

Form Number 53 (Version 2.0)

Queensland Civil and Administrative Tribunal Act 2009 (section 33)

Application for minor civil dispute – dividing fences – Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 and Building Act 1975

Please refer to the attached instructions before
completing this form.

For office use only

Case number:	
Date:	
Registry:	
Fee paid:	
Rec no:	

PART A APPLICANT'S DETAILS**Applicant details:** (for multiple applicants attach details on a separate sheet)*Name***Address**

<input type="text"/>		
<input type="text"/>	Postcode	<input type="text"/>

Contacts

() <input type="text"/>	() <input type="text"/>
<i>Preferred phone number</i>	<i>Alternative number</i>

Email

PART A RESPONDENT'S DETAILS

Respondent details: (for multiple applicants attach details on a separate sheet)

Name

Address

<input type="text"/>		
<input type="text"/>	Postcode	<input type="text"/>

Contacts

() <input type="text"/>	() <input type="text"/>
Preferred phone number	Alternative number

Email

PART B GENERAL DISPUTE DETAILS

1. What is the street address of the property where the fence is located or is to be constructed?

2. What is your connection with the property in question 1?

- Registered owner of property
 Body corporate for property
 Other: _____

3. What is the respondent's connection with the property in question 3?

- Registered owner of property
 Body corporate for property
 Other: _____

Note to applicants: Applications can only be made against owners of the land. Tenants who are renting the land and are covered by the *Residential Tenancies and Rooming Accommodation Act 2008* are not owners of the land.

4. Are you making this application because you believe that the respondent is about to construct or demolish a dividing fence without authorisation?

Yes

No

If Yes, please provide details about why you believe this and what you think is going to happen:

5. Have you given the respondent a notice about the fencing work for the dividing fence?

Notices to contribute for fencing work are found at www.justice.qld.gov.au . Notices applying to pool barriers that are also dividing fences are located at www.hpw.qld.gov.au

Yes

No

If Yes, please attach a copy of the notice and details of how and when you gave the notice to the respondent:

6. Is there an existing dividing fence?

Yes

No

If Yes, please provide details e.g. height, material, age, condition:

7. If no, was there previously a dividing fence?

Yes

No

If Yes, please provide details e.g. height, material, age, condition, reason it was removed:

8. The estimated cost of the fencing work is:

\$

How much contribution are you seeking from the respondent?

\$

If applicable please attach evidence to support the estimated costs.

9. What is your land used, or intended to be used, for?

Please provide details e.g. agricultural, pastoral, rural, residential, commercial:

10. What is the respondent's land used, or intended to be used, for?

Please provide details e.g. agricultural, pastoral, rural, residential, commercial:

11. What kind of dividing fence is normally used in your area?

Please provide details e.g. height, material, age, condition:

12. Can the dividing fence be maintained by you and the respondent?

Yes

No

Please provide details:

13. What is the local government area where the dividing fence is located? *for example Brisbane City Council, Redlands Shire Council. To locate your local government authority, check your rates notice, look in the phone book or visit www.qld.gov.au for more information.*

14. Is there any policy or local law about dividing fences in that local government area?

Please contact your local council or visit their website.

Yes

No

If Yes, please provide details:

15. Is there any requirement for fencing work in a development approval for your land?

Yes

No

If Yes, please provide details:

16. Is there any requirement for fencing work in a development approval for the respondent's land?

Yes

No

Don't know

If Yes, please provide details:

17. Is there any written agreement between you and the respondent about the dividing fence?

Yes

No

If Yes, please provide details and a copy of the agreement:

18. If you are making this application because you could not locate the respondent, please provide details about the how you tried to locate them.

PART C DIVIDING FENCE THAT IS ALSO A POOL BARRIER

19. Does any part of the fence form part of a pool barrier, or will it in the future?

Yes

No

If Yes, please provide details:

20. Does the pool barrier comply with the pool safety standard, or will it comply?

Yes

No

If Yes, please provide details:

PART D TREE DISPUTES

21. If there is an existing dividing fence, is part or all of the fence made of a tree or trees?

Yes

No (Proceed to question 23)

If Yes, please provide details:

22. Have you or the respondent already made an application to QCAT about the tree?

Yes

No

If Yes, please provide QCAT case number:

PART E DETAILS OF WHAT YOU SEEK FROM THE TRIBUNAL

23. I want the tribunal to make the following order/s: (please tick)

The orders below may be available for both dividing fences and a pool barrier.

- an order about the line on which fencing work is to be carried out
- an order that fencing work be done
- an order about the kind of material to be used in fencing work
- an order about the amount the parties have to contribute or pay for fencing work
- an order about which part of the dividing fence is to be constructed or repaired
- an order about when the fencing work is to be done
- an order for compensation for damage to or destruction of a dividing fence caused by the respondent, or someone on their land with their consent \$ _____
- an order requiring the removal of things attached to a dividing fence and the restoration of that fence
- variation of an existing order
- an order for payment of the filing fee for this application
- another order (please specify): _____

24. I want the tribunal to make the following additional order/s for a dividing fence that is not part of a pool barrier: (please tick)

The orders below may be available ONLY for dividing fences that are not also a pool barrier.

- an order that a specific fence is a dividing fence
- an order that no dividing fence is required for part or all of a boundary
- an order that an existing fence is a sufficient dividing fence
- an order preventing the construction or demolition of a dividing fence without authorisation
- an order requiring a dividing fence that was constructed or demolished without authorisation to be removed, modified or rectified
- an order that the respondent pay the costs of any removal, modification or rectification of an unauthorised dividing fence
- another order (please specify): _____

25. I want the tribunal to make the following order/s (please tick):

The orders below may be available ONLY for dividing fences that are also a pool barrier.

- for a dividing fence that is a pool barrier, an order for access to land
- an order preventing the demolition or tampering with the dividing fence without authorisation
- an order requiring a dividing fence that was demolished or tampered with without authorisation to be rectified
- an order that the respondent pay the costs of any rectification of an unauthorised dividing fence
- an order that an existing fence has been or can be used as a dividing fence forming part of a pool barrier
- an order that a dividing fence forming part of a pool barrier complies with the pool safety standard
- an order preventing fencing work for a dividing fence forming part of a pool barrier to be done without authorisation
- another order: (please specify): _____

Interpreter

Is an interpreter required? *The assistance of an interpreter is subject to approval by the tribunal.*

- Yes No

If Yes, please specify language: _____

SIGN AND DATE HERE

The information in this application is true to the best of my knowledge.

Applicant/s sign here

Date

If more than one applicant is named all must sign the application.

Instructions for completing**Application for minor civil dispute – dividing fences**
*– Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 and Building Act 1975***WHAT TYPE OF APPLICATION ARE YOU MAKING?**

A dividing fence dispute is a disagreement between neighbours about a fence, or a proposed fence, on the common boundary of adjoining lands.

It can include a dispute about a dividing fence that forms, or will form in the future, part of a pool barrier.

It does not include a dispute about a retaining wall or a wall that is part of a house or garage.

Note: if your dispute is about a dividing fence that is not part of a pool barrier, the amount in dispute is limited to \$25,000.

Note: if your dispute is about a dividing fence that is part of a pool barrier, the amount in dispute is unlimited.

General instructions**Lodging your application**

By post: QCAT, GPO Box 1639, Brisbane QLD 4001.

If you are posting your original application and copies to QCAT, you must include a stamped self-addressed A4 envelope with your application.

In person: At QCAT, Level 9, 259 Queen Street (BOQ Centre), Brisbane OR any Magistrates Court (excluding Brisbane).

To find your nearest Magistrates Court, look under “Justice and Attorney-General” in the phone book or visit www.courts.qld.gov.au.

Applications must be accompanied by the prescribed application fee

You must pay the prescribed application fee when you lodge your application. For more information on fees visit www.qcat.qld.gov.au or call 1300 753 228.

Payment can be made by cash (only when application being lodged in person), cheque or money order (payable to Department of Justice and Attorney-General), or credit card payment authorisation (see *Credit card payment authorisation form* – MasterCard and Visa accepted).

Copies of the application

When lodging your application you must also provide two copies of the application and any documents. If there is more than one respondent an extra copy of the application and any documents must be lodged.

After you lodge your application

QCAT will keep your original application and attached documents, and the 2 extra copies.

QCAT will stamp QCAT’s seal on your other copies and return them to you.

You need to give these stamped copies to the respondent and any additional party.

Instructions for completing *(continued)*

Providing copies to the respondent and other people

Generally, you must give the stamped copies of the application as soon as practicable, and no later than 7 days after you lodge the application.

If your application is to prevent the respondent from doing unauthorised fencing work in the future, you need to give them a copy at least 1 day before the application is heard.

If your application is about unauthorised fencing work that the respondent has already done, you need to give them a copy at least 3 days before the application is heard.

The most common ways to give the stamped application to the respondent and any other party is by:

- posting it to their address
- giving it to them in person, or if they refuse to take it, by putting it down in their presence and telling them what the application is
- leaving it with another adult who lives or works at their address.

You cannot give the stamped application to the respondent or any other party by leaving it in their letterbox or putting it under the door.

You will need to establish that the application has been given to the respondent and each other person who is required to be given a copy by filing a *Form 9 Affidavit of Service*, or a written acknowledgement from each person that they have received the application.

PART A APPLICANT'S AND RESPONDENT'S DETAILS

More than one applicant and respondent may be named in the application. If there is not enough space to include additional parties, attach additional pages with similar details.

If the applicant or respondent is not an individual then the correct name must be used, for example:

- a company name
- a business name, whether registered or unregistered
- a State agency name, for example a Queensland Government Department.

Documents will be given or sent to you at your address, unless you indicate your representative's address as your address for notices.

If you want to change your address for notices you must complete a *Change of contact details form*, file it in the tribunal and serve it on all other parties.

If you cannot locate the respondent, please see question 18.

Representation at QCAT

If you want your representative to represent you in any proceedings before the tribunal you must complete the form *Application for leave to be represented*. Generally the tribunal expects people to represent themselves. It may not grant your request. You must give reasons for why you want to be represented.

You are not required to seek leave if you are a child or a person with impaired capacity.

PART B GENERAL DISPUTE DETAILS

Please tick the relevant boxes and provide further details as required.

PART C DIVIDING FENCE THAT IS ALSO A POOL BARRIER DETAILS

Different laws apply to dividing fences that are or may also form part of a pool barrier. If the dividing fence that is the subject of the dispute is or may form part of a pool barrier, please tick the relevant boxes and provide details as required.

PART D TREE DISPUTES

Different laws may apply to a dividing fence that is a hedge or other kind of barrier made from a tree or trees. Please tick the relevant boxes and provide details as required.

PART E DETAILS OF WHAT YOU SEEK FROM THE TRIBUNAL

State what orders you are seeking from the tribunal and why you consider the orders sought should be made. Include a clear outline of the history and nature of the dispute.

SIGNATURE

Check that you have provided all copies and relevant documents that form part of your application. Please sign and date your application.

WARNING

Section 216 of the *Queensland Civil and Administrative Tribunal Act 2009* makes it an offence for a person to knowingly give the registry documents containing false or misleading information.

Maximum penalty for such an offence – \$11,000.

OTHER INFORMATION

Have you included a copy of all the relevant documents and evidence?

You must include a copy of all of the relevant documents that you want to use and rely on at the hearing.

You must print out all electronic evidence

Sometimes evidence (such as photos or receipts) may be stored in an electronic device, such as a mobile phone, tablet or computer. Sometimes evidence may be stored on a CD or DVD. You must provide a printed copy of this evidence with your application if you wish to use and rely on it at the hearing. The tribunal will not accept a CD or DVD for filing and will not consider evidence provided only in an electronic format.

Your information

QCAT is collecting your contact details for the purposes of compliance with the *Queensland Civil and Administrative Tribunal Act 2009* in relation to proceedings in QCAT. QCAT may contact you to seek your assistance in research to assist in the evaluation of the operation of QCAT. You are not obliged to participate in feedback or surveys. If you do participate no identifying particulars will be published. QCAT will not disclose your contact details or any other personal information to a third party unless required by law.

Application checklist: – Minor civil dispute – dividing fences

USING THE CHECKLIST

Before applying to QCAT about your dividing fence dispute, use the checklists below to:

- check your application is within QCAT's jurisdiction
- check you have completed and lodged your application correctly.

BEFORE MAKING A DIVIDING FENCE APPLICATION

<p>1. Have you checked if dividing fence laws apply to your dispute? Visit www.qld.gov.au/law/housing-and-neighbours/disputes-about-fences-trees-and-buildings for more information on the <i>Neighbourhood Disputes (Dividing Fences and Trees) Act 2011</i>.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>2. Is your dispute about recovering an agreed amount of money (up to \$25,000) for fencing work? For disputes about the recovery of a debt in relation to agreed or ordered contributions to fencing work, you must complete <i>Form 3 Application for Minor Civil Dispute – minor debt form</i> available from www.qcat.qld.gov.au</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>3. Is your dispute about a dividing fence that is part of the pool barrier for your pool or your neighbour's pool? Different laws apply to dividing fences that are part of pool barriers. For information regarding pool barriers, contact the Department of Housing and Public Works on 1800 340 634 or visit http://www.hpw.qld.gov.au</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4. Is the fence around a public park owned by council? Fences around parks owned by council are not under QCAT's jurisdiction. Contact your local government authority (council) for more information. For specific information on whether your dispute is covered by dividing fence legislation, you may wish to seek legal advice.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>5. Have you tried to resolve the dispute with your neighbour? Dispute Resolution Centres offer free mediation services to assist in resolving neighbourhood disputes. For more information call 1800 017 288 or visit http://www.qld.gov.au/law/housing-and-neighbours/disputes-about-fences-trees-and-buildings/</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

6. Have you sent your neighbour a Notice to contribute for fencing work?

If you want your neighbour to contribute towards the costs of constructing, replacing or maintaining the dividing fence, your first step is to provide your neighbour with a *Form 2 Notice for contribution to fencing work* available from www.neighbourhooddisputes.qld.gov.au

Yes
 No

7. What are the possible costs involved in making an application to QCAT?

You will need to pay an application fee. Information on fees can be located on the tribunal's website. You may have some costs in obtaining evidence such as an expert's report, or in attending a hearing. These costs are generally not recoverable, even if your application is successful. You will only be asked to pay the costs incurred by your neighbour in special circumstances.

Yes
 No

8. Have you considered the possible outcomes of making an application to QCAT?

Possible outcomes from an application include:

- the matter may go to a hearing where you may or may not be successful
- orders made by the tribunal are enforceable.

Yes
 No

LOGGING YOUR APPLICATION FOR MINOR CIVIL DISPUTE – DIVIDING FENCES

9. Are you using the correct application form?

Complete the *Form 53 Application for minor civil dispute – dividing fences – Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 and Building Act 1975* form available from www.qcat.qld.gov.au

This form also applies if your application is about a dividing fence that is part of a pool barrier.

For disputes about the recovery of a debt in relation to agreed or ordered contributions to fencing work, you must complete a *Form 3 Application for Minor Civil Dispute – minor debt* form available from www.qcat.qld.gov.au

Yes
 No

10. Are you ready to proceed with the application? Have you:

- answered all applicable questions
- provided all pages of the application form
- aware of the application fee, based on the amount of your claim
- signed and dated the application
- provided your own details including name, address and whether you are the owner or occupier
- provided full details of the person you are making an application against (the respondent) including name, address and whether they are the owner or occupier
- attached all relevant material
- provided QCAT with the correct number of copies (see your application form for more information)?

If you have not completed your form correctly, your application may not be accepted.

Yes
 No

11. Do you know where to lodge your application to QCAT?

By post: QCAT, GPO Box 1639, Brisbane QLD 4001
or your local Magistrates Court (excluding Brisbane)

In person: Brisbane: QCAT, Level 9, 259 Queen Street, Brisbane

In person outside of Brisbane: Your nearest Magistrates Court

Yes
 No