



## Fencing

### Sharing the cost

The *Dividing Fences Act 1991* requires neighbours to share equally in the cost of constructing and repairing a *sufficient dividing fence*. However, there are some important exceptions to this rule:

- if you want a fence that is of a higher standard than a *sufficient dividing fence*, you must pay the additional cost;
- if you or someone who entered the land with your express or implied permission, including a tenant living on the property, damages the existing fence, deliberately or negligently, you must pay the full cost of the repair; or
- if you build a new fence without consulting your neighbour and coming to an agreement, or without seeking an order, you cannot recover any costs from your neighbour (except where urgent work is required – see below).

### Sufficient dividing fences

The standard of a *sufficient dividing fence* depends on the circumstances. If there is a dispute about what constitutes a *sufficient dividing fence*, the court must consider:

- the standard of the existing fence (if any);
- the way in which the land on either side of the fence is used or intended to be used;
- privacy or other concerns of the owners;
- the kinds of dividing fences that are usual in the area;
- local council policy requirements; and
- relevant requirements in environmental planning instruments.

### Local Council regulations

It is a good idea to check with your local Council

before building a new fence. The Council may have set rules about fences or consent may be required before a fence can be built. For example, the Council may have limited the height of fences in the area.

### Reaching an agreement

The first step in building or repairing a dividing fence is to discuss the matter informally with your neighbour. It's useful to get a number of quotes so you can both see how much the fence is likely to cost. If you and your neighbour agree, you should both put your agreement in writing and both sign it. Your agreement should include cover all relevant details, including:

- the type of fence;
- the height of the fence;
- the colour of the fence;
- the cost of the fence;
- the position of the fence; and
- who will pay for the removal of the existing fence, if any.

If you are happy to pay all of the costs of the fence, you do not need to come to an agreement with your neighbour about the design. However, your neighbour may still have some influence over the design through the council building approval process and could refuse you access to their property to enable fencing work to be done.

### Giving notice to your neighbour

If you cannot reach an agreement after discussing the matter informally, you should give your neighbour a *Notice to Fence*. This notice formally describes the proposed fencing work and requests that they agree to contribute to the cost of the

fencing work. This notice must specify:

- the proposed position of the fence;
- the proposed type of fence;
- the proposed cost; and
- the proposed contribution of each owner.

A version of the notice is available from the Local Court website ([www.lawlink.nsw.gov.au/lc](http://www.lawlink.nsw.gov.au/lc)).

This fencing notice should be given to your neighbour or posted their usual or last known residential or business address. Keep a copy for yourself and make a record of the date you gave it to your neighbour.

### Mediation

Neighbours are encouraged to try to come to an agreement about fencing costs after a fencing notice has been served. Community Justice Centres can help you and your neighbour come to an agreement. Visit [www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au) for further information.

### Getting an order

If you are still unable to reach an agreement within a month of serving a *Notice to Fence*, it may be necessary to get a fencing order.

You apply to your Local Land Board or your Local Court for an order to fence.

Local Land Boards are community-based dispute resolution tribunals that determine a variety of matters including fence disputes. Hearings are less formal than those conducted in Local Courts.

To apply to the Local Land Board, you can use the form on the Land and Property Management Authority website ([www.lpma.nsw.gov.au](http://www.lpma.nsw.gov.au)). To apply to the Local Court, you can use the form on the Local Court website ([www.lawlink.nsw.gov.au/lc](http://www.lawlink.nsw.gov.au/lc)).

The Local Court or the Local Land Board can make orders about:

- where the fence is to be erected;
- the nature and standard of the work;
- how costs are to be shared;
- which part of the fence is to be constructed or repaired by each owner;
- the time in which the work is to be carried out; and
- whether a dividing fence is required at all.

### Once an order has been made

You and your neighbour must comply with a fencing order within the time specified in the order, or if a time is not specified, within three months of the order.

If you are carrying out fencing work under an order, you can enter your neighbour's land to carry out the work.

If your neighbour does not comply with the order, you can carry out the work and then recover the cost as a debt in the Local Court.

### Urgent work

If a damaged fence needs urgent repairs, you can fix the fence without contacting your neighbour. Your neighbour must still contribute equally to the cost of the urgent repair.

If your neighbour refuses to pay, you can apply to the Local Court or the Local Land Board to recover the money.

The Court or the Board will review the need for the work and the responsibility of the adjoining owner to contribute to the cost. It is important to keep records of the damage and the work that was completed so you can show the Court or the Board why the work needed to be done.

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