



Most neighbours who own homes and share a common boundary require fences. Sharing a fence can sometimes lead to disputes between adjoining home and land owners over the replacement or maintenance of the dividing boundary fence.

The obligations and responsibilities of land owners who are having trouble coming to an agreement are outlined in the Dividing Fences Act 1991 ("the Act").

When there is no dispute, any adjoining land owners are able to come to their own amicable arrangement for the provision of a dividing fence. Neighbouring owners may come up with a labour, trade or a financial split for any percentage variation that can be agreed upon. The Act is in place to assist neighbours who are unable to come to an arrangement independently.

Before anybody engages a fencing contractor, it is really important to find out first if the title of your (or your neighbour's property) is subject to any restrictive covenants. It is also a good idea to give the local Council a call to check if there is heritage protection applicable to your or your neighbour's property or any other council requirements that need to be considered.

Where one property owner requires the construction, replacement or repair of a fence but the adjoining owner disputes the requirement, the steps to be taken are usually as follows:

- Try to negotiate amicably with the neighbour and explain the details.
- Issue a written notice under Dividing Fences Act 1991 Section 11 to the adjoining owner with your address, your neighbour's address and which explains the type of fencing required, the line of the proposed fence, details of cost or quotes obtained and the cost share proposal.

Allow the adjoining owner one month to consider the proposal;

- Get a survey report where applicable;
- Contact a community justice centre for assistance in order to mediate the issue.

Any resolution that can be achieved by sensible negotiation between the parties will eliminate the risk of any long term hostility between close neighbours.

Where all efforts have been exhausted

between the property owners, and one month has passed since the notice was provided to the adjoining land owner, then it may become necessary to apply to the Local Court or the NSW Civil and Administrative Tribunal for an order to decide the matter under The Dividing Fences Act.

NCAT or the Local Court will interpret The Dividing Fence Act to make a determination that allows each neighbour to make a financial or labour contribution to the construction or repair of a fence of creating a dividing fence of "sufficient standard" to alleviate the boundary problem.

Sometimes damage to an existing fence that requires repair or replacement is clearly caused by one of the adjoining land owners. In this case NCAT or the Local Court will most likely find that the neighbour that is responsible for the damage is liable for all of the replacement or repair cost under Section 8 of the Act.

In order to best decide how to resolve your fencing dispute, NCAT or the Local Court they take into consideration things such as:

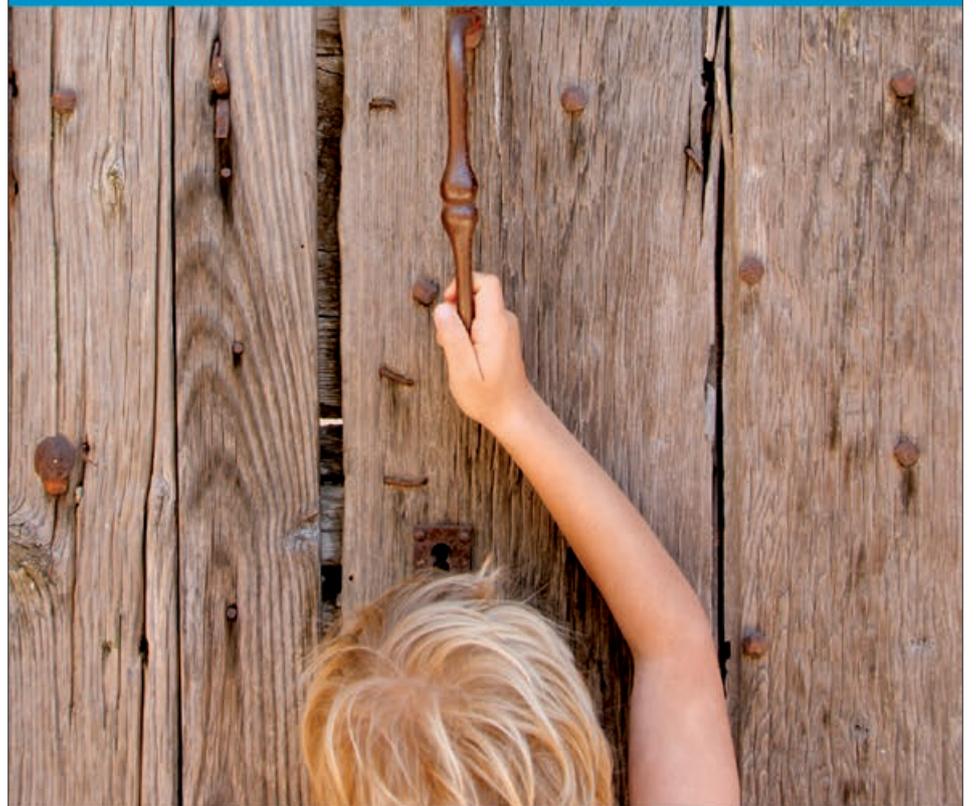
- Restrictions on the title or heritage listing;
- Local Government policies and planning instruments;
- What type of fence you had before or that the other neighbours have; and,
- What you need the fence for and its existing use, and who is able to contribute labour or materials.

When a decision is made under Section 14 of the Act by NCAT or the Local Court, the order may determine whether there needs to be a fence, what it will be made from and who will be paying which amount. NCAT or the Local Court can also help to determine who is responsible for which aspects of the labour where tradespeople are not to be used and when the work is to be done and may also award compensation to a party who may have suffered a loss. The court may simply find that costs should be shared equally.

If you have a fencing dispute that may need to go to NCAT or the Local Court or need more information you should seek assistance from your local solicitor.

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