

# Replacing or Repairing Fencing

The *Boundary Fences Act 1908* (Tas) determines who pays for the repair or replacement of fences.

## Who Has to Pay?

The general rule is that you and your neighbour must share the cost (each pays half) of repairing or replacing a shared fence.

## What if I border on Crown land or forestry?

In some situations you must pay the entire cost of fencing. This is the case if you border on:

- Unoccupied Crown land;
- Public reserves;
- Local council roads;
- Land owned by Forestry Tasmania;
- Unsold land owned by the same person (eg separate parcels of land contained within a subdivision, which have not yet been sold to individual purchasers).

## What if it is my neighbour's fault that the fence was destroyed?

If the fire originated from your neighbour's property and your neighbour was negligent, you can ask that your neighbour repair the fence immediately.

## If I pay for the entire fence, do I need my neighbour's permission?

No. If you pay for the entire fence you do not need your neighbour's permission. (But, make sure that you read the section below on 'Can I go onto my neighbour's property'.)

## What if I am leasing the property?

Owners, not tenants, are responsible for the maintenance, repair and replacement of fencing. If notice is given to a tenant, that tenant should give the notice to the owner.

## Where Do I Start?

### My fence was destroyed or damaged by the bushfires

This is accidental damage or destruction. You need to give your neighbour 7 days notice, which should be in writing ('serving notice' to repair a fence). After giving notice, you have 12 months to ask your neighbour to reimburse you for half of the cost. If you do not give notice then you may have to pay for the entire fence yourself.

### What should the notice look like?

A template for the notice is contained in Schedule 1 of the *Boundary Fences Regulations 2008*. You can get a copy of this from [www.thelaw.tas.gov.au](http://www.thelaw.tas.gov.au). You should either send

the notice to your neighbour in the mail or hand it to him/her. You should keep a copy of the notice for your records.

The notice to fence should contain the following information:

- where the fence will be built (the boundary);
- the type of fence you want to build and the materials you want to use;
- a plan for the fence;
- the cost of the fence and how the cost will be paid (it is probably best to get two quotes); and
- how the work on the fence will be done.

Your neighbour has 21 days (7 in the case of accidental damage) to respond to the notice.

### **What if my neighbour disputes the boundary?**

Contact the Hobart Community Legal Service for legal advice. You may have to employ a surveyor to determine where the boundary is.

### **What if my neighbour does not reply?**

If your neighbour does not reply within 30 days then you can fix or replace the fence and charge your owner for half the cost.

If your neighbour objects to your notice then you and your neighbour go to arbitration for the dispute to be settled. Contact the Hobart Community Legal Service for help with arbitration.

### **Can I go onto my neighbour's property to build or repair a fence?**

If there is no possible way to erect or repair the fence from your side of the boundary then you or your builders may go onto your neighbour's land to do this. Entry must be at reasonable times whilst the work is being completed. If your neighbour's land is a crop, garden, orchard, plantation or shrubbery then you must get his/her permission first.

- If you damage your neighbour's property while doing the work, either on purpose or accidentally, then you will have to pay compensation to your neighbour for the damage caused.

### **What if my neighbour refuses to pay after the fence is built?**

You should first try to reach an agreement with your neighbour. If you cannot agree, then the dispute goes to arbitration. Contact the Hobart Community Legal Service for advice.

## **Where Can I Get Help?**

Contact the Hobart Community Legal Service for help with fencing. Our website is at [www.hobartlegal.org.au](http://www.hobartlegal.org.au). Contact us by phone on 6223 2500 (Hobart), 6265 1911 (Sorell) or 6263 4755 (Bridgewater).