

Review of the Impounding Act 1993 Discussion Paper

Strengthening local government

December 2019



Office of
Local Government



Message from the Minister

In August of this year, I requested the Office of Local Government (OLG) to initiate a review of the *Impounding Act 1993* (the Act). Given the Act was introduced 25 years ago, I believe it is now timely to review the Act in its entirety.

The Act was introduced as companion legislation to the *Local Government Act 1993*, as a framework for councils and public land managers to enforce the impounding of abandoned and unattended articles and animals left in public spaces. In that time, the way we use public spaces has changed significantly and to date, bespoke amendments have been made to address specific issues such as boat trailers and share bikes.

The NSW Government's review of the Act will help ensure we have sensible laws for public land managers to use to prevent overcrowded public spaces and preserve amenity. It will also ensure that the Act is effective and future-proofed to enable inclusions of emerging technologies and to reflect our ever-changing use of public spaces.

This Discussion Paper asks for feedback from the broader community and businesses, as well as councils and other public land managers empowered with enforcement of the Act to help us understand whether the Act's objectives are still adequate to meet community needs and expectations. The review will also look for opportunities to reduce unnecessary red tape for businesses and local councils.

I encourage you to have your say by reading this Discussion Paper and answering the targeted questions. Throughout this paper, a broad range of issues are explored. We look at how to balance having the convenience of innovative transport modes, such as share bikes, with keeping our public spaces safe and enjoyable for all. We also look at how the Act can best support safety and biosecurity issues of stray stock in rural areas as well as the impact to the amenity of local communities through abandoned items such as shopping trolleys.

Your responses will assist the NSW Government in making sure there is a strong and sensible regulatory framework in NSW for identifying and managing things that need to be impounded. We want to ensure that there are safe and accessible public spaces for our communities to enjoy, now and into the future and that our rural areas and farming communities are also protected.

I appreciate your interest in protecting our valuable public spaces and supporting our communities and look forward to hearing your views.

Hon. Shelley Hancock MP

Minister for Local Government

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Introduction

The *Impounding Act 1993* (the Act) provides a legal framework for local councils, State authorities managing public land, the Police and others authorised to deal with safety and amenity issues caused by animals and ‘articles’ (or items) left unattended or abandoned in public places, and to work with landowners regarding impounding items or animals on private land. The Act is administered by the Minister for Local Government, and is available at: www.legislation.nsw.gov.au/#/view/act/1993/31

The Minister has called for a review to identify how to ensure the Act remains ‘fit for purpose’ and also integrates well with other laws in supporting timely and effective management of abandoned or unattended items and animals into the future. Community, industry and government input is critical to helping the NSW Government understand key issues to inform any changes to the Act.

While the *Impounding Regulation 2013* is not under review, as it is subject to a separate statutory review process, consequential changes may be made to the regulations to support any changes made to the Act.

Previous amendments

The Act was first introduced as companion legislation to the *Local Government Act 1993* (LG Act). It consolidated and expanded on previous impounding laws in the *Impounding Act 1898* (repealed), which dealt only with impounding livestock and parts of the *Local Government Act 1919* (repealed), which dealt only with impounding shopping trolleys and cars. The Act has been amended three times since it commenced:

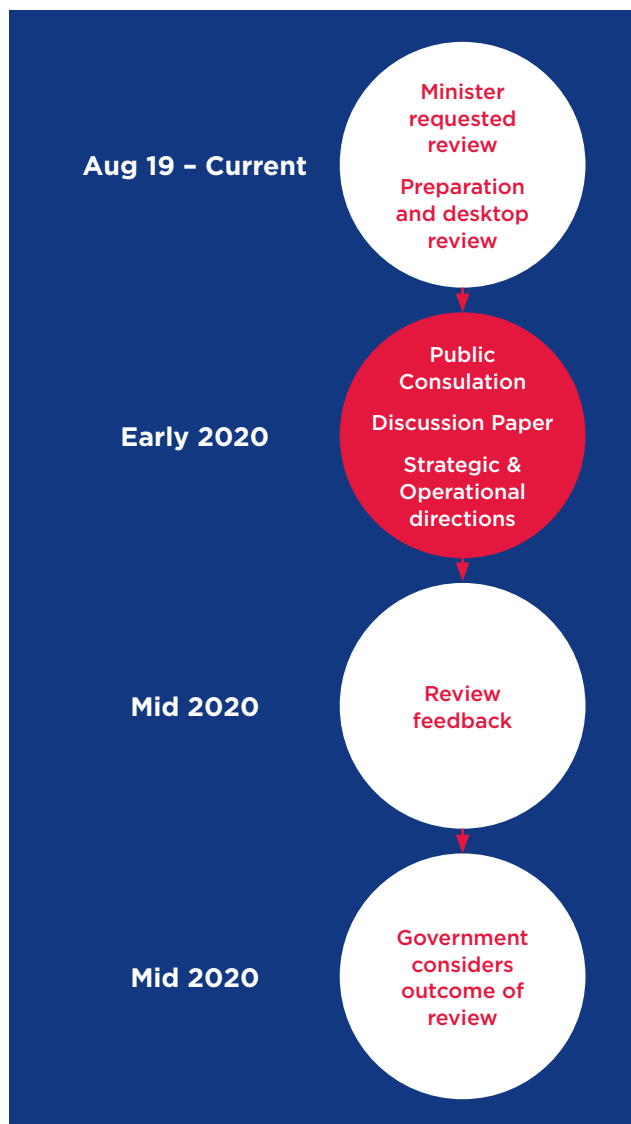
- **Impounding Amendment Act (1996)** – clarifications were made to definitions and section 9 so that ‘unattended’ animals (including those abandoned and straying) could be impounded and animals legitimately on public land could not be impounded (e.g. stock unattended in compliance with Local Land Services legislation).
- **Impounding Amendment (Unattended Boat Trailers) Act 2015** – introduced section 15A to address the issue of boat trailers being parked in public areas for extended periods of time. Authorised impounding officers can impound boat trailers if they have not been moved in 28 days, after reasonable efforts to notify the owners and a specified notification period.

- **Impounding Amendment (Shared Bicycles and Other Devices) Act 2018** – introduced Division 5 to require operators of shared device services (currently only share bikes) left in public places to move them within a prescribed period of time based on the risk they pose. Authorised impounding officers can fine operators who do not comply and move or impound abandoned or unattended shared devices.

The Act review process

This Discussion Paper marks the beginning of the review. Targeted stakeholder meetings and workshops may also be undertaken as required to help further determine key issues from different perspectives.

Feedback received in response to this Discussion Paper will be taken into account by the Government as it determines next steps in the review. The review process is shown below.



How did we get here?

Since the Act was first introduced, the way we use, interact with and enjoy public spaces has significantly changed due to social, cultural and technological change. More private and shared items are being used and parked in public areas and roads such as cars, trailers, boats, shared bicycles and mobility scooters. Overcrowding in our urban public spaces is becoming a bigger issue as our population grows and ages.

The Government recognises that emerging technologies, such as share bikes, can provide convenient and environmentally friendly ways of completing part of our journey to work in cities, if managed appropriately.

However, abandoned and unattended items create both safety and amenity issues for public land managers and the community alike. They can prohibit access for vehicles and pedestrians and create environmental nuisance by clogging up water ways and public spaces. Abandoned shopping trolleys, cars, share bikes and other items are often dealt with under waste and/or local government laws in other jurisdictions of Australia.

The term 'amenity' is difficult to define but encompasses the aesthetic value of a public area, the ease at which people can access and use a public area and the satisfaction or enjoyment people get from being in public spaces. 'Safety' is easier to define as being protected from or unlikely to cause danger, risk, or injury and includes the physical and mental well-being of the general public.

To balance the competing needs and priorities of the community, in recent years, the Government has chosen to use the Act to create bespoke solutions for individual items such as boat trailers and share bikes. However, as use of public spaces changes, and more innovative industries enter the share transport market and public spaces over time, the risk of further safety and amenity issues continues. For example, the Government is currently considering whether to introduce a share scooter trial in several council areas in Sydney. This may further impact the community and impounding authorities.

In our rural and regional areas, some impounding issues are different to those experienced in cities but are no less important. Abandoned and unregistered cars are an issue in many rural and regional communities, however, another issue is the management of stray or unattended stock and animals, trespassing onto both private and public land.

It is timely now to examine whether the Act still works in its current form and, if so, what amendments might be needed to better accommodate emerging technologies, services and issues. This will help councils and other authorities deal with impounding more effectively and support the community to be responsible for their items and animals into the future.

Purpose of the review

While the Act has been amended several times, it has not been comprehensively reviewed since it commenced 25 years ago.

This review will help the NSW Government to examine whether the Act remains adequate or if significant changes are required to provide for better regulation of abandoned items and stray animals across urban and rural areas. The review will provide an opportunity for the community, business and regulators to voice ideas for improvement or concerns so that the Government can understand how the Act is operating in real situations.

Principles guiding the review

NSW Government better regulation principles

guide the review of all legislation and include that:

- Need should be established
- Objective should be clear
- Impact should be understood, considering costs/benefits of options (including non-regulatory options)
- Regulation should be effective and proportional
- Regulation should be informed by consultation
- Simplification, repeal, reform or consolidation of regulation should be considered
- Regulation should be periodically reviewed to ensure continued efficiency and effectiveness.

Other principles that will guide the review include aiming as much as possible to:

- Anticipate future technology
- Recover costs from those being regulated
- Share responsibility for managing items in public spaces
- Encourage consumers to have 'whole-of-life' responsibility for their items and animals
- Better consider how amenity outcomes may be achieved (in addition to safety outcomes)
- Support a greater number of green public spaces in and around urban areas

- Support community cohesion and protect farmland and stock in rural areas
- Simplify the Act and devolve procedure to regulations to increase flexibility
- Integrate the Act with other legislation to deliver community priorities.

Structure of the discussion paper

The discussion paper has been divided into two sections to obtain feedback on key questions.

Section One – Strategic Directions – aims to obtain feedback on whether the current legislative framework for impounding is still an appropriate and effective one, and whether the Act’s strategic objectives are still valid. It discusses some key issues for the community, business and regulators to consider in relation to balancing community needs in public spaces, dealing with changing technology, incentives for responsible ownership etc.

Section Two – Operational Directions – invites discussion on the specific parts within the Act under key focus areas. Focus areas discussed include: objects of the Act, who and what may be impounded, impounding of animals, impounding of items (including specific items currently under the legislation and others of concern to the community) the impounding process, impounding fees, offences and penalties and miscellaneous provisions.

Many of the issues highlighted in this Section are those raised with the Government by the community and councils over time. Additional comments can be provided also.

How to have your say

How to read this discussion paper

Each section and focus area includes background information and a discussion of relevant issues to help you to answer the targeted questions asked at key points in the discussion paper. Where relevant, information regarding, or links to, legislation is included. To ensure comments are understood, please make them under the relevant question. If comments do not relate to a listed focus area or targeted question, a general comments page is provided at the end of the form.

How to complete the form

First read the [Privacy Notice](#) online or at **Appendix A**, which explains the personal information being collected through this consultation. If you want to continue, you need to provide some information about yourself and whether you are responding on behalf of an organisation.

The feedback form follows the discussion paper and targeted questions. It includes a page for providing general comments. You do not need to answer every question and can skip to sections of interest to you. Feedback can be provided via an online submission form, located on OLG website, www.olg.nsw.gov.au Alternatively, print the submission form at **Appendix A** and mail it to:

**OLG
Impounding Act Review
Locked Bag 3015
Nowra NSW 2541**

Impounding Act Review Discussion

Section One
Strategic Directions

Section Two
Operational Directions

Section One

Strategic Directions

1 Balancing community needs and shaping public places into the future

The review is an opportunity to examine whether the Act still works in its current form and, if so, what amendments might be needed to better accommodate emerging technologies, industries and items that have an impact on public places. Ideally, the Act will both provide incentives for the community to ensure more responsible usage and enjoyment of public spaces and enable councils and other authorities to deal with emerging issues and problems more effectively into the future.

It is important to discuss how and in what capacity, the Act may be used to achieve the collaborative outcome of more welcoming and useable public spaces in NSW. Councils have a key role through Integrated Planning and Reporting in strategic planning to shape public places that local communities can access, feel safe in and enjoy.

The NSW Government has also made a commitment to enhancing and expanding greener spaces across the urban area, including parks, gardens, recreational spaces and other open spaces that people can enjoy.

Questions

Balancing community needs and shaping public spaces

How can the Act help to manage our public spaces to meet community needs into the future?

How can we best balance protecting safety and amenity with supporting convenient innovation and technology that makes our lives easier?

How can the Act promote better use of public spaces, in line with the Premier's priority for a greater number of greener spaces?

2 Strategic framework for regulating impounding

The Act was introduced to provide all impounding authorities (local councils and NSW agencies that are public land managers) with an effective, compliance-based framework to deal with abandoned items and unattended animals. While the Act creates offences and penalties for abandoning items and leaving animals unattended, the key focus is on empowering authorised officers to act, and in outlining the processes they must follow, when an item or animal is abandoned.

Approaches to regulation change over time and this review provides an opportunity to check if the legislative framework for impounding is still appropriate. There has been a shift over time in many NSW laws from rules-based/process-based legislation to more principles-based/outcomes-based legislation (eg. *Environmental Planning and Assessment Act 1979*).

More traditional rules-based legislation can work well when the behaviour being regulated is known but can be problematic when there is a need to anticipate how the rule can apply into the future, in new or unexpected situations. On the other hand, while principles-based legislation allows greater flexibility in allowing the laws to adapt to changing behaviours and situations, it requires regulators to make decisions based more on qualitative assessments.

The current objectives of the Act provide an insight into how it is currently framed. These are:

- authorised officers to impound animals and items in public places if abandoned, unattended or (for animals) trespassing
- occupiers of private land to impound and deal with animals trespassing on their land
- release of impounded animals and items that are claimed by their owners
- disposal of impounded animals and items not claimed by owners, including sale.

By contrast, the objectives of the **Environmental Planning and Assessment Act** are about promoting social and economic wellbeing; facilitating ecologically sustainable development; protecting the environment; promoting good design and amenity; promoting sharing of responsibility between different levels of government; providing opportunity for community participation etc.

Questions

Strategic framework

Is the framework for the Act still 'fit for purpose'?

- Should the Act continue to focus on process, or should it be based around the outcome of promoting safety and amenity in public spaces?
- Should the current level of detail remain in the Act, or should it be moved to regulations?
- Do you feel the objectives of the Act need to change? If so, how?

3 Integration with NSW policy and other legislation

The review will aim to ensure the Act supports key Government policy, such as supporting primary industries and supporting greener public spaces for recreation. It also needs to ensure that the Act aligns – but does not overlap – with other relevant legislation in NSW to achieve Government policy objectives.

Many changes have been made to other NSW laws since the Act commenced, including in relation to animal management and protection, biosecurity, transport management, protecting the environment and promoting sustainable development.

Relevant legislation that the Act review should consider includes the following:

- *Local Government Act 1993*
- *Companion Animals Act 1998*
- *Environmental Planning and Assessment Act 1979*
- *Local Land Services Act 2013*
- *Prevention of Cruelty to Animals Act 1979*
- *Protection of the Environment Operations Act 1997*
- *Roads Act 1993*
- *Biosecurity Act 2015*.

Questions

Integration with NSW policy and other legislation

Is there any other relevant legislation that needs to be considered during the review of the Act?

- What are the current issues with interaction between the Impounding Act and other NSW policies or legislation?

4 Encouraging responsible behaviour

A key concern about the Act is that it provides little incentive for owners of items to take responsibility to stop abandonment, dumping or straying (for animals) in the first place.

Many councils have indicated that it is almost impossible to 'catch people in the act' of abandoning items, difficult to identify the owner of abandoned items and difficult to recover impounding costs. Many owners choose not to collect impounded items where they are of relatively low value. While items may be sold to recover impounding costs in some circumstances, this often does not cover the full cost of impounding. Even if owners are 'caught in the act' of abandoning an item, or even if their identity can be traced, fines are relatively low (excepting for share bikes) and prosecution is costly.

The review presents an opportunity to consider whether there is a way to make more accountable those in the community who are responsible for items being dumped or abandoned or, in the case of animals, left unattended or allowed to stray.

Questions

Encouraging responsible behaviour

How do we get the incentives right in the Act to influence responsible behaviour?

- Are those responsible for abandoning items and leaving animals unattended paying for the cost of regulation? If not, how might they be made more accountable?
- Are the current offences in the Act right? Are the penalties for those offences commensurate with the seriousness of the offences?
- Is it appropriate to create positive incentives that reward good behaviour? Could this be done in the legislation? If so, what could these be?

5 Innovation and emerging technology

Recent bespoke changes to the Act enable the more ready impounding of problem items, including boat trailers in 2015 and share bikes in 2018. Rapid social and technological changes may continue to introduce new items into public spaces that may need to be impounded or otherwise regulated. For example, shared e-scooters are illegal in NSW but are now prevalent in other jurisdictions. Many of them are being ridden illegally. While the new 'shared devices' provisions within the Act can incorporate e-scooters in the future if needed, other items will emerge in public spaces over time that may not be covered. This creates regulatory gaps and risk.

The continued adaptation of the Act to deal with these issues may or may not be the most effective and sustainable approach to continue to provide for the regulation of these items.

Questions

Innovation and emerging technology

How do we ensure the Act will effectively help to protect safety and amenity in public spaces into the future?

- What are some current and emerging/potential future issues with items that impact safety and amenity in public spaces?
- How can we create a framework that can anticipate and respond quickly to problems with these items that arise? Do we need to create a bespoke solution in the Act every time?
- How can we create a framework that can use emerging/potential future technology to help solve some of these issues?

Section Two

Operational Directions

1 Objects and definitions of the Act

(In Act Part 1: Preliminary)

Context

Part 1 is the administrative component of the Act and it provides the name, commencement, objects of the Act and definitions provisions.

Objects of this Act

The objects of the Act outline the purposes and overall scope of the Act. As these reflect the strategic reason for the Act and the powers that the Act conveys on authorities and occupiers of private land, the objects are discussed in Section One of this discussion paper. Associated questions are also located there.

Definitions

As the definitions are mostly located in Schedule 1 of the Act, they have been discussed at the end of Section Two of this discussion paper (12 - Other Matters). Associated questions are also located there.

2 Who can impound and what can be impounded?

(In Act Part 2 - Division 1: Impounding of animals and articles)

Context

Division 1, the general provisions of the Act, outlines what can be impounded and who can do the impounding.

Who can impound and what can be impounded?

Section 5 empowers impounding officers appointed by impounding authorities, to impound certain animals and items (termed 'articles') and also provides that same power to occupiers to impounding animals that trespass on their private land. This section is pivotal to the Act and must be read with the Dictionary which lists local councils and public authorities (such as Sydney Trains) with impounding powers on public land and provides for the regulations to prescribe other public or local authorities for a particular place or class of places. It also notes that Police can impound anywhere. The [Dictionary](#) also lists the animals (such as cattle) and items (such as motor vehicles) that may be impounded. Any further impounding authorities or animals that may be impounded under the Act need to be listed in the Dictionary or the regulations.

Area of operation and private property protections

Section 6 outlines and defines the concept of an impounding officer's area of operations in which an impounding officer can undertake impounding operations. This ensures that there is little to no overlapping of operations for impounding officers, except for police officers who have powers across all areas. The section also protects private property rights by preventing impounding authorities from entering private land unless invited by the occupier.

Where dogs can be impounded

Section 7 provides for specific areas where dogs may be impounded (national parks, historic sites, nature reserves, state game reserves, karst conservation reserves and Aboriginal areas) and details when something is classified as 'impounded' for the purposes of this Act. This recognises that dogs in local government areas must be impounded under the *Companion Animals Act 1998*, which provides specifically for cat and dog management matters in NSW, including impounding. Integration of the Impounding Act with other NSW legislation is discussed under Section One - 'Integration with NSW Policy and Legislation'.

Key issue

Who can be impounded and what can be impounded

Who can impound

Issues raised to date include difficulty for the community in understanding which authority is most appropriate to contact in certain situations, such as when an animal strays onto their land. Councils have also raised that the Act is not clear on what the role of a 'land manager' authorised officer is compared to Police, who are more 'general' authorised officers across land types, for example, when cattle stray onto a road or there is an accident involving vehicles transporting stock. This may be more a matter of communication and coordination between authorities rather than regulation. A specific issue raised by some council officers include their inability to impound dogs in national parks. Again, this may be a matter of communication and coordination.

What can be impounded

Items that may be impounded are defined as anything capable of ownership, except an animal, plus a number of specific items that are defined through special provisions, such as shared devices and boat trailers. 'Animals' that may be impounded are currently species in the Act which may be amended via regulation. Potential gaps in this approach are discussed with definitions in Part 11; 'Other Matters'.

Questions

Part 2 - Division 1: Who can impound and what can be impounded

- 2.1 Are these provisions working well?
- 2.2 If not, what is not working well?
- 2.3 What could be improved?

3 Impounding of animals

(In Act Part 2 - Divisions 2 & 3: Impounding of animals and articles)

Context

Division 2 of Part 2 provides for impounding authorities to impound animals left unattended in public places and on private land with an occupier's permission. Division 3 of Part 2 provides for defined occupiers of private land (including owners) to impound animals that trespass on their land.

Unattended animals in public places

Section 9 provides for impounding officers to deal with animals left unattended (including abandoned) in public places in their area of operation. The section also provides for when an animal on its own is not to be regarded as unattended, including with permission from the public authority and for stock on a stock reserve. It introduces the concept of impounding officers making judgements based 'on reasonable grounds', a concept used throughout the Act. This concept is discussed further in Part 11 - 'Other Matters'.

Trespassing animals on private land

The Act gives impounding officers the power to impound animals that trespass (section 10). This relates to private land which the officer must be invited onto by the occupier.

Impounding of animals

Section 11 provides for what is to happen to any impounded animals, after it is impounded, and outlines the responsibility of the impounding officer to deliver the animal to a pound as soon as practicable. The officer may instead detain the animal for up to 7 days prior to impounding. The pound can either be the nearest pound to where the animal was impounded (in the case of police officers) or the nearest pound owned or operated by the impounding authority (in the case of any other impounding officer). Additional provisions apply to Local Land Services impounding officers.

Impounded animals may be destroyed in certain circumstances

The impounding officer may immediately destroy any impounded animal if of the opinion that it is injured, diseased or severely distressed at the time of impounding, or is worth less than the cost of taking it to the pound. The impounding authority may recover the cost of destroying and disposing of the animal from the owner. Additional provisions apply to Local Land Services impounding officers.

Occupiers may impound trespassing animals but need to notify the owner and care for that animal.

Section 12 provides powers to occupiers of private land to impound any animal trespassing on their land. Section 13 sets out the parameters for care of the animal that must be met while the animal is in the care of the land occupier. It also outlines required animal owner notification and impounding processes including:

- moving the animal to the nearest pound or keeping it for up to 4 days before taking it to a pound
- notifying the owner within 24 hours (if known or can be easily found)
- applying an applicable charge (as defined) to the owner of the animal for costs associated with the occupier impounding the animal.

Where the occupier does not know the identity of the owner

If the occupier does not know, or cannot easily find out, the identity of the owner of an impounded trespassing animal, section 14 provides that the occupier must take it to the pound within 48 hours. It is an offence for an occupier to fail to comply with the notification, care and animal delivery requirements of both sections 13 and 14, with a maximum penalty of 5 penalty units (\$550).

Key Issue

Lawful impounding of animals

Lawful impounding of animals

It is important to ensure that the Act provides only for unattended (including abandoned) or trespassing animals to be impounded. The administrative review process in the Act enables owners to appeal in cases where they believe their animal has been unlawfully impounded. Very few cases have been heard.

Key issue - animals welfare

It is also important to ensure that the care provisions for animals remain appropriate and align with animal welfare legislation and standards. No issues have been raised to date about this.

Key issue - land owner conflict

The ability for land owners or occupiers to impound animals trespassing on their land is important to protect the land and stock from damage and disease. For rural communities it can create conflict where landowners impound their neighbour's stock. Some are reluctant to do so in difficult times of drought and disaster and may request a third party to mediate the issue.

Key issue - defining 'animal'

As highlighted above, the term 'animal' may need to be qualified in the Act (see Part 11 'Other Matters' to comment).

Questions

Part 2 - Divisions 2 & 3: Impounding of animals

- 3.1 Are the impounding of animals provisions working well?
- 3.2 If not, what is not working well?
- 3.3 What could be improved?

4 Impounding of items

(In Act Part 2 – Division 4: Impounding of animals and articles)

Section 15 of Division 4 empowers impounding officers to impound items (or ‘articles’ - defined in the Act as ‘anything capable of ownership except a living creature’) left abandoned and unattended in public places, within their area. Impounding officers may make reasonable decisions on when and what to impound.

Excerpt

Division 4: Impounding of articles

15 Abandoned and unattended articles can be impounded

An impounding officer may impound an article found in the officer’s area of operations if the officer believes on reasonable grounds that the article has been abandoned or left unattended. Section 16 affects this if the article is a motor vehicle.

Note. *The Local Government Act 1993* gives a council power to order the removal of an object or matter that is causing or likely to cause an obstruction.

Motor vehicles, boat trailers and shared devices have their own special provisions in the Act. While abandoned shopping trolleys are not captured specifically under the Act, there have been calls to do so. All of these specific items are discussed below.

Shopping Trolleys

Abandoned and dumped shopping trolleys have consistently been the most frequently raised concern by the community and councils in relation to items that can be regulated under the Act.

The current framework for impounding abandoned shopping trolleys is outlined under section 15 of the Act, which enables impounding of ‘generic’ articles. Section 20 of the Act outlines what is to be done with an article once impounded. Upon finding or being notified of an abandoned shopping trolley, an authorised officer may impound the shopping trolley if they reasonably believe that it has been abandoned. The shopping trolley is then to be taken to the authority’s pound and the authorised officer must make all reasonable attempts to find out the owner’s details. The authorised officer then must advise the owner in writing that they have no less than 28 days to retrieve the impounded shopping trolley before it will either be sold or destroyed. In practice, shopping trolleys are more frequently managed through a mix of approaches including consumer education, development consent conditions on supermarkets under Environmental Planning and Assessment Act, ‘trolley tracker’ devices and coin operated deposit schemes.

There have been calls from councils and others to create a bespoke regulatory framework to manage trolleys in the Act, as has been done recently for share bikes. These stakeholders are concerned that the current powers to manage shopping trolleys are not robust enough and do not provide enough of an incentive for users or retailers to prevent shopping trolleys from being abandoned or, in the case of the retailer, to collect them once impounded.

Other jurisdictions in Australia have implemented various strategies. In South Australia, City of Marion conducted a Shopping Trolley Summit on 12 July 2018. More than 40 government, business and community participants discussed potential solutions. They came up with 17 solutions including: lease agreements, a trolley hire scheme for customers who need to transport their groceries home, a trolley bounty for successful return of abandoned trolleys and encouraging the use of re-useable trolleys.

The ACT Government has implemented laws to make coin operated trolleys a mandatory system for all retailers. In other jurisdictions, some councils, such as Ipswich Council in Queensland, use by-laws to regulate retailers and put the onus back on them to ensure trolleys are not dumped outside of the shopping district.

Environmental waste caused by shopping trolleys

As often highlighted in media, dumped shopping trolleys end up in suburban streets, in bushland, parkland and in waterways. As shopping trolleys are relatively cheap to buy, there is little incentive for some retailers to collect them from hard to access places or from pounds, once impounded. As the impounding fees usually exceeds the cost of the trolley, there is even less incentive to retrieve them. The cost of dumped shopping trolleys is often borne by impounding authorities, usually councils, the community and the environment.

Small business supermarkets

Smaller supermarkets with fewer staff and shopping trolleys may find it cost prohibitive to install expensive technology or to retrieve trolleys within short timeframes, once notified.

There are legislative and non-legislative options to deal with shopping trolleys

Suggestions raised to curb the issue of abandoned shopping trolleys include:

- mandatory coin deposit schemes
- alternative containment schemes (e.g. perimeter wheel-locking technology)
- better owner branding on trolleys, including clear 24 hour phone numbers
- better education, including signs at shops telling users not to remove trolleys from the vicinity
- increased fines for users who abandon trolleys
- increased fines for owners of the trolleys
- extension of new 'shared devices' provisions in the Act to include shopping trolleys, with certain exemptions or concessions for smaller retailers.

- 4.1 Are the provisions to deal with abandoned shopping trolleys adequate?
- 4.2 If not, what is not working well?
- 4.3 What are some suggestions for better managing abandoned shopping trolleys in the community?

Impounding of boat trailers

Parking of boat trailers in crowded suburbs for extended periods of time, in the same place has been an issue for some time. The Parliament amended the Act in 2015 to deal with this issue. Section 15A gives impounding authorities the power to impound boat trailers that have been left in the same spot for at least 28 days. It also provides steps to be taken by the impounding officer relating to notification, before impounding is undertaken. Authorised officers must provide notification of the impending impounding to the owner of the boat trailer and provide no less than 15 days for the owner to remove the trailer before impounding will be undertaken.

Under the *Road Rules 2014*, Rule 200 it is an offence to stand a heavy or long vehicle (with a Gross Vehicle Mass of 4.5 tonne or greater or longer than 7.5m) on a street in a built up area for longer than 1 hour unless authorised to do so. Other laws relating to the parking of vehicles may be also enforced, including those relating to signposting, parking permits, traffic flow and public safety, which may also result in a notice of intention if breached.

Roads and Maritime Services (RMS) also have a category of parking restriction sign - "No Parking – Motor Vehicles excepted". This provides a means for councils to control problem parking by non-motorised vehicles and has been used by some metropolitan Sydney councils to control types of non-motorised vehicles in specific problem areas. The intention of the sign is to allow the parking of motor vehicles while restrict the parking of all types of trailers and caravans.

- (1) In this section:
- declared area** in relation to an impounding officer's area of operations, means the whole or any part of that area that is declared by the impounding authority that has appointed the officer, by order published in the Gazette, to be a declared area for the purposes of this section in relation to the officer.
- road** means a road within the meaning of the *Road Transport Act 2013* and includes a road related area within the meaning of that Act.
- Note. The definition of **motor vehicle** in the Dictionary includes a boat trailer.
- (2) An impounding officer may impound a boat trailer in the officer's area of operations if the officer believes on reasonable grounds that the boat trailer is in a declared area and has not been moved for at least 28 days (or such other period as is specified by the regulations).
- (3) A boat trailer that is on a road is not moved for the purposes of this section if it is only moved along the same road and without passing an intersection with another road. An intersection with a road related area is to be disregarded for the purposes of this subsection unless it is related to a different road.
- (4) This section does not apply to a boat trailer that is parked on a road in accordance with an official resident's parking permit that applies to the boat trailer and is displayed on the boat trailer.
- (5) The power of an impounding officer to impound a boat trailer under this section is in addition to any power to impound the boat trailer under section 15.
- (6) Section 16 applies to the impounding of a boat trailer under this section and in such a case, the notice to the owner under section 16(4) is to specify a period of not less than 15 days in which the boat trailer may be moved to avoid the impounding.

A boat trailer that may be impounded under this section is taken to have been left unattended for the purposes of this Act.

Key Issues

Boat Trailers

Boat trailers are an ongoing concern

Boat trailers being parked on public roads remains a community and local council concern due to both safety and amenity issues. A key concern is the required notification period of 15 days after an impounding officer identifies the boat trailer has been left for 28 days. Councils believe this creates a disincentive for prompt action by boat owners as they can park in one spot for 43 days. There are also a number of other concerns around the operational aspects of the boat trailer provisions that require discussion.

Other trailers

Another issue with this provision is that it is specifically aimed at boat trailers, whereas other forms of trailers are not captured here. While other legislation deals with some trailers, such as planning laws in relation to advertising trailers, many others are not captured, such as box trailers, horse floats and camper trailers.

Questions

Part 2 – Division 4: Boat Trailers

- 4.4 Are the boat trailer provisions still effective?
- 4.5 If not, what is not working well?
- 4.6 What are some suggestions for strengthening or expanding the legislation to better regulate the issue of boat trailer parking?

Specific provision relating to motor vehicles

Section 16 provides for impounding motor vehicles. Impounding officers can impound motor vehicles; however, they must use all reasonable methods to find out the owner's name and address. A written notification of intention to impound must also be issued with no less than 3 days' notice to move the vehicle and it must also indicate that if the vehicle is valued at less than \$500, it may be destroyed. If the impounding officer is unable to source the owner's details, the impounding officer may impound the vehicle pursuant to this clause. This requires police to be advised of all action pertaining to impounded motor vehicles. Lastly, the section provides specific provisions to move the motor vehicle immediately if it is causing an obstruction or poses a risk to public safety.

Key Issues

Motor Vehicles

Notification periods and identifying owners

Some stakeholders are concerned over the notification requirements being too laborious for impounding officers and about the difficulty identifying the owner. The 3-day period for the Police to provide in writing owner details is felt to be too long by some councils. The inability to access the VIN number on older cars is also a cause for concern, even though impounding officers only need to make a reasonable attempt to find the name of the owner. Concerns may be due to the current unlimited timeframe in the Act in which unidentified owners can claim a vehicle after it has been impounded or seek costs for the sale of their vehicle.

Responsibility

Some councils are concerned about the lack of clarity over who is primarily responsible for impounding of abandoned vehicles on public roads, whether it is NSW Police or the council.

Unregistered vehicles

Councils are concerned that they cannot issue on-the-spot fines for unregistered vehicles in the same way they can in relation to unregistered trailers. This may be a clarification issue with Roads and Maritime Services due to changes to the *Road Transport Act 2013* and how that interacts with the Act.

Obstructing vehicles causing driveway access issues

Stakeholders have said that motor vehicles parked across driveways are not captured by this provision, yet a blocked driveway causes access issues.

Consideration could be given to aligning this provision with a similar provision in relation to shared devices that expands on 'access' considerations.

Shared devices including share bikes

Shared device services, such as share bikes, are a relatively new form of shared technology in Australia. These transport services involve users hiring a dock less shared device, such as a share bike, from a public place using an app on their phone, and then riding and leaving the shared device parked safely in another public place at the end of their journey. Share bikes rely on GPS technology. Generally, they must be parked within a geo-fenced area or users are continuously charged. They can also send a signal to the operators if they are in water or knocked onto their sides. Share bikes are an innovative, practical, environmentally friendly and efficient form of transport in urban areas. However, as identified by concerns raised with the Government in 2017 when they first arrived in Sydney, these devices can be detrimental to safety and amenity in public places through misuse and abandonment.

The Government introduced a shared devices framework into the Act in 2018 to deal with share bike issues. The framework makes business operators of the sharing services responsible for ensuring the devices are parked safely or moved quickly within risk-based timeframe, or they may face a large fine or legal action by the relevant impounding authority. Impounding officers can also move share bikes themselves where they deem it necessary to do so. Currently the framework only applies to share bikes but has the flexibility to apply to other shared transport devices in the future. A code of practice requiring standards for the operation of shared devices and services can be added via regulations, if required. The following box below outlines the shared device framework introduced by the Government.

Future shared devices including e-scooters

Electric scooters (e-scooters) are not currently legal in NSW but have increased in popularity around the world as a way of taking the first and last leg of a journey, such as from train or bus to the office. E-scooters can reach speeds of 25km/hr and, in some other jurisdictions, can be driven on footpaths and other public land. In Victoria, Road Rules provide that e-scooters are motor vehicles which can only be driven on roads and must be registered. Brisbane and Adelaide have implemented larger-scale trial periods of e-scooters in their CBDs. While these have raised safety issues, few issues have arisen in relation to abandonment.

While potential share e-scooter operators have called for e-scooters to be legalised in NSW, the Government is still exploring whether to trial e-scooters in this state.

Excerpt

Division 5: Additional powers in relation to shared devices

19A Preliminary

This Division confers additional powers on impounding officers in respect of shared devices, and does not limit a power to impound an article that is a shared device under any other provision of this Act.

19B Definitions

(1) In this Division:

code of practice means a code of practice prescribed by the regulations under this Division.

device means:

(a) a bicycle, or

(b) any other thing used for transporting persons that is prescribed by the regulations as a device for the purposes of this Act.

leave a shared device includes park a shared device.

operator of a sharing service means a person who carries on the business of providing the sharing service.

shared device means any device that is provided for hire under a sharing service.

sharing service – see section 19C.

user means a person who hires a shared device under a sharing service.

(2) In this Division, a power to impound or move a shared device includes a power to unlock the device.

19C Sharing service – meaning

(1) In this Division, **sharing service** means an arrangement (including an arrangement in writing or one established through a smartphone application) under which:

(a) devices are provided for hire (whether or not a fee is payable), and

(b) the devices are self-locking, or access to the devices is otherwise able to be limited, including remotely, and

(c) the devices are not hired from the premises of the operator of the sharing service or from a fixed docking station, and

(d) the devices are not required to be returned to:

(i) the operator, or

(ii) the premises from which they were picked up, or

(iii) a fixed docking station, or

(iv) other specific premises, and

(e) any other features prescribed by the regulations exist.

(2) The regulations may:

(a) declare any arrangement or type of arrangement made in connection with a device to be within the definition of **sharing service** for the purposes of this Division, or

(b) exclude any arrangement or type of arrangement made in connection with a device from that definition of **sharing service**.

- (3) A provision of this Act, the regulations or a code of practice that requires a shared device to be left in a particular place, or prohibits a shared device from being left in a particular place, is to be disregarded for the purpose of determining whether an arrangement is a sharing service.
 - (a) stairs, or
 - (b) in any other circumstances prescribed by the regulations.

19D Impounding shared devices that are causing an obstruction or safety risk

- (1) A shared device is not to be left in a public place in a way that causes an obstruction or safety risk.
- (2) An impounding officer may immediately impound a shared device if:
 - (a) the shared device has been left in a public place, and
 - (b) the impounding officer believes on reasonable grounds that the shared device has been left in a way that causes an obstruction or safety risk.
- (3) An impounding officer may, instead of impounding a shared device under subsection (2), move the device to another place.
- (4) An operator of a sharing service must ensure that any shared device owned by the operator that is left in a public place (whether by a user or any other person) in a way that contravenes this section is removed within 3 hours after the operator is notified of the contravention by an impounding officer, user or any other person.
- (5) An operator of a sharing service who fails to comply with subsection (4) in relation to a shared device is taken to have abandoned the shared device in a public place.

Note. Abandoning an article in a public place is an offence under section 32.

- (6) The regulations may prescribe a longer period than 3 hours to apply for the purposes of subsection (4) in all or any specified circumstances.
- (7) For the purposes of this section, a shared device causes an obstruction or safety risk:
 - (a) if the shared device is left in a way that causes an obstruction to traffic (whether vehicular or pedestrian), or that is likely to be a danger to road users or the public, including because it blocks access to a footpath, fire exit, lift, access ramp or stairs, or
 - (b) in any other circumstances prescribed by the regulations.

19E Impounding abandoned shared devices

- (1) A shared device is not to be left in a public place, in the same location, for a period of more than 7 consecutive days.
- (2) An operator of a sharing service must ensure that any shared device owned by the operator that has been left in a public place (whether by a user or any other person) in contravention of this section is removed within 4 days after the operator is notified of the contravention by an impounding officer, a user or any other person.
- (3) An operator of a sharing service who fails to comply with subsection (2) in relation to a shared device is taken to have abandoned the shared device in a public place.

Note. An impounding officer may impound the abandoned shared device under section 15. Abandoning an article in a public place is an offence under section 32.

The regulations may prescribe a longer period than 4 days to apply for the purposes of subsection (2) in all or any specified circumstances.

19H Ownership of shared devices

For the purposes of this Act, the operator of a sharing service is taken, unless the contrary is proven, to be the owner of any shared device that is branded with the name of the operator or the operator's business.

19I Notice to operators

- (1) A notice under this Division may be given:
 - (a) by giving the notice by email to an email address specified by the operator for the service of documents of that kind, or
 - (b) if the operator to whom it is issued has requested or consented to notification by SMS text message or any other electronic means – by giving the notice by SMS text message to the mobile telephone number specified by the operator for the service of documents of that kind or giving the notice by the other electronic means, or
 - (c) in the case of a notice given by an impounding officer – in any other way agreed between the relevant impounding authority and the operator concerned.
- (2) This section is in addition to, and does not limit section 49.

Key Issues

Shared Devices

Share bikes

Monitoring to date indicates that, since the introduction of these provisions few issues have been raised about share bikes, with less responsive operators having left the market. Current operators appear to be working responsibly and cooperatively with councils and other impounding authorities to promptly address any issues relating to poorly parked or abandoned share bikes.

Future shared devices

Potential operators have called on the Government to trial shared e-scooter services in Sydney, as for Brisbane and Adelaide. The review needs to consider if the shared device framework is appropriate to respond to emerging shared transport device technology and the ever-changing uses of public spaces. Further, while shared transport devices such as scooters could be added to the current framework via regulations, if legalised, the framework currently applies to only transport-related shared devices.

Key issue

New items in public places

Appropriateness of bespoke solutions

While special provisions can potentially continue to be made to deal with existing items of concern to the community, such as shopping trolleys, or potential emerging items, such as shared mobility scooters, the review should consider whether it is practical or appropriate to continue to make bespoke legislative change to deal with each item in public spaces.

Questions

Part 2 - Division 4: Impounding of items

- 4.7 Are these provisions working well?
- 4.8 If not, what is not working well?
- 4.9 What could be improved?

New items in public places

A greater number and variety of items will continue to emerge and be used in public places across Australia as the population grows and ages and as technological change and innovation continues. In recent years there have been a greater number of cars, different types of trailers, shared devices, campers, mobility scooters, segways, drones, smart phones, tablets, cameras and other devices all in use in public places.

5 Part 3 – How impounded items are to be dealt with

Impounding authority to notify owner

Section 20 provides the requirements for notifying owners of the impounding of an animal or item. Impounding officers must use all reasonable resources and make all reasonable inquiries to find out the owner of the impounded animal or item. This must happen as soon as practicable after the item is impounded (except for vehicles, boat trailers and shared devices which require attempts to notify the owner prior to impounding). Notice must be given to the owner that the animal or item has been impounded not less than 7 days (in the case of an item) and not less than 28 days (in the case of an animal) before sale or disposal to allow the owner time to retrieve the animal or item.

Care of impounded animals

Sections 21 and 22 provide for the necessary and required care of impounded animals. Importantly, it sets the duty of impounding officers to care for impounded animals. Impounding officers may humanely destroy injured, diseased or distressed animals based on a reasonable decision regarding an animal's welfare. A suffering animal may be euthanised to eliminate that suffering without requiring owner consent. This must be done humanely (see also section 41 and 44).

Owner's right to claim impounded item

Section 23 provides owner with the powers to obtain release of the impounded animal or item. The owner must make an application to the impounding authority before the animal or item is disposed of or sold.

Disposal of impounded items

Section 24 outlines the processes that must be undertaken when an impounding authority comes to sell any impounded item. It provides the steps needed to be taken by impounding authorities to determine whether an animal or item can be sold or needs to be disposed of. If an item is not sold within the designated timeframe, this section also provides the impounding authority with the power to dispose of that item. Timeframes for the release of impounded animals or items after the notification period established above has been exhausted are also provided for.

What happens to the proceeds from the sale of impounded items

The proceeds of the sale of impounding items can be handled in several ways. Section 25 describes what is to happen in these cases. After the fees and charges of impounding are deducted from the sale of the animal or item, the proceeds are to be held by the impounding authority for the original owner. The owner or another applicant need to apply to receive the proceeds of sale, anytime in the following 12 months after sale of the animal or item. If there is no application within that 12-month period, the proceeds become the property of the authority to use as they see fit.

Questions

Part 3: How impounded items are to be dealt with

- 5.1 Are these provisions working well?
- 5.2 If not, what is not working well?
- 5.3 What could be improved?

6 Impounding fees and charges

Fees and charges relating to impounding

Costs associated with impounding items and animals may be recovered from an owner by an impounding authority through impounding fees and charges. Section 26 sets out how fees and charges can be determined and applied in relation to impounded items and animals. Importantly, councils are required to consult annually with their communities about all fees and charges based on a clear pricing methodology as part of their Integrated Planning and Reporting process requirements under the Local Government Act. Fees and charges must also be based on the cost of providing the relevant service.

Section 26: Impounding fees and charges

- (1) An impounding authority may fix the fees and charges that are to be paid in respect of the impounding, holding and disposing of an item by the authority and its impounding officers. The Commissioner of Police may by order in writing fix the fees and charges that are to be paid in respect of the impounding of an item by a police officer.
- (2) The fees and charges that may be fixed are as follows:
 - a fee for walking or transporting an impounded animal to the pound or to the address of its owner and to a market or saleyard for sale,
 - a charge for providing an impounded animal with food, water and veterinary care,
 - a charge for loss or damage attributable to an impounded animal while it was unattended or trespassing,
 - a fee for conveying an impounded article to a pound,
 - a fee for storing an impounded article at the pound,
 - a fee to cover the cost of serving a notice notifying the owner of an impounded item that the item may be or has been impounded.
- (3) Fees and charges may be fixed so as to differ according to the kinds of animals or articles impounded.
- (4) A fee or charge must not exceed the corresponding maximum fee or charge (if any) prescribed by the regulations, and any amount that is fixed so as to exceed the maximum is reduced to the maximum.
- (5) Fees and charges fixed under this section are the fees and charges payable in respect of the impounding, holding and disposing of an item under this Act.
- (6) An impounding authority must remit to the Commissioner of Police any fee or charge paid to or deducted or recovered by the authority that was payable in respect of the impounding of an item by a police officer.
- (7) An impounding authority may waive payment of a fee or charge, or part of a fee or charge, in respect of the impounding of an animal in a public place that had strayed because a gate or fence had ceased to be animal proof due to fire, flood or other natural disaster.

Under section 27, impounding authorities may recover fees associated with the cost of impounding an item or animal. This can include costs of impounding, holding, care (in the case of animals) and disposal of items or animals that have been impounded. It allows the owner of an item to declare (within 21 days) that an impounded item was under the charge of another person at the relevant time so that any charges or debts can be transferred to the appropriate person. Any amount recovered by an impounding authority for loss or damage incurred by trespassing animals on private land must be paid to the occupier of the private land who suffered the loss or damage.

Section 27: General right to recover impounding fees and charges and damages

- (1) An impounding authority may recover the following amounts as a debt from the person responsible for an impounded item:
 - the fees and charges payable in respect of the impounding, holding and disposing of the item,
 - in the case of an animal impounded because it was trespassing – the cost of rectifying any loss or damage attributable to the trespassing of the animal.
- (2) The Commissioner of Police may recover as a debt from the owner of an impounded item the fees and charges payable in respect of the impounding of an item by a police officer.

- (3) The person responsible for an impounded item for the purposes of this section is the owner of the item unless the owner, within 21 days after being required to do so by the impounding authority by notice in writing:
 - (a) supplies, in the approved form, the impounding authority with the name and address of the person (being a person who is at least 18 years of age) who was in charge of the item immediately before it was abandoned, became unattended or was permitted to trespass, or
 - (b) satisfies the impounding authority that he or she did not know and could not with reasonable diligence have ascertained that name and address.
- (4) If the owner supplies the name and address of the person who was in charge of the item immediately before it was abandoned, the person named is the person responsible for the impounded item for the purposes of this section.
- (5) Amounts recoverable under this section can be recovered only if they have not already been paid, or deducted from proceeds of sale.
- (6) An impounding authority must pay any amount recovered by it under this section for loss or damage attributable to the trespassing of an animal on private land to the person who suffered the loss or damage.
- (7) For the purposes of subsection (6), an impounding authority is entitled to treat the owner of the land concerned as the person who suffered the loss or damage unless satisfied that the loss or damage was suffered by some other person.
- (8) Without limiting the form that may be approved under subsection (3)(a), the form may be an electronic form accessible on a publicly available website.
- (9) A person who provides the impounding authority with a statutory declaration containing the particulars required by the approval form is taken to have done so in the approved form.

Key Issues

Fees and Charges

Cost of fees and charges often exceed value of item or animal

Councils and other impounding authorities have raised concerns that many of the items and some animals they impound are never recovered by their owners. This is because the cost of paying the impounding fees and charges often exceeds the value of the item. While some costs can be recovered through sale, this does not cover all costs. The review should consider how the Act can provide an incentive to owners to take whole-of-life responsibility for their items and animals so that they retrieve them when impounded. This would help to ensure the cost of impounding and disposal is borne by those being regulated community, not the broader community.

Appropriate variation in fees and charges across councils

Fees for impounding items are calculated differently across councils and jurisdictions. In NSW, some of the fees charged for release of impounded items range from twenty dollars to hundreds of dollars. This variation is appropriate in the context of location, population density and distance from the pound. Council discretion to determine reasonable costs and set fees is important in ensuring that the costs of impounding an item are fully recovered.

Questions

Part 3: Impounding Fees and Charges

- 6.1 Are the fees and charges provisions working well?
- 6.2 If not, what is not working well?
- 6.3 What could be improved?

7 Part 4: Establishing Pounds

Part 4, section 28 enables councils to establish public or private pounds for impounding of animals and items. This section also gives impounding authorities the responsibility of management and operation of the pounds they establish and sets the framework for how impounding authorities can enter into arrangements with public pounds. Lastly, it establishes administrative requirements for the operation of these pounds. No issues have been raised in relation to establishing pounds.

Questions

Part 4: Establishing Pounds

- 7.1 Are the pounds provisions working well?
- 7.2 If not, what is not working well?
- 7.3 What could be improved?

8 Part 5: Offences and Penalties

Part 5 of the Act sets out the offences relating to non-compliance with the Act. These offences apply to people who abandon items or animals. Several offences come with penalties designed to encourage owners to act responsibly.

Offence of abandoning item, or leaving animal unattended, in public place

Section 32 provides the offence for a person who abandons an item or leaves an animal unattended in a public place. It specifies a far greater maximum penalty amount for abandoning a shared device (\$2,750) compared with the maximum penalty for any other item (\$550). The provision is provided in full below and details the penalty units associated with each of the offences. Note that associated penalty notices, or fines, are provided for in the regulations.

Excerpt

Part 5: Offences

32 Offence of abandoning article, or leaving animal unattended, in public place

(1) A person who abandons an article in a public place is guilty of an offence.

Maximum penalty:

- (a) In the case of a shared device taken to be abandoned by an operator of a sharing service under section 19D or 19E – 25 Penalty units, or
- (b) In any other case – 5 penalty units.

(2) A person who causes or permits an animal to be unattended in a public place is guilty of an offence unless the person establishes that the person took all reasonable precautions to prevent the animal from being unattended.

Maximum penalty: 5 penalty units.

(3) A person is not to be regarded as having abandoned an article in a public place or as having caused or permitted an animal to be unattended in a public place:

- (a) if the article or animal is in the public place in response to an invitation contained in a notice published by the relevant public authority and in accordance with any conditions specified in that notice, or
- (b) if the article or animal is in the public place with the consent of the relevant public authority, or
- (c) if the presence of the article or animal in the public place is authorised by or under an Act, or

- (d) in the case of an animal that is stock (within the meaning of Part 8 of the *Local Land Services Act 2013*) that is unattended on a road or travelling stock reserve, in any circumstances prescribed by section 115 of that Act,
 - (e) in the case of an animal, in any circumstances prescribed by the regulations for the purposes of section 9.
- (4) A court that convicts a person of an offence under this section may order the person to pay to an impounding authority the fees and charges payable in respect of the impounding, holding and disposing of the item concerned (whether or not the court imposes a penalty for the offence).

Owner liable for offences concerning motor vehicles

Section 32A describes how the liability is on the owner of the vehicle unless the owner can satisfactorily prove that the vehicle was stolen or taken and used illegally. In this case, if it is known to the owner, the name and address of the person in control of the vehicle at the time of the offence must be provided or the court can satisfy this, in their own right. This section also provides other mechanisms for identifying the true offender in these circumstances.

Excerpt

Part 5: Offences

32A Owner liable for offences concerning motor vehicles

- (1) The owner of a vehicle with respect to which an offence under section 32 is committed is, by virtue of this section, guilty of the offence as if the person were the actual offender, unless:
 - (a) if the offence is dealt with by way of penalty notice, the owner satisfies a person specified in the notice that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used, or
 - (b) in any other case, the court is satisfied that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used.
- (2) Nothing in this section affects the liability of an actual offender in respect of the offence but, if a penalty has been imposed on, or recovered from, any person in relation to the offence, no further penalty can be imposed on or recovered from any other person in relation to the offence.
- (3) The owner of a vehicle is not, by virtue of this section, guilty of the offence if, where the offence is dealt with by way of penalty notice:
 - (a) within 21 days after service on the owner of the penalty notice for the offence, the owner gives a person specified in the notice an approved nomination notice containing the name and address of the person who was at all relevant times in charge of the vehicle, or
 - (b) the owner satisfies a person specified in the notice that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.
- (4) The owner of a vehicle is not, by virtue of this section, guilty of the offence if, in any other case:
 - (a) within 21 days after the service on the owner of a court attendance notice for the offence, the owner gives the informant an approved nomination notice containing the name and address of the person who was at all relevant times in charge of the vehicle, or
 - (b) the owner satisfies the court that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.
- (4A) Despite any other provision of this Act, an approved nomination notice may be provided by an owner of a vehicle served with a penalty notice within 90 days of the notice being served on the owner if the approved nomination notice is provided in the circumstances specified in section 23AA or 23AB of the *Fines Act 1996*.

- (4B) If the owner of a vehicle gives an approved nomination notice to a person or an informant for the purposes of this section, the person or informant may, by written notice served on the owner, require the owner to supply a statutory declaration for use in court proceedings that verifies the nomination contained in the approved nomination notice.
- (5) If a statutory declaration supplying the name and address of a person for the purposes of this section is produced in any proceedings against the person in respect of the offence to which the declaration relates, the declaration is evidence that the person was, at all relevant times relating to that offence, in charge of the vehicle involved in the offence.
- (6) An approved nomination notice or a statutory declaration that relates to more than one offence is taken not to be an approved nomination notice or a statutory declaration supplying a name and address for the purposes of this section.
- (7) This section does not limit any other provision of this Act, any provision of any other Act or any provision of an instrument in force under this or any other Act.
- (8) In this section:
approved nomination notice has the same meaning as in section 38 of the *Fines Act 1996*.

Other provisions relating to offences

Section 33 outlines an offence for people who permit an animal to trespass in a place (other than a public place) and sets a maximum penalty at 5 penalty units. A penalty unit is currently \$110 in NSW.

Section 34 provides an offence for people who unlawfully recover an impounded item. This extends to any attempts to incite or assist another person to unlawfully recover impounded items. The maximum penalty for this offence is set at 50 penalty units. The court can also impose charges and fees that would have been paid to the authority for the lawful release.

Section 35 makes it an offence for a person to obstruct the duties of an impounding officer whilst they are undertaking their impounding requirements under this Act. Maximum penalty for this offence is 20 penalty units.

Penalty notices can be issued by an impounding officer if it appears to the officer that the person has committed a penalty notice offence, as outlined in the Act or under the regulations. Fine amounts are currently set at \$550 for abandoning a motor vehicle, \$500 for abandoning a shared device, \$330 for abandoning an animal and \$220 for abandoning any other item. Lastly, section 37 outlines where proceedings for offences must be dealt with, which is in the Local Court.

Excerpt

Part 5: Offences

33 Offence of causing or permitting animal to trespass

- (1) A person who causes or permits an animal under his or her control to trespass in a place (other than a public place) is guilty of an offence.

Maximum penalty: 5 penalty units.

- (2) A court that convicts a person of an offence under this section may order the person to pay to an impounding authority the fees and charges payable in respect of the impounding, holding and disposing of the animal concerned (whether or not the court imposes a penalty for the offence).

34 Offence of unlawfully recovering impounded item

- (1) A person who, without lawful authority, recovers or attempts to recover or incites or assists another person to recover an item that he or she knows is impounded is guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) A court that finds a person guilty of such an offence may order the person to pay to the impounding authority concerned the fees and charges that would have been payable to the authority for the release of the item had it not been recovered (whether or not the court imposes a penalty for the offence).

35 Offence of obstructing impounding officer

A person who, without reasonable excuse, obstructs an impounding officer exercising or attempting to exercise a power under this Act is guilty of an offence.

Maximum penalty: 20 penalty units

36 Penalty notices

- (1) An impounding officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

Note. The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).

This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

Penalty notice data from Revenue NSW

Below is a table outlining the total type, number and value of penalty notices issued under the Impounding Act for the 2018/19 financial year, across all issuing authorities.

Fin_Year	Offence Code	Offence Description	No of PNs	Face Value (\$)
2018/19	10660	Abandon an article (not motor vehicle or shared device) in a public place	112	24,640
	10661	ABANDON A MOTOR VEHICLE IN A PUBLIC PLACE	1,645	904,750
	10662	Cause or permit animal to be unattended in public place	142	46,860
	93769	Abandon a shared device in a public place	2	1,000

Key Issues

Offences and penalties

Incentives for responsible behaviour

Notwithstanding the shared device provisions that commenced in 2018 introducing relatively larger penalties for abandoning share bikes, penalties for offences under the Act have never been reviewed. Concerns have been raised that the penalties are insufficient to encourage owners not to abandon items and animals. The review should consider the nature of the offences and ensure that all penalties in the Act are at an appropriate level. The review may also consider tiered penalties (such as a higher penalty for corporations than for individuals) or whether penalties for continuing offences would encourage responsible behaviour.

Identifying offenders

Councils and others have raised concerns that it is difficult to 'catch people in the act' of abandoning items and animals, and that penalties for abandoning some items are therefore rarely applied. The review should consider how the Act can provide an incentive to owners to take whole-of-life responsibility for their items and animals. Any regulatory incentives would also need to be supported by non-regulatory incentives such as education programs.

- 8.1 Are the offences provisions working well?
- 8.2 If not, what is not working well?
- 8.3 What could be improved?

9 Part 6: Applications to Civil and Administrative Tribunal

Owners can apply to the NSW Civil and Administrative Tribunal (NCAT) for a review of the decision to impound their animal or item, but only on the grounds that the impounding was done unlawfully. Owners can also apply for a review of any fee or charge the impounding officer requires to be paid on the grounds that it is improperly charged, incorrectly calculated or excessive. Appellants have 28 days from notification of impounding, where the owner has been identified. Where an owner has not been identified, they have an unlimited timeframe to appeal. Where a matter is dismissed by the NCAT, the applicant is liable for any additional impounding fees.

A review of a dozen cases heard by NCAT over the past twelve years shows that most relate to owners questioning the lawfulness of items being impounded such as cars, shopping trolleys and stock. Other cases have been brought to NCAT where an owner believes the impounding fees charged has been excessive, including in one recent case by a neighbour who had impounded stock. In some cases, appeals to NCAT determinations were heard in higher courts.

- 9.1 Are these provisions working well?
- 9.2 If not, what is not working well?
- 9.3 What could be improved?

10 Part 7: Miscellaneous

The miscellaneous provisions contain important administrative matters, including in relation to police assistance, liability of authorised officers, giving notice destruction of animals and collecting debts. Key provisions are highlighted below.

- **Protections from liability (s45)** – provides important protection from liability to authorised officers who act in good faith in disposing of a motor vehicle or destroying an animal under the Act for any loss or damages sustained by an owner as a result of impounding. It also provides for the details surrounding ownership and rights once the item has been sold. This reflects the liability provisions for council officials under the Local Government Act. A person can seek to recover damages if they believe the impounding officer or impounding authority did not act in good faith.
- **Police required to provide assistance on request (s43)**
Police must, on request from an impounding officer, assist to provide details of ownership of an item within 3 days in writing. It may be appropriate to review this timeframe in light of changes to technology that allow for more rapid written notices via emails and/or SMS messages.
- **Method of giving notice(s49)** – currently this must be done in person, by posting it to the person's residence or business or, in the case of a body corporate, by leaving it at the registered office or principal place of business. It may be appropriate to review notice methods in light of changes to technology that allow more rapid written notice via emails and/or SMS messages.

- **Special power to destroy animals (s41) and humane destruction of animals (s44)** – where an animal threatens public safety or is so diseased or injured that it is suffering and likely to die, an impounding officer may destroy it. Carcass removal, disposal and recovery of associated expenses from the owner is also covered. Threatened species or protected animals under the *Biodiversity Conservation Act 2016* are exempt. Animals destroyed under the Act must be done so humanely and the carcass disposed of safely and hygienically.

Other miscellaneous provisions

- Impounding officers must have written authorisation and produce it upon request;
- Permit not required to deliver stock to pound;
- A court order for the payment of money is enforceable as a judgement made under the *Civil Procedure Act 2005*;
- An amount of money under the Act may be recovered as a debt in court;
- The Act binds the Crown;
- Making of regulations;
- Repealed sections;
- Savings and transitional provisions;
- Notes in text.

Questions

Part 7: Miscellaneous

- 10.1 Are the miscellaneous provisions working well?
- 10.2 If not, what is not working well?
- 10.3 What could be improved?

11 Other Matters

Definitions

Definitions for the Impounding Act are mostly in the Dictionary towards the end of the Act, or in relevant sections or Divisions (such as for shared devices). They provide clarity on certain terms which have a slightly different meaning to the standard dictionary definition or may be specific to a certain situation. The Act was amended in 1996 to define the term ‘unattended’ in relation to animals so that animals straying in public places could be impounded and those animals legitimately in a public place would not be impounded. It is appropriate to consider whether clarifications or further definitions are required.

Key issue

Definitions

Animals

The term ‘animal’ is currently limited to a short list in the Act. Other animals may be added via regulations but have not been to date. Case law highlights a matter in which a council claimed it could not impound llamas under the Act. It may be more appropriate to have a broader definition of animal, or link the definition to another framework. Under the *Local Land Services Act 2013* an animal ‘includes aquatic and terrestrial animals’ and stock ‘means cattle, horses, sheep, goats, camels, alpacas, llamas, pigs, deer, ostriches, emus or other, as added via regulations.

Obstruction, danger to the public or safety risk

Motor vehicles may be impounded immediately where they cause an 'obstruction to traffic (vehicular or pedestrian)' or are likely to be a 'danger to the public' (s16(5)). Concerns have been raised that this does not empower authorised officers to act when a car blocks a driveway. On the other hand, a shared device may be immediately impounded where it causes an 'obstruction or safety risk', which includes not only an obstruction to traffic (vehicular or pedestrian), but also 'because it blocks access to a footpath, fire exit, lift, access ramp or stairs or in any other circumstances prescribed by the regulations' (s19D(7)). Consideration could be given to better aligning circumstances for immediate impoundment.

The owner, user and responsibility

The owner of an animal or item is defined in the Act's Dictionary as 'any person who alone or jointly is entitled, whether at law or in equity, to possession of the animal or article'. The new shared device laws have qualified this term so that the 'operator of a sharing service' is the owner of any shared device 'branded with the name of the operator or operator's business' (s19H). This means that it is hire company - not the user - that is ultimately responsible to retrieve abandoned share bikes within legislated timeframes. Supermarkets are similarly responsible for picking up their shopping trolleys under current Government policy. Consideration may need to be given to a more contemporary definition of owner and to defining the 'user' of items and 'carer' of animals in the Dictionary.

Amenity

The term 'amenity' is difficult to define as it encompasses the overall aesthetic value of a public space, as well as its ease of use and the enjoyment that one receives from accessing the space. The amenity of an area is important as an underlying principle of the review of the Act as it provides an outcome that benefits the community and influences the strategic direction. While it is difficult to define, it is reasonable to discuss whether it is necessary to have the term 'amenity' defined more succinctly in the definitions of the Act, to aid with interpretation.

A note on 'Reasonable grounds'

The Act provides for impounding officers to carry out their duties based on what they believe, or are satisfied of, 'on reasonable grounds'. As with many other NSW laws, this appropriately empowers the impounding officer to be guided by Government laws, policies and guidance (such as the NSW Ombudsman's [Enforcement Guidelines for Councils](#)), as well as their own authority's policies, procedures. They must also use their expert judgement, based on skills, experience and training, to examine each situation on a case-by-case basis, including an assessment of risk, to determine what action to take under the Act. It is not proposed to try to define 'reasonable grounds' in the Act. This is better done through education, training and guidance.

Questions

Other Matters

- 11.1 Are the definition provisions working well?
- 11.2 What is not working well?
- 11.3 What could be improved?

Glossary & Abbreviations

Impounding Act	<i>Impounding Act 1993</i>
OLG	Office of Local Government
Regulation	Impounding Regulation 2013
BRS	Better Regulation Statement
RMS	Roads and Maritime Services

Appendix A

Feedback form for printing and mailing to:

**Office of Local Government
Impounding Act Review
Locked Bag 3015
Nowra NSW 2541**

Privacy Notice - Impounding Act Review consultation

When you give us your feedback, OLG will be collecting some personal information about you, in particular:

- your name
- your email address
- the name of your organisation (if provided)
- any personal information you decide to put in the additional comments fields

All feedback received through this consultation process may be made publicly available. Please do not include any personal information in your feedback that you do not want published.

This information is being collected by OLG as part of the Impounding Act Review to help the Government develop new legislation. As part of that process, we may need to share your information with people outside OLG, including other public authorities and government agencies. We may also use your email contact details to send you notifications about further feedback opportunities or the outcome of consultation.

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ORGANISATION (PLEASE SELECT ALL APPLICABLE)

- Council - Metropolitan
- Council - Metropolitan Fringe
- Council - Regional
- Council - Rural
- Council - Large Rural
- Business or Industry Group
- Business Resident/ Ratepayer
- Community Group
- Community Resident/Ratepayer
- Other

FEEDBACK FORM

Section One - Strategic Directions

Balancing Community needs and shaping public spaces

- Q. How can the Act help to manage our public spaces to meet community needs into the future?
How can we best balance protecting safety and amenity with supporting convenient innovation and technology that makes our lives easier?
How can the Act promote better use of public spaces, in line with the Premier's priority for a greater number of greener spaces?

A. _____

Strategic framework for regulating impounding

- Q. Is the framework for the Act still 'fit for purpose'?
Should the Act continue to focus on process, or should it be based around the outcome of promoting safety and amenity in public spaces?
Should the current level of detail remain in the Act, or should it be moved to regulations?
Do you feel the objectives of the Act need to change? If so, how?

A. _____

Integration with NSW policy and other legislation

- Q. Is there any other relevant legislation that needs to be considered during the review of the Impounding Act?
What are the current issues with interaction between the Impounding Act and other NSW policies or legislation?

A. _____

Encouraging responsible behaviour

- Q. How do we get the incentives right in the Act to influence responsible behaviour?
- Are those responsible for abandoning items and leaving animals unattended paying for the cost of regulation? If not, how might they be made more accountable?
- Are the current offences in the Act right? Are the penalties for those offences commensurate with the seriousness of the offences?
- Is it appropriate to create positive incentives that reward good behaviour? Could this be done in the legislation? If so, what could these be?

A. _____

Innovation and emerging technology

- Q. How do we ensure the Act will effectively help to protect safety and amenity in public spaces into the future?
- What are some current and emerging/potential future issues with items that impact safety and amenity in public spaces?
- How can we create a framework that can anticipate and respond quickly to problems with these items that arise? Do we need to create a bespoke solution in the Act every time?
- How can we create a framework that can use emerging/potential future technology to help solve some of these issues?

A. _____

Section Two - Operational Directions

Consultation Questions 2 - Who can impound and what can be impounded

2.1 _____

2.2 _____

2.3 _____

Consultation Questions 3 - Impounding of animals

3.1 _____

3.2 _____

3.3 _____

Consultation Questions 4 - Impounding of abandoned shopping trolleys

4.1 _____

4.2 _____

4.3 _____

Consultation Question 4 - Boat Trailers

4.4 _____

4.5 _____

4.6 _____

Consultation Questions 4 - Impounding of items

4.7 _____

4.8 _____

4.9 _____

Consultation Questions 5 - How impounded items are to be dealt with

5.1 _____

5.2 _____

5.3 _____

Consultation Questions 6 - Impounding fees and charges

6.1 _____

6.2 _____

6.3 _____

Consultation Questions 7 - Establishing pounds

7.1 _____

7.2 _____

7.3 _____

Consultation Questions 8 - Offences and penalties

8.1 _____

8.2 _____

8.3 _____

Consultation Questions 9 - Applications to Civil and Administrative Tribunal

9.1 _____

9.2 _____

9.3 _____

Consultation Questions 10 - Miscellaneous

10.1 _____

10.2 _____

10.3 _____

Consultation Questions 11 - Other Matters

11.1 _____

11.2 _____

11.3 _____

Consultations Question 12 - General Comments

12.1 _____

Appendix B

Examples of impounding fees in NSW council areas - 2018-19

Fee name	Fee amount
City of Sydney	
Impounded vehicles – Release: Advertisement & Removal to impounding yard	\$348
Impounded vehicles – Storage	\$40/day
Impounded items – Removal and storage	\$40/day
Impounded animals – cost of release	As per contract
Unlocking of bollards and gates	\$30
Blue Mountains City Council	
Impoundment of goods – release fee	\$75
Storage of article (not motor vehicle)	\$17/week
Abandoned vehicle fee	\$115
Abandoned vehicle – towing and removal	At cost
Impounded dogs and cats – 1st impounding	\$36
Dogs & Cats – second and subsequent impoundings	\$77
Care and administration at pound	\$51/animal/day
Vet costs at pound	At cost
Horse, cattle, goats, sheep, pigs – up to 4 days	\$31/head/day
Horse, cattle, goats, sheep, pigs – after 4 days	\$163/head/week
Mid-West Regional Council	
Impounded article – release fee	\$50
Impounded vehicle – release fee	\$90 + towing cost
Dog & Cat impound release fees – 1st time	\$33
Dog & Cat impound release fees – 2nd & subsequent times	\$53
Dog & Cat sustenance fee	\$23/day
Livestock impounding fees – sheep, goats & pigs (1st offence)	\$8.90/head
Livestock impounding fees – All other animals (1st offence)	\$34/head
Livestock impounding fees – sheep, goats & pigs (repeat offence within 3 months)	\$11.30/head
Livestock impounding fees – All other animals (repeat offence within 3 months)	\$66/head
Impounding officer – Travel	\$0.80/km
Impounding officer – Labour	\$56/hour
After hours callout	\$112/person/hour
Livestock sustenance fee – sheep, goats & pigs	\$8.90/head
Livestock sustenance fee – All other animals	\$12.50/head
Transport of impounded stock	At cost plus 10%
Damage to property by trespassing stock	At cost plus 10%

Shoalhaven City Council

Impounded article release fee	\$98
Vehicle removal fee	\$123
Impounded vehicle storage fee	\$12/day
Impounded vehicle release fee	\$98
Dog/cat pickup fee	\$42
Dog/cat release fee	\$40
Dog maintenance	\$30/day
Cat maintenance	\$19/day
Livestock pickup fee – animal management vehicle used	\$123
Livestock pickup fee – Council float used	\$61
Livestock maintenance	\$36/day
Livestock release fee	\$50

Port Macquarie-Hastings Council

Animals – sustenance fee	\$46/head/day
Animals – conveyance fee (admin fee + actual cost)	\$46
Animals – Loss or damage fee (admin fee + actual cost)	\$46
Animals – notice of impounding fee	\$41
Animals – impounding fee	\$59
Other articles – storage fee	\$46/article/week
Other articles – conveyance fee	\$46
Other articles – loss or damage fee	\$46
Other articles – notice of impounding	\$41
Other articles – impounding fee	\$59
Impounding and recovery fee	At cost

Produced by the Office of Local Government
5 O'Keefe Avenue Locked Bag 3015
NOWRA NSW 2541 NOWRA NSW 2541

Phone 02 4428 4100 olg@olg.nsw.gov.au
TTY 02 4428 4209 www.olg.nsw.gov.au

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