DIVIDING FENCES

A self-help kit about the law of building and maintaining fences between neighbours
Please note ...

In respect to neighbourhood disputes about trees, fences or retaining walls, Caxton Legal Centre Inc. is able to provide general legal information and referrals but not legal advice about your specific issue. Neighbourhood mediation is provided free of charge by the Queensland Government’s dispute resolution centres. The South Queensland Dispute Resolution Centre is located at Level 1, 363 George Street, and you can call them on (07) 3738 7000.

If you require legal assistance to resolve your dispute or for more detailed information, please contact a private solicitor. We maintain a private solicitor list for the greater Brisbane area, available on our Caxton Legal Centre website. Contact details for other solicitors can be obtained from the Queensland Law Society.
FREQUENTLY ASKED QUESTIONS

What information does this kit provide?

This kit provides general information about the building and maintenance of fences dividing two neighbouring residential properties.

What is a dividing fence?

A fence may be built on the boundary lines between properties for privacy, as protection from intruders or to keep in animals and children. A dividing fence is a fence on the common boundary between two pieces of adjoining land.

The Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld) (Neighbourhood Disputes Act) provides a wide definition of the term ‘fence’. A fence is a structure, ditch or embankment, or a hedge or similar barrier, enclosing any land, whether or not it extends along an entire boundary. It includes any gate, cattle grid or parts used for the operation of a fence.

Who must contribute to the cost of a dividing fence?

Unless it is agreed otherwise, neighbouring property owners normally must contribute equally to the cost of building and maintaining a sufficient dividing fence. Residential tenants of property are not liable to contribute to the cost of building a new fence. Owners are responsible for this, and fencing disputes should be directed to the owners of the property.

Who owns a dividing fence?

The Neighbourhood Disputes Act specifically states that both adjoining owners own the dividing fence if it is built on the common boundary.

Must we have a dividing fence?

No. You and your neighbour can agree not to have a dividing fence.

What if only one of us wants to have a dividing fence?

If either you or your neighbour wants a dividing fence, then (subject to the limits discussed below) you must both share the cost of building the fence and maintaining it, unless you make a special arrangement about which neighbour will pay for the cost of the fence.

A person cannot simply build a dividing fence without consulting their neighbour about the matter. In such a case, the Queensland Civil and Administrative Tribunal (QCAT) could order that an unauthorised fence has to be removed.

What do my neighbour and I need to talk about?

You should talk with your neighbour about:

- the boundary line
- the type of fence
- the cost of the fence and how it will be shared
- any other relevant special requirements.

It is usually worth trying to have a friendly conversation with your neighbour to work out an agreement about building a new fence if one is needed, in order to avoid disputes.

What if we do not agree?

If you cannot agree straight away, using mediators to help you reach agreement with your neighbour is a good way to try to settle a dispute. There are dispute resolution centres throughout Queensland.

If you build a fence without your neighbour’s agreement or an order from QCAT or a court, you cannot later claim a contribution from your neighbour towards the cost of the fence.

How can I find out my neighbour’s name?

Before making a complaint or taking legal action, you should find out your neighbour’s full name. Ways to find out the name include asking the neighbour directly (if it is safe to do so), asking another neighbour or investigating if the neighbour’s landlord, real estate agent or the local council will share it. If the neighbour is the registered owner of the land, it is possible to pay for a current title search of the neighbour’s address, which will also show the name of the landowner.

How do we decide on the boundary line?

If there is no fence between your property and your neighbour’s property, then you will have to agree on the boundary line. You may need to measure out your properties to find the correct boundary. Access to survey pegs and plans of your land may assist, and it would be wise to hire properly qualified surveyors to do a survey.
If you cannot agree on the boundary, you could agree to share the costs of a surveyor to find the boundary line. You can also give a written notice to the owner of the property next door (or their agent) advising them that you intend to have the common boundary defined by a cadastral surveyor, and they have one month to either do their own survey or tell you where the boundary is. Section 40 of the Neighbourhood Disputes Act sets out this process in more detail and explains who is liable to pay for the costs of the survey. The tribunal can also make an order for a survey to be obtained when parties cannot agree on these issues.

**What should I do if my fencing matter has progressed under the old laws?**

The following circumstances may apply:

I have issued, or been issued with, a Notice to Fence under the repealed *Dividing Fences Act 1953 (Qld)* (repealed Dividing Fences Act), but no agreement has been reached in relation to the construction of the fence.

OR

I am already scheduled to attend mediation in relation to a dividing fence after a notice was issued under the repealed Dividing Fences Act.

OR

I am currently before QCAT or the Magistrates Court in relation to the dispute under the repealed Dividing Fences Act.

The repealed Dividing Fences Act will continue to apply to the situations above when the Notice to Fence was issued six months or less before the commencement of the Neighborhood Disputes Act on 1 November 2011. The repealed Dividing Fences Act will also continue to apply to any existing order made under it as if the Neighborhood Disputes Act had not been enacted.

**WHAT TO DO IF YOU AND YOUR NEIGHBOUR AGREE TO BUILD A FENCE**

**How do we decide on the type of fence?**

You and your neighbour should try to agree on the type and height of the fence to be built. You should choose a style that is appropriate to the neighbourhood and, ideally, you should choose one that will meet both your needs. You are only legally liable to contribute to the cost of a sufficient fence, and this will vary from case to case.

If you cannot agree, then one or both of you may have to compromise. For example, your neighbour may want a chainwire fence, and you may want a wooden fence to give more privacy. A compromise could be reached by building the chainwire fence on which you can grow vines and creepers to provide privacy.

What is agreed or ordered by QCAT may end up being more than the basic half cost of a sufficient fence, depending on the circumstances of each case.

**What is a sufficient dividing fence?**

A fence will be considered to be a sufficient dividing fence if, for the purposes of adjoining residential blocks of land, it is a fence between 0.5 m and 1.8 m in height and is constructed of any of the specified materials listed in the Neighbourhood Disputes Act.

If the property is pastoral land, the fence must be sufficient to restrain livestock.

**How is the cost of the fence shared?**

It is common for each neighbour to pay for one half of the fence. You should obtain at least one quote to build the fence before you approach your neighbour to discuss costs and the new fence.

It is often sensible to obtain two or three quotes to provide to your neighbour and then offer to proceed with the least expensive quote. You may find your neighbour is more willing to agree to a proposal if they feel the quoted price is a fair one.

**Are there special requirements?**

Occasionally local councils will have special requirements. You should check with your council before building the fence to ensure there are no special requirements for the height or type of fence you want to build.

There are special laws governing pool fences. These are regulated by the *Building Act 1975 (Qld)*. You may be fined heavily if you breach that Act. The pool owner is wholly responsible for the cost of the fence (or part of a fence) that acts as a pool fence.
Retaining walls are excluded from the new Neighbourhood Disputes Act. Retaining walls and fences serve different purposes, and retaining walls are usually subject to special building and engineering requirements.

However, QCAT does have some power to make orders about retaining walls where a fence otherwise cannot be repaired. If your dispute involves a retaining wall, you should consult a private property lawyer for legal advice about the retaining wall.

Some new developments and some body corporates also have their own rules or covenants, which may be relevant in fencing disputes.

**How do we record our agreement?**

It is appropriate to put your agreement with the neighbour in writing. This may be recorded on the quote that you have both agreed to accept. That quote should contain details of the type, height and cost of fence. You could record on the bottom of the quote:

_We agree to build a new fence as per the above quote on the existing fence line and will both pay one half of the cost._

An agreement should be dated and signed by all relevant owners. It would be wise to get someone to witness your signatures. You should also set out when and how the costs will need to be paid.

If you do not want to write up your own agreement, the new notices attached at the back of this kit also include agreements, which can be adapted and used for this purpose.

**WHAT TO DO IF YOU AND YOUR NEIGHBOUR DO NOT AGREE TO BUILD A FENCE**

If you cannot reach agreement with your neighbour, you will need to get a formal order from QCAT authorising the building of the dividing fence. You will need to serve your neighbour with a special form before you can proceed to file a claim in QCAT.

The form is called a Notice to Contribute for Fencing Work, and a draft example of this notice is attached. It sets out the descriptions of the properties concerned (i.e. the addresses or lot numbers of both properties), the boundary where the fence is to be built, the type of fencing work to be carried out and the estimated cost of the fencing work. At least one quote must be attached to the notice. A sample agreement to contribute to fencing work is included at the end of the notice. This can be used to document an agreement based on the Notice to Contribute for Fencing Work.

The notice can be given to the owner personally, left at their usual place of residence with another adult who appears to live there, posted to the relevant address, or, if no-one is at the relevant address, you can leave it at the address in a place where it is reasonably likely to come to the owner’s attention. You can also try sending it by registered post if you have concerns that the other owner/s may deny receiving the notice. Giving the notice to at least one of the owners is enough if you genuinely cannot find the other owner/s. You should make a careful note of exactly when and how the letter was given to the neighbour.

You could also send a polite cover letter to your neighbour with your notice in an attempt to try to encourage them to reach agreement with you about the matter (see below for a sample letter).

**What happens if my neighbour accepts the proposal?**

If your neighbour agrees to your proposal for a fence, as already stated above, it is crucial that the agreement be in writing and signed by both parties. This should be done by the responding neighbour completing the final page of the Notice to Contribute for Fencing Work. A copy of the document should be provided to each party.

If your neighbour then refuses to pay as agreed, you can bring debt proceedings in QCAT to recover your money for fences under $25 000.

**What happens if my neighbour does not accept the proposal?**

Your neighbour has one month after the service of your notice to agree to the proposal. If you and your neighbour cannot agree, then you will have to reach a compromise by mediation or go to QCAT if the fence dispute is less than $25 000 in value, or the Magistrates
Dear [insert your neighbour’s name and address],

I wish to build a new dividing fence between your property at [insert your neighbour’s address] and my property at [insert your address].

I propose that the fence be built along the full length of the boundary separating our properties. The fence will be built along the boundary line, which is [insert details; e.g. ‘...shown by the two original white fence posts at each boundary end, which have existing survey markings ...’].

I propose that the entire fence be constructed of [insert details; e.g. ‘...one-metre palings supported by timber cross rails ...’].

[Insert any other aspect of construction which need to be agreed upon; e.g. ‘I am happy to paint the fence and am proposing that it be painted green, which is a neutral colour that should suit both existing houses’.]

Of course, we can discuss this further if you have any objection, and I welcome your input into working out how to get our new fence organised.

I have obtained two quotes for that type of fencing. Copies are enclosed. [Set out the details; e.g. ‘I propose accepting the lower quote of $2000 from Harvey’s Fencing Pty Ltd. I believe that we should equally share the cost of building the fence, that is $1000 each. The fence contractor requires a 50% deposit, and I propose that we pay this by the X date. The balance will need to be paid within seven days of us receiving the fencing contractor’s invoice ...’.]

If you accept my proposal, please sign the enclosed Notice to Contribute for Fencing Work, and return it to me. I am happy to discuss this with you if you need further information.

If you have a particular problem about this fencing issue, which is making you feel uncomfortable talking to me about, I am happy to participate in a mediation about the matter. The Department of Justice and Attorney-General offers dispute resolution services and I am happy to use that service. Please let me know what you would like to do within one month.

Yours faithfully

[Sign your name]
Court if it is greater than $25,000 and ask for an order about the fence.

You must lodge your claim with QCAT within two months of issuing the notice.

**Is mediation compulsory in QCAT for trees and fences disputes?**

Mediation is where a mediator, who acts as a go-between between you and your neighbour, helps you to arrive at a decision, if possible. The tribunal will refer most matters under the Neighbourhood Disputes Act to mediation before they progress to a hearing. Both you and your neighbour must agree to mediation, and it will often take place by phone.

If you have reasons for not wishing to participate in mediation, you can write to the South Queensland Dispute Resolution Centre.

You can also arrange mediation yourself prior to making a QCAT application. The dispute resolution centres of the Department of Justice and Attorney-General provide mediation services.

**Which tribunal or court will hear my case?**

If the total cost of your fence is less than $25,000, you can make your application to QCAT for an order that your neighbour pay half the cost of a fence. The tribunal will also make an order setting out the type of fence, the height of the fence and where the fence will be built.

The tribunal can consider a range of factors in making its decision, including: any previous dividing fence on the property, the purposes for which the properties are used, the kind of fence normally used in the area, whether the parties can maintain the fence, local laws and government policies, development policies and written agreements of the parties.

The tribunal does not apply strict rules of evidence, but it is important to provide evidence of relevant matters to help the tribunal make its decision. Photographs can be particularly useful.

If the total cost of your fence is more than $25,000, you will have to make your application to the Magistrates Court. Before you go to the tribunal or court to file your documents, you should telephone QCAT or the Brisbane Magistrates Court (see Contact Points) and confirm that you are lodging your application in the most appropriate locality.

**HOW TO APPLY FOR AN ORDER FOR A FENCE COSTING LESS THAN $25,000**

You must make a claim in QCAT. A sample application form is attached to this kit.

You must include in your claim:
- the date when you served your Notice to Contribute for Fencing Work on your neighbour
- details about the location and size of the fence
- details of quotes for construction/repair.

**What do you do next for cases under $25,000?**

Once you have completed your application, you will need to lodge it with QCAT. You can lodge your application in person or by mail and you should provide QCAT with the original and two photocopies of the application.

The filing fee for dividing fences disputes in QCAT is currently:
- $24.60 (for matters less than $500 in value)
- $63.20 (for matters involving $500 to $1000)
- $112.50 (for matters involving $1000 to $10,000)
- $315.70 (for matters involving $10,000 to $25,000).

You will need to either enclose your cheque or money order for the filing fee or provide a credit card authorisation. You can pay by cash if you lodge your application in person. Once filed, the application normally will be allocated a hearing date.

**Who tells my neighbour about the claim?**

Once you have completed your application, you will be notified of details about when and where the tribunal will hear the matter. You will need to give (or serve) a copy of the stamped application, including the details about what will happen next (which may be in the form of a letter or
on the application itself), to your neighbour. You must serve your documents as soon as possible, and no later than seven days after the application is filed.

**How will you know about the date of the hearing?**

The tribunal will either make a note of your hearing date on your application when you file your case or send you a copy of a notice advising you of a hearing date.

**Will my neighbour need to do anything before the hearing?**

Your neighbour may wish to file a counterclaim, in which case they can set out the alternative orders they will be seeking from QCAT. The counterclaim is a Form 8.

**What happens at the hearing?**

The people who make decisions in QCAT cases are called ‘members’ of the tribunal. Some members may be judges, but most are lawyers appointed to sit simply as members in QCAT hearings. The tribunal member will hear your story and your neighbour’s story and will then make a decision about your case.

You should take with you the originals of your quotes, proof that you own your property and any other relevant documents. Photographs of fences and boundary lines can be quite useful when you are explaining fencing disputes, and these can be handed up to the members as you explain your case.

**What orders will be made?**

The member will consider what type of fence already exists in the neighbourhood, what the neighbouring land is used for, the reasonableness of your fencing proposal, and what is a sufficient dividing fence in the circumstances.

The member will then make an order about the type of fence, the height of the fence, where the fence is to be built and how much each neighbour should pay towards the cost of the fence.

**HOW TO APPLY FOR AN ORDER FOR A FENCE COSTING MORE THAN $25 000**

You must file a claim in the Magistrates Court. You can obtain the forms that you need from your local Magistrates Court.

If your case involves complex facts (especially where your fence involves retaining walls and other fixed engineering structures), you may need to go to the District or Supreme Court to have your matter decided by a court, depending on the actual value of your land. In a complex case, you should consult a property lawyer for expert legal advice.

**WHAT ABOUT REPAIRS TO AN EXISTING FENCE?**

Repairs to an existing fence should be paid equally by both neighbours, unless the fence has been destroyed because of the negligence or wilful damage of one neighbour or someone they have specifically allowed onto their property.

You should talk with your neighbour about sharing the costs of the repairs. You should obtain at least one quote to repair the fence and an agreement with your neighbour about paying for the repairs.

If you do agree, you should both write on the quote that you have agreed, and how much each neighbour will pay. You could record the following on the bottom of the quote:

*We agree to repair our fence as per the above quote and will both pay one half of the cost.*

Each neighbour should then sign the agreement.

If the repairs are not urgent, and your neighbour cannot agree, you will simply issue a Notice to Contribute for Fencing Work as explained earlier. The same process explained above applies. If the notice does not result in agreement within one month, you will need to get an order from QCAT about the repairs. You will need to apply to QCAT within two months after the notice is given for an order about carrying out fencing work.
If your neighbour has negligently or wilfully damaged the fence, they are liable for the entire cost of any repairs. The tribunal can make orders about these matters.

The Neighbourhood Disputes Act specifically states that an owner cannot attach things to a dividing fence that unreasonably and materially alter or damage the dividing fence.

What if we cannot agree?

If urgent repairs are required and you are unable to negotiate an agreement with your neighbour, you should issue a Notice to Contribute for Urgent Fencing Work. A sample notice is attached. You should stipulate the repairs required, why the repairs are urgent, details of the proposed repairs/work and supply one or more quotes.

If your neighbour agrees to the work, you can then proceed to carry out the repairs and rely on the agreement about the cost of the work.

If it is not reasonably possible to give the notice for urgent work, you can carry out the fencing work that is needed to return the dividing fence to a reasonable standard, having regard to its state before the damage or destruction. You can then give the other owner a Notice to Contribute for Urgent Fencing Work under s 32 of the Neighbourhood Disputes Act requiring them to contribute to the cost of the urgent fencing work. If they refuse to cooperate, you can apply to QCAT for orders about the matter.

CONTACT POINTS

CAXTON LEGAL CENTRE

1 Manning Street
South Brisbane Qld 4101
Tel: (07) 3214 6333
www.caxton.org.au

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

Level 9 Bank of Queensland Building
259 Queen Street
Brisbane Qld 4000

SAMPLE DOCUMENTS

The information in the following sample documents is an example only. Individuals have to complete the forms with their own personal details and information.
NOTICE TO CONTRIBUTE FOR FENCING WORK

Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 – Section 31

To: John and Juliette Caxton
Address: 1 Manning Street, South Brisbane Qld 4101

Please note that I/we propose that fencing work be carried out in respect of our adjoining lands at:
Numbers 1 and 3 Manning Street South Brisbane Qld 4101

(Include description of lands e.g. street addresses, lot numbers or other identifying particulars.)

It is proposed that the fencing work be carried out on the common boundary of our adjoining lands described above 1 and that the type of fencing work consist of 2:

1. Digging 10 post holes in soil.
3. Securing cross rails to the posts and palings to cross rails and generally otherwise securing the fence on the marked boundary as indicated by the existing survey pegs.

and that the fence be constructed of 3:-

one-metre timber palings and timber cross rails

The estimated cost of the fencing work is: $2000

I propose that the cost of the fence be shared equally between us /be shared in the following proportions/be shared in the following way 4:-

I propose the cost of the fence be shared equally between us.

and that you contribute $1000
and I contribute $1000

A copy of one (1) written quote specifying the estimated cost of the fencing work is attached.

If you agree to this proposal, please complete the attached ‘Agreement to contribute to fencing work’ and return a signed copy of the agreement to me/us within one (1) month of the date this notice is given to you to the following address:
3 Manning Street, South Brisbane Qld 4101

Please let me/us know within one (1) month of the day this notice is given to you if you do not agree to this proposal.
FORM 2: NOTICE TO CONTRIBUTE FOR FENCING WORK
Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 – Section 31

Full Name: Jane Legal
Address: 3 Manning Street, South Brisbane Qld 4101
Signature/s: J. Legal
Date: 01/02/2017

Notes:
Section 30(1) of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (the Act) encourages adjoining owners to attempt to resolve issues about fencing work to avoid a dispute arising.

1 If it is impracticable to carry out fencing work on the common boundary, the line on which the proposed fencing work is to be carried out must be specified.

Section 40 of the Act provides for a process if adjoining owners do not agree on the position of the common boundary.

2 Section 16 sets out the meaning of fencing work which can include construction of a new dividing fence, repair of an existing dividing fence, replacement of a dividing fence, and modification of a dividing fence, surveying or preparation of land, including the trimming, lopping or removal of vegetation along or on either side of the common boundary of adjoining lands.

3 Section 13(3) of the Act sets out prescribed material for a dividing fence.

4 If it is proposed that the cost of fencing work be shared otherwise than in equal proportions, the proposed proportions must be specified (refer to section 31(4) of the Act). For example, an adjoining owner may contribute by a payment of an amount of money or provision of labour or materials (refer to section 31(6) of the Act).

Section 31(6) of the Act provides that if within one (1) month after this notice is given, the adjoining owners do not agree about the proposed fencing work, or the contributions to the cost of the proposed fencing work, then either one may, within two (2) months after this notice is given, apply to the Queensland Civil and Administrative Tribunal for an order about carrying out fencing work (refer to section 35 of the Act).

A copy of the Act may be accessed at www.legislation.qld.gov.au

PLEASE KEEP A COPY OF THIS NOTICE FOR YOUR RECORDS AND MAKE A NOTE OF THE DATE THIS NOTICE WAS GIVEN TO YOUR NEIGHBOUR.
AGREEMENT TO CONTRIBUTE TO FENCING WORK

I/We the adjoining owner/s acknowledge receipt of the Notice to Contribute for Fencing Work and agree/disagree to contribute to the fencing work.

I/We agree to contribute to the fencing work as follows:

Installation of an one-metre timber palings, cross rails and timber posts fence on the boundary between 1 and 3 Manning Street, South Brisbane Qld 4101.

I/We will pay our contribution to you/the fencing contractor as follows:

We will contribute half the cost of the fence, that is $1000.

Full Name: John and Juliette Caxton
Address: 1 Manning Street, South Brisbane Qld 4101
Signature/s: John Caxton
Date: 14/02/2017

PLEASE KEEP A COPY OF THIS AGREEMENT FOR YOUR RECORDS AND MAKE A NOTE OF THE DATE THIS SIGNED AGREEMENT WAS GIVEN TO YOUR NEIGHBOUR.

www.justice.qld.gov.au
NOTICE TO CONTRIBUTE FOR URGENT FENCING WORK

Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 – Section 28 and section 32

To: John Lennon
Address: 24 Laurel Street, Wooloowin Qld 4030

Please take notice that urgent fencing work was carried out on the dividing fence on the common boundary of our adjoining lands located at:

24 and 26 Laurel Street, Wooloowin Qld 4030

(Include description of lands e.g. street addresses, lot numbers or other identifying particulars.)

Date urgent fencing work carried out: 23 January 2017

The reason urgent fencing work was required:

A branch fell onto the fence and made it insecure after the storm on Saturday 21 January 2017. We own two large dogs and are away at work all day, so the fence needed to be repaired immediately. The dogs can get off their leashes and we were concerned that they could destroy your garden and escape into the neighbourhood. As you were away from home and we did not know when you would return we went ahead with the necessary urgent repairs.

The type of fencing work carried out consisted of:

Replacement of a 1.4 metre chainwire fence in two sections near the rear of the properties.

The cost incurred for the fencing work was: $400

The receipt for the cost of the fencing work is attached to this notice.

I/we propose that the contribution to the fencing work be shared equally between us/be shared in the following proportions:

We propose to pay three quarters of the cost and would like you, our neighbour, to contribute one quarter.

and that I/we contribute: $300
and that you contribute: $100

If you agree to this proposal, please complete the attached Agreement to Contribute to Urgent Fencing Work and return a signed copy of the agreement to me/us within one (1) month of the date of this notice.

www.justice.qld.gov.au
If you do not agree to this proposal please let me/us know within one (1) month of the day this notice is given to you.

Please send your response to this notice to the following address:

Paul and Linda McCartney  
26 Laurel Street, Wooloowin Qld 4030

Name: Paul and Linda McCartney  
Address: 26 Laurel Street, Wooloowin Qld 4030  
Signature:  
Date: 28 January 2017

Notes:  
Section 30(1) of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (the Act) encourages adjoining owners to attempt to resolve issues about fencing work to avoid a dispute arising.

Section 28 of the Act states that this section applies if all or part of a dividing fence is damaged or destroyed and in the circumstances urgent fencing work is required.

Section 16 of the Act sets out the meaning of fencing work which can include construction of a new dividing fence, repair of an existing dividing fence, replacement of a dividing fence, and modification of a dividing fence, surveying or preparation of land, including the trimming, lopping or removal of vegetation along or on either side of the common boundary of adjoining lands.

If it is proposed that the cost of fencing work is to be borne otherwise than in equal proportions, the proposed proportions must be specified (Refer to section 32(5) of the Act).

Section 32(6) of the Act provides that if within one (1) month after this notice is given, the adjoining owners, have not agreed about their contributions to carrying out the fencing work then either adjoining owner may, within two (2) months after this notice is given, apply to the Queensland Civil and Administrative Tribunal for an order about carrying out fencing work (refer to section 35 of the Act).


PLEASE KEEP A COPY OF THIS NOTICE FOR YOUR RECORDS AND MAKE A NOTE OF THE DATE THIS NOTICE WAS GIVEN TO YOUR NEIGHBOUR.
AGREEMENT TO CONTRIBUTE TO URGENT FENCING WORK

I/We the adjoining owner/s acknowledge that we have been given a copy of the Notice to Contribute for Urgent Fencing Work dated: 28 January 2017

by: Paul and Linda McCartney

of: 26 Laurel Street, Wooloowin Qld 4030

I/We agree that the contribution to the fencing work be shared equally between us/be shared in the following proportions: You pay three quarters and I will pay one quarter.

and that I/we contribute: $100

and that you contribute: $300

I/We will pay our contribution to you at the address nominated in your notice on or before: 6 February 2017

Name/s: John Lennon

Address: 24 Laurel Street, Wooloowin Qld 4030

Signature: J. Lennon

Date: 6 February 2017

PLEASE KEEP A COPY OF THIS AGREEMENT NOTICE FOR YOUR RECORDS AND MAKE A NOTE OF THE DATE THIS AGREEMENT NOTICE WAS GIVEN TO YOUR NEIGHBOUR.
Application for minor civil dispute – dividing fences – Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 and Building Act 1975

Please refer to the attached instructions before completing this form.

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**PART A  APPLICANT’S DETAILS**

**Applicant details: (for multiple applicants attach details on a separate sheet)**

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<tr>
<th>Name</th>
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<tr>
<td>Margaret Thatcher</td>
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<table>
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<tr>
<th>Address</th>
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<tbody>
<tr>
<td>3 Smith Street</td>
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<tr>
<td>New Farm Qld</td>
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<tr>
<td>Postcode 4005</td>
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<th>Contacts</th>
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<tbody>
<tr>
<td>( ) 3456 7890</td>
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<td>( ) 0412 3564</td>
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Preferred phone number

Alternative number

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<tr>
<td><a href="mailto:maggie_thatcher@gmail.com">maggie_thatcher@gmail.com</a></td>
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PART A  RESPONDENT'S DETAILS

Respondent details: (for multiple applicants attach details on a separate sheet)

Richard Nixon

Name

Address

2 Smith Street

New Farm Qld

Postcode

4005

Contacts

( ) 3123 4567

Preferred phone number

( )

Alternative number

Email

mixon@gmail.com

PART B  GENERAL DISPUTE DETAILS

1.  What is the street address of the property where the fence is located or is to be constructed?

   1 Smith Street, New Farm Qld 4005

2.  What is your connection with the property in question 1?

   ☑ Registered owner of property
   ☐ Body corporate for property
   ☐ Other: __________________________

3.  What is the respondent’s connection with the property in question 3?

   ☑ Registered owner of property
   ☐ Body corporate for property
   ☐ Other: __________________________

Note to applicants: Applications can only be made against owners of the land. Tenants who are renting the land and are covered by the Residential Tenancies and Rooming Accommodation Act 2008 are not owners of the land.


For more information on QCAT: Call 1300 753 228 or visit www.qcat.qld.gov.au
4. Are you making this application because you believe that the respondent is about to construct or demolish a dividing fence without authorisation?

- [ ] Yes
- **[x]** No

If Yes, please provide details about why you believe this and what you think is going to happen:

________________________________________

5. Have you given the respondent a notice about the fencing work for the dividing fence?

*Notices to contribute for fencing work are found at www.justice.qld.gov.au. Notices applying to pool barriers that are also dividing fences are located at www.hpw.qld.gov.au*

- **[x]** Yes
- [ ] No

If Yes, please attach a copy of the notice and details of how and when you gave the notice to the respondent:

see Attachment A

________________________________________

6. Is there an existing dividing fence?

- [ ] Yes
- **[x]** No

If Yes, please provide details e.g. height, material, age, condition:

________________________________________

7. If no, was there previously a dividing fence?

- [ ] Yes
- **[x]** No

If Yes, please provide details e.g. height, material, age, condition, reason it was removed:

________________________________________

8. The estimated cost of the fencing work is: **$2,000.00**

How much contribution are you seeking from the respondent? **$1,000.00**

If applicable please attach evidence to support the estimated costs.

Application for minor civil dispute – dividing fences – *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* and *Building Act 1975* – page 3 of 8

For more information on QCAT: Call 1300 753 228 or visit www.qcat.qld.gov.au
9. What is your land used, or intended to be used, for?

Please provide details e.g. agricultural, pastoral, rural, residential, commercial:

residential property

10. What is the respondent’s land used, or intended to be used, for?

Please provide details e.g. agricultural, pastoral, rural, residential, commercial:

residential property

11. What kind of dividing fence is normally used in your area?

Please provide details e.g. height, material, age, condition:

new one-metre timber palings supported by new timber cross rails

12. Can the dividing fence be maintained by you and the respondent?

☑ Yes
☐ No

Please provide details:

it is simple to construct and maintain

13. What is the local government area where the dividing fence is located? for example Brisbane City Council, Redlands Shire Council. To locate your local government authority, check your rates notice, look in the phone book or visit www.qld.gov.au for more information.

Brisbane City Council

14. Is there any policy or local law about dividing fences in that local government area?

Please contact your local council or visit their website.

☐ Yes
☑ No

If Yes, please provide details:

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For more information on QCAT: Call 1300 753 228 or visit www.qcat.qld.gov.au
15. Is there any requirement for fencing work in a development approval for your land?

☐ Yes
☑ No
If Yes, please provide details:

________________________________________________________________________

16. Is there any requirement for fencing work in a development approval for the respondent's land?

☐ Yes
☐ No
☑ Don't know
If Yes, please provide details:

________________________________________________________________________

17. Is there any written agreement between you and the respondent about the dividing fence?

☐ Yes
☑ No
If Yes, please provide details and a copy of the agreement:

________________________________________________________________________

18. If you are making this application because you could not locate the respondent, please provide details about the how you tried to locate them.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
PART C  DIVIDING FENCE THAT IS ALSO A POOL BARRIER

19. Does any part of the fence form part of a pool barrier, or will it in the future?
   
   [ ] Yes
   [x] No
   
   If Yes, please provide details:

   ____________________________________________________________

20. Does the pool barrier comply with the pool safety standard, or will it comply?

   [ ] Yes
   [ ] No
   
   If Yes, please provide details:

   ____________________________________________________________

PART D  TREE DISPUTES

21. If there is an existing dividing fence, is part or all of the fence made of a tree or trees?

   [ ] Yes
   [x] No (Proceed to question 23)

   If Yes, please provide details:

   ____________________________________________________________

22. Have you or the respondent already made an application to QCAT about the tree?

   [ ] Yes
   [ ] No

   If Yes, please provide QCAT case number:

   ____________________________________________________________
PART E  DETAILS OF WHAT YOU SEEK FROM THE TRIBUNAL

23.  I want the tribunal to make the following order/s: (please tick)

   The orders below may be available for both dividing fences and a pool barrier.

   [ ] an order about the line on which fencing work is to be carried out
   [ X ] an order that fencing work be done
   [ X ] an order about the kind of material to be used in fencing work
   [ X ] an order about the amount the parties have to contribute or pay for fencing work
   [ ] an order about which part of the dividing fence is to be constructed or repaired
   [ X ] an order about when the fencing work is to be done
   [ ] an order for compensation for damage to or destruction of a dividing fence caused by the respondent, or someone on their land with their consent $_______
   [ ] an order requiring the removal of things attached to a dividing fence and the restoration of that fence
   [ ] variation of an existing order
   [ X ] an order for payment of the filing fee for this application
   [ ] another order (please specify): ____________________________
   ____________________________
   ____________________________

24.  I want the tribunal to make the following additional order/s for a dividing fence that is not part of a pool barrier: (please tick)

   The orders below may be available ONLY for dividing fences that are not also a pool barrier.

   [ ] an order that a specific fence is a dividing fence
   [ ] an order that no dividing fence is required for part or all of a boundary
   [ ] an order that an existing fence is a sufficient dividing fence
   [ ] an order preventing the construction or demolition of a dividing fence without authorisation
   [ ] an order requiring a dividing fence that was constructed or demolished without authorisation to be removed, modified or rectified
   [ ] an order that the respondent pay the costs of any removal, modification or rectification of an unauthorised dividing fence
   [ ] another order (please specify): ____________________________
   ____________________________
   ____________________________

Application for minor civil dispute – dividing fences – Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 and Building Act 1975 – page 7 of 8

For more information on QCAt: Call 1300 753 228 or visit www.qcat.qld.gov.au
25. I want the tribunal to make the following order/s (please tick):

- for a dividing fence that is a pool barrier, an order for access to land
- an order preventing the demolition or tampering with the dividing fence without authorisation
- an order requiring a dividing fence that was demolished or tampered with without authorisation to be rectified
- an order that the respondent pay the costs of any rectification of an unauthorised dividing fence
- an order that an existing fence has been or can be used as a dividing fence forming part of a pool barrier
- an order that a dividing fence forming part of a pool barrier complies with the pool safety standard
- an order preventing fencing work for a dividing fence forming part of a pool barrier to be done without authorisation
- another order: (please specify): ____________________________

Interpreter

Is an interpreter required? The assistance of an interpreter is subject to approval by the tribunal.

- Yes
- No

If Yes, please specify language: ____________________________

SIGN AND DATE HERE

The information in this application is true to the best of my knowledge.

Applicant's sign here

Select Date

Date

If more than one applicant is named all must sign the application.
Instructions for completing

Application for minor civil dispute – dividing fences
– Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 and Building Act 1975

WHAT TYPE OF APPLICATION ARE YOU MAKING?

A dividing fence dispute is a disagreement between neighbours about a fence, or a proposed fence, on the common boundary of adjoining lands.

It can include a dispute about a dividing fence that forms, or will form in the future, part of a pool barrier.

It does not include a dispute about a retaining wall or a wall that is part of a house or garage.

Note: if your dispute is about a dividing fence that is not part of a pool barrier, the amount in dispute is limited to $25,000.

Note: if your dispute is about a dividing fence that is part of a pool barrier, the amount in dispute is unlimited.

General instructions

Lodging your application

By post: QCAT, GPO Box 1639, Brisbane QLD 4001.

If you are posting your original application and copies to QCAT, you must include a stamped self-addressed A4 envelope with your application.

In person: At QCAT, Level 9, 259 Queen Street (BOQ Centre), Brisbane OR any Magistrates Court (excluding Brisbane).

To find your nearest Magistrates Court, look under “Justice and Attorney-General” in the phone book or visit courts.qld.gov.au.

Applications must be accompanied by the prescribed application fee

You must pay the prescribed application fee when you lodge your application. For more information on fees visit www.qcat.qld.gov.au or call 1300 753 228.

Payment can be made by cash (only when application being lodged in person), cheque or money order (payable to Department of Justice and Attorney-General), or credit card payment authorisation (see Credit card payment authorisation form – MasterCard and Visa accepted).

Copies of the application

When lodging your application you must also provide two copies of the application and any documents. If there is more than one respondent an extra copy of the application and any documents must be lodged.

After you lodge your application

QCAT will keep your original application and attached documents, and the 2 extra copies.

QCAT will stamp QCAT’s seal on your other copies and return them to you.

You need to give these stamped copies to the respondent and any additional party.
Instructions for completing (continued)

Providing copies to the respondent and other people

Generally, you must give the stamped copies of the application as soon as practicable, and no later than 7 days after you lodge the application.

If your application is to prevent the respondent from doing unauthorised fencing work in the future, you need to give them a copy at least 1 day before the application is heard.

If your application is about unauthorised fencing work that the respondent has already done, you need to give them a copy at least 3 days before the application is heard.

The most common ways to give the stamped application to the respondent and any other party is by:

- posting it to their address
- giving it to them in person, or if they refuse to take it, by putting it down in their presence and telling them what the application is
- leaving it with another adult who lives or works at their address.

You cannot give the stamped application to the respondent or any other party by leaving it in their letterbox or putting it under the door.

You will need to establish that the application has been given to the respondent and each other person who is required to be given a copy by filing a Form 9 Affidavit of Service, or a written acknowledgement from each person that they have received the application.

PART A  APPLICANT'S AND RESPONDENT'S DETAILS

More than one applicant and respondent may be named in the application. If there is not enough space to include additional parties, attach additional pages with similar details.

If the applicant or respondent is not an individual then the correct name must be used, for example:

- a company name
- a business name, whether registered or unregistered
- a State agency name, for example a Queensland Government Department.

Documents will be given or sent to you at your address, unless you indicate your representative's address as your address for notices.

If you want to change your address for notices you must complete a Change of contact details form, file it in the tribunal and serve it on all other parties.

If you cannot locate the respondent, please see question 18.

Representation at QCAT

If you want your representative to represent you in any proceedings before the tribunal you must complete the form Application for leave to be represented. Generally the tribunal expects people to represent themselves. It may not grant your request. You must give reasons for why you want to be represented.

You are not required to seek leave if you are a child or a person with impaired capacity.

PART B  GENERAL DISPUTE DETAILS

Please tick the relevant boxes and provide further details as required.
PART C   DIVIDING FENCE THAT IS ALSO A POOL BARRIER DETAILS
Different laws apply to dividing fences that are or may also form part of a pool barrier. If the dividing fence that is the subject of the dispute is or may form part of a pool barrier, please tick the relevant boxes and provide details as required.

PART D   TREE DISPUTES
Different laws may apply to a dividing fence that is a hedge or other kind of barrier made from a tree or trees. Please tick the relevant boxes and provide details as required.

PART E   DETAILS OF WHAT YOU SEEK FROM THE TRIBUNAL
State what orders you are seeking from the tribunal and why you consider the orders sought should be made. Include a clear outline of the history and nature of the dispute.

SIGNATURE
Check that you have provided all copies and relevant documents that form part of your application. Please sign and date your application.

WARNING
Section 216 of the Queensland Civil and Administrative Tribunal Act 2009 makes it an offence for a person to knowingly give the registry documents containing false or misleading information.
Maximum penalty for such an offence – $11,000.

OTHER INFORMATION
Have you included a copy of all the relevant documents and evidence?
You must include a copy of all of the relevant documents that you want to use and rely on at the hearing.
You must print out all electronic evidence
Sometimes evidence (such as photos or receipts) may be stored in an electronic device, such as a mobile phone, tablet or computer. Sometimes evidence may be stored on a CD or DVD. You must provide a printed copy of this evidence with your application if you wish to use and rely on it at the hearing. The tribunal will not accept a CD or DVD for filing and will not consider evidence provided only in an electronic format.
Your information
QCAT is collecting your contact details for the purposes of compliance with the Queensland Civil and Administrative Tribunal Act 2009 in relation to proceedings in QCAT. QCAT may contact you to seek your assistance in research to assist in the evaluation of the operation of QCAT. You are not obliged to participate in feedback or surveys. If you do participate no identifying particulars will be published. QCAT will not disclose your contact details or any other personal information to a third party unless required by law.
Application checklist:  
– Minor civil dispute – dividing fences

USING THE CHECKLIST

Before applying to QCAT about your dividing fence dispute, use the checklists below to:

• check your application is within QCAT’s jurisdiction
• check you have completed and lodged your application correctly.

BEFORE MAKING A DIVIDING FENCE APPLICATION

1. Have you checked if dividing fence laws apply to your dispute?
   ☑ Yes  ☐ No

2. Is your dispute about recovering an agreed amount of money (up to $25,000) for fencing work?
   For disputes about the recovery of a debt in relation to agreed or ordered contributions to fencing work, you must complete Form 3 Application for Minor Civil Dispute – minor debt form available from www.qcat.qld.gov.au
   ☑ Yes  ☐ No

3. Is your dispute about a dividing fence that is part of the pool barrier for your pool or your neighbour’s pool?
   Different laws apply to dividing fences that are part of pool barriers. For information regarding pool barriers, contact the Department of Housing and Public Works on 1800 340 634 or visit http://www.hpw.qld.gov.au
   ☑ Yes  ☐ No

4. Is the fence around a public park owned by council?
   Fences around parks owned by council are not under QCAT’s jurisdiction. Contact your local government authority (council) for more information. For specific information on whether your dispute is covered by dividing fence legislation, you may wish to seek legal advice.
   ☑ Yes  ☐ No

5. Have you tried to resolve the dispute with your neighbour?
   Dispute Resolution Centres offer free mediation services to assist in resolving neighbourhood disputes. For more information call 1800 017 288 or visit http://www.qld.gov.au/law/housing-and-neighbours/disputes-about-fences-trees-and-buildings/
   ☑ Yes  ☐ No


For more information on QCAT: Call 1300 753 228 or visit www.qcat.qld.gov.au
6. **Have you sent your neighbour a Notice to contribute for fencing work?**
   If you want your neighbour to contribute towards the costs of constructing, replacing or maintaining the dividing fence, your first step is to provide your neighbour with a Form 2 Notice for contribution to fencing work available from www.neighbourhooddisputes.qld.gov.au
   - Yes
   - No

7. **What are the possible costs involved in making an application to QCAT?**
   You will need to pay an application fee. Information on fees can be located on the tribunal’s website. You may have some costs in obtaining evidence such as an expert’s report, or in attending a hearing. These costs are generally not recoverable, even if your application is successful. You will only be asked to pay the costs incurred by your neighbour in special circumstances.
   - Yes
   - No

8. **Have you considered the possible outcomes of making an application to QCAT?**
   Possible outcomes from an application include:
   - the matter may go to a hearing where you may or may not be successful
   - orders made by the tribunal are enforceable.
   - Yes
   - No

**LODGING YOUR APPLICATION FOR MINOR CIVIL DISPUTE – DIVIDING FENCES**

9. **Are you using the correct application form?**
   This form also applies if your application is about a dividing fence that is part of a pool barrier.
   For disputes about the recovery of a debt in relation to agreed or ordered contributions to fencing work, you must complete a Form 3 Application for Minor Civil Dispute – minor debt form available from www.qcat.qld.gov.au
   - Yes
   - No

10. **Are you ready to proceed with the application? Have you:**
    - answered all applicable questions
    - provided all pages of the application form
    - aware of the application fee, based on the amount of your claim
    - signed and dated the application
    - provided your own details including name, address and whether you are the owner or occupier
    - provided full details of the person you are making an application against (the respondent) including name, address and whether they are the owner or occupier
    - attached all relevant material
    - provided QCAT with the correct number of copies (see your application form for more information)?
    - Yes
    - No

11. **Do you know where to lodge your application to QCAT?**
    - By post: QCAT, GPO Box 1639, Brisbane QLD 4001
    - or your local Magistrates Court (excluding Brisbane)
    - In person: Brisbane: QCAT, Level 9, 259 Queen Street, Brisbane
    - In person outside of Brisbane: Your nearest Magistrates Court
    - Yes
    - No

Instructions for completing - Application for minor civil dispute – dividing fences – Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 and Building Act 1975 - page 5 of 5

For more information on QCAT: Call 1300 753 228 or visit www.qcat.qld.gov.au