

RURAL FENCING COSTS: LANDOWNER'S OR TENANT'S?

Background

Each state and territory has its own fencing legislation:

- **Victoria:** [Fences Act 1968](#)
- **ACT:** [Common Boundaries Act 1981](#)
- **New South Wales:** [Dividing Fences Act 1991](#)
- **Northern Territory:** [Fences Act 1972](#)
- **Queensland:** [Dividing Fences Act 1953](#)
- **South Australia:** [Fences Act 1975](#)
- **Tasmania:** [Boundary Fences Act 1908](#)
- **Western Australia:** [Dividing Fences Act 1961](#)

Liability to contribute towards the construction or repair of a fence may vary between each jurisdiction.

Relevant provisions include:

- VIC (s 14, Fences Act 1968)
- NSW (s 18, Dividing Fences Act 1991)
- NT (s 20, Fences Act 1972)
- QLD (s 20, Dividing Fences Act 1953)
- SA (s 14, Fences Act 1975)
- WA (s 19, Dividing Fences Act 1961)

In most jurisdictions, the extent of a tenant's liability depends on the term of the tenant's interest. There are no rules for apportionment in the ACT or Tasmania. In all other jurisdictions, liability as between landlord and tenant to contribute to the construction or repair of a fence may depend on the duration of the Lease term.

The Acts set out the procedures to be followed by a party wishing to construct or repair a fence, and the obligations towards the cost of that construction or repair.

Compliance with local fencing regulations is also relevant and may differ between local, shire and regional council areas on matters such as materials to be used, height restrictions, etc.

Victoria

The [Fences Act 1968 \(Vic\)](#) sets out the requirements for construction, maintenance and repair of dividing fences by landholders. The Act applies to "occupiers" of adjoining land. The term "occupier" refers to those actually occupying properties as a licensee or lessee and those entitled to occupy them as owners. The word "fence" is not defined by the legislation and is thus subject to common law interpretation.

The provisions of the Act do not affect any covenant or agreement made relative to fencing between landlord and tenant or between occupiers of adjoining land: s 30.

Where there is no agreement to the contrary, the Act makes provision for fencing costs to be apportioned between owners and lessees.

Relevant provisions under the Act include:

Apportionment of costs

Section 10 provides that if the lease term is less than three years, the whole cost for constructing a fence dividing the land from any adjoining land under the Act is payable by the landlord.

If the lease term is for more than three years, the tenant is liable to pay the following proportions of the landlord's share of the cost, depending on the duration of the Lease term:

- a quarter of the landlord's share if the lease is less than six years;
- half the landlord's share if the lease is between six and twelve years; and
- all the landlord's share if the lease is more than twelve years.

Notice to fence

Where a tenant is served with a notice order award or certificate under the Act relating to the construction of a fence, the tenant must within 14 days serve a copy of the notice or certificate by registered post on either the landlord, the party who he pays his rent to, or any other person who the tenant has reason to believe is authorised to accept service of notices on behalf of the landlord: s 10(3).

Occupiers to "repair" dividing fence – Liability to contribute excused in certain circumstances

If a fence is damaged by fire or by the falling of a tree, the occupier whose neglect caused the damage is liable for the cost of the repair: s 15.

If there is any other immediate problem with straying stock or any other unreasonable risk, the fence may be repaired immediately by either occupier without any notice, and the cost of the repair may be recovered from the other occupier later. In default of agreement, the Magistrates' Court may determine contributions.

The Act does not deal with the situation where a tree's roots or branches on a neighbouring property intrude into the adjoining property and cause damage to the boundary fence. However, general common law principles permit the removal of roots or branches which intrude into a property, provided the roots or branches are returned to the neighbour by placing them on the neighbour's side of the fence.

A Magistrate can take into account the damage caused to a boundary fence by a neighbouring tree's roots or branches when determining the proportion of the costs of repair to or replacement of the fence to be borne by each party.

Whether the replacement of a pre-existing fence with a new fence can be regarded as a "repair" under the terms of the Act does not seem to have yet been resolved by the Courts.

Crown exemption

The Crown is exempt from the requirements of the Act: s 31. Therefore, farmers with land bordering Crown land must bear the entire cost of constructing and repairing dividing fences (and vice versa if the Crown wishes to erect a fence).

However, half of the fencing costs may be recoverable if the Crown leases, licenses or sells the bordering Crown land to a private person or company (s 12), or if the local council uses the land for public use.

A Vaccari
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