



Thursday, March 24, 2016

Know your rights and obligations when it comes to fencing

By KATE BICKFORD*

WHERE work is needed to erect, rebuild or repair boundary fences between neighbouring properties, communication and consensus between landowners is ideal.

Any agreement on fencing should ideally be documented and signed for the certainty and protection of each party. However, consensus is not always easily achieved, particularly when it comes to cost and who will pay.

In the absence of an agreement, the *Fences Act 1975 (SA)* provides a pathway to resolution through a 'prescriptive notice' process. The Act also sets out the process for objection and resolution where neighbours do not share a common view.

To achieve a contribution to cost to rebuild or repair an existing boundary fence, a 'notice of intention to perform replacement, repair or maintenance work' can be served by a farmer to the owner of the adjoining property.

After serving the notice, the proponent must allow 30 days for the neighbour to object or counter the proposal. If no objection or counter proposal is served, then the Act deems this to be 'agreement' and the proposed fencing work may proceed.

If there is a dispute about the proposal or cost, the aggrieved landowner can apply to the Magistrates Court to seek a determination.

The court can determine whether the proposed fence should be erected, the type of fence and location, who will carry out the work and when and how, details of cost-sharing as well as make orders for entry or access to adjoining properties.

In the case of urgent repair or restoration, either of the adjoining owners may take immediate action to repair or restore the fence without providing any notice to the other adjoining owner. Unless the person who has repaired or restored the fence was responsible for the damage, that person may then recover from the adjoining owner the lesser amount of either half of the cost of their work, or the amount that the adjoining owner would be liable to contribute if the dividing fence was replaced.

If a producer receives a notice or cross notice from a neighbour and believes the proposal is reasonable but cannot afford to pay, then it is better to negotiate payment instead of objecting to

the notice. The Magistrates Court will not reject a reasonable fencing proposal simply because a landholder cannot afford to pay.

- Kate Bickford is a director of DW Fox Tucker. The firm provides discounted legal services to Livestock SA members. For more information, phone 08 8124 1813.
- **Details:** For more information, the Legal Services Commission's Handbook dedicates a chapter to fencing at www.lawhandbook.sa.gov.au/