

# Fencing Laws in Victoria: Frequently Asked Questions



If you are a property owner, new changes to the [Fences Act](#)<sup>1</sup> mean that you and your neighbour have equal responsibility for the dividing fence on your land.

## *What is a dividing fence?*

A dividing fence is a fence built to separate two pieces of adjoining land. It may or may not be located on the common boundary between the pieces of land as this depends on what is agreed between neighbours. The dividing fence might be located off the common boundary if, for example, there is an obstruction or waterway on the common boundary.

It does not include a retaining wall or any wall that is part of a house, garage or other building (although sometimes these types of walls may mean that a dividing fence is not needed, or is not needed for part of the boundary).

## *What should I do if I want to build a dividing fence or think my dividing fence needs repairing?*

Talk to your neighbour informally first about the dividing fence between your properties. If you both agree that work needs to be done, then you might not need to follow the processes in the *Fences Act*. You might be able to agree on the type of fence, the contractor that you will employ, how the costs of the fencing works will be paid and the placement of the dividing fence. If you are able to come to an agreement like this with your neighbour, then the fencing works can go ahead as agreed.

If your neighbour does not agree to your proposal at this stage, then you cannot build a dividing fence or commence repairs on an existing dividing fence until you have obtained agreement (by negotiating with them), or you have followed the processes in the *Fences Act* with regards to submission of a 'Fencing Notice.' Without your neighbour's agreement, then before you arrange for any work to be done, you need to give your neighbour a notice that contains information about the work you are proposing (fencing notice).

## *I did not speak to my neighbour before building a new fence; do they still have to contribute?*

No. While neighbours are considered equally responsible for dividing fences, if one party does not consult with the other before building or repairing a fence, then the party who was not consulted does not have a legal obligation to pay for any works completed.

If you do not know who lives next door, then you should obtain the details of the owner and send a 'Fencing Notice' to them.

## *How do I obtain the details of the owner next door?*

If you do not have the details of the property owners next door, you should try ringing your local Council and asking for the details of the owner next door for the purposes of submitting a 'Notice to Fence.' Council may decide to give you the address and name of this person, after which you can send them a letter or a formal 'Notice to Fence.'

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<sup>1</sup> *Fences Act* is used in this document to mean the *Fences Act 1968* as amended by the *Fences Amendment Act 2014*, which brought in changes from 22 September 2014.

If Council cannot provide these details, the second option is to try the website [www.landata.vic.gov.au](http://www.landata.vic.gov.au). This website enables you to run a title search for the property address which may give you the details of the property owner. There is an administrative fee to use this website so you should try your local Council first.

### *What is a “fencing notice?”*

A fencing notice is a formal document that sets out a proposal for construction or repair of a dividing fence or other works that need to be done. The regulations under the *Fences Act* include a template notice which you can use which will cover all the necessary details for your neighbour. This template is available from the [Dispute Settlement Centre of Victoria website](#).

It is a good idea to include as much information in the fencing notice as possible. The template fencing notice includes proposals about:

- the line on which the works should be carried out (the boundary line);
- the type of works to be carried out;
- the person to be engaged to undertake the works;
- an estimate of the cost; and
- the expected contribution proportions.

You can hand the fencing notice to your neighbour personally or send it by post, though it is recommended that you send this via Registered Post, so you can show that you sent the Notice and on the day that it was received.

### *Do I have to use a fencing notice?*

No, if you and your neighbour have agreed to the fencing works and any other works that need to be done, then a fencing notice is not required. You might agree about the works by signing a quote provided by a fencing contractor, for example. If you agree in this way, then you do not need a fencing notice.

However, you should be aware that if you do not use a fencing notice, it may be more difficult to show that you had an agreement with your neighbour if something goes wrong. In these situations, the provisions in the *Fences Act* would not apply, and instead would be subject to contract law. This can be much harder to prove or resolve if a dispute arises later.

### *What if my neighbour ignores my fencing notice?*

If you have given a fencing notice to the person who owns the property next door and they have not responded to it within 30 days, you can proceed with the fencing works without their agreement and later recover their contribution by bringing an action in the Magistrates’ Court of Victoria.

However, you should be aware that any Magistrates’ Court action may incur significant costs and it is worthwhile considering if you can negotiate with your neighbour a solution that avoids Court.

The Dispute Settlement Centre operates a free, confidential and non-adversarial process called mediation that is designed to help parties resolve neighbourhood disputes, such as those involving fencing. If you would like to speak to one of our officers about how mediation may be able to assist you, please call our office on 1300 372 888.

### *What if I cannot find the person who owns the property next door?*

If you do not have an agreement with your neighbour about work that needs to be done for a dividing fence, you need to give your neighbour a fencing notice. To do this, you need to be able to find the person who owns the property next door.

To locate them, you might need to make ‘reasonable inquiries,’ including asking any tenant of the property next door about the owner’s whereabouts and asking the local council. After making reasonable inquiries, if you still cannot find the owner of the property next door, you may go ahead with the fencing works. But it is important to know that if you want the owner of the property next door to contribute financially to the fencing works, and you have done the works without giving them a fencing notice or getting their agreement, then you will need a Magistrates’ Court order.

### *What if my neighbour responds to my fencing notice and does not agree to the works?*

If the owner next door does not agree to the proposal in your fencing notice, you cannot proceed. You must negotiate an agreement or wait until the 30 days expires and then initiate an action in the Magistrates’ Court of Victoria. If neighbours cannot agree, then the only entity that has the power to make a determination with regards to a fencing matter is a Magistrate through the Magistrates’ Court of Victoria. A Magistrate has the power to determine whether works are needed or not and, if so, what sort of fence should be built, the time within which the works should be carried out, how much each neighbour should contribute, and other matters. However, remember that obtaining a judgement from a Magistrate will take some time, bear a significant cost and may not result in an outcome that you agree with; it is often far better for both parties to negotiate and come to their own agreements about fencing matters.

You can still negotiate or mediate at any point after the 30 days has expired. The Dispute Settlement Centre of Victoria may be able to assist with mediation; a free, confidential and non-adversarial process designed to resolve disputes without the need for Court.

The Dispute Settlement Centre of Victoria offers neighbours who are in dispute an opportunity to meet together in mediation and, with the assistance of mediators, reach an agreement that works for everyone. The service is free, informal and confidential.

You can contact the Dispute Settlement Centre of Victoria for advice on 1300 372 888 or by visiting the [website](#).

### *What if my neighbour gives me a fencing notice, but I do not agree with their proposal?*

You should talk to your neighbour and explain which parts of the proposal you do not agree with. You may wish to get your own quotes or receive your own advice to ensure that you are fully informed on all issues; in which case, you should inform your neighbour that this is what you plan to do. The fencing notice has a section for you to complete if you would like to state in writing the parts of the proposal that you disagree with and suggest alternatives.

It may still be possible to negotiate an agreement. If you need assistance with your discussions, the Dispute Settlement Centre of Victoria may be able to help. The fencing notice available from the [website](#) has a section for you to complete if you would like to state in writing the parts of the proposal that you disagree with and suggest alternatives.

The process is the same as if you give a fencing notice and your neighbour disagrees: if you cannot reach agreement after 30 days, either of you may proceed with an action in the Magistrates’ Court of Victoria. The Magistrates’ Court has the power to determine whether works are needed or not and, if so, what sort of fence should be built, the time within which the works should be carried out, how much each neighbour should contribute, and other matters. You can still negotiate or mediate at any point after the 30 days has expired.

### *What happens if my neighbour and I disagree about the location of the common boundary?*

If there is a boundary dispute, the 30-day period after which you can commence court action is suspended until the location of the common boundary is agreed or defined by a licensed surveyor.

If you and your neighbour do not agree about the location of the common boundary, either of you may give a boundary survey notice. This can be given at the same time as, or after, a fencing notice is given. It sets out your intention to have the common boundary defined by a licensed surveyor unless its location can be agreed. The boundary survey notice process is designed to ensure that only one survey is required to resolve any boundary disputes at the property.

The owner who receives the boundary survey notice can agree to the location of the common boundary, express their own view about the location of the common boundary, or engage a licensed surveyor to define the common boundary. If, after 30 days, the location of the common boundary has not been agreed or defined by a licensed surveyor, the owner who gave the boundary survey notice may engage a licensed surveyor.

If you engage a licensed surveyor, you are responsible for telling your neighbour what the outcome was. In most circumstances, both owners must contribute to the costs of the survey.

If there are obstructions or obstacles on the boundary that prevent the fence from being placed there, then neighbours can still negotiate where the fence will be built and on what line. The dividing fence does not have to be built on the 'correct' boundary, provided that both parties agree.

### *How should the costs of a fence be split?*

Generally, owners of adjoining land must contribute in equal shares to a dividing fence. The standard of fence that you must contribute to is a 'sufficient dividing fence', which will depend on the circumstances.

If you or your neighbour want a dividing fence that is of a higher standard or of a different type than a sufficient dividing fence, like a higher fence or one made of more expensive materials, the person who wants this pays the difference in cost between a sufficient dividing fence and the higher standard. Alternatively, if you agree, you can split the cost of the higher standard fence. For instance, if you want a particular fence which costs \$2,000, and your neighbour wants a cheaper alternative which costs \$1,500, then your neighbour would pay \$750 (half of a standard replacement) and you would pay \$1,250, provided that you both agreed to the more expensive fence.

Costs are typically the parts of the fence that are most often in dispute; with this in mind, it is often worthwhile considering negotiating over price in order to resolve the dispute. If parties reach a private agreement without the need for court, then any distribution of contribution could be arranged.

### *What is a 'sufficient' dividing fence?*

The *Fences Act* contains terminology which refers to a general right to have what is known as a 'sufficient' dividing fence. What these words mean has been left up to the courts to interpret, as the legislation does not state what is a 'normal' fence with regards to height, material etc.

If you and your neighbour cannot agree on what type of fence is sufficient, the only person that can decide for you is a Magistrate. When deciding the matter, a Magistrate could consider a number of things, including:

- What the existing dividing fence looks like,
- How you and your neighbour intend to use the land,
- Reasonable privacy or security concerns, and
- The types of fences used in your local area.

For some residential properties, a sufficient dividing fence might be a 1.8 metre paling fence. For some rural properties, a sufficient dividing fence might be a wire and post fence. If you wish to

avoid putting the decision in the hands of a Magistrate, you will need to negotiate together to reach a resolution.

### *What if I need to clear the land in order to build the fence? Who pays for it?*

Under the Fences Act, contributions cover more than just building or repairing the dividing fence. Neighbours are required to contribute in equal proportions to fencing works, and any other associated works to allow the fencing works to take place. These are called 'subsidiary works' in the Act. Depending on the circumstances, this may include clearing the land, removing the existing dividing fence, having the land surveyed and using temporary barriers.

### *What if there is a tenant renting my property? Do they have to pay anything?*

Most residential or retail tenants do not have to contribute to fencing works, but some other types of tenants (like commercial tenants) may be required to contribute. If your tenant falls into one of the categories that is covered by the *Fences Act* and has a term of five or more years still remaining on their lease, they may be required to contribute to the dividing fence. If they have between five and ten years remaining on their lease, they must pay half of your share. If they have more than ten years remaining on their lease, they must pay your full share. However, a long-term tenant is only liable to pay if you give them particular notices that are required under the *Fences Act*. The tenant will then be able to participate in negotiations with you and your neighbour and their agreement to the works is required.

### *What should I do if the fence is damaged and needs to be fixed urgently?*

Where a dividing fence is damaged or destroyed and needs to be replaced or repaired urgently, and it is impracticable to give your neighbour a fencing notice, you can undertake the fencing works without giving notice and without otherwise obtaining your neighbour's agreement (although it would still be advisable to talk to them about what you are going to do).

Whether or not fencing works need to be carried out urgently will depend on the circumstances. For example, the damage might be caused by fire or flood and animals might be escaping or a pool might not be fenced.

If you undertake urgent fencing works and then want your neighbour to contribute to the cost, you will need to give them an urgent fencing notice. This notice includes things like the type of fencing works that were done, the cost, and the reason for the urgency. It gives your neighbour an opportunity to have a say. Regulations under the *Fences Act* contain a template urgent fencing notice and this urgent notice is available from the DSCV [website](#).

### *On which side of the fence should the posts and rails sit?*

As with most fencing matters, if you and your neighbour can agree for the rails and framing of the fence to face a certain way, then you are free to build the fence as agreed. If you cannot agree, the *Fences Act* contains some rules that apply if your proposed fence has rails and framing.

- If the dividing fence is between residential land and commercial land, then the rails and framing should face into the residential land.
- If the dividing fence is between residential or commercial land, and land over which the public has a right of access, then the rails and framing should face into the residential or commercial land.
- If the dividing fence is between two residential properties, or the above rules do not apply, then the rails and framing should go on the same side as the existing dividing fence if there is one. If there is no existing dividing fence, the rails and framing should go on the side least subject to weathering, which will depend on the circumstances.

If necessary, a fencing contractor may be able to help you work out which side is the least subject to weathering (but usually the rails and framing will just go on the same side as the existing dividing fence).

### *What do I do if someone is damaging my dividing fence?*

If an owner of land, or someone who has entered their land with the owner's express or implied consent (like a tradesperson, tenant or visitor), deliberately or negligently damages a dividing fence, the owner of the property must pay for any repairs to the dividing fence. This does not prevent the owner from recovering payment from the person who caused the damage. For example, if a tenant caused the damage, then this would most likely be a breach of the lease agreement. You can also apply to the Magistrates' Court for an order that any party cease an activity or discontinue conduct that is unreasonably damaging, or may unreasonably damage, a dividing fence.

### *What if I reach an agreement with my neighbour but they don't abide by it?*

If you and your neighbour used the processes in the *Fences Act* and reached agreement on the basis of a fencing notice, there are provisions under the *Fences Act* to enforce that agreement. If your neighbour does not do what they said they would do, either within the time specified in the agreement or within 3 months of making the agreement, you can carry out the fencing works that are the subject of the agreement and/or recover the money from your neighbour that they agreed to pay.

Also, if the Magistrates' Court has made an order about your fencing works and your neighbour does not do what they were ordered to do, either within the time specified in the order or within 3 months of the order being made, you can carry out the fencing works that were the subject of the order or recover money that your neighbour was ordered to pay.

Enforcement of agreements outside of the *Fences Act*—for example, if you did not give a fencing notice and reached a verbal agreement with your neighbour—would be subject to contract law and is not dealt with by the *Fences Act*.

### *If my property is next to a public park or Government owned land, does the Government have to contribute to the fencing works?*

No. The principles of the *Fences Act* do not apply to Government-owned land, which means that Governments and Councils do not have to contribute to a dividing fence. The Government may choose to contribute in some circumstances, but this is not required by the *Fences Act*.