



# DIY Legal Kit

## FENCING



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# Commonly asked Questions about: Fencing Disputes

Dividing fences are a common cause of neighbourhood disputes. Here are some commonly asked questions and answers.

## **Q1 - What is the relevant legislation?**

*Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (Qld) (the Act).

## **Q2 - Who is the responsible Court or Tribunal?**

The Queensland Civil & Administrative Tribunal (QCAT) makes decisions about fencing disputes.

## **Q3 - What is sufficient fencing?**

The Act provides that *sufficient* fencing in respect to adjoining properties consists of fencing:-

- between the height of 0.5 metres and 1.8 metres in height; and
- made of:
  - wood (including palings);
  - chain wire;
  - metal panels or rods;
  - bricks;
  - rendered cement;
  - concrete blocks;
  - hedging or another plant barrier; or
  - other materials ordinarily used to construct fencing (section 13 of the Act).



## **Q4 - Who pays for fencing?**

Adjoining property owners are liable to contribute equally to fencing works to ensure sufficient fencing (section 21 of the Act).

## **Q5 - What is included in fencing works?**

Fencing work includes replacement, repair or maintenance of the whole or part of a dividing fence.

If either owner wants a fence of a higher standard than that of sufficient fencing, the extra cost would be paid by that owner (section 21(2) of the Act).

## **Q6 - What if the fence is not on the boundary line?**

Generally, a dividing fence should be located on the boundary line between adjoining properties. If a fence is not located on the boundary line, it may cause encroachment issues onto a neighbour's property.

Encroachment is a complex issue that is dealt with under the *Property Law Act 1974* (Qld). Claims about encroachment issues are not heard by QCAT.



### **Q7 - How about retaining walls?**

Retaining walls are not considered to be fences.

Usually, a retaining wall is not located on a boundary line. Generally, the owner of the land where the retaining wall is located is responsible for maintaining the wall.

QCAT does not make decisions about retaining walls. However, QCAT can make a decision in limited instances where work is required on a retaining wall in order to complete fencing works (section 35(f) of the Act). For example, where a retaining wall is located exactly on the boundary line and a fence is located on top of the retaining wall.

It may be necessary to survey the land to confirm the location of the retaining wall.

### **Q8 - What is a Notice to Contribute?**

If neighbours cannot come to an agreement, an owner must give their adjoining neighbour a Notice to Contribute. The Notice to Contribute should contain the following details:-

- a description of the land where fencing is proposed;
- the type of proposed fencing;
- the estimated cost of fencing including labour and material costs;
- at least one written quote for proposed fencing works; and
- if the cost of proposed works is to be unequally split between neighbours, a breakdown of proposed costs.

A Notice to Contribute can be found at:  
<https://www.publications.qld.gov.au/datas/et/notices-to-neighbours>

### **Q9 - How do you serve a Notice to Contribute on your neighbour?**

The Notice to Contribute can be given in person or sent by post.



Tip: Express Post provides a tracking service. A copy of the Australia Post Express Post tracking information can be included in a QCAT application.

### **Q10 - What if my neighbour will not agree?**

If a neighbour does not agree to the proposed fencing within one month of receiving the Notice to Contribute, an owner may apply to QCAT to resolve the dispute.

An application to QCAT must be within two months from giving the neighbour the Notice to Contribute.

### **Q11 - Can fencing works be completed if neighbours cannot agree?**

Fencing, other than urgent fencing works, cannot be carried out without agreement.

In the case of an unresolved dispute, an application must be submitted to QCAT to hear and decide the matter.

### **Q12 - Can a neighbour's property be entered without agreement?**

No. There must be an agreement between neighbours unless QCAT has made an order allowing for access.

### **Q13 - What are the limitation periods to be aware of?**

An owner must give their adjoining owner one month to agree to contribute to the cost of the fence.

Any application to QCAT must be within two months of providing the Notice to Contribute.

# Step by Step guide to resolving fencing disputes

1. The best way to resolve issues about fencing is to talk directly with your neighbour and remain on good terms. Remember, the Act encourages neighbours to resolve issues informally. A QCAT application should be a last resort.

2. Get at least one written quote. The quote should contain the following details:-

- the location of the fence;
- what the fence will be made of;
- the length of the fence;
- the height of the fence; and
- the proposed cost showing the breakdown cost of labour and materials.

3. Write a letter or email to your neighbour and provide them with a copy of the quote obtained.

4. Attempt mediation. Did you know Bayside Community Legal Service (BCLS) has a FREE mediation service? See BCLS Mediation Factsheet on page 9 of this kit.

5. If you cannot reach an agreement with your neighbour initially, provide them with a Notice to Contribute. Remember, a Notice to Contribute should contain the following details:-

- the location, height and materials of the fence;
- the proposed cost of the fence; and
- how much each neighbour will pay.

Remember:

- The general position is that neighbours contribute equally to sufficient fencing.
- Any standard greater than sufficient fencing would be paid by the neighbour wanting the greater standard.
- Retaining walls are usually not included in fencing works.

## QCAT Applications

An application must be submitted to QCAT within two months from the date you provided the Notice to Contribute to your neighbour.

### **How much does it cost to submit an application to QCAT?**

The cost to submit an application for a fencing dispute is based on the amount being claimed. Fees range from approximately \$28 to \$352.

Up to date information on current fees can be found at:

<https://www.qcat.qld.gov.au/resources/fees-and-allowances>.



## Can you or your neighbour be represented by a lawyer at QCAT?

Generally, neighbours must represent themselves unless QCAT provides permission (leave) to do otherwise.

A neighbour can have a real estate agent represent them in particular cases (section 34 of the Act).



## Can my neighbour claim their legal costs against me?

Each neighbour usually pays their own costs.



## What type of orders can QCAT make?

QCAT can make a broad range of orders about fencing issues including:-

- where a fence is to be located, whether or not on the boundary;
- fencing works to be completed, including the type of fencing;
- what each neighbour will pay towards the works;
- identification of a portion of fencing to be repaired;
- the date fencing works needs to be completed by;
- any other necessary work to be carried out;
- that no dividing fence is required;
- that a fence has been used, or could reasonably be used, as a dividing fence;
- the amount of compensation to be paid for damaging or removing a dividing fence;
- removal of something attached to a dividing fence; and/or
- restoration of a dividing fence.





## How to submit a QCAT application

1. Complete a QCAT – Minor Civil Dispute – Fencing (form 53). This form can be found at:

[https://www.qcat.qld.gov.au/\\_data/assets/pdf\\_file/0004/129577/Form-53-Application-for-minor-civil-dispute-dividing-fences.pdf](https://www.qcat.qld.gov.au/_data/assets/pdf_file/0004/129577/Form-53-Application-for-minor-civil-dispute-dividing-fences.pdf)

2. Include a copy of your Notice to Contribute and written quote.

3. Keep the application simple and to the point.

4. Make sure your application complies with the Act.

5. Make three copies of your application – one copy for QCAT, your neighbour and yourself.

6. Only pages 1-8 are required to be copied and submitted to QCAT. The remaining pages are for your information only.

7. Remember to date and sign your application.

8. Submit your application to QCAT by either:-

- sending your application via post to QCAT Brisbane. Their postal address is GPO Box 1639, Brisbane, Qld, 4001. Address all correspondence to the QCAT Registry; or
- submitting your application to a QCAT Registry located within your local Magistrates Courthouse.

## Serving your neighbour

You will receive two stamped copies back from QCAT.

One stamped copy must be given to your neighbour within seven days of submitting your application with QCAT.

- If your application is about:
  - preventing future unauthorised works, then you must give the copy to your neighbour at least one day before the hearing;
  - unauthorised works already performed, then you must give the copy to your neighbour at least three days before the hearing.

- You can personally give the copy to your neighbour. If they refuse to take it, you can tell them what it is and put it down in their presence.

 *Tip: You cannot put it in their letterbox or under their door.*

- You can post the stamped copy to your neighbour.

 *Tip: Australia Post's express post service provides a free tracking service online at:*

<https://auspost.com.au/mypost/track/#/search>

- If your neighbour submits a written response to QCAT, they will need to provide you with a stamped copy prior to the hearing.



## Affidavit of Service

Affidavit of Service can be found online at:  
[https://www.qcat.qld.gov.au/data/assets/pdf\\_file/0018/100863/form-09-affidavit-of-service.pdf](https://www.qcat.qld.gov.au/data/assets/pdf_file/0018/100863/form-09-affidavit-of-service.pdf)

Once you have given a stamped copy of the QCAT application to your neighbour:

1. Complete a QCAT Affidavit of Service confirming how you served a copy of the QCAT application on your neighbour.
2. Submit the completed Affidavit of Service to QCAT prior to the hearing.

QCAT can make an order if your neighbour chooses not to attend the hearing however, will not do so if they are not satisfied that your neighbour was served.

### Finally...

Attend the QCAT hearing.



*Tip: Read through your application before attending the hearing to ensure you are very familiar with your application.*

"Good fences  
make good  
neighbours"

## Next Steps / Resources

- Tried talking to your neighbour or sending them a letter but still cannot come to an agreement? Consider mediation. Remember, it is important to keep on good terms with your neighbour.
- If you cannot reach an agreement with your neighbour, provide them with a Notice to Contribute. A Notice to Contribute can be found on pages 10 to 12 of this kit.
- Have you provided your neighbour with a Notice to Contribute and not received a response within one month of giving the notice to them? An application to QCAT must be submitted within two months from the date you provided the Notice to Contribute. An Application for Minor Civil Dispute - Dividing Fences (form 53) can be found on pages 13 to 25 of this kit. An example Application can be found on pages 26 to 33 of this kit.
- A stamped copy of your QCAT application must be given to your neighbour within seven days of submitting your application with QCAT. Once your neighbour is served, you are required to complete an Affidavit of Service (form 9). An Affidavit of Service can be found on pages 34 to 40 of this kit.

## FACT SHEET

## Mediation

***Are you in a dispute with someone? Do you want to save time, legal fees and costs? Mediation is the answer!***

### **What is mediation?**

Mediation helps people settle disputes without the need to go to court.

Mediation is a process in which an independent person (known as the 'mediator') assists disagreeing parties to resolve conflict.

### **Bayside Community Legal Service Mediation Service?**

Bayside Community Legal Service (BCLS) provides a FREE confidential mediation service. The BCLS Mediation Service is independent from the BCLS Legal Service. Currently, we have approximately 25 mediators available therefore there are limited wait times and quick turnovers.

### **What Sort of Issues Can A Mediator Help With?**

There are no limits as to what can be mediated but the most common issues, we deal with at the Bayside Community Legal Service are:

- Divorce/separation
- Property settlements
- Parenting plans
- Neighborhood disputes including fences, retainer walls and overhanging branches.
- Debt issues

### **How does mediation work?**

To enhance the opportunity to resolve disputes between parties, the BCLS Mediation Service provides a co-mediation model of dispute resolution in which there are two mediators who assist the parties in discussion and resolution of issues.

### **Who Attends Mediation?**

Attending mediation is generally voluntary and both parties need to agree to attend.

Due to the co-mediation model provided, no lawyers are present during the mediation. The mediator has no determinative role but will assist each party to identify issues in dispute, develop options and consider alternatives to reach a mutually acceptable outcome.

The mediation sessions will usually go for a period of 2 to 4 hours, but this will depend on the complexity of the issues.

### **Mediation and the Law**

Mediation is not a legal process. Mediators cannot provide you with legal advice. If the parties have questions about their rights or responsibilities, BCLS suggests you seek legal advice before the mediation.

### **Are mediation sessions legally binding?**

Mediation sessions are simply an agreement between two parties. For example, a mediated parenting plan is not binding, however the two parties are able to submit their agreement to the Family Court to make them binding.

### **How do I apply to use the mediation service?**

The first step is to visit our website and complete a mediation booking form and return it to us via email at [mediation@bcls.org.au](mailto:mediation@bcls.org.au). Once we receive this form, we will assess the legal issue and if your matter is suitable for mediation, a BCLS mediator will be in contact with you to begin the mediation process.



[www.bcls.org.au](http://www.bcls.org.au)

[info@bcls.org.au](mailto:info@bcls.org.au)

07 3162 3282

Wynnum Community Centre, 105 Florence Street, Wynnum QLD 4178

PO Box 103, Wynnum QLD 4178

*Bayside Community Legal Service acknowledges the traditional owners of the lands across Queensland, and in particular the Quandamooka peoples, the traditional owners of this land where our Bayside community is situated. We pay our respect to elders past, present and emerging*

# NOTICE TO CONTRIBUTE FOR URGENT FENCING WORK

## *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 – Section 28 and section 32*

To:

Address:

Please take notice that urgent fencing work<sup>1</sup> was carried out on the dividing fence on the common boundary of our adjoining lands located at:

(Include description of lands e.g. street addresses, lot numbers or other identifying particulars.)

Date urgent fencing work carried out:

The reason urgent fencing work<sup>2</sup> was required:

The type of fencing work carried out consisted of:

The cost incurred for the fencing work was: \$

The receipt for the cost of the fencing work is attached to this notice.

I/we propose that the contribution to the fencing work be shared equally between us/be shared in the following proportions<sup>3</sup>:

and that I/we contribute: \$

and that you contribute: \$

If you **agree** to this proposal, please complete the attached 'Agreement to contribute to Urgent Fencing Work' and return a signed copy of the agreement to me/us within one (1) month of the date of this notice.

FORM 1: NOTICE TO CONTRIBUTE FOR URGENT FENCING WORK  
*Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 – Section 28 and section 32*

If you **do not agree** to this proposal please let me/us know within one (1) month of the day this notice is given to you.

Please send your response to this notice to the following address:

Name:

Address:

Signature:

Date:

**Notes:**

Section 30(1) of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (the Act) encourages adjoining owners to attempt to resolve issues about fencing work to avoid a dispute arising.

<sup>1</sup>Section 28 of the Act states that this section applies if all or part of a dividing fence is damaged or destroyed and in the circumstances urgent fencing work is required.

<sup>2</sup>Section 16 of the Act sets out the meaning of *fencing work* which can include construction of a new dividing fence, repair of an existing dividing fence, replacement of a dividing fence, and modification of a dividing fence, surveying or preparation of land, including the trimming, lopping or removal of vegetation along or on either side of the common boundary of adjoining lands.

<sup>3</sup>If it is proposed that the cost of fencing work is to be borne otherwise than in equal proportions, the proposed proportions must be specified (Refer to section 32(5) of the Act).

Section 32(6) of the Act provides that if within one (1) month after this notice is given, the adjoining owners, have not agreed about their contributions to carrying out the fencing work then either adjoining owner may, within two (2) months after this notice is given, apply to the Queensland Civil and Administrative Tribunal for an order about carrying out fencing work (refer to section 35 of the Act).

A copy of the Act may be accessed at [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au).

**PLEASE KEEP A COPY OF THIS NOTICE FOR YOUR RECORDS AND MAKE A NOTE OF THE DATE THIS NOTICE WAS GIVEN TO YOUR NEIGHBOUR.**

# AGREEMENT TO CONTRIBUTE TO URGENT FENCING WORK

I/We the adjoining owner/s acknowledge that we have been given a copy of the 'Notice to contribute for Urgent Fencing Work' dated:

by:

of:

I/We agree/decline to contribute to the urgent fencing work.

I/we agree that the contribution to the fencing work be shared equally between us/be shared in the following proportions:

and that I/we contribute:

\$

and that you contribute:

\$

I/We will pay our contribution to you at the address nominated in your notice on or before:

Date:

Name/s:

Address:

Signature:

Date:

**PLEASE KEEP A COPY OF THIS AGREEMENT NOTICE FOR YOUR RECORDS AND MAKE A NOTE OF THE DATE THIS AGREEMENT NOTICE WAS GIVEN TO YOUR NEIGHBOUR.**

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"/>	<b>Postcode</b> <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:

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**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](http://www.justice.qld.gov.au) . Notices applying to pool barriers that are also dividing fences are located at [www.hpw.qld.gov.au](http://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:

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**6. Is there an existing dividing fence?**

Yes

No

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

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**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:

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**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:

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

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

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

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

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

Yes

No

Please provide details:

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**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](http://www.qld.gov.au) for more information.*

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**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:

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

Yes

No

If Yes, please provide details:

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**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:

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**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:

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**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.**

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## **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 11, 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](http://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](http://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><b>1. Have you checked if dividing fence laws apply to your dispute?</b> Visit <a href="http://www.qld.gov.au/law/housing-and-neighbours/disputes-about-fences-trees-and-buildings">www.qld.gov.au/law/housing-and-neighbours/disputes-about-fences-trees-and-buildings</a> 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><b>2. Is your dispute about recovering an agreed amount of money (up to \$25,000) for fencing work?</b> 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 <a href="http://www.qcat.qld.gov.au">www.qcat.qld.gov.au</a></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b>3. Is your dispute about a dividing fence that is part of the pool barrier for your pool or your neighbour's pool?</b> 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 <a href="http://www.hpw.qld.gov.au">http://www.hpw.qld.gov.au</a></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p><b>4. Is the fence around a public park owned by council?</b> 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><b>5. Have you tried to resolve the dispute with your neighbour?</b> Dispute Resolution Centres offer free mediation services to assist in resolving neighbourhood disputes. For more information call 1800 017 288 or visit <a href="http://www.qld.gov.au/law/housing-and-neighbours/disputes-about-fences-trees-and-buildings/">http://www.qld.gov.au/law/housing-and-neighbours/disputes-about-fences-trees-and-buildings/</a></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](http://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](http://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](http://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

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)

JOHN SMITH

Name

Address

111 SMITH ROAD

SMITHTOWN

Postcode

1000

Contacts

( ) 1234 5678

Preferred phone number

( )

Alternative number

Email

johnsmith@email.com

## PART A RESPONDENT'S DETAILS

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

NAME OF YOUR NEIGHBOUR - INCLUDE TWO COPIES OF THIS PAGE IF MORE THAN ONE NEIGHBOUR

Name

Address

113 SMITH ROAD

SMITHTOWN

Postcode

1000

Contacts

( ) 1234 5679

Preferred phone number

( )

Alternative number

Email

neighbour@email.com (if you have your neighbour's email address)

## PART B GENERAL DISPUTE DETAILS

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

111 SMITH ROAD SMITHTOWN

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.

Application for minor civil dispute – dividing fences – *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* and *Building Act 1975* – page 2 of 8

For more information on QCAT: Call 1300 753 228 or visit [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)

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](http://www.justice.qld.gov.au). Notices applying to pool barriers that are also dividing fences are located at [www.hpw.qld.gov.au](http://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:

RESIDENTIAL

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

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

RESIDENTIAL

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

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

PAILING

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](http://www.qld.gov.au) for more information.

NAME OF LOCAL COUNCIL

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:

Two horizontal blue lines for providing 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:

Two horizontal blue lines for providing 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:

Two horizontal blue lines for providing 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.

Three horizontal blue lines for providing details about how the respondent was located.

**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.

Form Number 9 (version 3)

Queensland Civil and Administrative Tribunal Rules 2009 (Rule 42)

## Affidavit of service

Refer to attached instructions prior to filling out this form.

Please note that this is an affidavit. Each of the following pages must be signed by the person making the affidavit in the presence of a qualified witness (the person taking the affidavit).

### For office use only

Case number:

Date:

Registry:

### PART A APPLICANT'S AND RESPONDENT'S DETAILS

Case number (if known):

Applicant

Respondent

## PART B DETAILS OF SERVICE

I,   
(insert full name of person making affidavit)

of  (insert residential or business address, or place of employment)  
  
 Postcode

state on oath / solemnly and sincerely affirm and declare:

On the  /  / 20 at  am / pm,  
I served   
(insert name of person or entity/s served)

a copy of   
  
(insert name of document/s)

filed on  /  / 20 at the Queensland Civil and Administrative Tribunal  
  
(insert tribunal address)

as follows: (For personal service please complete part B1, for other service please tick relevant boxes in parts B2 and B3)

## PART B1 PERSONAL SERVICE

**Note:** personal service is required for applications for minor civil dispute - minor debt claims.

1. I delivered the copy to  him  her  them

personally at (insert address)  
  
 Postcode

2. I identified the person served by   
  
  
(insert means of identification)

Person making affidavit to sign

Person taking the affidavit to sign (qualified witness)

## PART B2 SERVICE OF A COMPANY

I left the copy at the company's registered office, namely

	<b>Postcode</b>	

I posted the copy to the company's registered office, namely

	<b>Postcode</b>	

I served the copy otherwise in accordance with section 109X of the *Corporations Act 2001* (Commonwealth), namely

--

*(insert method of service)*

## PART B3 OTHER SERVICE

I sent the copy by post to the address in the entity's address for service, namely *(insert address)*

	<b>Postcode</b>	

I sent the copy by post to the address in accordance with the service practice direction to which documents may be posted in circumstances where the entity does not have an address for service, namely *(insert address)*

	<b>Postcode</b>	

I faxed the copy to the fax number ( ) that was included in the entity's address for service.

--

*Person making affidavit to sign*

--

*Person taking the affidavit to sign (qualified witness)*

**PART B3 OTHER SERVICE** *(continued)*

I emailed the copy to the email address that was included in the entity's address for service.  
  
*(insert email address)*

I electronically transmitted the copy to the non-fax or email electronic address that was included in the entity's address for service *(e.g. via a website)*  
  
*(insert electronic address)*

I left the copy with a person *(insert name)*   
who is apparently an adult and apparently residing or employed at the entity's address for service, namely *(insert address)*  
  
 **Postcode**

I left the copy with a person *(insert name)*   
who is apparently an adult and apparently residing or employed at the address in accordance with the service practice direction at which documents may be left with a person in circumstances where the entity does not have an address for service, namely *(insert address)*  
  
 **Postcode**

I served the copy in another way in accordance with the service practice direction, namely  
  
*(insert method of service)*

I served the copy in accordance with the tribunal's direction, namely by  
  
*(insert method of service)*

I otherwise served the copy in accordance with an Act   
namely by *(insert name of Act)*  
  
*(insert method of service)*

*Person making affidavit to sign*

*Person taking the affidavit to sign (qualified witness)*

## PART C DOCUMENT SERVED

One of the following must apply, please tick as appropriate:

- I have attached to this affidavit a copy of the document served, or
- I have already filed the document which is named above in Part B.

## PART D INTERSTATE SERVICE

This part only applies if you served the document interstate. Tick as applicable.

- I did attach the notice under the *Service and Execution of Process Act 1992* (Commonwealth) to the document.
- I did not attach the notice under the *Service and Execution of Process Act 1992* (Commonwealth) to the document.

## 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 – 100 penalty units.

## SIGNATURE

Sworn (or affirmed) by (insert full name)

on  /  / 20 at (place)

in the presence of:

Person making affidavit to sign

Person taking the affidavit to sign (qualified witness)

Print name

Commissioner for declarations / solicitor /  
justice of the peace

## Instructions for completing

# Affidavit of service

**Use this form where you are seeking, or are required, to prove that you have provided a copy of a document to another party.**

### Default decisions

Where you are applying for a decision in default of a response by a respondent you will need to prove that you have provided a copy of your application to the respondent. You may complete this affidavit, or in some cases you may complete the affidavit in the application for decision by default (for example the *Form 6 – application for decision by default – minor debt*).

### Interstate service

If the respondent resides in another state or territory you will need to provide an additional notice to the respondent, as required by the *Service and Execution of Process Act 1992* (see also Practice Direction 2 of 2014). The notice is available on the QCAT website at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au).

### Where to lodge your Affidavit of service

The Affidavit of service must be lodged in the QCAT registry where the application that started the proceeding was lodged.

**By post:** QCAT, GPO Box 1639, Brisbane QLD 4001  
*If you are posting your original response and/or counter-application and copies to QCAT, you need to include a stamped self-addressed A4 envelope with your material.*

**In person:** QCAT, Level 11, Bank of Queensland Building, 259 Queen Street, Brisbane QLD 4000, or at any Magistrates Court outside of the Brisbane CBD.

For more information visit [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au) or call 1300 753 228.

## PART B DETAILS OF SERVICE

Refer to the *Queensland Civil and Administrative Tribunal Rules 2009* and the tribunal's practice directions for service requirements available at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au).

Insert your full name and residential or business address or place of employment.

If the entity served is not an individual then the correct name must be used. For example, a company name, business name (regardless of whether it is registered) or a State agency name. For further information you can refer to the tribunal's factsheet *How to identify and name parties in QCAT* available at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au).

If you are serving an application for a minor debt claim you must deliver the copy to an entity personally and in a way that complies with QCAT's practice direction on service. Practice Directions are available at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au).

## **SIGNATURE**

Please sign in the presence of a person who is authorised by the *Oaths Act 1867* to take an affidavit:

- (a) a justice, commissioner for declarations or notary public under the law of Queensland, the Commonwealth or another State,
- (b) a lawyer,
- (c) a conveyancer, or another person authorised to administer an oath, under the law of the state, the Commonwealth or another state,
- (d) if the affidavit is taken outside Australia — a person authorised to administer an oath under the law of the place in which the affidavit is taken.

**Each page must be signed in the presence of a qualified witness.**

A qualified witness includes a lawyer, Justice of the Peace or a Commissioner for Declarations.

## **Your Information**

QCAT collects 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.