

Neighbourhood disputes

Resolve neighbourhood dividing fence disputes

Fences can be more than physical boundaries – in the past they have been the cause for divisions of friendship between neighbours. New laws spelling out who is responsible and what is acceptable in neighbourhood dividing fence issues will go a long way to opening the gate for amicable solutions.

Problems that have divided and conquered good neighbours in the past include:

- Who is responsible for the cost of the dividing fence?
- Which neighbour should pay for wear and tear or damage to a dividing fence?
- How high can a dividing fence go and is a hedge a dividing fence?

Following is a rundown on some of the major issues surrounding neighbourhood dividing fence ownership and responsibilities which will help make a dividing fence something you simply want to hang over each day for a neighbourly chat.

Laws for fences

The *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (the Act) commenced 1 November 2011.

Changes to previous laws

The new laws now include:

- a wider definition of the term fence (including hedges)
- a clearer definition of the term ‘sufficient dividing fence’
- tools to give neighbours notice of intention to seek contribution for fencing work or urgent fencing work
- clarification that ownership of a dividing fence on a common boundary is shared equally
- distinction between a retaining wall and a fence
- clearer rules for pastoral and agricultural fences.

The Act does not apply to swimming pool fences or part of a fence that is a barrier to a pool. For more information on pool fences, please contact the Department of Local Government and Planning – <https://www.statedevelopment.qld.gov.au/local-government>

Basic rules

There should be a sufficient dividing fence between two parcels of land if an adjoining owner requests one – even if one or both parcels of land are vacant.

Generally neighbours must contribute equally to the cost of building and maintaining a sufficient dividing fence.

Who owns a fence?

A dividing fence is owned equally by the adjoining neighbours if it is built on the common boundary line. However, a fence or part of a fence built on one neighbour’s land is owned by that neighbour, even if the other neighbour contributed to the construction of the fence.

Who pays for what?

Adjoining neighbours are each liable for half the cost of fencing work to build or maintain a sufficient dividing fence. However, where one neighbour wants to have more work done than is necessary for a sufficient dividing fence then they may be liable to pay the extra expenses. For example, if a neighbour wants a higher fence for privacy or security they should meet this extra cost.

The Act and retaining walls

The Act states that a fence is not a retaining wall. This is because retaining walls serve a different purpose than fences. They are engineered to support built-up or excavated earth. Retaining walls are not normally a matter of joint responsibility for neighbours because a retaining wall is usually of more benefit to one neighbour.

However, QCAT may make an order about a retaining wall in limited circumstances e.g. the dividing fence cannot be repaired unless the retaining wall is repaired.

Resolving issues

Neighbours who disagree over fences are encouraged to discuss the matter themselves. Should they be unable to agree, a professional mediator may be able to help. Mediators are an impartial third party and can facilitate a structured process. Mediation is quicker, easier and often cheaper than taking legal action.

Contact your nearest Dispute Resolution Centre to find out more or visit qld.gov.au/law/legal-mediation-and-justice-of-the-peace/dispute-resolution

South Queensland	07 3738 7000
Wide Bay	07 4120 6708
Central Queensland	07 4887 1760
Mackay Whitsunday	07 4889 8402
North Queensland	07 4417 8141
Far North Queensland	07 4037 2600

Neighbours who are still unable to reach agreement through mediation can apply to have their disagreement heard by the Queensland Civil and Administrative Tribunal (QCAT). Applying to QCAT should be the final resort if neighbours are unable to reach a solution through mediation. QCAT actively resolves tree and dividing fence disputes in a way that is independent, efficient, expert, accessible and flexible. Visit www.qcat.qld.gov.au for more information about how to make an application involving a tree or dividing fence matter.

Dividing fences disputes: seven most-asked questions

1. Who has to pay for the cost of constructing and/or maintaining a dividing fence?

Generally, according to the Act, both you and your neighbour must contribute equally to the cost of building and maintaining a sufficient dividing fence.

2. What if my neighbour wants to build a dividing fence to a higher standard than I have proposed?

Should your neighbour want to build or change to a fence of a higher standard than you have suggested then, under the Act, your neighbour would generally have to meet the additional cost.

3. My neighbour has damaged/ destroyed the dividing fence. What should I do?

Should this damage or destruction to the dividing fence be caused by a negligent or deliberate act or omission, your neighbour is responsible for the cost of restoring the fence to a reasonable standard, having regard to its state before the damage or destruction. Should your neighbour not comply, you can give the owner a *Notice to contribute to fencing work*.

In cases where the dividing fence is damaged or destroyed unintentionally, for example by fire or flood, and requires urgent repair work, you may restore the dividing fence to a reasonable standard without giving your neighbour a *Notice to contribute to fencing work*. Should you wish to seek financial contribution from your neighbour for this urgent repair work, you can then give your neighbour a *notice to contribute for urgent fencing work*. You will need to show, however, that the repair work was urgent and that it was impracticable to give your neighbour the *Notice to contribute to fencing work*.

4. My neighbour has attached an object to the dividing fence which alters its appearance and can damage it. What can I do?

If your neighbour attaches something (without your consent) to a dividing fence that unreasonably and naturally alters or damages the fence, you can apply to QCAT for an order requiring your neighbour to remove the attached item and to return the fence to a reasonable standard having regard to its state before the thing was attached.

5. I need to do work on the fence but I can't locate the adjoining owner. What do I do?

You can apply to QCAT* for an order to carry out the fencing work. Before QCAT makes the order, it will have to be satisfied that you have made all reasonable inquiries in attempting to locate the adjoining owner.

6. The fence is inside the common boundary on our side. Is it still a dividing fence?

A fence built entirely inside the common boundary is not generally a dividing fence. It is owned by you and the cost of maintaining the fence is your responsibility, even if your neighbour contributed to the cost of building the fence. It may not be considered a dividing fence by QCAT.

7. What's in the Act with regard to retaining walls?

The Act deals with dividing fences and trees. It does not deal with retaining walls except in very limited circumstances. The Act does state, however, that a fence is not a retaining wall.

*For more information making an application to QCAT in regards to a dividing fence dispute, refer to the QCAT website for guidance at: <http://www.qcat.qld.gov.au/matter-types/dividing-fence-disputes>