



Boundary Fences

Contents

Do I have to have a dividing fence? 3
What if my neighbour or I want a fence?..... 3
What are typical boundary fences? 3
Who is my neighbour?..... 4
What if we agree? 4
What if we don't want the same thing? 4
What if we fail to negotiate an agreement? 5
How do I force my neighbour to contribute?..... 5
What if no objection is made to the fence proposed in the notice? 5
What if the neighbour objects to the fence proposed in the notice? 6
What are the rules for the arbitration?..... 7
Repair of fences 7
Who is responsible for accidental or wilful damage to the fence? 7
Can a hedge be a fence? 8
Are all properties subject to the Boundary Fences Act? 8
Can I go onto my neighbour's property?..... 9
When do I need a planning or building permit from Council?..... 9
How can I obtain a copy of the Boundary Fences Act? 9
Everybody needs good neighbours 10



As they say, "Good fences make good neighbours", so how do you organise fencing with your neighbour?

Do I have to have a dividing fence?

There is no requirement to have a fence, however where applicable you are responsible to contain your stock.

What if my neighbour or I want a fence?

Under the Boundary Fences Act, owners of adjoining lands not divided by a "sufficient" or "rabbit proof" fence, are liable to contribute to the erection of a fence between them.

What sort of fence? A "sufficient fence" is defined in the Boundary Fences Act as "a fence which is ordinarily capable of resisting the trespass of cattle and sheep, except where such fence is in a city or town, or adjacent to a dwelling-house, when the expression means a fence of the description and quality agreed or awarded".

What is appropriate for one area may be inappropriate for another.

"Fence" is defined as "a fence separating the lands of different owners, or any fence used or accepted by adjoining occupiers as a boundary line between their respective lands".

A boundary fence must be along the boundary line. Where the boundary is uncertain because it is a river, creek, lake, pond, or is rocky land, the neighbours can agree on the line the fence should take or resolve any dispute about the location of the boundary fence using the Boundary Fences Act arbitration procedure.

What are typical boundary fences?

A typical fence in a residential area is a 1.5 metre high wooden paling fence.

A typical fence in a rural area is a seven wire, post and wire fence.

Where do I start?

If you want a fence then you should discuss with the neighbour:

- the style of fence;
- when it will be built;
- who shall build it; and
- how the costs will be shared.

Some neighbours agree for one to construct the fence and the other to pay for the materials. Other neighbours divide the area to be fenced between them.

Even if you do not wish your neighbour to contribute to the cost of the fence, you are best to get agreement with your neighbour on what will be built .

Who is my neighbour?

The owner of land is shown on the land title which can be obtained through the Land Titles Office at 134 Macquarie Street, Hobart or from Service Tasmania.

What if we agree?

Take care to record the arrangement. A short neat note signed by both parties should be enough, but make it clear and complete.

A contractor may be willing to send two separate bills thus organising collection of the two contributions.

If one party breaks the agreement, it can be enforced in the courts.

What if we don't want the same thing?

Do not take any action on a fencing problem, before talking the matter over with your neighbour.

You may be living alongside your neighbour for years to come. It is in both your interests to be on reasonable terms.

If necessary, try involving a third party as mediator. You may need to obtain legal advice about your rights and possible remedies. Talk to Tierney Law.

What if we fail to negotiate an agreement?

You may erect a fence at your own cost without the agreement of your neighbour.

If you fence a boundary without the agreement of your neighbour and without following the dispute resolution system of the Boundary Fences Act:

- you cannot force your neighbour to contribute to the cost, and
- your neighbour may institute the Boundary Fences Act procedure to have the form of the fence adjusted.

If you are worried the neighbour will seek a change to your fence, consider setting your fence back from the boundary so it is well within your land. If the fence is not a boundary fence it will not be covered by the special boundary fence laws. Take care however to then avoid confusion about what is the boundary line of your block.

How do I force my neighbour to contribute?

If you don't reach agreement then under the Boundary Fences Act, you can give the neighbour a formal notice specifying the fencing work proposed. A sample copy is included at the end of this booklet.

The notice says that if the recipient does not object within 21 days, the specified fencing work will be done.

When you serve a copy make sure you can prove service. You can ask your neighbour to sign a receipt, use receipted delivery mail or have an independent witness to the service.

What if no objection is made to the fence proposed in the notice?

If :

- no notice of objection is given within 21 days; and
- no agreement is otherwise reached within 30 days of service of the notice,
the person giving the notice to fence, can proceed to erect or upgrade a fence in accordance with the notice and can recover from the neighbour a portion of the actual cost of construction or conversion of the fence together with interest.

What if the neighbour objects to the fence proposed in the notice?

If after serving the notice your neighbour objects, review the counter proposal and if appropriate discuss it with your neighbour.

If you and your neighbour still cannot agree, either of you may ask an independent arbitrator to make an order about the fencing work required.

The arbitrator as umpire will consider the views of the parties and make an award to resolve the disputed matters.

The arbitrator has power to resolve:

- the erection of any fence;
- the conversion of any fence into a rabbit-proof fence;
- the description or type of fence;
- the necessity or otherwise for the erection of any fence, or for the conversion of any existing fence into a rabbit-proof fence;
- the time and manner in which any fence should be erected or converted, and by whom it should be erected or converted; and
- the cost of erecting or converting any fence, and the proportion of such cost to be borne and paid by any party.

If a fence is to be built, you and your neighbour usually, though not always, will have to share the cost. Typically you would expect the cost of the fence to be divided equally. In apportioning the cost, the arbitrator must take into consideration the benefit likely to accrue to each owner from the fence.

The costs of the arbitration are borne by the parties in such proportions as the arbitrator determines. The arbitrator may order a person whose position has been rejected to pay a larger share of the arbitration costs.

What are the rules for the arbitration?

There are a set of standard arbitration rules set down under the Commercial Arbitration Act. These standard rules govern the conduct of an arbitration under the Boundary Fences Act.

The arbitrator needs to be a capable person chosen by the parties. The arbitrator need not be a judge or magistrate.

Repair of fences

Where a fence is out of repair or becomes insufficient, the owners of land on either side are liable to share the cost of repairing the fence.

An owner of land may serve a notice upon the adjoining owner, requiring assistance “in the repairing or making sufficient a fence separating such lands, or part thereof”.

If the adjoining owner refuses or neglects to do this for 21 days after the service of the notice, the person who served the notice may do the work required and demand of the other owner half the cost of such work. The Boundary Fences Act arbitration provisions also apply to disputes concerning the repair of fences. The liability of an adjoining owner to pay part of the costs of repairing a fence may therefore be subject to the determination of an arbitrator.

Who is responsible for accidental or wilful damage to the fence?

As with any other type of property, a person who carelessly or deliberately damages a fence may be responsible for its repair. This is so even if it is one of the neighbours who damages the fence.

Can a hedge be a fence?

The Boundary Fences Act does not require a constructed fence. A hedge can be used as a fence if it meets the other requirements of the Act.

Under the Boundary Fences Act neighbours can be required to cut back any live boundary fence more than a metre from the boundary line and are required to keep the boundary line clear of gorse, undergrowth or noxious weed within 5 metres of the boundary fence.

If the obligations to keep the fence cut back or clear are not met, the other neighbour can enter the property to do the necessary clearing and recover the costs from the offending neighbour.

Under the Boundary Fences Act there is a right to clear bush and scrub and remove fallen timber for a width of not less than 2 metres either side of the fence; to fall trees standing in the immediate line of the fence and fall and remove trees or branches either side of the fence which might injure the fence. These costs are dealt with as part of the cost of fencing.

Are all properties subject to the Boundary Fences Act?

The Boundary Fences Act does not apply to unoccupied Crown land, a public reserve or land owned by the Forestry Commission,

Under the Boundary Fences Act bodies such as the Council are not bound to share in the cost of fences on roads or public footways.

Subdividers usually protect themselves against boundary fence claims as part of the subdivision conditions. If the neighbouring land in a subdivision has not yet been sold separately, such a condition may permit enforcing the Boundary Fences Act obligations against the subdivider. A search of the neighbour's title will show if such a condition applies.

Tenants usually cannot enforce the Boundary Fences Act obligations, unless there is special provision in the lease that says otherwise.

Can I go onto my neighbour's property?

If there is no possible way to erect or repair the fence from your own side of the boundary, then you can go onto your neighbour's land but only at reasonable times.

If your neighbour's land has a crop, garden, orchard, plantation or shrubbery, then you must get their permission first.

If you damage your neighbour's property while doing the work, either on purpose or if you did not take care, then you may be bound to pay compensation to your neighbour for the damage caused.

When do I need a planning or building permit from Council?

Check with your Council whether a planning permit is required as this depends on the planning scheme.

A building permit is only required if the fence is more than 2.1 metres high for a timber/iron fence, or more than 1.2 metres high for a fence constructed from masonry (brick, concrete etc).

How can I obtain a copy of the Boundary Fences Act?

Copies of the Act can be obtained through the internet on www.thelaw.tas.gov.au. The actual address of the act is:

http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=all;doc_id=40%2B%2B1908%2BAT%40EN%2B20070310000000;histon=;prompt=;rec=;term=boundary

Everybody needs good neighbours

It is important for everybody to have a good understanding of the legal mechanics of both fencing and rights of way.

A good understanding of those rights and obligations is a sound foundation for an amicable neighbourly relationship.

A copy of this booklet may assist your neighbour and clarify the dispute.

You can choose your friends but not your neighbours. You are stuck with them and they are stuck with you.

If you find you cannot resolve matters by talking directly to your neighbours, consider using a mediation service like Positive Solutions www.positivesolutions.com.au .

This booklet is not a complete statement of the law. It does not deal comprehensively with your particular situation.
This booklet is to provide general information to supplement our specific advice to you. Do not act in reliance on this booklet without our specific advice.
We are responsible only if you give us specific instructions and for the specific advice we give.
This booklet was originally prepared in 2000 and has been updated as at the 30th August 2012. It does not reflect changes to the law after that date. You need to take specific advice on the possibility or effect of any such changes.

Tasmania

Boundary Fences Act 1908

NOTICE TO JOIN IN ERECTING A SUFFICIENT OR RABBIT-PROOF FENCE

Under the *Boundary Fences Act 1908* I give you notice as the owner of the land adjoining my land situated at that I require you to join in erecting a sufficient fence or rabbit-proof fence in accordance with the Act between our representative lands.

I propose:

(a) That the boundary to be fenced be as follows:

.....
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.....
.....

(b) That the kind of fence to be to be erected as follows:

.....
.....
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.....

Your attention is directed to the following provisions of that Act:

(a) Section 10, which enables you within 21 days after service of this notice to object to any proposal contained in this notice and provides for arbitration in case we do not come to an agreement;

(b) Section 12, which enables me to erect the fence and recover from you one half the actual cost together with interest if within 30 days after service of this notice we do not enter into an agreement and you have not served a notice of objection on me.

Dated aton.....

.....
(Signature of person giving notice)

.....
(Witness' signature)