



Dividing Fences *a guide*

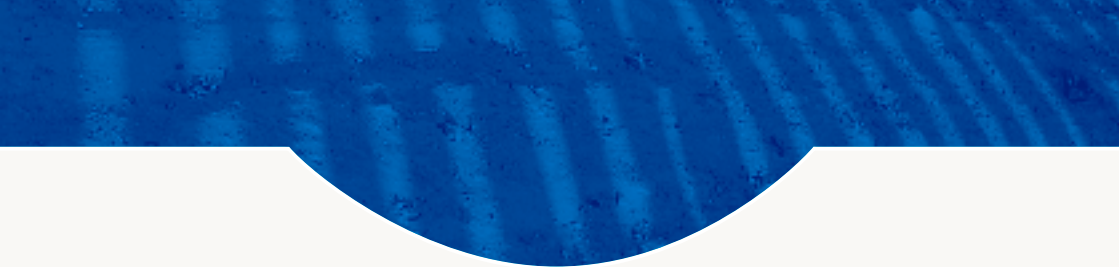


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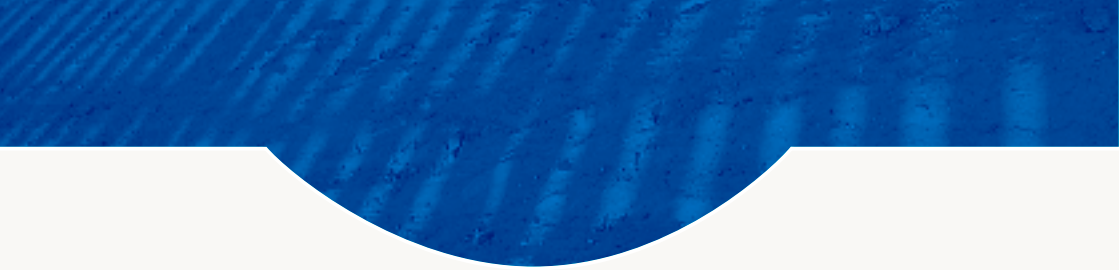
Disclaimer

The material contained in this booklet provides general guidance and information only and is current at time of printing. Readers should not act or omit to act solely on the basis of anything contained herein. In relation to a particular matter, you should seek appropriate legal/professional advice. The State of Western Australia and its servants and agents expressly disclaim liability, whether in negligence or otherwise, for any act or omission resulting from reliance on this document or for any consequence of such act or omission.



The *Dividing Fences Act 1961* (the Act) deals primarily with the process for sharing with your neighbour the cost of building and maintaining a dividing fence. Other matters concerning boundaries are dealt with under different legislation, in particular:

- **Landgate** provides information on issues such as defining and surveying boundaries.
- **Local Governments** advise on minimum fencing requirements under local laws. Your local government also controls boundary construction work, such as retaining walls, party walls, parapet walls and the like under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960*.
- **The Magistrates Court** may rule on disputes between adjoining owners on issues such as nuisance from trees, overhead branches and falling leaves under the provisions of the common law. You will need to seek independent legal advice in respect of each case.



This booklet is intended to help you understand the *Dividing Fences Act 1961*.

The Act provides a process for neighbours to agree on the fence that divides their properties, and to share the cost of construction and maintenance. The Act also provides for the courts to deal with disputes that may arise over dividing fences. The booklet outlines the processes in the Act, and provides answers to some frequently asked questions. You may obtain a copy of the *Dividing Fences Act 1961* from the State Law Publisher, or consult it online at either **www.dhw.wa.gov.au/193_359.asp** or at the State Law Publisher on **www.slp.wa.gov.au/statutes/swans.nsf**

The Department of Housing and Works has provided the information in this booklet as a public service.

The Department does not have any role or powers to advise on individual issues or resolve disputes. If you need advice on a dividing fences matter you must seek independent professional advice. The building inspector or surveyor at the relevant local government authority nearest the fence can advise you of any local laws that may affect your dividing fences. Retaining walls, parapet walls and the like that form part of a dividing fence are regulated by the local government in your area, and are not covered by the *Dividing Fences Act 1961*. Such issues in relation to boundary construction are covered under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960*.

First things to consider

FIRST THINGS TO CONSIDER

If you wish to build or repair a dividing fence you need to consider two things:

1. Does the fence and/or associated work require building or planning approval from your local government?

Any substantial structure built along a boundary is likely to require a building permit from your local government (shire or council). This is particularly the case for retaining walls, walls that form part of buildings, unusually high fences or fences made from unusual materials. Fences that form part of a swimming pool barrier are also regulated by the local government.

In many local government areas, brick and masonry fences require a building permit. Although simple and conventional dividing fences may not need a building permit, you should check with your local government first, as construction without a building permit is an offence. Local laws may also set out requirements or restrictions on fences, and will define what is a “sufficient fence” in your locality.

2. Do you wish to receive a contribution from your neighbour for the cost of building or maintaining the fence?

The *Dividing Fences Act 1961* provides for neighbours to share the cost of a sufficient dividing fence and provides a mechanism for giving notice and resolving disputes. You should give the necessary notice and obtain agreement BEFORE constructing a fence, as the Act only allows for recovery of costs afterwards in very limited circumstances.

Note: Any agreement, contract or covenant between owners of adjoining lands on the construction and contribution for a dividing fence overrides provisions of the *Dividing Fences Act 1961*.

What you need to know

WHAT IS A DIVIDING FENCE?

A dividing fence, as defined in the *Dividing Fences Act 1961*, is a fence that separates the land of different owners whether the fence is on the common boundary of adjoining lands or on a line other than the common boundary.

A dividing fence does not include a retaining wall.

The Act does not apply to the Crown or to land used for public purposes such as roads and paths under the control of local governments. This means that if your property adjoins such land you cannot compel a contribution to the cost of a fence you may wish to build.

SUFFICIENT FENCE

Local governments may have local laws that prescribe what is a sufficient fence. If you want information on what type of fence is allowed in your area, contact your local government.

A 'sufficient fence' is:

- a fence prescribed by a local government law; or
- a fence of any standard agreed upon by adjoining owners provided that it does not fall below the standard prescribed by the relevant local government law.

Where there are no local laws or no agreement is made, a sufficient fence is:

- a substantial fence that is ordinarily capable of resisting the trespass of cattle and sheep; or
- a fence determined by a Magistrates Court to be a sufficient fence.

If you want to erect a dividing fence of a higher standard than a sufficient fence and cannot obtain the agreement of the adjoining owner, you may only claim half the cost of erecting and maintaining a sufficient fence.

Owners may decide what they want as long as it does not conflict with the local laws.

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 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 standard.

CLAIMING FOR ERECTING OR MAINTAINING A DIVIDING FENCE

The *Dividing Fences Act 1961* provides that owners of adjoining lands are each liable to pay half the cost of erecting or repairing a 'sufficient fence' between their properties. The owner of a vacant block can defer making a contribution until that owner makes use of the block – typically by building on it.

An owner wanting to fence a boundary with an adjoining vacant lot can erect a fence without obtaining a contribution, then seek the contribution when the adjoining owner makes use of the block, usually by completing the construction of a substantial building or structure on that land. Alternatively an owner can seek a court order for a contribution.



Procedure for erecting a new fence

STEP 1: Giving notice

If you wish to claim half the cost of erecting a sufficient fence and avoid any disputes over payment, you should approach the owner of the adjoining land to discuss your proposal and reach an agreement.

The *Dividing Fences Act 1961* provides a mechanism for sharing the cost of the fence. The procedure is to give notice in writing to your neighbour describing the proposed dividing fence including materials to be used, costs, and specifying the boundary line to be fenced. If you do not know the name and address of the adjoining owner, the rates section of your local government may provide this information. Alternatively you may wish to arrange a land title search through Landgate.

Each notice must be served by either:

- delivering it in person; or
- sending it by registered mail to the person's usual or last known place of residence.

If the notice is to be given to a company it may be served by:

- delivering it to the head office of the company in the State in which the company is incorporated; or
- sending it by registered mail to the company's principal officer.

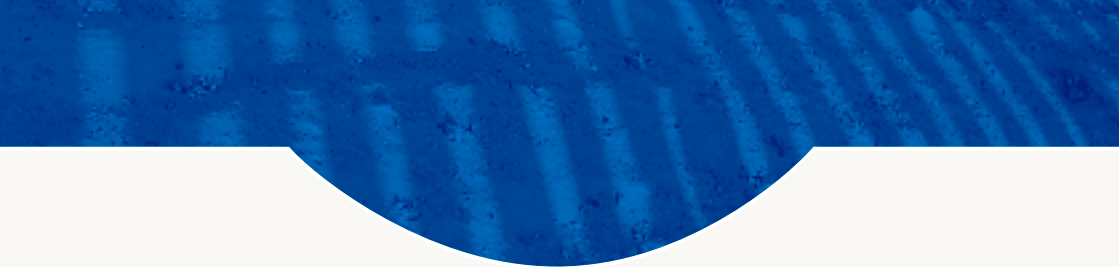
You may wish to attach a copy of this booklet to your written notice.

If an agreement is reached with your neighbour, it is best to confirm the agreement in writing, signed by all parties. Include details in your written agreement about when payment is to be made.

Whether agreement is reached or not, you should always keep copies of all quotations, documents and receipts.

Talk to your neighbour





If you and your adjoining owner cannot agree, then the use of an independent mediator may help. Mediation helps to sort out civil disputes in a confidential and non-threatening way. Details of mediation services available are listed in the Yellow Pages under “Mediators”.

STEP 2: Court action

The adjoining owner has 21 days to respond or write back if they dispute all or any part of your proposal. If you are unable to reach an agreement within that time, the matter may be referred to the Magistrates Court nearest to where the fence is situated.

The court may decide:

- whether the fence is necessary;
- what type of fence should be built;
- how long it should take to build;
- the boundary upon which the fence is to be built;
- the level of each adjoining owner’s contribution to the fence;
- legal costs; and
- the payment arrangements.

The adjoining owner has three months to comply with the agreement you both made, or to comply with the order which has been made by the Magistrates Court, unless the adjoining owners agree or the court orders a different period.

If after three months the owner has not complied with the agreement or order, you may erect the fence and recover half of its cost. Contact your nearest Magistrates Court to find out the procedure for lodging a complaint with the court or go online at www.justice.wa.gov.au.

The court’s decision is final.

**The Magistrates Court can be contacted on telephone: 9425 2247
or visit www.justice.wa.gov.au or www.magistratescourt.wa.gov.au**

Claiming for a fence erected on vacant land

This section applies only where one or both of the adjoining lots of land is vacant.

You may erect a sufficient fence without giving notice or reaching agreement with the owner of the vacant land and still obtain a contribution towards the cost.

The owner who has erected the fence may claim from the adjoining owner whether or not notice was given or an agreement was reached.

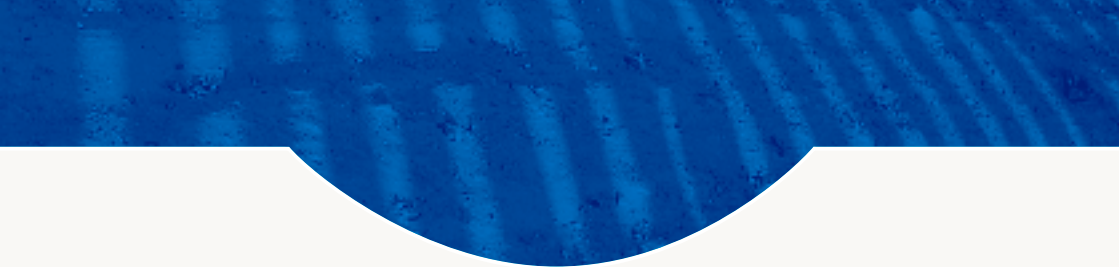
Except where there is an agreement or a court order, you cannot recover any of the costs from the owner of adjoining land that is vacant unless or until the current owner of the adjoining land:

- (a) has completed a substantial building or structure on the land; or
- (b) has occupied or occupies a building or structure on the land; or
- (c) has permitted or permits some other person to lawfully occupy a building or structure on the land.

If any of the above conditions are satisfied, you may give the other owner a notice claiming half the value of the fence as estimated at the date of claim.

An owner or owners of adjoining land are liable to pay even if they were not the owners of the land when the fence was constructed and no previous adjoining owners have paid a claim to the owner who erected the fence.





There is no specified method for determining the value of a fence. Obtaining a current day price for a similar fence may be useful in providing a base from which to estimate the value of the fence.

If it cannot be agreed upon between the adjoining owners, it may be necessary to have the matter decided through mediation or if that fails, in court.

The right to claim exists while the person who erected the fence continues to own the property, however, it is doubtful whether this right exists after the property is sold. The commonly held legal view is that the right does not continue and this would mean the right to claim cannot be passed on from the owner who erected the fence to another owner who buys their land.

If the adjoining owner gives you written notice of objection and agreement cannot be reached on the claim, you may make a complaint to the Magistrates Court nearest to where the fence is situated. Complaint forms are available from the court or online at www.justice.wa.gov.au.

The court will make a decision on the dispute.

Repair of dividing fences

The Dividing Fences Act 1961 provides for owners of land on either side of the fence to join in or contribute in equal proportions to the repair of the fence. This applies to both developed and vacant land.

The Act defines the word “repair” as including “realign and re-erect” so the provisions which deal with repairing a dividing fence also apply in the same way to fences which need re-erection or realignment.

It is important to determine whether the condition of the existing fence justifies it being replaced by the same type of fence.

If you wish to have a dividing fence repaired, you should give the adjoining owner a notice describing the kind and extent of repairs to be made, and stating that you are prepared to:

- repair the fence and pay half the cost if the other owner will also pay half the cost;
- permit the other owner to repair the fence and you will pay half the cost; or
- pay half the cost of having the fence repaired by a third party.

Note: “Cost” may include labour, equipment hire and materials.

The other owner or owners have 14 days to object. They must notify you in writing of the objection. If they object, you may apply to the Magistrates Court nearest to where the fence is situated for an order.

If they do not object within 14 days you may repair the fence. If a contribution is not made you will be able to recover half the cost of repairs from the other adjoining owner or owners by referring the matter to the Magistrates Court.

If the adjoining owner or owners object or do not agree to pay, you must apply to the Magistrates Court for an order. Where the adjoining owners have agreed to the repair or the court has ordered the repair, both owners must allow access to enable the dividing fence to be repaired.

SPECIAL CASES

- If the dividing fences was built partly by one neighbour, and partly by the other neighbour, each neighbour is responsible for the cost of repairing the part of the fence he or she built.

REDEVELOPMENT OF PROPERTIES

If your adjoining owner redevelops his/her land by demolishing existing buildings or erecting new ones, he/she may ask for a contribution for a new fence.

This may occur if the existing fence is of a lower standard than a sufficient fence, is erected other than on the boundary line or is in need of repair or replacement. It may also occur because the adjoining owner wants a new fence.

Development approvals by some local governments require the developer to build new fences or require that they be to the local government's satisfaction.

This does not prevent the adjoining owner from serving notice under the Act on the other owner seeking a contribution for half the fence construction or repair costs.

For a claim to be successful it will depend on whether the fence was in a condition requiring its replacement.



Repairing without notice

Where a dividing fence is damaged or destroyed in whole or in part by flood, fire, lightning, storm, tempest or accident, the owner on either side of the fence may immediately repair the fence without notice. The party who repaired the fence is then entitled to recover half of the expenses of doing so from the owner of the adjoining land through the Magistrates Court.

However, it is suggested that despite this right of action, it is better to try to give notice of your intention to repair the fence. Try to reach agreement on payment for repairs before taking court action.

WHAT HAPPENS IF THE FENCE IS DAMAGED BY YOUR NEIGHBOUR?

Situations may arise where you consider that your neighbour or neighbours should be paying for the entire repair of the fence because it has been damaged by their actions or inaction.

The Act only recognises a limited set of circumstances where an adjoining owner or owners who are at "fault" are bound to repair or renew a dividing fence at their cost. These are where the dividing fence is damaged or destroyed in whole or in part by fire, or by the falling of any tree (or portion thereof). An element of neglect on the part of the adjoining owner or owners from whose land the fire originated or the tree fell must also be evident.

For all other fence damage the adjoining owners are liable to join in and contribute in equal proportions to the repairs.

If your neighbours are bound to repair the dividing fence, at their cost, according to the above, and fail to do so, you as the adjoining owner may repair or renew the fence. You may then recover the whole cost of doing so from your neighbours by referring the matter to the Magistrates Court.

It is better to maintain harmony with neighbours by first negotiating with them to repair the fence.

Tenant and landlord

Special rules apply to tenants and landlords. As a tenant you do not have to pay for the cost of construction or repair of a dividing fence unless the term of the lease is for a period of five years or more.

If the term of the lease is between five and seven years, the landlord must pay three quarters of the cost and the tenant one quarter.

Example (a)

Total cost of construction or repair	\$400
Half cost to each owner = \$200 each	
Landlord's share	\$150
Tenant's share	+\$ 50
	<hr/>
	=\$200

If the term of the lease is longer than 12 years the tenant must pay the whole of the cost.

Example (c)

Total cost of construction or repair	\$400
Half cost to each owner = \$200 each	
Landlord's share	\$ Nil
Tenant's share	+\$200
	<hr/>
	=\$200

If the term of the lease is between seven and twelve years, the landlord and the tenant must each pay one half of the cost of construction or repair of the dividing fence.

Example (b)

Total cost of construction or repair	\$400
Half cost to each owner = \$200 each	
Landlord's share	\$100
Tenant's share	+\$100
	<hr/>
	=\$200



In this explanation, the cost is half the total cost of construction or repair of the dividing fence. This follows the general rule that each adjoining owner is to pay half the total cost of construction or repair of a dividing fence.

Strata titles

Where adjoining land is owned under a strata title, a claim may still be made against the owners for a contribution for constructing or repairing a dividing fence.

The owners of the strata title land may be:

- the strata company; or
- another person, depending on the nature of the strata scheme and the by-laws of the strata company. It will also depend on whether a person has lodged a notice for recording on the strata/survey-strata plan with the Registrar of Titles in accordance with section 123A(3) of the *Strata Titles Act 1985* (WA).

The name of the strata company and information about this type of strata scheme, the by-laws of the strata company and whether a notice has been recorded on the strata/survey-strata plan can be obtained from the Customer Services Branch of Landgate, 1 Midland Square, Midland WA, Phone: 9273 7373.

Note: There are fees payable for this information.



Liability for upkeep and maintenance of dividing fences – strata title

For most schemes (single tier strata schemes and survey-strata schemes), unless an objection has been lodged or a law has been registered on the plan, then:

- if the fence divides a strata lot and the adjoining property (which is not part of the scheme), the owners of the strata lot and the adjoining property are liable;
- if the fence divides common property and the adjoining property (which is not part of the scheme), the strata company and the owner of the adjoining property are liable;
- if the fence divides two (2) lots in the strata scheme, the owners of those lots are equally liable;
- if the fence divides a lot and common property in the scheme, the owner of the lot and the strata company are liable;

In other schemes (for example in a multi storey scheme), the strata company and the owner of the adjoining land are equally liable for these costs.



Negotiating with your neighbour

Although informal discussions are okay, it is better to have agreements 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. Note that agreements between owners with regard to the cost of erecting or repairing dividing fence override the Act.

It is in both neighbours' interests to attempt to resolve dividing fences matters between themselves in a courteous and friendly manner. The *Dividing Fences Act 1961* encourages agreement between owners of adjoining land, and any such agreement overrides the Act.

There are many steps that can be taken to reach agreement with a neighbour to provide for dividing fences. These include:

- approaching your negotiation with an appropriate communication style;
- identifying key needs you would like to have met. Recognise your neighbour may have competing needs, try to acknowledge these;
- starting the negotiation with a positive statement about your mutual needs;
- gaining agreement on common ground during the negotiation, this will help identify the points of difference between you and your neighbour;
- being aware that you may have an ongoing relationship with your neighbour – be reasonable, pushing too hard or becoming adversarial will alienate your neighbour and possibly harm your future relationship;
- recognising that you have not only dividing fences rights, but also responsibilities;
- remembering that where both parties are satisfied, each will work to make the agreement and relationship succeed.



ENTERING YOUR NEIGHBOUR'S PROPERTY

Where an agreement or court order exists, or where the provisions of the Act are being followed, a contractor or person erecting or repairing a fence has access to the adjoining property. This access is "at all reasonable times" to effect the erection or repair of a dividing fence.

Before repairing or constructing a fence, you should:

- inform your neighbour of what you are doing;
- tell them that you may need to go onto their land to construct or repair the fence; and
- obtain your neighbour's agreement before undertaking any work relating to dividing fences.

You should be careful not to enter onto, or interfere with your neighbour's property unless it is necessary to carry out the work.

LEGAL ADVICE

Where you have failed to obtain agreement with an adjoining owner, it may be advisable to obtain legal advice before making any commitments or carrying out any fencing or associated work that would involve significant cost or before starting legal proceedings.



Other matters to be aware of

WALLS CONSTRUCTED ADJACENT TO LOT BOUNDARIES

These walls, such as a house wall, garage wall, parapet wall and a shed or the like, are built solely on one property under a building licence and belong to the owner who constructed the wall.

Responsibility for construction and maintenance rests with the owner of the land on which it is constructed.

An adjoining owner is not permitted to paint, render or attach anything (such as pot plants, clotheslines and basketball hoops) to the wall without the permission of the owner of the wall. It is suggested that any such permission be in writing.

A boundary wall is not a dividing fence and either adjoining landowner can still erect a sufficient fence along the boundary line.

TREE DEBRIS, ENCROACHING ROOTS AND OVERHANGING BRANCHES

Trees are a highly desirable part of our landscape and essential to our environment so a certain amount of inconvenience associated with them should be tolerated.

Information on your rights about tree nuisance is available online at: www.legalaid.wa.gov.au/InfoAboutLaw.

You should be aware that these issues are not covered under the *Dividing Fences Act 1961*.

Only where a dividing fence has been destroyed in whole or in part by the falling of a tree does the Act provide for the adjoining owner to repair the fence immediately and recover the costs in the Magistrates Court.

Under Schedule 3.1 of the *Local Government Act 1995*, your local government may serve a notice on owners of land to ensure that a tree on that land that endangers any person or thing on adjoining land is made safe. Contact your local government authority for more information.

FENCES CONSTRUCTED ADJACENT TO A DIVIDING FENCE

Situations may arise where property owners wish to construct a fence on their own land adjacent to an existing dividing fence. The Act does not prevent this second fence from being erected, however, it is recommended that you contact your local government to find out whether it has any restrictions on structures of this type.

Your adjoining owner may still seek your contribution for maintaining the existing dividing fence, even where you erect a second fence on your property adjacent to it.

YOUR PRIVACY

If the dividing fence does not provide adequate privacy, contact your local government for more information on their local fencing laws. Some local governments permit the use of lattice attached to a fence or allow you to erect a privacy/garden screen as a separate structure from the fence.



Swimming pool barriers

REQUIREMENT TO HAVE A SAFETY BARRIER

Western Australia has legislation to restrict unsupervised access to a private swimming or spa pool by young children. If the structure contains water to a depth greater than 300mm and is meant for swimming, wading, bathing or like activities then the structure is required to have a barrier installed.

Private swimming pools are required to be isolated using appropriate safety barriers (e.g. fencing, gates, walls, enclosed in a building) that must comply with Part 10 of the Building Regulations 1989. Generally, swimming pools are required to be isolated by fencing unless otherwise permitted by the Regulations.

For swimming pools installed before 5 November 2001:

- access from adjoining properties and from the road is to be protected;
- access from the house to the pool is to be protected, by ensuring all doors and windows leading from the house to the pool area are in accordance with Australian Standard 1926.1;
- any gates allowing entry into the pool area must swing in a direction other than towards the pool area.

For swimming pools installed on or after 5 November 2001 the following additional requirements also apply:

- access from the house to the pool is to be protected by a barrier fence and by ensuring all windows that are along a wall of the house that form a barrier to the pool area are in accordance with Australian Standard 1926.1;
- doors leading from the dwelling to the pool area are not permitted, unless exempted by the Regulations and approved by the local government.

Local governments are required to inspect and ensure compliance of these barriers at least every four years.

A portable wading pool that is capable of being filled with water to a depth of no more than 300mm does not need to have a barrier.

Regardless of the barrier requirements, homeowners and parents need to be aware that although these types of pools do not require a mandatory child safety barrier, they are still dangerous to young children.

BARRIER DESIGN AND CONSTRUCTION

The design and construction of barriers must be such that they comply with the requirements of Australian Standards 1926.1 - 1993 - (Fencing for swimming pools).

Legislation in Western Australia requires that the installed barriers are maintained in compliance with the Australian Standard at all times. If the barrier does not comply with the requirements, upon local government inspection, infringement notices may be issued.

PENALTIES FOR NON-COMPLIANCE

Penalties for non-compliance can range from on-the-spot fines issued by local government to court imposed penalties if:

- an appropriate barrier is not installed; or
- under inspection, parts of the barrier are found not to comply.

Under inspection, a local government may:

- impose a penalty of \$100 without first issuing a defect/compliance notice;
- impose a penalty of \$200 if a defect/compliance notice has been issued to the occupier, and should the pool owner/occupier fail to comply with a defects/compliance notice; or
- begin legal proceedings, where a maximum penalty of \$5,000 and penalty of \$250 for each day may apply until the barrier is deemed to comply.

For more information about swimming pool barriers, contact your local government or download a brochure at:
http://www.dhw.wa.gov.au/193_361.asp



Giving notice to fence

SAMPLE LETTER

(Your address)

Dear Neighbour

I am writing to advise that I propose to erect a dividing fence on the boundary line between our properties (include property addresses).

The fence I wish to erect is a (specify here the description of the fence, ie. type, height, material and the boundary line to be fenced).

I have obtained quotes (copies attached) and propose to accept the quote from (fencing company - eg. ABC Fencing Company) for (amount - eg. \$400). Your share of the dividing fence will be (half of the cost - eg. \$200) which is half the cost of a sufficient fence according to the local government laws in the area.

Please let me know within 21 days if you agree or disagree with this proposal.

If you would like to discuss this with me I can be contacted on telephone number (your number) or by email at (your email address).

If within 21 days we cannot reach agreement or you do not respond, the Dividing Fences Act 1961 provides for the matter to be determined in the Magistrates Court.

(Your signature, name and date)

Giving notice to fence

SAMPLE FORM

Giving Notice to Fence - Western Australia

date.....

To my Neighbour..... From.....

Address..... Address.....

..... Phone.....

..... Email.....

Dear Neighbour

I would like to fix/erect the dividing fence on the boundary line between our properties and hope that you will share the costs with me.

The fence is located between my land (address).....

and your land (address).....

Length of Fence.....Height of fence.....

Type of fence.....

Attached is copy of the quotes I have obtained.

The total cost of the fence fromincluding GST is \$.....

Your half share of a sufficient fence according to the local government laws in the area including GST is \$.....

If within 21 days of receiving this notice you do not agree to *repair or *replace (*delete one) our adjoining fence I will apply as per the Dividing Fences Act 1961 to a Magistrates Court for an order that describes the type of fence to be constructed and how much each party will contribute.

Yours sincerely signed.....

I.....of.....acknowledge receipt of this 'fencing notice' and agree to *repair or *replace (*delete one) the dividing fence on the boundary line between our properties as proposed.

I will pay my share of \$..... to *you or *the fencer. (*delete one)

Yours sincerely signed.....

Print NameDate.....

This form can be printed out from the website: www.dhw.wa.gov.au

Disclaimer: this form provides general guidance and information only and is current at time of printing. The State of Western Australia and its servants and agents expressly disclaim liability, whether in negligence or otherwise, for any act or omission resulting from reliance on this document or for any consequence of such act or omission.

Claiming for a fence already erected

(Your address)

Dear Neighbour

I am writing to seek your contribution to the dividing fence between our properties (include property addresses) that was constructed (eg. 6 months ago) when your land was vacant. The Dividing Fences Act 1961 allows owners of adjoining land to seek contribution from their neighbour for a fence that has already been constructed once the adjoining owner has completed a construction of a building or structure, or occupies a building or structure on the land.

Now that you have completed your construction, I wish to seek half the value of the dividing fence which cost (eg. \$400) to erect. Under the local government fencing laws the fence is classed as a sufficient fence.

I estimate that the value of the fence is current and therefore seek payment of your half share of the fence, that is (half of the cost - eg. \$200).

Please let me know within 21 days if you agree or disagree with this proposal. I have attached copies of the quotes obtained and the invoice and receipt we received from the fencing contractor.

If you would like to discuss this with me I can be contacted on telephone number (your number) or by email at (your email address).

If within 21 days we cannot reach agreement or you do not respond, the matter may be determined in the Magistrates Court.

(Your signature name and date)

Notice to share cost for repair

(Your address)

Dear Neighbour

I am writing to seek your agreement and contribution for the repair of the dividing fence which separates our properties, (include property addresses) in accordance with Section 15 of the Dividing Fences Act 1961.

The dividing fence is in need of repair because (give reasons eg. several pickets are missing).

I have attached copies of quotes to have the repairs done. I suggest we accept the quote from (company - eg. ABC Fencing) for (amount - eg. \$300). Your half share will be (half of the cost - eg. \$150).

Please let me know within 14 days if you agree or disagree with this proposal.

If you would like to discuss this with me I can be contacted on telephone number (your number) or by email at (your email address).

If within 14 days we cannot reach agreement or you do not respond, the Act provides that I may repair the fence and then recover half of the repair costs through the Magistrates Court.

(Your signature name and date)

Frequently asked questions

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Frequently asked questions

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Frequently asked questions

PROCEDURES FOR ERECTING A NEW FENCE

Do I need my adjoining neighbour's agreement before I erect a new fence?

If you wish to claim a contribution and the adjoining land is not vacant, there must be an agreement or a court order in place before erecting the fence.

Where the adjoining land is vacant, you do not need an agreement. If you do not obtain agreement, a claim for a contribution to the fence can be made on the owner when there is a substantial building erected on the land, or when the land owner occupies or permits the occupation of any building on the land.

You do not need an agreement if you want to erect the fence entirely at your own expense, and forego any right to contribution under the Act. The fence you erect must still be a "sufficient fence".

If you decide to erect a fence at your own expense, it is recommended that you give the adjoining owner the details of the proposal as a courtesy, and to enable them to make arrangements to protect their property or animals, etc during the construction process. A decision to erect a fence entirely at your own cost does not give you the right to enter the adjoining owner's property without their permission during the erection of the fence.

Do I have to have more than one quote to give to my neighbour when I approach him looking for his half payment to a new fence?

The Act does not specify a requirement for the obtaining of quotes but it is suggested that you should try to obtain at least two written quotes.

Frequently asked questions

Can I take down the existing dividing fence without my neighbour's agreement?

Once a dividing fence is erected, it becomes joint property. Both adjoining land owners are liable to maintain the fence, regardless of the contribution made to the cost of its erection.

Therefore either party cannot act unilaterally to remove, alter or damage or in any way affect the structural integrity of the dividing fence.

I am about to put up my new dividing fence and want to know where on the boundary it should go. Does it have to be located wholly on my property?

The fence should normally be placed along the boundary line, with half the structure in each property. Where this is not practical you may agree to locate the fence wholly in one or other property. You should record an agreement to do this in writing. The Dividing Fences Act 1961 allows for a fence to be considered a dividing fence even when it is not on the common boundary. This means both neighbours can be asked to contribute to the cost.

What should I do about my neighbour who is refusing to pay for half of the cost of the fence?

It is recommended that discussion and negotiation be held with the adjoining owner to identify the issues, such as whether the fence is on the correct boundary, are repairs needed, whether payment as an option is acceptable to all parties, etc.

Mediation services may be used to assist with dispute resolution. If the former attempts fail, the *Dividing Fences Act 1961* provides that the matter may be settled through the court.

Frequently asked questions

CLAIMING FOR A FENCE ERECTED ON VACANT LAND

The land next door is vacant but they have started building on it. How much of the building must be constructed before I can make a claim for half the cost of the fence?

Under section 13 of the *Dividing Fences Act 1961*, you can make a claim when a substantial building has been completed. This should not be confused with a building that is substantially completed. It is only once the building is complete that you may make a claim under this section of the Act.

How much time does the adjoining owner have to pay me my claim for half the fence cost now that a substantial building has been completed on his land?

The adjoining owner is required to pay within one month of the receipt of your claim. You may enter into an agreement with your neighbour to allow a longer time period or agree to accept payment by instalments. Such agreement should be in writing and signed and dated by both parties.

I built the dividing fences on my property when the adjoining land was vacant. There is now a substantial building erected on the vacant land and I want to now claim my share of the fencing. How much can I claim?

You may give the adjoining owner a notice claiming half the value of a sufficient fence as estimated at the date of claim.

Note: *This is not the same as current day market price for the fence, although the obtaining of a current day price for a similar fence may be useful in providing a base from which to estimate the value of the fence.*

Frequently asked questions

Do I have to contribute to the cost of a fence when my land is still vacant?

No, not unless you have agreed to contribute before the fence is erected or unless the adjoining owner obtains a court order, before the fence is erected, requiring you to contribute.

My lot was vacant and my neighbour has constructed a brick fence, do I have to pay for half of it?

No, not unless the sufficient fence (minimum standard) for a fence in that location is a brick fence. The minimum standard could be as a result of the local government's fencing local law or town planning scheme, or through a condition of sale imposed by the developer as a covenant. You would as a general rule have to contribute half the cost of a sufficient fence, this being the minimum standard required by your local government.

I am about to build and do not like the fence my neighbour just erected, and I do not want to pay him anything. Can I do this?

If the fence that is erected is a sufficient fence, ie. acceptable to the local government and in keeping with other fences in the immediate area, the adjoining landowner who erected it has a legal right under the *Dividing Fences Act 1961* to claim half payment of a sufficient fence when you complete your building.

My neighbour built his house first and erected a fence that I did not like. I wanted a green colorbond and he erected a wooden one. I have since built my house and erected a fence on my land. My neighbour has now given me a bill for the fence he erected. Do I have to pay?

Yes, the original fence is the dividing fence and you would be required to pay half the cost of it and also bear responsibility for a half share of the ongoing maintenance costs of the dividing fence. The cost for the erection and ongoing maintenance of the second fence would be yours entirely.

Frequently asked questions

My neighbour has claimed from me half the cost of the dividing fence he erected. I am the second owner of the property and feel that he should have got his money from the previous owner. Am I liable to pay the money claimed?

Yes, an owner or owners of adjoining land are liable to pay even if they were not the owners of the land when the fence was constructed, provided that no previous adjoining owners had paid a claim to the owner who erected the fence.

My neighbour and I are at about the same stage of building our houses. He wants a metal fence and I want a fibrous cement one that goes into the ground. I have a dog to contain and he could easily dig under a metal one. What can do about this?

The best way to erect a fence is by agreement with the adjoining owner. You should first try to resolve any differences by discussing the matter with the owner. You may wish to consult a mediator, who can assist you in resolving differences, before going to court.

If the owners cannot agree, the matter may be determined in the Magistrates Court.

My neighbour's fence is 10 years old. Do I have to pay for the half value of the fence when it was constructed or what it is worth now?

The requirement is for payment of half the value of the fence as at the date of claim. The person making the claim has to estimate the value.

If your neighbour erected a fence of a higher standard than a sufficient fence, as defined by your local government, unless you agreed to pay the higher cost, you would only have to pay half the cost of a sufficient fence.

If for example, a metal fence was erected and the sufficient fence, as defined by your local government, is a fibrous cement one, the obligation is for payment of half the cost of the lesser standard fence, being the fibrous cement one. The additional cost for the higher standard fence would be borne by the adjoining owner that requires it.

Frequently asked questions

REPAIRING

The fence has been damaged by my neighbours, why should I have to pay for half of it?

As a general rule, each of the adjoining owners must pay half the cost of repairs unless the adjoining owners agree to an alternative arrangement or the court rules differently. The *Dividing Fences Act 1961*, provides for specific situations when one owner who is 'at fault' pays the whole cost. These specific situations are where the fence is damaged by fire or by the falling of a tree, or part of it. There must be an element of neglect by the owner at fault in these specific situations.



The replacement of an existing fence with an entirely different type of fence, for instance replacing a damaged old picket fence with a new fibrous cement fence, is not a repair. This is regarded as an erection of a new fence and must be dealt with under Sections 9 and 10 of the Act if a contribution to the costs is sought.

Frequently asked questions

I have had my land surveyed and it shows that the dividing fence is out of alignment and my adjoining owner has some of my land. Who pays for the cost of the relocation of the fence onto the correct boundary and what steps should be followed to shift the fence?

The Dividing Fences Act 1961 in defining what a repair is, includes the realignment or re-erection of a fence. This means that the cost is liable to be shared equally by the adjoining land owners. The process for seeking a realignment of a fence is covered by Section 15 of the Act.

Our dividing fence is an old picket fence that needs to be replaced. I want to put up a new brick fence. If I do so, what procedures do I need to follow?

The *Dividing Fences Act 1961* only applies to the erection of the first fence and then its repair. Replacing an existing fence with an entirely different type of fence is regarded as the erection of a new fence. Thus the procedure for erecting a fence must be followed where a fence is replaced with an entirely different one (refer to step 1 – giving notice). If an old fence is replaced with a new fence that is the same as the old fence, it is classified as a repair, and the procedures relating to repairing fences must be followed.

I believe that the dividing fence is fine and can be simply repaired in a few places and maybe realigned and straightened up a bit. My neighbour does not agree and told me he wants a new one. Do I have to pay half for a new fence just because he wants it?

No, you would not have to pay for a new fence unless you agree to this or your neighbour takes you to court and is successful in obtaining an order for you to contribute to a new fence. In such a dispute, it would be necessary for the owner taking the legal action to prove that the fence is in need of replacement and cannot or should not be repaired. That owner would then generally seek to support such a case through the presentation to the court with photographs and testimony from expert witnesses.

Frequently asked questions

My neighbour's trees are pushing against the fence and have damaged it. I have asked that he cut the trees down or at least cut them back and repair the fence at his cost. He advised that as far as he is concerned the trees stay and that he will only pay half the cost of the repair. What are my rights?

You would be required under the Dividing Fences Act 1961 to contribute to half the cost of the repairs to the fence. If you refuse to pay your neighbour may seek a court order.

Do I have to contribute to the repair of the dividing fence if my land is vacant?

Yes, subject to Part III Section 15 of the *Dividing Fences Act 1961*.

The neighbouring property is owned by the Department of Housing and Works (DHW) and the fence is in need of repair, what should I do?

State government departments are not bound by the *Dividing Fences Act 1961*, however you should contact your nearest DHW office to discuss the repair or replacement options.

Useful contact numbers and links

CITIZENS ADVICE BUREAU

(Access to community lawyers/mediators- small fee)

www.cabwa.com.au

email: cab@cabwa.com.au

9221 5711

MAGISTRATES COURT

(To resolve civil disputes in a court of law)

www.justice.wa.gov.au or www.magistratescourt.wa.gov.au

9425 2247

LANDGATE

(Land title searches, adverse possession information)

www.landgate.wa.gov.au

email: mailroom@landgate.wa.gov.au

9273 7341

HEALTH DEPARTMENT

(Environmental Health Branch – asbestos issues)

www.population.health.wa.gov

9222 4222

DEPARTMENT OF LOCAL GOVERNMENT AND REGIONAL DEVELOPMENT

(To obtain a contact number for your local government office)

www.dlgrd.wa.gov.au

email: info@dlgrd.wa.gov.au

9217 1500

STATE LAW PUBLISHER

(To view legislation)

www.slp.wa.gov.au

email: sales@dpc.wa.gov.au

9321 7688



Further information on Dividing fences

call: 1300 720 715

email: dividingfences@dhw.wa.gov.au

This booklet is available online at: www.dhw.wa.gov.au
DHW136 1008