—

(i) It had been given by the person who is the occupier for the time being of that land; and

(ii) That person had been the occupier of that
25 land when that notice or cross-notice was given:

(b) If the receiver of the notice or cross-notice thereafter ceases to be the occupier of the land of which he was the occupier when he received the notice or cross-notice, that notice or cross-notice shall have
30 effect as if—

(i) It had been given to the person who is the occupier for the time being of that land; and

(ii) That person had been the occupier of that
35 land when that notice or cross-notice was given.

New

13. Effect of change of occupier—Where a notice or cross-notice is duly given by the occupier of any land to the occupier of any other land in accordance with this Act,
40 but, before the matter is settled (whether by agreement or order of the Court), one of the parties disposes of his interest in either of the parcels of land concerned, the notice or cross-notice shall cease to have effect.

14. Contribution where immediate work required—Subject to the provisions of section 15 of this Act, if any fence is damaged or destroyed by sudden accident or other cause and requires immediate work, either of the adjoining occupiers may do that work without any notice, and may recover half the cost thereof from the other occupier. 5

Cf. 1908, No. 61, s. 33

15. Liability for damage caused by occupier—If any fence is damaged or destroyed in circumstances in which, apart from this Act, an occupier would be liable therefor, he shall be liable for the whole cost of making good the fence. 10

16. Person taking advantage of fence—(1) In any case where there is a fence along the boundary between any land and a road, if a person (other than the owner or occupier or some other person lawfully in possession of that land) adopts or takes advantage of any means by which the fence is rendered of beneficial use to himself, or avails himself of the fence, the occupier of that land may serve on that other person a notice in writing requiring him to pay interest at the rate of 10 percent per annum on half the value of the fence at the time of the serving of the notice; and, so long as that other person continues to take advantage or avail himself of the fence, he shall be liable to pay that interest to the giver of the notice or his successor in title, and he shall also be liable for repairs to the fence as if he were an adjoining occupier. 15 20 25

(2) In any case where a notice in respect of a fence has been served under subsection (1) of this section and the value of the fence subsequently increases, a further notice in respect of the fence may be served under that subsection and the provisions of that subsection shall apply accordingly in respect of that further notice. 30

Cf. 1908, No. 61, s. 25

17. Fence erected when occupier of adjoining land exempt from liability therefor—(1) Where at the time when any fence was erected the occupier of the land on one side thereof had, by reason of section 3 of this Act or of the Fencing Act 1908 or any corresponding former Act, no liability to contribute to the cost of the erection, if the occupier for the time being of that land has thereafter become liable to contribute to the cost of work on that fence— 35 40

- (a) The person who erected the fence, or his successor in title, may serve upon the occupier of that land a notice in writing requiring him to pay an appropriate share of the value of the fence at the time when the notice is served taking into account any contributions made towards the cost of the erection and maintenance of that fence by any occupier of that land; and
- (b) That occupier shall, within one month after receiving the notice, pay that share to the person who erected the fence, or to his successor in title, and so long thereafter as he continues to be the occupier shall be liable to bear half the cost of work on the fence.
- (2) This section shall not apply in any case where the exemption from liability to contribute to the cost of the erection of a fence arose by reason of a fencing covenant or any other covenant, agreement, or proviso relating to fencing.
- Cf. 1908, No. 61, s. 19

Struck Out

- 20 **18. Crown tenant's option**—Where a fence is erected under the provisions of this Act dividing any land held by any person as Crown tenant from any adjoining land, it shall be lawful for that Crown tenant, instead of paying the proportionate share of the cost of erecting the fence for which he may be
- 25 liable as an occupier, to pay to the person who erected the fence, or to his successor in title, interest on that proportionate share at the rate of 10 percent per annum during that Crown tenant's term of occupation:
- 30 Provided that that Crown tenant shall be liable for repair while he remains an adjoining occupier.

New

- 35 **18. Crown tenant's option**—Where a fence was erected under the provisions of the Fencing Act 1908 dividing any land held by any person as Crown tenant from any adjoining land, and, before the commencement of this Act, the tenant exercised the option conferred on him by section 20 of the Fencing Act 1908 to pay to the person who erected the fence, or to his successor in title, interest on the proportionate share of the cost of erecting the fence for which he may have been
- 40 liable as an occupier instead of paying that proportionate share, that Crown tenant shall continue to be liable to pay to that other person (or his successor in title) interest on that share at that rate during his term of occupation of the Crown land.

- 45 Cf. 1908, No. 61, s. 20

19. Give and take fence—(1) Where it is impracticable or undesirable to erect a fence on the boundary of adjoining lands, and the occupiers cannot agree upon a line of fence on either side of that boundary, the line of the fence shall be determined by the Court in manner hereafter provided in this section. 5

(2) The Court may inspect, or may appoint one or more persons to inspect, the proposed line of fence, and shall determine whether a fence is necessary, and (if so) what line is to be adopted; and whether any, and (if so) what compensation (whether an annual payment or otherwise) is to be made to either of the occupiers in consideration of loss of occupation of land. 10

(3) The reasonable costs of inspection shall be borne as the Court in its discretion shall direct. 15

(4) The occupation of lands on either side of the line of fence shall not constitute a tenancy or be deemed adverse possession, and shall not affect the title to or possession of any lands, save for the purposes of this Act.

20. Where fence to be built—Save as otherwise agreed or ordered by the Court, the middle of a fence shall be upon the boundary line: 20

Provided that, where a fence is supported by or formed about posts, the posts shall be placed on the boundary line or as near thereto as practicable. 25

Cf. 1908, No. 61, s. 24

Struck Out

21. Ditch and bank fences—(1) Subject to any agreement or order of the Court, where the occupier of any land has a right to make a ditch and bank fence, he may make the ditch on the adjoining land (including Crown land) and use the soil taken therefrom towards making the bank, or he may make the ditch on his own land and make the bank on that adjoining land. 30

(2) No ditch or bank shall be made upon any such adjoining land so as to disturb or injure a live fence without the previous written consent of the occupier of the land. 35

Cf. 1908, No. 61, s. 23

PART IV

PROCEDURE

22. Proceedings to be in accordance with Magistrates' Courts Act 1947—(1) The provisions of the Magistrates' Courts Act 1947 shall apply to all proceedings under this Act.

(2) Nothing in this Part of this Act shall restrict section 441 of the Maori Affairs Act 1953.

Cf. 1908, No. 61, s. 37

- 23. Jurisdiction of the Court**—(1) Notwithstanding that a question of title may be involved and whatever the amount involved, the Court shall have jurisdiction to hear and determine all questions and disputes arising under this Act in relation to the following matters:
- 15 (a) Whether an existing fence is an adequate fence:
 - (b) Work on a fence:
 - (c) The persons by whom work on a fence is to be done:
 - 20 (d) The reasonable and proper cost of work on a fence, including interest on outlay and reasonable remuneration for the superintendence and labour of an occupier (or of any person acting on his behalf) when he is or has been personally engaged on the work:
 - 25 (e) The person or persons by whom the cost of any work on a fence is to be borne; and, if the cost is to be borne by 2 or more persons, the proportion of the cost which each of them shall bear:
 - (f) The line of fence to be adopted, and the amount of compensation (if any) to be paid for loss of occupation of land and the manner of payment thereof:
 - 30 (g) The date on or before which, and the manner in which, any work is to be done:
 - (h) The removal of a fence that is not erected on the proper boundary:
 - 35 (i) Whether there has been a failure to exercise due diligence under subsection (3) of section 12 of this Act:
 - (j) Whether immediate work is or was required under section 14 of this Act:
 - 40 (k) The entry on adjoining land for the purpose of carrying out the work:

- (l) The use on adjoining land of animals, vehicles, aircraft, hovercraft, any mode of conveyance, and any equipment for the purpose of carrying out the work:
 - (m) The value or cost of a fence, and the amount of the appropriate share payable by an occupier, for the purpose of any of the following sections, namely, sections 16, 17, and 18 of this Act: 5
 - (n) The amount of the appropriate share under section 17 of this Act:
 - (o) Any other question or dispute arising out of this Act: 10
 - (p) The costs of any proceedings, (including such expenses of survey as the Court thinks fit) and the parties by whom and to whom costs are to be paid.
 - (2) In any case where the Court has jurisdiction under subsection (1) of this section it may— 15
 - (a) Make such consequential order as it thinks fit:
 - (b) Enter judgment for such sum of money as it thinks fit.
 - (3) In any such case—
 - (a) The Court may make or enter an interim order or judgment: 20
 - (b) The order or judgment shall be deemed to be final unless it expressly states that it is an interim order or judgment, as the case may be.
- Cf. 1908, No. 61, s. 36

- 24. Power to come in and defend proceedings—**Where any proceedings have been commenced under this Act in relation to any fence, any person who may ultimately incur any liability in respect of the fence may come in and— 25
- (a) Raise any defence in the proceedings against any party thereto: 30
 - (b) Avail himself of any defence in the proceedings that any party thereto might set up.
- Cf. 1908, No. 61, s. 45

PART V

MISCELLANEOUS PROVISIONS

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- 25. Right of persons constructing fences to enter on adjoining land—**(1) Where an occupier is doing or proposes to do work under this Act and access to the fence over his own land is more difficult, inconvenient, or expensive than over the adjoining land, the Court may authorise that occupier, his agents, workmen, and contractors, with or without animals, 40

vehicles, aircraft, hovercraft, any mode of conveyance, and any equipment, to enter upon any portion of the adjoining land at all reasonable times and do such things thereon as are reasonably necessary to carry out the work.

5 (2) The following provisions shall apply with respect to any order made under subsection (1) of this section:

10 (a) The right of entry thereby conferred shall be exercised so as to cause as little damage as possible to the land entered upon and as little disturbance as possible to persons lawfully upon the land, and shall be upon such terms and conditions, including payment of compensation, as the Court thinks fit:

15 (b) No such order shall authorise any person to cut down, lop, or injure any tree or shrub without the consent of the owner.

20 (3) If an owner or occupier of land, by himself or his agents or employees, obstructs any entry authorised by an order made under subsection (1) of this section, he shall be liable (in addition to any other penalty that he may incur) to pay the entire cost of the work, unless the Court (on application made by him in that behalf) orders him to pay part only of that cost.

Cf. 1908, No. 61, s. 45

25 **26. Rules**—The Governor-General may from time to time, by Order in Council, make rules prescribing, in all cases not specially provided for in this Act, the practice and procedure of the Court and forms in all proceedings before a Court under this Act, and until rules are made and to the extent they do not cover any case the provisions of the Magistrates' Courts
30 Rules 1948 shall so far as practicable be adopted.

27. Repeals and savings—(1) The enactments specified in the Third Schedule to this Act are hereby repealed.

35 (2) All matters and proceedings commenced under any such enactments, and pending or in progress at the commencement of this Act, may be continued, completed, and enforced under this Act.

SCHEDULES

FIRST SCHEDULE

FORMS

Form No. 1

Section 8

FENCING NOTICE

(Use of this form is not obligatory but it is given as a guide to the type of information that should be included in a fencing notice.)

TO

(Owner, or occupier by virtue of a tenancy for not less than 10 years certain, of No. Street, Dunedin, or Broadacres Farm, Taradale.)

PLEASE TAKE NOTICE that I desire that a/the fence be erected (or repaired) between your said property and my adjoining property at No. Street

(or Greenmeadows Farm)

in accordance with the following particulars:

1. Further description of boundary to be fenced.
2. Type of fence. *(If desired specify one of the specimen fences in the Second Schedule to the Fencing Act 1977, or specify any other type desired.)*
3. Method of construction. *(e.g., by a contractor, or by 1 neighbour, or by both neighbours.)*
4. Estimated total cost. *(To be shared half each or, if different shares are proposed, specify those shares.)*

5. How materials to be purchased or supplied and how paid for.

6. Date for commencement of work.

Within 21 days after the date of the receipt of this notice you may object to any of the above particulars and make your counter-proposals.

Within the same time, if you claim you are not liable to pay for fencing, you may notify me accordingly and supply the name and address of the person who is liable for fencing in connection with your property.

If no objection is received I will proceed with the fencing in accordance with this notice, and you will be deemed to have agreed to the proposals set out in this notice, and will be liable to share the cost accordingly.

This notice is given under the Fencing Act 1977.

Dated this day of 19 .

FIRST SCHEDULE—*continued*

Form No. 2

Section 9

CROSS-NOTICE

(A cross-notice must be in this form or to the like effect.)

TO

*(Specify the giver of the original notice.)*Please take notice that I object to your notice to fence dated the
day of 19 .

The particulars of my objection are as follows:

(Set forth the proposals to which objection is made. If objection is made to all the proposals a statement to this effect will suffice.)

*I make the following counter-proposals:

(Set forth any counter-proposals with the same particularity as is required in the case of a fencing notice.)

This notice is given under the Fencing Act 1977, which provides that, if we are unable to agree regarding the particulars to which objection is taken by this cross-notice and the counter-proposals that are made by this cross-notice, the matters in dispute may be determined by a Magistrate's Court.

Dated this day of 19 .

*Delete if no counter-proposals are proposed.

SECOND SCHEDULE

Section 8 (2)

SPECIMEN TYPES OF FENCE

Urban

1. *Post and rail fence*: A post and rail fence, at least 1 m in height, of substantial material, firmly erected, with not less than 4 rails, the space between the 2 bottom rails, and the bottom rail and the ground, not to exceed 125 mm, and the posts to be not more than 2.75 m apart.

2. *Close boarded fence*: A close boarded fence at least 1.5 m in height with posts and 2 rails, and having split or sawn timber placed upright, and well nailed to both rails, there being no openings between upright pieces of timber.

3. *Paling fence*: Any paling fence, at least 1 m in height, with posts and 2 rails, and having split or sawn timber placed upright, and well nailed to both rails, there being not more than 100 mm of opening between upright pieces of timber.

4. *Panel fence*: A panel fence at least 1 m in height with posts spaced not more than 2.7 m apart and having 2 or more rails with asbestos cement infill panels securely screwed to the rails.

5. *Masonry walls*: Walls of brickwork, blockwork, or stonework adequately supported.

Rural

6. *7 or 8 wire fence*: A substantial wire fence, having 7 or 8 wires properly strained, with up to 2 of these wires as galvanised barbed wire, or with 1 galvanised barbed wire and a top rail; barbed wires to be

SECOND SCHEDULE—*continued*

placed in a position agreed upon by the persons interested, or to be omitted if those persons agree; the posts to be of durable timber, metal, or reinforced concrete, and not more than 5 m apart, and securely rammed and, in hollows or where subject to lifting through the strain of the wire, to be securely footed, or stayed with wire; the battens (droppers) to be affixed to the wires and of durable timber, metal or plastic, evenly spaced, and not fewer than 3 between posts; the wires to be galvanised and of 2.5 mm high tensile steel or 4 mm steel or its equivalent; the bottom wire to be not more than 125 mm from the ground, the next 3 wires to be not more than 125 mm apart; and the top wire or rail to be not less than 1 m from the ground.

7. *9 or 10 wire fence*: A substantial wire fence having 9 or 10 wires properly strained, with or without battens (droppers) or lacing affixed to the wires between the posts or standards; the posts or standards to be of durable timber, metal, or reinforced concrete, well and substantially erected, and not more than 5 m apart, the top wire not to be less than 1 m from the ground surface, the wires to be galvanised, and of 2.5 mm high tensile steel or 4 mm steel, or its equivalent, the space between the ground and the bottom wire not to exceed 100 mm, the 4 bottom wires to be not more than 130 mm apart.

8. *Prefabricated (netting) fence*: A substantial wire netting fence properly strained of a minimum height of 1 m; the netting to have at least 7 horizontal wires, and, if necessary, extra wires above or below the netting, one of which may be a galvanised barb wire, all other wires to be galvanised in either 2.5 mm high tensile steel or 4 mm steel, or its equivalent; the vertical stays of the netting to be galvanised wire, and not more than 305 mm apart; posts or standards to be not more than 5 m apart, and of durable timber, metal, or reinforced concrete; additional battens (droppers) may be installed between the posts if both parties agree; the overall fence to be well and substantially erected.

9. *Live fence*: A close and sufficient live fence.

THIRD SCHEDULE

Section 27 (1)

ENACTMENTS REPEALED

- 1908, No. 61—The Fencing Act 1908. (1957 Reprint, Vol. 4, p. 869.)
 1922, No. 33—The Fencing Amendment Act 1922. (1957 Reprint, Vol. 4, p. 893.)
 1953, No. 40—The Fencing Amendment Act 1953. (1957 Reprint, Vol. 4, p. 893.)
 1955, No. 90—The Fencing Amendment Act 1955. (1957 Reprint, Vol. 4, p. 894.)
 1970, No. 137—The Age of Majority Act 1970: So much of the First Schedule as relates to the Fencing Act 1908.
 1975, No. 36—The Property Law Amendment Act 1975: Section 14.