

AUSTRALIAN CAPITAL TERRITORY
CIVIL LIABILITY (ANIMALS) ORDINANCE 1984
POUNDS (AMENDMENT) ORDINANCE 1984
ORDINANCE NO 36 OF 1984

EXPLANATORY STATEMENT

The Civil Liability (Animals) Ordinance 1984 is modelled on the NSW Animals Act 1977 which was drafted by the NSW Law Reform Commissioners. The legislation provides that the law relating to liability caused by animals should be the same as the law relating to liability for damage otherwise caused. The Ordinance therefore abolishes the special common law rules peculiar to liability for damage caused by animals in favour of the application of the ordinary rules of negligence, nuisance and trespass which are considered more appropriate to actions in modern society.

Details of the Ordinance are set out below:

Sections 1, 2 and 3 are interpretation provisions.

Section 4 abolishes the independent medieval common law action of cattle - trespass which differs from ordinary trespass to land in that the trespass need not have resulted from a direct or voluntary act on the part of the defendant.

Section 5 abolishes the outdated remedy of distress of an animal damage feasant which permits the impounding of a trespassing animal until damage done by the animal is compensated.

Section 6 abolishes the common law rule in Searle v Wallbank and the rule relating to knowledge of the nature or propensity of an animal. Searle v Wallbank affirmed that an owner of land adjoining a public highway owed no duty of care to the users of the highway to prevent his stock from straying onto the highway. This ancient common law immunity is considered inappropriate in the age of the motor car. The latter rule divided animals into those generally accepted as dangerous and those normally harmless. Strict liability lay for damage caused by dangerous animals irrespective of the disposition of the particular animal while for damage caused by animals classed as harmless liability only lay where the animal had shown a previous propensity to do the damage inflicted. The abolition of these special rules means that liability for damage caused by animals is now covered by the ordinary action in negligence.

Section 7 abolishes the rule in Rylands v Fletcher in so far as it relates to damage caused by animals. This rule, which is similar to the rule relating to knowledge of the nature

or propensity of an animal referred to above; imposes strict liability on an occupier of land who keeps on it anything likely to do damage if it escapes. Once again, abolition of this special rule as it relates to animals means that liability for damage caused by animals is now covered by the ordinary action in negligence.

Section 8 facilitates proof of negligence in certain cases by providing that the fact of an animal's unlawful presence on premises is evidence of a breach of a duty of care owed to the occupier or other person on the premises.

Section 9 ensures that actions on the old special common law rules which accrued before the commencement of the Ordinance are not affected by the Ordinance.

The Pounds (Amendment) Ordinance 1984 amends the Pounds Ordinance 1928 consequential upon the introduction of the Civil Liability (Animals) Ordinance 1984 so as to provide that any right given by the Pounds Ordinance or its exercise does not prevent any person from maintaining a cause of action, such as trespass, that he would otherwise have.

Ord Nos. 2/84, 3/84