

## PART VI.

## OUSTER OF OFFICE.

Application  
of municipal  
procedure.  
1 Geo. VI  
No. 75.

**15**—(1) The provisions of section eight hundred and one of the *Local Government Act* 1962 apply with the necessary changes to an *ex officio* information in the nature of *quo warranto* with respect to—

- (a) any election of a member of an authority alleged to have been made unduly or contrary to the Act regulating the conduct of the election; or
- (b) the unlawful holding or exercise by any persons of office as president, chairman, or similar officer or ordinary member of an authority.

(2) Where judgment of ouster has been given in the Supreme Court against a member of an authority, the Governor, if in his opinion it is in the public interest so to do, may appoint some qualified person to take the place of that member until a successor can be elected or appointed in accordance with the provisions of the Act under which the authority is constituted.

## PART VII.

## REGULATIONS.

Regulations.

**16** The Governor may make regulations for the purposes of this Act.

---

LAW OF ANIMALS.

---

## No. 70 of 1962.

AN ACT to consolidate certain enactments relating to trespass by animals. [14 February 1963.]

**BE** it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

## PART I.

## PRELIMINARY.

Short title  
and com-  
mencement.

**1** This Act may be cited as the *Law of Animals Act* 1962 and shall commence on the day on which the *Local Government Act* 1962 commences.

**2** In this Act, unless the contrary intention appears—Interpreta-  
tion.

“animal” means an animal subject to distress for damage done by it while trespassing;

“owner”—

(a) in relation to an animal includes any servant or agent of the owner having charge of the animal; and

(b) in relation to land means the person in possession thereof, his servants, and agents;

“pound” means a pound established under the *Local Government Act 1962*.

## PART II.

## DISTRESS DAMAGE FEASANT.

**3** The right to distrain trespassing animals is subject to the provisions of this Part.

Limitation  
of right of  
distress.

**4** For the purposes of this Part, distance shall be reckoned by the shortest route practicable in the circumstances and distances less than half a mile shall be disregarded in determining which is the shorter of two routes.

Distance.  
Cf. 21 Geo. V  
No. 23, s. 13  
(8).

**5**—(1) An owner who distrains a trespassing animal and detains it on his own land—

Impounding  
in private  
pounds.  
Cf. *ibid.*, s. 19.

(a) shall, as soon as practicable after finding the animal—

(i) inform the officer in charge of the nearest police station, if orally, confirming the information in writing as soon as practicable; and

(ii) give notice in writing to the owner of the animal, if known to him, and if not to the keeper of the nearest pound,

of the particulars mentioned in subsection (2) of section six;

(b) is bound to comply with the provisions of the *Cruelty to Animals Prevention Act 1925* in respect of the animal;

(c) may recover from the owner of the animal the charges prescribed under section five hundred and seventy-six of the *Local Government Act 1962* for keep, giving notice of impounding, and damage done by the animal in trespassing; and

(d) may at any time deal with the animal as provided in section six.

(2) Where an animal detained on the distraining owner's land is dealt with as provided in section six within twenty-four hours after it is found trespassing, it is unnecessary to comply with paragraph (a) of subsection (1) of this section.

(3) If an animal detained on the distraining owner's land appears to be too sick or injured reasonably to be removed to a pound the distraining owner may apply to a justice for authority to destroy the animal, and the justice, after such inquiry and inspection as he thinks sufficient, may give his authority accordingly by warrant under his hand, and shall therein direct and authorize the disposition of the carcass and of the proceeds of sale, if any, of the carcass or any part of it.

(4) If an owner who has distrained a trespassing animal contravenes this section in respect of it his detention of the animal thereafter is unlawful.

(5) A person who has not complied with paragraph (a) of subsection (1) of this section within twenty-four hours of finding the animal trespassing shall be deemed to have contravened the paragraph unless he proves that he did comply therewith as soon as practicable.

Impounding  
in municipal  
pounds.

*Ibid.*, s. 18.

**6—**(1) An owner who distrains an animal trespassing on his land, if the place where the animal found trespassing is—

(a) within five miles of a pound, shall as soon as practicable after finding the animal; or

(b) not within five miles of a pound, may,

drive or take the animal to the nearest pound, and there deliver it to the poundkeeper to be impounded.

(2) With the animal he shall deliver to the poundkeeper a written statement specifying—

(a) his name, address, and degree, profession, or calling;

(b) the description of the animal;

(c) the marks and brands thereon as far as they can be ascertained;

(d) the name of the owner, if known to him;

(e) the place where the animal was found trespassing; and

(f) the amount of the driving or transport charges and the damages, if any, claimed by him.

(3) If the place where the animal is found trespassing is the same distance from two or more pounds the owner may cause the animal to be impounded at either or any of those pounds.

(4) If the poundkeeper is absent from the nearest pound, the owner may cause the animal to be impounded at some other convenient pound.

**7**—(1) The owner of an animal which is, or is being, or is liable to be, taken as a distress for damage done may recover the possession of the animal upon payment of all charges lawfully due under the *Local Government Act 1962* in respect of the animal at the time recovery is claimed by him or on his behalf.

Right of owner to recover possession.  
*Ibid.*, ss. 31, 32, (2), (3).

(2) If recovery is claimed under this section before or during the taking of the animal to the pound, the person having possession of the animal shall inform the person making the claim of the name of the person on whose behalf the animal is held and of the amount of the charges which he claims to be then due.

(3) If the owner of an animal taken for distress thinks that the amount—

- (a) stated by the poundkeeper to be due in respect of it, in the case of an animal received into the pound; or
- (b) claimed as provided in subsection (2) of this section, in the case of an animal not yet received into a pound,

is excessive or that the impounding is unlawful he may pay under protest, and the person receiving payment shall give to the person making it a receipt, if required, acknowledging that the payment is made under protest, and the owner may proceed as provided in section eight.

(4) A person who fails to give up an animal to a person entitled to recover possession of it under this section is liable to a penalty of fifty pounds.

(5) When any animal is released from a pound under this section the poundkeeper shall retain the fees, charges, and damages paid in respect of it until the expiration of the time limited for taking proceedings under section eight in respect of the impounding or until the determination of such proceedings, if commenced.

**8**—(1) Within seven days after any payment has been made under protest, as provided by section seven, the owner of the animal in respect of which the payment was made may proceed to dispute—

Proceedings alternative to replevin.  
*Ibid.*, s. 33.

- (a) the amount of the fees, charges, or damages claimed in respect of the animal; or
- (b) the legality of the impounding,

by way of action under the *Local Courts Act 1896*.

(2) The person to whom payment was made shall be a defendant in an action under this section and where the plaintiff disputes the legality of the impounding the person impounding the animal shall also be a defendant.

(3) If on the hearing of the action the court is satisfied—

(a) that the amount of the fees, charges, and damages demanded in respect of the animal is excessive, it may—

(i) assess the amount of the fees, charges, and damages due; and

(ii) order the repayment to the owner of the animal of any amount paid in excess of the amount so assessed; and

(b) that the impounding was unlawful, it may order—

(i) the repayment to the owner of the fees, charges, and damages paid by him;

(ii) the payment of any such fees, charges, and damages to the poundkeeper by the person impounding the animal; and

(iii) the payment to the owner by the person impounding the animal of such compensation, not exceeding thirty pounds, as the court thinks fit.

(4) The court may hear and determine the action, notwithstanding that the amount in dispute exceeds the limits of its jurisdiction.

Search for  
lost stock.  
Cf. 25 Geo. V  
No. 54, s. 58.

**9—**(1) The owner of any domestic animals who has reasonable grounds for believing that any of them are on the land of another person and who—

(a) has been refused permission by that other person to search for them on his land; or

(b) owing to the absence of that other person from the neighbourhood or for any other satisfactory reason is unable to communicate with that other person within reasonable time,

may apply to a justice for authority to enter and search that land for the animals.

(2) The justice may give to the owner a warrant under his hand subject to such terms and conditions as to the justice seem reasonable, and any such terms and conditions shall be set forth in the warrant.

(3) A warrant under this section, subject to any terms and conditions thereby imposed, authorizes and empowers the owner, if accompanied by an inspector of stock or police officer, to enter on the land and search for the animals and to remove therefrom all animals belonging to him which may be found thereon, and for that purpose to employ such assistants, horses, and dogs as may be reasonably necessary.

**10—**(1) This Part does not—

- (a) affect the provisions of any other enactment in relation to animals straying or grazing; or
- (b) affect or take away the right of any person to bring an action for trespass or any other action or any remedy available to any person at common law,

Saving of other Acts and of common law remedies.  
 Cf. 21 Geo. V No. 34, s. 34.

except as provided in sections five and six and in this section.

(2) If the plaintiff in any action for trespass by an animal which has been impounded does not recover, by way of damages, more than the amount of damages for trespass prescribed under the *Local Government Act 1962* he is not entitled to any costs of the action.

(3) An action in the nature of an action of replevin may not be brought to recover from a poundkeeper possession of an animal detained in his pound.

### PART III.

#### DOGS.

**11—**(1) An occupier of land may destroy any dog found on his land and—

- (a) not registered under the *Local Government Act 1962*; or
- (b) not wearing a collar bearing the proper registration label required under that Act.

Unregistered dog found on property may be destroyed.  
 Cf. 25 Geo. V No. 48, ss. 7, 8 (4).

(2) A person who has contributed to the destruction of a dog under this section by unlawfully removing its collar or the registration label therefrom is liable to pay the dog's owner the value of the dog and where he is convicted of a breach of paragraph (a) of subsection (3) of section eight hundred and thirty-eight of the *Local Government Act 1962*, the convicting justices may order him to pay the owner the value of the dog in addition to the penalty for his offence.

**12—**(1) Upon complaint that a dog is dangerous and is not kept under proper control, any two justices may, whether the dog was found at large or not, make an order commanding the owner of the dog to keep it under proper control and that if he make default the dog shall be destroyed or, if the justices are satisfied that the circumstances so require, that the dog be destroyed forthwith by such person or in such manner as they may direct.

Destruction of dangerous dogs.  
*Ibid.*, ss. 10 and 16 (2) iv.

(2) A person who fails to comply with an order under subsection (1) of this section is liable to a penalty of fifteen pounds, and the justices before whom he is convicted may order the dog to be destroyed as provided in that subsection.

Dogs biting  
or attacking  
persons or  
animals may  
be destroyed.  
*Ibid.*, s. 11.

**13** A person who—

- (a) is bitten or attacked by a dog that is at large; or
- (b) sees a dog that is at large biting or attacking a human being or an animal useful to man,

may destroy that dog without being answerable for damage occasioned thereby.

Dogs running  
at large  
among cattle  
or sheep or  
in the country  
may be  
destroyed.  
*Ibid.*, s. 12.

**14**—(1) An owner or the agent of an owner of cattle or sheep, or a servant or person employed by such an owner or agent, may destroy any dog running at large among such cattle or sheep, without being answerable for damage occasioned thereby.

(2) An occupier or the agent of an occupier of land not within a city or town, or a servant or person employed by such an occupier or agent, may destroy any dog running at large on the land without being answerable for damage occasioned thereby.

Proof of  
scienter.  
*Ibid.*, s. 13.

**15** The owner of a dog is liable in damages for injury done by his dog, and it is not necessary for the party seeking damages to show a previous mischievous propensity in the dog, or the owner's knowledge of its mischievous propensity or that the injury was attributable to neglect on the part of the owner of the dog.

Liability of  
keeper of  
dog.  
*Ibid.*, s. 13A.

**16** The keeper of a dog, unless he is in respect of the dog the servant of some person resident in this State, is subject to all liabilities, civil and criminal, in respect of the dog as if he were its owner.

Evidence.  
*Ibid.*, ss. 7, 9,  
18.

**17**—(1) In any proceedings in any court—

- (a) the burden of proof of registration of a dog under the *Local Government Act* 1962 and of the payment of the tax thereon under that Act is on the person alleging the registration or payment or denying the contrary;
- (b) proof that a person has himself or by his servant or agent had the custody or control of a dog or is the occupier of premises on which a dog has been seen gives rise to a rebuttable presumption that that person was then and is still the keeper of the dog; and
- (c) proof, either as provided in paragraph (b) or otherwise, that a person was at any particular time or period the keeper of a dog gives rise to a rebuttable presumption that that person was at the time or period the owner of the dog.

(2) A copy of, or extract from, an entry in a register of dogs kept under the *Local Government Act* 1962 under the hand of the town clerk or council clerk, as the case may be, of the corporation is *prima facie* evidence of the facts therein stated.

(3) A dog without a collar bearing the proper registration label required by that Act shall *prima facie* be deemed to be unregistered thereunder, and any person is entitled to act on that presumption unless he has reasonable grounds for thinking it false.

(4) Where it appears that a dog is owned or kept by one of two or more persons living or working on the land where the dog has been kept or found other than the occupier of that land, the occupier shall be deemed to be the keeper of the dog unless he proves that some other person is the keeper of the dog.

(5) Where the land to which subsection (4) relates is occupied by the Crown a Minister of State responsible for the activities of some or all of the persons of whom the keeper of the dog is one shall be deemed to be the occupier.

---

## POLICE OFFENCES.

---

### No. 71 of 1962.

AN ACT to amend the *Police Offences Act 1935*.  
[14 February 1963.]

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1—**(1) This Act may be cited as the *Police Offences Act 1962*. Short title, citation, and commencement.

(2) The *Police Offences Act 1935*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall commence on the day on which the *Local Government Act 1962* commences.