

Submission on the Review of the Impounding Act 1993 Discussion Paper

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to provide input to the review of the *Impounding Act 1993*. Councils are key users of the legislation in their day to day operations, using it to maintain order and safety of public areas and local roads. As such, it is vital that the legislation be clear, easy to use and free from ambiguity. This submission makes several recommendations to solve existing operational challenges with the legislation.

Summary of Recommendations

This submission makes the following recommendations: [text marked in aqua]

1. That the Act itself be more principles-based, with procedural aspects moved to the Impounding Regulation.
2. That the Impounding Act be revised to reduce duplication with existing legislation. In cases where legislation or policies continue to intersect or overlap by necessity, councils would welcome guidance on how the legislation can be cohesively implemented.
3. That where the vehicle registration is known, the Act require the NSW Police to provide last registered owner details (name and address) when referring an abandoned or unattended vehicle to council.
4. The Act include a power of entry that can be used to establish ownership of an item, be it vehicle or trailer or other.
5. Councils have suggested that a state-wide register for unregistered vehicles would be desirable, which Police could also access.
6. That the review address the disconnect between the Impounding Act which requires identification of the 'owner' and the Road Transport Act which only requires a register to be kept of registered operators (not owners).
7. Council rangers be given the authority to have vehicles impounded where they are illegally parked across driveways preventing access.
8. That the Act or supporting procedures include options to assist councils dealing with illegally dumped cars in areas where currently council officers have no authorisation to impound.
9. The Act should provide alternative measures for safe-keeping of impounded animals.
10. The interaction of the Impounding Act and Biosecurity Act be reviewed, and the Biosecurity Act include a liability exemption if an action is undertaken to provide for public safety.
11. That impounding officers be able to issue penalty infringement notices (PINs) for stock trespassing on private property, as currently they can only issue a PIN for leaving an animal unattended in a public place.
12. The Act be revised to:
 - a. recognise shopping trolleys as the property of individual supermarkets so that the trolley owner (rather than user) can be regulated and issued with fines, and
 - b. apply similar standards and requirements to shopping trolleys as has been legislated for shared devices.
13. That s15A(3) be revised to be clear that parking the trailer in the same section of road is unacceptable.
14. That impounding officers be authorised to move or impound a boat trailer where all or part of the trailer is on public land and there are safety concerns.

15. That the legislation include provisions to assist with the identification and management of small watercraft in public spaces.
16. That lower-order offences be changed to penalty notice offences, to streamline and simplify regulatory action, with higher penalties for corporations.
17. That section 24 be broadened to allow other mechanisms for the fair and transparent sale of impounded items.
18. That in relation to definitions in the Act:
 - a. Definitions be added/revise for the terms unattended, abandoned, animal, reasonable grounds and move.
 - b. definitions be moved to the Regulation to enable them to be updated more readily.
19. Greater flexibility and an outcomes based approach would assist impounding officers to deal with cases of individual hardship or extenuating circumstances.
20. Access to real-time data and information can reduce the time and effort required by council impounding officers in establishing ownership of items and subsequent reporting.

Background

The *Impounding Act 1993* provides a legal framework for 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. The Act also provides the framework for working with landowners regarding impounding items or animals on private land.

The NSW Government 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.

Response

Strategic Directions

Strategic framework for regulating impounding

Since 1993 there have been technological and societal changes and also changes to best-practice regulation. Our society has become more of a ‘throwaway’ society that readily replaces items. How we live has also changed, with choice – of transport, of pet, of hobby – becoming wider and varied, with new technological advances and business models adding to the complexity. Our approach to regulating has also moved from being prescriptive to more outcome-focused.

LGNSW recommends that the Act itself be more principles-based, with procedural aspects moved to the Impounding Regulation. This will help regulatory responses keep pace with the changes outlined above and enable fines and other values to be updated over time. For example, section 18 of the Act provides for motor vehicles worth less than \$500 to be destroyed. This figure has not been updated since 1993. The cost to councils to impound a vehicle, store it and make contact with the owner can readily exceed that cost.

Integration with NSW policy and other legislation

Council impounding officers have powers and responsibilities under the Impounding Act that intersect with their powers or responsibilities under the *Local Government Act 1993*, *Companion Animals Act 1998*, the *Biosecurity Act 2015* and the *Protection of the Environment Operations (POEO) Act 1997*. Specific circumstances and inconsistencies of concern to councils are outlined in the submission below. For example, if a council ranger moves stock from the road onto the nearest property to prevent collisions, they may be committing an offence under the Biosecurity Act.

While councils are not bound by the Protocol for Homeless People in Public Places, many nonetheless take it into consideration when implementing the Impounding Act. The Protocol was introduced to help ensure that homeless people are treated respectfully and appropriately and are not discriminated against on the basis of their situation. The protocol is currently the subject of a review by the Legislative Assembly Committee on Community Services. LGNSW's submission identified that councils would welcome additional guidance on how to manage excess belongings in public space. This could be in the form of a definition of a reasonable quantum of belongings (i.e. City of Sydney defines belongings as two suitcases and a roll of bedding). It was also suggested that the Protocol should provide guidance around the extent of the right to store belongings in public space as this is a current grey area.

LGNSW recommends that the Impounding Act be revised to reduce duplication with existing legislation. In cases where legislation or policies continue to intersect or overlap by necessity, councils would welcome guidance on how the legislation can be cohesively implemented.

Operational Directions

Who can impound and what can be impounded

Part 5 of the Act empowers impounding officers to impound certain animals and articles, including motor vehicles and boat trailers. Impounding officers are appointed by an impounding authority (usually council or a NSW agency listed in the Act), but can also include NSW Police officers. Items that are abandoned or unattended can be impounded, however these terms are not adequately defined in the Act (see 'Other Matters' below for recommendations).

Councils have advised us that NSW Police generally treat unregistered vehicles as abandoned, which they view as the regulatory domain of council's impounding officers. For example, approximately 1,000 vehicles are reported as abandoned each year in Randwick Council, with 70% of these reports coming from NSW Police. This is a significant workload for councils, including requesting owner details from the Police, contacting the owner and issuing a notice for the proposed impounding.

LGNSW recommends that where the vehicle registration is known, the Act require the NSW Police to provide last registered operator details (name and address) when referring an abandoned or unattended vehicle to council. This will obviate the need for councils to separately request those details from the Police as per section 43 of the Act.

However not all unregistered vehicles are abandoned or unattended. In some cases the vehicle is being lived in and therefore not abandoned (and possibly not unattended), highlighting other issues such as homelessness that councils need to consider when deciding what action to take under the Impounding Act.

An unregistered vehicle may not have a number plate by which council impounding officers can determine the owner. Registration labels were dispensed with in 2013, and the operator of the vehicle may not be the registered owner, further complicating things. The vehicle

registration register contains 'registered operator' details, which under the Road Transport Act is defined as the person who is 'responsible' for the vehicle. This may or may not be the same person as the owner of the vehicle (e.g. under a lease arrangement, the leasing company may own the vehicle but the person that the vehicle is leased to may be the registered operator). Being the registered operator of a vehicle does not confer title of the vehicle. There is a disconnect between the Impounding Act which requires identification of the 'owner' and the Road Transport Act which only requires a register to be kept of registered operators (not owners). There may be no way for councils to determine owner details. This should be addressed as part of the review.

The Impounding Act does not provide any powers of entry for a police or impounding officer to use to search for the vehicle identification number (VIN). Without the VIN or other identifier it can be very difficult to determine who the owner is. LGNSW recommends the Act include a power of entry that can be used to establish ownership of an item, be it vehicle or trailer or other.

Often those who sell an unregistered vehicle fail to notify authorities of the sale. Even if council can establish the VIN and last registered owner, council may still need to contact two or three subsequent owners before they can identify the current owner. Councils have suggested that a state-wide register for unregistered vehicles would be desirable, which Police could also access.

Under section 16(5) of the Impounding Act, impounding officers are able to have a motor vehicle towed and impounded "if the vehicle is in a public place and the impounding officer is satisfied on reasonable grounds that its immediate removal is justified because it is causing an obstruction to traffic (vehicular or pedestrian) or is likely to be a danger to the public". The general interpretation of this section is that councils are not able to use this provision for immediate towing of vehicles parked across driveways. In extreme circumstances the Police could be called and might be able to remove the vehicle using their emergency powers, but there is a general reluctance to use these powers. However, if a car owner cannot be contacted, as in the above example, then nothing can be done until the driver decides to remove their vehicle.

LGNSW recommends council rangers be given the authority to have vehicles impounded where they are illegally parked across driveways preventing access. Such legislation could include safeguards to prevent the misuse of the authority such as a requirement that the removal be initiated by an owner of the affected property.

Council has recently experienced on-going issues with abandoned vehicles in both public and private places where Council is not authorised to impound these vehicles eg where there are other impounding authorities such as for State forests, national parks. This has on occasion resulted in long delays in the removal of these vehicles; increased vandalism, risk to public safety and fire risk to public assets if these vehicles are torched. LGNSW recommends that the Act or supporting procedures include options to assist councils dealing with illegally dumped cars in areas where currently council officers have no authorisation to impound.

Impounding of animals

Sections 9 and 10 of the Act provide for animals that are unattended in public places or animals that are trespassing to be impounded. Where a council impounding officer impounds an animal, the Act requires the animals to be taken to a pound as soon as possible, or detained for no longer than 7 days (on council land or in agistment) before taking it to the nearest pound. This has posed councils with a number of challenges, as outlined below.

The nearest pound may be many kilometres away, with the costs of transport outweighing the cost of the stock, or costs beyond what may be recoverable from the owners (if they can be identified). The pound / holding area may also be full or not capable of holding that type of animal. For example, a council may use the local cattle/sheep saleyards to hold the animals, however goats and pigs can often escape cattle/sheep pens. LGNSW recommends that the Act should provide alternative measures for safe-keeping of impounded animals.

There are also situations where an impounding officer may be called to impound cattle straying on the road at night for road safety reasons. The officer may not be able to immediately determine the owner of the cattle, nor arrange for transport at that time. The safest option may be to open the gate to the nearest paddock and hold cattle there overnight. However councils are concerned as to the possible implications this has for their staff under the *Biosecurity Act 2015*. If the cattle introduce weeds or another biosecurity threat to the paddock or livestock, the impounding officer can be held personally liable. This is an unfair position to put an impounding officer in – to protect public safety at possible personal expense. LGNSW recommends that the interaction of the Impounding Act and Biosecurity Act be reviewed, and the Biosecurity Act include a liability exemption if an action is undertaken to provide for public safety.

The Act also provides for land occupiers to impound an animal that is trespassing and either return it to the owner (if known) or take it to the nearest pound within 48 hours. Similar to the case above for impounding officers, the nearest pound may be tens if not hundreds of kilometres away and an impractical requirement on occupiers. LGNSW recommends that impounding officers be able to issue penalty infringement notices (PINs) for stock trespassing on private property, as currently they can only issue a PIN for leaving an animal unattended in a public place.

Impounding of shopping trolleys

Abandoned or dumped trolleys have plagued councils for years and are a major clean-up problem, especially in built-up suburbs. They can litter streets, be left in parks or dumped in rivers and creeks negatively impacting on amenity and the environment. Western Sydney councils collected more than 1,000 trolleys from streets and parks during two blitzes in 2019, including 550 that were rounded up in one week by Fairfield, Penrith, Liverpool and Cumberland Councils.

Local Government NSW has long been calling for better regulatory measures to force supermarkets to take responsibility for shopping trolleys, which have been the source of frustration for councils for years. Councils can currently fine customers caught abandoning a trolley, however this is impractical and difficult to do. Section 15 of the Act provides for councils to impound abandoned shopping trolleys and charge impounding fees to the trolley provider. However the cost of impounding the trolley can quickly outweigh the cost of replacing it, giving the trolley owner little reason to pay for its release from council or prevent it from being abandoned in the first place.

LGNSW believes that the legislation needs to adopt a more preventative approach to illegally dumped shopping trolleys. In almost all cases the owner of the shopping trolley has their brand clearly identified on the trolley. The Act should enable impounding officers to issue PINs to the owners of shopping trolleys found on public land. Such changes would incentivise shopping trolley owners to introduce proven measures and management systems to prevent shopping trolleys leaving their stores. This has been successfully achieved by chains such as Aldi, which use a coin deposit trolley mechanism.

Another example is in 2013 Ipswich City Council introduced a local law requiring supermarkets and retailers to install a shopping trolley wheel lock containment system if their store owns at least 20 trolleys. The same would apply to any retailer that receives two or more infringement notices for illegally dumped trolleys within a 12 month period. Retailers who fail to comply with the Council's law face fines of \$667 and up to \$5,500 for failing to install wheel locks. Council has issued 81 fines since the law was introduced in 2013, and the approach hailed a success with illegally dumped shopping trolleys now a rare sight in Ipswich.

However many stores have been slow to implement coin-operated systems, once-again leaving councils with the burden of collection and management. In 2018 the Impounding Act was amended to include specific provisions for shared devices (eg bikes), such as a code of practice that can impose enforceable obligations on operators, timeframes for reporting and removing devices (bikes) left in inappropriate locations before they are deemed to be abandoned, and also specifying that the operator is the owner of the shared device where it is branded (Sections 19A to 19H). The provisions also make roles and responsibilities clearer, helping to streamline compliance and enforcement.

LGNSW recommends the Act be revised to:

- recognise shopping trolleys as the property of individual supermarkets so that the trolley owner (rather than user) can be regulated and issued with fines, and
- apply similar standards and requirements to shopping trolleys as has been legislated for shared devices.

Impounding of boat trailers and other items

Councils often receive complaints from residents concerning long-term parking of boat trailers in streets with limited car parking availability. Section 15A of the Act provides for impounding officers to impound a boat trailer if on reasonable grounds they believe the trailer has not been moved for at least 28 days.

Section 16(4) provides that for motor vehicles, the impounding officer must give notice to the owner and must indicate that the vehicle may be impounded unless it is removed within a specified period (not less than 3 days). However for boat trailers the Act requires that the period allowed to move the trailer must specify a period not less than 15 days. Councils believe that the timeframe allowed for boat trailers is too long, as it can result in a boat trailer being parked in the same location for at least 6 weeks.

LGNSW recommends that the legislation be changed so that a fine can be issued to the boat trailer owner after 28 days. If this is not legally possible (eg because notification is required to provide for natural justice), an alternative option is to make the notice period for moving boat trailers consistent to that for motor vehicles (minimum 3 days after the initial 28 day period).

Section 15A(3) provides that 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. Impounding officers have advised that some people take advantage of this by moving the trailer past the next intersection, turn it around and park it on the other side of the road opposite where it was. While this currently meets the letter of the law, the desired outcome has not been achieved ie. the trailer is still taking up car spaces at the same location. LGNSW recommends that s15A(3) be revised to be clear that parking the trailer in the same section of road is unacceptable.

Council impounding officers tell us that a boat trailer cannot be impounded if any part of it is on private property. However, there have been circumstances where the majority of the trailer is on private property but a portion (eg towball) is on public land. While it may not cause an immediate danger, there is potential for another vehicle or pedestrian to collide with the part of the trailer on public land (which is a liability for council). LGNSW recommends that impounding officers be authorised to move or impound a boat trailer where all or part of the trailer is on public land and there are safety concerns.

Other items that can create unnecessary and significant extra work for councils is the management of small watercraft such as kayaks and dinghies. Along waterways where larger yachts or motorboats are, individuals leave small water craft to help them get to moored boats or otherwise enjoy the waterway. Particularly around Sydney Harbour and its rivers, the already narrow and busy shoreline can be cluttered with these craft. Council officers find it difficult to know whether an item is abandoned or not, or who to contact to check, because often the craft do not have any identifying details.

LGNSW suggests that the legislation include provisions to assist with the identification and management of small watercraft in public spaces. For example, a suggestion would be to require the craft to have a visible contact name and number (or other registration details, such as the associated car or boat registration that can be cross-referenced), otherwise it will be deemed as abandoned. Another option is to require the watercraft to be stored in designated racks or areas, as determined by council, to ensure the safety of the public space. Any items left outside those areas would be deemed abandoned.

See 'Other matters' below for comments and recommendations in relation to definitions of 'reasonable grounds', 'moved', 'abandoned' and 'unattended'.

Offences and penalties

It is critical that offences and penalties in the legislation provide a deterrent to undesirable behaviour. However penalties that are too high can have a perverse outcome when the cost of purchasing a replacement is cheaper than the fees for releasing an impounded item, or requires less effort than getting the item released. Some councils are of the view that current penalties do not provide sufficient motive for owners to take responsibility for items, and that higher penalties should exist for corporations.

Councils have also highlighted that the only offences for which a PIN can be issued for are offences under s32(1) and s32(2) i.e. abandoning an article in a public place, or causing / permitting an animal to be unattended in a public place. All other offences must be dealt with via the courts, which is a cumbersome and resource-intensive process for councils and individuals. LGNSW recommends that lower-order offences be changed to penalty notice offences, to streamline and simplify regulatory action, with higher penalties for corporations.

Other matters

Advertising of impounded items

Section 24 of the Act requires an impounded item (other than a motor vehicle) to be offered for sale if it is not claimed within the deadline for release. This is to occur by public auction or public tender. While councils appreciate the need for transparency around this process, the Act currently limits other, newer approaches from being used eg social media.

LGNSW recommends that section 24 be broadened to allow other mechanisms for the fair and transparent sale of impounded items.

Definitions

The Act currently defines '*unattended*' in relation to an animal only and does not define '*abandoned*'. Both these terms need to be defined in the Act to assist impounding officers implement the Act effectively.

The current definition of '*animal*' is limiting. Councils are coming across a wide range of species that require impounding, including alpacas and llamas, that are not covered by the definition. There are also other species, for example bison and water buffalo or new mixed species that will need to be covered by the definition. It is also noted that there are two definitions of '*animal*' – one in the Act dictionary, and another at s41 of the Act. While they are for different purposes, having two definitions for the same term creates confusion and uncertainty.

Other terms which require definition include:

- '*reasonable grounds*'. Section 15 of the Act states "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." This has led to contention with individuals arguing with impounding officers about what is reasonable from their perspective.
- '*move*' – see comments under section on boat trailers for rationale.

LGNSW recommends that:

- Definitions be added/revised for the terms unattended, abandoned, animal, reasonable grounds and move.
- definitions be moved to the Regulation to enable them to be updated more readily.

Procedural issues

Greater flexibility and an outcomes based approach would assist impounding officers to deal with cases of individual hardship or extenuating circumstances. Councils also seek greater flexibility and discretion in relation to the impoundment of animals under the legislation. For example, the current legislation can be impractical when it comes to individuals or impounding officers being required to take an animal to the nearest pound within a specified timeframe.

Data

Access to real-time data and information can reduce the time and effort required by council impounding officers in establishing ownership of items and subsequent reporting. As highlighted above, councils have suggested a state-wide register for unregistered vehicles (accessible by all impounding authorities). Councils would also like to have access to GIS locational data for items such as share bikes, to help streamline reporting and follow up of items left unattended for extended periods.

Conclusion

Local Government welcomes the review of the Impounding Act, which provides an opportunity to modernise and update the legislation to deal with current and emerging technology and our changing way of life. The Act is an important tool for council in maintain order and safety of public areas and local roads, and the recommendations in this submission are sought to improve the Act's clarity and ease of use. Public amenity, safety and the environment are key considerations for councils when managing their LGAs and current legislative powers would benefit from clarification and additional powers to remove ambiguity and allow councils to ensure that their communities are great places to live and work.

For further information, please contact Susy Cenedese, Strategy Manager Environment, on Susy.Cenedese@lgnsw.org.au or 02 9242 4080.