

Question on Notice

No. 782

Asked on 16 July 2020

MS S BOLTON ASKED THE ATTORNEY-GENERAL AND MINISTER FOR JUSTICE (HON Y D'ATH) –

QUESTION:

Will the Attorney-General advise if there is currently any consideration of implementing legislation, in line with other states, to address the issue of livestock on roads causing accidents, instead of reliance on common law as a methodology for resolution?

ANSWER:

I thank the Member for Noosa for her question.

The appropriateness of the rule in *Searle v Wallbank* [1947] AC 341 is an issue which attracts the interest of members of this House, the media and the community from time to time.

Under the rule, owners and occupiers of land owe no duty of care to highway users to prevent their animals (including livestock) straying onto the highway, whether by the maintenance of fences or otherwise.

The rule, which owes its origin to rural conditions in medieval England, was adopted in Australia through the High Court decision in *State Government Insurance Commission (SA) v Trigwell* [1979] HCA 40.

The rule was abolished in England and Wales in 1971 and has been abolished in all Australian jurisdictions, except Queensland and the Northern Territory.

While some stakeholders and individuals who have suffered personal injury or death of a family member from accidents caused by straying livestock on a highway or road have at times called for the rule to be modified or abolished, other stakeholders, including those representing rural interests have strongly supported its retention.

Concerns with abolishing the rule include that it may increase insurance premiums and place an additional financial burden on primary producers and agricultural landholders who may be required to fence their properties. Concerns with retaining the rule are that those who suffer personal injury and property loss are left without a remedy or access to compensation through insurance.

The Queensland Law Reform Commission released a working paper in 1977 which canvassed the abolition of the rule.

Given the passage of time since the rule was last reviewed and the need for extensive consultation with stakeholders and the broader community, any further review of the rule would be a matter for consideration during the next term of government.