



Fencing

This chapter is for people who may need to repair or replace their fencing because of the February 2009 Victorian bushfires.

My fence was damaged because of the bushfires. Who pays to repair or replace the fence?

Me or the neighbour?

If your fence was damaged or destroyed because of the bushfires, both you and your neighbour should share the cost of repairing or replacing the fence.

When you talk to your neighbour about the repair or replacement, get agreement on:

- the need to repair or replace the fence
- the type of fence you should use
- the amount you each should pay
- the contractor or company you should use to replace the fence.

What to do if you and your neighbour agree

Write down your agreement and make it clear in that document how much each party will pay. This document should be signed and dated by both of you. Get written quotes for contractors.

If the fence gets built and your neighbour later refuses to pay their share, you can apply for the agreement to go ahead (be 'enforced') in the Magistrates' Court.

What to do if you and your neighbour do not agree

If you cannot get agreement on all of the above things, usually the next step is to give your neighbour a Notice to Repair/Rebuild a Fence. The notice does not need to be written in any strict way. It should, however, be in writing, dated and headed 'Notice to Repair/Rebuild a Fence'. It should include:

- your name and your neighbour's name
- the boundary to be fenced
- the type of fence to be built

- the cost of building the fence
- the amount you believe each party should pay.

Attach a quote from a fencing contractor with details of the type of fence to be built and the price.

For a sample of a notice, visit the Fencing Online website at www.fencingonline.com.au/disputes/victoria-notice-02.htm

If your neighbour does not disagree ('object') to the notice within seven days and does not try to come to agreement, you can begin to build the fence that you wrote about in your notice. You can apply later for an order at the Magistrates' Court for your neighbour to pay their share of the fencing cost.

If your neighbour objects to the notice within seven days, you should apply to the Magistrates' Court for a magistrate to make a decision about what type of fence will be built and how much each neighbour will pay.

Usually a magistrate will make neighbours pay equal amounts to repair a fence. However, if your neighbour wants a special fence or a fence that is different to the one usually built in your area, the magistrate may order that your neighbour pay more.

If the fence was destroyed because your neighbour did not do their share of looking after it, your neighbour will have to pay the entire cost of rebuilding. If you think your neighbour was negligent you should get legal advice. Contact Bushfire Legal Help on 1800 113 432.

It is always best to try to reach agreement with your neighbour before going to court. This will stop disagreements between you and your neighbour. A magistrate will also look more favourably on your application if you have tried to reach agreement with your neighbour.

What tenants need to do

If you are renting and your neighbour sends you a notice, you must let your landlord know within 14 days of getting the notice. If you do not let your landlord know within 14 days, you may have to pay your landlord's share of the new fence. The amount of money you end up paying will depend upon how long you have been living in the property.

What farmers need to do

When one neighbour is a farmer and the other neighbour is on residential land, the farmer only needs to pay for half the cost of a farming fence.

Special circumstances for not making a notice

If your fence is damaged or destroyed by an accident, such as the bushfires and you need to rebuild urgently, you can start rebuilding straight away. You can then apply for an order at the Magistrates' Court for your neighbour to pay their share of the cost. If you cannot find your neighbour (for example, if they have left their property and have not returned), you can also repair or replace the fence immediately without giving notice and apply to the Magistrates' Court later. Or, you can send a Notice to Repair/Rebuild a Fence by registered post to the owner listed in the council rate book. You could also take out an advertisement in the local paper asking the property owner to contact you.

My fence was burnt down and my property borders government or council land. Who pays?

Generally you have to pay the whole cost of repairing or replacing your fence when it borders government-owned land ('crown land') and has been affected by bushfires.

The government, however, is currently reimbursing the insurance excess on your fence where the fence was insured, was on the boundary of crown land and was destroyed or damaged during the February 2009 Victorian bushfires. There is a limit on the amount of the reimbursement. If you have a 'no excess' insurance policy you can still get the reimbursement. Boundary fences should be insured by the landholders.

The government will also repair or replace crown land boundary fences burnt by the fire agencies that were doing back-burning to control a bushfire during an emergency. This does not include internal fencing.

If your property is next to crown land, the government may offer help for clearing the old fence if the bushfire began in the park or forest.

Call the Department of Human Services' Victorian Bushfire and Storm Information Line on 1800 240 667 for more information and repairs and reimbursement application forms.

My fence was damaged or destroyed during the fire fighting effort. Who pays?

The government will currently repair or pay the whole cost of replacing fences that are on private land and were damaged by machinery used to control the bushfires. This includes fences that were damaged by emergency vehicles. The fire agency will talk with you about the repairs before work begins. If you have done emergency repairs to keep stock within your property, the fire agency will look at the repairs after the work has started. Call the Department of Human Services' Victorian Bushfire and Storm Information Line on 1800 240 667 for more information and for application forms.

Are fences included in my insurance cover?

This depends upon the type and location of your policy. For example, is your policy for a business, home or farm? If fences are included, the amount of money you get will depend on the terms of the policy. It may not include full costs of replacement. Check with your insurer.

If you have lost your insurance policy documents, talk to your insurance company. If you cannot find the contact details of your insurance company visit the Victoria Online website at www.vic.gov.au (click on 'Emergencies & Safety > Emergency services > Emergency information'). You can also **see** the 'Insurance' chapter for more information about insurance-related matters.

I am worried about unsafe trees and my fencing. What can I do?

Call your local council to see if you have permission to remove the trees. To find your local council, visit the Local Government Victoria website at www.localgovernment.vic.gov.au (click on 'Find your local council'). The Department of Sustainability and Environment may have an officer working in your area who can help you work out whether the trees are native vegetation. Contact the Department of Sustainability and Environment on 136 186. You may also need to get professional advice from a tree specialist (arborist). Start by speaking first with your local council.

The fire control lines on my property were damaged. Who pays for the repairs?

The government will pay for the rehabilitation of fire control lines on your property to help stop or slow bushfires. Rehabilitation does not include replanting trees or other agricultural crops, other than pasture. For

more information see the Department of Environment and Sustainability website at www.dse.vic.gov.au (click on 'Fire and Other Emergencies > Fire Situation > Bushfire Recovery'). You can also contact your local Department of Environment and Sustainability office to report any damage.

Can I get help paying for my fence repair/replacement?

Primary producers and small businesses may be able to get a grant and/or concessional loans. These include the federal and state government's clean-up and restoration grants, which may be used to help restore fences that were destroyed or damaged because of the bushfires. This assistance is currently being offered through Rural Finance. Contact Rural Finance on their Rural Finance Bushfire Hotline on 1800 255 925.

Other useful Handbook chapters

See 'Insurance', 'Property', 'Relief' and 'Renting' and Appendix two 'Trees and causes of action'.

DISCLAIMER

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