

# Animals Act 1977 No 25

[1977-25]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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# Animals Act 1977 No 25



New South Wales

An Act relating to liability for damage caused by animals; and other matters.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Animals Act 1977*.

### 2 (Repealed)

### 3 Act binds the Crown

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

## Part 2 Abolition of certain matters

### 4 Cattle-trespass

- (1) The tort of cattle-trespass is abolished.
- (2) Subsection (1) does not affect:
  - (a) the construction of a reference in any Act to a trespassing animal,
  - (b) the tort of trespass committed by a person by means of cattle, or
  - (c) the law relating to liability of an occupier of land for death of or injury to cattle trespassing on the land.

### 5 Distress damage feasant

The remedy at common law of distress of an animal damage feasant is abolished.

## Part 3 Liability for animals

### 6 Definitions

In this Part:

**liability** means liability in damages for tort.

**occupier** means, in relation to any premises, a person who is an occupier of the premises for the purposes of the law relating to the liability of occupiers for damage arising from dangers to persons entering premises, being dangers due to the state of the premises or due to things done or left undone on the premises.

**premises** means any land, structure (fixed or movable), vessel, aircraft or other vehicle.

## **7 General liability for damage by an animal**

- (1) Liability for damage caused by an animal depends on so much of the law relating to liability as does not include the common law abrogated by subsection (2).
- (2) Any common law qualification, restriction, exclusion, extension or imposition of liability that had effect immediately before the commencement of this Act and related exclusively to liability for damage caused by an animal is hereby abrogated, whether or not:
  - (a) it related to the nature or propensity of an animal or any class of animal, or knowledge of any such nature or propensity, or
  - (b) it applied generally or in the circumstances of escape on to a highway or in any other particular circumstances.

## **8 Danger from presence or behaviour of animal on premises**

Where damage results from a danger to a person entering premises, being a danger due to the state of the premises or due to things done or left undone on the premises, the liability (if any) of a person as an occupier of the premises in respect of the damage depends only on the law relating to the liability of occupiers, notwithstanding that the danger is, or is associated with, the presence or behaviour of an animal in or on the premises.

## **9 Restriction of rule in Rylands v Fletcher(1868) LR 3 HL 330**

The rule in Rylands and Fletcher does not apply in relation to damage caused by an animal.

## **10 Evidence of breach of duty in certain cases**

- (1) Subject to subsection (2), where:
  - (a) an animal is in or on any premises and the occupier of the premises:
    - (i) may not lawfully prevent the animal from being in or on the premises, or
    - (ii) in any other case—has not consented to the presence of the animal in or on the premises,

(b) a person other than the occupier of the premises was, at the time the animal was in or on the premises, under a duty to another person to take reasonable care that the other person would not be subjected to the danger of the animal causing damage to the other person, and

(c) the animal causes damage to that other person while it is in or on the premises, the fact that the animal was in or on the premises when the damage was caused is evidence of breach of the duty.

(2) Subsection (1) does not apply:

(a) where the premises concerned are a place used by the public as a road or way, or

(b) where the animal concerned is a dog or cat.

## Part 4 Miscellaneous

### 10A Ownership of deer and feral goats

(1) A deer or feral goat that is held in captivity may be bought, sold or otherwise dealt with or disposed of.

(2) If a deer or feral goat ceases to be held in captivity, all property in the deer or feral goat is immediately extinguished.

(3) If a person captures a deer or feral goat that is not held in captivity, the person becomes the owner of the deer or feral goat.

(4) In this section:

**deer** means a living animal of the family cervidae.

**feral goat** means a living animal of the species *Capra aegagrus hircus* that has become established in the wild, has not been born as a result of a managed breeding program and has not been subject to any animal husbandry procedure or treatment.

### 11 Transitional provisions

Schedule 1 has effect.

### 12 (Repealed)

## Schedule 1 Transitional provisions

(Section 11)

1 Section 4 (1) does not apply to a case of cattle-trespass where the cause of action accrued before the commencement of this Act.

2 Section 5 does not apply to or in respect of an animal distrained damage feasant before the

commencement of this Act.

- 3** Part 3 does not apply to or in respect of any question of liability within the meaning of that Part where the acts or omissions giving rise to that question occurred before the commencement of this Act.

**4 (Repealed)**

**Schedule 2 (Repealed)**