

FACT SHEET - FENCES

Fences have the potential to create problems between neighbours when it comes time to repair or replace them. It is important to address the issue promptly and in a courteous manner, remembering it is always preferable to maintain good relationships with your neighbours.

Being proactive and looking to repair fence before they completely deteriorate is recommended. This can extend the life of the fence and ultimately save money.

The relevant legislation is the *Fences Act 1968*.

USEFUL LINKS

For a current copy of the Fences Act 1968, refer to link below:

<https://www.parliament.vic.gov.au/legislation>

Under Current Acts – Victorian Law Today – search for Fence Act 1968

Procedures

The following steps will assist CERCs in resolving issues with the repair or replacement of fences, and how to notify neighbours.

1. Approach the neighbour/s to discuss the condition of the fence and the need to repair or replace, as well as options regarding height, colour and type, and arrangements concerning payment. If the neighbouring property is tenanted, you will need to contact the agent/owner.
2. Agree to obtain at least two written quotes from fencing contractors.
3. Contact appropriate tradespeople to provide quotes, including the length and height of fence, type of material and cost for removal of existing fence if necessary. On request, the tradesperson

should be able to provide an itemised quote showing the proportion payment by each party.

4. Supply neighbour with copies of quotes and discuss best option, including method of payment. To avoid later argument, any agreement reached with your neighbour should be put in writing. The simplest way to do this is for each party to sign a copy of the accepted quote and write on it the proportion each agrees to pay. Make sure the quote is appropriately detailed. The tradesperson should invoice both parties individually for their share of the cost (half or as per the agreement).

If the neighbour does not agree to repair or replace the fence

The CERC should issue a formal notification. The *Notice to Fence* must be in writing, contain specific information and request the adjoining owner

- a) repair the fence, if the fence has been destroyed or damaged through the neglect of the adjoining owner, or
- b) join in or contribute to the repair of the fence in proportions to be agreed. Refer Appendix 1.



If there is no agreement after one month, and before taking any Court action, the CERC may seek mediation which is available through the Dispute Settlement Centre

If there is no agreement and mediation fails, action may be taken through the Magistrates' Court to seek an Order. Alternatively, the fence may be repaired and the cost, or proportion (see below) of the cost may be recovered by the filing of a complaint at the Magistrates' Court nearest the property. It is recommended you contact your CERC Development Co-ordinator for assistance.

Proportion

In most cases it will be reasonable for each occupier/owner to contribute 50% of the cost, but there may be special circumstances to justify a different proportion.

If a dividing fence is destroyed or damaged by fire or a falling tree as a result of neglect by one occupier, that occupier is liable to replace the entire fence or repair it completely at his or her own cost (S.14 of the *Fences Act*).

If one occupier causes damage to the fence or shortens its life through some other activity – for example, piling soil against the fence and causing it to rot – a Magistrate can take that into account when determining the proportion each occupier is to pay. Whether and how much the Magistrate will take into account is not possible to say.



Appendix 1

To the Owner

From (CERC name) _____
CERC address _____

Dear Sir/Madam

**Notice To Fence
Under Section 6 of the Fences Act 1968**

Pursuant to the provisions in the Fences Act 1968, I am compelled to give you Notice that I require you to join with me and contribute to the construction of a dividing fence between the following properties.

Lot/Street No. _____ in Street/Road _____ suburb _____,
owned by me, and the property Lot/Street No. _____ in
Street/Road _____ suburb _____ occupied (or owned) by you.

The total length of the boundary fence to be erected is _____ meters. Height _____ meters.

My proposal is that the kind of fence to be constructed be *(description of kind of fence, materials, distance between posts)*

Based on the present quotes, the total amount will be \$ _____, and I propose *(set out by whom to be constructed, and how the cost is to be apportioned between the parties i.e. one half)* _____

Any increase in costs will be our joint responsibility.

Please notify me of your consent to the above proposal by signing it below and returning it to me. Your reply to reach me within 14 days or earlier will be much appreciated.

If your consent is not received within one month of the date of service of this Notice upon you, I intend to make application to the Magistrates' Court under Section 7 of the Fences Act 1968.

Dated the _____ day of _____ 20 _____

Signature of person giving Notice _____ on behalf of (CERC)

I: *(name)* _____
do hereby agree to the above proposal.

(signature)

Dated the _____ day of _____ 20 _____