

Version No. 031
Impounding of Livestock Act 1994
No. 89 of 1994

Version incorporating amendments as at 1 January 2010

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Impounding of Livestock Act 1994
No. 89 of 1994

Version incorporating amendments as at 1 January 2010

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are to—

- (a) provide for the impounding of livestock that has been abandoned or found trespassing on any land or roads; S. 1(a)
amended by
No. 65/2007
s. 45.
- (b) regulate the impounding, care, release, disposal or destruction of impounded livestock;
- (ba) provide for matters relating to the agistment of horses; S. 1(ba)
inserted by
No. 69/2004
s. 44.
- (c) repeal the **Pounds Act 1958** and consequentially amend various other Acts;
- (d) amend the **Crown Land (Reserves) Act 1978**, the **Forests Act 1958**, the **Land Act 1958**, the **National Parks Act 1975** and the **Wildlife Act 1975**.

2 Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3 Definitions

In this Act—

authorised officer means—

- (a) an authorised officer within the meaning of the **Conservation, Forests and Lands Act 1987**; or
- (b) a person or class of persons prescribed to be an authorised officer under this Act;

authorised officer of a council means an authorised officer appointed under section 224 of the **Local Government Act 1989**;

authorised person means a person authorised under section 5 to impound livestock found trespassing;

charge means a sum payable under section 7 and includes—

- (a) an impounding charge, being an amount not exceeding—
 - (i) the reasonable expenses actually incurred in providing impounded livestock with food, water and veterinary care; and
 - (ii) the reasonable cost of rectifying or compensating for any loss or damage which can be attributed to the trespassing of the livestock; and
- (b) a disposal charge being an amount not exceeding the reasonable expenses actually incurred in the disposal or destruction of impounded livestock,

S. 3 def. of *authorised person* substituted by No. 65/2007 s. 46(1)(b).

including reasonable costs associated with advertising, the conduct of public auctions or the public tender process and the disposal of carcasses; and

- (c) a transport charge being an amount not exceeding—
- (i) the reasonable costs incurred in capturing trespassing livestock; and
 - (ii) the reasonable expenses actually incurred in walking or transporting impounded livestock to a pound or the address of the owner of the livestock or to a market or saleyard;

council means a council within the meaning of section 3 of the **Local Government Act 1989**;

Crown land has the same meaning as in section 3 of the **Conservation, Forests and Lands Act 1987**;

* * * * *

S. 3 def. of ***declared road*** repealed by No. 12/2004 s. 159(a).

Department means the Department of Primary Industries

S. 3 def. of ***Department*** inserted by No. 65/2007 s. 46(1)(a).

impound in relation to livestock, means the seizing or taking possession of that livestock and includes the holding of that livestock until the livestock is released or disposed of in accordance with this Act;

S. 3 def. of ***impound*** substituted by No. 65/2007 s. 46(1)(c).

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s. 3

S. 3 def. of *inspector of stock* substituted by No. 115/1994 s. 142(Sch. 2 item 4.1) (as amended by No. 73/1996 s. 48(f)(i)).

inspector of stock means an inspector of livestock appointed under the **Livestock Disease Control Act 1994**;

S. 3 def. of *livestock* amended by No. 65/2007 s. 46(2).

livestock means an animal (including a bird) of any species used in connection with primary production or kept or used for recreational purposes or for the purposes of recreational sport, other than a dog or cat;

S. 3 def. of *notice of seizure* inserted by No. 65/2007 s. 46(1)(a).

notice of seizure means a notice under section 8A;

occupier includes—

- (a) a person who manages any land on behalf of the land's owner or occupier; and
- (b) a person who is responsible for the care and control of any land; and
- (c) a lessee or licensee of any land;

S. 3 def. of *officer of the Roads Corporation* amended by No. 37/1996 s. 12.

officer of the Roads Corporation includes a person, and a person included in a class of persons, authorised by the Roads Corporation for the purposes of this Act to act as an officer of the Roads Corporation;

owner of livestock means—

- (a) a person who is entitled to legal or equitable possession of livestock whether solely or jointly; or

(b) a person who has custody of livestock on behalf of a person referred to in paragraph (a);

pound means a facility or area established by a council or group of councils for the impounding of livestock;

public notice has the same meaning as in section 3 of the **Local Government Act 1989**;

road has the same meaning as it has in section 3(1) of the **Local Government Act 1989**;

S. 3 def. of *road* inserted by No. 65/2007 s. 46(1)(a).

Secretary means the person who is, for the time being, the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department;

S. 3 def. of *Secretary* inserted by No. 65/2007 s. 46(1)(a).

trespassing includes wandering without effective control or being at large.

4 Act to bind Crown

This Act binds the Crown not only in the right of Victoria, but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2—IMPOUNDING OF LIVESTOCK

Pt 2 Div. 1
(Heading)
inserted by
No. 65/2007
s. 47.

**Division 1—Powers and duties relating to impounding and
release of livestock**

S. 5 (Heading)
inserted by
No. 65/2007
s. 48.

5 Power to impound livestock found trespassing

- (1) An authorised person may impound livestock found trespassing.
- (2) The following are authorised persons—
 - (a) an authorised officer of a council if the livestock are trespassing on land vested in or under the care and management of that council;
 - (b) an owner or occupier of any land if the livestock are trespassing on that land or on a road adjoining that land;
 - (c) an officer of the Roads Corporation if the livestock are trespassing on or near a freeway or an arterial road within the meaning of the **Road Management Act 2004**;
 - (d) an authorised officer if the livestock are trespassing on Crown land;
 - (e) in the case of the Link road or the Extension road within the meaning of the **Melbourne City Link Act 1995**, a person authorised by the relevant corporation within the meaning of that Act if the livestock are trespassing on or near that road.

S. 5(2)(c)
amended by
No. 12/2004
s. 159(b).

S. 5(2)(e)
inserted by
No. 102/1998
s. 42.

-
- (3) Despite subsection (2), for the purposes of impounding livestock, an authorised officer of a council may—
- (a) enter onto any land at the request of the owner or occupier; or
 - (b) enter onto Crown land at the request of an authorised officer.

5A Power to enter land or building and impound abandoned livestock

S. 5A
inserted by
No. 65/2007
s. 49.

- (1) An authorised officer of a council may enter any land or building (excluding any building occupied as a residence) in the municipal district of that council at the request of the owner if he or she reasonably suspects that there is abandoned livestock in or on the land or building.
- (2) An authorised officer of a council who enters a land or building under subsection (1)—
 - (a) may impound any livestock in or on the land or building that he or she reasonably believes have been abandoned; and
 - (b) must deliver the livestock to a pound.
- (3) An authorised officer of a council who impounds livestock under this section must fix a notice of seizure to the building or to the entry gate of the land at the time of the impounding so that it is visible to persons wishing to enter the property.
- (4) This section does not apply in respect of a horse that is the subject of a lien under Part 3A.

6 General duty of persons who impound livestock

S. 6(1)
amended by
No. 65/2007
s. 50(a).

- (1) A person who has impounded livestock under section 5 or 5A must take all steps that are reasonable in the circumstances to ensure that the livestock are—
- (a) provided with adequate food, water and veterinary care; and
 - (b) kept securely in a well-drained place; and
 - (c) maintained in a clean condition; and
 - (d) provided with adequate shelter for the climatic conditions; and
 - (e) kept separately from other livestock if—
 - (i) the impounded livestock are or appear to be diseased; or
 - (ii) the other livestock are or appear to be diseased; or
 - (iii) the person reasonably believes that physical injury is likely to be caused to any of the impounded livestock or to any other livestock.

S. 6(1)(e)(iii)
amended by
No. 65/2007
s. 50(b).

Penalty: 20 penalty units.

- (2) Despite subsection (1), livestock may be destroyed if the circumstances set out in section 22(1) apply.

S. 7
substituted by
No. 65/2007
s. 51.

7 Entitlement to reimbursement of charges

A person who has impounded livestock under section 5 or 5A—

- (a) is entitled to payment from the owner of the livestock of charges relating to the impounding of livestock; and

-
- (b) may recover those charges from the owner of the livestock as a civil debt recoverable summarily in a court of competent jurisdiction.

8 Duties of authorised officer of council

- (1) As soon as possible after impounding livestock, an authorised officer of a council must—
- (a) deliver the livestock to—
 - (i) the nearest pound operated or used by that council; or
 - (ii) a pound operated by another council if the relevant council has an agreement to use that pound with that other council; or
 - (iii) any land if the authorised officer of a council has obtained the permission of the owner or occupier of that land to use it.
- (2) As soon as possible after impounding livestock under section 5 or 5A, or receiving impounded livestock from an authorised person, an authorised officer of a council must—
- (a) take reasonable steps to ascertain the owner of the livestock including scanning the livestock for any permanent identification device and checking for any other identification marker; and
 - (b) if the owner of the livestock is known or ascertained, serve a notice of seizure on the owner.

S. 8(2)
substituted by
No. 65/2007
s. 52.

S. 8A
inserted by
No. 65/2007
s. 53.

8A Notice of seizure

- (1) For the purposes of this Act, a notice of seizure is a notice that sets out the following—
 - (a) details of the impounded livestock including a description of the livestock;
 - (b) the contact details of the authorised officer of the council who impounded or received the impounded livestock;
 - (c) the date of impounding of the livestock;
 - (d) the charges payable in respect of the impounding;
 - (e) that the livestock may be sold or disposed of unless the charges for impounding are paid and the livestock claimed;
 - (f) the details of the relevant powers under this Act relating to the release and disposal of livestock;
 - (g) the effect of sections 26 and 27 of this Act.
- (2) A notice of seizure must be served personally on the owner or by registered post to the last known address of the owner.

9 Duties of owners and occupiers of land

S. 9(1)
amended by
No. 65/2007
s. 54.

- (1) As soon as possible after impounding livestock under section 5, an owner or occupier of land must—
 - (a) deliver the livestock to the nearest convenient pound; or
 - (b) deliver the livestock to the owner of the livestock if he or she knows the identity of the owner; or

- (c) subject to this section and section 10, keep the livestock on his or her land in accordance with section 6.

Penalty: 5 penalty units.

- (2) If the owner or occupier knows the identity of the owner of the livestock which he or she has impounded, he or she must notify the owner of the whereabouts of the livestock within 24 hours of impounding the livestock.

Penalty: 5 penalty units.

- (3) If the owner or occupier is unable to notify the owner of the livestock because—
- (a) he or she does not know the identity of the owner; or
 - (b) it is impossible or impractical to contact the owner—

the owner or occupier must notify the council which operates the nearest convenient pound of the whereabouts of the livestock as soon as practicable.

Penalty: 5 penalty units.

10 Owners and occupiers of land to deliver livestock to pound

- (1) An owner or occupier of land who under section 5 has impounded livestock on that land must not keep that livestock on that land for more than 4 days without the written permission of the council.
- (2) An owner or occupier of land who does not comply with subsection (1) is not entitled to—
- (a) reimbursement from the council; or

S. 10(1)
amended by
No. 65/2007
s. 55.

(b) recovery from the owner of the livestock—
for any part of any charge relating to the
impounding of the livestock after the expiry of
4 days.

**11 Procedure where owner claims livestock from owner
or occupier of land**

S. 11(1)
amended by
No. 65/2007
s. 56.

- (1) If the owner of livestock impounded under section 5 claims that livestock before the owner or occupier of the land on which the livestock is impounded has delivered the livestock to a pound, the owner or occupier—
- (a) must release or deliver the livestock to the owner on payment of the charges owing; or
 - (b) must, if the owner refuses to pay the charges owing, deliver the livestock to the nearest pound; or
 - (c) may release or deliver the livestock to the owner without receiving payment of the charges owing on the basis that the owner agrees to pay the charges within 7 days.
- (2) If the owner of the livestock has not paid the charges owing within 7 days of the release or delivery of the livestock, the owner or occupier of land who has released or delivered the livestock to its owner may recover the charges which are due under this Act as a civil debt recoverable summarily in a court of competent jurisdiction.

**12 Duties of authorised officer who impounds livestock
on Crown land**

S. 12
amended by
No. 65/2007
s. 57.

An authorised officer who under section 5 impounds livestock trespassing on Crown land must comply with sections 9 to 11 as if he or she were the owner or occupier of that land.

13 Duties of officer of the Roads Corporation

An officer of the Roads Corporation who under section 5 impounds livestock must deliver that livestock to the nearest convenient pound as soon as practicable.

S. 13
amended by
No. 65/2007
s. 58.

13A Duties of person authorised by relevant corporation

A person who is authorised by a relevant corporation under section 5(2)(e) and who under section 5 impounds livestock must deliver that livestock to the nearest convenient pound as soon as is practicable after impounding the livestock.

S. 13A
inserted by
No. 102/1998
s. 43,
amended by
No. 65/2007
s. 59.

14 Records to be kept by councils

- (1) A council must ensure that a record is kept of all impounded livestock that are delivered to any pound which the council operates.
- (2) The record must include the following details—
 - (a) details of the location where the livestock were found;
 - (b) the number and kind of livestock;
 - (c) where and how the livestock are branded;
 - (d) the sex and colour of the livestock and any other descriptive marks;
 - (e) the name of the person who impounded the livestock;
 - (f) details of how the livestock were disposed of.
- (3) A member of the public may inspect the record kept by a council free of charge during the period that the council is open for public business.

s. 15

15 Duties of councils to notify owners

S. 15(1)
amended by
No. 65/2007
s. 60(1)(a).

(1) A council which receives notification of the whereabouts of livestock under section 9(3) from—

- (a) the owner or occupier of land; or
- (b) an authorised officer—

must, as soon as possible—

(c) take reasonable steps to ascertain the owner of the livestock; and

(d) if the owner of the livestock is ascertained by the council, serve a notice of seizure on the owner.

S. 15(1)(d)
substituted by
No. 65/2007
s. 60(1)(b).

S. 15(2)
substituted by
No. 65/2007
s. 60(2).

(2) If livestock impounded under section 5 have been delivered to a council pound by an authorised person (other than an authorised officer of a council) the council must, as soon as possible—

(a) take reasonable steps to ascertain the owner of the livestock, including scanning the livestock for any permanent identification device and checking for any other identification marker; and

(b) if the owner of the livestock is known or ascertained by the council serve a notice of seizure on the owner.

S. 15(3)
repealed by
No. 65/2007
s. 60(2).

* * * * *

16 Release of livestock from pound

S. 16(1)
amended by
No. 65/2007
s. 61.

(1) A person may apply to the council for the release of livestock impounded under section 5 or 5A at any time before the livestock are sold or otherwise disposed of.

-
- (2) The council must release the livestock to the applicant if—
- (a) the council is satisfied on reasonable grounds that the applicant—
 - (i) is the owner of the livestock; or
 - (ii) is authorised to claim the livestock on the owner's behalf; or
 - (iii) is otherwise entitled to lawful possession of the livestock; and
 - (b) the charges owing in respect of the impounding are paid; and
 - (c) the applicant signs a release for the livestock; and
 - (d) the release of the livestock is made—
 - (i) during normal operating hours of the pound; or
 - (ii) by special arrangement with the authorised officer of the council for the release of the livestock at an agreed time outside the normal operating hours of the pound.

Division 2—Powers to serve notices relating to trespassing livestock

Pt 2 Div. 2
(Heading and
ss 16A, 16B)
inserted by
No. 65/2007
s. 62.

16A Power to serve notice objecting to the trespassing of livestock

S. 16A
inserted by
No. 65/2007
s. 62.

- (1) If an authorised officer of a council reasonably believes that livestock have trespassed on any land or road, he or she may serve a notice on the owner of the livestock objecting to the trespass of the livestock.

s. 16B

- (2) A notice under subsection (1) must be served on the owner personally or by registered post to the last known address of the owner.
- (3) A notice under subsection (1) must be in a form approved by the council and include the following information—
 - (a) the date and location of the trespass;
 - (b) a description of livestock believed to have trespassed;
 - (c) a description of the offence in section 25A including the maximum penalty;
 - (d) the contact details of the authorised officer of the council.

S. 16B
inserted by
No. 65/2007
s. 62.

16B Power to serve notice on owner regarding confinement of livestock

- (1) If an authorised officer of a council reasonably believes that livestock are not adequately confined on a property, he or she may serve a notice on the owner of the livestock directing the owner to take the measures set out in the notice to ensure the livestock are adequately confined.
- (2) A notice under subsection (1) must be served on the owner personally or by registered post to the last known address of the owner.
- (3) A notice under subsection (1) must be in a form approved by the council and include the following—
 - (a) a direction to take the measures set out in the notice to adequately confine the livestock;
 - (b) the time within which those measures must be taken;
 - (c) a description of the offence in section 25B including the maximum penalty;

-
- (d) the contact details of the authorised officer of the council.
-

PART 3—DISPOSAL OR DESTRUCTION OF LIVESTOCK

17 Livestock found trespassing to be held for 7 days

S. 17
(Heading)
inserted by
No. 65/2007
s. 63(1).

S. 17(1)
amended by
No. 65/2007
s. 63(2).

- (1) A council must hold livestock impounded under section 5 for at least 7 days before the council may dispose of the livestock in accordance with this Part.
- (2) The 7 day period referred to in subsection (1) commences on the day that—
 - (a) the authorised officer of a council impounds the livestock; or
 - (b) the council is informed of the impounding of livestock under section 9(3) by the owner or occupier of land or an authorised officer; or
 - (c) if the council has not been informed under paragraph (b), the impounded livestock are delivered to the council pound by the owner or occupier of land or an authorised officer under section 9(1)(a); or
 - (d) the impounded livestock are delivered to the council pound by an officer of the Roads Corporation.

S. 17(3)
repealed by
No. 65/2007
s. 63(3).

* * * * *

S. 17A
inserted by
No. 65/2007
s. 64.

17A Livestock found abandoned to be held for 14 days

A council, an authorised officer of which has impounded livestock under section 5A, must hold the livestock for at least 14 days after the day that the livestock were impounded before the council may dispose of the livestock in accordance with this Part.

18 Sale of unclaimed livestock

- (1) A council may offer for sale by public auction or public tender impounded livestock that are not collected within the period within which the livestock are required to be collected under section 17 or 17A (as the case requires).
- (2) A council must not offer livestock for sale if the council has received a notice under section 27(1).
- (3) A council may offer impounded livestock for sale by public auction at a council pound or at a saleyard approved by the council.

S. 18(1)
substituted by
No. 65/2007
s. 65.

* * * * *

S. 18(4)
repealed by
No. 115/1994
s. 142(Sch. 2
item 4.2) (as
amended by
No. 73/1996
s. 48(f)(ii)).

19 Public notice of sale

- (1) A council must give public notice that it intends to sell impounded livestock by public auction or public tender.
- (2) A public notice of a council's intention to sell livestock by public auction must include—
 - (a) details of the location where the livestock were found;
 - (b) the number and kind of livestock;
 - (c) where and how the livestock are branded;
 - (d) the sex and colour of the livestock and any other descriptive marks;
 - (e) the name of the person who impounded the livestock;
 - (f) the time and place of the auction.

- (3) A public notice of a council's intention to sell livestock by public tender must include—
- (a) details of the location where the livestock were found;
 - (b) the number and kind of livestock;
 - (c) where and how the livestock are branded;
 - (d) the sex and colour of the livestock and any other descriptive marks;
 - (e) the name of the person who impounded the livestock;
 - (f) the date and time by which written tenders should be submitted to the council.

20 Application of proceeds of sale

- (1) A council must apply the proceeds of sale of impounded livestock in the following order—
- (a) the charges owing to the council must be deducted;
 - (b) if an authorised person (other than an authorised officer of a council) impounded the livestock, the charges (if any) owing to that person must then be paid;
 - (c) any balance then remaining must be paid to the owner of the livestock if the owner claims the balance in writing within 3 months of the sale of the livestock.
- (2) If the owner of livestock does not claim the balance of sale money under subsection (1)(c) that money is to be dealt with in accordance with the **Unclaimed Money Act 2008**.
- (3) If any of the proceeds of sale of impounded livestock are paid to an authorised officer, that officer must pay that money into the Consolidated Fund.

S. 20(2)
amended by
No. 44/2008
s. 111.

21 Disposal of livestock

A council may dispose of impounded livestock in such manner as the council thinks fit, including destroying or re-housing the livestock, if—

S. 21
amended by
No. 65/2007
s. 66(1).

- (a) livestock which are offered for sale by public auction or public tender under this Part are not sold; or
- (b) at the end of the 7 day period referred to in section 17 or the 14 day period referred to in section 17A (as the case may be), the council determines that, in the opinion of the council, the proceeds of the sale of the impounded livestock would be less than the charges owing in respect of the impounding of the livestock.

S. 21(b)
amended by
No. 65/2007
s. 66(2).

22 Power of authorised officer of council to destroy impounded livestock in certain circumstances

(1) Despite sections 8, 8A, 17 and 17A, an authorised officer of a council may destroy impounded livestock—

S. 22(1)
amended by
No. 65/2007
s. 67(1).

- (a) on the written order of an inspector of stock; and
 - (b) after 48 hours from the time of posting a written notice of the impounding of the livestock by the council at the pound where they are held.
- (2) Before issuing a written order under subsection (1) an inspector of stock must have formed the opinion that—
- (a) the livestock are in poor physical condition; and
 - (b) having considered the duties imposed on the council, the livestock are worth less than the cost of keeping the livestock at the pound—

S. 22(2)(b)
substituted by
No. 65/2007
s. 67(2).

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No. 89 of 1994
Part 3—Disposal or Destruction of Livestock

s. 23

- (i) for at least 7 days (in a case to which section 17 applies); and
- (ii) for at least 14 days (in a case to which section 17A applies).

S. 22(3)
amended by
No. 65/2007
s. 67(3).

- (3) Subsection (1) does not apply to livestock impounded under section 5 if, at the time the livestock were impounded—
 - (a) a boundary or dividing fence existing between the land of the livestock owner and the place where the livestock are found was not livestock-proof because of fire, flood or other natural disaster; and
 - (b) the owner of the livestock has not had a reasonable opportunity to restore or repair the fence or boundary effectively.

23 Prevention of Cruelty to Animals Act 1986 not affected

This Act is in addition to and not in derogation of the **Prevention of Cruelty to Animals Act 1986**.

S. 24
substituted by
No. 115/1994
s. 142(Sch. 2
item 4.3) (as
amended by
No. 73/1996
s. 48(f)(iii)).

24 Livestock Disease Control Act 1994 not affected

This Act is in addition to and not in derogation of the **Livestock Disease Control Act 1994**.

**PART 3A—LIEN OVER, AND RETENTION AND SALE OF,
AGISTED HORSES**

Pt 3A
(Heading and
ss 24A–24J)
inserted by
No. 69/2004
s. 45.

24A Application of Part

S. 24A
inserted by
No. 69/2004
s. 45.

- (1) This Part applies if a horse is agisted, a default occurs with respect to any money owed under the agistment agreement, and the default is not rectified within 14 days after it occurs.
- (2) However, this Part does not apply if the creation of a lien over the horse by the person who is owed the money would be inconsistent with any written agreement between that person and the owner of the horse as to how defaults concerning the agistment are to be dealt with.

24B Person owed money may create lien over horse

S. 24B
inserted by
No. 69/2004
s. 45.

- (1) The person who is owed money under the agistment agreement may create a lien over the horse by serving a default notice on the owner of the horse at any time after the owner has been in default under the agreement for 14 or more days.

Note

Section 24F sets out what a default notice must contain, and how it is to be served.

- (2) On the creation of a lien over a horse, the lien holder may retain possession of the horse until the lien is extinguished under this Part.

24C Extinguishment of lien

S. 24C
inserted by
No. 69/2004
s. 45.

A lien over a horse under this Part is extinguished—

- (a) on the owner of the horse becoming entitled to recover possession of the horse under section 24D; or

s. 24D

- (b) on the lien holder selling, exchanging, disposing of, or destroying the horse under this Part; or
- (c) on the lien holder signing a notice stating that the default notice that created the lien is withdrawn.

S. 24D
inserted by
No. 69/2004
s. 45.

24D Right of owner to return of horse

The owner of a horse that is subject to a lien is entitled to recover possession of the horse at any time before the horse is sold, exchanged, disposed of, or destroyed if the owner pays the lien holder—

- (a) the amount that the owner was in default on the date that the default notice was issued, or if that amount covers a period of agistment of more than 3 months, the amount payable for an agistment period of 3 months; and
- (b) the amount of any additional expenses (including agistment fees) incurred by the lien holder in caring for the horse from the date that the default notice was issued until—
 - (i) the expiry of 60 days from that date; or
 - (ii) the extinguishment of the lien—whichever occurs first; and
- (c) the amount of any expenses in relation to the intended sale, exchange, disposal, or destruction of the horse that have been reasonably incurred by the lien holder.

24E Lien holder may dispose of horse if default not rectified

S. 24E
inserted by
No. 69/2004
s. 45.

- (1) If, after a default notice has been served, the owner of a horse that is subject to a lien has not paid the amounts required to recover possession of the horse within 28 days after the day the notice was served, the lien holder may—
 - (a) sell, exchange or otherwise dispose of the horse; or
 - (b) destroy the horse.
- (2) Despite subsection (1), the lien holder may only exchange, dispose of, or destroy the horse if—
 - (a) the horse has been offered for sale at a public auction or by public tender; or
 - (b) the lien holder has obtained a certificate from a veterinary practitioner registered under the **Veterinary Practice Act 1997** stating that the horse is unsuitable for sale.
- (3) Despite subsection (1), the lien holder must not sell, exchange, dispose of, or destroy a horse if the owner becomes entitled to recover possession of the horse after the 28 day period referred to in subsection (1).

24F Default notice

S. 24F
inserted by
No. 69/2004
s. 45.

- (1) For the purposes of this Part, a default notice is a notice—
 - (a) that states that the owner of a horse is in default under an agistment agreement and gives details of that default, including how the amount of any money owing as a result of the default was calculated; and

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Part 3A—Lien Over, and Retention and Sale of, Agisted Horses

s. 24F

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- (b) that informs the owner that the person issuing the notice holds a lien over the horse under this Part, and may retain possession of the horse until the lien is extinguished; and
 - (c) that informs the owner how the owner may recover possession of the horse under this Part, including details of—
 - (i) the amount payable under section 24D(a); and
 - (ii) the rate of any agistment fees payable under section 24D(b) and a description of any other fees that are payable under that section; and
 - (iii) how the owner may obtain details of how much is payable in respect of the amounts referred to in sections 24D(b) and 24D(c) if the owner has not recovered the right to possession of the horse within 28 days after the service of the notice; and
 - (d) that informs the owner that the person may sell, exchange, dispose of, or destroy the horse after 28 days after the day that the notice is served if the owner has not recovered possession of the horse within that 28 day period under section 24D; and
 - (e) that specifies when the notice is taken to be served under subsection (4); and
 - (f) that specifies the date of issue of the notice.
- (2) A default notice must be served on the owner of the horse either in person or by registered post addressed to the owner at the owner's last known address.
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- (3) If the owner's address is not known, it is sufficient compliance with subsection (2) for the lien holder to cause to be published in the public notices section of a daily newspaper circulating generally in Victoria a notice in the following form—

"Attention: [*name of owner*]. Agistment fees are owed for the horse left at [*general location of the property at which the horse is being agisted*] by you. Part 3A of the Impounding of Livestock Act 1994 now applies. For details contact: [*contact details of person issuing the default notice*]."

- (4) A notice under this section is to be taken to be served—
- (a) if served in person, on it being given to the owner; or
 - (b) if served by registered post, on the day after the day that the notice is posted; or
 - (c) if subsection (3) applies, on the day the newspaper containing the notice is published.

24G When lien is created

A lien is created—

- (a) if the default notice is served in person, on the notice being served;
- (b) in any other case, on the day the notice is served.

S. 24G
inserted by
No. 69/2004
s. 45.

24H Sale of unclaimed horse by lien holder

- (1) If a person holding a lien sells the horse that is the subject of the lien, the person may retain from the proceeds of the sale the amounts specified in sections 24D(a), 24D(b) and 24D(c).
- (2) The person must pay any remaining proceeds of the sale to the owner of the horse or, if the owner cannot be found, to the Consolidated Fund.

S. 24H
inserted by
No. 69/2004
s. 45.

s. 24I

- (3) If the sale of the horse does not realise the full amount owing to the person, the person may sue the owner of the horse for the remaining amount.
- (4) The person must keep all records of the sale for 2 years.
- (5) A person holding a lien must not buy a horse that the person has offered for sale under this Part.

S. 24I
inserted by
No. 69/2004
s. 45.

24I Passing of property on sale of horse

Property in a horse that is sold, exchanged or disposed of under this Part passes to the person who receives the horse unless—

- (a) the sale, exchange or disposal was not conducted at arm's length; or
- (b) the person is aware that the lien holder has not complied with any of the provisions of this Part in selling, exchanging or disposing of the horse.

S. 24J
inserted by
No. 69/2004
s. 45.

24J Offence to remove or retain custody of horse subject to lien

- (1) A person must not—
 - (a) remove a horse from a person who holds a lien over that horse; or
 - (b) retain custody or possession of a horse over which a lien is held—
without the consent of the lien holder.
Penalty: 10 penalty units.
- (2) It is a defence to a charge under subsection (1)—
 - (a) if the default notice creating the lien was served on the owner of the horse by post and the horse was removed or retained before the owner received the notice;

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s. 24J

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- (b) if the lien was created by publishing the required notice in a newspaper and the horse was removed or retained before the owner became aware, or reasonably should have become aware, that the lien existed.
- (3) Despite subsection (1), the owner of a horse that has been left in the possession of another person without the owner's consent may recover that animal.
- (4) Subject to subsection (3), a lien continues to exist even though the lien holder allows the horse to be taken temporarily out of his or her custody or possession.
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Pt 4 (Heading)
amended by
No. 65/2007
s. 68.

PART 4—OFFENCES RELATING TO LIVESTOCK

25 Offences relating to livestock

A person must not—

- (a) retrieve or attempt to retrieve livestock in the possession of an authorised person;
- (b) remove or attempt to remove livestock from a pound;
- (c) interfere with impounded livestock;
- (d) damage or attempt to damage a pound;
- (e) impound livestock unless he or she is an authorised person;
- (f) when driving or assisting in the driving of livestock—
 - (i) refuse to state the name and address of the owner of the livestock; or
 - (ii) give a false name and address of the owner of the livestock—

when requested to do so by a member of the police force or a person on whose land the livestock are being driven;

- (g) drive livestock from a person's land without proper authority;
- (h) wilfully permit or cause livestock to trespass.

Penalty: 20 penalty units.

S. 25A
inserted by
No. 65/2007
s. 69.

25A Offence if livestock trespass after service of notice under section 16A

If livestock are found trespassing after a notice has been served on the owner of that livestock under section 16A, the owner is guilty of an offence and liable to a penalty of not more than 20 penalty units.

25B Offence if non-compliance with notice served under section 16B

S. 25B
inserted by
No. 65/2007
s. 69.

An owner of livestock who has been served with a notice under section 16B must comply with the notice.

Penalty: 50 penalty units.

Pt 5 (Heading)
substituted by
No. 65/2007
s. 70.

**PART 5—COURT PROCEEDINGS CONCERNING
IMPOUNDED LIVESTOCK**

S. 26
amended by
No. 65/2007
s. 71.

26 Proceedings in the Magistrates' Court

The owner of livestock impounded under this Act may bring proceedings against the relevant council in the Magistrates' Court to determine whether or not—

- (a) the impounding of the livestock was in contravention of this Act;
- (b) the charge required to be paid for the release of the livestock—
 - (i) is not authorised by this Act; or
 - (ii) has been incorrectly calculated; or
 - (iii) is unreasonable.

27 Notice of intention to bring proceedings

- (1) The owner of livestock who intends to bring proceedings under section 26 must give notice in writing to the council of his or her intention within 2 days of receiving notification of the impounding of the livestock.
- (2) The owner of livestock must commence the proceedings within 7 days from the date that he or she notified the council in writing of his or her intention to bring the proceedings under section 26.
- (3) Despite subsection (1) or (2), if the owner of livestock—
 - (a) did not receive notice of the impounding of the livestock; or

- (b) has not complied with subsections (1) or (2)—

the Magistrates' Court may, on the application of the owner of livestock, grant the application for an extension of time to enable proceedings under section 26 to be commenced within such time period as the Magistrates' Court determines.

28 Holding of impounded livestock

- (1) If a council receives notification under section 27(1), the council must not sell or otherwise dispose of the impounded livestock until—
 - (a) the time limit specified under section 27(2) has expired; or
 - (b) the proceedings have been determined or withdrawn.
- (2) Despite subsection (1), livestock may be destroyed if the circumstances set out in section 22(1) apply.
- (3) A council may release impounded livestock to the owner pending the determination of the proceedings without affecting the council's right to recover costs and charges from the owner of the livestock.

29 Orders court may make

- (1) If the Magistrates' Court determines that the impounding was in accordance with this Act, the owner of the livestock is liable for all costs incurred by the council in impounding the livestock until the date of the determination or the date of the release of the livestock under section 28(3).

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Part 5—Court Proceedings Concerning Impounded Livestock

s. 29

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- (2) If the Magistrates' Court determines that the impounding was in contravention of this Act, the council must release the impounded livestock free of all charges imposed under the Act and convey the livestock to the owner at the council's expense.
 - (3) If the Magistrates' Court determines that the charges are unreasonable, the Court may determine such charges as it considers reasonable.
 - (4) The Magistrates' Court may make an order against the council for damages suffered by the owner of livestock in consequence of his or her livestock having been impounded in contravention of this Act.
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PART 5A—GENERAL AND ENFORCEMENT

Pt 5A
(Heading)
inserted by
No. 65/2007
s. 72.

Division 1—General

Pt 5A Div. 1
(Heading)
inserted by
No. 65/2007
s. 72.

30 Recovery of outstanding charges owing to council

- (1) If the proceeds of sale of impounded livestock under section 18 are insufficient to discharge any amount owing to a council for the impounding of livestock, the council may recover the outstanding amount from the owner of the livestock as a civil debt recoverable summarily in a court of competent jurisdiction.
- (2) A council must apply a sum recovered under subsection (1) in accordance with section 20.

31 Recovery of outstanding charges owing to persons other than a council

If the proceeds of sale of impounded livestock under section 18 are insufficient to discharge any amount owing to an owner or occupier of land, an authorised officer or an officer of the Roads Corporation for the impounding of livestock, that person may recover the outstanding amount from the owner of the livestock as a civil debt recoverable summarily in a court of competent jurisdiction.

32 Compensation under the Conservation, Forests and Lands Act 1987

This Act is in addition to and not in derogation of the provisions of the **Conservation, Forests and Lands Act 1987** relating to the right of the Crown to seek compensation under that Act.

33 Application of money recovered under this Act

(1) In this section *money* means—

(a) a fine recovered where proceedings are brought under this Act; or

(b) a charge paid under this Act.

(2) Subject to sections 20 and 30—

(a) money received by or on behalf of a council is to be paid to that council; and

(b) money received by or on behalf of the Crown is to be paid into the Consolidated Fund.

S. 33(1)(a)
amended by
No. 65/2007
s. 73.

S. 33(2)(b)
amended by
No. 74/2000
s. 3(Sch. 1
item 62).

33A Power to file charge-sheets under this Act

A charge-sheet charging an offence under this Act or under the regulations may only be filed by—

(a) an authorised officer of a council (but only in respect of an alleged offence committed in the municipal district of the council of which that person is an officer); or

(b) an authorised officer.

S. 33A
(Heading)
amended by
No. 68/2009
s. 97(Sch.
item 68.1).

S. 33A
inserted by
No. 65/2007
s. 74,
amended by
No. 68/2009
s. 97(Sch.
item 68.2).

Division 2—Infringement notices

33B Power to serve infringement notices

(1) An authorised officer of a council may serve an infringement notice on a person who the authorised officer has reason to believe has committed an offence against section 25(e), 25(g), 25A or 25B.

Pt 5A Div. 2
(Heading and
ss 33B–33D)
inserted by
No. 65/2007
s. 75.

S. 33B
inserted by
No. 65/2007
s. 75.

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- (2) An authorised officer of a council may serve an infringement notice on a person who the authorised officer has reason to believe has committed an offence against the regulations if the offence is prescribed in the regulations for the purposes of this Division.

33C Infringement offence

An offence referred to in section 33B for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

S. 33C
inserted by
No. 65/2007
s. 75.

33D Infringement penalty

The infringement penalty for an infringement offence under this Division is the penalty—

- (a) which is prescribed by the regulations as the infringement penalty for that offence for the purposes of this Division; and
 - (b) which must not exceed 5 penalty units or the penalty for that offence.
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S. 33D
inserted by
No. 65/2007
s. 75.

PART 6—REGULATIONS

S. 34
substituted by
No. 65/2007
s. 76.

34 Regulations

S. 34(1)(a)
amended by
No. 35/2009
s. 120.

- (1) The Governor in Council may make regulations for or with respect to—
- (a) prescribing charges relating to the impounding of livestock in areas outside a municipal district; and
 - (b) prescribing infringement offences for the purposes of Division 2 of Part 5A; and
 - (c) prescribing, for the purposes of Division 2 of Part 5A, infringement penalties not exceeding 5 penalty units for infringement offences; and
 - (d) forms for the purposes of this Act; and
 - (e) fees for the purposes of this Act; and
 - (f) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Regulations made under this Act—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may leave any matter to be approved or determined by the Minister or the Secretary; and
 - (d) may be made so as to apply, adopt or incorporate any matter contained in any code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—

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Part 6—Regulations

s. 34

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- (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as amended from time to time; and
- (e) may impose penalties not exceeding 20 penalty units for contravention of the regulations.

*	*	*	*	*	Pt 7 (Heading) repealed by No. 28/2007 s. 3(Sch. item 31).
*	*	*	*	*	Ss 35–42 repealed by No. 11/2002 s. 3(Sch. 1 item 35).
					S. 43 repealed by No. 28/2007 s. 3(Sch. item 31).

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 10 November 1994

Legislative Council: 5 October 1994

The long title for the Bill for this Act was "A Bill to provide for and regulate the impounding of livestock, to repeal the **Pounds Act 1958**, to amend the **Crown Land (Reserves) Act 1978**, the **Forests Act 1958**, the **Land Act 1958**, the **National Parks Act 1975** and the **Wildlife Act 1975** and for other purposes."

The **Impounding of Livestock Act 1994** was assented to on 6 December 1994 and came into operation on 6 December 1994: section 2

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Impounding of Livestock Act 1994** by Acts and subordinate instruments.

Livestock Disease Control Act 1994, No. 115/1994 (as amended by No. 73/1996)

Assent Date: 20.12.94
Commencement Date: S. 142 (Sch. 2 items 4.1–4.3) on 20.12.95: s. 2(3)
Current State: This information relates only to the provisions amending the **Impounding of Livestock Act 1994**

Road Safety (Amendment) Act 1996, No. 37/1996

Assent Date: 6.11.96
Commencement Date: S. 12 on 21.11.96: Government Gazette 21.11.96 p. 2971
Current State: This information relates only to the provisions amending the **Impounding of Livestock Act 1994**

Melbourne City Link (Amendment) Act 1998, No. 102/1998

Assent Date: 1.12.98
Commencement Date: Ss 42, 43 on 1.12.98: s. 2(1)
Current State: This information relates only to the provisions amending the **Impounding of Livestock Act 1994**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 62) on 22.11.00: s. 2(1)
Current State: This information relates only to the provisions amending the **Impounding of Livestock Act 1994**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 35) on 24.4.02: s. 2(1)
Current State: This information relates only to the provisions amending the **Impounding of Livestock Act 1994**

Road Management Act 2004, No. 12/2004

Assent Date: 11.5.04
Commencement Date: S. 159 on 1.7.04: s. 2(2)
Current State: This information relates only to the provisions amending the **Impounding of Livestock Act 1994**

Primary Industries Legislation (Further Miscellaneous Amendments) Act 2004, No. 69/2004

Assent Date: 19.10.04
Commencement Date: Ss 44, 45 on 20.10.04: s. 2(1)
Current State: This information relates only to the provisions amending the **Impounding of Livestock Act 1994**

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Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 31) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Impounding of Livestock Act 1994**

Animals Legislation Amendment (Animal Care) Act 2007, No. 65/2007

Assent Date: 11.12.07
Commencement Date: Ss 45–76 on 12.12.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Impounding of Livestock Act 1994**

Unclaimed Money Act 2008, No. 44/2008

Assent Date: 26.8.08
Commencement Date: S. 111 on 1.1.09: s. 2(2)
Current State: This information relates only to the provision/s amending the **Impounding of Livestock Act 1994**

Primary Industries Legislation Amendment Act 2009, No. 35/2009

Assent Date: 30.6.09
Commencement Date: S. 120 on 1.7.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Impounding of Livestock Act 1994**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 68) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Impounding of Livestock Act 1994**

3. Explanatory Details

No entries at date of publication.