

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

No. 10 of 1928.

AN ORDINANCE

Relating to the Impounding of Cattle and for Other Purposes.

BE it ordained by the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act* 1909 and the *Seat of Government (Administration) Act* 1910, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Pounds Ordinance* 1928. Short title.
2. This Ordinance shall commence on a date to be fixed by the Commission by notice in the *Gazette*. Commencement.
3. The *Impounding Act* 1898 of the State of New South Wales shall cease to apply to the Territory. State Act to cease to apply.
4. This Ordinance is divided into Parts as follows:— Parts.
 - PART I.—Preliminary.
 - PART II.—Pounds and Poundkeepers.
 - PART III.—Impounding.
 - PART IV.—Sale of Cattle.
 - PART V.—Illegal Impounding.
 - PART VI.—Miscellaneous.
5. In this Ordinance, unless the contrary intention appears:— Definitions.

“Cattle” includes any horse, mare, gelding, colt, filly or foal, and any bull, cow, ox, steer, heifer or calf, and any ram, ewe, sheep, or lamb, and any ass, mule or goat;

“Great cattle” includes any horse, mare, gelding, colt, filly or foal, and any bull, cow, ox, steer, heifer or calf, and any ass or mule;

- “Occupier of land” includes the holder of land under any tenure whatsoever, and any person occupying any land the property of the Commonwealth or the Commission under any lease, licence or other authority granted by or on behalf of or in the name of the Commonwealth or the Commission, and also any agent or overseer or other duly authorized person acting for and on behalf of any such occupier, and in the case of land the property of the Commonwealth or the Commission means the Commission ;
- “Owner” means any proprietor of cattle or any agent or overseer of any proprietor ;
- “Pound” means any pound established under this Ordinance ;
- “Poundkeeper” means the person for the time being appointed to be the poundkeeper or to act as poundkeeper in respect of any pound ;
- “Road” means any street, road, lane, thoroughfare or footpath, open to, or used by, the public ;
- “Seat of Government Fund” means the Seat of Government Fund established under the *Seat of Government (Administration) Act 1924-1926* ;
- “Sheep” includes any ram, ewe, wether or lamb ;
- “Sufficient fence” means such a fence or other means of enclosure, natural or artificial, as a Court of Petty Sessions hearing any matter under this Ordinance deems to be sufficient to prevent trespass by animals ordinarily controllable ;
- “The Commission” means the Federal Capital Commission ;
- “Tillage land” includes any land that has been cultivated with a plough or cultivator and sown with a grain crop, but does not include any pasture land or land from which a crop has been harvested, except land sown with artificial grasses for the purpose of obtaining a crop of hay or grass seed or land planted with fruit trees or root crops or land under intense culture.

Application of Ordinance.

6.—(1.) This Ordinance shall not apply to the Territory accepted by the Commonwealth in pursuance of the *Jervis Bay Territory Acceptance Act 1915* unless and until the Commission, by notice published in the *Gazette*, declares it so to apply.

(2.) The Commission may, by any such notice, declare that this Ordinance shall so apply wholly or only to the extent specified in the notice.

Delegation by Commission.

7.—(1.) The Commission may delegate any of its powers and functions under this Ordinance (except this power of delegation) in relation to any matters or class of matters, so that the delegated powers and functions may be exercised by the delegate with respect to the matters or class of matters specified in the instrument of delegation.

(2.) Every delegation under this section shall be revocable at will and no delegation shall prevent the exercise of any power or function by the Commission.

PART II.—POUNDS AND POUNDKEEPERS.

8. The Commission may establish a pound at any place and may abolish any pound. Establishment and abolition of pounds.

9.—(1.) The Commission may in respect of any pound appoint a poundkeeper. Appointment and removal of poundkeepers.

(2.) Every poundkeeper shall hold office at the pleasure of the Commission.

(3.) If a poundkeeper is absent or incapable through illness or any other cause from acting as poundkeeper, the Commission may appoint any other person to act as poundkeeper during the absence or incapacity of the poundkeeper, and while so acting that person shall be deemed to be the poundkeeper.

10. The Commission shall demand and receive as pound fees such sums as are prescribed. Pound fees.

11.—(1.) The driving charges, sustenance fees and trespass rates payable in respect of any pound shall be as prescribed. Driving charges, sustenance fees and trespass rates.

(2.) Driving charges fixed in pursuance of this section shall be payable to the occupier of the land on which the cattle were found trespassing for leading, conveying or driving cattle to a pound.

(3.) Sustenance fees fixed in pursuance of this section shall be payable to the Commission in respect of the sustenance in the pound of impounded cattle.

(4.) Trespass rates shall be payable to the occupier of the land on which the cattle were found trespassing as compensation in respect of any trespass committed by impounded cattle, and may vary according to the description of the cattle trespassing and as the land trespassed on is or is not tillage land enclosed with a sufficient fence.

12. In respect of the trespass of any entire horse, any bull, or any ram, there shall be payable as a trespass rate, in addition to any other sum prescribed in pursuance of this Ordinance by way of trespass rate, a sum not exceeding Five pounds. Trespass rates for entire horse, bull or ram.

13. All driving charges and trespass rates payable in respect of impounded cattle shall be payable in the first instance to the Commission which shall hold them, subject to the provisions of this Ordinance, for the person entitled thereto. Driving charges and trespass rate on impounded cattle payable in first instance to Commission.

14. The poundkeeper shall erect and maintain on the gate or some other conspicuous part of the pound, a board having painted thereon in white letters on a black ground the name of the poundkeeper and a table, in accordance with the prescribed form, of all fees, charges and rates which are payable under this Ordinance. Notice of fees to be posted on conspicuous part of pound.

15. Whenever any cattle are impounded, the poundkeeper shall forthwith place a written notice on the gate or other conspicuous part of the pound giving the number, particulars, brands or apparent brands, and marks of the cattle so impounded and the notice shall remain so posted until the cattle have been claimed or disposed of in due course of law. Notice of impounded cattle.

Poundkeeper to keep pound books.

16.—(1.) Every poundkeeper shall keep a pound book in accordance with the prescribed form, and shall make all entries therein without delay.

(2.) A poundkeeper shall not make any entry in the pound book while any question as to the subject matter of the entry is at issue.

(3.) The pound-book and a copy of this Ordinance and all regulations thereunder shall at all reasonable times be open to the inspection of any member of the Police Force free of charge and of any other person upon payment of the prescribed fee.

PART III.—IMPOUNDING.

Power to impound cattle trespassing.

17.—(1.) Any member of the Police Force or any person thereto authorized by the Commission may, on any day and at any time of the day or night, impound any cattle found trespassing on any road or on any unleased land the property of the Commonwealth or the Commission.

(2.) The occupier of any land adjoining a road, which road is fenced on both sides by a sufficient fence, may impound any cattle wandering without control upon the road.

(3.) The occupier of any land, may, at any time between the hours of eight o'clock ante meridian and five o'clock post meridian on any day, other than a Saturday, Sunday or any day observed as a holiday in the offices of the Commission, impound any cattle found trespassing on the land occupied by him.

Impounding on private premises.

18.—(1.) Subject to the provisions of this section, any occupier may, if he knows their owner, temporarily impound in any convenient place on his own premises, for a period not exceeding four days, any cattle found trespassing on his land.

(2.) The occupier shall, within twenty-four hours after so impounding the cattle, give the prescribed notice to the owner, and shall feed and maintain the cattle while so impounded, and may, at or before the expiration of the period of four days, if they are not sooner duly released, impound them in accordance with the provisions of this Ordinance.

(3.) The occupier may make a charge for feeding and maintaining the cattle and for sending the notice, not exceeding such charge as would be payable to the Commission if the cattle were impounded in a pound and for trespass rates as prescribed.

(4.) Any occupier contemplating impounding any cattle may detain them on his own premises for twenty-four hours or such longer time as is prescribed before impounding them.

Occupier may send cattle to owner and demand payment.

19. Any occupier may send any cattle trespassing on his land to any convenient place near the residence of the owner, and may at the same time demand from the owner payment of driving charges and trespass rates as prescribed, and thereupon the owner shall pay those charges and rates as satisfaction for the trespass, or, in default thereof, the occupier may recover them as a debt in a Court of Petty Sessions with reasonable costs of suit.

20. The occupier of any land trespassed on by cattle may restore them to the owner thereof, and in that case the occupier may demand, and, in case of non-payment, recover in a summary way before any Court of Petty Sessions, from the owner of the cattle, the amount of any driving charges and trespass rates that would be payable in pursuance of this Ordinance if the cattle were impounded, and, when driving charges and trespass rates have not been prescribed, then such compensation as the Court deems reasonable.

Occupier entitled to trespass rates on restoring trespassing cattle to their owner.

21. Any occupier may detain any cattle trespassing on his land and give notice to the owner of the detention stating where they are and requiring him to remove them, and may demand trespass rates and the costs of notice as prescribed, and, if the cattle are not released within twenty-four hours after that notice has been given, shall impound the cattle, and may add the cost of the notice to the fees and charges recoverable by him on impounding.

Occupier may detain cattle.

22. Any person authorized in that behalf by the Commission or by any person thereto authorized by the Commission may, at his own risk and on payment of the prescribed charges, lodge any cattle in his custody in the pound for safe custody and may remove or authorize the removal thereof at his discretion.

Lodging cattle in pound for safe custody.

23. Occupiers or unenclosed lands the property of the Commonwealth or the Commission through which any road passes may not impound any cattle travelling along or through any such road unless they be at the time of seizure at a greater distance from either side than one chain, provided that, unless prevented by rain or flood, the cattle, other than sheep, are moved on or along the road, at least ten miles, and any such cattle being sheep at least six miles, in one direction, within every successive period of twenty-four hours.

Cattle more than one chain from road may be impounded.

24. Whenever any cattle have been seized for trespass by any occupier for the purpose of impounding them, and the owner of the cattle or some person on his behalf pays or tenders to the person seizing or having charge of the cattle before they have been actually impounded the driving charges and trespass rates prescribed in pursuance of this Ordinance, the person having charge of the cattle shall forthwith deliver them up to the owner or the person paying or tendering the charges and rates on his behalf.

Cattle to be restored to owner on tender of trespass rates

25.—(1.) Cattle shall be impounded under the provisions of this Ordinance in the nearest accessible pound to the place where the cattle were found trespassing, and the person by whom or by whose order any cattle are sent to the pound shall in a written memorandum specify to the poundkeeper the description, number, brands or apparent brands, and marks of the cattle, the place where they were found trespassing, the amount of damage claimed for the trespass according to the rates prescribed in pursuance of this Ordinance, and, so far as the person impounding can state it, the name of the owner of the cattle.

Cattle to be impounded in nearest pound.

(2.) The cattle may be either led, conveyed or driven to the pound.

Poundkeeper to detain impounded cattle in custody.

26. Every poundkeeper shall receive and detain in his custody any cattle lodged in the pound until the trespass rates for which the cattle were impounded and all prescribed fees, rates and charges are paid, or until he receives notice of the decision or order of a Court of Petty Sessions given or made in pursuance of section thirty-three of this Ordinance, or receives an order in writing, signed by the person impounding the cattle, for their release without payment of the trespass rates.

Poundkeeper to give notice to persons registering brands of cattle.

27.—(1.) Every poundkeeper shall, upon application made by or on behalf of the owner of the brand or mark accompanied by the prescribed fee, register any brand or mark (not being a brand or mark already registered) used in branding and marking cattle together with the name and address of the owner of the brand or mark.

(2.) Where any cattle are impounded, the poundkeeper shall forthwith, where the cattle are branded or marked with any registered brand or mark, deliver at or post to the registered address of the person causing the brands or marks to be registered, and, where the cattle are not so branded or marked, publish in the *Gazette* and in a newspaper published in the Territory, a notice in accordance with the prescribed form.

PART IV.—SALE OF CATTLE.

Cattle not released may be sold at pound.

28.—(1.) Where cattle have not been released from the pound within fourteen days after the giving or publication of the notice mentioned in the last preceding section, the cattle shall be sold by public auction at the pound.

(2.) The sale shall be made on the first day after the expiration of the period of fourteen days mentioned in the last preceding sub-section which the Commission or a person thereto authorized by the Commission determines by notice published in the *Gazette* and a newspaper published in the Territory to be a day on which a sale shall be held at the pound.

(3.) At any such sale, the poundkeeper shall act as auctioneer, and the sale shall commence at the hour of noon.

(4.) At any sale held in pursuance of this section not more than one head of great cattle nor more than ten sheep or goats shall be sold in one lot, but nothing in this sub-section shall prevent a cow with her calf or a mare with her foal from being sold in one lot.

(5.) The poundkeeper shall neither in person nor by his agent purchase any cattle at any such sale or have any interest of any kind in cattle so purchased.

If no purchaser at sale cattle to be destroyed and sold.

29. Where any cattle have been offered for sale at any pound sale and a bid has not been made at the sale for the cattle, and they are not, in the opinion of an officer of the Commission thereto authorized by the Commission worth the sustenance fees that would be payable in respect thereof during the interval between the sale and the next day appointed for holding a sale at the pound, that officer may cause the cattle to be destroyed and dispose of the carcasses in such manner as he thinks fit, and any proceeds of any sale of the carcasses or any portion thereof shall be deemed to be the proceeds of the sale of impounded cattle.

30.—(1.) The proceeds of all sales of impounded cattle sold in pursuance of this Ordinance shall be applicable in payment—

Application of the proceeds of pound sales.

- (a) firstly, of any costs and charges attending the sale ;
- (b) secondly, of all pound fees and sustenance fees ;
- (c) thirdly, of all other prescribed fees and charges ;
- (d) fourthly, to the impounder of the cattle, of the rates due to him for the trespass thereof,

and the residue, if any, shall be payable to the owner of the cattle.

(2.) If the fees, charges or rates are not or the residue is not claimed by any person entitled thereto within one year after the sale, or, in case the person has been an infant, of unsound mind, or beyond the seas at the time of the sale, within one year after the termination of the disability, the fees, charges, rates or residue shall be paid into the Seat of Government Fund.

31. Where any impounded cattle are not released, and cannot be sold as provided in this Ordinance, or are sold for a sum less than the fees, charges and rates payable in pursuance of this Ordinance, the Commission or any person thereto authorized by the Commission may recover in a Court of Petty Sessions from the person who was the owner of the cattle when impounded, a sum equivalent to the fees, charges, and rates due to the Commission or to the difference by which the sale price of the cattle falls short of those fees, charges, and rates, and the impounder may recover, in a Court of Petty Sessions, from that person the fees, charges and rates or any balance thereof payable to him in respect of the cattle.

Recovery of fees, &c., where cattle cannot be sold or proceeds of sale are not sufficient to pay fees, &c.

PART V.—ILLEGAL IMPOUNDING.

32. The owner of impounded cattle may give notice in writing to the poundkeeper that he intends to complain to a Court of Petty Sessions against the person impounding the cattle that the impounding was illegal under this Ordinance, or that the rates demanded for the trespass of the cattle are excessive, and, upon receipt of the notice and payment to the Commission of the rates with the prescribed fees and charges, the poundkeeper shall release the cattle.

Upon notice of illegal impounding and payment of rates and fees poundkeeper may release cattle.

33.—(1.) Every such complaint shall be made within ten days after the giving of the notice in writing, and shall be heard and determined in a summary manner before a Court of Petty Sessions.

Complaint of illegal impounding or excessive rates to be heard before Court of Petty Sessions.

(2.) The Court may—

- (a) dismiss the complaint ; or
- (b) may find that the cattle were not trespassing ; or
- (c) find that the impounding was illegal under this Ordinance ;
- (d) find that the rates demanded for the trespass of the cattle are excessive.

and may make an order against the defendant for the amount of damages sustained by the owner in consequence of the illegal impounding or excessive demand and for the amount of all prescribed fees, rates and charges paid by the owner to the Commission, and may make such order for costs and expenses as the Court thinks fit.

(3.) Any such order against the defendant shall be an authority to the Commission to pay to the owner the trespass rates paid in pursuance of the last preceding section.

(4.) The Court may hear and determine the complaint notwithstanding any question of title to property or suggestion of right that may be involved therein.

PART VI.—MISCELLANEOUS.

Power to
destroy goats,
pigs and geese
trespassing.

34. The occupier of any land, and, in the case of lands the property of the Commonwealth or the Commission, any person thereto authorized in writing by the Commission, may destroy or cause to be destroyed any goats, pigs, or geese trespassing on the land, and, if the owner of the goats, pigs or geese fails to remove their carcasses within twelve hours after their destruction, the person destroying the goats, pigs or geese shall cause the carcasses to be buried.

Penalty for
offences by
other persons.

35. If any person—

- (a) rescues or attempts to rescue or interfere with or aids, abets, incites, counsels or procures any person to rescue or interfere with any cattle impounded or seized for the purpose of being impounded ;
- (b) destroys or injures or attempts to destroy or injure any pound ;
- (c) illegally impounds any cattle ;
- (d) removes cattle from any one place to any other place for the purpose or impounding those cattle from the last-mentioned place ;
- (e) being in charge of or assisting in driving cattle refuses, on demand by any member of the Police Force or by or on behalf of any person upon whose land the cattle are trespassing, to disclose or states untruly the name and address of the owner of the cattle or of his agent or overseer ;
- (f) drives cattle on or from the land of any other person without proper authority and without previous notice to that person or to his agent or overseer ;
- (g) wilfully leaves open any gate or slip panel or makes a gap in any fence for the purpose of permitting or causing any cattle to trespass, or otherwise wilfully causes any cattle to trespass ;
- (h) without proper authority, wilfully lets in any cattle or knowingly suffers any cattle to enter upon the tillage land of any other person ; or
- (i) fails to comply with or contravenes any provision of this Ordinance,

shall be guilty of an offence.

Penalty : Fifty pounds or imprisonment for six months, or both.

Sufficient fence
in case of lands
in a ring fence.

36.—(1.) In every case in which more occupiers than one hold lands enclosed by one common outward sufficient fence, those lands shall, in regard to the liability for the prescribed trespass rates, be

deemed, as against all persons outside the common fence, to be sufficiently fenced, but, as against each other in cases where a sufficient fence does not stand between them, shall be deemed to be unenclosed lands.

(2.) If the occupier of any land having an insufficient dividing fence fails to make or repair his portion thereof and the occupant of the adjoining land has erected or kept in repair his portion thereof, the last-mentioned land shall be deemed to have a sufficient fence as against the trespass thereon of any cattle of which the first-mentioned occupier is the owner.

37.— (1.) The Commission may appoint inspectors of pounds who shall, subject to the instructions of the Commission, have the supervision and control of such pounds and poundkeepers as the Commission commits to their charge. Inspectors of pounds.

(2.) Any such inspector may enter at any time on any land to inspect any cattle impounded or detained for the purpose of being impounded, and any person refusing to allow any inspector so to enter or hindering or impeding him in the execution of his duty shall be guilty of an offence.

Penalty : Ten pounds.

38. A poundkeeper may take or send any cattle out of his pound at such times and to such places as he thinks fit for the purpose of grazing or watering. Poundkeeper may send cattle out of pound for purposes of grazing, &c.

39. A copy of the *Gazette* containing a notification of the establishment or abolition of any pound or of the appointment, suspension or removal of any poundkeeper or of any matter or thing required to be done by or under this Ordinance shall be prima facie evidence that the pound was duly established or abolished and that the poundkeeper was duly appointed, suspended or removed and that the matter or thing has been duly done or performed. Gazette prima facie evidence

40. All penalties received in pursuance of this Ordinance shall be paid into the Seat of Government Fund. Penalties to be paid into Seat of Government Fund.

41. The Commission may make Regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance and in particular for providing for pound fees, driving charges, sustenance fees, trespass rates, charges for lodging cattle in pounds for safe custody, and fees for inspection of books and for notices. Regulations.

Dated this twenty-fourth day of April, One thousand nine hundred and twenty-eight.

STONEHAVEN

Governor-General.

By His Excellency's Command,

NEVILLE HOWSE

Minister of State for Home and Territories

By Authority: H. J. GREEN, Government Printer, Canberra.