

Western Australia

Local Government (Straying Stock) Bill 2004

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Western Australia

LEGISLATIVE COUNCIL

(Introduced by Hon Paddy Embry)

Local Government (Straying Stock) Bill 2004

A Bill for

An Act to enable local governments to require remedial action by the owners of properties to prevent animals straying onto a road.

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Local Government (Straying Stock) Act 2004*.

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2. Definitions

(1) In this Act unless inconsistent with the context —

“**fence**” is an artificial or natural barrier that restricts stock movement to the land it encloses and is capable of preventing or resisting stock passing beyond it;

“**local government**” is a local government constituted under the *Local Government Act 1995* and includes any person or persons lawfully exercising the functions of a local government;

“**order**” is a written statement addressed to an owner setting out the terms of a resolution of a local government passed under section 5;

“**owner**” is the owner of the land included in an order, and includes an occupier of that land, or person having ownership of the stock on that land who is neither the owner nor the occupier;

“**private road**” is privately-owned land in common use as the sole or principal means of shared access from a road to 2 or more neighbouring properties;

“**road**” is any highway, road or street open to, or used by, the public and includes —

(a) every carriageway, footway, reservation, median strip and traffic island,

that is subject to control or regulation by a local government; and

(b) a private road.

“**stock**” has the same meaning as it is given in section 5 of the *Stock (Identification and Movement) Act 1970* or as may be prescribed under subsection (2);

(2) An animal species that is kept for a farming or agricultural purpose may be prescribed by regulation as stock subject to this Act.

3. Crown not bound

This Act does not bind the Crown.

4. Duty of owner to prevent stock straying

- 5 (1) An owner has a continuing duty to do those things necessary to prevent stock straying onto a road.
- (2) An owner who constructs and maintains a fence to a standard determined or adopted by a local law (if any) complies with subsection (1).
- 10 (3) In proceedings where breach of the duty under subsection (1) is an issue, an owner incurs no civil or criminal liability arising from those proceedings who proves that the breach was caused by another person's act or omission of which the owner had no prior knowledge and it is immaterial whether or not a legal relationship was in existence, or had existed, between the owner
- 15 and that other person.

5. Local government may require fencing of property

- (1) A local government may require an owner, by order, to erect or repair a fence.
- 20 (2) Subsection (1) applies whether or not any stock may have strayed before the time the order is made.
- (3) An order must be made by resolution of the council of a local government.

6. Proceedings before issuing order

- (1) An order is not to be made unless the local government —
- 25 (a) has previously given written notice of the duty imposed under section 4(1), has stated the grounds for its belief that there has been, or there is likely to be, a breach of that duty, and requested that the work described be carried out to remedy or prevent that breach;

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- (b) has given an owner to whom paragraph (a) applies a reasonable opportunity to have considered and determined any modification of, or objection to, the work to be carried out;
- 5 (c) is satisfied that an owner has failed to carry out the work originally requested or as subsequently modified by agreement.
- (2) Subsection (1) continues to apply to a person who ceases to be an owner, or to the executor or person administering the estate of a deceased owner —
- 10 (a) until the local government is given notice of that fact, the date on which it took effect, and the name of any transferee of, or successor to, any right, title or interest in or over the land affected; and
- 15 (b) the transferee or successor is served, not later than 14 days after the day on which the required information was provided under paragraph (a), with a copy of the notice given under subsection (1)(a) and advised of the provisions of subsection (1)(b).
- 20 (3) An owner given notice under subsection (1)(a) may request that it be redirected to a named person whose rights, title or interest with respect to the land affected are paramount. A redirection is to be treated as an original notice for any purpose of this section.
- 25 **7. Local government may carry out work**
- (1) A local government may apply to a Magistrate's Court for an order authorizing the local government to carry out work in default of the work being carried out by an owner.
- (2) A Magistrate's Court, if satisfied that an owner's default is
- 30 deliberate or inexcusable, may —
- (a) make the order conditionally or unconditionally;
- (b) make the order so as to apply from a specified future day;

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- (c) adjourn the proceedings on receipt of an undertaking from the owner to carry out the work without further delay;
 - (d) remit the matter to the local government for reconsideration but with leave to resume proceedings if no agreement is reached after reconsideration;
 - (e) refuse to make the order and require the owner to carry out the work without further delay.
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- (3) The costs with respect to work authorized by an order made under subsection (2) is a debt due and owing to that local government and may be recovered from the owner in a court of competent jurisdiction.

8. Saving of other laws

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Nothing in this Act is to be interpreted or applied so as to modify, suspend or extinguish a power conferred on a local government by another written law that may be exercised for a purpose relating or similar to a provision of this Act.

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