



Dividing fence matters

This fact sheet provides general guidance on the [Dividing Fences Act 1961](#) (the Act) and its interaction with local government by-laws in relation to the construction and maintenance of dividing fences in Western Australia. The Act provides a process for sharing costs between neighbours, the determination of boundaries and a mechanism for courts to deal with disputes over dividing fences in specific instances.

Any agreement, contract or covenant relating to dividing fences between owners of adjoining land overrides the provisions of the Act and in most cases a dispute between neighbours will be dealt with by the Magistrates Court. Therefore when issues with a dividing fence occur it is best to try to approach the owner of the adjoining land, discuss issues, and try to resolve matters together.

The Act does not deal with the following common matters but where to look for further information is provided.

Building work being completed under a building permit

Building work that may involve the removal of a fence including boundary and retaining walls is covered under the *Building Act 2011*.

Fence height restrictions and encroachments are set by local council by-laws in most instances.

More information:

See our [Work affecting other](#) land webpage.

Contact your local government. A directory of local government contact details is available on the Department of Local Government, Sport and Cultural Industries.

www.mycouncil.wa.gov.au

(08) 6551 8700

Commonwealth, State or local government land

Where the adjoining land is owned by the Commonwealth, State or local government and is used for public purposes, the Crown is not required to contribute to the costs of erecting or maintaining the fence under this Act.

More information:

Department of Communities

The Housing Authority can provide tenants of Public Housing with advice on dividing fence issues.

[Housing Authority Maintenance Policy](#)

1300 137 677

Tree debris, encroaching roots and overhanging tree branches

These include:

- branches or roots growing past the fence line; and
- trees pushing on or damaging the fence (without falling on it).

More information:

General tree nuisance issues are civil disputes between neighbours and are resolved in the Magistrates Court, if mutual agreement cannot be reached.

www.magistratescourt.wa.gov.au

(08) 9425 2222

Secondary fences

Situations where a property owner wishes to construct a fence on their own land adjacent to an existing dividing fence, rather than replace the one that is already there is not covered.



Asbestos cement fencing

Manufacture and use of asbestos is now banned in Australia. Therefore the repair of damaged sheets would require the replacement of the fence with newer non-asbestos fencing.

More information:

For information on safe handling of asbestos products and asbestos in the home, contact:

- the relevant local government environmental health officer www.mycouncil.wa.gov.au; or
- the Department of Health, Environmental Health Directorate (08) 9388 4999.

Swimming pool barriers

Temporary fencing to enclose a swimming pool while a dividing fence is being constructed or repaired. Or the type of fence to be used where a dividing fence forms part of a pool enclosure.

More information:

The Building Regulations 2012 allow a dividing fence to form part of the enclosure of swimming or spa pool, provided that the fence satisfies the requirements of the Australian Standards. [See our Swimming, spa and portable pools](#) webpage.

Contact your local government:

www.mycouncil.wa.gov.au

Materials or type of fence to be used in construction or repair

Replacement of a damaged fence where the materials used will differ from what was there originally, including when the original material is no longer available.

More information:

Either owner may make an application to the Magistrates Court for determination where an agreement cannot be reached. The court will consider the type of fence typically constructed in the area, how the lands are used and any local laws prescribing the type of fence for your area.

www.magistratescourt.wa.gov.au

(08) 9425 2222

What is a dividing fence under the Act?

A dividing fence is a 'sufficient fence' that separates the land of different owners, whether on the common boundary of adjoining lands or in a line other than the common boundary.

A sufficient fence is described as:

- a fence prescribed by a local law of the relevant local government; or
- a fence agreed upon by adjoining owners provided that it complies with the relevant local law.

Where no local law exists 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 court.

If you erect a dividing fence of a higher standard than a sufficient fence before obtaining the agreement of the adjoining owner, you may only claim half the cost of erecting and maintaining a sufficient fence as defined above.

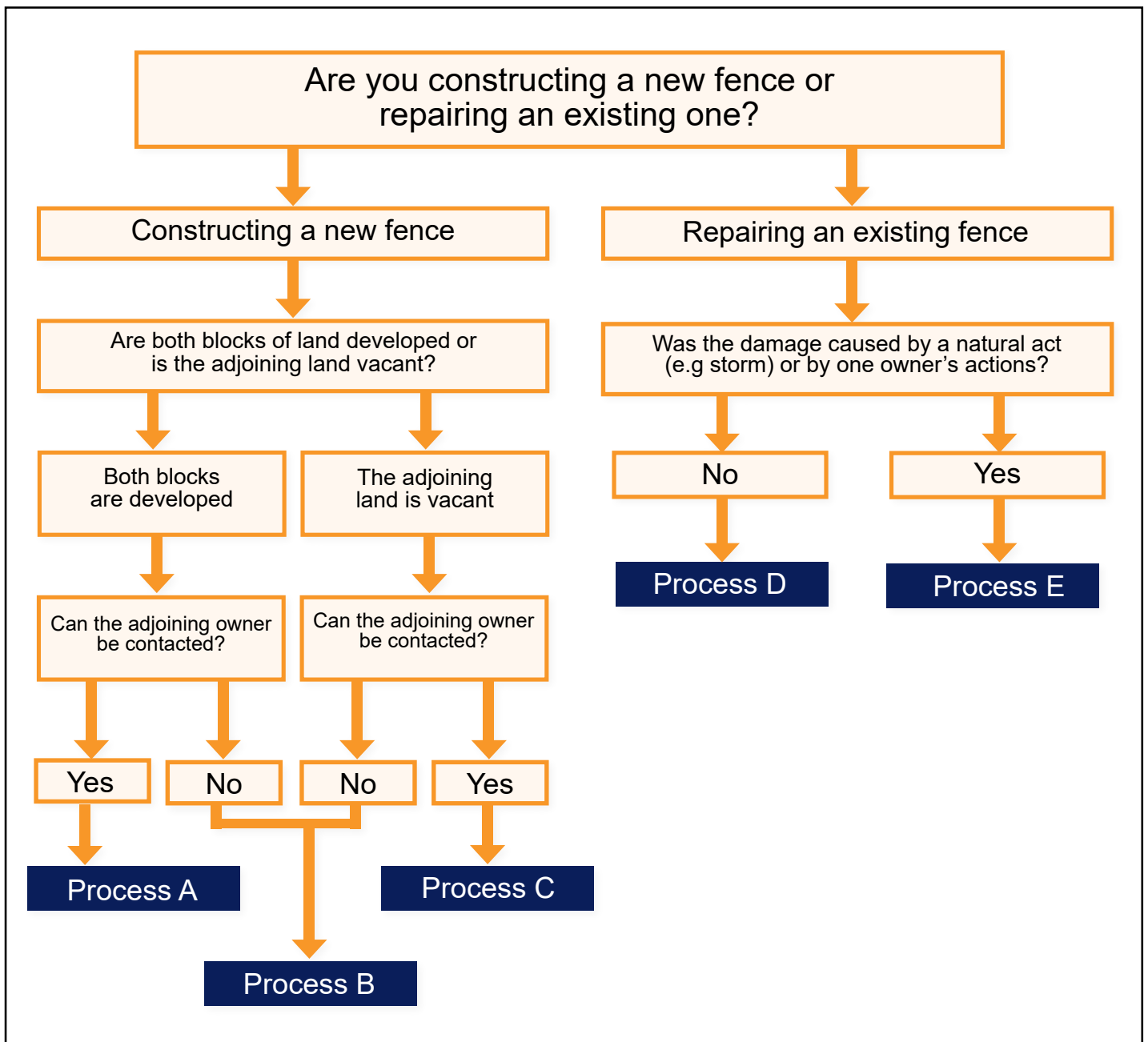
If you are unsure of what a sufficient fence is, visit your local government's website or contact your local government.

Legal Aid

Legal Aid has produced a [fact sheet and video](#) with information on tree nuisances and other types of boundary issues and what your rights and obligations are if you have a problem with a neighbour. Their website also provides information on common neighbourhood problems, negotiations, mediation and dispute resolution.

Legal Aid website: www.legalaid.wa.gov.au.

Processes for resolving a dividing fence matter



Process A: Constructing a new fence on developed land

Step one: Negotiate with your neighbour

An agreement between neighbours has priority over the requirements of the Act, therefore when issues with a dividing fence occur it is best to approach the owner of the adjoining land and try to resolve matters together.

In order to reach agreement with a neighbour, keep in mind that they have a right to protect their property and animals, especially during construction.

You should also be considerate of concerns they may have about their capacity to pay and discuss the option of a longer payment timeframe or payment plan.

While the Act does not specify the requirements for obtaining quotes, having quotes and a clear understanding of the costs can assist with obtaining a mutual agreement.

Informal discussions are a good starting point, but agreements in writing and signed by both parties 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 the courts.

Step two: Issue written notice

If for any reason an agreement is unable to be reached, the Act provides a mechanism for the construction of a new dividing fence, most often with a written notice. The notice must be in writing, signed and delivered in person or by registered post to the person's usual or last known place of residence.

Under the Act, to erect a new dividing fence, written notice must be provided to the neighbouring owner which sets out:

- the boundary to be fenced; and
- a proposal for fencing which includes:
 - the type of work to be done (new fence, repair or realignment);
 - the kind of fence (e.g. material and colour) you wish to put up;
 - who will organise to get the work done;
 - where it will be located (especially if not on the official boundary line); and
 - how the costs will be paid and shared.

You may also wish to check your 'Certificate of Title' with Landgate to check for any [covenants](#) that relate to dividing fences on your property.

Landgate website: www.landgate.wa.gov.au

Step three: Defining the boundary line

When neighbours disagree on the accurate location of a boundary line both owners can agree to have it established by a land surveyor and share the costs.

However, if one owner believes the surveyor is not necessary, the Act provides a mechanism for resolving the process described below involving Owner A and the neighbour, Owner B.

Owner A gives notice to the adjoining owner B stating that he/she is going to engage a surveyor to define the boundary line.

If after receiving the notice, Owner B thinks a surveyor is unnecessary, Owner B has seven days to place pegs where they think the boundary is, or if Owner B wants to engage a surveyor, they have seven days to engage the surveyor and recover half the cost from Owner A. In both scenarios, Owner B must give Owner A notice of the action they have taken as soon as practicable.

Where Owner B has not used a surveyor, but has defined the boundary by pegs and Owner A is still not satisfied, Owner A must wait one month after giving the notice to engage a surveyor, and Owner A may then have the boundary line defined by the surveyor.

If the surveyor finds the boundary is where Owner B initially placed the pegs, then Owner A has to pay the full cost of the surveyor. Otherwise the Act provides that both Owner A and Owner B share the cost in all other cases.

Land Surveyors Licensing Board website:
www.lslb.wa.gov.au

Step four: Applying to the court

Where the owners do not agree about the need for the fence or the kind of fence to be constructed, either owner may apply to the Magistrates Court within 21 days of the notice being received.

In making its order, the court will consider the type of fence typically constructed in the area, how the lands are used and any local laws prescribing the type of fence for your area.

The relevant court closest to the properties can determine:

- the need for and the kind of fence to be constructed;
- the portion of fence to be constructed by each owner;
- the time within which the fence is to be constructed;
- the boundary or line upon which the dividing fence is to be constructed; and
- if an annual payment should be paid by any owner to another in consideration of loss of occupation of any land.

Step five: Proceedings where an agreement or Court order have not been carried out

Where the owners agree, or where the court orders the erection of a fence, the owners must fulfil their obligations within the specified time or within three months if not time specified. If an owner does not fulfil their obligations within this time, the other owner may complete the work and recover half of the cost by making an application for an order in the Magistrates Court.

Magistrates Court website:
www.magistratescourt.wa.gov.au

Process B: Constructing a new fence when the adjoining owner cannot be contacted

In this case you will need to contact the Magistrates Court before building the fence. If you can satisfy the court that you have made reasonable enquiries to locate the owner and have issued the required notification, the court may make an order authorising the owner to construct a fence of a kind specified in the order upon the boundary or line specified therein.

If you do not know the name and address of the adjoining owner your local government (rates department) or Landgate may be able to provide this information. A directory of local government contact details is available on the Department of Local Government, Sport and Cultural Industries website: www.mycouncil.wa.gov.au.

Landgate website: www.landgate.wa.gov.au

When the neighbouring owner is located, irrespective of whether they were the owner of the land at the time of the construction of the fence, you may provide a copy of the court order and request the newly identified owner pay half of the value of the fence as at the date of giving notification.

If you receive one of these requests and do not feel it is equitable, or if you provide notice to the neighbour and they refuse to pay, then the issue can be referred to the Magistrates Court.

Magistrates Court website:
www.magistratescourt.wa.gov.au

Process C: Constructing a new fence where the adjoining owner's land is vacant

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

- has completed a substantial building or structure on the land;
- has occupied or occupies a building or structure on the land; or
- 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 the claim.

While it is not a requirement under the Act to notify the owner of the adjoining vacant land of your intention to construct a sufficient fence, clearly it will help engender good relations with the adjoining owner (your possible future neighbour) to do so.

This will give you and the adjoining owner an opportunity to discuss the type of fence to be constructed and avoid the adjoining owner later on (i.e. after you have constructed a building or structure on the vacant land) from disputing the need for a fence, the type of fence constructed, the dividing line of the fence, or its cost, and refusing to pay half of the cost. See further below information about this.

Step one: Discuss your proposed fence with the adjoining owner

If you can, approach the owner of the adjoining land with your proposal. Provide details of the type of fence you wish to construct, where it will be placed and a proposed cost. While the Act does not specify the requirements for obtaining quotes, having quotes and a clear understanding of the costs can assist in obtaining the adjoining owner's support for your proposed fence and avoid future disputes.

While there is no requirement for the adjoining owner to give written approval of your proposed fence, agreements in writing and signed by both parties 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 the courts.

Step two: Construction of the fence and claiming payment

If you are unable to come to an agreement with the owner of the vacant land, you may still erect a sufficient fence. The owner of the vacant land will be required to contribute half of the cost incurred in erecting the sufficient fence once they have completed a substantial building or structure on the property, occupy a building or structure on the land, or permit some other person to occupy a building or structure on the land. See repair process section.

If you proceed to construct a sufficient fence without the agreement of the owner of the adjoining land, you must give a notice to that owner claiming the payment of half of the amount of the value of the fence as estimated at the date of the claim. The notice must be in writing, signed and delivered in person or by registered post.

The neighbour has the right to dispute your claim based on:

- the need for the fence;
- the dividing being undesirable;
- the need for a fence of that particular type; or
- the value of the fence on the claim.

If the neighbour objects to paying the costs based on a reason listed above, they have one month from the date the claim was received to provide a written response to the owner.

Step three: Applying to the Court

If the adjoining owner has disputed the claim and failed to pay, you can apply for an order to be made through the Magistrates Court. The court can determine the amount, if any, to be paid and the period within which that amount is to be paid.

Magistrates Court website:

www.magistratescourt.wa.gov.au

Process D: Repairing an existing fence

Step one: Negotiate with your neighbour

An agreement between neighbours has priority over the requirements of the Act so it is best to approach the owner of the adjoining land first.

The Act does not specify the requirements for obtaining quotes, however, having quotes and a clear understanding of the costs can assist with obtaining a mutual agreement.

Informal discussions are a good starting point, but agreements in writing and signed by both parties removes any ambiguity and gives both owners a clear understanding of what has been agreed to. The written agreement can also be used if the matter is disputed at a mediation or comes before the courts.

If you are unable to locate the adjoining owner you will need to seek independent legal advice.

Step two: Determine how costs will be divided

Generally, when a dividing fence is in need of repair, realignment or re-erection, the owners of the land on each side of the fence are liable to contribute equal proportions of the costs of those repairs. This also applies to land that is vacant.

If the dividing fence was built partly by one neighbour, and partly by the other neighbour, either neighbour is responsible for the cost of repairing the part of the fence he or she built. Other exceptions are mentioned in the section 'Repairing an existing fence where damage is caused by a natural act or by one owner's actions'.

Step three: Issue written notice

Either owner may give the adjoining neighbour notice to contribute to the repair of the dividing fence. The notice must be in writing, signed, and delivered in person or by registered post. When issuing a notice you should describe the kind and extent of repairs to be made, and state 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.

If the owners do not object to your notice in writing within 14 days you may repair the fence.

Step four: Applying to court

If the adjoining neighbour has disputed the need for the repairs and is not prepared to pay any of the costs or objects to the type of repair or boundary line where the repairs would be carried out, you can apply for an order to be made through the Magistrates Court.

Magistrates Court website:

www.magistratescourt.wa.gov.au

Process E: Repairing an existing fence where damage is caused by a natural act or by one owner's actions

Damage caused by one neighbour

Situations may arise where you consider that your neighbour or neighbours should be responsible for paying 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 you feel your neighbour is responsible for the full amount of the repairs, you should obtain independent legal advice.

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

Legal Aid's website provides guidance on your rights and obligations regarding neighbourhood issues as well as information on negotiations, mediation and dispute resolution.

Legal Aid website: www.legalaid.wa.gov.au.

Natural event

In the event that a dividing fence or any part of the fence is damaged or destroyed by flood, fire, lightning, storm, or other natural accident, the owner of the adjoining land on either side of the fence may immediately repair it without providing any notice to the other owner. The owner who repairs the fence is then entitled to recover half of the expenses from the owner of the adjoining land.

Disclaimer – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

Building and Energy | Department of Mines,
Industry Regulation and Safety
1300 489 099

8.30am – 4.30pm
Level 1 Mason Bird Building
303 Sevenoaks Street (entrance Grose Avenue)
Cannington Western Australia 6107
M: Locked Bag 100, East Perth WA 6892
W: www.dmirs.wa.gov.au/building-and-energy
E: be.info@dmirs.wa.gov.au

Regional Offices

Goldfields/Esperance	(08) 9021 9494
Great Southern	(08) 9842 8366
Kimberley	(08) 9191 8400
Mid-West	(08) 9920 9800
North-West	(08) 9185 0900
South-West	(08) 9722 2888

National Relay Service: 13 36 77

Translating and Interpreting Service (TIS): 13 14 50

This publication is available in other formats on request to assist people with special needs.