



Western Australia

Highways (Liability for Straying Animals) Act 1983

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Highways (Liability for Straying Animals) Act 1983

Contents

1.	Short title	1
2.	Interpretation	1
3.	Liability in tort for damage caused by animals straying on to highways	1
	Notes	
	Compilation table	4

Highways (Liability for Straying Animals) Act 1983

An Act to clarify and amend the law relating to liability in tort for damage caused by animals straying on to highways.

1. Short title

This Act may be cited as the *Highways (Liability for Straying Animals) Act 1983*¹.

2. Interpretation

In this Act, unless the contrary intention appears —

damage includes —

- (a) the death of a person; and
- (b) injury to a person, including disease and impairment of mental or physical condition suffered by the person.

3. Liability in tort for damage caused by animals straying on to highways

- (1) Subject to subsection (2), so much of the rules of the common law relating to liability in tort for negligence as excludes or restricts the duty which a person might owe to others to take such care as is reasonable to see that damage is not caused by animals straying on to a highway does not form part, and shall be deemed never to have formed part, of the law of Western Australia.
- (2) Subsection (1) has no operation in relation to —

- (a) any action in respect of which a court has given judgment before the coming into operation of this Act; or
 - (b) any appeal relating to the matters which were in issue in the action referred to in paragraph (a).
- (3) A court shall determine the liability in tort of a person for damage caused by animals straying on to a highway solely according to the law of Western Australia relating to liability in tort for —
- (a) negligence; or
 - (b) intentional acts or omissions.
- (4) In determining according to the law of Western Australia relating to liability in tort for negligence whether or not a person is liable for damage caused by animals straying on to a particular highway, a court may consider, among other matters —
- (a) the general nature of the locality in which the relevant part of that highway is situated (in this subsection called ***the locality***);
 - (b) the nature and amount of traffic using that highway;
 - (c) the extent to which users of that highway would expect to encounter animals on that highway and could be expected to guard against the risk associated with their presence;
 - (d) the common practice in the locality in relation to —
 - (i) fencing and the taking of other measures to prevent animals from straying on to highways in that locality; and
 - (ii) the taking of measures to warn users of that highway of the likely presence of animals thereon;
- and

- (e) the cost of fencing, or of the taking of measures, referred to in paragraph (d) or of both, as the case requires.
- (5) There shall not be recoverable by way of damages in respect of any one cause of action in tort for negligence arising out of damage caused by animals straying on to a highway an amount exceeding \$500 000.

Notes

- ¹ This is a compilation of the *Highways (Liability for Straying Animals) Act 1983*. The following table contains information about that Act.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Highways (Liability for Straying Animals) Act 1983</i>	17 of 1983	17 Nov 1983	17 Nov 1983

Reprint of the *Highways (Liability for Straying Animals) Act 1983* as at 11 Oct 2002

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
damage	2
the locality	3(4)