

# Queensland



## Subordinate Legislation 1994 No. 102

### *Local Government Act 1993*

# LOCAL GOVERNMENT (TRANSITIONAL) AMENDMENT REGULATION (No. 2) 1994

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### **Short title**

1. This regulation may be cited as the *Local Government (Transitional) Amendment Regulation (No. 2) 1994*.

### **Commencement**

2. This regulation commences on 26 March 1994.

### **Regulation amended**

3. This regulation amends the *Local Government (Transitional) Regulation 1993*.

### **Insertion of new ss 7–15**

4. After section 6—

*insert—*

### **‘Continued relevance of certain provisions of repealed Act**

‘7.(1) In this section—

“**relevant sections**” means sections 31D, 33C, 35(22), 35(24B)(viii) to (xvi) and 42 to 42D of the repealed Local Government Act;

“**specified relevant section**” means sections 35(22) and 42 to 42D of the repealed Local Government Act.

‘(2) This section is for the transition from the operation of the repealed Local Government Act about the matters dealt with in the relevant sections to the operation of the *Local Government Act 1993* about the matters.

‘(3) The relevant sections apply—

- (a) as if they were contained in this regulation; and
- (b) subject to the changes shown in Schedules 1 to 5.

‘(4) A specified relevant section ceases to apply in a local government area if the local government for the area makes a local law about the matter dealt with in the specified relevant section.

‘(5) The following relevant sections apply only for 6 months—

- (a) section 31D;
- (b) section 35(22);
- (c) section 35(24B)(viii) to (xvi);
- (d) sections 42 to 42D.

‘(6) Despite the repeal of the relevant sections by the *Local Government Act 1993*, anything done or authorised under a relevant section before this section commenced continues to be as effective as it would be if the relevant section had not been repealed, but had continued in force subject to the changes shown in Schedules 1 to 5.

‘(7) Without limiting subsection (5), an approval, licence, consent or other authority under a relevant section and in force immediately before the commencement of this section continues in force under this regulation to the extent that its continuance is consistent with the relevant sections as applied.

### **‘Financial statements for current financial year**

‘8.(1) A local government must—

- (a) before 15 September 1994 prepare financial statements for the financial year ending 30 June 1994; and
- (b) by 30 November 1994—adopt the statements.

‘(2) The local government may comply with subsection (1) by—

- (a) preparing financial statements that comply with section 29(3) of the repealed *Local Government Act*; or
- (b) if the Minister has made standards about financial statements under section 416 of the Act—preparing financial statements in compliance with the standards; or
- (c) preparing an annual report under Chapter 7, Part 8 of the Act that contains financial statements for the year ending 30 June 1994.

‘(3) Section 451 of the Act applies to a local government’s financial statements mentioned in subsection (2)(a) and (b) as if they were an annual

report adopted by the local government.

**‘Interest rate applying to overdue rates**

**‘9.(1)** This section applies to a local government until whichever of the following first happens—

- (a) the local government makes a decision for the purposes of section 614(1)(a) of the Act;
- (b) 31 May 1994.

**‘(2)** For the purposes of section 614(1)(a) of the Act, the local government is taken to have decided that overdue rates for the local government bear interest at the percentage applying to the overdue rates of the local government immediately before 26 March 1994.

**‘(3)** If, under subsection (2), the percentage applying to the overdue rates of a local government would be more than 11%, the percentage is taken to be 11%.

**‘Remission of rates continues**

**‘10.** A remission or discharge of rates under section 27(4)(i) of the repealed Local Government Act for land in a local government area continues until 30 June 1994.

**‘Approved forms for purposes of elections**

**‘11.** Section 45 of the *Local Government Regulation 1994* does not apply to a form approved under section 237 of the Act whether the chief executive approved the form before or approves it after the commencement of this section.

**‘Time for councillors of Shire of Cooloola to tell about particulars for register of interests**

**‘12.(1)** This section is for the purposes of section 19 of the *Local Government Regulation 1994*.

‘(2) The term of office of a councillor of the Shire of Cooloolo who—

- (a) was elected to the local government at a fresh election held on 27 November 1993; and
- (b) holds the office immediately before the commencement of this section;

is taken to have started on 26 March 1994.

‘(3) Section 19 of the *Local Government Regulation 1994* does not apply to a councillor of an affected local government, within the meaning of section 752A of the Act, until—

- (a) the 1994 triennial elections, or fresh elections, are held for the affected local government; and
- (b) the councillor’s term of office starts after the elections.

### **‘Delegations to committees**

‘13. A delegation to a committee under section 15(1)(ii) of the repealed Local Government Act that was in force immediately before the commencement of this section continues in force until—

- (a) if the delegation is to a committee of a merging local government under the *Local Government (Bundaberg and Burnett) Regulation 1993*—immediately before the changeover day under that regulation; or
- (b) if the delegation is to a committee of a merging local government under the *Local Government (Mackay and Pioneer) Regulation 1993*—immediately before the changeover day under that regulation; or
- (c) if the delegation is to a committee of an adjusted local government under the *Local Government (Burdekin, Dalrymple, Hinchinbrook, Thuringowa and Townsville) Regulation 1993*—immediately before the changeover day under that regulation; or
- (d) if the delegation is to a committee of MCC or WSC under the *Local Government (Maryborough and Woocoo) Regulation 1993*—immediately before the changeover day under that

regulation; or

- (e) if the delegation is to a committee of a local government that is the subject of a triennial election on 26 March 1994—the day the last declaration of a poll conducted in the election is published as required by the Act.

### **‘Delegation in by-law**

**‘14.(1)** For avoiding doubt, despite the enactment of the *Local Government Act 1993* and the repeal of the *Local Government Act 1936*, a delegation made under section 31(18) of the *Local Government Act 1936* and in force immediately before the commencement of this section remains in force and has effect as if it were a delegation made under section 386 of the *Local Government Act 1993*.

**‘(2)** This section expires 2 months after it commences.

### **‘Expiry**

**‘15.** This regulation expires when Chapter 14, Part 1, Division 12 of the Act expires.’.

### **Insertion of new Schs 1–5**

**5.** After section 15—

*insert—*

## **‘SCHEDULE 1**

### **‘GIVING OF NOTICES OF PENALTIES FOR CERTAIN OFFENCES**

section 7

**(Section 31D of the repealed Local Government Act as applied)<sup>1</sup>**

#### **‘Giving of notices of penalties for certain offences**

**‘31D.(1)** Where an officer, servant or person appointed by a *local government* (such officer, servant or person being in this section referred to as an “authorised person”) finds a person acting in contravention of—

- (a) *a local law of the local government* in respect of camping, lodging or staying on land under the control of the *local government*;
- (b) *a local law of the local government* in respect of the keeping or control of dogs and declared by a *local law* to be a *local law* to which this section applies; or
- (c) *if the local law has been declared, by the same or another local law, to be a local law to which this section applies—a local law of the local government in relation to any of the following matters—*
  - (i) *the use of motor vehicles—*
    - (A) *on land under the control of the local government; or*
    - (B) *in public places (other than roads);*
  - (ii) *advertising the sale of vehicles or boats—*
    - (A) *on a road; or*

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<sup>1</sup> Textual changes are indicated by italic script. Citations of Acts are also in italics, and have been updated, but if a cited Act has been changed, the citation is underlined.



- (B) *on land under the control of the local government;*
- (iii) *the selling of goods or the conduct of any other commercial activity—*
  - (A) *on a road; or*
  - (B) *on land adjoining a road; or*
  - (C) *on land under the control of the local government;*
- (iv) *the use of parks and reserves under the control of the local government;*

the authorised person may—

- (d) require that person to state *the person's* full name and usual place of residence; *and*
- (e) upon ascertaining that person's full name and usual place of residence, give to *the person* the notice specified in this section.

‘(2) The notice—

- (a) shall be identified by a serial number;
- (b) shall identify the person to whom it is given by *the person's* full name and usual place of residence;
- (c) shall state in general terms the offence which the person is alleged to have committed;
- (d) shall inform the person in general terms that if *the person* does not desire the matter to be determined in a court hearing *the person* may complete the form attached to or appearing upon the notice and may forward or deliver that form together with *the amount of \$50* by way of penalty to the *local government* within the time appointed in the notice (which shall be not less than 10 days from the date of the giving of the notice) whereupon the person will not be liable to further penalty or costs in the matter;
- (e) shall inform the person in general terms that *the person* has the right to decline to proceed in the manner described in paragraph (d) and to allow the matter to be determined in a court hearing—
  - (i) if *the person* desires to contest the question whether the offence alleged was in fact committed;

(ii) if *the person* wishes to submit to the court matters in extenuation of penalty; or

(iii) for any other reason,

in which event *the person* need not reply or take further action in respect of the notice and that in such case court process will issue against *the person* in due course.

‘(3) Where a person to whom a notice is given pursuant to subsection(1) proceeds in the manner described in subsection (2)(d) within the time appointed in the notice a proceeding against *the person* by way of prosecution for the offence alleged in the notice shall not be competent but otherwise such a proceeding may be commenced as if the notice had not been given.

‘(4) A person shall not assault or use insulting or abusive language to an authorised person who is exercising any of *the authorised person’s* powers under this section or is attempting so to do.

*Maximum penalty—\$200.*

‘(5) A person shall not fail to comply with a requisition directed to *the person* under this section by an authorised person or, in response to such a requisition, give any information that is false or misleading.

*Maximum penalty—\$200.*

‘(6) An authorised person *does not incur civil liability for an act or omission done honestly and without negligence* under this section.

‘(6A) *A liability that would, apart from subsection (6), attach to an authorised person attaches instead to the local government.*

‘(7) In any proceedings for an offence referred to in this section a statement in the complaint—

(a) that the offence which the person is alleged to have committed is an offence against the *local laws* of the *local government*; and

(b) that the defendant named therein has not proceeded in the manner described in subsection (2)(d) within the time appointed in a notice given to *the person* pursuant to subsection (1),

is evidence (*words omitted*) of the matters contained in the statement.

‘(8) (*omitted*).

## **‘SCHEDULE 2**

### **‘CATTLE FEEDLOTS**

section 7

**(Section 33C of the repealed Local Government Act as applied)<sup>2</sup>**

#### **‘Cattle feedlots**

**‘33C.(1)** In this section—

*(words omitted)*

**“cattle feedlot”** means a cattle feedlot within the meaning of the *Stock Act 1915*;

**“Chief Inspector of Stock”** means the Chief Inspector within the meaning of the *Stock Act 1915*;

**“local government”** includes Brisbane City Council;

*(words omitted)*

**‘(2)** Notwithstanding the provisions of any *local law* or *planning scheme*, a person shall not use land within a *local government area* for the purpose of a cattle feedlot unless the *local government*, upon application made by the person pursuant to this section, has first given its consent to the use.

**‘(3)** An application to a *local government* for consent to use land for the purpose of a cattle feedlot shall be deemed to be an application for consent *under section 4.12 of the Local Government (Planning and Environment) Act 1990*, and, subject to subsections (4) and (5) of this section, the provisions of the *Local Government (Planning and Environment) Act 1990*

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apply in respect of the application and the use of the land as a cattle feedlot, to the extent that those provisions can sensibly apply.

‘(4) Where an application for consent to use land for the purpose of a cattle feedlot is before a *local government* for determination, the *local government*—

- (a) shall not consent to the use unless satisfied that the applicant has applied under the *Stock Act 1915* for a licence to use the land as a cattle feedlot and that the Chief Inspector of Stock will grant the licence if the *local government* consents to the use; and
- (b) in determining whether or not to consent to the use, shall have regard to the contents of the report furnished to the applicant by the Chief Inspector of Stock pursuant to section 28C(2) of the *Stock Act 1915*.

‘(5) Where a *local government* gives consent to land being used for the purpose of a cattle feedlot, it may subject that consent to reasonable and relevant conditions.

‘(6) (*omitted*)

‘(7) It shall not be competent to a *local government* to make a *local law* relating to the establishment, management or operation of a cattle feedlot but this shall not prejudice the power of the *local government* to make a *local law* in respect of premises that would be a cattle feedlot but for the number of cattle on the premises at any time.

‘(8) Where an application made before the commencement of Part 3 of the *Stock Act and Local Government Act Amendment Act 1989* for the approval, consent or permission of a *local government* to use land for the purpose of a cattle feedlot *had* not been determined on that commencement, the *local government*, in dealing with that application, shall give such weight as it considers appropriate to the provisions of this section.

## ‘SCHEDULE 3

### ‘LICENSED GATES

section 7

**(Section 35(22) of the repealed Local Government Act as applied)<sup>3</sup>**

#### **‘Application for licence to erect fence and gate across road**

**‘35.(22)(i)**When the owner of any land desires for the purpose of enclosing the same to include within the enclosure a road which passes through the land or separates it from the land held by any other person, *the owner* shall make application to the *local government* of the *area* within which the road is situated for a licence to erect a fence and gate across such road. Such application shall be in such form and accompanied by such plans and such fee as may be prescribed by the *local government*.

Before deciding such application, the *local government* shall cause public notice to be given of it by advertisement published at least twice in a newspaper. Such advertisement shall—

- (a) give a clear description of the road, and the location of the fence and gate to be erected by the applicant (which gate shall be of such width and description as the *local government* by *local law* in that behalf may determine);
- (b) state that the application may be inspected at the office of the *local government* and that objections to the granting of the licence may be lodged with the *local government* on or before the date specified in the advertisement, which date shall be not earlier than thirty days after the second publication of such advertisement.

Any such objection shall be in writing, shall be addressed to the *local*

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*government*, and shall set out the grounds of objection and the facts and circumstances relied on by the objector in support of those grounds.

**‘Licence may be granted**

‘(ii) After the expiration of the date specified in the advertisement, the *local government* shall consider the application and any objections which have been lodged in writing with the *local government* on or before the specified date and may, having regard to public convenience and the public interest, grant or refuse to grant a licence as appears to it expedient.

The *local government* may impose in any licence so issued such special conditions with regard to the description of gate as the convenience of the public requires and for the extirpation and destruction of noxious weeds or plants growing on the road so enclosed by such gate, and to keep such road free from the same.

The *local government* may require the erection of a grid in addition to a gate, and may impose in any licence so issued such special conditions with regard to the description of grid so required, if any, as the convenience of the public requires.

**‘Application for licence in certain special circumstances**

In case where a person has made application to the *local government* to erect a fence or fences across a road which separates the land of the applicant from the land held by other owners and the land of such other owners along the frontage of such road is already fenced, the applicant shall forward with *the applicant’s* application a written agreement of such other owners with respect to the use of any such fence or fences of such other owners as part of the enclosure of the applicant’s land.

- (a) If such other owners make default in making such agreement with such applicant; or
- (b) In case where such other owners have refused to apply to the *Land Court* under the provisions of section 323 of the *Land Act 1962*, for a determination by the *Court* of a judgment in a sum of money in respect of the benefit to such applicant of the fence or fences concerned; or
- (c) In case where such other owners shall acquiesce in the making of an agreement with the applicant only on such terms as shall

appear to the *local government* unreasonable and inequitable, the *local government* may in its discretion grant to the applicant a licence to erect such fence or fences across the road concerned in accordance with *the applicant's* application subject to any special terms, conditions, stipulations, and provisions as the *local government* may deem fit and proper to impose.

When any such licence has been granted, such licensee is hereby empowered to erect such fence or fences across the road concerned, notwithstanding that such fence or fences may encroach upon the land of such other owners, and neither the licensee nor the *local government* shall incur any liability for trespass in respect of the entry on and remaining on the land by such licensee or the licensee's servants or agents for the purpose of carrying out the work necessary for the erection or maintenance of such fence or fences concerned at the suit of the owners whose land is so encroached upon.

**‘Gate to have words painted on it**

‘(iii) Every gate erected in pursuance of any such licence shall be painted, of a uniform colour, and shall have the words “licensed public gate” painted in large letters on some conspicuous part thereof.

**‘Duration of licences**

‘(iv)(S) Subject to subparagraph (b), licences granted pursuant to this subsection continue in force until cancelled by the *local government* as hereinafter provided in this subsection.

(b) The *local government* may by *local law* prescribe a system of annual renewal of licences, including manner and conditions of and fees for such renewal and circumstances in which licences shall not or may not be renewed, and where *a local law* is so made, licences granted shall be subject to renewal in accordance with the *local laws*.

(c) The *local government* may by resolution cancel a license—

- (A) on the application of the licensee;
- (B) at any time after giving three months' notice to the licensee;
- (C) without notice in the circumstances referred to in paragraph (ivb) or paragraph (vii).



### **‘Assignment of licence**

‘(iva) The holder of a licence granted pursuant to this subsection may assign it in the circumstances and manner and subject to the conditions prescribed by the *local government* by local law, and the *local government* may make such a *local law* for this purpose.

### **‘Further provision re grids**

‘(ivb) In any case where a grid has not been erected by the licensee, the *local government* may at any time require the licensee to erect a grid in addition to the gate in respect of which *the licensee* holds a licence, and may impose such special conditions with regard to the description of the grid so required, if any, as the convenience of the public requires.

If the licensee neglects or refuses to erect the grid or to observe any such conditions required by the *local government*, the *local government* may cancel the licence.

### **‘Objections to continuance of licence**

‘(v) A person may with respect to a licence under this subsection lodge with the *local government* not less than one month and not more than two months before the due date for renewal of the licence where the *local government* has prescribed a system of annual renewal of licences and at any time during the continuance of the licence in any other case a written statement of *the person’s* objections to the continuance of the licence and of the grounds thereof, and shall send a copy of such statement to the holder of the licence; and the *local government* shall consider the objections and hear such evidence on the subject as appears necessary, and may at its discretion, having regard to public convenience, cancel the licence.

### **‘Powers of Governor in Council**

‘(vi) The Governor in Council may at any time cancel any licence or may impose any special conditions which *the Governor in Council* thinks expedient with respect to any such licensed public gate, or may wholly exclude a road from the operation of this subsection.

### **‘Approaches to be kept in repair by licensee**

‘(vii) The holder of a licence to erect a fence across a road shall keep the gate and grid, if any, in good and sufficient repair, and shall also maintain the road in reasonable repair for a distance of 5 metres on each side of the

gate and grid, if any, so that the public traffic may not be impeded or obstructed.

If the licensee neglects to keep the gate and grid, if any, or road in such repair *the licensee* shall be liable to a penalty not exceeding \$20, and in addition the *local government* may cancel the licence.

No claim shall be made and no action or proceeding shall lie against the *local government* in respect of injury or damage to any person or property arising out of any act or omission by any person to whom a licence has been granted by the *local government* which act or omission is in relation to the fence or gate or grid, if any, or that part of the road the subject of maintenance by that licensee.

**‘Damage, etc., to gates**

‘(viii) Any person who wilfully or negligently damages or leaves open a licensed public gate or wilfully or negligently damages a grid shall be liable to a penalty not exceeding \$100, which may be recovered and retained by the licensee.

**‘Travelling stock; freehold**

‘(ix) No person driving animals along a road through freehold land enclosed in pursuance of any such licence shall depasture the same upon such land except by permission of the owner or occupier thereof and any animals which are depastured without such permission shall be deemed to be trespassing, and may be impounded accordingly.

**‘Leasehold**

‘(x) Nothing in this *subsection* contained shall prevent any person from depasturing travelling stock, whether horses, cattle, or sheep, upon any land held under pastoral lease from the Crown which is enclosed in pursuance of any such licence if they are depastured within the limits and in accordance with the conditions imposed by the laws in force for the time being relating to stock travelling through land held under pastoral lease from the Crown.

## **‘SCHEDULE 4**

### **‘VEHICLES ON PEDESTRIAN MALLS**

section 7

**(Section 35(24B)(viii) to (xvi) of the repealed Local Government Act as applied)<sup>4</sup>**

#### **‘Offences**

**‘35.(24B)(viii)** A person who in any respect contravenes or fails to comply with the provisions of *(words omitted) a local law for the control and operation of a pedestrian mall (words omitted)*, shall be guilty of an offence *(words omitted)* and liable to a penalty not exceeding \$500 *(words omitted)*.

#### **‘Penalties exacted by way of notice to offender—Illegal entry of vehicles etc.**

**‘(ix)(a)** Where an officer, servant or person appointed by a *local government* (such officer, servant or person being hereinafter in this subparagraph referred to as “authorised person”) finds a vehicle in a pedestrian mall, in contravention of any exclusion or restriction imposed on the movement of vehicular or other traffic therein by *(words omitted) a local law (words omitted)*, the authorised person shall affix on such vehicle in a conspicuous position a notice, in writing, as specified in this subparagraph.

Such notice shall—

- (A) be identified by a serial number;
- (B) be addressed to the owner of such vehicle by name, or, if the

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name of the owner of the vehicle is not displayed on the vehicle, be addressed to the owner of such vehicle by the registration number of such vehicle;

- (C) describe the vehicle the subject of the alleged offence;
- (D) notify that it is alleged that an offence has been committed in respect of that vehicle in the pedestrian mall;
- (E) state in general terms the offence which it is alleged has been committed;
- (F) inform the owner in general terms that *the owner* has the right to decline to be dealt with in the manner described in provision (G) hereof and to insist on *the owner's* right to a Court hearing—
  - (i) if *the owner* desires to contest the question whether the offence alleged was in fact committed;
  - (ii) if *the owner* wishes to submit to the Court matters in extenuation of penalties; or
  - (iii) for any other reason the owner may regard as sufficient,

in which event there is no necessity for *the owner* to reply to or take any further action in respect of the notice and that Court process will issue against *the owner* in due course;

- (G) inform the owner in general terms that if *the owner* does not desire the matter to be dealt with by a Court, *the owner* may complete the form annexed to or endorsed or written upon such notice and forward or deliver it to the *local government* on or before the date or within the period specified in the notice (which shall not be less than ten days from the date of giving thereof), together with *the amount of \$25* by way of penalty, in which event *the owner* will not be liable to any further penalty or costs in the matter; and
- (H) inform the owner in general terms of the provisions of subparagraph (d) hereof.

‘(aa) Upon receipt by the *local government* of a report wherein it is alleged that a vehicle has been found in a pedestrian mall in contravention of any exclusion or restriction imposed on the movement of vehicular or other

traffic therein by (*words omitted*) a local law for the control and operation of a pedestrian mall (*words omitted*) in any case where a notice has not been affixed to the vehicle pursuant to subparagraph (a), the *local government* may give to the owner of that vehicle a notice, in writing, to the like effect as the notice referred to in subparagraph (a);

‘(b) For the purposes of subparagraphs (a) and (aa)—

- (i) where an offence is committed, the person who at the time of the commission of the breach was the owner of the vehicle shall be deemed to have committed that offence and may be proceeded against and shall be punished accordingly; and
- (ii) proof that the name and address of a person were shown upon the outside of a vehicle or upon a registration label issued under the Transport Infrastructure (Roads) Act 1991, and affixed to a vehicle, or that in or upon a vehicle there was otherwise shown the name and address of a person purporting to be the name and address of the owner of that vehicle, shall be evidence that at the time when such name and address were so shown, the person whose name and address were so shown was the owner of that vehicle (*words omitted*).

‘(c) Subject to subparagraph (d) where a notice in writing shall have been affixed on a vehicle or given to the owner thereof pursuant to subparagraph (a) or subparagraph (aa) as the case may be and the sum of money by way of penalty shall not have been paid to the *local government* on or before the date or within the period specified therein for such payment, the alleged offence may, notwithstanding any other provision of this Act, be prosecuted upon the complaint of the *local government*, and either against the owner or any other person whomsoever alleged to be guilty thereof.

(*Sentence omitted*).

‘(d) Notwithstanding the provisions of subparagraph (b)(i) an owner of a vehicle shall not, by virtue of that subparagraph be deemed guilty of an offence not actually committed by *the owner* if not later than ten days after the day of the service of a summons for that offence—

(A) *the owner* supplies to the *local government* a statement in writing,

verified upon oath or by statutory declaration, stating facts which prove to the satisfaction of the *local government* that some other person actually committed the offence and stating the name of that other person and the address at which *the person* may be readily located; or

- (B) *the owner* supplies to the *local government* a statement in writing, verified upon oath or by statutory declaration, stating facts which prove to the satisfaction of the *local government* that *the owner* had sold such vehicle on a date before the time when the offence was committed and stating the name of the person to whom the vehicle was so sold and the address at which such person may be readily located, the date of the sale, and the name and address of the agent, if any, who made the sale on *the owner's* behalf; or
- (C) *the owner* proves to the satisfaction of the *local government* that, at the time of the offence, the vehicle was stolen or being used unlawfully without *the owner's* consent.

‘(e) In any proceedings in respect of an offence referred to in subparagraph (a) against a person named in a statement referred to in provision (A) or (B) of subparagraph (d), a copy of such statement shall be served with the summons.

The endorsement of a copy of such statement with a oath of service shall be evidence of such service (*words omitted*).

‘(f) Subject to subparagraph (e), the production by the prosecutor of a statement referred to in provision (A) or (B) of subparagraph (d) shall be evidence of the facts stated therein (*words omitted*).

‘(x) A person shall not assault or use insulting or abusive language to an authorised person who is exercising any of *the authorised person's* powers under *paragraphs (viii) to (xvi)* or is attempting so to do.

*Maximum penalty—\$200.*

‘(xi) (*omitted*).

‘(xii) A person shall not hinder or resist an authorised person who is exercising any of *the authorised person's* powers under *paragraph (ix)(a)* or is attempting so to do.

*Maximum penalty—\$200.*

“(xiii) An authorised person *does not incur civil liability for an act or omission done honestly and without negligence under paragraphs (viii) to (xvi) (words omitted).*

“(xiiia) *A liability that would, apart from paragraph (xiii), attach to an authorised person attaches instead to the local government.*

“(xiv) In proceedings for an offence against this subsection a statement in the complaint that the defendant named therein has not proceeded in the manner described in paragraph (ix)(a)(G) or paragraph (ix)(d) as the case may be, within the time appointed in a notice given to *the defendant* pursuant to these paragraphs, is evidence (*words omitted*) of the matters contained therein.

“(xv) *Paragraphs (viii) to (xvi) apply to the Brisbane City Council.*

“(xvi) For the purpose of *paragraph (ix)*, the term “owner” means in relation to a vehicle that is registered in a State or Territory of the Commonwealth under a law of that State or Territory providing for the registration of vehicles, the person in whose name the vehicle is so registered.

## ‘SCHEDULE 5

### ‘IMPOUNDING OF ANIMALS

section 7

(Sections 42 to 42D of the repealed Local Government Act as applied)<sup>5</sup>

#### ‘ESTABLISHMENT AND MANAGEMENT OF POUNDS

##### ‘Definitions

‘42.(1) For the purposes of this section and sections 42A to 42D, both inclusive (*words omitted*)—

- (a) The term “**occupier**” includes any superintendent, overseer or other duly authorised person acting for and on behalf of the occupier;
- (b) The term “**proprietor**” used in relation to an animal means the owner of or person exercising dominion over such animal, and includes the person entitled, subject to *sections 42 to 42D*, to possession of the animal;
- (c) The term “**impounder**” includes the person by whom or by whose authority an animal has been delivered to the pound-keeper for impounding, and one who has seized an animal in purported pursuance of the provisions of section 42A (*words omitted*) for any alleged trespass on land, notwithstanding that the animal has not been taken to the pound: The term does not include the *local government*, or the pound-keeper or any other officer or employee of the *local government* acting or purporting to act in the course of *the person’s* duties as such;
- (d) The term “**animal**” does not include a dog.

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<sup>5</sup> Textual changes are indicated by italic script. Citations of Acts are also in italics, and have been updated, but if a cited Act has been changed, the citation is underlined.



**‘Power to establish, maintain and control pounds**

‘(2) A *local government* may establish, maintain and control a pound or pounds within its *area*.

A *local government* may join with the *local government* of a neighbouring *area* or neighbouring *areas* in the establishment and maintenance of a pound in either or any of such *areas*.

A *local government* may by arrangement with the *local government* of a neighbouring *area*, contribute to the establishment and maintenance of a pound established by such other *local government* in its *area*.

(Sentence omitted).

A pound may be discontinued at any time by the *local government* or *local governments* concerned.

**‘Sole management and control; fees**

‘(3) The *local government* of an *area* in which a pound is situated, shall have the sole management and control thereof, and the *local laws* of that *local government* shall apply in relation to the pound. The fees to be charged in respect of the pound shall be those fixed for the time being by resolution of the *local government* of the *area*.

The damages and driving, leading or transport charges which an impounder may claim in respect of any impounded animal, shall be those fixed for the time being by resolution of the *local government* of the *area* in which such animal was seized.

**‘Time pound open for reception or release of animals; sale days; notice board**

‘(4) The *local government* having control of a pound shall (*words omitted*) fix the times during which the pound will be open for the reception or release of animals, and appoint *times* at which sales of impounded animals may take place. It shall place and maintain in a conspicuous place at or near the entrance to the pound a notice board legibly inscribed with the hours during which the pound is open for the reception or release of animals, and the days and times for holding of pound sales.

**‘Pound to be in good repair, etc.; prevention of spread of disease**

‘(5) A *local government* shall take reasonable and proper care to see that any pound under its control is in good repair, safe for animals placed therein, and secure against the escape of such animals, and is kept in a cleanly condition.

The *local government* shall use and adopt all proper means and appliances to secure the prevention or prevent the spread of any disease in any pound under its control, and, subject to *sections 42 to 42D*, the *local government* may order the removal or destruction of any diseased, infected or worthless animal, matter or thing in any such pound.

**‘Appointment of pound-keeper**

‘(6) The *local government* shall appoint some fit and proper person to be the pound-keeper of any pound under its control, and may appoint such deputies or assistants as it deems fit. The pound-keeper shall be an officer of the *local government* and responsible to it for the discharge of *the pound-keeper’s* duties.

‘(7) The pound-keeper shall, subject to *a local law*, receive and place in the pound all animals delivered to *the pound-keeper* pursuant to sections 42A or 42B (*words omitted*), at times when the pound is open for the reception of animals, or at such other times as *the pound-keeper* may arrange with any person desiring to deliver such animals:

Provided, however, that *the pound-keeper* shall not be obliged to receive animals in excess of the reasonable and proper capacity of the pound.

The pound-keeper shall maintain reasonable supervision over the animals in the pound. *The pound-keeper* shall supply them with sufficient wholesome food and water, but may take or send them out of the pound at fit times and to fit places for grazing and watering, exercising reasonable care for their proper driving and other handling, and to prevent their escape.

**‘Diseased, injured, starved or infirm animal**

‘(8) The *local government* having jurisdiction over a pound, upon being satisfied that an animal impounded in such pound is by reason of disease, injury, starvation or any other cause too infirm to be of further service, or that if such animal were offered for sale there would be no reasonable prospect of selling it, may by *written order*, authorise the destruction of

such animal, and thereupon such animal, if not released from the pound, may be destroyed; and all fees, rates and charges due to the *local government* in respect of the impounding of the animal, together with all reasonable expenses incurred in connection with its destruction, may be recovered by the *local government* from the proprietor as a debt.

Moreover the damages and driving, leading or transport charges claimed by the impounder in delivering such animal to the pound-keeper for impounding may be recovered by the impounder from the proprietor as a debt.

**‘Custody of animals for purposes of criminal charge or police investigation**

‘(9) Any *police officer* in charge of any animal in the course of or for the purpose of any criminal charge or police investigation, may deliver such animal to the pound-keeper for safe custody, and have it re-delivered to *the police officer* at the *police officer’s* pleasure, paying only in respect thereof the prescribed scale for sustenance: Provided that the pound-keeper shall not be obliged to receive, or if *the pound-keeper* has received it, may require the *police officer* to take away any animal which appears to be diseased or of a disposition rendering it dangerous to other animals in the pound, or otherwise improper to be kept in the pound.

**‘Loss or damage by act of *local government* or pound-keeper**

‘(10) The *local government* shall be liable to any person for any loss or damage occasioned to or sustained by *the person* by reason of any breach or non-observance by it of its obligation under this section or sections 42A or 42B (*words omitted*), or by reason of any wrongful or negligent act or omission of the pound-keeper or any other officer or employee in the discharge or purported discharge of *the officer’s* or *the employee’s* duties. Save as aforesaid, the *local government* shall not be liable to any person by reason of the impounding or purported impounding of any animal or the escape of or injury to any animal while in the pound or in the care of the pound-keeper.

**‘*Local government* to provide pound-keeper with Acts, *local laws* and pound-keeper’s book**

‘(11) The *local government* shall provide for the pound-keeper at any pound under its control, and the pound-keeper shall keep at such pound or

at a place reasonably convenient thereto—

- (i) A copy of the provisions of *sections 42 to 42D* and of its *local laws* relating thereto; and
- (ii) A pound-keeper's book in or to the effect of the following form, and containing the information specified therein:—

#### POUND-KEEPER'S BOOK

<p>Date</p> <p>Time</p> <p>Particulars of animals impounded</p> <p>Brands and marks</p> <p>Proprietor</p> <p>By whom impounded</p> <p>For what cause impounded</p> <p>Damages and charges claimed by impounder</p> <p>Time and mode of giving notice to proprietor</p> <p>How disposed of</p> <p>Time when released or sold or destroyed</p> <p>Particulars of release or sale or destruction</p>	
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#### **‘Entries in pound-keeper’s book**

**‘(12)** The pound-keeper shall enter or cause to be entered in the pound-keeper’s book, so soon as is reasonably practicable after an animal has been

delivered to *the pound-keeper* for impounding, the information specified in subsection (11) of this section.

**‘Acts, local laws and pound-keeper’s book open to inspection**

‘(13) The pound-keeper shall at all reasonable times produce to any *person for the person’s* inspection or to take extracts therefrom, the copy of the provisions of *sections 42 to 42D* and of the *local laws* relating to impounding, and the pound-keeper’s book.

**‘Brands and earmarks to be recorded in pound-keeper’s book**

‘(14) When any horses or cattle are impounded the brands of which are illegible or indistinct, the pound-keeper shall cause all such brands to be clipped or otherwise denuded of hair, and a correct diagram or facsimile of them (as nearly as practicable) to be entered in the pound-keeper’s book.

When any earmarked cattle or sheep are impounded, the pound-keeper shall cause a correct diagram of the earmark (as nearly as practicable) to be entered in the pound-keeper’s book.

**‘Notice of impounding; release of impounded animals**

‘(15) Within 24 hours after the impounding of any animal, the pound-keeper shall post or cause to be posted a written notice at the office of the *local government* of the *area* in which the pound is situated in a conspicuous place setting forth—

- (i) A description of such animal, with its brands and marks, if any;
- (ii) The place from which and the person by whose authority it was impounded;
- (iii) The date of the impounding;
- (iv) A statement of the time and place of its intended sale, if not duly released; and
- (v) A statement of the damages and charges claimed by the impounder, and the fees, rates and charges then due and accruing on the animal,

and such notice shall remain so posted until such animal has been released or otherwise disposed of according to *sections 42 to 42D*:

Provided that, if the pound is situated in a locality other than that in which

the office of such *local government* is situated, such notice shall be posted on the public notice board at the pound.

If the name and address for service of the proprietor of the animal are known to the *local government*, it shall also as soon as is practicable, serve on the proprietor a copy of such notice.

If the name and address for service of the proprietor are not known to the *local government*, it shall cause to be published in a newspaper as soon as is practicable a summary of such notice, showing the particulars of the animal, the date on which and place from which impounded and time and place of intended sale.

The *local government* shall, subject to the provisions (*words omitted*) of the *local laws*, by its pound-keeper detain an animal impounded until all fees, rates and charges authorised by *sections 42 to 42D* are paid or until the animal is sold as hereinafter provided in this section.

The pound-keeper shall, upon receipt of all pound fees, rates and charges due and all sums lawfully claimed by the impounder for damages, and driving, leading or transport in respect of an animal impounded, release the same to the proprietor or *the proprietor's agent* and shall, as soon as is practicable, transmit such moneys to the *local government*.

Unless notice of appeal has been given as hereinafter provided in *section 42C*, the *local government* shall on demand pay to the impounder of an impounded animal the amount received in respect of the release of such animal, for damages, and driving, leading or transport charges, and retain the amount received in respect of pound fees, rates and charges.

If notice of appeal has been given, the *local government* shall retain all moneys paid in respect of the release of an impounded animal until the appeal, if duly initiated, is determined. If no appeal is duly instituted within the time specified in *section 42C* (*words omitted*), or if within that time the notice of appeal is withdrawn, such moneys shall be dealt with as if no notice of appeal had been given.

### **‘Sale of impounded animals**

‘(16) Every sale of impounded animals shall take place only on one of the days appointed for the purpose and shall commence at the hour of noon. Save as otherwise provided, an impounded animal shall not be sold earlier than 10 days after its impounding.

All sales shall be by public auction and shall *be* held and made by some person appointed in that behalf by the *local government*. The person so appointed shall have power and authority to sell by public auction without taking out a licence as an auctioneer.

The *local government* may fix a reasonable reserve price on any animal to be offered for sale, and if the reserve price is not reached at the sale, the *local government* shall be deemed to have become the purchaser at the reserve price.

**‘Sale before sale day with consent of proprietor; sale of unbranded cattle or horses**

‘(17) The *local government* may, under the written authority of any proprietor of an impounded animal, cause the same to be sold on a sale day earlier than herein provided.

The *local government* may, under the authority of a certificate of the *mayor* or a justice of the peace, sell or cause to be sold at the next appointed day of sale any impounded unbranded cattle or horses apparently above the age of 1 year, with their foals or calves, if any.

**‘Certificate before sale**

‘(18) Before any sale is held, the person authorised by the *local government* in that behalf (who shall not be the pound-keeper or any of *the pound-keeper’s* deputies or assistants) shall examine every animal impounded and the pound-keeper’s book, and shall certify under *the person’s* hand that the animals intended for such sale are, if such is the case, correctly described in such book and in the prescribed notices and that such animals may lawfully be sold at such sale.

No animals shall be sold except upon such certificate.

If the person authorised as aforesaid gives a certificate which in any material particular is to *the person’s* knowledge false *the person* shall be liable to a penalty not exceeding \$100.

**‘Proceeds of sale**

‘(19) The person holding the sale shall receive the proceeds thereof and shall so soon as is practicable after any sale transmit such proceeds to the *local government* together with a detailed account of—

- (a) The several animals sold;
- (b) The amount realised upon each lot;
- (c) The moneys claimed by the impounder in respect of damages and charges for leading, driving or transporting; and
- (d) The amount of the fees, rates and charges due to the *local government* in respect of each animal.

### **‘Disposition of sale moneys**

‘(20) (*Sentence omitted*) All moneys received in respect of the sale of any animal shall be applied, firstly in payment of all fees, rates, charges and expenses due to the *local government* in respect of the impounding, sustenance and sale of the animal, and secondly, upon demand, to the impounder in payment of all amounts lawfully claimed by *the impounder* for damages and charges for the driving, leading or transporting. The balance, if any, shall on demand be paid to the proprietor:

Provided that upon the expiration of 2 years after the sale of any impounded animal all moneys remaining in possession of a *local government* in respect of a sale thereof and not demanded by the impounder or by the proprietor of the animal shall become the absolute property of the *local government*.

If the proceeds of the sale of any impounded animal are insufficient to pay the aggregate of the moneys lawfully payable to the *local government* and to the impounder, the *local government* or the impounder may recover summarily under the *Justices Act 1886*, the amount payable to *the local government or the impounder* of such insufficiency.

The allegation in the complaint that the person proceeded against is or was at any particular time the proprietor of any animal referred to in such complaint, *is* evidence of that fact (*words omitted*).

### **‘Certified copy of entry in pound-keeper’s book to be received in evidence**

‘(21) The *local government* shall (*words omitted*) grant to any person requiring it, a *certified* copy, (*words omitted*) of any entry in the pound-keeper’s book and such certificate shall be receivable in any court as *prima*



facie evidence of such entry.

**‘Title of purchases at sale**

‘(22) The sale of an impounded animal in pursuance or purported pursuance of the provisions of this section, shall confer an absolute title upon the purchaser.

**‘IMPOUNDINGS BY PRIVATE PERSONS**

**‘Remedies for private impounding**

‘42A.(1) Any occupier of land upon which any animal is found trespassing may seize such animal and, if *the occupier* does so, shall—

- ‘(i) As soon as practicable take such animal to some convenient pound at any time the pound is open to receive animals for impounding or at any other time by arrangement with the pound-keeper, and deliver it to the pound-keeper to be impounded. *The occupier* shall at the same time deliver to the pound-keeper a written memorandum specifying the brands and earmarks, if any (if they can be conveniently deciphered), and description of such animal, the name and address of the proprietor or supposed proprietor of the same, if known, the place where such animal was trespassing, and if *the occupier* claims damage the amount of such damage, and the driving, leading or transport charges claimed, which respectively shall not exceed the scale fixed in that behalf for the time being by resolution of the *local government* in whose *area* the trespass occurred; or
- ‘(ii) If *the occupier* knows the proprietor, temporarily hold the animal in any convenient place for a period not exceeding 4 days. *The occupier* shall, in that case, within 24 hours, give like notice to the proprietor as directed by section 42 (*words omitted*) to be given by the *local government* in the case of impounded animals not immediately claimed (except a statement of the time and place of intended sale) and shall feed and maintain the animal while so held. *The occupier* shall at the expiration of the said period of 4 days if the animal is not sooner released either—

- (a) Take and deliver such animal to be impounded as prescribed

by paragraph (i) of this subsection; or

- (b) Take and deliver it to the proprietor and, subject to doing so, may demand the damages, charges and fees next hereinafter mentioned, and if the proprietor fails to pay the same immediately on demand, the amount thereof shall be recoverable in the same manner as is provided in paragraph (iii) of this subsection for the recovery of damages. *The occupier* may make a charge for the sustenance of the animal and for giving notice, not exceeding the amount of such charges and fees prescribed to be payable at the nearest pound. *The occupier* shall not be entitled to any compensation for damage except for such as was done before the temporary holding; or

‘(iii) Take such animal to any place reasonably convenient to the residence of the proprietor and there deliver it to the proprietor and, subject to doing so, may demand payment of the damage done and charges for driving, leading or transport of the animal, according to the rate prescribed by the *local government* of the *area* in which the animal was trespassing. Thereupon the proprietor shall pay the same in satisfaction of such trespass. If *the proprietor* fails to pay the same in full, the unpaid amount thereof may be recovered summarily under the *Justices Act 1886*.

#### **‘Payment under protest**

‘(2) A proprietor of an animal from whom payment in respect of an alleged trespass is demanded under paragraphs (ii) or (iii) of subsection one of this section, may make the payment under protest, and may thereafter appeal as provided by section 42C (*words omitted*).

#### **‘Release of impounded animal**

‘(3) The proprietor of an animal impounded in a pound under this section may secure its release at any time the pound is open (or at any other time by arrangement with the pound-keeper) upon payment to the pound-keeper of the damages and other sums lawfully claimed by the impounder, and all (*word omitted*) fees and charges payable in respect of such animal.

**‘Notice of intention to appeal by proprietor**

‘(4) If the proprietor of an animal impounded in a pound under this section intends to appeal against the impounding as provided in section 42C (*words omitted*), *the proprietor* may on or before making the payment to secure the release of the animal, or at any time before the sale of the animal and without making such payment, give the *local government* written notice of such intention to appeal.

**‘Animal in respect of which notice of appeal given, not to be sold**

‘(5) An animal in respect of which notice of appeal has been given and which has not *been* released, may not be sold until the appeal has been decided, unless the appeal is not instituted within the time limited in that behalf:

Provided that the proprietor may, in writing, consent to the sale proceeding, whereupon the sale may proceed as though notice of appeal had not *been* given, but the *local government* shall retain the proceeds of sale until the appeal has been determined.

**‘Local government may assist in private impoundings**

‘(6) Where the land upon which any animal is found trespassing is within an area in which section 42B applies the *local government* may, upon the request of, and with the authority in writing of, the occupier of the land, by its agent enter onto the land and seize and take possession of the animal.

Where an animal has been seized by a *local government* under this subsection the occupier of land who requested the *local government* to make the seizure shall be deemed to be the impounder of the animal and *the occupier* may exercise as against the proprietor of the animal the rights conferred on *the occupier* by subsection (1), notwithstanding that *the occupier* has not performed the duties cast on *the occupier* by that subsection, and *the occupier* is excused from performing those duties.

The provisions of section 42B, other than subsections (1) and (2) thereof apply in respect of a seizure made under this subsection, as if it were a seizure made under that section, and in respect of the animal seized.

**‘LOCAL GOVERNMENT SEIZURE AND IMPOUNDINGS**

**‘Application of section**

**‘42B.(1)** This section shall apply in all *towns* and in such *shires* or parts of such *shires* as the Governor in Council may from time to time, by *regulation*, direct.

**‘Seizure of animals at large or unlawfully depastured on roads, reserves or other land**

**‘(2)** Any animal found at large or depasturing on any road or on any reserve or other land under the control of a *local government* or being driven along or on to any road or any such reserve or other land for the purpose of depasturing may be seized and taken possession of by such *local government*—

Provided that this subsection shall not apply to—

- (a) Travelling stock being depastured or being driven for the purpose of depasturing within the limits and in accordance with the conditions imposed by the laws in force for the time being related to travelling stock; or
- (b) Animals being depastured under licence or being driven for the purpose of so depasturing within the limits and in accordance with the conditions imposed by the laws in force for the time being relating to the depasturing of animals on roads and reserves; or
- (c) Animals found at large or depasturing on part of a road or being driven for the purpose of depasturing on part of a road where the proprietor of such animals has been authorised in accordance with the laws in force for the time being to fence that part of the road in with land occupied by him.

**‘Seizure at any time**

**‘(3)** Any seizure under this section may be made at any time, including day time, night time, a Sunday, or a holiday.

**‘Seized animals may be temporarily held and later impounded or immediately impounded**

**‘(4)** An animal seized under this section—

- (a) May be immediately impounded; or
- (b) May be temporarily held in some convenient place by the *local government* seizing the same, for a period of 48 hours after such seizure unless earlier released as hereinafter provided in this section.

Where an animal is seized and temporarily held in some convenient place, the *local government* shall, if the proprietor of such animal is known, notify such proprietor within a period of 24 hours of such seizure that such animal has been so seized and will be held for a period up to 48 hours after such seizure.

The *local government* shall keep a record in or to the effect of the following form, and record therein particulars of all animals so seized and temporarily held and of the action taken with regard to the release or impounding of such animals:—

#### RECORD OF ANIMALS SEIZED AND TEMPORARILY HELD

Date and time of seizure Particulars of animals seized Brands and marks Proprietor (if known) place of seizure Date, time and mode of giving notice to proprietor Release charges paid Time when released or impounded Particulars of release or impounding	
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The *local government* shall at all reasonable times produce such record to any (*words omitted*) person (*words omitted*) for *the person's* inspection or

for the taking by *the person* of extracts therefrom.

**‘Seized animal may be released**

‘(5) The proprietor of an animal seized and temporarily held under the provisions of this section may, subject to payment of the charges in respect thereof as fixed (*words omitted*) by the *local government*, procure the same to be released to *the proprietor*.

**‘If seized animal not released within 48 hours**

‘(6) If any animal so seized and temporarily held has not been released as aforesaid within the said period of 48 hours, such animal shall be impounded.

‘(7) The provisions of sections 42 and 42A (*words omitted*) shall, so far as applicable, apply and extend to any impounding pursuant to this section:

Provided that where any animal is actually seized and taken to the pound by the pound-keeper the provisions of paragraph (i) of subsection one of section 42A (*words omitted*) relating to the written memorandum referred to in that paragraph (i) do not apply.

**‘APPEALS**

**‘Appeals on legality of impounding, etc.**

‘42C.(1) The proprietor of an animal impounded or seized in purported pursuance of *section 42A*—

- (a) Who disputes the legality of any act of the impounder in relation to such impounding or seizure, or the nature of the trespass alleged, or the amount of the damages or charges claimed by the impounder; or
- (b) Who alleges any irregularity in any act of the impounder in relation to such impounding or seizure or lack in the care taken by the impounder of the animal,

and who has given notice of appeal under subsection (4) of section 42A (*words omitted*) or protested under subsection (2) of that section may appeal against the impounding.

Such appeal shall be by complaint under *the Justices Act 1886*, setting

out the grounds thereof and made within 30 days after the day on which the animal was seized or impounded. At the hearing no grounds may be relied on other than those stated in the complaint.

**‘If appeal dismissed**

‘(2) If the appeal fails and the animal impounded has not been released, the same course shall be observed with regard to its detention, sale and other matters as in all other cases of impounding.

If the proprietor has released the animal, the *local government* shall deal with all moneys paid to it in manner provided by section 42 (*words omitted*).

**‘If appeal succeeds**

‘(3) If the appeal succeeds, the Court may order the impounder to pay the proprietor such compensation as it deems just for the loss sustained by *the proprietor*, and in addition to pay all fees, rates and charges due to the *local government* in respect of the animal, which fees, rates and charges may thereupon be recovered by the *local government* as a debt. If the animal shall not have been sold, the Court may make such order as to the disposal of the animal as it deems just.

**‘OFFENCES AND GENERAL PROVISIONS**

**‘Offences by pound-keeper**

‘42D.(1) Any pound-keeper who works or uses or permits or allows to be worked or used any impounded animal commits an offence (*words omitted*) and in addition to any penalty which may be imposed upon conviction for such an offence shall be liable to make compensation for all damage occasioned by such offence.

*Maximum penalty—\$500.*

**‘Offences by impounder**

‘(2) Any occupier of land who seizes or impounds any animal in any pound or place not authorised by *sections 42 to 42D*, or in any manner contrary to *these* provisions, commits an offence (*words omitted*), unless the Court before whom the matter comes considers the irregularity so trivial that it could be adequately dealt with on an impounding appeal.

*Maximum penalty—\$500.*

**‘Horse employed by *Queensland Police Service* not to be impounded**

‘(3) No person shall seize or impound any horse employed by the *Queensland Police Service* or the property of the Crown, and no damage for trespass or driving charges shall be payable in respect thereof. Any person who seizes or impounds any such horse commits an offence (*words omitted*), but it shall be a defence for a person charged to show that *the person* had no reasonable means of knowledge of the fact of the employment or ownership.

*Maximum penalty—\$500.*

**‘Allowing animal to enter enclosed land without due authority**

‘(4) A person who, without due authority, wilfully lets in or knowingly suffers to enter upon the enclosed land of any other person any animal commits an offence (*words omitted*).

*Maximum penalty—\$500.*

A conviction under this subsection shall not be a bar to any civil remedy which the person aggrieved may have.

**‘Unlawful rescue of seized or impounded animals**

‘(5) Every person who rescues, or attempts to rescue, or assists any other person in rescuing or attempting to rescue, any animal lawfully impounded or seized for the purpose of being impounded, commits an offence (*words omitted*) and in addition to any penalty which may be imposed upon conviction for such an offence shall be liable to pay all fees, rates and charges in respect thereof. The *local government* or person who had seized the animal may re-take any animal which has escaped from the pound, or been rescued, and hold it as of the original impounding or seizure.

*Maximum penalty—\$500.*

**‘Possession of impounded animals which have escaped, been unlawfully let out or rescued**

‘(6) Any person who is found in possession of any animal which has been impounded and which has escaped, or has been unlawfully let out of or has been unlawfully rescued from any pound, and who does not



forthwith upon the demand of a *local government* or its authorised person, deliver such animal to be again impounded, commits an offence (*words omitted*) and in addition to any penalty which may be imposed upon conviction for such an offence shall be liable to pay all fees, rates and charges in respect thereof. Upon proof of such demand as aforesaid being made by the *local government* with respect of any animal which has been impounded, it shall lie upon the defendant to prove *the defendant's* right to retain possession of the animal, against the *local government*, and all other persons.

*Maximum penalty—\$500.*

#### **‘Unlawful driving of animals**

‘(7) Every person (*the “driver”*) who drives or attempts to drive any animal, which is *the driver's* property or the property of a person who has thereunto duly authorised *the driver*, from the lands of any owner or occupier or out of the herds or flocks of any owner or occupier, without first giving *the owner or occupier* notice of *the driver's* intention so to do, commits an offence (*words omitted*).

Every person (*the “driver”*) who so drives or attempts to drive any animal, which is neither *the driver's* property nor the property of a person who has thereunto duly authorised *the driver*, commits an offence (*words omitted*):

Provided that nothing herein shall affect any such other proceedings for such driving as are applicable thereto.

*Maximum penalty for subsection (7)—\$500.*

#### **‘Alternative remedy in damages**

‘(8) Nothing herein contained shall be construed to prevent the occupier of any land trespassed upon from waiving the damages prescribed by the *local government* and claiming in any court of competent jurisdiction full satisfaction for any damages sustained by *the occupier* in consequence of any trespass: Provided that if such occupier has claimed damages as prescribed by the *local government* pursuant to the provisions of subsection (1) of section 42A, *the occupier* shall be deemed to have made *the occupier's* election, and shall not afterwards be entitled to waive such prescribed damages and claim damages in any court of competent jurisdiction.

If the plaintiff in any action for damages does not recover more than the amount of the prescribed damages, then *the plaintiff* shall not be entitled to the costs of the action, but the defendant shall be entitled to the costs thereof. If the plaintiff in any such action is non-suited or discontinues the action, or a judgment is given against *the plaintiff* therein, the defendant shall be entitled to recover from the plaintiff the costs of such action as between solicitor and client.

**‘Right of appeal may be waived and action taken for unlawful or irregular seizure or impounding**

‘(9) Nothing herein contained shall be construed to prevent the proprietor of any animal seized or impounded by an impounder in pursuance or purported pursuance of the provisions of *sections 42 to 42D* who considers it was unlawfully seized or impounded, or that there was any irregularity by the impounder in such seizure or impounding, from waiving *the proprietor’s* right of appeal under *section 42C* or waiving the assessment of compensation by the justices upon any such appeal and claiming in any court of competent jurisdiction for any loss or damage occasioned to *the proprietor* by such seizure or impounding.’.

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ENDNOTES

1. Made by the Governor in Council on 24 March 1994.
2. Notified in the Gazette on 25 March 1994.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Housing, Local Government and Planning.