



Western Australia

Highways (Liability for Straying Animals) Act 1983

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Highways (Liability for Straying Animals) Act 1983

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Defined terms

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 table also contains information about any reprint ^{1a}.

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 <i>Highways (Liability for Straying Animals) Act 1983</i> as at 11 Oct 2002			

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Highways (Liability for Straying Animals) Amendment Act 2016</i> s. 3-5 ²	30 of 2016	3 Oct 2016	To be proclaimed (see s. 2(b))

² On the date as at which this compilation was prepared, the *Highways (Liability for Straying Animals) Amendment Act 2016* s. 3-5 had not come into operation. They read as follows:

- 3. Act amended**
This Act amends the *Highways (Liability for Straying Animals) Act 1983*.
- 4. Section 3 amended**
Delete section 3(5).

5. Sections 4 and 5 inserted

After section 3 insert:

4. Maximum damages recoverable for damage caused by animals straying on to highways

- (1) The damages awarded in respect of any one cause of action in tort for negligence arising out of damage caused by animals straying on to a highway must not exceed the maximum damages amount prescribed by the regulations for the financial year in which the damages are assessed.
- (2) Regulations made for the purposes of subsection (1) may specify or provide for a method of calculating the maximum damages amount for a financial year.
- (3) On or before each 1 July, the Minister must publish a notice in the *Gazette* specifying the amount that is the maximum damages amount for the purposes of subsection (1) for the financial year that begins on that 1 July.
- (4) The notice under subsection (3) is for public information only and a failure to publish or a delay or error in publication does not affect the maximum damages amount for the financial year concerned.
- (5) For the purposes of the application of this section to the financial year that includes the day (***commencement day***) on which the *Highways (Liability for Straying Animals) Amendment Act 2016* section 5 comes into operation —
 - (a) a reference in subsections (1) to (4) to a financial year is to be read as a reference to the period that begins on commencement day and ends on the next 30 June; and
 - (b) a reference in subsection (3) to 1 July is to be read as a reference to commencement day.

5. Regulations

The Governor may make regulations prescribing matters —

- (a) required or permitted to be prescribed by this Act; or
- (b) necessary or convenient to be prescribed for giving effect to this Act.

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)