



LIABILITY FOR STRAYING STOCK ON ROADS

Pastoralists, particularly those whose properties adjoin highways, gazetted roads and streets have a legal responsibility for stock that stray onto these roadways.

In Western Australia there is legislation that makes it an offence for an owner to allow their cattle to stray into and be at large in a street or public place (*Local Government (Miscellaneous Provisions) Act 1960*, section 484). This Act also gives local government authorities the power to take possession of straying cattle and be reimbursed by the owner for the costs of looking after them. The owner may also be fined.

Highways (Liability for Straying Animals) Act 1983

Prior to 1983, the owner or occupier of land adjoining a highway owed no duty of care to users of a highway, such as motorists, to take reasonable measures to protect the users from damage, death or injury caused by straying stock.

Now however, under the *Highways (Liability for Straying Animals) Act 1983* (HLSA Act), liability for injury or damage to people or vehicles caused by stock straying onto a highway may rest with the owner of the stock. Liability for such incidents is to be determined by a court of law according to the laws of negligence, the laws governing intentional acts or omissions, and the circumstances of each case.

The HLSA Act sets out a number of things a court must consider in determining whether an owner or occupier of land adjacent to a highway has a duty of care to highway users and whether they have breached that duty of care. These things include:

- the general nature of the locality in which the relevant part of the highway is located;
- the type and amount of traffic using the highway;
- the extent to which users of that highway could expect to encounter animals on the highway and be expected to take steps to guard against the risk associated with their presence (i.e. the risk of injury or damage arising from animals straying onto the highway);
- the common practice in the locality in relation to:
 1. fencing and other measures taken to prevent stock from straying onto the highway; and
 2. the measures (e.g. signs) taken to warn users of the highway about the presence of stock thereon;
 3. the cost of fencing or of other measures referred to above.

To succeed in a negligence claim against an owner or occupier of land adjacent to a roadway for injury or damage caused by stock straying, a road user must establish that:

- the owner or occupier owed the highway user a duty to take reasonable care to prevent their stock straying onto the highway;
- the owner or occupier breached that duty by failing to take reasonable care;
- the owner or occupier's breach of duty caused the injury or damage suffered by the highway user; and
- the injury or damage suffered by the highway user was not too remote a consequence of the breach of the duty of care by the owner or occupier.



Local conditions and practices

Whether a duty of care exists will depend on local conditions and usual practices and customs in the locality.

For example, are signs erected by the highway authority warning highway users of the presence of stock and animals on the highway?

Do highway users in the locality reasonably expect to encounter straying stock and animals on the highway? Do they usually take measures to reduce the risk of colliding with the stock or animals (e.g. by not driving at night or only driving at night with powerful spotlights)?

It may be affordable for a pastoralist on a small lease to fence the part of their land that runs along a highway, whereas it may not be economically viable for a pastoralist on a large lease with hundreds of kilometres of land adjoining a highway to erect fencing.

If, historically, pastoral land along a highway has been fenced in a particular locality then it can be assumed that the pastoralist owes a duty of care to highway users in that area to maintain the fence to a standard sufficient to prevent their stock from straying onto the highway.

In addition to this, section 107(3) of the *Land Administration Act 1997* requires a lessee to maintain in good condition, and where necessary, replace or renew improvements to a lease, including fences. A failure to comply with section 107 may result in forfeiture of the lease. It may also constitute a breach of a lessee's duty of care to highway users if, as a result of a failure by a lessee to maintain fences, stock stray onto a highway and cause injury or damage.

If a pastoralist becomes aware that their stock are grazing on or near a highway they may have a duty of care towards highway users to move the stock to another part of their property where they are less likely to wander onto the highway.

In some cases a pastoralist may be liable for damage or injury caused by their stock straying onto a highway even though they do not have a duty of care to fence land along the highway. For example, if a pastoralist moves stock to an area of land next to a highway in preparation for road transport or as part of a muster and the stock stray onto the highway causing injury or damage to a highway user, then the pastoralist may be liable to the road user even though they were not under a duty to fence the land in that locality. In such a case liability arises as a result of the intentional action of the owner in bringing the stock onto or near the highway.

Pastoralists can protect themselves from the financial affects of a failure to take reasonable care to protect highway users from injury or damage caused by straying stock, by ensuring that they carry public liability insurance that indemnifies them against such liability.

The HLSA Act seeks to strike a balance between safeguarding users of highways on the one hand without imposing undue burdens on those engaged in pastoral pursuits.

NOTE:

The above is a general guide only and does not constitute legal advice. No responsibility is taken for the accuracy of the contents. Pastoralists and others should not rely on this information to ascertain their legal position in instances where potential liability for straying stock is concerned.