Version
as at 24 January 2026

Fencing Act 1978

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Justice.

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

1 Short Title and commencement

(1) This Act may be cited as the Fencing Act 1978.

(2) This Act shall come into force on 1 April 1979.

Part 1
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) the District Court under the District Court Act 2016:

(b) the Disputes Tribunal with jurisdiction under section 24A

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

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

fencing covenant means a covenant, agreement, or proviso—

(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; and

(b) that does not enure for the benefit of any subsequent purchaser for value of the land occupied by the first party

occupier—

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

  (i) where another person 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

  (ii) where no person is an occupier of the land by virtue of subparagraph (i), but a person is in occupation of the land as mortgagee in possession, that last-mentioned person shall be the occupier of the land:

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

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

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

road means a road within the meaning of section 43 of the Government Roading Powers Act 1989; and includes any motorway, limited access road, street, access way, service lane, and other public highway

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.

Compare: 1908 No 61 s 2

Section 2 **court**: replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 2 **fencing covenant** paragraph (b): amended, on 14 December 1979, by section 2 of the Fencing Amendment Act 1979 (1979 No 88).

Section 2 **road**: amended, on 1 August 2008, by section 50(1) of the Land Transport Management Amendment Act 2008 (2008 No 47).

Section 2 **road**: amended, on 1 October 1989, pursuant to section 116(1) of the Government Roading Powers Act 1989 (1989 No 75).

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 1980:

(ba) land that is Te Urewera land, as defined by section 7 of the Te Urewera Act 2014:

(c) land held for railway purposes other than for the accommodation of employees by the Crown, New Zealand Railways Corporation, or a railway operator that is a Crown transferee company (as those terms are defined in section 2 of the New Zealand Railways Corporation Restructuring Act 1990):

(ca) land held or occupied for the operation of a railway by a railway operator, not being a Crown transferee company (as those terms are defined in section 2 of the New Zealand Railways Corporation Restructuring Act 1990), other than land used principally for car parking, the storage of

freight, materials, and ancillary equipment, or administration or residential purposes:

(d) land that is a marginal strip within the meaning of the Conservation Act 1987:

(e) land that is an esplanade reserve within the meaning of the Resource Management Act 1991 or an esplanade strip within the meaning of that Act.

(2) Subject to subsection (1), this Act binds the Crown.

Compare: 1908 No 61 s 5

Section 3(1)(b): amended, on 1 April 1981, pursuant to section 80(2) of the National Parks Act 1980 (1980 No 66).

Section 3(1)(ba): inserted, on 28 July 2014, by section 138 of the Te Urewera Act 2014 (2014 No 51).

Section 3(1)(c): substituted, on 28 August 1990, by section 35 of the New Zealand Railways Corporation Restructuring Act 1990 (1990 No 105).

Section 3(1)(ca): inserted, on 28 August 1990, by section 35 of the New Zealand Railways Corporation Restructuring Act 1990 (1990 No 105).

Section 3(1)(d): substituted, on 1 April 1987, by section 65(1) of the Conservation Act 1987 (1987 No 65).

Section 3(1)(e): substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 3(1)(e): amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Part 2
Agreements

4 Act not to interfere with agreements

Except as provided in section 6, 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 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.

Compare: 1908 No 61 s 6

5 Fencing covenants and agreements registrable

(1) Fencing covenants and fencing agreements relating to land subject to the Land Transfer Act 2017 may be registered under that Act against the title to that land.

(2) Subject to section 6, 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.

Section 5(1): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

6 Registration of fencing covenants to expire after 12 years

(1) Where a fencing covenant is registered under the Land Transfer Act 2017 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) 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.

Section 6(1): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

7 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 1978 in favour of the transferor" or words to that effect; or

(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.

8 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 24.

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

(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.

Part 3
Liability for work on a fence

9 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 not divided by an adequate fence are liable to contribute in equal proportions to work on a fence.

Compare: 1908 No 61 s 11

9A Contributions where Building Act 2004 requires pool to have means of restricting access

Where any person is required to provide a fence in order to comply with the subpart 7A of Part 2 of the Building Act 2004—

(a) all work on that fence that is required because of the application of that Act and would not otherwise be required shall be the responsibility of the owner of the swimming pool; and

(b) no person, other than the owner of the swimming pool, shall be required to make any contribution under this Act to the work on a fence greater than the contribution that the person would be required to make to the work on a fence (whether of the same type or not) if the swimming pool did not exist.

Section 9A: inserted, on 20 July 1987, by section 14 of the Fencing of Swimming Pools Act 1987 (1987 No 178).

Section 9A heading: amended, on 1 January 2017, by section 20 of the Building (Pools) Amendment Act 2016 (2016 No 71).

Section 9A: amended, on 1 January 2017, by section 20 of the Building (Pools) Amendment Act 2016 (2016 No 71).

10 Notice to do work to be given

(1) Any occupier who desires to compel any other occupier under this Act to contribute to the cost of work on a fence shall serve on him a notice in form 1 of Schedule 1 or to the like effect.

(2) The notice shall—

(a) specify the boundary or line of fence, or the parts of 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 Schedule 2 or otherwise) the work proposed to be carried out with sufficient particularity to enable the 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

(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 16, in the 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:

(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 occupier who gave the notice or the expiration of 21 days from the date of the service of the notice, whichever first happens:

(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.

Compare: 1908 No 61 s 12

11 Objections to proposed fence

(1) If the 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 occupier who gave the notice a cross-notice signifying his objection, and he may make counter-proposals in that cross-notice.

(2) A cross-notice shall be in form 2 of Schedule 1 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 10.

(3) If the 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.

Compare: 1908 No 61 s 13

12 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 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 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 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) a person who is the guardian of, or who has the role of providing day-to-day care for, or who has the custody of, the minor; or

(b) the minor himself or herself if he or she—

(i) is of or over the age of 18 years; or

(ii) 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.

Compare: 1908 No 61 s 40; 1952 No 51 s 152

Section 12(4)(a): substituted, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 12(4)(b): substituted, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

13 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.

Compare: 1908 No 61 s 14

14 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

(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.

(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.

(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.

(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) 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 orders.

(5) At any time before or after the expiration of any period of 90 days to which subsection (2) or subsection (4) applies, the period may be extended either 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.

Compare: 1908 No 61 s 17

15 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, 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.

16 Contribution where immediate work required

Subject to the provisions of section 17, 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.

Compare: 1908 No 61 s 33

17 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.

18 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% 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.

(2) In any case where a notice in respect of a fence has been served under subsection (1) 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.

Compare: 1908 No 61 s 25

19 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 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—

(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 1 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.

Compare: 1908 No 61 s 19

20 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 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.

Compare: 1908 No 61 s 20

21 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.

(2) The court may inspect, or may appoint 1 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.

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

(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.

22 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:

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.

Compare: 1908 No 61 s 24

Part 4
Procedure

23 Proceedings to be in accordance with District Court Act 2016

(1) Subject to section 24A, the provisions of the District Court Act 2016 shall apply to all proceedings under this Act.

(2) Nothing in this Part shall restrict section 26 of Te Ture Whenua Maori Act 1993.

Compare: 1908 No 61 s 37

Section 23 heading: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 23(1): substituted, on 1 March 1989, by section 72 of the Disputes Tribunal Act 1988 (1988 No 110).

Section 23(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 23(2): amended, on 1 July 1993, pursuant to section 362(2) of Te Ture Whenua Maori Act 1993 (1993 No 4).

24 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:

(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:

(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:

(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:

(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:

(i) whether there has been a failure to exercise due diligence under subsection (3) of section 14:

(j) whether immediate work is or was required under section 16:

(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 18, 19, and 20:

(n) the amount of the appropriate share under section 19:

(o) any other question or dispute arising out of this Act:

(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) it may—

(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:

(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.

Compare: 1908 No 61 s 36

24A Jurisdiction of Disputes Tribunal

(1) Subject to subsection (2), the Disputes Tribunal established under the Disputes Tribunal Act 1988 shall have jurisdiction to—

(a) hear and determine all questions and disputes arising under this Act in relation to any of the matters specified in paragraphs (a) to (o) of subsection (1) of section 24; and

(b) exercise the powers conferred by subsection (2) or subsection (3) of that section.

(2) In the exercise of its jurisdiction under subsection (1), the Disputes Tribunal shall not—

(a) make an order under section 24(2)(a)—

(i) requiring a person to pay an amount exceeding $60,000:

(ii) requiring a person to incur any expense that exceeds $60,000:

(iii) declaring a person not liable to another for an amount exceeding $60,000:

(iv) requiring a person to remove a fence where the value of the fence exceeds $60,000:

(b) enter judgment under section 24(2)(b) for an amount exceeding $60,000—

and an order or judgment of the Tribunal that exceeds any such restriction shall be entirely of no effect.

(3) *[Repealed]*

Section 24A: inserted, on 1 March 1989, by section 73 of the Disputes Tribunals Act 1988 (1988 No 110).

Section 24A heading: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 24A(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 24A(2): amended, on 29 October 2019, by section 340(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 24A(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 24A(2)(a)(i): amended, on 24 January 2026, by section 10 of the Disputes Tribunal Amendment Act 2025 (2025 No 60).

Section 24A(2)(a)(ii): amended, on 24 January 2026, by section 10 of the Disputes Tribunal Amendment Act 2025 (2025 No 60).

Section 24A(2)(a)(iii): amended, on 24 January 2026, by section 10 of the Disputes Tribunal Amendment Act 2025 (2025 No 60).

Section 24A(2)(a)(iv): amended, on 24 January 2026, by section 10 of the Disputes Tribunal Amendment Act 2025 (2025 No 60).

Section 24A(2)(b): amended, on 24 January 2026, by section 10 of the Disputes Tribunal Amendment Act 2025 (2025 No 60).

Section 24A(3): repealed, on 29 October 2019, by section 340(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

25 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—

(a) raise any defence in the proceedings against any party thereto:

(b) avail himself of any defence in the proceedings that any party thereto might set up.

Compare: 1908 No 61 s 45

Part 5
Miscellaneous provisions

26 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, 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.

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

(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:

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

(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), 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.

Compare: 1908 No 61 s 45

27 Rules

(1) 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 District Court Rules 2014, or of the Disputes Tribunal Act 1988, as the case may require, shall so far as practicable be adopted.

(2) Rules under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 27(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 27(1): amended, on 1 March 1989, by section 74 of the Disputes Tribunals Act 1988 (1988 No 110).

Section 27(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

28 Repeals and savings

(1) The enactments specified in Schedule 3 are hereby repealed.

(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.

Schedule 1
Forms

Form 1
Fencing notice

s 10

(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 [address], 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 [*number, 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 Schedule 2 of the Fencing Act 1978, or specify any other type desired.*]

3 Method of construction. *(Eg, by a contractor, or by one 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 1978.

Date:

Signature:

Form 2
Cross-notice

s 11

(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 [*date*].

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 1978, 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 the District Court.

Date:

Signature:

*Delete if no counter-proposals are proposed.

Schedule 1 form 2: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Schedule 2
Specimen types of fence

s 10(2)(b)

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 infil 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 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.

Schedule 3
Enactments repealed

s 28(1)

Age of Majority Act 1970 (1970 No 137)
Amendment(s) incorporated in the Act(s).

Fencing Act 1908 (1908 No 61) (1957 Reprint, Vol 4, p 869)

Fencing Amendment Act 1922 (1922 No 33) (1957 Reprint, Vol 4, p 893)

Fencing Amendment Act 1953 (1953 No 40) (1957 Reprint, Vol 4, p 893)

Fencing Amendment Act 1955 (1955 No 90) (1957 Reprint, Vol 4, p 894)

Property Law Amendment Act 1975 (1975 No 36)
Amendment(s) incorporated in the Act(s).

Notes

1 General

This is a consolidation of the Fencing Act 1978 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Disputes Tribunal Amendment Act 2025 (2025 No 60): section 10

Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68): section 6

Secondary Legislation Act 2021 (2021 No 7): section 3

Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51): section 340(2)

Land Transfer Act 2017 (2017 No 30): section 250

District Court Act 2016 (2016 No 49): section 261

Building (Pools) Amendment Act 2016 (2016 No 71): section 20

Te Urewera Act 2014 (2014 No 51): section 138

Land Transport Management Amendment Act 2008 (2008 No 47): section 50(1)

Care of Children Act 2004 (2004 No 90): section 151

Local Government Act 2002 (2002 No 84): section 262

Te Ture Whenua Maori Act 1993 (1993 No 4): section 362(2)

New Zealand Railways Corporation Restructuring Act 1990 (1990 No 105): section 35

Government Roading Powers Act 1989 (1989 No 75): section 116(1)

Disputes Tribunal Act 1988 (1988 No 110): sections 71–74

Fencing of Swimming Pools Act 1987 (1987 No 178): section 14

Conservation Act 1987 (1987 No 65): section 65(1)

National Parks Act 1980 (1980 No 66): section 80(2)

Fencing Amendment Act 1979 (1979 No 88)

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