

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 183.

Fencing.

GENERAL ANNOTATION

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), the administration of this Chapter was not vested specifically in any Minister. It seems, therefore, that under Constitution, Section 148(2), it came within the political responsibility of the Prime Minister.

The Chapter does not refer to "the Minister", "the Departmental Head" or "the Department".

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 183.

Fencing Act.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 183.

Fencing Act.

Being an Act to regulate the fencing of certain land.

1. Interpretation.

In this Act, unless the contrary intention appears—

“common natural boundary” means the portion of a watercourse or other natural feature that forms the common boundary of lands adjoining it on opposite sides;

“cross fence” means a fence duly erected across the common boundary under this Act;

“land” means land other than—

- (a) land held under the State by annual licence under any law relating to land; or
- (b) State land that is not alienated or the subject of a State lease; or
- (c) customary land;

“neighbouring land”, in relation to any land, means land of a different owner or occupier that adjoins it at a common natural boundary, the whole or part of which boundary is insufficient to prevent the passage of stock.

2. Application.

(1) Neither the State nor an officer who, by virtue of his office, has the management or control of any lands of the State is liable under this Act to make a contribution towards the erection or repair of a boundary or other fence between the land of an owner or occupier and any public land.

(2) Nothing in this Act affects a covenant, contract or agreement, whenever made, between a landlord and a tenant relating to fencing.

(3) The provisions of this Act relating to adjoining lands and their owners and occupiers extend, as far as practicable, to neighbouring lands and their owners and occupiers respectively.

3. Adjoining owner, etc., to contribute to dividing fence.

(1) The owner of any land not separated by a dividing fence from adjoining land may serve a notice on the occupier, or if there is no occupier then on the owner, of the adjoining land, or his attorney or agent, requiring him to assist in equal proportions in, or contribute in equal proportions to, the erection of a dividing fence.

(2) If the occupier or owner, or his attorney or agent, refuses, or neglects for three months after the service of the notice under Subsection (1), to assist in or contribute to the making of the fence, or after having started does not use due diligence in completing the fence, the person serving the notice may make and complete the fence and demand and recover from the other occupier or owner half the cost of the fence.

4. Dividing fences on neighbouring lands.

(1) In the case of neighbouring lands, the owner of land on one side of a common natural boundary may require the owner or occupier of the neighbouring land to join him in separating their respective lands, for the common advantage of the lands, by a fence erected along the common natural boundaries (either on one side or partly on one side and partly on the other side of the common boundary), and by the necessary cross fences.

(2) The fence and any cross fences erected under Subsection (1) shall be deemed to form a dividing fence within the meaning and for the purposes of this Act.

5. Repair of dividing fence.

(1) Subject to Subsections (3) and (4), the occupier of any land separated from any adjoining land by a dividing fence may serve a notice on the occupier, and if there is no occupier then on the owner, of that adjoining land requiring him to assist in equal proportions in, or contribute in equal proportions to, the repairing of the dividing fence.

(2) If the occupier or owner who is served with a notice under Subsection (1) refuses, or neglects for three months after the service of the notice, to assist in or contribute to the repairing of the dividing fence, the occupier serving the notice may repair the fence and demand and recover from the other occupier or owner half the cost of repairing the fence.

(3) If a dividing fence or a portion of a dividing fence is destroyed by accident, the occupier of land on either side may immediately repair it without any notice, and is entitled to recover half the expense of doing so from the occupier or owner of the adjoining land.

(4) Where a dividing fence is destroyed by fire or by the falling of a tree, any owner or occupier through whose neglect the fire originated or the tree fell is bound to repair the entire fence so damaged.

6. Cost of repair of dividing fence.

When a dividing fence is out of repair or becomes insufficient, the occupiers of land on either side of the fence are liable, in equal proportions, for the costs of repairing the fence.

7. Expenses of dividing fence where State land alienated, etc.

The owner of land who makes or has made a fence dividing the land from adjoining State land that is subsequently alienated or demised (otherwise than by an annual licence under any law relating to land) may, within six months after the alienation or demise, recover from the owner of the adjoining land half the value of the dividing fence.

8. Occupier may recover costs from owner.

(1) The occupier of the adjoining land is liable in the first instance to contribute to the erection of a dividing fence, but he may deduct all expenses incurred in erecting the fence from any rent due or afterwards becoming due from the occupier to the owner.

(2) The occupier is liable to contribute to the erection or repair of a dividing fence, but where the adjoining land is not in the occupation of any person the owner of the land is liable to contribute.

9. Notices.

(1) Subject to Subsection (2), where a notice is required by this Act to be given it must be in writing and must be served personally on the person to whom it is addressed, or his attorney or agent, or left with some adult person at his last-known place of residence.

(2) When an owner is unknown or is absent from the country without a known attorney or agent, the notice shall be inserted once a week for two consecutive weeks in a

newspaper published nearest to the land, and the production of a copy of the newspaper containing the notice is proof of the due service of the notice.

10. Agreements as to dividing fences.

(1) The owners or occupiers of adjoining lands may agree between themselves as to what part of a dividing fence each is to—

- (a) erect and keep in repair; or
- (b) keep in repair only; or
- (c) erect only.

(2) An agreement made under Subsection (1) shall be in writing, and shall be witnessed by the clerk of the District Court nearest to the land to which the agreement relates.

(3) A copy of an agreement under this section certified by the clerk as being a true copy shall be lodged in the office of the District Court nearest to the land to which the agreement relates, and any such copy may be used in evidence in any case arising in relation to the land and the fence referred to in the agreement.

(4) Subject to Subsection (5), the provisions of this Act, so far as they are applicable, apply to a dividing fence the subject of an agreement under this section.

(5) Where an owner or occupier erects or repairs under this Act any portion of a dividing fence that, under an agreement made under this section, the owner or occupier of the adjoining land should have erected or repaired, the first-mentioned owner or occupier is entitled to recover the whole of the cost of the erection or repair from the owner or occupier failing or neglecting to repair the dividing fence.

11. Jurisdiction of Court.

If a dispute or difference occurs between the owners or occupiers of any adjoining lands as to—

- (a) the sufficiency as a fence of a river or other natural boundary; or
- (b) what portion of a fence shall be erected or repaired by each owner; or
- (c) the necessity for a dividing fence to be repaired; or
- (d) whether due diligence has been used to complete the erection or repair of a fence after it has been started; or
- (e) the description and sufficiency of a fence erected or to be erected; or
- (f) the sufficiency or otherwise of an excuse for not using due diligence in the completion of the erection of a fence or any repairs after having commenced the erection or repairs; or
- (g) what is a fair distribution of the water in a water-course, lagoon or water-hole forming part of a common natural boundary on which a dividing fence has been or is to be erected,

either party may apply to the District Court nearest to the place where the fence in question exists or is about to be erected, and the Court—

- (b) shall inquire into the matter; and
- (i) may summon witnesses and examine them on oath or by view or otherwise take the best means of informing itself on the merits of the case at issue; and

(j) shall give judgement, with or without costs, to either party as it sees fit, and the decision of the Court is final¹.

12. Mode of recovering cost of fencing.

All sums of money recoverable under this Act may be sued for and recovered in a summary manner before a District Court.

13. Recoverable costs of fencing.

(1) A judgement shall not be given under this Act that will involve an expense in the erection of a fence exceeding—

(a) in the case of land other than land in a town—the fair and usual price charged for the erection of a three-railed fence; or

(b) in the case of land in a town—the fair and usual price charged for a four-railed or paling fence.

(2) Where contribution is required for an existing fence, the amount to be recovered shall have reference to the actual value and state of the fence at the time the sum is sought to be recovered and not to the original cost of the fence.

14. Fencing costs may be levied by distress, etc.

All sums of money ordered under this Act by a District Court to be paid by a party for erecting or repairing a fence and not paid within one month after the order may be recovered under a warrant of the Court directed to a commissioned officer of the Police Force to levy it by distress and sale of the goods and chattels of the party ordered to pay the sum of money, together with all costs and charges attending the levy.

¹ But see Constitution Section 155.

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CHAPTER NO. 183.

Fencing.

APPENDIX.

SOURCE OF THE FENCING ACT.

Part A.—Previous Legislation.

Fencing Act 1951 (No. 6 of 1952)

as amended by—

Fencing Act 1962 (No. 9 of 1962).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference ¹ .
1	3
2	4, 12, 13
3	5
4	6
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¹ Unless otherwise indicated, references are to the Act set out in Part A.

