

## No. II.

### An Act to regulate the Impounding of Live Stock. [20th June, 1865.]

IMPOUNDING.

WHEREAS it is expedient to make better provision for the Impounding of Live Stock. Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

1. The Act nineteenth Victoria number thirty-six being the Repeal of existing Act. "Impounding Act of 1855" is hereby repealed.

2. For the purposes of this Act the following terms in inverted commas shall unless the context otherwise indicate bear the meanings set against them respectively—

"Cattle"—Bulls cows oxen heifers steers and calves.

"Horses"—Horses mares geldings colts and fillies asses mules and foals.

"Sheep"—Rams ewes wethers and lambs.

"Animal"—Cattle horses sheep goats and swine whether one or more.

"Poundkeeper"—Any person having the authorized charge of any public pound.

"Sufficient fence"—Such a fence or other means of enclosure natural or artificial as the Petty Sessions shall deem to be sufficient to prevent trespass by animals ordinarily controllable.

"Justice"—Any Justice of the Peace.

"Petty Sessions"—The Justices assembled at a Court of Petty Sessions.

"Occupant"

*Impounding.*

**"Occupant"**—Any holder or occupier of land under whatever tenure or any superintendent overseer or other duly authorized person acting for and on behalf of any such occupant.

**"Owner"**—Any proprietor of animals or any agent or overseer of any such proprietor.

**"Minister"**—The Minister for the time being administering this Act.

Pounds may be established.

Poundkeepers to be appointed and give security.

One day only in week to be fixed for sales.

Poundkeepers to keep pound book.

Book for particulars of stray animals.

Poundkeeper to repair.

3. The Minister may on the recommendation of the Court of Petty Sessions of any District by notice in the *Gazette* fix upon and determine convenient places in such Districts for establishing public pounds.

4. To every such pound there shall be a poundkeeper who shall be appointed by the majority of the Justices assembled in the Court of Petty Sessions assembled for that purpose nearest to the said pound And every poundkeeper before acting under such appointment shall enter into a bond to Her Majesty with sufficient sureties in such amount as may be deemed reasonable by such Justices that he shall well and truly perform the duties of such poundkeeper and account for and pay over all moneys received by him in such capacity as by this Act directed.

5. The Minister may by notice in the *Gazette* fix some one day in every week on which sales of impounded animals may take place at noon at every pound in the Colony And every such sale shall take place on such day only unless it be Good Friday Christmas Day or any Public Holiday and then on the next business day not being such.

6. Every poundkeeper shall be supplied by the Government with a copy of this Act and also with a pound book in such form as shall be determined by the Minister both which and also all printed instructions from time to time transmitted to such poundkeeper he shall keep at his pound And he shall enter legibly in writing in such book the particulars of all matters referred to therein under their proper heads at the time of such matters occurring or being done respectively or as soon thereafter as possible And the said pound book and such instructions shall once in every month be produced to the Petty Sessions and with this Act be open at the pound at all reasonable times to any Justice or Police Officer or to any person authorized in that behalf by the Minister free of charge and to any other person on payment of sixpence and the poundkeeper shall supply extracts therefrom signed by himself at the rate of one shilling for one hundred words or less and sixpence for all additional words not above one hundred And every poundkeeper shall at the time of his ceasing to hold such office deliver up such pound book Act and instructions to the Petty Sessions.

7. Every poundkeeper shall also keep a book in which he shall from time to time enter the descriptions of all stray animals coming under his observation with the names and addresses of their owners if known to him and such other particulars as may lead to the recovery of them by their proprietors and such book shall at all reasonable hours be open to the inspection of any person on payment of a fee of one shilling.

8. Every poundkeeper shall at his own cost keep the pound to which he is appointed clean and in good repair and shall supply the animals impounded therein with sufficient and wholesome food and water having regard to the capabilities of the district and the circumstances of the season—the charges for such care and sustenance to be fixed for each pound from time to time by the majority of Justices assembled for that purpose in the Court of Petty Sessions and published in the *Gazette*—and the poundkeeper may send such animals out of his

*Impounding.*

his pound at fit times and to fit places for grazing or watering Provide sustenance. Provided that every poundkeeper shall be responsible to the owner of any impounded animals for every loss or damage occasioned by any wilful act or neglect of himself or his servants.

9. Every poundkeeper may demand and retain for his own use Pound fees. for all animals impounded the following fees—For the first or only head of goats or swine sixpence and for every additional head thereof not exceeding ten impounded at the same time and by the same person three-pence and for every additional head so impounded one penny—for the first or only head of cattle sixpence and for every additional head not exceeding ten three-pence and for every additional head so impounded one penny—for the first or only horse one shilling and for every additional horse not exceeding ten so impounded sixpence and for every additional head three-pence—and for the first or only sheep three-pence and for every additional sheep not exceeding ten one penny and for every additional sheep exceeding ten one farthing.

10. Every poundkeeper shall keep on or near to some conspicuous part of the pound a board containing in legible white letters on a black ground a table of all fees and charges which he is authorized to demand under this Act and all rates of damage fixed by the first Schedule hereto. And if he fail to keep such board in proper repair or neglect to make necessary alterations therein within a reasonable time or allow any false statement to be thereon he shall be liable for every day of such offending to a penalty not exceeding five pounds. Poundkeeper to erect board with table of fees.

11. Any occupant impounding any animals in the public pound Rates of damage. may charge and receive for them respectively to his own use the rates of damage fixed by such first Schedule and rates per mile for driving them according to the scale fixed in the second Schedule hereto as well as all tolls or ferry dues incurred in such driving.

12. In every case in which the same animal shall be found trespassing on the same land more than once and any such trespass shall take place within twenty-one days after a preceding one such trespass there shall be charged for the second and every other such trespass twice the rate of damage authorized by the first Schedule together with driving fees as by the second Schedule as well as all tolls or ferry dues incurred in such driving. Increasing charge for repeated trespasses.

13. Within twenty-four hours after the impounding of any animals the poundkeeper shall post a written notice on the gate or on some other conspicuous part of the pound setting forth a description of such animals with their brands and marks and such notice shall remain so posted until such animals shall have been claimed or otherwise disposed of according to this Act. And every poundkeeper who shall neglect to post such notice or keep the same so posted shall for every day of such neglect be liable to a penalty not exceeding forty shillings. Poundkeeper to post on gate notice of cattle in pound.

14. When any cattle horses or sheep impounded in a public pound shall not be immediately claimed by the owner or some one on his behalf the poundkeeper shall within twenty-four hours thereafter send a notice to the owner if known and residing within ten miles of the pound and if residing at a greater distance then by a registered letter through the general post—such notice to contain a description of such animals with their brands and marks—the place from which they are impounded and by whom—the date of their impounding—a statement of the time and place of their intended sale if not duly released and the sum which shall at the date of such notice be lawfully chargeable on the same Provided that every owner residing within ten miles of a pound may instruct the poundkeeper in writing by which of such modes such notice shall be sent and

*Impounding.*

Notice to persons unknown.

Fees for notices of impounding.

Damages and penalty for injury by neglect of pound-keeper.

Unbranded cattle to be sold outright.

Animals may be sold on authority of owner.

Mode of sale.

Application of proceeds of sale and account.

and the poundkeeper shall act accordingly. Provided also that when the poundkeeper knows the owner of any impounded goats or swine residing within three miles of the pound he shall forthwith send him notice of the impounding.

15. If the owner of any animals be not known the poundkeeper shall within twenty-four hours after the impounding post a like notice at the nearest Court of Petty Sessions if within twenty-five miles of the place of impounding and if not then with reasonable speed and shall with all possible dispatch insert the same in the *Gazette* and a local newspaper.

16. Every poundkeeper shall demand and receive for every notice duly sent by post one shilling and if sent otherwise at the rate of sixpence per mile of such distance travelled in proceeding to the residence of such owner with the actual costs of inserting any notice in the *Gazette* and local newspaper. Provided that one notice only shall be charged for any number of animals belonging to the same owner and impounded at the same time. Provided also that every poundkeeper may detain all animals impounded until all fees and charges authorized by this Act shall be paid or tendered or until their sale.

17. Every poundkeeper who shall take or demand any sum for anything done by him under this Act otherwise than is hereby authorized—or shall fail to pay to the occupant on demand any damages received by him from the owner of impounded animals—or shall fail duly to provide sustenance to any such animals—or shall work any cattle or horses impounded—or shall as such poundkeeper contrary to this Act do or neglect anything whereby damage is incurred by the Crown or by any person may be ordered by any competent Court to make compensation for such damage and shall also be liable to a penalty not exceeding ten pounds.

18. The poundkeeper notwithstanding anything in this Act contained may without other preliminary than an order obtained from a Justice sell at the next appointed day of sale any unbranded cattle or horses above the age of twelve months which have been impounded and shall pay over two-thirds of the proceeds of their sale to the occupant so impounding.

19. Any poundkeeper may under the written authority of any owner of impounded animals sell the same at the then next appointed day of sale.

20. All sales of impounded animals under this Act shall be held at noon by auction at the public pound by the poundkeeper who may so sell without an auctioneer's license and no auction duty shall be paid and before every such sale a sufficient hand-bell shall be rung for fifteen minutes at the least. Provided that not more than ten sheep or goats or five swine shall be put up in one lot nor more than one horse or one head of cattle unless in the case of a cow with her calf or a mare with her foal such calf or foal being under six months old and the poundkeeper or his surety or any Justice ordering the sale shall if he purchase any animal sold be liable to a penalty not exceeding twenty pounds.

21. Every poundkeeper shall apply the proceeds of all sales of impounded animals in payment first of the pound fees of the charges for sending notices and for advertising and for sustenance all which he may keep to his own use. And he shall within ten days after the end of every month furnish to the Clerk of Petty Sessions a transcript from the pound book for the previous month and shall at the same time pay to such Clerk the remainder of such proceeds and other charges authorized by this Act excepting trespass damages lawfully due to the person impounding if claimed previously to making any monthly payment. And such Clerk on receipt of such transcript and

*Impounding.*

and moneys shall compare and verify the same and cause any error or omission therein to be rectified by such poundkeeper and on being satisfied of their accuracy shall forthwith forward the same with a certificate of such accuracy to the Colonial Treasurer together with such moneys and also all other moneys then in his hands arising from penalties under this Act and shall affix a copy of such transcript on some conspicuous part of the Court House for at least one month for general information.

22. Any occupant upon whose land any animals shall trespass Animals trespassing to be impounded in nearest pound. may drive or otherwise take or send the same to the public pound nearest by a practicable road or highway to the land where the same were trespassing or if such land be equidistant or nearly so from two pounds then to either thereof and may on any business day between sunrise and sunset deliver them to the poundkeeper to be impounded. Provided that should there be no poundkeeper at the nearest pound then at the nearest pound having a poundkeeper.

23. Any occupant upon whose land any animals are found trespassing may if he know their owner temporarily impound the same in any convenient place on his own premises for a period not exceeding four days. Provided that he shall within twenty-four hours give like notice to such owner as hereinbefore enacted to be given by the poundkeeper in the case of animals not immediately claimed and shall feed and maintain such animals while so impounded and may at the expiration of such time if not sooner duly released deliver them to the poundkeeper to be impounded in the nearest public pound. Provided also that he may make a charge for such feeding and maintaining them and for sending notice not exceeding such as might by law be made by the nearest poundkeeper but shall not be entitled to any compensation for damage except for such as was done before the temporary impounding. Provided always that any occupant contemplating impounding may detain animals on his own premises for twenty-four hours prior thereto.

24. Any occupant may send any animals found trespassing on his land to any convenient place near the residence of the owner and at the same time may demand payment of the damage done according to the rate fixed by the first Schedule of this Act together with the charges for driving as fixed by the second Schedule of this Act and thereupon such owner shall pay the same as satisfaction of such trespass or in default thereof the occupant may recover the same as a debt in the nearest competent Court with reasonable costs of suit. Animals trespassing may be taken home and damage recovered.

25. Any occupant may detain any animals trespassing on his land and give notice to the owner thereof of such detention stating where they are and requiring him to remove them and may demand damages according to the rate in the first Schedule and costs of sending such notice and if not released within twenty-four hours after such notice he may turn at large such animals and may recover in a competent Court such damages and charges for notice as are hereinbefore provided to be paid to a poundkeeper for similar service. Occupant may detain animals and recover damages after notice.

26. Any person duly authorized by the Minister by any Magistrate or by any Police Officer in that behalf may lodge any animals lawfully in possession or custody of such person in any public pound for safe custody and may remove or authorize the removal of the same at his discretion. And in every such case the only charge made by the poundkeeper shall be the cost of sustaining such animals according to the scale for sustenance as aforesaid. Lodging animals for safe custody.

27. The occupant of any lands enclosed by a fence sufficient for cattle and horses ordinarily controllable may destroy any goats or swine found trespassing thereon. Goats or swine trespassing may be destroyed.

*Impounding.*

Unbranded cattle  
trespassing may be  
destroyed.

Proceedings as to  
unclaimed animals  
prior to sale.

Animals half mile  
from road may be  
impounded.

Owners of entire  
horses and bulls to  
pay £5 damages.

Animals not to be  
driven away without  
notice to occupant.

Fine not to exceed  
ten pounds.

Penalty for rescue.

Wilful trespass.

28. Any occupant finding any unbranded cattle or horses above the age of two years trespassing on his land may destroy the same.

29. Where any cattle horses or sheep impounded in a public pound shall not be duly released within four days after notice duly served on the known owner thereof—or in case the owner is not known within fourteen days after such notice shall have been duly advertised such periods respectively being reckoned exclusive of the day of such service or of the first advertisement thereof—any Justice upon being satisfied that the poundkeeper has complied with the provisions of this Act may by order under his hand authorize the sale of such cattle horses or sheep and such sale may take place on a sale day to be advertised. And any goats or swine impounded may be sold on any business day of which notice shall have been posted on the pound not being less than three days after being impounded.

30. Occupants of unenclosed Crown lands through which any public road or thoroughfare may pass may not impound any cattle horses or sheep travelling along or through any such road or thoroughfare unless they be at the time of seizure at a greater distance from the centre thereof than half a mile. Provided however that unless prevented by rain or flood such horses or cattle shall be moved on or along such road or thoroughfare at least ten miles and such sheep at least six miles in one direction within every successive period of twenty-four hours.

31. The owner of any entire horse or bull above the age of one year which may be impounded or detained under the provisions of this Act shall be liable to pay by way of damages for every such horse or bull any sum not exceeding five pounds to the party impounding the same besides all the legally authorized poundage fees and if the owner shall not release any such animal and it shall not realize at the poundkeeper's sale sufficient to pay the said penalty besides the poundage fees such owner shall pay the balance to such impounding party to be recovered before any two Justices in Petty Sessions assembled.

32. Every person who shall drive or attempt to drive any animals being his own or belonging to any person duly authorizing him from the land and out of the herds or flocks of any occupant or without first giving him two days' notice if required of his intention so to do or who having given such notice shall proceed to carry it into effect without calling upon the occupant to enable him if he pleases to accompany him or send a servant to do so shall be liable to a penalty not exceeding five pounds and every person who shall so drive or attempt to drive any animals not being his own or under authority as aforesaid shall be liable to a penalty not exceeding ten pounds. Provided that nothing herein shall affect any criminal proceeding for such driving if applicable thereto. Provided nevertheless that no person having animals trespassing shall be empowered to demand to exercise such right more than once in the same month.

33. Every person who shall rescue or incite or assist any other person in rescuing any animals lawfully impounded or seized for the purpose of being impounded shall be liable in any competent Court to all costs and damages lawfully chargeable thereupon and also to a penalty not exceeding twenty pounds.

34. Every person who shall wilfully let in or knowingly suffer to enter upon any cultivated land of any occupant any animals without due authority shall be deemed guilty of a wilful trespass and shall be liable for every such offence to a penalty not exceeding twenty pounds. Provided that no conviction of such offence shall affect any civil remedy against such offender.

*Impounding.*

35. In every case in which more occupants than one holding lands enclosed by one common outward sufficient fence such lands shall for the purposes of the first Schedule hereto be deemed as against all persons outside such general fence to be sufficiently fenced but as against each other in cases where no sufficient fence stands between them shall be deemed to be unenclosed lands.

36. Whenever this Act contains a direction to insert any notice in a local newspaper such insertion may be dispensed with unless it can be made at a cost not exceeding the charge authorized for advertising in the *Gazette*.

37. Nothing herein shall interfere with the Common Law right of proceeding for damages. Provided that if the plaintiff in any such proceeding does not recover more than damages according to this Act he shall not be entitled to costs from the defendant.

38. The Colonial Treasurer shall keep a separate account of all moneys accruing under this Act and in case no claim to the same shall be duly made within two years next after the said money shall have been so paid into the hands of such person it shall be lawful for the Governor by warrant under his hand to direct the same to be paid to the Treasurer or other authorized officer of any Benevolent Society or Hospital established or to be established in any district of the Colony for the relief of such poor persons as through age sickness accident or infirmity are unable to support themselves. Providing that in any district in which there is no Benevolent Society or Hospital the same shall be paid towards the support of the nearest Benevolent Society or Hospital.

39. Every person who shall wilfully commit any offence against this Act or any regulations thereunder not herein expressly provided for shall be liable to a penalty not exceeding five pounds which may be recovered before any two Justices.

40. This Act shall commence and take effect on and after the first day of July next and shall be styled and may be cited as the "Impounding Act of 1865."

**FIRST SCHEDULE.****RATES of Damage to be charged for Trespass.**

Description of Animals trespassing.	In any paddock of grass enclosed by a sufficient fence.	In any garden uncut meadow or growing crop of any kind enclosed by a sufficient fence.
	s. d.	s. d.
For every horse mare gelding colt filly ass mule bull } cow ox heifer steer calf .....	1 0	4 0
For every ram ewe sheep or lamb .....	0 1	0 4
For every goat .....	2 0	6 0
For every pig .....		

*Customs.*

## SECOND SCHEDULE.

RATES of Mileage for driving or taking animals to Pound.

Description of Animals trespassing.	Per Mile.
Every horse mare gelding bull cow ox heifer steer calf.....	For the first three-pence and for every other trespassing and impounded at the same time one half-penny.
Every one hundred rams ewes sheep or lambs or under that number.....	Sixpence for the first and one penny for every hun- dred or portion of a hun- dred above that number.
Every goat .....	One half-penny.
Every pig.....	One shilling.