

The Dividing Fences Act

The Dividing Fences Act 1991 commenced on 1 February 1992. The Act is about how the cost of a dividing fence is shared between adjoining **land owners**, where an owner wants to erect a dividing fence or wants work done on an existing dividing fence. It sets out only the minimum requirements, and owners may always agree to arrangements above those requirements.

A dividing fence

A **dividing fence** is a fence that separates the lands of adjoining owners. The **fence** may be a structure of any material, a ditch, an embankment or a vegetative barrier, eg. hedge. It does not include a retaining wall or a wall of a building. The **cost** of a dividing fence includes the cost of all related **fencing work**, such as preparation of the land, and the design, construction, replacement, repair and maintenance of the fence.

Sharing the cost of a dividing fence

Adjoining landowners are liable to share equally the cost of fencing work that will result in a sufficient dividing fence. A **sufficient dividing fence** is a fence sufficient to separate the properties, for example a paling fence in a residential area, or a wire and steel post fence in a rural area. If a court or land board needs to decide what is a sufficient dividing fence between adjoining owners, it will consider matters such as any existing dividing fence, the uses of the lands, privacy or other concerns of the owners, the usual kind of fence in the locality, or any relevant local council policy. If one owner wants a fence of a higher standard than a sufficient dividing fence, the owner wanting the higher standard is liable to pay the difference in the cost between that fence and a sufficient dividing fence. If an existing dividing fence is damaged or destroyed by one owner or someone on the owner's land, that owner is liable to pay up to the whole cost of restoring the dividing fence.

Serving a fencing notice

An owner wanting an adjoining owner to contribute to the cost of a dividing fence must first serve a **fencing notice** on that adjoining owner (personally or by post). Owners are liable to contribute to the cost once agreement is reached. A Community Justice Centre may be able to help if adjoining owners have difficulty reaching agreement. *If agreement is not reached within one month of the Notice being served, either owner may apply to a Local Court or Local Land Board to have the matter decided.*

When a fencing notice need not be served

If URGENT fencing work is needed on a dividing fence that has been destroyed or damaged, adjoining owners must share equally the cost of that urgent work even though a Fencing Notice has not been served. Reasons for urgent fencing work include safety, security or to prevent stock loss. A Local Court or Local Land Board can review any dispute arising in these circumstances. An owner can apply to a Local Court or Local Land Board for an Order about costs if a Fencing Notice is unable to be served because the whereabouts of the adjoining owner are unknown.

Carrying out fencing work

An owner who is carrying out fencing work under this Act is able to enter the adjoining land for that purpose at any reasonable time. This also applies to the owner's employees or agents.

Recovering money

Any money which an owner is required to pay under the Dividing Fences Act may be recovered as a debt in a court.

Seeking further information

The **Dividing Fences Act 1991** is available from the NSW Government Information Service or at the [Australasian Legal Information Institute \(AustLII\) web site](#). For further information, contact a solicitor or the nearest Local Court, [Local Land Board](#) or Community Justice Centre.

Authorities not covered by the Act

Some authorities do not have any rights or liabilities under the Act. They are:

- the Crown,
- local councils or other trustees in respect of public reserves, and
- local councils in respect of public roads.

Nevertheless, an authority may wish to contribute to the cost of a dividing fence.

The Dividing Fences Act 1951

This earlier Act applies to a dividing fence matter where a notice was served under that Act, an order was made under section 11 or work was completed under section 14(2)(b) of that Act.

**FENCING NOTICE
(Dividing Fences Act 1991)**

***To:** _____
(Name) (Address) *(Name and address of adjoining land owner)

The fencing work described below is required between our adjoining properties. I would be pleased if you would share the cost as shown.

From: _____
(Name) (Address)

(Signed) (Date)

Proposal:

1. Properties affected (street address):

- a. A _____ owned by _____
- b. B _____ owned by _____
- c. C _____ owned by _____

2. Position of fencing work (on boundary line, or as shown on attached plan)

3. Fencing work proposed to be carried out (include length, height and type of materials)

4. Estimated cost: \$ _____

5. Sharing of cost

- a. _____ will pay for the fencing work and will be paid half the estimated cost by
_____ on completion, **OR**
- b. (insert other option) _____

If you agree to this proposal, please complete the form of agreement hereunder and return a copy to me.

Section 12 of the Dividing Fences Act 1991 provides that if adjoining owners do not agree as to the fencing work to be carried out within 1 month after the service of this notice, either owner may apply to a Local Court or a Local Land Board for an order determining the manner in which fencing work (if any) is to be carried out.

AGREEMENT TO FENCING

Property A

Property B

I agree to the above proposal

I agree to the above proposal

(signed)

(dated)

(signed)

(dated)