

13

FENCING ACT  
NO. 31 OF 1963

[ASSENTED TO 27 APRIL, 1963]

[DATE OF COMMENCEMENT: 3 MAY, 1963]

*(Afrikaans text signed by the State President)*

as amended by

Land Bank Amendment Act, No. 5 of 1968

[with effect from 6 March, 1968—see title AGRICULTURE]

Fencing Amendment Act, No. 3 of 1971

Fencing Amendment Act, No. 4 of 1978

Transfer of Powers and Duties of the State President Act, No. 97 of 1986

[with effect from 3 October, 1986—see title CONSTITUTIONAL LAW]

Abolition of Racially Based Land Measures Act, No. 108 of 1991

ACT

To consolidate the laws relating to fences and the fencing of farms and other holdings and matters incidental thereto.

1. Definitions.—(1) In this Act, unless the context otherwise indicates—

“boundary fence” means any fence (including, in an area in respect of which a proclamation under section three is in force, a jackal-proof fence), together with any necessary gate or any contrivance forming part or serving the purpose of such a gate, erected on or as near as possible to the boundary of any holding and separating such holding from any other holding;

“contributions” means contributions by owners to the cost of boundary fences in accordance with this Act, and “contribute” has a corresponding meaning;

“cost”, in relation to the erection, alteration or repair of any fence, means any cost of or incidental to such erection, alteration or repair, including the cost of transport of materials;

“holding” means—

(a) land held by any person other than the State under separate grant, deed of transfer or certificate of title;

[Para. (a) substituted by s. 1 (a) of Act No. 4 of 1978.]

(b) land held under lease, licence or allotment from the State with an option to purchase it, provided the lease, licence or allotment is registered in a deeds office or other registration office;

(bA) other land which vests in the State;

[Para. (bA) inserted by s. 1 (b) of Act No. 4 of 1978.]

(c) . . . . .

[Para. (c) deleted by Proclamation No. R. 116 of 1994.]

(d) . . . . .

[Para. (d) deleted by Proclamation No. R. 116 of 1994.]

but does not include any erf, stand or lot situated within a municipality or borough or proclaimed town, village or township unless such erf, stand or lot is at least three morgen in extent and is one of a number contiguous to each other on which farming operations are carried on;

“jackal-proof fence” means a boundary fence which is jackal-proof;

“Minister” means the Minister of Agriculture;

[Definition of “Minister” substituted by s. 1 (c) of Act No. 4 of 1978.]

“owner”, in relation to a holding, means—

- (a) save as provided in paragraph (b), the person registered in any deeds office or other registration office as the owner of the land comprising the holding;
- (b) where the land comprising the holding—
- (i) is land referred to in paragraph (b) of the definition of “holding”, the person registered as the holder of the relevant lease, licence or allotment;
- (iA) is land mentioned in paragraph (bA) of that definition, the State, or is such land which has been purchased by any person but which has not yet been registered in his name, that person;
- [Sub-para. (iA) inserted by s. 1 (d) of Act No. 4 of 1978.]

(ii) . . . . .  
[Sub-para. (ii) deleted by Proclamation No. R.116 of 1994.]

(iii) . . . . .  
[Sub-para. (iii) substituted by s. 1 (e) of Act No. 4 of 1978 and deleted by Proclamation No. R.116 of 1994.]

(iv) . . . . .  
[Sub-para. (iv) deleted by Proclamation No. R.116 of 1994.]

(v) is subject to a usufruct, the usufructuary;

and, where any person aforementioned is dead or any person or usufructuary aforementioned is a minor or is or becomes insolvent or of unsound mind or subject to some other legal disability, includes any executor, administrator, guardian, trustee, liquidator, curator or other person having the control of the estate or assets of, or representing that person or usufructuary;

“repair”, in relation to any boundary fence, includes putting and maintaining such fence in good order by trimming, cutting or any other means.

(2) Whenever under this Act it is necessary to determine in respect of the fencing of any public outspan the ownership thereof, the owner shall be deemed to be—

- (a) where the outspan is situated—
- (i) in the area of jurisdiction of a local authority, that local authority;
- (ii) in the area of jurisdiction of a divisional council, that divisional council;
- (iii) in an area in which no local authority or divisional council has jurisdiction, the provincial council of the province in which it is situated.
- [Para. (a) amended by Proclamation No. R.116 of 1994.]

(b) . . . . .  
[Para. (b) deleted by Proclamation No. R.116 of 1994.]

2. Areas where contributions are obligatory.—(1) The Minister may, if he deems it expedient, by notice in the *Gazette* declare contributions to be obligatory as from a date to be specified in such notice—

(a) throughout the area of jurisdiction of any divisional council or in any part of such an area if the provisions of sub-section (2) have been complied with in respect of the area concerned or the part of such an area concerned, as the case may be;

(b) subject to the provisions of sub-section (3), throughout any district in which no divisional council has jurisdiction, or in any ward of any such district or in any other area included in any such district and defined in such notice.

[Sub-s. (1) amended by ss. 46 and 47 of Act No. 97 of 1986. Para. (b) amended by s. 47 of Act No. 97 of 1986.]

(2) Whenever a divisional council has considered a proposal that it should recommend that contributions be declared obligatory in any area under its jurisdiction, it shall transmit to the Minister—

- (a) the terms of the proposal and proof that it was moved and put to the vote at an ordinary meeting of the council in accordance with the rules of the council;
- (b) a statement of the council's decision;
- (c) proof that notice of intention to move the proposal and of its terms had, at least one month before the date on which it was first moved, been published in the newspaper or newspapers in which notices of the council are usually published; and
- (d) a statement showing the number of owners of holdings situated in such area who, within a time to be fixed by the council, have expressed themselves in favour of contributions being declared obligatory in such area and the total extent of their holdings, and the number of owners of such holdings who, within that time, have expressed themselves against contributions being declared obligatory in such area and the total extent of their holdings.
- (3) In respect of any such district, ward or other area as is referred to in paragraph (b) of sub-section (1), such a notice may be issued if—

- (a) the Minister is satisfied—
- (i) that a meeting of owners of holdings situated in such district, ward or other area was convened on a written request signed by not less than twelve owners of such holdings;
- (ii) that not less than one month's prior notice of the date, place and purpose of the meeting was given by advertisement in at least one newspaper circulating in such district, ward or other area; and
- (iii) that the magistrate of such district presided at the meeting and that a proposal that the meeting pass a resolution recommending that contributions be declared obligatory in such district, ward or other area, was put to the meeting; and
- (b) the said magistrate has transmitted to the Minister a statement showing—
- (i) the number of owners of such holdings present or represented at the meeting who supported the proposal, and the total extent of their holdings; and
- (ii) the number of such owners who did not support the proposal, and the total extent of their holdings.

[Sub-s. (3) amended by s. 47 of Act No. 97 of 1986.]

(4) The Minister may, if he deems it expedient having regard to the circumstances prevailing in the area concerned, from time to time and for such period as he may deem fit, by notice in the *Gazette* suspend the operation of any notice issued under sub-section (1), or the operation of sub-section (3) of section *thirty-three* in respect of any area to which the latter sub-section relates.

[Sub-s. (4) amended by ss. 46 and 47 of Act No. 97 of 1986.]

3. Areas where contributions are obligatory in respect of jackal-proof fences.—

(1) Subject to the provisions of sub-section (2), the Minister may, if he deems it expedient, by notice in the *Gazette* declare contributions to the cost of jackal-proof fences to be obligatory in any area in which contributions to the cost of boundary fences are obligatory.

[Sub-s. (1) amended by ss. 46 and 47 of Act No. 97 of 1986.]

(2) The provisions of section *two* shall *mutatis mutandis* apply in respect of the issue and the operation of any such notice.

[Sub-s. (2) amended by s. 47 of Act No. 97 of 1986.]

4. Jackal-proof fencing in an area where contributions are obligatory in respect of boundary fences other than jackal-proof fences.— The owner of a holding situated in an area in which contributions are obligatory in respect of boundary fences other than jackal-proof fences, may erect a jackal-proof fence in respect of that holding or convert any boundary fence in respect of that holding into a jackal-proof fence but shall, as against

the owner of an adjoining holding who does not wish such fence to be jackal-proof, bear any additional cost necessary to make it jackal-proof.

5. **Boundary fencing in an area where contributions are not obligatory.**—If the owner of a holding situated in an area in which contributions are not obligatory, has lawfully erected a boundary fence in respect of that holding, and the owner of an adjoining holding adopts means whereby that fence is rendered of beneficial use to himself, either owner may, in default of agreement, claim that the value of the fence to each owner (regard being had to the extent to which such use is being or has been made) be determined in accordance with the provisions of the Second Schedule, and, upon the value being so determined, it shall be obligatory on the owner who has made beneficial use of the fence to contribute to the cost of the fence in accordance with the determination.

6. **Boundary fencing where holding adjoins an area in which contributions are obligatory.**—The owner of a holding situated outside any area in which contributions are obligatory, shall not be liable to contribute to the cost of a boundary fence between that holding and any holding situated in any such area, unless he adopts means whereby the fence is rendered of beneficial use to himself.

7. **Notice in respect of erection of a boundary fence.**—(1) An owner of a holding situated in an area in which contributions are obligatory, who intends to erect a boundary fence between that holding and any other such holding, shall, if he requires the owner of such other holding to contribute to the cost of the fence, give to that owner written notice (as nearly as possible in the form set out in the First Schedule) of his intention to erect the fence, which shall be dated and shall set out the specifications and the estimated cost of the fence and the proportion of such cost which he requires that owner to contribute.

(2) If, within a period of one month or, where notice is given by publication in terms of paragraph (b) of subsection (1) of section *eight*, three months after the date on which such notice was given, the owner so required to contribute—

(a) lodges with the owner who gave the notice an objection thereto, stating that he wishes to erect a boundary fence of a different type and setting out the specifications and the estimated cost of such fence, either owner may, in default of agreement, claim that the matter shall be determined as a dispute in accordance with the provisions of the Second Schedule;

(b) does not lodge such an objection, the owner who gave the notice may forthwith proceed to erect the fence.

[Sub-s. (2) amended by Proclamation No. R. 116 of 1994.]

(3) The provisions of this section shall *mutatis mutandis* apply in respect of any boundary fence existing at the date as from which contributions become obligatory in the area concerned, provided such fence is in good order.

(4) If an owner has erected a boundary fence without complying with the provisions of subsection (1) and the owner of an adjoining holding adopts means whereby such fence is rendered of beneficial use to himself, the provisions of section *five* shall *mutatis mutandis* apply.

8. **Notice to absentee owner.**—(1) Any notice to be given in terms of section *seven* to an owner who cannot be traced or is absent from the Republic, shall be deemed to be duly given—

(a) when it is given to any person generally or specially authorized by such owner as his representative; or

(b) if no such person is known to the owner giving the notice, when it has been published once in the *Gazette* and three times in a newspaper circulating in the district in which the holding is situated.

(2) The cost of any such publication as is referred to in paragraph (b) of subsection (1), shall be added to the contribution required from the owner to whom the notice is so deemed to be given.

9. . . . .

[S. 9 repealed by Proclamation No. R.116 of 1994.]

10. **Repair of boundary fences.**—(1) An owner shall be liable for the cost of repairs to any boundary fence in respect of his holding to the extent to which he would under this Act be liable to contribute to the cost of such fence.

(2) An owner may serve upon the owner of the adjoining holding separated by such fence a notice in writing requiring him to assist, within a period of one week, in repairing such fence and, if the owner of the adjoining holding fails to comply with the notice, may repair such fence and recover from that owner the proportion of the cost due from him.

11. **Alteration of boundary fences.**—An owner may at any time alter any boundary fence in respect of his holding so as to make it a fence of a superior type: Provided that the owner of the adjoining holding separated by such fence shall not be liable to contribute to the alteration unless and until he derives beneficial use from the type of the fence as altered.

12. **Right of owners to obtain advances from the Land Bank.**—(1) Any owner of a holding (other than a usufructuary thereof) who wishes to erect a boundary fence in respect of that holding, and any owner of a holding who is, in accordance with the provisions of this Act, required by the owner of an adjoining holding to contribute to the cost of a boundary fence in respect of the two holdings or the cost of any such alteration to a boundary fence in respect of those holdings as is referred to in section eleven, shall, if the cost of the erection or the contribution, as the case may be, exceeds forty rand, be entitled to obtain, subject to the provisions of the Land Bank Act, 1944 (Act No. 13 of 1944), from the Land and Agricultural Bank of South Africa an advance to defray such cost or such contribution, as the case may be.

(2) . . . . .

[Sub-s. (2) repealed by s. 14 (1) of Act No. 5 of 1968.]

13. **Usufructuary's claim in respect of contributions paid by him as owner.**—A usufructuary who is in terms of the definition of "owner" in section one the owner of a holding and has under any provision of this Act been required by the owner of an adjoining

continued on page 713

holding to contribute to the cost of erection, conversion or alteration of any boundary fence in respect of the two holdings, or the estate of any such usufructuary who has died may, on the termination of the usufruct, claim from the owner who succeeds him an amount equal to the amount contributed less—

- (a) if the owner who succeeds him is in terms of section *thirty-three* of the Land Bank Act, 1944 (Act No. 13 of 1944), liable in respect of any advance made to the usufructuary in respect of such cost, the amount of the capital of such advance for which that owner is so liable; and
- (b) such amount, if any, in respect of depreciation of such fence or, as the case may be, of such converted or altered part thereof, as shall, in default of agreement between the usufructuary or his estate and the owner who succeeds him, be determined in accordance *mutatis mutandis*, with the provisions of the Second Schedule.

**14. Rights where holding held under lease is fenced.**—(1) Where any holding fenced under this Act is held under lease, the owner may during the term of the lease claim from the lessee, as from the date when such holding became so fenced, a payment of six per cent per annum on any sum which he has paid in respect of the fence and shall, in respect of the recovery of any such payment, have the same rights as he has in law to recover rent due to him from the lessee.

(2) Upon receiving notice from the owner that he requires such payment to be made, the lessee may determine the lease, unless the owner's liability to contribute to the cost of the fence arose from any act of the lessee.

(3) If any civil proceedings are taken under this Act against a lessee for which the owner will ultimately incur any liability, the owner may intervene in and defend such proceedings, and any defence which is available to the lessee shall be available to the owner in addition to any other available defence.

**15. Rights pertaining to boundary fencing where holding is subject to certain servitudes.**—(1) An owner may fence his holding or contribute to the cost of erecting a boundary fence in respect of his holding notwithstanding that such holding is subject to a servitude of grazing or a servitude of watering livestock thereon in favour of any other person, provided he allows reasonable means of ingress and egress to the livestock of the servitude holder through suitable and sufficient gates.

(2) The holder of a servitude of grazing as in sub-section (1) described, shall be liable to pay to the owner of the holding a fair share of the cost of erection, maintenance and repair of the fence proportionate to his interest in the grazing rights over the holding.

(3) In default of agreement between the owner and a servitude holder as to the suitability or sufficiency of the gates referred to in sub-section (1), or as to the amount of the share of the cost referred to in sub-section (2), either of them may claim that the matter shall be determined as a dispute in accordance, *mutatis mutandis*, with the provisions of the Second Schedule.

**16. Give-and-take line.**—(1) Where a dividing line between any two holdings is formed by a watercourse or river (not being of such a nature as to form a natural barrier for stock) or range of hills, outcrops of solid rock or kopjes, along which it is impracticable or inexpedient to erect a fence, the owners concerned may agree on a fair give-and-take line as a dividing line to be fenced in accordance with this Act, and, in default of agreement, any such owner may claim that the matter shall be determined as a dispute in accordance with the provisions of the Second Schedule.

(2) Any give-and-take line so agreed on or determined, shall be deemed to be the boundary line for the purposes of this Act but shall not otherwise affect the titles to such holdings.

17. Clearing bush for boundary fencing.—(1) Any person erecting a boundary fence may clean any bush along the line of the fence up to 1.5 metres on each side thereof and remove any tree standing in the immediate line of the fence.

[Sub-s. (1) substituted by s. 1 of Act No. 3 of 1971.]

(2) The cost of such clearing shall be deemed to be part of the cost of erecting the fence.

18. Access to land for purpose of boundary fencing.—(1) Any person erecting, converting, altering or repairing any boundary fence, whether under this Act or otherwise, shall at all times have access to any land for himself and his servants, implements, materials, animals and vehicles for the purpose of carrying out the work reasonably required therefor.

(2) Nothing in sub-section (1) contained shall authorize the entry, without the consent of the occupier, upon land under cultivation or any garden, plantation, orchard or pleasure ground, or the cutting down, lopping or damaging of any fruit tree, ornamental tree or shrub.

19. Access to land by authorized persons for certain purposes.—Any person authorized by the Department of Agricultural Technical Services acting through an officer delegated thereto by the Minister, and any person appointed or nominated to determine a dispute in accordance with the provisions of the Second Schedule, may enter upon any land and value, measure, survey, take grades and levels, fell trees, cut fences and do all other acts necessary for the purpose of inspection, valuation or survey or of carrying out any provision of this Act: Provided that any damage caused by the exercise of the powers conferred by this section shall be repaired and, in so far as repair is not possible, the amount of the damage (which in default of agreement, shall be determined in accordance, *mutatis mutandis*, with the provisions of the Second Schedule) shall be paid to the owner.

20. Fencing-off of railway lines.—(1) The owner of any railway line which traverses any holding shall, at his own expense, erect and maintain on either side of such line a sufficient fence with adequate crossing facilities at every place where a public road traverses such line and at any other place where such facilities are reasonably necessary in order to enable livestock to cross such line from one part of such holding to another: Provided that half the cost of any such facilities required at any such other place shall be paid by the owner of the holding affected.

(2) Subject, in any case where a public road traverses the line, to the approval of the road authority concerned, gates of such number and structure as may be agreed on between the owner of such line and the owner of such holding or as may, in default of agreement, be determined in accordance, *mutatis mutandis*, with the provisions of the Second Schedule, shall be erected in such fence at any place where such crossing facilities are provided.

(3) The Minister may by notice in the *Gazette* exempt any area from the operation of this section.

[Sub-s. (3) amended by ss. 46 and 47 of Act No. 97 of 1986.]

21. Gates.—(1) (a) Subject to the provisions of paragraphs (b) and (c), the owner of any fence crossing a public road shall allow an opening of not less than 4.5 metres across the road and shall erect and maintain in good order a gate made of iron or wood or of an iron or wooden frame spanned with wire, placed as near as possible at right angles to the road and properly fixed by hinges or pivots to posts erected for the purpose, so as to facilitate the opening and closing of the gate and to ensure that it will swing clear of the ground.

[Para. (a) substituted by s. 2 of Act No. 3 of 1971.]

(b) Where any road authority exists, such authority shall prescribe the types and width of gates which may be erected across any road in its area.



(c) Nothing in this sub-section contained shall apply in any area in which the provisions of section *twenty* of The Road Boards Act, 1901 (Act No. 35 of 1901), of Natal, are in force, or in which any road authority lawfully prohibits the erection of gates across public roads.

(2) A provincial council may make ordinances in regard to contrivances in gaps in fences crossing or near public roads, which are designed to permit the passage of motor vehicles but to prevent the passage of livestock over or through such contrivances.

**22. Leaving gates open.—**Any person who—

(a) opens and leaves open or unfastened; or

(b) finding open on passing through, neglects to shut and fasten,

a gate in any fence shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or, in default of payment, to imprisonment for a period not exceeding three months or, in the case of a second or subsequent conviction, to such imprisonment without the option of a fine.

**23. Climbing or crawling over or through fences without permission.—**Any person who climbs or crawls over or through any fence or gate without the permission of the owner or lessee of the land upon which such fence or gate is situated, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or, in default of payment, to imprisonment for a period not exceeding three months.

**24. Willful damaging or removal of fences.—**Any person who willfully damages or removes any fence or gate or any contrivance forming part or serving the purpose of a gate, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred and fifty rand or, in default of payment, to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.

**25. Climbing or crawling over or through, and damaging or removing fences authorized in connection with destruction of vermin.—**The provisions of section *twenty-three* or *twenty-four* shall not render it unlawful for any member of a club registered in terms of any ordinance relating to the destruction of vermin or for any person in the service of a divisional council or provincial administration to climb or to crawl over or through any fence or gate without the permission referred to in section *twenty-three* or to damage or to remove any fence or gate with the intent contemplated by section *twenty-four* if such member or such person does so in the exercise of powers conferred by such ordinance and during the course and for the purposes of a hunt organized and carried out in terms of such ordinance by the club to which such member belongs or the divisional council or provincial administration employing such person, provided the said club, council or administration, as the case may be—

(a) gives prior notice, by publication in a newspaper circulating in the area in which the hunt is to be carried out or to the owner or occupier of the land on which such fence or gate is situated personally, of the hunt and the week during which it is to be carried out;

(b) within seven days after such fence or gate is so damaged or removed, restores it to the condition in which it was immediately prior to being so damaged or removed, and, until it is so restored, places a guard at any opening in such fence or gate caused by such damage or removal and, in the case of a jackal-proof fence, places such fence, on the day it is so damaged or removed, in such a condition that the passage of jackals at the place where it is so damaged or removed, is prevented.

**26. Unintentional damaging of fencing.—**(1) Any person who unintentionally damages any fence or gate situated on a holding or on a public road within a holding, shall forth-

with repair the damage or, if he is unable to repair it, report the damage and his inability to repair it to the owner or any lessee of the holding and deposit or give security for such sum as may be reasonably sufficient to cover the cost of the repair, and the owner or such lessee shall thereupon on request give such person a written acknowledgement of the sum deposited or secured.

(2) Any person who fails to comply with the provisions of sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or, in default of payment, to imprisonment for a period not exceeding three months.

27. Failure to give name after damaging fence.—Any person who, having climbed or crawled over or through any fence or gate without permission, or having damaged any fence or gate, fails to give his correct name and address, on request by the owner or lessee of the land on which such fence or gate is situated or by some person authorized thereto by such owner or lessee, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or, in default of payment, to imprisonment for a period not exceeding three months.

28. Penalties where not expressly provided.—Any person who contravenes or willfully fails to comply with any provision of this Act in respect of which no penalty is expressly provided, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or, in default of payment, to imprisonment for a period not exceeding three months.

29. Settlement of disputes.—Whenever, under this Act, two owners are unable to agree as to—

- (a) the specifications of any boundary fence proposed to be erected or altered;
  - (b) the value to either owner of any boundary fence;
  - (c) the use which either owner is making of any boundary fence and whether such use is beneficial use and, if so, the extent to which it is being made; or
  - (d) any other matter in respect of which a dispute has arisen between them,
- the provisions set out in the Second Schedule shall apply.

30. Civil jurisdiction of magistrates' courts.—The magistrate's court of the district in which the defendant in any civil proceedings under this Act resides, shall have jurisdiction to entertain such proceedings and give judgment for the amount claimed, notwithstanding that the proceedings or the amount claimed is under the law relating to magistrates' courts, outside the ordinary jurisdiction of that court.

31. Non-liability of owner or occupier of holding in respect of certain injuries or damage.—No owner or occupier of a holding shall be held liable in damages in respect of an injury or damage caused to any person or property by such person or property coming into contact with any fence, unless the injury was occasioned by the negligence of such owner or occupier in erecting, altering, maintaining or repairing such fence.

32. The State's rights and duties.—The State shall in relation to any holding in respect of which it is the owner or lessee, whether by registration or otherwise, have all the rights, obligations and duties conferred or imposed on the owner or lessee of a holding by or under this Act.

33. Repeal of laws and savings.—(1) Subject to the provisions of sub-sections (2), (3) and (4), the Fencing Act, 1912 (Act No. 17 of 1912), the Fencing Act Amendment Act,

1922 (Act No. 11 of 1922), the Fencing Act Amendment Act, 1934 (Act No. 24 of 1934), the Fencing Act Amendment Act, 1940 (Act No. 11 of 1940), and the Fencing Amendment Act, 1962 (Act No. 57 of 1962), are hereby repealed.

(2) Any proclamation, notice, order or appointment issued, given or made, or any other action taken or thing done under any provision of a law repealed by sub-section (1), shall be deemed to have been issued, given, made, taken or done under the corresponding provision of this Act.

(3) Every area which at the commencement of this Act is in terms of sub-section (5) of section five of the said Fencing Act, 1912, deemed to be an area proclaimed under that section, shall be deemed to be an area in respect of which a proclamation under section two has been issued.

(4) The repeal of the said Fencing Act, 1912, shall not affect any act or right to which at the commencement of this Act the provisions of section forty-one of that Act apply.

34. Short title.—This Act shall be called the Fencing Act, 1963.

First Schedule

{First Schedule amended by s. 3 of Act No. 3 of 1971.}

NOTICE OF INTENTION TO FENCE

To \_\_\_\_\_ Owner/Agent of Owner of farm or holding \_\_\_\_\_  
Address \_\_\_\_\_

Take notice in terms of section seven of the Fencing Act, 1963, that I intend to erect a fence along the boundary between my farm/holding \_\_\_\_\_ No. \_\_\_\_\_ and your farm/holding \_\_\_\_\_ No. \_\_\_\_\_

The work will be commenced on or about the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ in accordance with the specifications annexed hereto, and I request you to inform me whether it is your intention to contribute either labour or material or both, towards this fencing.

If no reply or objection to the proposed specifications reaches me within the period prescribed by the said section seven, the work will be proceeded with in the usual manner.

Date \_\_\_\_\_ Signature \_\_\_\_\_  
Owner/Agent for Owner

SPECIFICATIONS OF FENCE

1. Height of fence: \_\_\_\_\_ metres
2. Number of wires: Barbed \_\_\_\_\_ Plain \_\_\_\_\_
3. Distance apart of wires in centimetres from ground upwards: \_\_\_\_\_
4. Nature of straining posts: \_\_\_\_\_ metres
5. Distance apart of straining posts: \_\_\_\_\_ metres
6. Nature of standards: \_\_\_\_\_  
(i.e. stone pillars, iron standards — kg, wooden posts — minimum diameter in centimetres, etc.)
7. Distance apart of standards: \_\_\_\_\_ metres
8. Nature of droppers: \_\_\_\_\_
9. Distance apart of droppers: \_\_\_\_\_ metres
10. Number of gates: single \_\_\_\_\_ double \_\_\_\_\_
11. Length of proposed fence: \_\_\_\_\_ metres
12. Remarks: \_\_\_\_\_
13. Estimated cost including erection: R \_\_\_\_\_

\_\_\_\_\_  
Owner/Agent for Owner

## Second Schedule

## DISPUTES

1. An owner who is a party to the dispute may serve on the other owner a notice in writing stating that he desires the matter in dispute to be determined by a board appointed in accordance with and having the powers set out in this Schedule.
2. The board shall consist of three members (of whom none shall be related to any of the parties) appointed as in this Schedule provided, unless the two owners mutually agree that one person shall determine the matter, and further agree as to who that person shall be. Such person shall have all the powers conferred on the board by this Schedule.
3. In default of such agreement each owner shall within fourteen days after the date of the notice aforesaid nominate one person as a member of the board, and shall inform the other owner of the name and address of the person so nominated.
4. If after the expiry of the said period either owner has made default in complying with paragraph 3 the other owner may request—
  - (a) the magistrate of the district in which the two holdings are situated; or
  - (b) if the holdings are situated in different districts, the magistrate whose seat of magistracy is nearest to the place which is or will be the central point of the boundary fence, to appoint forthwith a member of the board to act in the place of the person who should have been nominated by the defaulting owner, and the magistrate shall forthwith comply with the request.
5. Notice of appointment shall forthwith be given by the appointing owner of the appointing magistrate, as the case may be, to a member appointed as aforesaid, and the two members so appointed shall within fourteen days after the giving of such notice nominate a third person to be a member of the board.
6. If at the expiry of the lastmentioned period of fourteen days the said two members have made default in agreeing upon a third member, the magistrate aforesaid shall, at the request of either owner, appoint a third member. Notice of the appointment shall forthwith be given to the third member by one of other of the owners or by the appointing magistrate, as the case may be.
7. The board shall proceed to determine the matter in dispute as soon as possible after the third member has received his notice of appointment.
8. The third member shall be chairman of the board and shall summon all meetings of the board.
9. For the purpose of determining the matter in dispute the board shall have power to summon and hear witnesses, to administer the oath to witnesses, to call for the production of papers and documents, and to enter upon and inspect the holdings concerned or any adjacent holding.
10. The decision of the majority of the members shall be the decision of the board and shall be binding on both owners.
11. The board shall have power to award to either owner as against the other owner the costs of or incidental to the determination of the matter in dispute, including the remuneration, and allowances to defray the expenditure, of the members of the board at a rate determined by the Minister in consultation with the Minister of Finance.
 

[Para. 11 substituted by s. 4 of Act No. 3 of 1971.]
12. Any decision of the board, including any decision as to costs, may be enforced in the same manner and by the same persons as a judgment or order of the magistrate's court of the district.
13. For the purposes of carrying out any of the powers of the board and of the payment of allowances to witnesses, the law relating to magistrates' courts shall, save as otherwise provided in this Schedule, *mutatis mutandis* apply.
14. Any costs awarded by the board may at the request of the owner against whom the award was made, be taxed by the clerk of the magistrate's court of the district in accordance with the law relating to magistrates' courts.

