

Q 1.1. What is the law covering fences?

A 1.1. The *Dividing Fences Act 1961* (“The Act”) covers the rights and obligations of adjoining land owners in relation to “dividing fences”. A dividing fence is a fence that separates the lands of different owners.

The Act obliges adjoining owners whose land is not divided by a “sufficient fence” to construct a sufficient fence to divide their properties. The Act also provides for the repair of dividing fences.

The Act does not interfere with the rights of adjoining owners to enter into a private agreement about a dividing fence.

Your local government may also have local laws that cover fencing matters, such as the types of materials that can be used, the maximum and minimum height of fences, any special provision for corner lots such as truncations, whether fences can be erected forward of the building line and if so on what conditions, etc.

Q 1.2. Does the law covering dividing fences include retaining walls?

A 1.2. No, retaining walls are not covered by the Act. If you have any questions about retaining walls, such as whether a building licence is required, contact the building department of your local government.

Q 1.3. What is a Sufficient fence?

A 1.3. The Act requires that the dividing fence you erect is a “sufficient fence”.

You should first check whether your local government has prescribed in its local laws what a sufficient fence is. If there are local laws, the dividing fence you erect must comply with those laws.

If there aren't any local laws, the Act describes a sufficient fence as one that would ordinarily withstand the trespass of cattle or sheep. Alternatively a Magistrates Court may determine what is sufficient in each particular case.

You may also agree with the adjoining landowner about the type of dividing fence you erect. The fence that you agree upon must comply with your local laws (if there are any).

Q 1.4. How can I get a copy of my local government's fencing local laws?

A 1.4. You would need to contact your local government (usually the building section) to obtain a copy of it, or for any advice on its fencing local laws. It may be that the local laws are available on its web site, so check this out first.

Q 1.5. My local government does not have local laws covering fences so what now?

A 1.5. If your local government does not have any local laws covering fences, you are still obliged to contribute a half share of the construction of a sufficient fence. The *Dividing Fences Act 1961* requires that your fence must be ordinarily able to resist the trespass of cattle or sheep. This does not mean that you need to have sheep or cattle on your property, but as a minimum requirement it must be of such a type and strength so that it can be ordinarily resist the trespass of cattle or sheep. Checking out the type of fencing that has been erected in your area will give you a good guide as to what is accepted as the fencing standards.

Q 1.6. Do dividing fences agreements have to be in writing?

A 1.6. The best way of maintaining a good neighbourly relationship and complying with the requirements of the *Dividing Fences Act 1961* is to enter into an agreement with the adjoining owner. The Act provides that agreement between owners for the erection or repair of fences overrides the legislative provisions. Verbal agreements through informal discussion are often reached by adjoining owners discussing the options on fencing matters.

Although informal discussions are okay, it is always beneficial to have any agreements reached, in writing. This clears any ambiguity and clarifies any point of difference. It can also be used later to show what has been agreed if the matter comes before mediation, arbitration or the courts.

Q 1.7. Who pays for the construction or repair of dividing fencing?

A 1.7. As a general rule, owners of adjoining land are responsible for half the cost of erecting or repairing a sufficient fence that divides their properties.

Please note that this a general rule only and there may be exceptions.

Q 1.8. My land has a road along side of it. Can I get my local government to pay for half the cost of fencing it off?

A 1.8. No. The *Dividing Fences Act 1961* does not apply to the Crown i.e. the State or the Commonwealth Government, or to local governments for land used for public purposes such as roads and parks under the control of local governments.

Q 1.9. How do I serve notice on my adjoining owner?

A 1.9. By delivering it in person and giving it to the adjoining owner or by sending it by registered mail to the adjoining owner's usual or last known address. The notice can be in the form of a letter.

See "Step 1 – Giving Notice" on page 3 of information booklet.

Q 1.10. How do I find the owner of the land next door?

A 1.10. You can check with the tenants or the estate agent if the house is rented or leased out, or do a land title search through the Department of Land Information, or check with the rates section of the local government in whose district your property is located.

Q 1.11. What do I do when I have a dispute with my neighbour on where boundary line is?

A 1.11. If you cannot agree on the boundary line for the purpose of constructing or repairing a fence, you may give the owner of adjoining land notice of your intention to have the boundary line defined by a land surveyor, licensed and registered with the Department of Land Information. Within one month of receiving a notice, an adjoining owner must define the boundary line by pegs or employ a land surveyor to define the common boundary line. Once the owner of adjoining land has done this he or she must give you notice of the action taken.

If the owner who has been given the notice does not do anything then you may have the common boundary surveyed. If after you have the land surveyed the boundary is found to be in the same position as defined by the pegs placed there by the owner receiving the notice, then the owner is entitled to recover the costs, if he paid a surveyor.

If the boundary is found to be in a different position to that claimed by you, then you will be liable to pay half of the surveyor's costs.

Q 1.12. The fence separating my neighbour's place from our place does not give us any privacy. Can we do something about it?

A 1.12. The fencing local laws of your local government may make provision for an over-height fence. This should be followed up at your Council Office for details. Some local governments permit the use of lattice attached to a fence or you may be able to erect a privacy/garden screen as a separate structure from the fence.

Again, your Local Council Office should be contacted for its position on lattice attachments to fences and privacy screens. You will most probably be required to pay for such alterations to the fence.