

# Avoiding conflict with your neighbours about fences and trees

## FENCES

### The law

The *Dividing Fences Act 1953* relates to constructing and repairing fences that divide adjoining land and aims to help you obtain a contribution from your neighbour. This brochure does not replace the Act, but is a guide to understanding it.

Generally, owners of adjoining land not separated by an adequate fence are liable to contribute equally to the cost of a dividing fence.

### Suggested plan of action

Discuss the type of fence, the cost and how it will be built with your neighbour. (Make sure you are talking to the owner of the property.)

Write out the details once you and your neighbour have reached an agreement. Written agreements are easier to enforce.

To compel your neighbour to contribute, you must, before construction of the fence is started, give notice in writing.

The notice should:

- specify the common boundary to be fenced;
- specify the kind of fence proposed;
- contain a proposal for the fence (include an estimate of cost, contribution required and method of construction). As a matter of courtesy, two quotes should be supplied.

If your neighbour accepts your proposal, then he/she will be bound to pay half the cost of it.

### What if you can't agree on where the fence should go?

Fences should be built on the common boundary.

If you and your neighbour disagree on where the dividing fence should go, there is a special procedure to follow:

- Give written notice to your neighbour of your intention to employ a registered cadastral (or land) surveyor.

(Regardless of who engages this service, surveyors are professionally obliged to look after the interests of all parties involved in the process. In most cases, the cost of the survey should be paid in equal shares by you and your neighbour.)

- When your neighbour has written advice from you, he or she can either:
  - 1) agree to employ the cadastral surveyor, or
  - 2) place stakes (other than marks used by a cadastral surveyor) which demonstrate in his/her opinion the common boundary line for the dividing fence.
- Your neighbour must let you know which option he/she will take within seven days of receiving your advice.
- If your neighbour selects option 2 and you do not agree on the position of the stakes, you may employ a cadastral surveyor to define the common boundary line.
- If the cadastral surveyor finds that your neighbour's stakes were correct, then you would be liable to pay all expenses incurred, otherwise, the expenses would be divided equally.

### The type of fence

Check with your local council if:

- the fence is to be higher than others in the neighbourhood.
- the fence is to form part of a retaining wall.
- there could be any restriction to water run-off.
- the fence is to have some other unusual feature.

### What if your neighbour refuses to contribute, challenges the cost, or disagrees with the type of fence you wish to construct?

Do not go ahead and build the fence.

If you and your neighbour cannot reach an agreement after one month, either party may apply to either a Magistrates Court or the Small Claims Tribunal for an 'order to fence'.

In making any order, the Magistrates Court or Small Claims Tribunal will take into account the type of fence common to the area and the purpose for which the adjoining lands are used.

There is no definition of a 'standard fence' in the Act. If most houses in your street are Queenslanders with picket fences, then it is possible that the Court or Tribunal might favour a similar construction.

### **How do you apply to the Magistrates Court?**

Either you, your solicitor or your authorised agent can make a complaint in writing before a Justice of the Peace who will issue a summons requiring the neighbouring landowners to appear before the Court.

If you make your complaint before a Justice of the Peace who is not employed at a Magistrates Court, you should check with your nearest Clerk of the Court to find out the time and date the dispute can be heard by the Court.

The Clerk of the Court may answer any questions you have about procedures, but will not give legal advice. In the Magistrates Court, you and your neighbour are both entitled to have legal representation.

The Court will either make an order on the fence or dismiss the application. In each case, the Court may order the payment of costs by either party.

### **How do you apply to the Small Claims Tribunal?**

The Small Claims Tribunal will hear matters involving claims not exceeding \$7500. In the Small Claims Tribunal, you are not entitled to legal representation.

You can obtain a claim form from the Small Claims Tribunal or your local Magistrates Court.

A Small Claims Tribunal may make whatever order it sees fit, or dismiss the claim, but costs of the Tribunal proceedings will not be allowed for or against any party. This means that regardless of the outcome, each party pays half of the hearing costs.

### **What do you do when your neighbour refuses to comply with an agreement or order?**

If an adjoining owner fails to fulfil his/her part of any agreement or fails to comply with any order of a Magistrates Court or Small Claims Tribunal within the stated time (or, if not stated, within 3 months from

the date of the agreement or order), you may build the whole fence under the terms of the order and recover a share from the owner.

Depending on the amount involved, you may take the recovery action in a Magistrates Court, a District Court or the Supreme Court.

### **What if you've already built the fence?**

If you failed to give your neighbour a Notice to Fence, then you are not covered by the Dividing Fences Act.

Once the construction of the fence has started, the Magistrates Court and the Small Claims Tribunal cannot deal with your claim. If you and your neighbour agreed on a price prior to construction, and your neighbour's share was \$7500 or under, the claim may be referred to the Magistrates Court as a minor debt claim.

### **What if you want to repair an existing fence?**

When an existing dividing fence needs repairing, the owners on either side are liable to contribute equally unless one of them caused the damage.

If you want your neighbour to contribute to the cost, you should issue a Notice to Repair requiring assistance.

Generally, if your neighbour fails to assist within 1 month of the notice being served, you can repair the fence and recover half the cost.

If the neighbour advises you in writing within 14 days of service of notice that he/she disputes the need to repair and won't contribute towards the cost, you may need to apply to a Magistrates Court or a Small Claims Tribunal for a ruling.

Maintaining the fence, for example painting it, is not covered by the Act, but it would be usual for each neighbour to paint their own side.

### **What if you want to replace an existing fence?**

If the fence is beyond repair or very costly to repair, it may be reasonable to replace it with a new one. If so, your neighbour will be responsible for contributing to the cost of demolition as well as half the cost of a new fence. You should give your neighbour notice of your plan and follow the usual steps outlined in previous sections.

## **What if your dividing fence also has to act as a pool fence?**

That depends on the circumstances such as...

### **When there is an existing fence**

If you are putting in a swimming pool and have to change the fence between you and your neighbour in order to meet safety standards, then, as the pool owner, you will be required to pay all the costs involved.

### **When there is no fence**

You and your neighbour need to work out the cost of building a fence typical to your area.

Then:

- if this fence meets pool safety standards, you will split this cost equally.
- if this fence does not meet the safety standards, your neighbour will still pay half the cost to build a typical fence, and you will pay the other half plus the extra costs to meet the safety standards.

### **When you want to make repairs to the fence at a later date:**

- The process is much the same as if you were building a new fence. If the fence is typical to your area, and still meets pool fence standards, the costs are shared equally.
- If the fence is not typical of the area, you need to get an estimate for a typical fence, and halve it. This will be your neighbour's share. Then you will pay the other half, plus the extra costs involved because you need it to meet safety standards.

### **When you and your neighbour both want the dividing fence to act as a pool fence**

- The cost for alteration, construction and repair are shared equally.

For enquiries concerning the construction of a swimming pool contact your local council.

For enquiries concerning your obligations under the Building Act, contact Building Codes Queensland at the Department of Local Government and Planning. Phone (07) 3237 1718 or (07) 3237 1714.

Pool fencing regulations are set out in Part 3 of the *Building Act 1975* and the *Standard Building Regulation 1993*. Copies can be accessed on: [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au).

## **What if your land borders Crown land?**

State and Commonwealth governments are not bound by the Dividing Fences Act. Therefore, if your land borders their land, they are not liable to contribute towards the cost of a dividing fence. The same applies if the land is owned by the Local Government and designated a reserve or public park.

The exception is if Crown land is leased to other people. In that case, they would be liable to contribute to the cost of a dividing fence.

## **Can you build a dividing fence on your own land?**

Yes you can, but the fence would be treated the same as any other dividing fence that is actually on the common boundary. So, for example, you would not be able to tell your neighbours' children to keep away from it.

## **If you pay for all of the fence, do you need your neighbour's permission?**

It would be good manners to advise your neighbour of your intention to build a fence even though you are not bound to do so by the Act.

## **Do you have to let your neighbour onto your land?**

Anyone engaged in building or repairing the dividing fence should be allowed on land adjoining the fence at all reasonable times during construction.

## **TREES**

### **Can you lop off the overhanging branches of a neighbour's tree?**

Yes, you can if the branches are causing a nuisance. You should not trespass on the neighbour's land to do this. However, any branches you lop off belong to them and they cannot refuse to take the branches back if you are unable or unwilling to dispose of them yourself.

Generally, your neighbour is not obliged to share the cost of hiring someone to remove the branches if they are too big or too high for you to cut down.

### **If it's a fruit tree, can you keep the fruit?**

Technically, all the fruit on the tree belongs to the owners of the tree. They may be happy to let you keep the fruit on your side of the fence. The best thing to do is to talk to them.

The roots of a tree can be a nuisance, particularly when they damage an adjoining property. The injured party has every right to sue.

If your tree falls and strikes somebody, either on the highway or on neighbouring property, you may be liable for negligence.

Trees should not be a traffic hazard. Where they are likely to be a problem to road users, the local council can order them to be removed, lowered or trimmed. The same applies if they are likely to damage a sewer or drain.

Consult your solicitor if you require specific advice on problems created by trees.

### Resolving conflict

A free dispute resolution service is offered by the Dispute Resolution Centre.

Trained, neutral mediators can assist you and your neighbour to reach a mutually acceptable solution at a place and a time to suit both parties.

The dispute could be about fencing, trees, dogs, drainage, noise, smoke, garbage or car parking.

Dispute Resolution Centre mediators can be reached by telephoning:

**Brisbane** Ph: 3239 6269  
Fax: 3239 6284

Regional area toll free 1800 017 288

**South-east Queensland** Ph: 3239 6007  
Fax: 3239 6284

Regional area toll free 1800 017 288  
email: [SEQ.DRC@justice.qld.gov.au](mailto:SEQ.DRC@justice.qld.gov.au)

**Townsville and Mt Isa** Ph: 4799 7870  
Fax: 4799 7871

Regional area toll free 1800 809 605  
email: [drctownsville@justice.qld.gov.au](mailto:drctownsville@justice.qld.gov.au)

**Cairns** Ph: 4039 8742  
Fax: 4039 8743

Regional area toll free 1800 671 680  
email: [drccairns@justice.qld.gov.au](mailto:drccairns@justice.qld.gov.au)

**Rockhampton** Ph: 4938 4249  
Fax: 4938 4294

Regional area toll free 1800 817 927  
email: [drcrockhampton@justice.qld.gov.au](mailto:drcrockhampton@justice.qld.gov.au)

**Mackay** Ph: 4967 4404  
Fax: 4967 4402  
Regional area toll free 1800 501 576  
email: [drcmackay@justice.qld.gov.au](mailto:drcmackay@justice.qld.gov.au)

**Wide Bay (Hervey Bay)** Ph: 4125 9225  
Fax: 4125 9227  
Regional area toll free 1800 681 109  
email: [widebaydrc@justice.qld.gov.au](mailto:widebaydrc@justice.qld.gov.au)

This service does not provide legal advice or information relating to the Dividing Fences Act.

### Further information

Any enquiries should be directed to your local council, or to:

Legal Aid Telephone Information Service  
Phone 1300 651 188

A copy of the *Dividing Fences Act 1953* can be obtained from:

GoPrint bookshops at  
371 Vulture Street, Woolloongabba, 4102 or  
135 George Street, Brisbane 4000  
Ph: 3246 3399 Fax: 3246 3534

or [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)