

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

D. L. WHEELER,
for Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 24 March, 1977.*

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. , 1977.

An Act relating to liability for damage caused by animals.

BE

Animals.

BE it enacted by the Queen's Most Excellent Majesty, by
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
5 follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Animals Act, 1977". Short title.

2. This Act is divided as follows :—

Division
of Act.

10 **PART I.—PRELIMINARY—ss. 1-3.**

**PART II.—ABOLITION OF CERTAIN MATTERS—ss. 4,
5.**

PART III.—LIABILITY FOR ANIMALS—ss. 6-10.

PART IV.—MISCELLANEOUS—ss. 11, 12.

15 **SCHEDULES.**

3. 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

Animals.

PART II.

ABOLITION OF CERTAIN MATTERS.

4. (1) The tort of cattle-trespass is abolished. Cattle-trespass.
- (2) Subsection (1) does not affect—
- 5 (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
- 10 (c) the law relating to liability of an occupier of land for death of or injury to cattle trespassing on the land.
5. The remedy at common law of distress of an animal Distress damage feasant. damage feasant is abolished.

PART III.

LIABILITY FOR ANIMALS.

- 15 6. 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;
- 20
- “premises”
- Interpretation.

Animals.

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

7. (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).

General liability for damage by an animal.

(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. 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.

Danger from presence or behaviour of animal on premises.

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

Restriction of rule in *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330.

Animals.

10. (1) Subject to subsection (2), where—

Evidence
of breach
of duty in
certain
cases.

(a) an animal is in or on any premises and the occupier of the premises—

5 (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;

10 (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 him; and

15 (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—

20 (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.

Animals.

PART IV.

MISCELLANEOUS.

11. Schedule 1 has effect.

Transitional provisions.

12. An Act specified in Column 1 of Schedule 2 is amended in the manner set forth opposite that Act in Column 2 of Schedule 2.

Amendment of Acts.

SCHEDULE 1.

Sec. 11.

TRANSITIONAL PROVISIONS.

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 III 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. Nothing in this Schedule affects any saving under the Interpretation Act, 1897.

SCHEDULE

Animals.

SCHEDULE 2.

Sec. 12.

AMENDMENT OF ACTS.

| Column 1. | | Column 2. | |
|-----------|-------------------------|--------------------------------------|--|
| 5 | Year and number of Act. | Short title of Act. | Amendment. |
| 10 | 1898, No. 6 .. | Impounding Act, 1898. | Section 58— Omit the section, insert instead:— Action for 58. The existence of any right damages given by this Act or its exercise preserved. shall not prevent any person from maintaining an action for damages on a cause of action he would have otherwise. |
| 20 | 1913, No. 7 .. | Crown Lands Consolidation Act, 1913. | Section 250 (1)— Omit "trespass committed by stock", insert instead "the recovery of damages for damage caused by stock trespassing". Section 250 (3)— Omit "trespass in respect thereof", insert instead "the recovery of damages for damage caused by the stock trespassing". |
| 30 | 1919, No. 41 .. | Local Government Act, 1919. | Section 444 (2)— Omit the subsection, insert instead:— (2) The existence of any right given by this Part or its exercise shall not prevent any person from maintaining an action for damages on a cause of action he would have otherwise. |
| 35 | 1953, No. 39 .. | Lord Howe Island Act, 1953. | Section 32 (2)— Omit "sue the owners of such stock for trespass", insert instead "recover damages for damage caused by the stock trespassing". |

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977

Act No. 1977

Amended

Sec. 12.

SCHEDULE 2

AMENDMENT OF ACT

Section 10. (1) The following provisions shall apply to the provisions of the Act...

Section 11. (1) The following provisions shall apply to the provisions of the Act...

Section 12. (1) The following provisions shall apply to the provisions of the Act...

Section 13. (1) The following provisions shall apply to the provisions of the Act...

Section 14. (1) The following provisions shall apply to the provisions of the Act...

BY AUTHORITY OF THE GOVERNMENT OF SOUTH AFRICA

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

PART I

PRELIMINARY

1. This Act may be cited as the Animal Act 1977.

No. , 1977.

A BILL

Relating to liability for damage caused by animals.

[MR F. J. WALKER—17 March, 1977.]

BE

Animals.

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

PART I.

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1. This Act may be cited as the "Animals Act, 1977". Short title.

2. This Act is divided as follows:—

Division
of Act.

10 PART I.—PRELIMINARY—*ss.* 1–3.

PART II.—ABOLITION OF CERTAIN MATTERS—*ss.* 4,
5.

PART III.—LIABILITY FOR ANIMALS—*ss.* 6–10.

PART IV.—MISCELLANEOUS—*ss.* 11, 12.

15 SCHEDULES.

3. 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

Animals.

PART II.

ABOLITION OF CERTAIN MATTERS.

4. (1) The tort of cattle-trespass is abolished. Cattle-trespass.
- (2) Subsection (1) does not affect—
- 5 (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
- 10 (c) the law relating to liability of an occupier of land for death of or injury to cattle trespassing on the land.
5. The remedy at common law of distress of an animal Distress damage feasant.
damage feasant is abolished.

PART III.

15 LIABILITY FOR ANIMALS.

6. In this Part— Interpretation.
- “liability” means liability in damages for tort;
- 20 “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”

Animals.

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

7. (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).

General liability for damage by an animal.

(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. 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.

Danger from presence or behaviour of animal on premises.

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

Restriction of rule in *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330.

Animals.

10. (1) Subject to subsection (2), where—

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cases.

(a) an animal is in or on any premises and the occupier of the premises—

- 5 (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;

10 (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 him; and

15 (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—

20 (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.

Animals.

PART IV.

MISCELLANEOUS.

11. Schedule 1 has effect.

Transitional provisions.

12. An Act specified in Column 1 of Schedule 2 is amended in the manner set forth opposite that Act in Column 2 of Schedule 2. Amendment of Acts.

SCHEDULE 1.

Sec. 11.

TRANSITIONAL PROVISIONS.

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 III 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. Nothing in this Schedule affects any saving under the Interpretation Act, 1897.

SCHEDULE

Animals.

SCHEDULE 2.

Sec. 12.

AMENDMENT OF ACTS.

| Column 1. | | Column 2. |
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| 20 | 1913, No. 7 .. | Crown Lands Consolidation Act, 1913. |
| 25 | | Section 250 (1)— Omit "trespass committed by stock", insert instead "the recovery of damages for damage caused by stock trespassing". Section 250 (3)— Omit "trespass in respect thereof", insert instead "the recovery of damages for damage caused by the stock trespassing". |
| 30 | 1919, No. 41 .. | Local Government Act, 1919. |
| | | Section 444 (2)— Omit the subsection, insert instead:— (2) The existence of any right given by this Part or its exercise shall not prevent any person from maintaining an action for damages on a cause of action he would have otherwise. |
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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977

[8c]

Chapter

SCHEDULE 2

AMENDMENT OF ACT

Column 1

Year and
number of
Act

2

1958 No. 1

10

13

1911 No. 7
Cantonment
Act 1911

18

23

1954 No. 1
Cantonment
Act 1954

30

32

ANIMALS BILL, 1977

EXPLANATORY NOTE

THE object of this Bill is to give effect to recommendations of the Law Reform Commission aimed at bringing the law relating to liability for damage caused by an animal into harmony with the law relating to liability for damage otherwise caused.

The Bill contains the following provisions:—

Clause 1. Short title.

Clause 2. Division of proposed Act.

Clause 3 provides that the proposed Act will bind the Crown.

Clause 4 abolishes the tort of cattle-trespass. By this tort, the keeper of cattle (which includes sheep, goats, pigs, horses, poultry and some other domesticated animals but not cats or dogs) incurs liability for trespass by the cattle even though he has done nothing to cause the trespass. Negligence is immaterial.

Clause 5, in view of the existence of the Impounding Act, 1898, and the impounding provisions of the Local Government Act, 1919, abolishes the common law remedy (known as distress damage feasant) whereby a trespassing animal may be kept in custody until any damage done by it is paid for.

Clause 6 is an interpretation provision.

Clause 7, without affecting the ordinary liability of a person in tort for damage done by an animal, abrogates certain special rules of the common law which at present constitute exceptions from, or qualifications of, that liability where damage by an animal is concerned including—

- (a) the rule that the keeper of an animal that he knows, or is presumed by the law to know, is savage or dangerous is absolutely liable (i.e. without proof of negligence) for damage caused by the animal; and
- (b) the rule that the owner or occupier of land adjoining a highway is not liable where one of his animals (not being an animal referred to in paragraph (a)) strays on to the highway and causes bodily injury to, or damage to the property of, a user of the highway.

Clause 8 ensures that where premises are dangerous due to the presence or behaviour of an animal therein or thereon, the law to be applied in determining liability for damage resulting from the danger is the ordinary law relating to the liability of occupiers and not any special law relating to animals.

Clause 9 makes it clear that the common law rule known as the rule in Rylands and Fletcher does not apply in respect of an animal. The effect of the rule is that an occupier of land who brings and keeps up on it, otherwise than as a "natural" user of the land, anything likely to do damage if it escapes, is bound at his peril to prevent its escape, and is liable for all direct consequences of the escape, even if he has not been guilty of negligence.

Clause 10 is an evidentiary provision whereby the claim of a person for damage done by a trespassing animal is not defeated merely because, for lack of evidence of how the animal came to be upon his land, he is disabled from having the matter litigated.

Clause 11 gives effect to Schedule 1 which contains transitional provisions.

Clause 12 makes consequential amendments to the Impounding Act, 1898, the Crown Lands Consolidation Act, 1913, the Local Government Act, 1919, and the Lord Howe Island Act, 1953.

PROOF

No. , 1977.

A BILL

Relating to liability for damage caused by animals.

[MR F. J. WALKER—17 March, 1977.]

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Animals.

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

PART I.

PRELIMINARY.

1. This Act may be cited as the "Animals Act, 1977". Short title.

2. This Act is divided as follows :—

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

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PART II.

ABOLITION OF CERTAIN MATTERS.

4. (1) The tort of cattle-trespass is abolished.

Cattle-trespass.

(2) Subsection (1) does not affect—

- 5 (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
- 10 (c) the law relating to liability of an occupier of land for death of or injury to cattle trespassing on the land.

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

Distress damage feasant.

PART III.

LIABILITY FOR ANIMALS.

15 6. In this Part—

Interpretation.

“liability” means liability in damages for tort;

20 “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;

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

7. (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).

General liability for damage by an animal.

(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. 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.

Danger from presence or behaviour of animal on premises.

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

Restriction of rule in *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330.

Animals.

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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
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- 10 (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
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(2) Subsection (1) does not apply—

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the public as a road or way; or
- (b) where the animal concerned is a dog or cat.

Animals.

PART IV.

MISCELLANEOUS.

11. Schedule 1 has effect.

Transitional provisions.

12. An Act specified in Column 1 of Schedule 2 is amended in the manner set forth opposite that Act in Column 2 of Schedule 2. Amendment of Acts.

SCHEDULE 1.

Sec. 11.

TRANSITIONAL PROVISIONS.

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 III 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. Nothing in this Schedule affects any saving under the Interpretation Act, 1897.

SCHEDULE

Animals.

SCHEDULE 2.

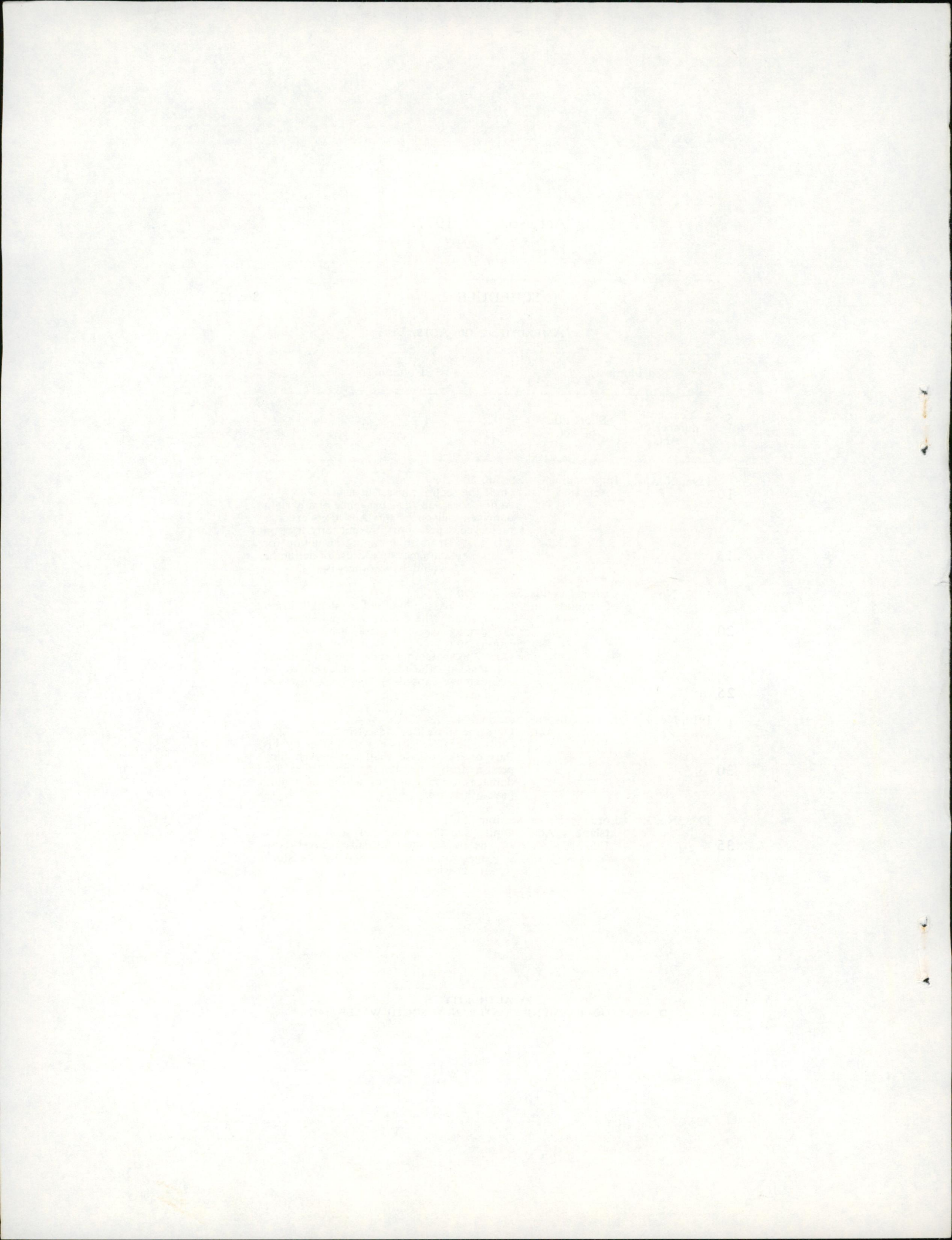
Sec. 12.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977



New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

*****:*****

Act No. 25, 1977.

An Act relating to liability for damage caused by animals.
[Assented to, 13th April, 1977.]

BE

Animals.

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- Short title.** 1. This Act may be cited as the "Animals Act, 1977".
- Division of Act.** 2. This Act is divided as follows:—
- PART I.—PRELIMINARY—*ss.* 1–3.
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- SCHEDULES.**
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Distress damage feasant.

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Interpretation.

“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;

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7. (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
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Danger from presence or behaviour of animal on premises.

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Restriction of rule in *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330.

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10. (1) Subject to subsection (2), where—

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(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 him; 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

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Transitional provisions.

11. Schedule 1 has effect.

Amendment of Acts.

12. An Act specified in Column 1 of Schedule 2 is amended in the manner set forth opposite that Act in Column 2 of Schedule 2.

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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 III 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.
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SCHEDULE

Animals.

SCHEDULE 2.

Sec. 12.

AMENDMENT OF ACTS.

| Column 1. | | Column 2. |
|-------------------------|--------------------------------------|--|
| Year and number of Act. | Short title of Act. | Amendment. |
| 1898, No. 6 .. | Impounding Act, 1898. | Section 58— Omit the section, insert instead:— Action for 58. The existence of any right damages given by this Act or its exercise preserved. shall not prevent any person from maintaining an action for damages on a cause of action he would have otherwise. |
| 1913, No. 7 .. | Crown Lands Consolidation Act, 1913. | Section 250 (1)— Omit "trespass committed by stock", insert instead "the recovery of damages for damage caused by stock trespassing". Section 250 (3)— Omit "trespass in respect thereof", insert instead "the recovery of damages for damage caused by the stock trespassing". |
| 1919, No. 41 .. | Local Government Act, 1919. | Section 444 (2)— Omit the subsection, insert instead:— (2) The existence of any right given by this Part or its exercise shall not prevent any person from maintaining an action for damages on a cause of action he would have otherwise. |
| 1953, No. 39 .. | Lord Howe Island Act, 1953. | Section 32 (2)— Omit "sue the owners of such stock for trespass", insert instead "recover damages for damage caused by the stock trespassing". |

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 31 March, 1977.*

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 25, 1977.

An Act relating to liability for damage caused by animals.
[Assented to, 13th April, 1977.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

T. J. CAHILL,
Chairman of Committees of the Legislative Assembly.

Animals.

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

PART I.

PRELIMINARY.

- | | |
|----------------------|--|
| Short title. | 1. This Act may be cited as the "Animals Act, 1977". |
| Division of Act. | <p>2. This Act is divided as follows :—</p> <p>PART I.—PRELIMINARY—<i>ss.</i> 1–3.</p> <p>PART II.—ABOLITION OF CERTAIN MATTERS—<i>ss.</i> 4, 5.</p> <p>PART III.—LIABILITY FOR ANIMALS—<i>ss.</i> 6–10.</p> <p>PART IV.—MISCELLANEOUS—<i>ss.</i> 11, 12.</p> <p>SCHEDULES.</p> |
| Act binds the Crown. | <p>3. 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.</p> |

PART

Animals.

PART II.

ABOLITION OF CERTAIN MATTERS.

4. (1) The tort of cattle-trespass is abolished. Cattle-trespass.
- (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. The remedy at common law of distress of an animal Distress damage feasant. damage feasant is abolished.

PART III.

LIABILITY FOR ANIMALS.

6. In this Part— Interpretation.
- “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”

Animals.

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

General liability for damage by an animal.

7. (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.

Danger from presence or behaviour of animal on premises.

8. 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.

Restriction of rule in *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330.

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

Animals.

10. (1) Subject to subsection (2), where—

Evidence
of breach
of duty in
certain
cases.

- (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 him; 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

Animals.

PART IV.

MISCELLANEOUS.

Transitional provisions.

11. Schedule 1 has effect.

Amendment of Acts.

12. An Act specified in Column 1 of Schedule 2 is amended in the manner set forth opposite that Act in Column 2 of Schedule 2.

Sec. 11.

SCHEDULE 1.

TRANSITIONAL PROVISIONS.

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 III 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. Nothing in this Schedule affects any saving under the Interpretation Act, 1897.
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SCHEDULE

Animals.

SCHEDULE 2.

Sec. 12.

AMENDMENT OF ACTS.

| Column 1. | | Column 2. |
|-------------------------|--------------------------------------|--|
| Year and number of Act. | Short title of Act. | Amendment. |
| 1898, No. 6 .. | Impounding Act, 1898. | Section 58— Omit the section, insert instead:— Action for 58. The existence of any right damages given by this Act or its exercise preserved shall not prevent any person from maintaining an action for damages on a cause of action he would have otherwise. |
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| 1953, No. 39 .. | Lord Howe Island Act, 1953. | Section 32 (2)— Omit "sue the owners of such stock for trespass", insert instead "recover damages for damage caused by the stock trespassing". |

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

Government House,
Sydney, 13th April, 1977.

