

# DIVIDING (BOUNDARY) FENCES EXPLAINED

**It's an area that confuses property owners – who is responsible for maintaining and repairing a boundary fence? The issue can be even more complicated for strata schemes where there are also common property boundaries and individual lot boundaries.**

Let's look at the legislation and see whether that helps provide any clarity.



In all Australian states, a dividing fence is defined as one that separates the lands of different owners regardless of whether the fence is on a common boundary line or not. So, if a strata scheme has built a fence wholly within its boundaries, the legislation still applies to both owners, as if the fence was on the boundary. A retaining wall is generally not a dividing fence unless it's built solely as a foundation and support of the fence.

- The legislation defines a fence, cost sharing, location and the standard of dividing fences, as well as procedures for carrying out work and resolving disputes.
- It's designed to regulate neighbours' responsibilities and to settle the contentious aspects of sharing a fence.
- It provides a basic structure for construction, replacing, repairing or maintaining a dividing fence, but neighbours can still come to their own agreement.
- It doesn't apply to boundary fences bordering public authorities, such as Crown Land, public parks, reserves, roads, train lines and footpaths.

Each State has its own legislation for dividing (boundary) fences

- QLD – Neighbourhood Disputes (Dividing Fences and Trees) Act 2011
- NSW – Dividing Fences Act 1991
- SA – Fences Act 1975
- TAS – Boundary Fences Act 1908
- VIC – Fences Amendment Act 2014
- WA – Dividing Fences Act 1961
- ACT – Common Boundaries Act 1981
- NT – Fences Act 1972

## Strata scheme boundaries

For a strata insurance claim, the legislation defining neighbour's responsibilities only applies to perimeter fences that define the land owned by a strata scheme.

'The definition of fences between individual lots within a strata scheme still applies for maintenance purposes but the strata insurer will cover the fence for 100% of the reinstatement cost if a claim for damage is accepted.

## Managing claims for damage to a dividing(boundary) fence

The following questions help determine if the damaged fence is a dividing fence under the state legislation and whether it forms the border of the land owned by a strata scheme.

1. Is the fence shared with another property?
2. Is the neighbouring property privately owned, ie not Crown, Council or Public Land?
3. Was the damage caused deliberately by either owner of the adjoining property?

All claims must be lodged with full details about the incident and who (if anyone) is responsible for the damage. If the damage was caused by a motor vehicle, you'll need to provide the registration number and the owner's motor vehicle insurance details.

You should also obtain two quotes to fully reinstate the damaged area of the fence. These should reflect rebuilding with the same materials as the damaged fence. If a strata scheme wants to upgrade the fence, it will need to cover any additional costs together with the neighbour.

## Taking individual responsibility

Where a person is responsible for the damage, the insurer will generally try to recover costs from that person and the strata scheme must not interfere in this process.

If the individual chooses to pay for full reinstatement of the fence using their own choice of licensed contractor, then there's no need to lodge a claim, as with all damage caused by others.

## Allocating the cost of repairs

This is the area where state legislation differs the most.

In general, if an insurer accepts a claim, it will settle in the proportion allowed for in the relevant legislation. Generally, this is 50% of the cost. The neighbour should also submit a claim to its insurer for the remaining 50%.

However, where the neighbouring property is Crown Land, public parks, reserves, roads, train lines or footpaths, the insurer will settle 100% of the claimed costs.

Claims are usually settled in cash. But if the neighbours have come to a prior agreement to each pay the contractor 50% of the final invoice, the insurer may provide authority to an approved contractor for its portion of the fence reinstatement only.



A boundary fence is a perimeter fence that defines the land owned by a strata scheme.

If a claim for strata insurance is accepted, the insurer will pay 100% of the cost to reinstate the damage to fences between individual lots.

**If you have any questions about dividing boundary fences, please contact your local BCB office.**

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### QUESTIONS?

Please contact your nearest BCB office for any queries or advice.



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