

# HIGHWAYS (LIABILITY FOR STRAYING ANIMALS).

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No. 17 of 1983.

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

[Assented to 17 November 1983.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

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

2. In this Act, unless the contrary intention Interpreta-  
tion. 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.

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

3. (1) Subject to subsection (2) of this section, 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) of this section 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) of this subsection.

(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) of this subsection 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.