

DIVIDING FENCES

A self-help kit about the law of
building and maintaining fences
between neighbours

Caxton Legal Centre Inc.

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This kit is current at 1 November 2013

Disclaimer

This publication is intended to give general information about the subject of law that it deals with. While every effort has been made to ensure accuracy, the law is constantly changing. No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from this publication.

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SAMPLE DOCUMENTS

Notice to Contribute for Fencing Work (including agreement notice)
Notice to Contribute for Urgent Fencing Work
Application for Minor Civil Dispute—Dividing Fences

FREQUENTLY ASKED QUESTIONS

What information does this kit provide?

This kit provides general information about the building and maintenance of fences dividing two neighbouring residential properties.

What is a dividing fence?

A fence may be built on the boundary lines between properties for privacy, as protection from intruders or to keep in animals and children. A dividing fence is a fence on the common boundary between two pieces of adjoining land.

The *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (Qld) (Neighbourhood Disputes Act) provides a wide definition of the term 'fence'. A fence is a structure, ditch or embankment, or a hedge or similar barrier, enclosing any land, whether or not it extends along an entire boundary. It includes any gate, cattle grid or parts used for the operation of a fence.

Who must contribute to the cost of a dividing fence?

Unless it is agreed otherwise, neighbouring property owners normally must contribute equally to the cost of building and maintaining a sufficient dividing fence.

Residential tenants of property are not liable to contribute to the cost of building a new fence. Owners are responsible for this, and fencing disputes should be directed to the owners of property.

Who owns a dividing fence?

The Neighbourhood Disputes Act specifically states that both adjoining owners own the dividing fence if it is built on the common boundary.

Must we have a dividing fence?

No. You and your neighbour can agree not to have a dividing fence.

What if only one of us wants to have a dividing fence?

If either you or your neighbour wants a dividing fence, then (subject to the limits discussed below) you must both share the cost of building the fence and maintaining it, unless you make a special arrangement about which neighbour will pay for the cost of the fence.

A person cannot simply build a dividing fence without consulting their neighbour about the matter. In such a case, the Queensland Civil and Administrative Tribunal [QCAT] could order that an unauthorised fence has to be removed.

What do my neighbour and I need to talk about?

You should talk with your neighbour about:

- the boundary line
- the type of fence
- the cost of the fence and how it will be shared
- any other relevant special requirements.

It is usually worth trying to have a friendly conversation with your neighbour to work out an agreement about building a new fence if one is needed, in order to avoid disputes.

What if we do not agree?

If you cannot agree straight away, using mediators to help you reach agreement with your neighbour is a good way to try to settle a dispute. There are dispute resolution centres throughout Queensland.

If you build a fence without your neighbour's agreement or an order from QCAT or a court, you cannot later claim a contribution from your neighbour towards the cost of the fence.

How do we decide on the boundary line?

If there is no fence between your property and your neighbour's property, then you will have to agree on the boundary line. You may need to measure out your properties to find the correct boundary. Access to survey pegs and plans of your land may assist, and it would be wise to hire properly qualified surveyors to do a survey.

If you cannot agree on the boundary, you could agree to share the costs of a surveyor to find the boundary line.

You can also give a written notice to the owner of the property next door (or their agent) advising them that you intend to have the common boundary defined by a cadastral surveyor, and they have one month to either do their own survey or tell you where the boundary is. Section 40 of the Neighbourhood Disputes Act sets out this process in more detail and explains who is liable to pay for the costs of the survey. QCAT can also make

an order for a survey to be obtained when parties cannot agree on these issues.

What should I do if my fencing matter has progressed under the old laws?

The following circumstances may apply:

I have issued, or been issued with, a Notice to Fence under the *Dividing Fences Act 1953* (Qld) (Dividing Fences Act), but no agreement has been reached in relation to the construction of the fence.

OR

I am already scheduled to attend mediation in relation to a dividing fence after a notice was issued under the Dividing Fences Act.

OR

I am currently before QCAT or the Magistrates Court in relation to the dispute under the Dividing Fences Act.

The Dividing Fences Act will continue to apply to the situations above when the Notice to Fence was issued six months or less before the commencement of the Neighbourhood Disputes Act on 1 November 2011.

The Dividing Fences Act will also continue to apply to any existing order made under it as if the Neighbourhood Disputes Act had not been enacted.

WHAT TO DO IF YOU AND YOUR NEIGHBOUR AGREE TO BUILD A FENCE

How do we decide on the type of fence?

You and your neighbour should try to agree on the type and height of the fence to be built. You should choose a style that is appropriate to the neighbourhood and, ideally, you should choose one that will meet both your needs. You are only legally liable to contribute to the cost of a sufficient fence, and this will vary from case to case.

If you cannot agree, then one or both of you may have to compromise. For example, your neighbour may want a chainwire fence, and you may want a wooden fence to give more privacy. A compromise could be reached by building the chainwire fence on which you can grow vines and creepers to provide privacy.

What is agreed or ordered by QCAT may end up being more than the basic half cost of a sufficient fence, depending on the circumstances of each case.

What is a sufficient dividing fence?

A fence will be considered to be a sufficient dividing fence if, for the purposes of adjoining residential blocks of land, it is a fence between 0.5 m and 1.8 m in height and is constructed of any of the specified materials listed in the Neighbourhood Disputes Act.

If the property is pastoral land, the fence must be sufficient to restrain livestock.

How is the cost of the fence shared?

It is common for each neighbour to pay for one half of the fence. You should obtain at least one quote to build the fence before you approach your neighbour to discuss costs and the new fence.

It is often sensible to obtain two or three quotes to provide to your neighbour and then offer to proceed with the least expensive quote. You may find your neighbour is more willing to agree to a proposal if they feel the quoted price is a fair one.

Are there special requirements?

Occasionally local councils will have special requirements. You should check with your council before building the fence to ensure there are no special requirements for the height or type of fence you want to build.

There are special laws governing pool fences. These are regulated by the *Building Act 1975* (Qld). You may be fined heavily if you breach that Act. The pool owner is wholly responsible for the cost of the fence (or part of a fence) that acts as a pool fence.

Retaining walls are excluded from the new Neighbourhood Disputes Act. Retaining walls and fences serve different purposes, and retaining walls are usually subject to special building and engineering requirements.

However, QCAT does have some power to make orders about retaining walls where a fence otherwise cannot be repaired. If your dispute involves a retaining wall, you should consult a private property lawyer for legal advice about the retaining wall.

Some new developments and some body corporates also have their own rules or covenants, which may be relevant in fencing disputes.

How do we record our agreement?

It is appropriate to put your agreement with the neighbour in writing. This may be recorded on the quote that you have both agreed to accept. That quote should contain details of the type, height and cost of fence. You could record on the bottom of the quote:

We agree to build a new fence as per the above quote on the existing fence line and will both pay one half of the cost.

An agreement should be dated and signed by all relevant owners. It would be wise to get someone to witness your signatures. You should also set out when and how the costs will need to be paid.

If you do not want to write up your own agreement, the new notices attached at the back of this kit also include agreements, which can be adapted and used for this purpose.

WHAT TO DO IF YOU AND YOUR NEIGHBOUR DO NOT AGREE TO BUILD A FENCE

If you cannot reach agreement with your neighbour, you will need to get a formal order from QCAT authorising the building of the dividing fence. You will need to serve your neighbour with a special form before you can proceed to file a claim in QCAT.

The form is called a *Notice to Contribute for Fencing Work*, and a draft example of this notice is attached. It sets out the descriptions of the properties concerned (i.e. the addresses or lot numbers of both properties), the boundary where the fence is to be built, the type of fencing work to be carried out and the estimated cost of the fencing work. At least one quote must be attached to the notice. A sample agreement to contribute to fencing work is included at the end of the notice. This can be used to document an agreement based on the *Notice to Contribute for Fencing Work*.

The notice can be given to the owner personally, left at their usual place of residence with another adult who appears to live there, posted to the relevant address, or, if no-one is at the relevant address, you can leave it at the address in a place where it is reasonably likely to come to the owner's attention. You can also try sending it by registered post if you have concerns that the other owner/s may deny receiving the notice.

Giving the notice to at least one of the owners is enough if you genuinely cannot find the other owner/s. You should make a careful note of exactly when and how the letter was given to the neighbour.

You could also send a polite cover letter to your neighbour with your notice in an attempt to try to encourage them to reach agreement with you about the matter.

An example letter is set out on page 7.

What happens if my neighbour accepts the proposal?

If your neighbour agrees to your proposal for a fence, as already stated above, it is crucial that the agreement be in writing and signed by both parties. This should be done by the responding neighbour completing the final page of the *Notice to Contribute for Fencing Work*. A copy of the document should be provided to each party.

If your neighbour then refuses to pay as agreed, you can bring debt proceedings in QCAT to recover your money for fences under \$25 000.

What happens if my neighbour does not accept the proposal?

Your neighbour has one month after the service of your notice to agree to the proposal. If you and your neighbour cannot agree, then you will have to reach a compromise by mediation or go to QCAT if the fence dispute is less than \$25 000 in value, or the Magistrates Court if it is greater than \$25 000 and ask for an order about the fence.

You must lodge your claim with QCAT within two months of issuing the notice.

Is mediation compulsory in QCAT for trees and fences disputes?

Mediation is where a mediator, who acts as a go-between between you and your neighbour, helps you to arrive at a decision, if possible. QCAT will refer most matters under the *Neighbourhood Disputes Act* to mediation before they progress to a hearing. Both you and your neighbour must agree to mediation, and it will often take place by phone.

If you have reasons for not wishing to participate in mediation, you can write to the *Dispute Resolution Branch* (see *Contact points*).

Insert the date

*Insert your name
and address*

*Insert your neighbour's name
and address*

Dear *insert your neighbour's name*,

I wish to build a new dividing fence between your property at (*insert your neighbour's address*) and my property at (*insert your address*).

I propose that the fence be built along the full length of the boundary separating our properties. The fence will be built along the boundary line, which is (*insert details; e.g. '... shown by the two original old white fence posts at each boundary end, which have existing survey markings'*).

I propose that the entire fence be constructed of (*insert details; e.g. '... 1 metre palings supported by timber cross rails'*).

(*Insert any other aspects of construction which need to be agreed upon; e.g. 'I am happy to paint the fence and am proposing that it be painted cottage green, which is a neutral colour that should suit both our existing houses'.*) Of course, we can discuss this further if you have any objection, and I welcome your input into working out how to get our new fence organised.

I have obtained two quotes for that type of fencing. Copies are enclosed. (*Set out details; e.g. 'I propose accepting the lower quote of \$2000 from Harvey's Fencing Pty Ltd. I believe that we should equally share the cost of building the fence, that is \$1000 each. The fence contractor requires a 50% deposit and I propose that we pay this by the X date. The balance will need to be paid within seven days of us receiving the fencing contractor's invoice'.*)

If you accept my proposal, please sign the enclosed Notice to Contribute for Fencing Work, and return it to me. I am happy to discuss this with you if you need further information.

If you have a particular problem about this fencing issue, which is making you feel uncomfortable talking to me about, I am happy to participate in a mediation about the matter. The Department of Justice and Attorney-General offers dispute resolution services and I am happy to use that service. Please let me know what you would like to do within one month.

Yours faithfully

Sign your name

You can also arrange mediation yourself prior to making a QCAT application. The dispute resolution centres of the Department of Justice and Attorney-General provide mediation services. For more information contact the Dispute Resolution Branch (see *Contact points*).

Which tribunal or court will hear my case?

If the total cost of your fence is less than \$25 000, you can make your application to QCAT for an order that your neighbour pay half the cost of a fence. The tribunal will also make an order setting out the type of fence, the height of the fence and where the fence will be built.

The tribunal can consider a range of factors in making its decision, including: any previous dividing fence on the property, the purposes for which the properties are used, the kind of fence normally used in the area, whether the parties can maintain the fence, local laws and government policies, development policies and written agreements of the parties.

QCAT does not apply strict rules of evidence, but it is important to provide evidence of relevant matters to help the tribunal make its decision. Photographs can be particularly useful.

If the total cost of your fence is more than \$25 000, you will have to make your application to the Magistrates Court.

You must make sure that the court or tribunal has the power to make a decision about land in your area. This depends on precisely where your property is situated. Before you go to the tribunal or court to file your documents, you should telephone QCAT or the Brisbane Magistrates Court and confirm that you are lodging your application in the most appropriate locality. For a location of the Magistrate Court or QCAT please refer to the *Contact points*.

HOW TO APPLY FOR AN ORDER FOR A FENCE COSTING LESS THAN \$25 000

You must make a claim in QCAT. A sample application form is attached to this kit.

You must include in your claim:

- the date when you served your Notice to Contribute for Fencing Work on your neighbour
- details about the location and size of the fence
- details of quotes for construction/repair.

What do you do next for cases under \$25 000?

Once you have completed your application for QCAT, you should make two photocopies.

You should then take the application and the photocopies to QCAT for filing. The filing fee for dividing fences disputes in QCAT is currently:

- \$20.50 (for matters less than \$500 in value)
- \$51 (for matters involving \$500 to \$1000)
- \$92 (for matters involving \$1000 to \$10 000)
- \$255 (for matters involving \$10 000 to \$25 000).

You can lodge your application in person, by mail or by electronic lodgement (email). You will need to either enclose your cheque or money order for the filing fee or provide a credit card authorisation. You can pay by cash if you lodge your application in person. Once filed, the application normally will be allocated a hearing date.

Who tells my neighbour about the claim?

Once the application has been filed, you will be notified of details about when and where the tribunal will hear the matter. You will need to give (or serve) a copy of the stamped application, including the details about what will happen next (which may be in the form of a letter or on the application itself), to your neighbour. You must serve your documents as soon as possible, and no later than seven days after the application is filed.

How will you know about the date of the hearing?

QCAT will either make a note of your hearing date on your application when you file your case or send you a copy of a notice advising you of a hearing date.

Will my neighbour need to do anything before the hearing?

Your neighbour may wish to file a counterclaim, in which case they can set out the alternative orders they will be seeking from QCAT. The counterclaim is a Form 8.

What happens at the hearing?

The people who make decisions in QCAT cases are called 'members' of the tribunal. Some members may be judges, but most are lawyers appointed to sit simply as members in QCAT hearings. The tribunal member will hear your story and your neighbour's story and will then make a decision about your case.

You should take with you the originals of your quotes, proof that you own your property and any other relevant documents. Photographs of fences and boundary lines can be quite useful when you are explaining fencing disputes, and these can be handed up to the members as you explain your case.

What orders will be made?

The member will consider what type of fence already exists in the neighbourhood, what the neighbouring land is used for, the reasonableness of your fencing proposal, and what is a sufficient dividing fence in the circumstances.

The member will then make an order about the type of fence, the height of the fence, where the fence is to be built and how much each neighbour should pay towards the cost of the fence.

HOW TO APPLY FOR AN ORDER FOR A FENCE COSTING MORE THAN \$25 000

You must file a claim in the Magistrates Court. You can obtain the forms that you need from your local Magistrates Court.

If your case involves complex facts (especially where your fence involves retaining walls and other fixed engineering structures), you may need to go to the District or Supreme Court to have your matter decided by a court, depending on the actual value of your land. In a complex case, you should consult a property lawyer for expert legal advice.

WHAT ABOUT REPAIRS TO AN EXISTING FENCE?

Repairs to an existing fence should be paid equally by both neighbours, unless the fence has been destroyed

because of the negligence or willful damage of one neighbour or someone they have specifically allowed onto their property.

You should talk with your neighbour about sharing the costs of the repairs. You should obtain at least one quote to repair the fence and an agreement with your neighbour about paying for the repairs.

If you do agree, you should both write on the quote that you have agreed, and how much each neighbour will pay. You could record the following on the bottom of the quote:

We agree to repair our fence as per the above quote and will both pay one half of the cost.

Each neighbour should then sign the agreement.

If the repairs are not urgent, and your neighbour cannot agree, you will simply issue a Notice to Contribute for Fencing Work as explained earlier. The same process explained above applies. If the notice does not result in agreement within one month, you will need to get an order from QCAT about the repairs. You will need to apply to QCAT within two months after the notice is given for an order about carrying out fencing work.

If your neighbour has negligently or willfully damaged the fence, they are liable for the entire cost of any repairs. QCAT can make orders about these matters.

The Neighbourhood Disputes Act specifically states that an owner cannot attach things to a dividing fence that unreasonably and materially alter or damage the dividing fence.

What if we cannot agree?

If urgent repairs are required and you are unable to negotiate an agreement with your neighbour, you should issue a Notice to Contribute for Urgent Fencing Work. A sample notice is attached. You should stipulate the repairs required, why the repairs are urgent, details of the proposed repairs/work and supply one or more quotes.

If your neighbour agrees to the work, you can then proceed to carry out the repairs and rely on the agreement about the cost of the work.

If it is not reasonably possible to give the notice for urgent work, you can carry out the fencing work that is needed to return the dividing fence to a reasonable standard, having regard to its state before the damage or destruction. You can then give the other

owner a Notice to Contribute for Urgent Fencing Work under section 32 of the Neighbourhood Disputes Act requiring them to contribute to the cost of the urgent fencing work. If they refuse to cooperate, you can apply to QCAT for orders about the matter.

CONTACT POINTS

CAXTON LEGAL CENTRE

1 Manning Street
South Brisbane Qld 4101
Tel: (07) 3214 6333

www.caxton.org.au

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

Level 9
Bank of Queensland Centre
259 Queen Street
Brisbane Qld 4000
Tel: 1300 753 228
Email: enquiries@qcat.qld.gov.au
www.justice.qld.gov.au

Factsheets are available online.

BRISBANE MAGISTRATES COURT

1st Floor, Central Courts Building
363 George Street
Brisbane Qld 4000
Tel: (07) 3247 5598

Other magistrates courts are listed in the White Pages or at www.courts.qld.gov.au

DISPUTE RESOLUTION BRANCH

Department of Justice and Attorney-General
Level 1, 363 George Street
Brisbane Qld 4000

GPO Box 149
Brisbane Qld 4001
Tel: (07) 3006 2518 or 1800 017 288
www.justice.qld.gov.au

The Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld) covers the law of building and maintaining fences on adjoining residential land. It also sets out rules governing tree disputes between neighbours. You can access this Act at www.legislation.qld.gov.au

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NOTICE TO CONTRIBUTE FOR FENCING WORK

Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 – Section 31

To:

Address:

Please note that I/we propose that fencing work be carried out in respect of our adjoining lands at:

(Include description of lands e.g. street addresses, lot numbers or other identifying particulars.)

It is proposed that the fencing work be carried out on the common boundary of our adjoining lands described above¹ and that the type of fencing work consist of²:

1. Digging 10 post holes in soil.
2. Securing galvanised pipe posts in concrete in the post holes.
3. Securing chainwire mesh to the posts and generally otherwise securing the fence on the marked boundary as indicated by the existing survey pegs.

and that the fence be constructed of³:-

The estimated cost of the fencing work is:

I propose that the cost of the fence be shared equally between us /be shared in the following proportions/be shared in the following way⁴:-

and that you contribute

and I contribute

A copy of one (1) written quote specifying the estimated cost of the fencing work is attached.

If you **agree** to this proposal, please complete the attached 'Agreement to contribute to fencing work' and **return a signed copy of the agreement to me/us within one (1) month of the date this notice is given to you** to the following address:

Please let me/us know **within one (1) month of the day this notice is given to you if you do not agree** to this proposal.

FORM 2: NOTICE TO CONTRIBUTE FOR FENCING WORK
Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 – Section 31

Full Name:	Jane Legal
Address:	3 Manning Street, South Brisbane Qld 4101
Signature/s:	<i>J. Legal</i>
Date:	01/09/2013

Notes:

Section 30(1) of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (the Act) encourages adjoining owners to attempt to resolve issues about fencing work to avoid a dispute arising.

¹ If it is impracticable to carry out fencing work on the common boundary, the line on which the proposed fencing work is to be carried out must be specified.

Section 40 of the Act provides for a process if adjoining owners do not agree on the position of the common boundary.

² Section 16 sets out the meaning of *fencing work* which can include construction of a new dividing fence, repair of an existing dividing fence, replacement of a dividing fence, and modification of a dividing fence, surveying or preparation of land, including the trimming, lopping or removal of vegetation along or on either side of the common boundary of adjoining lands.

³ Section 13(3) of the Act sets out prescribed material for a dividing fence.

⁴ If it is proposed that the cost of fencing work be shared otherwise than in equal proportions, the proposed proportions must be specified (refer to section 31(4) of the Act). For example, an adjoining owner may contribute by a payment of an amount of money or provision of labour or materials (refer to section 31(6) of the Act).

Section 31(6) of the Act provides that if within one (1) month after this notice is given, the adjoining owners do not agree about the proposed fencing work, or the contributions to the cost of the proposed fencing work, then either one may, within two (2) months after this notice is given, apply to the Queensland Civil and Administrative Tribunal for an order about carrying out fencing work (refer to section 35 of the Act).

A copy of the Act may be accessed at www.legislation.qld.gov.au

PLEASE KEEP A COPY OF THIS NOTICE FOR YOUR RECORDS AND MAKE A NOTE OF THE DATE THIS NOTICE WAS GIVEN TO YOUR NEIGHBOUR.

AGREEMENT TO CONTRIBUTE TO FENCING WORK

I/We the adjoining owner/s acknowledge receipt of the Notice to Contribute for Fencing Work and agree/disagree to contribute to the fencing work.

I/We agree to contribute to the fencing work as follows:

Installation of an 1.2 metre chainwire mesh and galvanised pipe post fence on the boundary between 1 and 3 Manning Street, South Brisbane Qld 4101.

I/We will pay our contribution to you/the fencing contractor as follows:

We will contribute half the cost of the fence, that is \$600.

Full Name: John and Juliette Caxton

Address: 1 Manning Street, South Brisbane Qld 4101

Signature/s: *John Caxton*

Date: 14/09/2013

PLEASE KEEP A COPY OF THIS AGREEMENT FOR YOUR RECORDS AND MAKE A NOTE OF THE DATE THIS SIGNED AGREEMENT WAS GIVEN TO YOUR NEIGHBOUR.

NOTICE TO CONTRIBUTE FOR URGENT FENCING WORK***Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 – Section 28 and section 32***To: Address:

Please take notice that urgent fencing work¹ was carried out on the dividing fence on the common boundary of our adjoining lands located at:

(Include description of lands e.g. street addresses, lot numbers or other identifying particulars.)

Date urgent fencing work carried out: The reason urgent fencing work² was required:

A branch fell onto the fence and made it insecure after the storm on Saturday 21 January 2013. We own two large dogs and are away at work all day, so the fence needed to be repaired immediately. The dogs can get off their leashes and we were concerned that they could destroy your garden and escape into the neighbourhood. As you were away from home and we did not know when you would return we went ahead with the necessary urgent repairs.

The type of fencing work carried out consisted of:

The cost incurred for the fencing work was:

The receipt for the cost of the fencing work is attached to this notice.

I/we propose that the contribution to the fencing work be shared equally between us/be shared in the following proportions³:

We propose to pay three quarters of the cost and would like you, our neighbour, to contribute one quarter.

and that I/we contribute: and that you contribute:

If you **agree** to this proposal, please complete the attached Agreement to Contribute to Urgent Fencing Work and return a signed copy of the agreement to me/us within one (1) month of the date of this notice.

FORM 1: NOTICE TO CONTRIBUTE FOR URGENT FENCING WORK
Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 – Section 28 and section 32

If you **do not agree** to this proposal please let me/us know within one (1) month of the day this notice is given to you.

Please send your response to this notice to the following address:

Paul and Linda McCartney 26 Laurel Street, Woolloowin Qld 4030	
Name:	Paul and Linda McCartney
Address:	26 Laurel Street, Woolloowin Qld 4030
Signature:	<i>L. McCartney</i>
Date:	28 January 2013

Notes:

Section 30(1) of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (the Act) encourages adjoining owners to attempt to resolve issues about fencing work to avoid a dispute arising.

¹Section 28 of the Act states that this section applies if all or part of a dividing fence is damaged or destroyed and in the circumstances urgent fencing work is required.

²Section 16 of the Act sets out the meaning of *fencing work* which can include construction of a new dividing fence, repair of an existing dividing fence, replacement of a dividing fence, and modification of a dividing fence, surveying or preparation of land, including the trimming, lopping or removal of vegetation along or on either side of the common boundary of adjoining lands.

³If it is proposed that the cost of fencing work is to be borne otherwise than in equal proportions, the proposed proportions must be specified (Refer to section 32(5) of the Act).

Section 32(6) of the Act provides that if within one (1) month after this notice is given, the adjoining owners, have not agreed about their contributions to carrying out the fencing work then either adjoining owner may, within two (2) months after this notice is given, apply to the Queensland Civil and Administrative Tribunal for an order about carrying out fencing work (refer to section 35 of the Act).

A copy of the Act may be accessed at www.legislation.qld.gov.au.

PLEASE KEEP A COPY OF THIS NOTICE FOR YOUR RECORDS AND MAKE A NOTE OF THE DATE THIS NOTICE WAS GIVEN TO YOUR NEIGHBOUR.

AGREEMENT TO CONTRIBUTE TO URGENT FENCING WORK

I/We the adjoining owner/s acknowledge that we have been given a copy of the Notice to

Contribute for Urgent Fencing Work dated:

by:

of:

I/We agree/decline to contribute to the urgent fencing work.

I/we agree that the contribution to the fencing work be shared equally between us/be

shared in the following proportions:

and that I/we contribute:

and that you contribute:

I/We will pay our contribution to you at the address nominated in your notice on or before:

Date:

Name/s:

Address:

Signature:

Date:

PLEASE KEEP A COPY OF THIS AGREEMENT NOTICE FOR YOUR RECORDS AND MAKE A NOTE OF THE DATE THIS AGREEMENT NOTICE WAS GIVEN TO YOUR NEIGHBOUR.

Instructions for completing**Application for minor civil dispute – dividing fences
– *Neighbourhood Disputes Resolution Act 2011 and
Building Act 1975*****WHAT TYPE OF APPLICATION ARE YOU MAKING?**

A dividing fence dispute is a disagreement between neighbours about a fence, or a proposed fence, on the common boundary of adjoining lands.

It can include a dispute about a dividing fence that forms, or will form in the future, part of a pool barrier.

It does not include a dispute about a retaining wall or a wall that is part of a house or garage.

Note: if your dispute is about a dividing fence that is not part of a pool barrier, the amount in dispute is limited to \$25,000.

Note: if your dispute is about a dividing fence that is part of a pool barrier, the amount in dispute is unlimited.

General instructions**Copies of the application**

When lodging your application you must also provide two copies of the application and any documents. If there is more than one respondent an extra copy of the application and any documents must be lodged.

Lodging your application

By post: QCAT, GPO Box 1639, Brisbane QLD 4001.

If you are posting your original application and copies to QCAT, you must include a stamped self-addressed A4 envelope with your application.

In person: At QCAT, Level 9, 259 Queen Street (BOQ Centre), Brisbane OR any Magistrates Court (excluding Brisbane).

To find your nearest Magistrates Court, look under “Justice and Attorney-General” in the phone book or visit www.courts.qld.gov.au.

Applications must be accompanied by the prescribed application fee

You must pay the prescribed application fee when you lodge your application. For more information on fees visit www.qcat.qld.gov.au or call 1300 753 228.

Payment can be made by cash (only when application being lodged in person), cheque or money order (payable to Department of Justice and Attorney-General), or credit card payment authorisation (see *Credit card payment authorisation form* – MasterCard and Visa accepted).

After you lodge your application

QCAT will keep your original application and attached documents, and the 2 extra copies.

QCAT will stamp QCAT’s seal on your other copies and return them to you.

You need to give these stamped copies to the respondent and any additional party.

Instructions for completing (continued)

Providing copies to the respondent and other people

Generally, you must give the stamped copies of the application as soon as practicable, and no later than 7 days after you lodge the application.

If your application is to prevent the respondent from doing unauthorised fencing work in the future, you need to give them a copy at least 1 day before the application is heard.

If your application is about unauthorised fencing work that the respondent has already done, you need to give them a copy at least 3 days before the application is heard.

The most common ways to give the stamped application to the respondent and any other party is by:

- posting it to their address
- giving it to them in person, or if they refuse to take it, by putting it down in their presence and telling them what the application is
- leaving it with another adult who lives or works at their address.

You cannot give the stamped application to the respondent or any other party by leaving it in their letterbox or putting it under the door.

You will need to establish that the application has been given to the respondent and each other person who is required to be given a copy by filing a *Form 9 Affidavit of Service*, or a written acknowledgement from each person that they have received the application.

PART A APPLICANT'S AND RESPONDENT'S DETAILS

More than one applicant and respondent may be named in the application. If there is not enough space to include additional parties, attach additional pages with similar details.

If the applicant or respondent is not an individual then the correct name must be used, for example:

- a company name
- a business name, whether registered or unregistered
- a State agency name, for example a Queensland Government Department.

Documents will given or sent to you at your address, unless you indicate your representative's address as your address for notices.

If you want to change your address for notices you must complete a *Change of contact details form*, file it in the tribunal and serve it on all other parties.

If you cannot locate the respondent, please see question 18.

Representative's details

If you want your representative's address as the address for notices, please complete your representative's details.

If you want your representative to represent you in any proceedings before the tribunal you must complete the form *Application for leave to be represented*. Generally the tribunal expects people to represent themselves. It may not grant your request. You must give reasons for why you want to be represented.

You are not required to seek leave if you are a child or a person with impaired capacity.

PART B GENERAL DISPUTE DETAILS

Please tick the relevant boxes and provide further details as required.

PART C DIVIDING FENCE THAT IS ALSO A POOL BARRIER DETAILS

Different laws apply to dividing fences that are or may also form part of a pool barrier. If the dividing fence that is the subject of the dispute is or may form part of a pool barrier, please tick the relevant boxes and provide details as required.

PART D TREE DISPUTES

Different laws may apply to a dividing fence that is a hedge or other kind of barrier made from a tree or trees. Please tick the relevant boxes and provide details as required.

PART E DETAILS OF WHAT YOU SEEK FROM THE TRIBUNAL

State what orders you are seeking from the tribunal and why you consider the orders sought should be made. Include a clear outline of the history and nature of the dispute.

Form Number 53 (Version 1.0)

Queensland Civil and Administrative Tribunal Act 2009 (section 33)

Application for minor civil dispute – dividing fences – Neighbourhood Disputes Resolution Act 2011 and Building Act 1975

Refer to attached instructions at the front of this application prior to filling out this form.

For office use only	
Case number:	
Date:	
Registry:	
Sent to:	
Fee paid:	
Rec no:	

PART A APPLICANT'S DETAILS			
Name			
<input type="text" value="Ms"/>	<input type="text" value="Margaret"/>	<input type="text" value="Thatcher"/>	
<i>Title</i>	<i>Given name/s</i>	<i>Surname/Family name</i>	
OR			
Company			
<input type="text"/>		ABN	<input type="text"/>
Address			
<input type="text" value="3 Smith Street"/>			
<input type="text" value="New Farm , Queensland"/>		Postcode	<input type="text" value="4005"/>
Telephone			
<input type="text" value="(07) 3254 1111"/>	<input type="text" value="()"/>	<input type="text" value="0412 345 678"/>	
<i>Home</i>	<i>Business</i>	<i>Mobile</i>	
Fax			
<input type="text" value="()"/>			
Email			
<input type="text" value="maggie thatcher@gmail.com"/>			

PART A APPLICANT'S DETAILS (continued)

Representative's details (if applicable)

- Tick if you want this to be your address for notices
- Tick if you want your representative to represent you in proceedings before the tribunal (see Part A of the instructions – you may be required to seek the tribunal's leave for this to happen by making an application under the form Application for leave to be represented).

Name

<input type="text"/>	<input type="text"/>	<input type="text"/>
<i>Title</i>	<i>Given name/s</i>	<i>Surname/Family name</i>

OR

Company

<input type="text"/>	ABN	<input type="text"/>
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Address

<input type="text"/>	<input type="text"/>
<input type="text"/>	Postcode <input type="text"/>

Telephone

<input type="text"/>	<input type="text"/>
<i>Business</i>	<i>Mobile</i>

Fax

<input type="text"/>

Email

<input type="text"/>

PART A RESPONDENT'S DETAILS

Name

<input type="text"/>	<input type="text"/>	<input type="text"/>
<i>Title</i>	<i>Given name/s</i>	<i>Surname/Family name</i>

OR

Company

<input type="text"/>	ABN	<input type="text"/>
----------------------	------------	----------------------

Address

<input type="text"/>	<input type="text"/>
<input type="text"/>	Postcode <input type="text"/>

Telephone

<input type="text"/>	<input type="text"/>	<input type="text"/>
<i>Home</i>	<i>Business</i>	<i>Mobile</i>

PART A RESPONDENT'S DETAILS *(continued)*

Fax ()

Email rnixon@hotmail.com

PART B GENERAL DISPUTE DETAILS

1. What is the street address of your property (if different from above)?

2. What is your connection with the property in question 1?

- Registered owner of property
- Body corporate for property
- Other: _____

3. What is the street address of the respondent's property (if different from above)?

4. What is the respondent's connection with the property in question 3?

- Registered owner of property
- Body corporate for property
- Other: _____

Note to applicants: Applications can only be made against owners of the land. Tenants who are renting the land and are covered by the *Residential Tenancies and Rooming Accommodation Act 2008* are not owners of the land.

5. Are you making this application because you believe that the respondent is about to construct or demolish a dividing fence without authorisation?

- Yes
- No

If Yes, please provide details about why you believe this and what you think is going to happen:

6. Have you given the respondent a notice about the fencing work for the dividing fence?

For example, a notice to contribute for fencing work. *Note that different notices apply to dividing fences that are also pool barriers or when urgent work was required.*

Yes

No

If Yes, please attach a copy of the notice and details of how and when you gave the notice to the respondent:

See attachment A

7. Is there an existing dividing fence?

Yes

No

If Yes, please provide details e.g. height, material, age, condition:

8. If no, was there previously a dividing fence?

Yes

No

If Yes, please provide details e.g. height, material, age, condition, reason it was removed:

9. What is your land used, or intended to be used, for?

Please provide details e.g. agricultural, pastoral, rural, residential, commercial:

Residential property

10. What is the respondent's land used, or intended to be used, for?

Please provide details e.g. agricultural, pastoral, rural, residential, commercial:

Residential property

11. What kind of dividing fence is normally used in your area?

Please provide details e.g. height, material, age, condition:

A chain wire fence approximately 1.2 metres in height supported by metal posts.

12. Can the dividing fence be maintained by you and the respondent?

Yes

No

Please provide details:

A new chain wire fence would require very limited maintenance and would be very durable.

13. What is the local government area where the dividing fence is located?

Brisbane

14. Is there any policy or local law about dividing fences in that local government area?

Yes

No

If Yes, please provide details:

15. Is there any requirement for fencing work in a development approval for your land?

Yes

No

If Yes, please provide details:

16. Is there any requirement for fencing work in a development approval for the respondent's land?

- Yes
 No
 Don't know

If Yes, please provide details:

17. Is there any written agreement between you and the respondent about the dividing fence?

- Yes
 No

If Yes, please provide details and a copy of the agreement:

18. If you are making this application because you could not locate the respondent, please provide details about the how you tried to locate them.

PART C DIVIDING FENCE THAT IS ALSO A POOL BARRIER

19. Does any part of the fence form part of a pool barrier, or will it in the future?

- Yes
 No

If Yes, please provide details:

20. Does the pool barrier comply with the pool safety standard, or will it comply?

- Yes
 No

If Yes, please provide details:

NA

PART D TREE DISPUTES

21. If there is an existing dividing fence, is part or all of the fence made of a tree or trees?

Yes

No

If Yes, please provide details:

22. Have you or the respondent already made an application to QCAT about the tree?

Yes

No

If Yes, please provide details:

PART E DETAILS OF WHAT YOU SEEK FROM THE TRIBUNAL

23. I want the tribunal to make the following order/s: (please tick)

The orders below may be available for dividing fences and a pool barrier.

an order about the line on which fencing work is to be carried out

an order that fencing work be done

an order about the kind of material to be used in fencing work

an order about the amount the parties have to contribute or pay for fencing work

an order about which part of the dividing fence is to be constructed or repaired

an order about when the fencing work is to be done

an order for compensation for damage to or destruction of a dividing fence caused by the respondent, or someone on their land with their consent \$_____

an order requiring the removal of things attached to a dividing fence and the restoration of that fence

variation of an existing order

an order for payment of the filing fee for this application

another order (please specify): _____

24. I want the tribunal to make the following additional order/s for a dividing fence that is not part of a pool barrier: (please tick)

The orders below may be available ONLY for dividing fences that are not also a pool barrier.

- an order that a specific fence is a dividing fence
- an order that no dividing fence is required for part or all of a boundary
- an order that an existing fence is a sufficient dividing fence
- an order preventing the construction or demolition of a dividing fence without authorisation
- an order requiring a dividing fence that was constructed or demolished without authorisation to be removed, modified or rectified
- an order that the respondent pay the costs of any removal, modification or rectification of an unauthorised dividing fence
- another order (please specify): _____

25. I want the tribunal to make the following order/s (please tick):

The orders below may be available ONLY for dividing fences that are also a pool barrier.

- for a dividing fence that is a pool barrier, an order for access to land
- an order preventing the demolition or tampering with the dividing fence without authorisation
- an order requiring a dividing fence that was demolished or tampered with without authorisation to be rectified
- an order that the respondent pay the costs of any rectification of an unauthorised dividing fence
- an order that an existing fence has been or can be used as a dividing fence forming part of a pool barrier
- an order that a dividing fence forming part of a pool barrier complies with the pool safety standard
- an order preventing fencing work for a dividing fence forming part of a pool barrier to be done without authorisation
- another order: (please specify): _____

PART F CHECKLIST AND SIGNATURE

- I have completed all questions on the application form according to the instructions
- I have provided the correct number of copies of the application form and attachments (for the number of copies required – see the instructions)
- I have paid the prescribed fee
- I am ready to proceed with this application.

Interpreter

Is an interpreter required? *The assistance of an interpreter is subject to approval by the tribunal.*

Yes No

If Yes, please specify language: _____

Warning

Section 216 of the *Queensland Civil and Administrative Tribunal Act 2009* makes it an offence for a person to knowingly give the registry documents containing false or misleading information.

Maximum penalty for such an offence – \$10,000.

SIGN AND DATE HERE

The information in this application is true to the best of my knowledge.

Mrs. Margaret Thatcher

Applicant/s sign here

01/07/13

Date

If more than one applicant is named all must sign the application.

PRIVACY CONSENT AND DISCLOSURE STATEMENT

The Queensland Civil and Administrative Tribunal (QCAT) collects personal information from applicants in proceedings (You), for the purpose of compliance with the provisions of the Queensland Civil and *Administrative Tribunal Act 2009*,

Research purposes

QCAT wishes to use your personal information for research purposes to improve its services. An example of research is an online survey or focus group. QCAT may also share information about You with research companies for the purposes of conducting research. Any research company engaged by QCAT will undertake to keep your personal information confidential subject to the *Information Privacy Act 2009*.

By signing this Statement, you consent to communicate with QCAT by email or other suitable manner for research purposes; you consent to the sharing of your personal information with third parties as indicated and you waive your right to take further action against QCAT for any breach of your privacy.

Your consent commences from the date that you sign this Statement and return it to QCAT and continues for research purposes after your matter with QCAT has finalised and until you either withdraw your consent or upon the expiration of a period of 12 months.

Signature of applicant

By signing below, I acknowledge that I have read this Privacy Consent and Disclosure Statement and that I consent to the use and disclosure of my personal information as described in this Statement.

Applicant/s sign here

Contact details

For further information call 1300 753 228 or write to the QCAT registry, GPO Box 1639, Brisbane 4001.