

SOUTH AUSTRALIA

IMPOUNDING ACT, 1920

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **15 August 1991**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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SCHEDULES

IMPOUNDING ACT, 1920

being

Impounding Act, 1920, No. 1441 of 1920
[Assented to 1 December 1920]

as amended by

Impounding Act Amendment Act, 1923, No. 1574 of 1923 [Assented to 28 November 1923]
Impounding Act Amendment Act, 1925, No. 1678 of 1925 [Assented to 19 November 1925]
Impounding Act Amendment Act, 1926, No. 1736 of 1926 [Assented to 30 September 1926]
Impounding Act Amendment Act, 1931, No. 2033 of 1931 [Assented to 26 November 1931]
Local Government Act, 1934, No. 2156 of 1934 [Assented to 25 October 1934]¹
Statute Law Revision Act, 1935, No. 2246 of 1935 [Assented to 19 December 1935]
Impounding Act Amendment Act, 1938, No. 2413 of 1938 [Assented to 8 December 1938]
Impounding Act Amendment Act, 1947, No. 10 of 1947 [Assented to 16 October 1947]
Impounding Act Amendment Act, 1962, No. 26 of 1962 [Assented to 25 October 1962]
Impounding Act Amendment Act, 1966, No. 10 of 1966 [Assented to 24 February 1966]
Impounding Act Amendment Act, 1967, No. 64 of 1967 [Assented to 16 November 1967]
Statute Law Revision Act, 1973, No. 77 of 1973 [Assented to 6 December 1973]
Impounding Act Amendment Act, 1974, No. 65 of 1974 [Assented to 3 October 1974]²
Impounding Act Amendment Act, 1975, No. 49 of 1975 [Assented to 10 April 1975]
Impounding Act Amendment Act, 1976, No. 22 of 1977 [Assented to 12 May 1977]

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

¹ Came into operation 2 November 1934: *Gaz.* 25 October 1934, p. 845.

² Came into operation 5 December 1974: *Gaz.* 5 December 1974, p. 3558.

An Act to consolidate and amend certain Acts relating to the impounding of cattle.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title

1. This Act may be cited as the *Impounding Act, 1920*.

Acts repealed

2. The Acts mentioned in the first schedule are hereby repealed.

Interpretation

3. (1) In this Act, unless some other meaning is clearly intended—

* * * * *

"cattle" includes the several animals mentioned in the fifth and sixth schedules:

"council" means a municipal or a district council:

"district" means a district council district or a municipality:

"enclosed" means enclosed with a good and substantial fence:

"nearest public pound" means the public pound nearest by distance measured along the shortest route usually used in travelling:

"owner" includes the agent, overseer, bailiff, and manager for the owner, and when used with reference to land includes the occupier.

- (2) For the purposes of this Act, when a suckling animal under six months old is running with its mother, the two shall together be deemed one animal.

Pounds and Poundkeepers

Establishment of pounds and appointment of poundkeepers

4. (1) Any council may establish and maintain within its district one or more public pounds, and may appoint fit and proper persons to be keepers of such pounds.

(1a) Any council may join with any other council or councils in the establishment or maintenance of any public pound, notwithstanding that such public pound is not within the district of such first-mentioned council.

(2) With regard to any portion of the State not within the boundaries of any district, the Governor may establish public pounds at such places as he deems necessary, and may appoint fit and proper persons to be keepers of such pounds.

(3) No person holding the office of ranger under the Crown or under any council, or holding a publican's licence, shall be appointed a poundkeeper.

Notice in *Gazette* to be evidence of establishment of pound or appointment of poundkeeper

5. A notice of the establishment of any public pound or of the appointment or removal of any poundkeeper shall be published in the *Government Gazette*, and such notice shall in all legal proceedings, and for all intents and purposes, be *prima facie* evidence that such pound was legally established, or that such poundkeeper has been legally appointed or removed, as the case may be.

Governor or council may close pound

6. (1) The Governor may close any pound established by him, and any council may close any pound established within the district of such council.

(2) Notice of the intended closing of a pound shall be given to the keeper thereof, and at the same time or prior to such notice being given to the poundkeeper, notice of the intended closing of such pound shall be published in the *Government Gazette*.

(3) After the receipt by the poundkeeper of the notice of the intended closing of such pound, no more cattle shall be impounded therein, and upon any cattle impounded therein at the time of such notice being released, sold, or otherwise disposed of, the appointment of such poundkeeper shall cease and determine, except in so far as relates to his liability to render accounts and pay over moneys as provided by this Act, and the pound shall be closed.

Pound to be fenced, enclosed, and kept clean and in repair

7. (1) Every public pound shall be properly enclosed and adapted, so far as may be, for keeping cattle infected with any contagious or infectious disease separate and apart from other cattle, and shall be kept clean and in good repair by the keeper thereof.

(2) If the keeper of any public pound—

- (a) does not keep such pound clean and in good repair, or
- (b) knowingly keeps or permits to be kept therein any cattle infected with any contagious or infectious disease in the same enclosure with cattle not so infected, or
- (c) does not supply the cattle for the time being impounded therein with a sufficiency of wholesome food at least twice a day, once before the hour of nine o'clock in the forenoon, and once after the hour of four o'clock in the afternoon,

such poundkeeper shall be liable to a penalty not exceeding forty dollars.

Provision of shelter in pounds

7a. In every public pound there shall be provided and maintained adequate shelter for cattle impounded in the public pound.

Constant supply of water to be maintained

8. There shall be maintained in every pound a constant supply of wholesome water by means of troughs or by any other means in such a manner as to afford any cattle impounded therein free access to the water at all times.

Persons using or milking cattle without consent of owner

9. Any person—

- (a) who, without the authority and consent of the owner, works or uses any cattle impounded in any public pound; or
- (b) who, not being the keeper of the public pound or the owner of the cow or goat in question, or a person authorized in that behalf by the poundkeeper or such owner, milks any cow or goat impounded in any public pound,

shall be liable to a penalty of not less than eight dollars and not more than one hundred and sixty dollars, and shall pay to the owner of such cattle or cow or goat such sum as the court, at the hearing of the information or complaint, adjudges as just and reasonable for such owner's compensation and costs in that behalf.

* * * * *

Pound book, copy of this Act, and file of *Gazette* to be kept by poundkeeper

11. (1) The keeper of every public pound shall be provided by the authority appointing him with a copy of this Act and with a book in the form in the third schedule, to be called the "pound book", and shall be furnished by the Government Printer with a copy of the *Government Gazette* containing the notice of the appointment of that poundkeeper.

(2) Such poundkeeper shall make entries, in a legible handwriting, in the pound book stating, with respect to all cattle impounded in such pound, the particulars indicated in the third schedule. No such entry shall be made after any dispute has arisen concerning such entry. Any person to whom any cattle impounded in such pound are delivered shall sign the pound book in the appropriate place. The poundkeeper shall, on the last day of each month, transmit to the treasurer of the council or to the Treasurer of the State (according as the pound is situated within or outside the boundaries of a district) a true copy of all the entries made in the pound book during such month.

(3) The pound book shall be and remain public property, and shall be delivered up to the authority appointing him by the poundkeeper on his ceasing to hold that office, or sooner if demanded.

(4) The copy of this Act, the pound book, and the copy of the *Government Gazette* containing the notice of his appointment and furnished to him as aforesaid by the Government Printer shall be kept by the poundkeeper at or near the pound, and shall at all reasonable times be produced by him to, and be open for inspection by, any person desiring to inspect the same. The poundkeeper shall, if required, grant extracts (signed by himself) from the pound book upon payment of twenty cents for every one hundred words or part of one hundred words of each such extract.

(5) The poundkeeper shall file and preserve, for not less than two years, all orders made by any justice concerning any cattle impounded.

(6) Any poundkeeper who—

- (a) neglects or refuses to produce, free of charge, a copy of this Act, the pound book, or the copy of the *Government Gazette* furnished to him as aforesaid by the Government Printer, for the inspection of any person desiring to inspect the same, or

5.

(b) neglects to make any entry in the pound book as hereinbefore provided,

and any person to whom any cattle impounded are delivered who neglects or refuses to sign the pound book as hereinbefore provided, shall be liable to a penalty not exceeding eighty dollars.

(7) Any poundkeeper who—

(a) wilfully delays making any entry in the pound book as hereinbefore provided, or

(b) knowingly makes any false entry in the pound book, or

(c) erases or destroys any entry previously made in the pound book,

shall be liable to a penalty not exceeding one hundred and sixty dollars.

Poundkeeper to keep a board of fees and charges, and rates for ordinary damage

12. (1) The keeper of every public pound shall, within fourteen days after his appointment, erect and thereafter maintain in proper repair, in some conspicuous part of the pound, a board on which shall be displayed a table of all lawful fees and charges which he is, according to the provisions of this Act, authorized to charge, together with a table of the rates at which damages may be claimed under this Act for trespass by cattle. Any such table may be printed or typed in legible characters upon white cloth or paper in which event the table shall be protected from the weather by clear glass or may be painted upon the said board in legible characters.

(2) Any poundkeeper who—

(a) neglects or fails to erect such board as aforesaid, or to maintain the same in proper repair, or to maintain the characters thereon in a legible condition, or

(b) neglects or fails, for more than fourteen days after any of the fees, charges, or rates therein have been lawfully varied, to make any alteration in the said tables which may have become necessary by reason of such variation, or

(c) knowingly suffers to remain on such board any false statement

shall, for every day on which such neglect or failure occurs (except during such reasonable time as such board is taken down for alteration thereon or repair thereto) be liable to a penalty of one dollar, and for every day that he knowingly suffers any false statement to remain on such board to a penalty of two dollars.

Poundage fees and charges, how to be accounted for

13. (1) The keeper of every public pound not situate within the boundaries of a district shall duly and faithfully, on the last day of every month, render an account to the Treasurer of the State of all moneys received by him as such poundkeeper during the month, and of all moneys so received by him in respect of the sale of cattle impounded or in respect of the sale of any carcasses of any such cattle, which are unclaimed by the person entitled thereto (which unclaimed moneys are hereafter in this section referred to as the "unclaimed proceeds"), and shall at the same time pay over to the Treasurer so much of the unclaimed proceeds as have remained in his hands for one month without being claimed by the person entitled thereto.

(2) The poundkeeper of every public pound situated within the boundaries of a district shall, on the last day of every month, duly and faithfully render an account to the council of such district of all moneys received by him as such poundkeeper during the month, and of all moneys received by him in respect of the sale of cattle impounded or in respect of the sale of any carcasses of any such cattle, which are unclaimed by the person entitled thereto (which unclaimed moneys are hereafter in this section referred to as the "unclaimed proceeds"), and shall at the same time pay over to such council so much of the unclaimed proceeds as have remained in his hands for one month without being claimed by the person entitled thereto.

(3) The Treasurer and such council shall retain all such unclaimed proceeds for a period of two years, for the use of the persons entitled thereto. At any time during such period any justice may, on proof to his satisfaction, make an order authorizing payment of any such unclaimed proceeds to the person entitled thereto, and the Treasurer and such council shall make payment accordingly, and shall by such order be indemnified against all adverse claims in respect of such proceeds so paid.

(4) If during such period of two years no such order is made, the unclaimed proceeds may be applied by the Treasurer to the public uses of the State, or by such council for the use and benefit of its district, as the case may be.

(5) Any poundkeeper who neglects or fails to render any account or pay over any moneys as hereby required shall be liable to a penalty not exceeding forty dollars.

Impounding of Cattle

Power to impound cattle

14. (1) Any cattle found trespassing upon any land may be impounded in the nearest public pound by the owner of such land or by any ranger.

(2) Any ranger duly appointed in that behalf, any officer of the council, and any person authorized in that behalf by any such officer may impound any cattle found wandering, straying, or lying upon any road, bridge, parklands, reserve, or Crown lands within any district or upon any road, reserve, foreshore, jetty, wharf, or approach within any district which is vested in or under the control of the Minister of Marine. Any ranger officer or person so impounding any cattle may claim fees at the rate set out in the fourth schedule in respect of any number of animals belonging to any one owner so impounded at one time, and such sum may be recovered in the same manner as the poundkeeper's fees and charges. Any such cattle found on any road which comprises a boundary of the district or which abuts on the district may be impounded by any such ranger, officer, or person as aforesaid, notwithstanding that the part of the road on which the cattle are found as aforesaid is outside the district.

(3) The occupier of any enclosed land may seize and impound—

- (a) any cattle found wandering, straying, or lying upon any road immediately adjacent to or fronting the enclosed land of such occupier; or
- (b) any cattle found feeding off such enclosed land,

notwithstanding that such cattle may be lawfully depastured upon such road.

(4) Any person may seize and impound in the nearest public pound any cattle straying or at large or unlawfully tethered or depastured in any street or public place within any town or township.

(5) Any goat unlawfully trespassing upon Crown lands, may be seized and impounded by a Crown lands ranger, or by any person authorized in that behalf by the Minister of Lands or by a Crown lands ranger, and if there is no public pound within five miles of the place where it is seized it may be impounded elsewhere. Notwithstanding anything contained in section 35, no full bred Angora, Saanen, Toggenburg, British Alpine, or Anglo Nubian goat so seized and impounded shall be destroyed.

(6) In this section "Crown lands" means Crown lands within the meaning of the *Crown Lands Act, 1929*, and includes lands reserved for or dedicated to the public use.

Owner may impound on his own land cattle trespassing on such land

15. (1) The owner of any land on which any cattle are found trespassing may impound such cattle in any convenient place upon his own land if there is not a public pound situated within eight kilometres of such land.

(2) Such owner shall, within twenty-four hours of such impounding—

- (a) if the owner of any of such cattle is known to him, give to the owner of such cattle, or leave at his usual or last known place of abode in the said State, notice of such impounding, specifying, with respect to such of the cattle as are owned by him, the same particulars as are, by section 22, required to be specified in the notice given to the keeper of any public pound by any person impounding cattle therein; and
- (b) if the owner of any of such cattle is unknown to him, give to the keeper of the nearest public pound the same notice specifying the same particulars with respect to the cattle whose owner is unknown to him as is, by section 22, required to be given to such keeper by any person impounding cattle in such pound.

(3) The owner impounding cattle as aforesaid shall feed and maintain the cattle whilst impounded, and shall not keep them so impounded longer than seven whole days of twenty-four hours each. If the owner of such cattle does not within that period pay to the owner impounding such cattle the amount of damages claimed in respect of the trespass of such cattle, together with charges for the sustenance of such cattle whilst so impounded, at the same rates as are chargeable by the keeper of the nearest public pound, the owner of the land may impound them in the nearest public pound.

(4) The owner impounding cattle as aforesaid may claim in respect of the cattle so impounded sustenance charges in respect of the sustenance of such cattle whilst impounded by him on his own land at the rates chargeable by the keeper of the nearest public pound, in addition to any damages claimed for the trespass of such cattle on his land.

Cattle to be impounded may be driven or conveyed to pound

15a. (1) Any cattle to be impounded under section 14 or section 15 of this Act may be driven or led to the pound or place where the cattle are to be so impounded or may be conveyed to that pound or place by any vehicle suitable for the purpose.

(2) Where any such cattle are conveyed by any vehicle to a pound or place to be impounded the ranger or person so conveying them or causing them so to be conveyed may claim the cost of such conveyance and such cost may be recovered in the same manner as a poundkeeper's fees and charges.

Impounding unlawfully or in unauthorized place

16. Any person who impounds any cattle unlawfully or in any place not authorized by this Act shall be liable to a penalty not exceeding eighty dollars.

Fees to be paid to poundkeeper

17. (1) Every poundkeeper may charge, as poundage fees for cattle impounded under the provisions of this Act, the fees specified in the fifth schedule, and, for the sustenance of such cattle while impounded, charges as the rates specified in the said schedule, according to the description of the cattle impounded contained in the said schedule.

(2) Such fees and charges shall be chargeable for each day, or part of a day, during which such cattle remain impounded.

Rates for damage by trespass

18. (1) The owner of any land impounding any cattle found trespassing thereon may claim damages in respect of such trespass, at the rates for damage by trespass specified in the sixth schedule, according to the description of the cattle, and the description of the land or crop on which such trespass is committed, contained in the said schedule.

(2) If any cattle are found trespassing upon any unenclosed land—

- (a) after three days' notice in writing not to trespass upon such land has been given to the owner of such cattle by the owner of such land, either by being delivered personally or by being left for him at his usual or last known place of abode in the State, or
- (b) after fourteen days' notice not to trespass on such land, describing the same by the numbers of the sections or other precise and accurate description, has been published in the *Government Gazette*,

the owner of such land may lawfully claim damages in respect of such trespass at one-fourth of the rate for damage by trespass which he could lawfully claim if the land upon which such cattle were found trespassing was enclosed.

Fees and rates may be varied

19. (1) The Governor may, with respect to any public pound not situated within the boundaries of any district, and with the consent in writing of the Minister any council may, with respect to any pound situated within the boundaries of its district, vary the fees, charges, and rates specified in the fourth, fifth and sixth schedules.

(2) Notice of any such variation shall be published in the *Government Gazette*, and from the date of such publication the said fees and charges as so varied may be charged, and damage for trespass, at the rates as so varied, may be claimed, according to the provisions of this Act.

Person impounding not liable to fees

20. The person impounding any cattle in any public pound shall not be liable, by reason only of such impounding, to pay to the poundkeeper any fees or charges in respect of such cattle.

Cattle to be restored to owner on payment or tender of amount claimed

21. (1) If any cattle found trespassing upon any land have been seized for the purpose of being impounded, the owner of the cattle, or some person authorized by him, may pay or tender to the person having charge of such cattle before such cattle have been actually impounded all sums claimed and payable under this Act in respect of such cattle, whether for damage by trespass, sustenance, or to the ranger in respect of such impounding, and thereupon the person having charge of such cattle as aforesaid shall deliver up the same to the owner or the person paying or tendering the sums so claimed.

(2) If any person refuses or fails to deliver up such cattle on payment or tender as aforesaid he shall be liable to a penalty not exceeding eighty dollars.

Notice to be given by person impounding cattle in public pound

22. Any person impounding any cattle in any public pound shall give notice to the keeper thereof, specifying—

- (a) the number and kinds of the cattle impounded,
- (b) the name of the owner, if known, or of the supposed owner of such cattle, or stating the fact that he is unknown,
- (c) the place where the cattle were found trespassing, and
- (d) the sum claimed for damage by trespass of such cattle (if any) and for the sustenance thereof (if any) whilst impounded on the land of the person by whom such cattle were impounded.

Duty and responsibility of poundkeeper

23. (1) The keeper of every public pound shall receive into his custody any cattle impounded in the pound, and shall detain the same in his custody, whether in the pound or elsewhere, until they are released, sold, or otherwise disposed of, according to the provisions of this Act.

(2) The poundkeeper shall be responsible to the owner of any cattle impounded for loss or damage sustained by the poundkeeper's wilful act or neglect, or the wilful act or neglect of any of his servants, but not otherwise, until such cattle are released, sold, or otherwise disposed of, according to the provisions of this Act.

Notice of cattle impounded to be posted up at pound

24. (1) The keeper of every public pound, whenever and as soon as any cattle are impounded therein, shall post a written notice on a board on some conspicuous part of the pound, setting forth a description of such cattle.

(2) Such a notice shall be kept posted until such cattle have been released, sold, or otherwise disposed of, according to the provisions of this Act.

(3) Every poundkeeper who fails to post such notice as aforesaid, or to keep such notice so posted as aforesaid, shall be liable to a penalty not exceeding sixteen dollars.

Notice of impounding

25. (1) If any cattle impounded in any public pound are not claimed by the owner or by some person on his behalf within twenty-four hours after being impounded, the poundkeeper shall, subject to subsection (6) hereof, give notice of impounding as hereinafter provided.

(2) If the owner of any cattle so impounded is known to the poundkeeper, written notice of the impounding shall be given to the owner—

- (a) by delivering the notice personally to the owner; or
- (b) by sending the notice by post addressed to the owner to his usual or last known place of residence or business in the State.

(3) Where the notice is to be given by delivering it personally to the owner, it shall be given within forty-eight hours after the time when the cattle were impounded, and where the notice is to be sent by post, it shall be posted as soon as practicable after the expiration of twenty-four hours after the time of such impounding.

(4) Every such notice shall be in writing and shall specify—

- (a) the same particulars as are by section 22 required to be given to the poundkeeper by the person impounding such cattle, and
- (b) the time and place of the sale of such cattle, if not sooner released from the pound, and
- (c) the sum upon payment of which the cattle will be released.

(5) If the owner of any cattle so impounded is unknown to the poundkeeper, such poundkeeper shall, as soon as possible after the expiration of twenty-four hours from the time of impounding such cattle, cause a notice of such impounding in the form of the seventh schedule to be published in some newspaper circulating in the locality in which the public pound is situated.

(6) When the cattle impounded consist of sheep, goats, swine, or calves, and are not more than two in number, it shall not be necessary to give any notice of such impounding other than the posting of notice thereof on the pound as provided by section 24.

(7) If any poundkeeper, without sufficient excuse, (the proof whereof shall be on the poundkeeper), incorrectly, or in an insufficient manner, describes any impounded cattle in any notice or advertisement required or permitted by this Act to be given or published, or in any such notice or advertisement fixes a time for the sale of such cattle earlier than provided by this Act, such poundkeeper shall be liable to a penalty of not more than eighty dollars.

Poundkeeper may charge for service of notice

26. (1) Every poundkeeper may charge—

- (a) the sum of ten cents for delivery or sending by post the notice of impounding; and
- (b) the amount incurred in publishing the notice in a newspaper as provided by this Act.

(2) Every poundkeeper may, subject to subsection (3) hereof, also charge for the delivery of such notice, by himself or by any person employed by him for that purpose, the sum of ten cents for every kilometre or part of a kilometre of the distance to the place at which such notice is delivered or left from the pound wherein are impounded, the cattle to which such notice relates.

(3) In any case where notice of impounding is by section 25 permitted to be sent by post, the poundkeeper may charge for the delivery or the posting of such notice ten cents for every kilometre or part of a kilometre of the distance from the pound to the nearest post office, and no more.

Disposal of Cattle Impounded

Cattle to be released on payment of damages and poundkeeper's fees and charges

27. (1) The keeper of every public pound—

- (a) upon payment of any sum claimed for damage by trespass in respect of any cattle impounded, together with his lawful fees and charges in respect of such cattle, being made to him or secured to him as hereinafter provided, or
- (b) upon receipt of a written order from the person impounding such cattle to release the same, and upon payment of his lawful fees and charges in respect of such cattle,

shall release such cattle and deliver them to the owner thereof or to any other person duly authorized by such owner to receive them: Provided that no poundkeeper shall be required to release and deliver any cattle except between the hours of sunrise and sunset.

(2) The keeper of any public pound who—

- (a) receives in respect of the release and delivery of any cattle impounded therein any sum greater than the sum upon payment of which he is by this Act required to release and deliver any such cattle, or
- (b) upon such payment as aforesaid being made or secured to him, or upon receipt of such written order as aforesaid, together with his lawful fees and charges, fails to release or deliver any such cattle,

shall be liable to a penalty of not less than sixteen dollars nor more than forty dollars.

Sum payable in respect of cattle impounded may be secured

28. (1) Notwithstanding that the moneys payable pursuant to paragraph (a) of subsection (1) of section 27 have not been paid, the keeper of any public pound may, upon receiving an undertaking in writing to secure the payment of the said moneys in the form in the eighth schedule signed by the owner of the impounded cattle or by some person on his behalf, release the cattle and deliver them to the owner thereof or to any person authorized in writing by the owner to receive them.

(2) The sum mentioned in every such undertaking shall be paid at the time and place therein mentioned, without any further notice or demand for that purpose. Upon failure of payment as mentioned in such undertaking, the sum secured by such undertaking may be recovered by summary process of distress and sale of the goods of the owner of the cattle so impounded, which process shall be issued by any justice upon the production before such justice of such undertaking, and upon the oath of the poundkeeper that the sum secured by such undertaking is still due and unpaid.

Payment under protest where owner alleges amount claimed is excessive

29. (1) If the owner of any cattle impounded is of opinion that the sum claimed by the person impounding them is excessive, such owner may pay to the poundkeeper under protest in writing the sum so claimed, and also all fees and charges due to such poundkeeper in respect of such cattle, and upon such payment the poundkeeper shall forthwith release and deliver such cattle.

(2) If such owner brings an action against the poundkeeper or the person impounding such cattle within a reasonable time after the release of such cattle for the recovery of so much of the amount so paid as is claimed to be excessive, it shall be lawful for the court before which such action is brought to direct the poundkeeper or the person impounding such cattle to return to such owner all sums of money paid by him over and above the damages or fees and charges lawfully due in respect of such cattle.

Delivery of cattle on recognizance without payment of damages

30. (1) If the owner of any cattle impounded, in respect of which the person impounding such cattle claims any sum not exceeding one hundred and sixty dollars, institutes proceedings with respect to such impounding, to be determined in a summary way according to the provisions of this Act, and enters into a recognizance with one sufficient surety before any justice in the form and with the conditions set forth in the ninth schedule, such justice may order the poundkeeper to release such cattle. Upon receipt of such order and recognizance, and on payment of all fees and charges due to him in respect of such cattle, the poundkeeper shall release the cattle in respect of which the order was made.

(2) Any poundkeeper who fails to release any cattle as required by this section shall be liable to a penalty not exceeding forty dollars.

Payment to person impounding of money received in respect of cattle impounded

31. (1) If any cattle impounded are released upon payment being made or secured as hereinbefore provided of the sum of money claimed in respect of such cattle by the person impounding the same, the poundkeeper shall, on demand made after such money is received by him, pay such money to such person.

(2) Any poundkeeper who fails to pay any money as required by this section shall be liable to a penalty not exceeding forty dollars.

Proceedings prior to sale by poundkeeper of unclaimed cattle

32. (1) If any impounded cattle are not released from the pound—

- (a) where notice of the impounding, or subsequent notice of suspension and future time of sale as provided by subsection (4) hereof, has been given by being delivered personally or left as mentioned in section 25, or any such notice has been sufficiently given by being posted up on a board at the pound, within seven days of such notice being so given or posted up, or

- (b) where any such notice has been given by post, within fourteen days after the time when, in the ordinary course of post, such notice should have been received by the owner, or
- (c) where any such notice has been given by being published in a newspaper as provided by this Act, within twenty one days of such publication,

the poundkeeper shall apply to a justice, not being a party interested in the matter, for an order for the sale of such cattle.

(2) The said poundkeeper shall, at the time of such application produce and show to such justice, the pound book kept by him, or an extract of so much thereof as relates to the cattle in respect of which the application is made, and shall produce on oath such other proofs as such justice may require that he has complied with the provisions of this Act.

(3) Thereupon such justice shall—

- (a) if he is satisfied that all the provisions of this Act have been complied with in respect of such cattle, make an order under his hand authorizing the sale of such cattle on the day specified in that behalf in the notice of impounding given pursuant to section 25 or in the subsequent notice given pursuant to subsection (4) hereof; or
- (b) if not so satisfied, shall direct such acts to be done as may be necessary to comply with the provisions of this Act, and in such case shall suspend the sale until such provisions have been complied with.

(4) Notice of such suspension of sale and of the future time of sale shall forthwith upon the making of such order be given by the poundkeeper as required or permitted by section 25 with respect to the notice of impounding, and the provisions of that section shall *mutatis mutandis* apply to such notice.

(5) If any delay or suspension of sale becomes necessary in consequence of any neglect or omission of the poundkeeper, the cost of all proceedings and notices thereby occasioned, as well as of the future sustenance of such cattle whilst impounded, shall be borne by the poundkeeper.

Time and mode of sale of impounded cattle

33. (1) Subject to section 34, all sales of impounded cattle shall take place—

- (a) where notice of impounding has been given by being delivered personally or left as mentioned in section 25, or such notice has been sufficiently given by being posted up on a board at the pound, not less than ten clear days after such cattle are impounded, or
- (b) in all other cases, not less than twenty-four clear days after such notice was posted or published in a newspaper as provided by this Act:

Provided that when the sale is suspended by a justice under section 32, and notice of such suspension and of the future time of such sale is required to be given as provided by that section, the said periods of ten and twenty-four days respectively shall be calculated from the time of the giving, posting, or publication of such notice of suspension and future time of sale.

(2) All such sales—

- (a) shall take place at the public pound where such cattle are impounded or in any case where it is so directed by the mayor of the municipality or the chairman of the district council district wherein the cattle were found, the sale may take place at any stock saleyard appointed by the said mayor or chairman, as the case may be;
- (b) shall be by auction and to the highest bidder; and
- (c) shall commence at such time as is fixed by the poundkeeper by notice published in a newspaper circulating in the area in which the pound is situated, and posted up on a board at the pound.

(3) All such sales shall be conducted by—

- (a) a person duly licensed as an auctioneer for that purpose by the Governor, or
- (b) a person duly licensed for that purpose by the council of the district within which is situate the pound at which such sale takes place.

(4) Not more than ten head of sheep or goats or five head of pigs, nor more than one animal of any other description, shall be put up for auction in one lot.

(5) Neither the person who impounded the cattle, nor the justice who made the order for the sale of such cattle, shall, either personally or by any other person, purchase such cattle, nor shall the keeper of the pound, nor his servant or surety, nor any member or clerk of the council of the district in which such pound is situated, either personally or by any other person, purchase any cattle impounded in such pound. Any person so offending shall be liable, for every such purchase, to a penalty of forty dollars, and shall also restore the cattle purchased to the person who, if such sale had not taken place, would be entitled to receive the same.

Special provision with reference to valueless cattle

34. If any cattle impounded are not of sufficient value to defray the poundage fees and charges for the sustenance of the same during the respective periods mentioned in subsection (1) of section 32, any justice not interested in the matter may authorize the sale of such cattle on a day earlier than hereinbefore directed, and notice of such sale shall, previous to such sale, be given by the poundkeeper as required or permitted by section 25, and the provisions of section 25 and section 26 shall apply to such notice.

Special provision with reference to goats seized under section 14

35. (1) If the owner of any goat seized pursuant to subsection (5) of section 14 does not, within seven clear days after the seizing thereof, claim it and pay the reasonable expenses of keeping and maintaining it, such goat may, without any order or authority other than this Act, be offered for sale by auction at any time and place by a Crown lands ranger, or any person authorized in that behalf by a Crown lands ranger. The provisions of subsections (2), (4), and (5) of section 33 shall, *mutatis mutandis*, apply to such sale, and the provisions of section 40, *mutatis mutandis*, shall apply to the application of the proceeds of such sale.

(2) If at any auction any goat so seized is not sold, it may be destroyed by the poundkeeper, a Crown lands ranger, or any person authorized in that behalf by a Crown lands ranger, without compensation to the owner.

(3) Nothing in this section shall be held to in any way derogate from the effect of section 256 of the *Crown Lands Act, 1929*.

Justice may order unsold cattle to be destroyed

36. (1) If any impounded cattle offered for sale are not sold, any justice may certify that he does not consider such cattle of sufficient value to pay the cost of further maintaining the same, and may order that such cattle shall forthwith be killed and the carcasses sold or otherwise disposed of.

(2) Every such order shall be in writing, and shall be delivered to the poundkeeper, who shall retain the same.

Purchaser not bound to prove regularity of sale

37. No purchaser of any cattle or of any carcass sold under the provisions of this Act shall be bound to prove that such sale was regular or that the provisions of this Act were complied with, nor be affected by any default or irregularity in respect of such sale.

Poundkeeper may recover fees and charges from owner of cattle

38. (1) If any impounded cattle offered for sale are not sold, or if the sale of such cattle or of the carcasses of such cattle does not realise a sufficient sum to pay his lawful fees and charges, the poundkeeper may recover such fees and charges, or the portion thereof remaining unpaid, from the owner of such cattle as a debt due to him by action in any court of competent jurisdiction.

(2) It shall be sufficient defence to any such action if it is shown that any notice required by this Act to be given by the poundkeeper with respect to such cattle has not been given.

Justice may order destruction of dying or diseased cattle impounded

39. (1) If any justice, after inspecting any cattle impounded in any pound, is of opinion that such cattle are in a dying state or are so weak as not to be likely to recover, such justice may order such cattle, if not claimed within twenty-four hours, to be killed, and the carcasses sold or otherwise disposed of.

(2) Every such order shall be in writing, and shall be delivered to the poundkeeper, who shall retain the same.

(3) If any such carcass is disposed of other than by sale, the cost incurred in the disposal shall be recoverable from the owner of the stock as a debt due and owing to the council or Minister, as the case may be, by which or whom the pound aforesaid is maintained.

Application of money arising from sale of cattle impounded

40. The price of any cattle, or the carcass of any cattle, sold under the provisions of this Act shall be paid by the person purchasing the same to the poundkeeper and shall be by him applied as follows:—

Firstly, in payment to the auctioneer at such sale, not being the poundkeeper, of a commission of five per centum on the gross amount realised;

Secondly, in payment to himself of all lawful fees and charges;

Thirdly, in payment of the sum due to the person by whom the same were impounded; and

Lastly, he shall pay over the balance of the proceeds of such sale—

- (a) where the owner of the cattle is known, to such owner upon the same being demanded, or
- (b) where the owner is not known, to the persons and at the times directed by section 13.

Miscellaneous

Goats, pigs, poultry, etc., may be destroyed

41. (1) The owner or any person in charge of any enclosed land—

- (a) who has given notice in writing to the owner of any goats, pigs, or poultry, of his intention to destroy all goats, pigs, or poultry found trespassing thereon, may kill by any means, except by the use of poison, any goats, pigs, or poultry the property of such owner found trespassing thereon; or
- (b) who has advertised twice in any two or more public newspapers published in the State and circulating in the locality his intention to destroy all goats, pigs, or poultry found trespassing thereon, may kill, by any means except by the use of poison, any goats, pigs, or poultry found trespassing thereon,

and, if not sooner claimed by the owner thereof, may six hours after such killing remove, bury, or destroy the carcasses of any goats, pigs, or poultry so killed.

(2) This section shall not apply to any full bred Angora, Saanen, Toggenburg, British Alpine, or Anglo Nubian goat.

Stray cattle not to be taken away without notice to owner of land where they are

42. (1) No person shall drive any cattle from the land, or out of the herds of any other person, without first giving notice to such last-mentioned person or to his agent, overseer, or bailiff, of the time he intends to drive away such cattle.

(2) Any person who, not having given notice of his intention to drive away any cattle as aforesaid—

- (a) drives any cattle from the land, or out of the herds, of any other person, or
- (b) enters upon the land of any other person for the purpose of driving any cattle from such land,

or who drives from the land, or out of the herds, of any other person any cattle other than his own, shall be liable to a penalty of not less than forty dollars nor more than one hundred and sixty dollars.

(3) If the land of any person is a road to which the public has right of access then, notwithstanding the provisions of this section, it shall not be necessary to give any notice which would otherwise be required to be given by this section.

Pound rescues or breaches

43. (1) Any person who—

- (a) unlawfully rescues or releases any cattle lawfully impounded or seized for the purpose of being impounded, or
- (b) damages any pound lawfully established, whether any cattle are impounded therein or not, or
- (c) commits any pound-breach whereby any cattle may escape from any such pound,

shall be liable to a penalty not exceeding forty dollars, together with reasonable charges and expenses. The whole or any portion of such penalty may be awarded to the owner of such cattle.

(2) In any proceedings in respect of any offence against this section, proof that any cattle so rescued, released, or escaping are, within forty-eight hours of the time of such rescue, release, or escape, found in the possession or on the lands, or with any of the herds of the owner of such cattle, shall be *prima facie* evidence that the rescue, release, or pound-breach was made or committed by such owner.

Penalty for taking down rails or opening gates, to let cattle into or out of enclosed land

44. Any person who unlawfully removes or takes down any fence, rail, or slip-panel, or opens any gate, for the purpose of allowing cattle to trespass upon or escape from any enclosed land, shall be liable to a penalty not exceeding eighty dollars, or to imprisonment for any period not exceeding three months.

Penalty for allowing any bull, stallion, colt or ram to be at large

45. (1) If any bull above the age of one year is found straying or at large, the owner shall be liable to a penalty not exceeding two hundred dollars; and if any stallion or colt above the age of one year is found straying or at large the owner shall be liable to a penalty not exceeding two hundred dollars; and if any ram above the age of six months is found straying or at large the owner shall be liable to a penalty not exceeding eighty dollars.

(2) Such penalties shall be in addition to all other sums which, under the provisions of this Act, may become payable for damage by trespass by such bull, stallion or colt, or ram.

Duty of supervision in relation to bulls, stallions and rams

45a. (1) The owner of any bull, stallion or colt above the age of one year, or ram above the age of six months, shall not keep that bull, horse or ram upon any land within a prescribed area unless—

- (a) the land is enclosed;

and

- (b) the owner, or an agent who is responsible for supervision of the bull, horse or ram is ordinarily resident on that land, or within 10 kilometres of that land.

Penalty: Five hundred dollars.

(2) The Governor may make such regulations as are necessary or expedient for the purposes of this section.

Liability of owner of straying cattle

46. (1) If any cattle are found straying, or at large, or tethered, or depastured, in any street or public place, the owner thereof shall be liable to a penalty not exceeding two hundred dollars.

(2) In any proceedings for an offence against this section the allegation in the complaint that any person is the owner of the cattle in respect of which the complaint is made shall be deemed proved in the absence of proof to the contrary.

(2a) In any proceedings for an offence against this section it shall be a defence that the owner has attempted with all reasonable diligence so to confine his cattle as to prevent their intrusion upon any street or public place in a manner contrary to subsection (1) of this section and—

(a) he did not know and might not reasonably have been expected to know of such intrusion;

or

(b) having discovered such intrusion as soon as might reasonably have been expected of a person exercising proper diligence, he immediately made all proper endeavours to bring his cattle back within confinement and so to confine them as to prevent further such intrusion.

(2b) For the purposes of subsection (2a) of this section anything which a servant or agent of the owner of cattle knows or discovers, or might reasonably be expected to know or discover, shall be deemed to be something which the owner knows or discovers or might reasonably be expected to know or discover.

(3) If whilst in any street or public place, any cattle in charge of any person do not travel at the rate of at least eight kilometres a day in a direct line, the cattle shall, for the purposes of this section, be deemed to be at large: Provided that if any cattle are being driven to any market, this subsection shall not apply in respect of such cattle on the day when the cattle are driven to the market or to the preceding day.

(4) If, in any proceedings for an offence against this section, the court is satisfied upon evidence that any cattle, although in charge of any person, were in any street or public place for depasturing purposes only, the cattle shall, for the purposes of this section, be deemed to be at large.

Provision as to leasing of roads, etc.

46a. (1) If the Governor is satisfied that any road—

(a) is one which is necessary to be used by travelling stock; or

(b) is a main road within the meaning of the *Highways Act 1926-1937*; or

- (c) is a road which by reason of the traffic thereon should not be leased or over which depasturing licences should not be granted,

he may by proclamation declare that this section shall apply to the road.

- (2) The Governor may by proclamation revoke or vary any such proclamation.

(3) During such time as any proclamation is in force with respect to any road no council shall let that road or permit the use thereof as provided by section 375 of the *Local Government Act, 1934-1936*, or shall grant pursuant to the *Local Government Act, 1934-1936*, or any by-law of the council, any depasturing licence over any such road.

(4) If at the time of the making of a proclamation under subsection (1) in respect of any road, any such letting, permission to use, or depasturing licence is in force in respect of the road, the same shall be deemed to be determined and the person entitled thereunder shall be entitled to be repaid by the council such proportion of any fees paid thereunder as the unexpired period thereof at the time of the making of the proclamation bears to the full period thereof.

- (5) In this section "road" includes a part of a road.

Jurisdiction of justices in matters arising out of the impounding of cattle

47. Any two justices not interested in the matter in dispute shall have cognizance of and may hear and determine in a summary way—

- (a) all complaints and causes of action arising out of the impounding of cattle for trespass, or arising out of the trespass of cattle, wherein neither the party whose cattle are impounded nor the party impounding the cattle claims any greater amount of damages than one hundred and sixty dollars, and
- (b) all questions of the amount for which any poundkeeper is liable by reason of his own neglect or default.

Actions for full compensation for trespass

48. (1) Nothing in this Act contained shall prevent the owner of any lands trespassed on by cattle from suing in the Supreme Court or in a local court for compensation for ordinary damages, at the rates specified in the sixth schedule or at the rates in force for the time being at the public pound nearest to the lands trespassed upon, or for special damages for the trespass of cattle.

(2) No action in the Supreme Court shall be brought to recover special damages for such trespass until seven days after notice in writing has been delivered personally to the party against whom the action is proposed to be brought, or is left at his usual or last known place of abode in the State.

(3) Such notice shall specify the cause of action, the name and place of abode of the person bringing the same, and the amount of damages claimed.

(4) The person to whom such notice is given may, at any time within seven days from the delivery of the notice as aforesaid, tender the amount claimed to the person bringing such action, or to his attorney or agent, and, in case the same is not accepted, proof of such tender shall be deemed a good defence to such action.

Damage must be sustained within one month of commencement of action

49. In any action brought in any court to recover ordinary damages for the trespass of cattle, no damages shall be recoverable except for damages sustained within one month before the commencement of such action.

Summary proceedings for offences

50. All proceedings in respect of offences against this Act shall be disposed of summarily.

* * * * *

Mode of distribution of fines, etc.

53. (1) All penalties recovered under this Act, if incurred within the boundaries of a district, shall be paid to the council of such district for the use and benefit of the district. Any such penalty may be remitted, in whole or in part, by such council, as it may deem expedient.

(2) Such penalties as are not incurred within the boundaries of a district shall be paid to the Treasurer for the public uses of the State, and any such last mentioned penalty may be remitted, in whole or in part, by the Governor, as he may deem expedient.

SCHEDULES

THE FIRST SCHEDULE

ACTS CONSOLIDATED AND REPEALED

Reference to Act	Short Title of Act
No. 8 of 1858	The Impounding Act of 1858
No. 625 of 1895	The Impounding Act Amendment Act, 1895
No. 1119 of 1913	The Impounding Act Amendment Act, 1913

* * * * *

THE THIRD SCHEDULE
FORM OF POUNDKEEPER'S BOOK

IMPOUNDED							RELEASED OR SOLD								
Date and time	Description of cattle, colours, and brands	By whom impounded	For what cause	Owner or supposed owner	Time and mode of giving notice	Date and time	Whether released or sold	By whose order	To whom delivered or proceeds paid	Amount received for—			Signature and place of residence of person receiving cattle		
										Sales	Maintenance	Fees	Charges		
										\$	¢	\$	¢	\$	¢

THE FOURTH SCHEDULE

TABLE OF FEES CHARGEABLE BY RANGER IN RESPECT OF
IMPOUNDING OF CATTLE

(1) In respect of the impounding of cattle comprising stallions or colts, mares, geldings, colts, fillies, foals, mules, asses, camels, bulls, oxen, cows, steers, heifers, calves, rams, or deer—

	\$ c
For any number of such cattle up to five, per head	8 00
For the next fifteen of such cattle, per head	2 00
For any number of such cattle after the first twenty, per head	0 50

(2) In respect of the impounding of cattle comprising goats, pigs, ewes, sheep, wethers, lambs, or Angora goats—

	\$ c
For any number of such cattle up to five, per head	4 00
For any number of such cattle after the first five, per head	0 25

(3) In respect of the impounding of cattle, some of which are of the descriptions mentioned in paragraph (1) hereof, and some of which are of the descriptions mentioned in paragraph (2) hereof—

	\$ c
For any number of such cattle up to five	4 00
For any number of such cattle of the descriptions mentioned in paragraph (1) hereof, after the first five)	At the rates per head specified in paragraph (1) hereof.
For any number of such cattle of the descriptions mentioned in paragraph (2) hereof, after the first five)	At the rates per head specified in paragraph (2) hereof.

The above fees are payable by each owner in respect of the cattle owned by him impounded at any one time.

No fee shall be chargeable for a suckling animal under the age of six months running with its mother.

THE FIFTH SCHEDULE

TABLE OF POUNDAGE FEES FOR CATTLE IMPOUNDED

	For each period of 24 hours or part thereof \$ c
For every stallion or colt above the age of two years—	
For the first day the sum of \$20 and thereafter	4 00
For every stallion or colt under the age of two years	4 00
For every mare, gelding, colt, filly, foal, mule, ass, and camel	1 00
For every goat and pig	2 00
For every bull above the age of two years—	
For the first day the sum of \$20 and thereafter	4 00
For every bull under the age of two years	4 00
For every ox, cow, steer, heifer, calf and deer, of the first twenty	1 00
For every ox, cow, steer, heifer, calf and deer, of the next twenty	0 50
For every ox, cow, steer, heifer, calf and deer, of all others above forty	0 25
For every ram above the age of twelve months—	
For the first day the sum of \$20 and thereafter	0 50
For every ewe, sheep, wether, and lamb, of the first forty	0 50
For every ewe, sheep, wether, and lamb, of all others above forty	0 25

TABLE OF CHARGES FOR SUSTENANCE OF CATTLE IMPOUNDED

	For each period of 24 hours or part thereof \$ c
For every stallion or colt, mare, gelding, filly, ass, mule, bull, ox, steer, heifer, cow, calf, colt, foal, camel, and deer	2 00
For every ram, ewe, sheep, wether, and lamb	0 50
For every goat	0 25
For every pig	1 00

No fee or charge, whether for poundage or sustenance, to be made for a suckling animal under the age of six months running with its mother.

THE SIXTH SCHEDULE

RATES FOR DAMAGE BY TRESPASS BY CATTLE

Description of Cattle	Trespass in unenclosed forest, pasture land, stubble, after-grass or other unenclosed land	Trespass in any enclosed paddock or meadow of grass or stubble	Trespass in any enclosed growing crop of any kind, or any garden or enclosure whence the crop has not been removed, or in any enclosed public cemetery
	\$ ¢	\$ ¢	\$ ¢
For every stallion or colt, mare, gelding, filly, ass, mule, bull, ox, steer, heifer, cow, calf, colt, foal, camel, and deer	0 15	2 00	8 00
For every ram, ewe, sheep, wether and lamb	0 05	0 25	0 50
For every goat	2 00	2 00	8 00
For every pig	5 00	5 00	8 00

No damage to be claimed in respect of a suckling animal under the age of six months running with its mother.

THE SEVENTH SCHEDULE

FORM OF ADVERTISEMENT IN A NEWSPAPER CIRCULATING IN THE LOCALITY

Impounded at *[here state the place, describe the cattle, the number and kind, and where and how branded].*

If not claimed will be sold on

A . . . B . . .

Poundkeeper.

[Where there is no brand, the animals are to be shortly described, stating age, colour, and any particular mark.]

THE NINTH SCHEDULE

FORM OF RECOGNIZANCE TO ABIDE BY JUDGMENT OF JUSTICES OF THE PEACE

South Australia) BE IT REMEMBERED, that on the day of
 (to wit)) , 19 , A.B., of ,
 in the State of South Australia, and C.D., of in the said State , personally
 came before me, , Esquire, one of His Majesty's justices of the peace for the said State, and acknowledged
 themselves jointly and severally to owe to our Sovereign Lord the King the sum of dollars, to be levied of their
 respective goods and chattels, lands and tenements, to the use of His Majesty, His heirs and successors, if the said A.B.
 shall fail in the condition hereunder written; whereas the said C.D. has instituted proceedings against , to be
 heard and determined in a summary way according to the provisions of the *Impounding Act, 1920*, in respect of the taking
 and unjustly impounding of his cattle, to wit [*here state the substance as in the summons*]: Now the condition of this
 recognizance is such that if the said A.B. shall duly prosecute such proceedings with effect and without delay, and make a
 return of the said cattle, if a return thereof shall be adjudged, and in all respects abide by and perform the judgment of the
 justices of the peace before whom such proceedings shall be heard, then this present recognizance shall be void, or else
 shall remain in full force and effect.

A.B.

C.D.

Taken and acknowledged at)
 before me,)

Justice of the Peace.

APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 4 of The Public General Acts of South Australia 1837-1975 at page 820.

Section 45:	amended by 22, 1977, s. 2
Section 45a:	inserted by 22, 1977, s. 3
Fourth schedule:	amended by 22, 1977, s. 4
Fifth schedule:	amended by 22, 1977, s. 5
Sixth schedule:	amended by 22, 1977, s. 6