

Question on Notice

No. 584

Asked on Thursday 17 April 2008

Mrs Pratt asked the Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland (Mr Shine) –

QUESTION:

With regard to stock owners' liability for damages caused to traffic by straying stock and former Attorney-General Welford's comments to the Queensland Law Society that '...it is something that is increasingly a problem in areas closer to urban communities, so it's something that the Government ...does need to have a look at' –

Will he advise what guidelines will be reviewed and who will be consulted?

ANSWER:

In Queensland, land owners and occupiers are generally immune from liability for negligence if injury or damages result from an accident caused by animals straying onto a road or highway. This is known as the Rule in *Searle v Wallbank* (the Rule). Under the Rule, owners and occupiers of land adjoining a highway owe no duty of care to highway users to prevent their animals straying onto the highway. The Rule was adopted in Australia through the 1979 High Court decision in *State Government Insurance Commission (SA) v Trigwell*.

The appropriateness of the Rule has been a long-standing issue which has been raised with the Queensland Government.

The Rule has been reviewed by the Queensland Law Reform Commission and, from time to time, the Queensland Government receives representations about the appropriateness of the Rule. However, while some call for the Rule to be abolished, others strongly support keeping it.

The fundamental difficulty is to find an appropriate balance between the rights and responsibilities of both landholders and road users.

In a State such as Queensland, with large scale agricultural areas, including sheep and cattle production areas, abolition of the Rule is likely to place a significant financial burden on primary producers and agricultural landholders. Removal of the Rule may also result in an increase in insurance premiums and expose farmers and graziers to claims that could not have previously been made.

While the Government does not propose to abolish the Rule at this time, it will continue to monitor the situation, including the community's views about the application of the Rule.