

Dividing fences legislation

The legislation regulating dividing fences on New South Wales land is the *Dividing Fences Act 1991* (NSW).

In determining whether an existing fence is a “sufficient dividing fence” for the purposes of the legislation, the Court will consider all of the circumstances, including:

- the purposes for which the adjoining lands are used or intended to be used;
- the privacy or other concerns of the adjoining land owners;
- the kind of dividing fence usual in the locality;
- any policy or code relating to dividing fences adopted by the local Council; and
- any relevant environmental planning instrument (section 4).

Who is liable to pay for the fence?

Each owner is required to contribute to the carrying out of fencing work that results or would result in the provision of a dividing fence “of a standard not greater than the standard for a sufficient dividing fence” (section 6). Generally, this equates to a standard wooden paling fence. If one of the neighbours would like to install, for example, a metal fence (that is, “a standard greater than the standard for a sufficient dividing fence”), then the other neighbour is only required to contribute half of the cost of a standard wooden paling fence. The shortfall needs to be paid by the neighbour who would like the metal fence.

How do I get my neighbour’s agreement to contribute towards the cost of a new fence?

The legislation requires you to provide a formal notice in writing to your neighbour prior to commencing any fencing work (section 11). This notice requires you to specify the boundary line on which the fencing is proposed, the type of fencing work to be carried out, and the estimated cost of the fencing work.

What if we can’t agree?

It is quite common for neighbours to not necessarily agree on issues concerning fencing between their properties. In that case, neighbours should approach their local Community Justice Centre in an attempt to reach an agreement (see <http://www.cjc.nsw.gov.au/>). Otherwise, proceedings can be commenced in the Local Court.

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