

FENCING NOTICE

Date of this notice:

Name of person(s) giving fencing notice:

Address of person(s) giving fencing notice (for response):

Telephone number of person(s) giving fencing notice:

Email address of person(s) giving fencing notice (if any):

1. I (the notifying owner) give this notice to you, the owner of the property located at (the adjoining owner):

[Include description of land e.g. street address, lot number and/or identifying particulars]

2. I propose that fencing works and and/or other associated works be carried out for the boundary of your property, above at 1, and my adjoining property, which is located at:**

[Include description of land e.g. street address, lot number and/or other identifying particulars]

** other associated works are called 'subsidiary works' in the *Fences Act 1968* (Vic)

3. I propose that the position of the dividing fence should be:

[and complete one option only]

- the boundary line, described as follows:

[Describe e.g. the existing line of fence, the boundary line as marked on the ground]

- another line, described below, if it is impracticable to carry out the fencing works and/or any other associated works** on the common boundary because a waterway or obstruction (whether natural or manmade) is on or forms the common boundary:

[Describe e.g. the line of a waterway, around an obstruction or along a line marked on the ground. Give reasons]

4. I propose that the following type of fencing works and/or other associated works should be carried out:**

[you may more than one option]

- repair or maintenance of the whole or part* of the existing dividing fence

[Specify nature of the proposed repair or maintenance e.g. replacement of palings, painting, etc]

- demolition of the whole or part* of the existing dividing fence
- removal of the whole or part* of the existing dividing fence
- construction of the whole or part* of a new dividing fence
- replacement of the whole or part* of the existing dividing fence (including demolition and removal of the whole or part* of the existing dividing fence and construction of the whole or part* of a new dividing fence)
- planting, replanting, repair or maintenance* of a hedge or similar vegetative barrier that is the whole or part* of a dividing fence
- cleaning, deepening, enlargement, repair or alteration* of a ditch or embankment* that is the whole or part* of a dividing fence

* strike out whichever does not apply

** other associated works are called 'subsidiary works' in the *Fences Act 1968* (Vic)

other associated works**

[Specify other associated works e.g. design of dividing fence, preparation or clearing of land, surveying and marking of common boundary or other proposed line of fence, using temporary barriers etc]

5. If applicable—statement that a dividing fence is not required for part of the common boundary:

if applicable

A dividing fence is not required for part of the common boundary because a waterway or other obstruction (whether natural or manmade) is on or forms the common boundary

[If applicable, describe waterway or obstruction and the part of the common boundary for which a dividing fence is not required]

6. If it is proposed to construct a new dividing fence or replace the existing dividing fence—I propose that the height(s) of the new/replacement dividing fence should be:

[Specify proposed height(s) of new/replacement dividing fence e.g. same as existing dividing fence or specify other height(s)]

7. If it is proposed to construct a new dividing fence or replace the existing dividing fence—I propose that the type of dividing fence and construction material should be:

[Specify proposed type of dividing fence and construction material e.g. same as existing dividing fence, paling fence, Colorbond fence]

* strike out whichever does not apply

** other associated works are called 'subsidiary works' in the *Fences Act 1968* (Vic)

8. If it is proposed to construct a new dividing fence or replace the existing dividing fence with a dividing fence that has rails and framing, I propose that the rails and framing should be placed on the side of the dividing fence facing into:

one option only

- your property, described at 1
- my property, described at 2

9. Whether a contribution is sought from the adjoining owner:

and complete one option only

- I propose to pay the entire cost of fencing works and any other associated works** at 4
- I propose that the cost of fencing works and any other associated works** at 4 should be shared between us

10. If a contribution is sought from the adjoining owner—estimate of cost, basis of estimate and proposed contribution proportions and amounts:

[Complete only if it is proposed, at 9, that the cost should be shared]

a. The total estimated cost of the proposed fencing works and any other associated works** at 4 is \$_____

b. The basis of this estimate is:

[Describe e.g. quotation from fencing contractor]

[Attach quotation if you have one]

c. I propose that the cost should be shared as follows:

I pay \$_____, being ____ %

you pay \$_____, being ____ %

d. If contributions other than in equal proportions are proposed, give reasons:

[Give reasons e.g. one party requires a dividing fence that is of a standard greater than a sufficient dividing fence]

** other associated works are called 'subsidiary works' in the *Fences Act 1968* (Vic)

11. I propose that the fencing works and any other associated works at 4 should be carried out by:**

[Specify name and contact details of person(s) proposed to carry out works, if known]

Although not required by the Fences Act 1968 (Vic), it would assist negotiations if you complete the attached 'Response to fencing notice' and return it to me at address at the beginning of this fencing notice within 30 days of the date this notice is given to you. Please note, if no response is received with 30 days, the notifying owner may proceed with the proposed fencing works and later seek to recover contributions from the adjoining owner.

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RESPONSE TO FENCING NOTICE

I/we the adjoining owner/s acknowledge receipt of the fencing notice dated _____

AND

I/we the adjoining owner/s **agree** with the proposal in the fencing notice about fencing works and other associated works and contributions

OR

I/we the adjoining owner/s **do not agree** with the proposal in the fencing notice about fencing works and other associated works and contributions

If you do not agree with the proposal in the fencing notice, you may wish to specify the aspect(s) of the proposed fencing works, other associated works** or contributions that you do not agree with and propose alternatives:

Adjoining owner

Name: _____

Signature: _____ Date: _____

Adjoining owner

Name: _____

Signature: _____ Date: _____

** other associated works are called 'subsidiary works' in the *Fences Act 1968* (Vic)

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IMPORTANT INFORMATION ABOUT THIS FENCING NOTICE

1. This is a fencing notice under section 13 of the **Fences Act 1968**.
2. Agreement to the fencing works and any subsidiary works proposed in this fencing notice gives rise to a fencing notice agreement, which can be enforced under the **Fences Act 1968**.
3. Notifying owners† should provide fencing notices to adjoining owners prior to the commencement of fencing works or any subsidiary works*, unless urgent fencing works (including subsidiary works) must be carried out. Urgent fencing works may need to be carried out in circumstances including where the dividing fence has been damaged or destroyed by a falling tree or branch or by fire or flood. If urgent fencing works are to be undertaken the urgent fencing notice should be used.
4. Using temporary fences and barriers as dividing fences until the completion of fencing works is subsidiary works and requires agreement from the adjoining owner in the manner described above, unless it is classified as urgent fencing works.
5. Subsidiary works can also include the design of a dividing fence, the preparation or clearing of land for the purpose of fencing works, the surveying and marking of the common boundary of adjoining land or other proposed line of fence for the purpose of fencing works and obtaining an approval required for the purpose of fencing works.
6. A notifying owner can commence fencing works and any subsidiary works with a fencing notice agreement, any other agreement between the owners, an order of the Magistrates' Court, or otherwise in accordance with the **Fences Act 1968**. If there is no complete agreement between the notifying owner and the adjoining owner or no order of the Magistrates' Court, or if the notifying owner's actions are in conflict with the **Fences Act 1968**, the adjoining owner may file a complaint in the Magistrates' Court.
7. If, within 30 days from the day this fencing notice is given, the adjoining owner has responded to a fencing notice from a notifying owner, but does not agree to one or more of the matters specified in this notice, the notifying owner cannot proceed with fencing works or any subsidiary works (whether proposed in this notice or otherwise) without the adjoining owner's agreement.
8. The notifying owner and adjoining owner may continue to negotiate or, after the 30 days, either owner may commence proceedings in the Magistrates' Court for orders. Orders sought may include the line on which fencing works and any subsidiary works are to be carried out; the line that is the common boundary; whether or not a dividing fence is required and whether or not fencing works and any subsidiary works should be carried out; the nature of any fencing works and subsidiary works to be carried out; the nature of the fence that constitutes a sufficient dividing fence; the way in which contributions for the fencing works and any subsidiary works should be apportioned; and other matters.
9. If, within 30 days from the day this fencing notice is given, the adjoining owner has not responded to this notice, the notifying owner may proceed with the fencing works and any subsidiary works set out in this notice. The notifying owner may then commence proceedings in the Magistrates' Court to recover contributions from the adjoining owner.

* subsidiary works are other necessary works to allow the fencing works to take place, including design of a dividing fence, preparation or clearing of land, surveying and marking of common boundary or other proposed line of fence, obtaining approval and using temporary barriers

† the owner who gives the fencing notice is the notifying owner (or owners) and the owner who receives the fencing notice is the adjoining owner (or owners)

10. Either owner may seek assistance from the Dispute Settlement Centre of Victoria to resolve any disputes about the proposed fencing works and any subsidiary works.
11. Section 6 of the **Fences Act 1968** provides for the factors that must be considered in determining whether a dividing fence is a sufficient dividing fence. The factors that must be considered include (but are not limited to) the purpose for which owners of adjoining land use the land or intend the land to be used, reasonable privacy concerns of the owners of adjoining land, any policy or code relating to dividing fences adopted by the municipal council of the area, any relevant planning instruments, the existence of any agreements or covenants, and the need for a dividing fence.
12. Section 8 of the **Fences Act 1968** provides for who is liable for the cost of fencing works and any subsidiary works if one owner of adjoining land requires a dividing fence that is of a greater standard than a sufficient dividing fence.
13. Section 32 of the **Fences Act 1968** provides for the placement of rails and framing for a dividing fence that has rails and framing. Owners may agree about the side of the dividing fence on which the rails and framing are to be placed. If an agreement between owners or an order of the Magistrates' Court does not specify the side on which rails and framing are to be placed, the **Fences Act 1968** provides for the side on which rails and framing must be placed.
14. For a dividing fence between residential or commercial land and land over which the public has general access or over which there is a right of way, the rails and framing must be placed on the side of the dividing fence facing into the residential or commercial land. For a dividing fence between residential and commercial land, the rails and framing must be placed on the side of the dividing fence facing into the residential land. In all other cases, the rails and framing must be placed on the same side as the previous dividing fence (if a dividing fence is being replaced by a similar dividing fence) or on the side least subject to weathering (if a dividing fence is being replaced by a different type of dividing fence or if there was no previous dividing fence).
15. The **Fences Act 1968** deals with a range of other matters. Further information is available from the Dispute Settlement Centre of Victoria's website.

Other important information

16. Division 3 of Part 3 of the **Fences Act 1968** details the process that must be followed if the common boundary is not agreed, which includes giving a boundary notice and engaging a licensed surveyor to have the common boundary defined.
17. Unless impractical to do so, a dividing fence must be built on the common boundary or claims of adverse possession may arise, as detailed in section 30E of the **Fences Act 1968**.

Building and protection works

18. Building works on boundaries may involve the demolition of walls, which could occur prior to the commencement of fencing works, if a new sufficient dividing fence is then to be constructed. Building works may also include the construction of a new structure on a boundary line. Building and protection works are not fencing works and are not subject to the **Fences Act 1968** (unless where specified). Building and protection works are subject to Part 7 of the **Building Act 1993**. More information can be obtained from the Victorian Building Authority's website.