

## Liability for Stock Straying on to the Highway

### Terms of Reference

In 1978 the Commission was asked to consider and report on whether there should be any change to the law relating to liability for loss caused by stock straying on to the highway.<sup>1</sup>

### Background of Reference

At common law there was a rule that owners and occupiers of land owed no duty to road-users to take reasonable care to prevent their animals straying onto a highway (“the rule”). The rule dates back to medieval England when unfenced land made it difficult to control grazing stock and road-users were responsible for their own care.<sup>2</sup> In 1976, the Full Court of the Supreme Court of Western Australia decided that the rule had no place in the modern jurisprudence of Western Australia and that loss caused by animals straying onto a highway should be subject to the ordinary law of negligence.<sup>3</sup> However, subsequent decisions in other jurisdictions, in particular the decision of the High Court of Australia in *State Government Insurance Commission (SA) v Trigwell*<sup>4</sup> cast doubt upon the correctness of the Full Court decision.

### Nature and Extent of Consultation

The Commission issued a working paper on the subject in August 1980 proposing that the rule be legislatively abolished in Western Australia. The paper attracted comments from relevant government authorities, a senior judicial officer, representative associations, legal academics and a number of individuals. Only one commentator argued that the rule should apply in Western Australia in its traditional form. The Commission delivered its final report in June 1981.<sup>5</sup>

### Recommendations

After consideration of the issues and submissions received in response to the working paper, the Commission recommended that:

- the rule in *Searle v Wallbank* be abolished in Western Australia;
- liability for loss caused by an animal straying on to the highway be determined according to the law of negligence only;
- when determining liability for negligence the court should be entitled to consider factors specific to this issue;
- an upper limit of \$500 000 be placed on the amount of damages recoverable in respect of any one accident, with provision for this limit to be increased at regular intervals; and
- the existing law concerning contributory negligence and contribution between persons guilty of negligence apply to claims brought in respect of loss suffered as a result of an animal straying on to the highway.

### Legislative or Other Action Undertaken

With the exception of the recommendation dealing with the issue of contributory negligence, the *Highway (Liability For Straying Animals) Act 1983 (WA)* implemented the Commission's recommendations.

<sup>1</sup> This matter was originally referred to the Committee in 1969 and a report was produced in 1970. Due to developments in the case law on this subject, the matter was referred to the Commission again in 1978.

<sup>2</sup> Despite its arguable applicability to modern conditions, the rule was affirmed by the House of Lords in *Searle v Wallbank* [1947] AC 341.

<sup>3</sup> *Thomson v Nix* [1976] WAR 141.

<sup>4</sup> (1979) 142 CLR 617.

<sup>5</sup> Law Reform Commission of Western Australia, *Liability for Stock Straying onto the Highway*, Project No 11 (1981). The Commission essentially affirmed the recommendations in the Committee's 1970 report on the subject, however, it additionally recommended that the amount of damages recoverable by a successful claimant be limited.