

# Boundary fences

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To get free legal information call 1300 366 611, drop into our Hobart or Launceston office (no appointment necessary) or use the Legal Talk chat function on our website. We are open Monday to Friday, 9am to 5pm.

A lawyer can listen to your story and help identify the next steps you can take.

Putting up or repairing a boundary fence between neighbouring properties is a common neighbourhood issue. If done properly any problems that the neighbours may have can be sorted out.

## What do I need to know before I begin to erect or repair a boundary fence?

There are 2 things to know **BEFORE** you begin to erect or repair a boundary fence:

- (1) where the boundary lies. If you are uncertain, you may need to get a land surveyor to ensure that any fence is put in the right place. You can only ask a neighbour to share in the costs of a fence if the fence is on the boundary between you and your neighbour.
- (2) let your neighbour know 21 days before you begin to make repairs if you want them to share in the costs. Use [this form](#) if you want to repair an existing fence, or [this form](#) if you want to build a new fence along the boundary. Your neighbour has 21 days after receiving the appropriate form to let you know if they are not happy to share the costs.

The [Boundary Fences Act 1908](#) ('the Act') consolidates the law in relation to boundary fences in Tasmania, in particular the repair and erection of boundary fences. The Act applies to all land except for unoccupied Crown land, public reserves, any roads which remain the responsibility of a local council, or land owned by the Forestry corporation. Further, the provisions of the Act do not apply to any unsold land which adjoins land already owned by one person [\[s.71B Conveyancing and Law of Property Act 1884\]](#); for example, separate parcels of land contained in a subdivision which have not yet been sold to individual purchasers.

## Who pays the cost of erecting or repairing a boundary fence?

### Erecting a Boundary Fence

Owners of adjoining land not divided by a sufficient fence need to pay or contribute to the erection of a sufficient or rabbit-proof fence. The neighbours can agree on their contribution or have this decided by an arbitrator. Generally, neighbours contribute equally.

### Repairing a Boundary Fence

If a boundary fence needs to be repaired or replaced, the landowners on either side pay or contribute half each.

## What is meant by the term 'sufficient fence'?

'Sufficient fence' means a fence of the description and quality agreed between neighbours or awarded by an arbitrator where such fence is in a city or town or adjacent to a house. Otherwise, a fence which is ordinarily capable of resisting sheep and cattle.

## How do I get my neighbour to pay?

You need to serve on the owner of the adjoining land either a [Notice to Fence](#) or a [Notice to Assist in Repairing a Fence](#). The Notice can be served either personally on the owner or sent by post and you must give 21 days for your neighbour to reply. If the fence has been erected without a formal Notice having been served on the adjoining landowner, or any written or oral agreement made between the landowners, the adjoining landowner is not liable to pay any contribution towards the cost of the fence.

## What if I am served with a Notice to Fence and I do not agree?

A neighbouring landowner may object to any proposal contained in a Notice to Fence within 21 days of the date the Notice was served. The objection must be in writing stating the grounds for objection and must be served on the person who gave the Notice. If agreement cannot be reached at the objection stage, then all disputes, questions and differences must be determined by arbitration. This right of objection also applies to any proposal or Notice to Repair Existing Fence.

## What happens if I do not formally object and I still do not agree with the proposal?

If no formal objection has been received and the parties have not agreed within 30 days from the date of service of the Notice to Fence, the person serving the Notice may recover from the other person half the cost of erecting the fence within a period of 2 years from the date the fence was completed, together with interest at the rate of 6% per annum. This provision also applies to any person who neglects or fails to comply with their part of an agreement for the space of three months or to carry out an award made under the Act.

## What do I do if my neighbour and I can't agree?

In this situation, an arbitrator will decide for you. The arbitrator is chosen by the parties, or at least, accepted by them. The decision of an arbitrator is called an award. The parties going to arbitration agree to be bound by this award. Section 26 of the Act says that if a matter, dispute, question, or difference arises between any adjoining owners, the matter shall be referred to, and decided by arbitration according to the [Commercial Arbitration Act 2011](#). What the arbitrator decides is legally binding.

Mediation is another way of resolving a dispute. Mediation may assist the parties to the dispute to come to their own resolution. Any agreement resulting should be put in writing and signed by all interested parties. Such an agreement may not necessarily be legally binding.

## As a tenant of the premises, do I need to pay?

Generally, a tenant does not need to pay although a tenant should check the provisions of their lease. Under section 37(1) of the Act, it is the owner (not the tenant in possession of the property) who needs to erect or repair a fence.

## What if an award has been made in my favour and still my neighbour refuses to pay?

You can sue your neighbour in court. Depending on the amount of money you are seeking, or whether you are simply enforcing an award will determine which court action should be made in. You should seek legal advice before starting legal action.

## Am I able to enter my neighbour's property to repair a fence?

A person (or their tradesperson) is allowed to enter their neighbour's property to repair a fence where there is no access to the area where the fence is to be repaired.

Entry on to a neighbour's land must be at reasonable times whilst the work is being completed. If the area being accessed is in crop, or is a garden, orchard, shrubbery, or plantation, then you need to get permission to access the area. If there is any damage caused because of the neighbour (or their tradesperson) that is wilful or contrary to the provisions, the owner of the damaged land is entitled to compensation to cover the damage.

This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.