

DIVIDING FENCES.

No. 5 of 1969.

AN ACT to amend the Dividing Fences Act, 1961.

[Assented to 21st April, 1969.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Dividing Fences Act Amendment Act, 1969.* Short title and citation.
- (2) In this Act the Dividing Fences Act, 1961 is referred to as the principal Act.
- (3) The principal Act as amended by this Act may be cited as the Dividing Fences Act, 1961-1969.

Amendment
to s. 5. (In-
terpretation.)

2. Section five of the principal Act is amended by adding after the interpretation "owner" an interpretation as follows—

"repair" includes re-erect and re-align and inflexions of the word "repair" include corresponding meanings; .

Amendment
to s. 13. (Li-
ability to
contribute
to cost of
dividing
fence.)

3. Section thirteen of the principal Act is amended—

(a) as to subsection (2)—

(i) by substituting for the words "the owner of the adjoining land had not paid to the owner who constructed the fence", in lines six and seven, the words "has not received from the owner of the adjoining land or any previous owner of it"; and

(ii) by substituting for the word "he", in line nine, the words "the adjoining owner";

and

(b) as to subsection (7), by substituting for the word "and", at the end of paragraph (a), the word "or".

Amendment
to s. 14. (Li-
ability of
adjoining
owners to
repair a
dividing
fence.)

4. Section fourteen of the principal Act is amended by substituting for the word "out", in line one, the words "in need".

Amendment
to s.15 (Pro-
cedure to
compel
contribution
to repair
dividing
fence.)

5. Section fifteen of the principal Act is amended—

(a) as to subsection (2), by substituting for the passage "party.", in line two of paragraph (c), the following passage—

" party,

and shall contain a proposal for repairing the fence upon the previous or other line, specifying the kind and extent of repairs and the line upon which they are to be effected. " ;

(b) as to subsection (3)—

- (i) by deleting the word "or", at the end of paragraph (a);
 - (ii) by deleting the word "that", in line one of paragraph (b);
 - (iii) by substituting for the passage "fence.", in line three of paragraph (b), the passage "fence; or"; and
 - (iv) by adding, after paragraph (b), a paragraph as follows—
 - (c) he objects to the kind and extent of repairs or the line upon which the repairs are to be effected. ;
- (c) as to subsection (4), by adding after the word "it", in line six, the words "or objects to the kind and extent of repairs or the line upon which the repairs are to be effected" ;

(d) as to subsection (5)—

- (i) by deleting the word "and", at the end of paragraph (a);
- (ii) by adding after the passage "if so," in line one of paragraph (b), the words "the kind and extent of repairs and";
- (iii) by substituting for the passage "out.", in line three of paragraph (b), the following passage—

" out,
and if the court thinks it is
necessary, the court may deter-
mine—

 - (c) the line upon which the repairs are to be effected;
 - (d) the compensation to be paid by one owner to the other owner in consideration of any extra expense involved

in the provision of additional fencing because of re-alignment; and

- (e) the compensation in the form of an annual payment to be paid by one owner to the other owner in consideration of loss of occupation of any of his land. ";

and

- (e) by adding, after subsection (5), subsections as follow—

(5a) Where an order made under subsection (5) of this section determines that the repairs to a fence are to be effected otherwise than on the common boundary of adjoining lands, the occupation of land on either side of that repaired fence in pursuance of or as a result of that order is not and shall not be deemed adverse possession as against the owner of the land or affect the title to or possession of the land except for the purposes of this Act.

(5b) When making an order under this section, the court of petty sessions shall be guided as to the kind and extent of repairs the court orders by the kind of fence in use in the locality where it is proposed to repair the fence, the purpose for which the lands that are or will be separated by the fence are used, and the type of sufficient fence (if any) prescribed under a by-law made by a municipality for that locality. .

Amendment
to s.18.
(Method of
recovering
money pay-
able under
this Act.)

- 6. Subsection (2) of section eighteen of the principal Act is amended by adding after the word "eleven", in line five the words "or section fifteen" .