



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*<sup>1</sup>.

**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) *deleted*]

[Section 3 amended: No. 30 of 2016 s. 4.]

**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.

*[Section 4 inserted: No. 30 of 2016 s. 5.]*

**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.

*[Section 5 inserted: No. 30 of 2016 s. 5.]*



**Notes**

- <sup>1</sup> This is a compilation of the *Highways (Liability for Straying Animals) Act 1983*. The table also contains information about any reprint.

**Compilation table**

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Highways (Liability for Straying Animals) Act 1983</i>	17 of 1983	17 Nov 1983	17 Nov 1983
<b>Reprint of the <i>Highways (Liability for Straying Animals) Act 1983</i> as at 11 Oct 2002</b>			
<i>Highways (Liability for Straying Animals) Amendment Act 2016</i>	30 of 2016	3 Oct 2016	s. 1 and 2: 2 Dec 2016 (see s. 2(a)); Act other than s. 1 and 2: 3 Dec 2016 (see s. 2(b) and <i>Gazette</i> 2 Dec 2016 p. 5383)

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**Defined terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
commencement day .....	4(5)
damage .....	2
the locality .....	3(4)