

Alteration of Ground Levels

Terms of Reference

In 1973 the Commission was invited to examine and report on the rights and obligations of adjoining owners when one alters the ground level of their land, and to recommend such changes to the law as it considered desirable.

Background of Reference

- (b) make it clear that a retaining wall is to be regarded as a building for the purposes of the section but a fence is not;
 - (c) reduce to twenty-one days the period of notice which the excavator is required to give to the adjoining owner;
 - (d) provide that the excavator must inform the adjoining owner of the method by which the excavator proposes to underpin or strengthen the foundations of the adjoining building; and
 - (e) provide for arbitration of disputes.
- Section 391 and its associated sections should be transferred to the *Property Law Act*.
 - The clarification and amendment of the *Uniform Building By-laws 1974 (WA)*. Amendment of the *Local Government Act 1960 (WA)* to extend the powers of local authorities to regulate the alteration of ground levels which could affect the drainage or water table of adjoining land and where the safety, stability and use of adjoining land or buildings could be substantially and adversely affected. As with building by-laws, any by-laws made under the powers recommended above should be uniform general by-laws.
 - If an owner raises the level of their land so that the safety fencing around a swimming pool on adjoining land no longer complies with safety requirements, the obligation to rectify the fence should remain on the owner of the swimming pool, but that owner should have the right of indemnity from the owner who altered the ground level. The *Local Government Act 1960 (WA)* should be amended to empower local authorities to impose safety requirements, whether of fencing or otherwise, in relation to alteration of ground levels generally. Amendment of the *Dividing Fences Act 1961 (WA)* to provide that where it is proposed to erect a structure comprising both a retaining wall and a dividing fence so that the two constitute an integral unit, the wall should be deemed to be part of the dividing fence.
 - Amendment of the *Dividing Fences Act 1961 (WA)*² to:
 - (a) extend s 15(7)(c) to cover all cases where one owner would be liable at common law for any damage to a dividing fence; and
 - (b) empower the court to decide on the extent of contribution payable by adjoining owners where there is some imbalance between the parties as to their needs or as to the degree of benefit each will receive from the type of fence to be constructed.

A comprehensive outline of the Commission's recommendations may be found in chapter eight of the final report.

Legislative or Other Action Undertaken

The Minister representing the Attorney-General confirmed receipt of the final report during Parliamentary proceedings on 12 June 1986.³ There has, however, been no legislative action to implement the Commission's recommendations.

In September 1992 a Working Party, comprised of representatives from private industry and state and local government, reported to the Minister for Local Government in respect of a proposed Integrated Building Act.⁴ The Working Party did not adopt the recommendations of the Commission that the

² This confirmed the Commission's recommendations in its final report on dividing fences, see Law Reform Commission of Western Australia, *Dividing Fences*, Project No 33 (1975).

³ Western Australia, *Parliamentary Debates*, Legislative Assembly, 12 June 1986, 238 (Mr Peter Dowding, Minister representing the Attorney-General)

⁴ Integrated Building Act Committee, *Integrated Building Act: Report of the Working Party*, 1992.

common law right of support for land should be extended to buildings. In August 2000 the Department of Local Government released an issues paper on the Review of the