



Fact Sheet

Common Boundaries and Fences

As a resident in the ACT, we all share boundaries, and fences, with neighbours. Laws about fences are found in the *Planning and Development Regulation 2008* (ACT), *Common Boundaries Act 1981* (ACT), *Building (General) Regulation 2008* (ACT) and the *Territory Plan 2008* (ACT). Fences can be expensive and can be a source of disputes between neighbours. This factsheet provides basic information on the fencing requirements in the ACT, and what you can do if a conflict arises.

What should I consider when building a fence?

When building a fence between properties, there are a number of things you will need to take into consideration, including the type of fence you will build, its height, the materials it will be made out of, and whether you need development approval.

Do I need development approval?

A freestanding wall or fence between neighbours in an urban area does not need development approval (that is, it is exempt from the requirement for development approval) if:

- a fence panel or wall is no higher than 2.3m above natural ground level;
- a fence support post or wall is no higher than 2.5m above natural ground level;
- no part of the fence or wall is between a front boundary and a building line for the block;
- no part of the fence or wall diverts or concentrates the flow of surface water onto other land or in a way that causes ponding.

See section 1.51, Schedule 1 [Planning and Development Regulation 2008](#).

Note: Different exemption rules apply depending on what surrounds your property. See section 1.85, Schedule 1 [Planning and Development Regulation 2008](#) for exempt developments on rural blocks.

Different rules also apply to fences between privately owned property and unleased territory land such as parks, reserves, public access areas, street frontage, laneways and other landscaped buffer zones. These fences are built and maintained at your own cost. There may be rules about the sorts of materials you can use to build these fences. If you live on a parcel of land that borders Territory land, the Environment, Planning and Sustainable Development Directorate may require you to erect a fence on the boundary or any part of it at your own expense (section 23, [Common Boundaries Act 1981](#)).

You do not need development approval to repair an existing fence.

Lodging a development application

If the type of fence you wish to build is not exempt under the [Planning and Development Regulation 2008](#), you will need to [lodge a development application](#). If the application is successful, the costs will subject to the arrangements with you have made with your neighbour.



Does my fence need building approval?

Schedule 1, *Building (General) Regulation 2008* sets out the circumstances where a fence will be exempt from building approval. See in particular parts 1.2 and 1.3 of Schedule 1.

Can I build a fence facing the street?

In residential zones, fences or boundary walls facing the street are not allowed under the [Residential Boundary Fences General Code](#) (Item 2.1) in the Territory Plan, though there are exceptions to this rule. Exceptions are set out in the code and include (but are not limited to):

- As previously approved as part of an Estate Development Plan (Item 2.1)
- Corner Blocks (Items 2.2, 2.3 and 2.4);
- Battle-axe blocks and blocks with frontages to open space (Item 2.5);
- Fences beside major roads where allowed in the Lease or previously approved (Item 2.6);
- Diplomatic residences and chancelleries (Item 2.7).

See the [Residential Boundary Fences General Code](#) for more details on front fences.

Who pays for a fence on a common boundary?

According to the [Common Boundaries Act 1981](#), private property owners who share side or rear fences are each responsible for half the cost and maintenance of a *basic urban fence*. For a fence to be a *basic urban fence*, it must:

- Be a timber paling fence;
- Be 1.5m in height above finished ground level;
- Have reinforced spade-end precast concrete posts spaced at 2.4m;
- Have a 75mm x 50mm hardwood rail at the top and bottom of the fence that is fixed to the posts; and
- Have 100mm x 12mm hardwood palings nailed to the rails ([section 2](#)).

If you want a fence that is not a basic urban fence, you and your neighbour will have to agree to the design and cost before the fence is erected. These costs will also include the expense of removing the existing fence ([section 2C](#)) and any costs of surveyors ([section 2D](#)).

I can't reach an agreement with my neighbour about a fence – what next?

If you and your neighbour cannot reach an agreement about a fence on a common boundary, you can try mediation. Mediation is a discussion facilitated by an independent person who has been trained in resolving conflict. The [Conflict Resolution Service](#) (www.crs.org.au) provides free or low-cost mediation and is recommended by the ACT government – especially for disputes involving common boundaries and fences.



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ACT Civil and Administrative Tribunal (ACAT)

The ACT Civil and Administrative Tribunal (ACAT) is an independent body with exclusive jurisdiction to hear and determine common boundary disputes in the ACT. If you cannot resolve a dispute about a common fence through discussions with your neighbour or by mediation, ACAT may be able to hear the dispute. For most situations, the most significant source of law governing fence disputes heard in ACAT is the *Common Boundaries Act 1981*.

You cannot apply to the ACAT for a determination about the fence until you have attempted to resolve the dispute by writing to your neighbour about what you are asking them to do. If you are seeking agreement with your neighbour to share the costs of constructing a new fence, or to sharing the costs of repair or replacement of a fence, including a fence that needed to be fixed urgently, you will need to show that you have written to your neighbour and given them an opportunity to respond. A sample Notice to Discuss Fence letter is provided on the [ACAT website](#).

There are different types of fencing disputes that can be heard by the ACAT:

1. New fence determination ([section 4](#)): Where there is no existing fence and you and your neighbour cannot agree on building a fence.
2. Repair determination ([section 5](#)): Where you and your neighbour cannot agree about repairing a fence. NOTE: You must give your neighbour a *notice to discuss fence* (see above).
3. Application for a repair cost determination ([section 6](#)): Where you or your neighbour have already repaired the fence but you cannot agree how much each of you should pay.
4. Application for an unleased land determination ([section 7](#)). Where you have started building a fence next to land which was not a *parcel of land* when you started building the fence but has since become a *parcel of land*. A parcel of land is land held under a lease from the Territory or a sublease ([section 2A](#)).
5. Application for variation of a determination ([section 14](#)). Where ACAT has already made a determination and you want to change it.

You can make an application to ACAT to resolve a dispute by filling in the [Fence Dispute Application Form](#) on the ACAT website. These applications attract a fee. See the [ACAT website](#) for more information and for the current application fees.

Notice to Discuss Fence

If you want a new fence or repair determination in ACAT, you must give your neighbour a Notice to Discuss Fence before you apply to ACAT. A Notice to Discuss Fence is a letter asking your neighbour to discuss reaching an agreement. ACAT has a useful [Notice to Discuss Fence](#) template online.

The next page presents a general diagram depicting the general steps taken in ACAT, if you lodge a dispute application. For information about going to ACAT, please see the Self-Represented Litigants' fact sheet.

- a) the person or animal provoking the dog;
- b) the dog coming to the aid of another person that the dog could be expected to protect;
- c) the person or animal being on the premises occupied by the defendant without lawful excuse; or
- d) another person had been a carer for the dog at the time of the offence, and the defendant.



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Step 1: ACAT receives your application

After you lodge your application, the Registrar will decide the next steps to take. You may be referred for a conference or mediation. You and your neighbour will receive written notice of the next steps and the date, time and location of the conference or hearing.



Step 2: Conference

The Registrar may conduct a pre-hearing conference. The purpose of the conference is to understand what issues are in dispute, make sure that you have tried to resolve the dispute, and assess how long a hearing would take. A large number of common boundary disputes are dealt with through the Tribunal's Conference and Immediation determination process. There is a guide on ACAT's website about what to expect. If this is unsuccessful, you will proceed to a hearing.

If you reach an agreement, the terms of the agreement can be lodged with ACAT. If you do not reach an agreement, you may go to a hearing.



Stage 3: Hearing

You will receive written notice advising the date, time and location of the hearing.

At a hearing, you will be asked if you have any further information or evidence to that already presented in the application or response.

Where can I find out more information?

You can find out more information through the following:

- Access Canberra (in particular, see [Fencing disputes between neighbours](#) and [Residential fence information for the ACT](#));
- [Conflict Resolution Service](#);
- The Legal Aid Helpline (1300 654 314)
- The EDO ACT at www.edoact.org.au.

Disclaimer: The law described in this Fact Sheet is current at 30 June 2018. The EDO ACT Fact Sheets have been designed to give readers plain English background knowledge to planning and environmental decision making in the ACT. They cannot replace the need for professional legal advice in individual cases. Please contact us as we may be able to provide additional advice. While every effort has been made to ensure the content is as accurate as possible, the EDO does not accept any responsibility for any loss or disadvantage resulting from reliance or use of this work. Duplication and reproduction of the information provided in any EDO ACT Fact Sheet is permitted with acknowledgment of the EDO ACT as source. The ACT EDO Fact Sheets Project was carried out with the assistance of funds made available by the ACT Government.