



**THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA**

Project No 11 – Part I

**Liability for Stock Straying
on to Highway**

REPORT

DECEMBER 1970

REPORT
ON
LIABILITY FOR STOCK STRAYING ON TO HIGHWAY

To: The HON. ARTHUR F. GRIFFITH, M.L.C.,
MINISTER FOR JUSTICE

TERMS OF REFERENCE

1. As Project No. 11 of its first programme the Committee was asked -

"to consider the law relating to liability for injury or damage occasioned by stock straying on to the highway and whether it is practical to effect reforms and if so, the extent of such reform".

WORKING PAPER

2. The Committee issued a working paper on 30 June 1970 and sent copies to the persons and organisations listed therein. A copy of the working paper is attached.

3. Comments were received from -

- The Country Party of W.A.;
- The Law Society of W.A.;
- The Country Shire Councils' Association of W.A.;
- The Local Government Association of W.A.; Bruce Rock Shire Council;
- Northampton Shire Council;
- Coolgardie Shire Council;
- The Royal Automobile Club of W.A.;
- The Fire and Accident Underwriters' Association of W.A.

(The Police Department also replied but confined itself to providing supplementary information).

4. With the exception of the Law Society, all agreed that statutory provisions should be enacted to the effect that liability for injury or damage caused by stock straying on to the highway should be determined in accordance with the principles of the law of negligence. Some referred to the suggestion in paragraph 25 of the working paper that the statute could include matters to which regard must be had in determining whether the occupier of the land had been negligent. Three commentators were in favour of doing so, and only one expressed disagreement.

5. The Law Society considered that any uncertainty in the law could be cured by the High Court.

DEVELOPMENTS SINCE ISSUE OF WORKING PAPER

Incidence of road accidents involving animals:

6. More precise figures than those given in the working paper about the frequency with which farm animals are involved in road accidents in Western Australia are now available. From a Main Roads Department report (reference – M.R.D. 24/69 - 2) it appears that from 1966 to 1968 seven per cent of single vehicle accidents on open country roads in this State involved farm animals (a yearly average of 120 such accidents). In the South West Division the proportion was 11 per cent – a yearly average of 50. Only six per cent of accidents of this type caused personal injury.

Developments in other jurisdictions:

7. The working paper refers to a bill introduced into the United Kingdom Parliament in November 1969 (paragraph 18). The bill was not enacted by the time Parliament was dissolved for the elections, but the new Government reintroduced the bill and it has now passed the second reading stage in the House of Lords.

8. The report of the New South Wales Law Reform Commission on civil liability for animals has now been presented to parliament (L.R.C.8). It includes a recommendation that the rule in *Searle v Wallbank* be abrogated.

9. The South Australian Law Reform Committee has also recommended a similar change (Seventh Report, 1969, paragraph 3).

10. Paragraph 9 of the working paper states that the New Zealand courts have treated *Searle v Wallbank* as authoritative. This can now be taken as confirmed by the decision of the New Zealand Court of Appeal in *Ross v McCarthy* [1970] N.Z.L.R. 449. Thus although it would certainly be conceded, as the Law Society suggests, that the High Court of Australia would resolve any uncertainty in the law of Western Australia, that court may take the same view as the New Zealand courts, and hold itself bound by the principles laid down in *Searle v Wallbank*.

RECOMMENDATION

11. The Committee is of the opinion that the rule in *Searle v Wallbank* should not apply in Western Australia and that the quickest, least expensive and only certain method of ensuring this is to enact appropriate legislation.

12. The majority of the Committee consider that the legislation should lay down matters to which the court should have regard, along the lines of the United Kingdom Animals Bill (see paragraph 19 of the working paper). This would assist the court (which may be a Local Court) to determine whether there has been a failure to take reasonable care, and would provide guidance in advance to keepers of animals of the standard of care expected of them.

13. One member however, is of the opinion that it is sufficient to abolish the rule leaving it to the courts to derive these considerations from the general law of negligence and to apply them in the given case.

14. A draft bill is attached. Subclause (2) may be omitted if the listing of matters to which the court must have regard is not required.

CHAIRMAN:

B.W. Rowland

MEMBER:

E.J. Edwards

MEMBER:

C. le B. Langoulant

8 December 1970