

# PREVENTION OF CRUELTY TO ANIMALS ORDINANCE 1935.\*

## An Ordinance relating to the Prevention of Cruelty to Animals.

**Short title.**        1. This Ordinance may be cited as the *Prevention of Cruelty to Animals Ordinance 1935*.\*

**Repeal.**            2. "The Prevention of Cruelty to Animals Act, 1908" (No. 956 of 1908) and "The Prevention of Cruelty to Animals Act Amendment Act, 1909" (No. 997 of 1909) of the State of South Australia, in their application to the Territory, are repealed.

**Definitions.**       3. In this Ordinance, ~~unless~~ the contrary intention appears—

    "animal" means and includes every species of quadruped and every species of bird, whether in a natural or domestic state, and all other animals dependent upon man for their care or sustenance or in a state of captivity;

    "ill-treat" includes—

        (a) cruelly wound, mutilate, overdrive, override, overwork, abuse, worry, torment or torture;

        (b) knowingly overload or overcrowd; or

        (c) unreasonably, wantonly or maliciously neglect or beat;

    "information" includes complaint;

    "Justice" means a Justice of the Peace for the Territory;

    "member of the Police Force" means any member of the Police Force of the Territory, and includes an inspector appointed in pursuance of section fifteen of this Ordinance.

    "owner", used with reference to an animal, includes not only the owner, but also the hirer or borrower or other person for the time entitled to the possession of the animal, and also any manager, overseer, foreman, agent or other representative of the owner, with whose orders the driver or other person in charge of the animal is bound to comply;

    "the Court" means the Special Magistrate or Justices hearing the complaint;

    "vehicle" includes every description of cart, wagon, truck, barrow, carriage or other conveyance.

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\* No. 18, 1935; notified in *Commonwealth Gazette* and commenced on 5th September, 1935.

4.—(1.) Any person who—

Ill-treating  
animals.

- (a) ill-treats, or causes or procures to be ill-treated, or causes unnecessary pain to any animal;
- (b) wantonly or negligently fails to supply any animal with proper and sufficient food or water, or in the case of animals other than those running at large or on a journey, with shelter;
- (c) keeps, uses or acts in the management of any place for the purpose of fighting or baiting any animal, or permits or suffers any place to be so used;
- (d) receives money for the admission of any other person to any place kept or used for the purpose of fighting or baiting any animal;
- (e) incites any animal to fight, or baits any animal, or encourages, aids or assists at the fighting or baiting of any animal;
- (f) conveys, carries or packs, or causes to be conveyed, carried or packed, whether in or upon any vehicle or not, any animal in such a manner or position as to subject the animal to unnecessary pain or suffering;
- (g) slaughters, or causes to be slaughtered, any animal in such a manner as to subject the animal to unnecessary pain or suffering;
- (h) knowingly or wantonly rides, drives, uses, conveys, carries or packs any animal which is unfit for such use or treatment or which is caused unnecessary pain by being ridden, driven, used, conveyed, carried or packed;
- (j) neglects, as the owner or person in charge, to exercise reasonably, or cause to be exercised, at least once a day, any dog habitually chained up;
- (k) conveys, carries or packs, or causes to be conveyed, carried or packed, any poultry in any coop or receptacle together with any other poultry which is of different species; or
- (l) connives with another in doing any of the above acts,

shall be guilty of an offence.

Penalty: Twenty-five pounds or imprisonment for six months.

(2.) Any person who docks or causes or procures to be docked the tail of any horse in such a manner as to leave less than thirteen joints in the tail shall be deemed to be guilty of an offence against paragraph (a) of the last preceding sub-section.

(3.) An additional penalty of Five pounds may, on conviction, be imposed for every day on which an offence committed under paragraph (c) or paragraph (d) of sub-section (1.) of this section is continued.

(4.) Any person who, by ill-treating or causing unnecessary pain to any animal or inciting any animal to fight, does damage or injury to the animal, or thereby causes damage or injury to be done to any person or property, shall, upon his conviction therefor, in addition to the prescribed penalty, pay to the owner of the animal (if the offender is not the owner thereof) or to the person who sustains damage or injury, such sum of money by way of compensation, not exceeding the sum of Twenty pounds, as is ascertained and determined by the Court convicting the person charged with the offence:

Provided that nothing in this sub-section shall take away any other remedy of the owner or any other person in respect of the damage or remedy.

(5.) Nothing in this Ordinance shall render unlawful the slaughtering of any animal in any manner which is necessary to comply with the requirements of the Jewish or other religion.

Dehorning  
cattle.

5. The dehorning of cattle, where the operation is performed with a minimum of suffering to the animal operated upon, shall not be deemed an offence under this Ordinance.

Penalty for  
using or  
employing  
animal  
condemned to  
be slaughtered.

6. Any person keeping, using or having the management of any place for the purpose of slaughtering any diseased, maimed or worn out animals (not intended for butchers' meat) who uses or employs, or causes or permits to be used or employed, any such animal brought to, or delivered at, or which is in or upon, the place for the purpose of being slaughtered, or permits or suffers any such animal to leave that place to be employed in any manner of work, shall be guilty of an offence.

Penalty: Forty shillings for every day on which the animal is so used or employed or is absent from the place.

Power to  
prohibit use of  
animal unfit  
for work.

7.—(1.) If any member of the Police Force is of opinion that any animal is unfit to be used in work or labour or in work or labour of any particular kind, he may, by notice signed by him and indorsed by a Justice and delivered to any person, direct that the animal is not to be used in work or labour, or in work or labour of the kind specified in the notice, for any time stated therein, not exceeding three weeks.

(2.) At the expiration of the time specified in any notice under the last preceding sub-section, or of the time specified in any notice under this sub-section, any member of the Police Force, if he is of opinion that the animal is unfit to be used in work or labour or in work or labour of the kind specified in the notice, may, by notice signed by him and indorsed by a Justice

and delivered to any person, direct that the animal is not to be used in work or labour, or in work or labour of the kind specified in the last-mentioned notice, for any further time stated therein, not exceeding three weeks.

(3.) If the person to whom any notice under sub-section (1.) or sub-section (2.) of this section is delivered, or any person who has notice thereof, uses the animal or permits it to be used in any work or labour, or in work or labour of the kind specified in the notice (as the case may be) during the time specified in the notice, he shall be liable, upon conviction before a Special Magistrate or two Justices (other than the Justice who signed the notice), to a penalty not exceeding Five pounds.

(4.) Upon complaint in writing made to any Justice by any person who alleges in the complaint that he is injured by the operation of any notice under sub-section (1.) or sub-section (2.) of this section, and that the animal is not unfit to be used as specified in the notice, the Justice shall issue his summons calling upon the member of the Police Force who signed the notice to appear, at a time and place therein named, and show cause why the notice should not be annulled. At the time and place so named the complaint may be heard by any Special Magistrate or two Justices, who may in their discretion annul, vary, confirm or extend (as to time or kinds of work or labour) the operation of the notice, but shall not, unless satisfied that the notice was delivered frivolously or maliciously, give any costs against the member of the Police Force signing the notice.

8.—(1.) The owner of any animal in respect of which an offence has been committed against paragraph (h) of sub-section (1.) of section four of this Ordinance or against section seven of this Ordinance shall in every case be deemed in the first instance to have committed the offence, and shall be liable to pay the penalty therefor; but an owner who has been proceeded against for an offence shall be entitled, upon complaint duly laid by him, to have any driver or other employee who was, at the time when the offence is alleged to have been committed, in charge of the animal, brought before the Court at the time appointed for hearing the charge made against the owner.

Owner of ill-treated animal liable in the first instance in certain cases.

(2.) If, after the commission of the offence has been proved, the owner proves to the satisfaction of the Court—

(a) that he used due diligence to prevent the offence;  
and

(b) that the driver or other employee committed the act complained of without the knowledge, consent or connivance of the owner,

the driver or other employee shall be convicted of the offence and pay the penalty or undergo the imprisonment, instead of the owner.

Actual offender  
may be  
proceeded  
against in  
certain cases.

**9.** When it appears to any person at any time before laying a complaint in respect of an offence against the provisions of paragraph (h) of sub-section (1.) of section four of this Ordinance or of section seven of this Ordinance—

- (a) that the owner of the animal concerned had used due diligence to prevent offences against the provisions of this Ordinance in breach whereof the offence is committed;
- (b) that the actual offence was committed by a person other than the owner; and
- (c) that the offence was committed without the personal knowledge, consent or connivance of the owner, and in contravention of his orders,

then the first-mentioned person may proceed against the person whom he believes to be the actual offender in the first instance, without first proceeding against the owner.

When owners  
are not liable.

**10.—(1.)** A person shall not be liable for an offence against the provisions of paragraph (h) of sub-section (1.) of section four of this Ordinance or of section seven of this Ordinance as the owner of an animal, unless the animal is worked or used—

- (a) by him personally;
  - (b) by a driver or other person in his employ;
  - (c) by some other person under his orders or directions;
- or
- (d) in some manner for his benefit or profit.

(2.) Nothing contained in this section shall exempt any corporate body from any liability under this Ordinance by reason only of the fact that any animal of which the corporate body is the owner, and with respect to which any offence mentioned in this section is charged, is worked or used under the orders or directions of a director, secretary, manager or other person elected or employed by the corporate body.

Member of the  
Police Force  
may inspect  
saleyards, &c.

**11.—(1.)** Any member of the Police Force or any inspector appointed by the Administrator under section fifteen of this Ordinance may enter at any time into the saleyard or place where animals are usually sold or kept for the purposes of sale, and may inspect any animal found therein, and the accommodation for such animals.

(2.) Any person hindering a member of the Police Force or inspector from so entering and inspecting shall be guilty of an offence.

Penalty: Ten pounds.

Apprehension.

**12.—(1.)** Any member of the Police Force may, upon his own view of the commission of an offence under this Ordinance, or upon the complaint of any other person who declares that he

has seen an offence under this Ordinance committed, and gives his name and place of abode to the member of the Police Force, lay an information against the offender for the purpose of the offender being dealt with according to law.

(2.) Any Justice may, without previously issuing any summons, forthwith issue his warrant for the apprehension of any person charged with any offence under this Ordinance whenever good grounds for so doing shall be stated on oath before the Justice.

13. Any complaint in respect of an offence against this Ordinance shall be laid or made within one month after the cause of offence or complaint arose.

Limitation of time within which information or complaint laid or made.

14.—(1.) Whenever a member of the Police Force arrests any person having charge of any vehicle or animal or both for an offence against the provisions of this Ordinance, he may take charge of the vehicle or animal or both, and any saddle and harness on or attached to the animal or vehicle, and deposit the same in some place of safe custody as security for payment of any penalty to which the person, or the owner of the vehicle or animal, may become liable, and the expenses which have been or may be necessarily incurred for taking charge of and keeping the same.

Vehicles, animals, &c., may be detained.

(2.) The Special Magistrate or Justices who hear the case may, in default of payment, order the vehicle, animal, saddle or harness, or any or all of them, to be sold for the purpose of satisfying the penalty and reasonable expenses in like manner as if the vehicle, animal, saddle and harness had been subject to be distrained, and had been distrained upon for the payment of the penalty and expenses.

15. The Administrator may, in writing, appoint any officer of the Public Service or any officer, agent or servant of any society for the prevention of cruelty to animals to be an inspector to act for such time and within such limits as are appointed, and any such inspector shall, during such time and within such limits, have, exercise and enjoy all the powers, authorities, advantages and immunities, and be liable to all the duties and responsibilities, of a member of the Police Force of the Territory.

Inspectors may be appointed.

16.—(1.) If it is made to appear to any Justice by personal inspection, or by the testimony of a competent witness, that any animal impounded in any pound or found elsewhere is in such a weak, disabled or diseased state that it ought to be killed, it shall be lawful for him, by notice in writing, to order that the animal shall be forthwith killed; and that order shall be

Killing of animals.

sufficient authority to the poundkeeper or owner of the animal, or any other person authorized by the Justice, to kill the animal, and no compensation whatever shall be recoverable in respect of the killing.

(2.) Whenever, in the opinion of a member of the Police Force, any animal is so weak, disabled or diseased, or as the result of an accident, or from any other cause, sustains such injury that its recovery is impossible, the member of the Police Force may, with the consent of the owner of the animal, or, if the owner is not in the immediate vicinity of the animal, without his consent, immediately kill the animal. If the owner is in the immediate vicinity of the animal and refuses to consent to the killing of the animal, the member of the Police Force may, nevertheless, upon an order of a Justice, kill the animal. No compensation shall be recoverable against any Justice or member of the Police Force in respect of the killing of any animal pursuant to this sub-section.

Inspection of  
premises.

17. Whenever it is by the oath of any credible person made to appear to the satisfaction of a Special Magistrate or a Justice that an offence against this Ordinance has been, or is being, or is about to be committed on or in any premises, the Magistrate or Justice may, by writing under his hand, authorize a member of the Police Force named therein to enter upon or into the premises and inspect any animal confined or kept there.

Obstructing  
member of the  
Police Force.

18. Any person who, at any time or in any manner, unlawfully obstructs, hinders, molests or assaults any member of the Police Force while in the exercise of any power or authority under or by virtue of this Ordinance shall be guilty of an offence.

Penalty: Ten pounds.

Proprietors of  
vehicles to be  
summoned to  
produce their  
employees.

19.—(1.) Whenever a complaint is laid against the driver or other person in charge of any vehicle, whether licensed or otherwise, for any offence against this Ordinance, the Special Magistrate or Justices before whom the complaint is laid may forthwith summon the proprietor or owner of the carriage or vehicle to produce before him the driver or other employee by whom the offence was committed, or is alleged to have been committed, to answer the complaint.

(2.) If the proprietor or owner, after being duly summoned, fails without reasonable excuse to produce the driver or other employee, the Special Magistrate or Justices before whom the driver or other employee is required to be produced may proceed, in the absence of the driver or other employee, to hear and

determine the case in the same manner as if he had been produced, and to adjudge payment by the proprietor or owner of any penalty or sum of money and costs ordered to be paid by the driver or other employee on conviction.

(3.) Any sum of money so paid by the proprietor or owner may, upon proof of payment thereof, and of the driver or other employee refusing or neglecting to be produced pursuant to the order of the Special Magistrate or Justices, be recovered in a summary way from the driver or other employee through whose default the sum has been paid, in the same manner as a penalty.

(4.) The Special Magistrate or Justices may, if the proprietor or owner fails to produce his driver or other employee without reasonable excuse, impose a penalty of Forty shillings upon the proprietor or owner, and may also direct a further summons to issue against him under sub-section (1.) of this section, whereupon the same consequences shall follow as upon the first summons so issued, including power upon the hearing of each successive summons to issue a further summons, until the driver or other employee is produced.

**20.—**(1.) If any animal is at any time impounded, or confined in any yard, pound, pen, cage, hutch or receptacle of the like nature, or deprived of its liberty, and continues impounded, confined or restrained without fit and sufficient food and water for more than twenty-four consecutive hours, any person may enter into and upon any yard or other premises, or any pound, or other receptacle of a like nature in which the animal is so confined, and supply the animal with fit and sufficient food and water during so long a time as it remains and continues so impounded, confined or restrained, without being liable to any action of trespass or other proceeding by any other person for or by reason of his entry for that purpose. The reasonable cost of the food and water shall be paid by the owner of the animal to the person who has supplied the same, and the cost thereof may be recovered by complaint before a Special Magistrate or two Justices.

Power to  
provide food  
to neglected  
animals.

(2.) Nothing in this section shall apply to animals carried in railway trucks.

**21.—**(1.) Except as hereinafter provided, nothing contained in this Ordinance shall apply to any act done in any of the following cases:—

Exemptions.

- (a) In the extermination of rabbits, marsupials, wild dogs, foxes or vermin;
- (b) In the extermination or destruction of any animal under the authority of any laws for the time being in force in the Territory;

- (c) In the hunting, snaring, trapping, shooting or capturing of any animal not in a domestic state;
- (d) In any experiment or vivisection performed upon any animal by any legally qualified medical practitioner or veterinary practitioner, or any officer authorized by the Administrator, for the purposes of scientific investigation; or
- (e) In any operation of the nature of an inoculation or of a feeding experiment.

(2.) Nothing contained in the last preceding sub-section shall apply in any case where an animal is ill-treated, or pain is unnecessarily caused to any animal, by any person.

Power for Court to deprive person convicted under Ordinance of ownership of animal.

**22.** If the owner of any animal is convicted of an offence against this Ordinance in respect of the animal, the Court, upon his conviction thereof, may, if the Court thinks fit, in addition to any other punishment, deprive him of the ownership of the animal, and make such order as to the disposal of the animal as the Court thinks fit:

Provided that no order shall be made under this section unless it is shown by evidence as to a previous conviction, or as to the character of the owner or otherwise, that the animal, if left with the owner, is likely to be exposed to cruelty.

Sale and purchase of decrepit animals.

**23.—(1.)** An auctioneer or other person who sells or offers for sale, and any person who buys or attempts knowingly to buy, except for the purpose of slaughter, any horse, mule, donkey or other draught animal which is so old, or permanently diseased, or permanently disabled, that it is unfit for work, shall be guilty of an offence.

Penalty: Five pounds.

(2.) The production of a certificate from the buyer of any such animal, given at the time of sale to the auctioneer or vendor, that the animal is being purchased for immediate slaughter shall be a defence to the prosecution of an auctioneer or other person under this section.

Ordinance not to apply to hunting or coursing of hares.

**24.** Nothing contained in this Ordinance shall apply to, or make unlawful, the hunting or coursing of hares which have not been liberated in a mutilated or injured state in order to facilitate their capture or destruction.

Regulations.

**25.** The Administrator may make regulations, not inconsistent with this Ordinance, prescribing all matters which are, by this Ordinance, required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance.