



New South Wales

Public Spaces (Unattended Property) Regulation 2022

under the

Public Spaces (Unattended Property) Act 2021

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Public Spaces (Unattended Property) Act 2021*.

WENDY TUCKERMAN, MP
Minister for Local Government

Explanatory note

The object of this Regulation is to prescribe, consequent on the enactment of the *Public Spaces (Unattended Property) Act 2021 (the Act)*, matters that are required or permitted to be prescribed under the Act. In particular, this Regulation makes provision about the following—

- (a) key concepts of the Act,
- (b) dealing with unattended property,
- (c) dealing with property taken into possession by authorities or authorised officers,
- (d) other miscellaneous matters, including savings and transitional provisions.

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Public Spaces (Unattended Property) Regulation 2022

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Public Spaces (Unattended Property) Act 2021

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Public Spaces (Unattended Property) Regulation 2022*.

2 Commencement

This Regulation commences on 1 November 2022.

3 Definitions

In this Regulation—

minimum notice period—see section 4.

scheme operator, in relation to a class 2 item, means a person who carries on the business of providing a sharing service under which the item is provided for hire.

the Act means the *Public Spaces (Unattended Property) Act 2021*.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

4 Minimum notice period

- (1) In this Regulation, the ***minimum notice period*** is—
 - (a) for a notice given in relation to a shopping trolley whose owner is the owner of fewer than 25 shopping trolleys—4 days after the notice is given, and
 - (b) for a notice given in relation to an animal or an item other than a shopping trolley referred to paragraph (a)—3 hours after the notice is given.
- (2) For subsection (1)—
 - (a) a notice given before 7am on a day is taken to have been given at 7am on the day, and
 - (b) a notice given after 8pm on a day is taken to have been given at 7am on the next day.

Part 2 Key concepts

5 Excluded animals—the Act, s 5

For the Act, section 5(2)(b), the Act does not apply to the following—

- (a) a feral animal,
- (b) a native animal, but only if the particular native animal is not—
 - (i) ordinarily held in captivity, or
 - (ii) farmed.

Example— Wild emus and kangaroos are excluded animals, but farmed emus and kangaroos are not.

6 Classification of items—the Act, s 9

For the Act, section 9(2), a motor vehicle that is made available for the use of the public at large, whether or not on payment of a fee or other benefit, including as part of a sharing service, is a class 3 item.

7 Additional responsible persons for class 3 items—the Act, s 15

- (1) For the Act, section 15(3), the last registered operator of a class 3 item for which there is currently no registered operator is a responsible person for the item.
- (2) However, if the last registered operator has disposed of the item to another person, the other person is a responsible person for the item instead.
- (3) If the last registered operator has disposed of the item to another person within the previous 3 years, the other person is a responsible person for the item only if the last registered operator produces written evidence of the disposal.

Note— Class 3 items are motor vehicles—see the Act, section 8(1). For obligations under road transport legislation relating to disposal of registered motor vehicles, see the *Road Transport (Vehicle Registration) Regulation 2017*, clause 38(1).

Part 3 Dealing with unattended property

8 Property belonging to homeless persons—the Act, ss 18 and 25

For the Act, sections 18(3)(b) and 25(3)(b), if an authorised officer believes a homeless person is a responsible person for an animal or item, the authorised officer must, before taking possession of the animal or item, consider—

- (a) the underlying principles in the *Protocol for Homeless People in Public Places* published by the Department of Communities and Justice, as in force from time to time, and
- (b) a policy, however described, adopted by the authority to give effect to the Protocol.

9 Unattended items—the Act, s 25

- (1) For the Act, section 25(3)(b) and (c), this section prescribes—
 - (a) conditions that must be satisfied before authorised officers may take possession of items, and
 - (b) matters about giving notices in relation to taking possession of items.
- (2) Before taking possession of a class 1 item or a class 2 item under the Act, section 25(1)(b)(i) or (ii)—
 - (a) the authorised officer must give written notice in accordance with this section that the authorised officer believes the item is unattended, and
 - (b) the notice must specify a time and date at which, if the authorised officer believes the item is unattended, the authorised officer may take possession of the item, and
 - (c) the specified time and date must be after the end of the minimum notice period, and
 - (d) the authorised officer must believe the item is unattended at the specified time and date.
- (3) Before taking possession of an item under the Act, section 25(1)(b)(iii) or (iv)—
 - (a) the authorised officer must believe the item is unattended for the period specified in section 19(1), and
 - (b) the authorised officer must give written notice in accordance with this section that the authorised officer believes the item is unattended, and
 - (c) the notice must specify a time and date at which, if the authorised officer believes the item is unattended, the authorised officer may take possession of the item, and
 - (d) the specified time and date must be after the end of the following period after the notice is given—
 - (i) for a class 1 item—7 days,
 - (ii) for a class 2 item—4 days,
 - (iii) for a class 3 item that is—
 - (A) an unregistered vehicle—3 days, or
 - (B) a registered vehicle unable to be legally driven because of its physical condition—3 days, or
 - (C) for another registered vehicle—15 days, and
 - (e) the authorised officer must believe the item is unattended at the specified time and date.

- (4) To avoid doubt, the notice may be given before the end of the period, specified in section 19(1), for which the authorised officer must believe the item is unattended under subsection (3)(a).
- (5) A notice under this section must be given—
 - (a) to a responsible person for the item, or
 - (b) if the authorised officer is unable to readily identify a responsible person for the item—by attaching it to the item.

10 Items taken into possession—the Act, s 26

- (1) For the Act, section 26(1)(c) and (2)(b), an authorised officer must, after taking an item into possession, take reasonable steps to—
 - (a) ensure the item remains in the condition it was in at the time it was taken into possession, and
 - (b) without limiting paragraph (a), protect the item from damage.
- (2) For the Act, section 26(2)(b), an authorised officer must, as soon as practicable, notify NSW Police of having taken a class 3 item into possession.

11 Items not taken into possession—the Act, s 27

For the Act, section 27(3), if an authorised officer decides to move an item to another place in the same general area, the authorised officer must—

- (a) move the item to a place where it is reasonably likely to be found by a responsible person for the item, or
- (b) if it is not practicable to move the item as referred to in paragraph (a)—take reasonable steps to notify a responsible person for the item of the place to which the item has been moved.

12 Directions to responsible persons about unattended property—the Act, s 28

- (1) For the Act, section 28(5)(a), action may be required under a notice only if it is reasonable and proportionate.
- (2) Without limiting the reasonable and proportionate action that may be required, a notice may require a person to do 1 or more of the following—
 - (a) repair a fence behind which, or an enclosure in which, an animal was kept, or ordinarily kept, immediately before becoming unattended,
 - (b) submit to the relevant authority a draft plan of management for the prevention of property, for which the person is a responsible person, becoming unattended again,
 - (c) comply with a plan of management approved by the authority, whether or not the plan is in the same terms as a draft plan submitted by the person in compliance with a requirement of a kind mentioned in paragraph (b).
- (3) For the Act, section 28(5)(b), action required to be taken under a notice, other than action of a kind mentioned in subsection (2)(c), must be taken—
 - (a) if the notice specifies the minimum notice period—within the minimum notice period, or
 - (b) if the notice specifies a period longer than the minimum notice period—within the longer period, or
 - (c) if the notice specifies no period—within a reasonable period ending after the end of the minimum notice period.

Part 4 Dealing with property taken into possession

13 Reasonable steps to identify and notify property owners—the Act, s 29

- (1) For the Act, section 29(2), reasonable steps to identify a property owner include the following—
- (a) for an animal—
 - (i) checking a form of identification worn by, or information contained in a microchip implanted in, the animal, or
 - (ii) searching registers to which the authority has access for information about the animal and its owner,
Example— the National Livestock Identification System under the *Biosecurity Act 2015*
 - (b) for a class 1 item—checking the item for a label that identifies the item’s owner,
 - (c) for a class 2 item—checking the branding on the item to identify a scheme operator,
 - (d) for a class 3 item—
 - (i) searching registers to which the authority has access for information about the vehicle and its registered operator, and
Example— the NSW registrable vehicles register under the *Road Transport Act 2013*
 - (ii) if searching registers referred to in subparagraph (i) does not reveal the registered operator—asking NSW Police to make enquiries about the name and address of the owner of the motor vehicle.
Note— See the Act, section 56.
- (2) For the Act, section 29(2), reasonable steps to notify a property owner include attempting to contact a person identified by taking a step mentioned in subsection (1).

14 Proceeds of sale of property—the Act, s 32

- (1) For the Act, section 32(6), an authority may keep the following from the proceeds of sale of property—
- (a) an amount equal to the costs incurred in selling the property,
 - (b) an amount equal to a fee payable for the exercise of a function in relation to the property by an authorised officer appointed by the authority.
Note— See the Act, section 55.
- (2) An owner of property sold by an authority may claim the proceeds of sale, other than the amounts specified in subsection (1), within the following time periods after the sale—
- (a) for a class 1 item or a class 2 item—3 months,
 - (b) for a class 3 item or an animal—6 months.
- (3) If a claim is not made within the period specified in subsection (2), the authority may keep the remaining proceeds of sale.

15 Action to be taken before disposing of class 3 item—the Act, s 32

- (1) For the Act, section 32(6), before disposing of a class 3 item, an authority must—
- (a) consider a response made by the Commissioner of Police, if any, to the notification under section 10(2), and

- (b) search the Personal Property Securities Register under the *Personal Property Securities Act 2009* of the Commonwealth for security interests in the vehicle, and
 - (c) if the search reveals a security interest—give notice of the proposed disposal to the person who claims the interest, and
 - (d) give notice of the proposed disposal to the registered operator of the vehicle.
- (2) Subsection (1)(d) does not apply—
- (a) if searching registers to which the authority has access for information about the vehicle and its registered operator does not reveal the registered operator, or
Note— See section 13(1)(d)(i).
 - (b) if the authority has already taken reasonable steps to notify the registered operator that the vehicle is in the authority’s possession.
Note— See the following provisions—
 - (a) the Act, section 29(1)(b) and (2),
 - (b) this Regulation, section 13(2).

16 Disposal of contents of class 3 items—the Act, ss 26 and 32

- (1) For the Act, sections 26(2) and 32(6), this section provides for additional matters relating to—
 - (a) the functions of an authorised officer in relation to an item the officer has taken into possession, and
 - (b) the sale or disposal of property taken into possession under the Act.
- (2) This section applies in relation to a class 3 item that—
 - (a) contains 1 or more other items (*vehicle contents*), and
 - (b) is to be disposed of under the Act, section 31 or 32.
- (3) The vehicle contents are taken to be unattended.
- (4) An authorised officer may take possession of the vehicle contents by removing the vehicle contents from the class 3 item before the class 3 item is disposed of.
- (5) The authority may dispose of the vehicle contents in the same way it may dispose of other items it takes possession of.
- (6) However, the authority is not required, under the Act, section 31(2) and (3), to identify and notify the owner of the vehicle contents—
 - (a) if the authorised officer reasonably believes the owner of the vehicle contents is the same person as the owner of the class 3 item, and
 - (b) if the authority has already taken reasonable steps to notify the registered operator that the vehicle is in the authority’s possession.
Note— See the following provisions—
 - (a) the Act, section 29(1)(b) and (2),
 - (b) this Regulation, section 13(2).

17 Relevant period—the Act, s 32

For the Act, section 32(7), definition of *relevant period*, paragraph (a), the following periods are prescribed—

- (a) for a shopping trolley—1 day,
- (b) for an animal, or an item other than a shopping trolley—14 days.

18 Records of property—the Act, s 33

For the Act, section 33(2)(f), a record of property taken possession of must include the following information—

- (a) the cost of taking possession of, storing, returning, destroying or disposing of, including selling, the property,
- (b) if the property is disposed of—how and to whom it is disposed of,
Example— By selling the property or giving it away free of charge.
- (c) if the property is sold—
 - (i) the value of the proceeds of sale of the property, and
 - (ii) where the proceeds of sale are kept.

Part 5 Miscellaneous

19 Unattended item periods and code of practice for class 2 items—the Act, ss 25, 37 and 38

- (1) For the Act, sections 25(1)(b)(iv)(A), 37(1)(d)(i) and 38(d)(i), the following periods are prescribed—
 - (a) for a class 1 item or a class 2 item—7 days or more,
 - (b) for a class 3 item that is—
 - (i) an unregistered vehicle—15 days or more, or
 - (ii) a registered vehicle unable to be legally driven because of its physical condition—15 days or more, or
 - (iii) for another registered vehicle—28 days or more.
- (2) For the Act, sections 25(1)(b)(v)(A), 37(1)(e)(i) and 38(e)(i), the *Code of Practice for Class 2 Items—Shopping Trolleys and other Sharing Service Items*, published by the Department of Planning and Environment on 1 November 2022, is prescribed for class 2 items only.

20 Penalty notice offences—the Act, s 49

- (1) For the Act, section 49—
 - (a) each offence created by a provision specified in Schedule 1 is an offence for which a penalty notice may be issued, and
 - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
 - (a) that limited kind of offence, or
 - (b) an offence committed in those limited circumstances.

21 Fees payable for exercise of functions by authorised officers—the Act, s 55

- (1) For the Act, section 55(9), this section provides for matters in relation to the amounts to be paid in relation to property taken possession of under the Act.
- (2) In deciding an amount under the Act, section 55(2)(a), an authority must consider the reasonable cost of the authorised officer exercising the function in relation to which the amount is to be paid.
- (3) In deciding an amount under the Act, section 55(2)(b), the Commissioner of Police must consider the reasonable cost of the police officer exercising the function in relation to which the amount is to be paid.

22 Penalty notices to scheme operators for unattended class 2 items—the Act, s 61

For the Act, section 61(2), an authorised officer must not issue a scheme operator a penalty notice on the basis of the scheme operator's liability under the Act, section 39 in relation to a class 2 item unless the authorised officer gives the scheme operator notice, for the minimum notice period, of—

- (a) the location of the item, and
- (b) the fact that the authorised officer believes the item is unattended.

23 Authorities and areas of operations—the Act, Dictionary

For the Act, Dictionary, definitions of *area of operations* and *authority*—

- (a) Schedule 2 specifies authorities and their areas of operations, and
- (b) words and expressions in Schedule 2 have the same meaning as in the Act in relation to which they are used.

Example 1— In Schedule 2, section 4, **area** and **council** have the same meaning as in the *Local Government Act 1993*.

Example 2— In Schedule 2, section 15, **controlled area**, **Regulatory Authority** and **special area** have the same meaning as in the *Water NSW Act 2014*.

Part 6 Savings, transitional and other provisions

24 Temporary exemption from offences—the Act, s 61 and Sch 1, s 1

- (1) For the Act, section 61(4)(a) and Schedule 1, section 1(1)(a), a person is exempt from the specified offence provisions, other than in relation to a transportation device, until 1 May 2023.
- (2) In this section—

specified offence provisions means the following—

 - (a) the Act, section 37(1) and (2),
 - (b) the Act, section 38(e),
 - (c) the Act, section 40(1).

transportation device means—

 - (a) a class 2 item that is—
 - (i) a share-bike, or
 - (ii) an electric scooter within the meaning of the *Road Rules 2014*, or
 - (b) a class 3 item.

25 Identification documents—the Act, Sch 1, s 1

A written authorisation issued under the *Impounding Act 1993*, section 42 is, until 1 November 2023, taken to be an identification document issued under the *Public Spaces (Unattended Property) Act 2021*.

26 Repeal of Part

This Part is repealed on 2 November 2023.

Schedule 1 Penalty notice offences

section 20

Provision	Penalty—individual	Penalty—body corporate
Offences under the Act		
Section 28(4) for an animal	\$1,320	\$2,640
Section 28(4) for a class 1 item	\$660	\$1,320
Section 28(4) for a class 2 item	\$1,320	\$2,640
Section 28(4) for a class 3 item	\$1,320	\$2,640
Section 37(1) for a class 1 item	\$330	\$660
Section 37(1) for a class 2 item not in the same public place or circumstance as another class 2 item	\$660	\$1,320
Section 37(1) for 2–11 class 2 items in the same public place or circumstance	(a) for the first item—\$660, and (b) for each additional item—\$66	(a) for the first item—\$1,320, and (b) for each additional item—\$132
Section 37(1) for a class 3 item	\$660	\$1,320
Section 37(2) for a single animal in a public place	\$660	\$660
Section 37(2) for 2–11 animals in the same public place	(a) for the first animal—\$660, and (b) for each additional animal—\$66	(a) for the first animal—\$660, and (b) for each additional animal—\$66
Section 40(1) for a single animal on private land without permission	\$660	\$660
Section 40(1) for 2–11 animals on the same private land without permission	(a) for the first animal—\$660, and (b) for each additional animal—\$66	(a) for the first animal—\$660, and (b) for each additional animal—\$66
Section 42(3) for an animal	\$660	\$1,320
Section 42(3) for a class 1 item	\$330	\$660
Section 42(3) for a class 2 item	\$660	\$1,320
Section 42(3) for a class 3 item	\$660	\$1,320

Schedule 2 Authorities and areas of operations

section 23

1 Centennial Park and Moore Park Trust Act 1983

- (1) **Authority**
Centennial Park and Moore Park Trust.
- (2) **Area of operations**
Land vested in the authority.

2 Crown Land Management Act 2016

- (1) **Authority**
Minister administering the *Crown Land Management Act 2016*.
- (2) **Area of operations**
The following land—
 - (a) Crown land, including Crown managed land, that is not the subject of a holding,
 - (b) land in the Western Division that is not within the area of a local council.

3 Forestry Act 2012

- (1) **Authority**
Forestry Corporation of New South Wales.
- (2) **Area of operations**
The following land—
 - (a) a State forest,
 - (b) a timber reserve,
 - (c) a flora reserve,
 - (d) other land owned by or under the control of the authority.

4 Local Government Act 1993

- (1) **Authority**
A council.
- (2) **Area of operations**
The following land, other than land within the area of operations of the Secretary of the Department of Planning and Environment under this Schedule, section 6—
 - (a) the area of the council,
 - (b) a part of the area of another council authorised by the other council to be within the council's area of operations.

5 Local Land Services Act 2013

- (1) **Authority**
Local Land Services.
- (2) **Area of operations**
A region.

6 National Parks and Wildlife Act 1974

- (1) **Authority**
Secretary of the Department of Planning and Environment.
- (2) **Area of operations**
Land reserved or acquired under the *National Parks and Wildlife Act 1974*.

7 Parramatta Park Trust Act 2001

- (1) **Authority**
Parramatta Park Trust.
- (2) **Area of operations**
Land vested in the authority.

8 Place Management NSW Act 1998

- (1) **Authority**
Place Management NSW.
- (2) **Area of operations**
The foreshore area.

9 Ports and Maritime Administration Act 1995

- (1) **Authority**
Each of the following—
 - (a) Minister administering the *Ports and Maritime Administration Act 1995*,
 - (b) a Port Corporation.
- (2) **Area of operations**
Land owned by or under the control of—
 - (a) for the Minister—Transport for NSW, and
 - (b) for a Port Corporation—the Port Corporation.

10 Royal Botanic Gardens and Domain Trust Act 1980

- (1) **Authority**
Royal Botanic Gardens and Domain Trust.
- (2) **Area of operations**
Land vested in the authority.

11 Sporting Venues Authorities Act 2008

- (1) **Authority**
Venues NSW.
- (2) **Area of operations**
Land vested in the authority.

12 Sydney Olympic Park Authority Act 2001

(1) **Authority**

Sydney Olympic Park Authority.

(2) **Area of operations**

The following land—

- (a) the Sydney Olympic Park Development Area,
- (b) land vested in the authority.

13 Transport Administration Act 1988—Transport for NSW

(1) **Authority**

Transport for NSW.

(2) **Area of operations**

The following land—

- (a) land vested in, owned by or under the control of the authority,
- (b) without limiting paragraph (a)—
 - (i) a classified road within the meaning of the *Roads Act 1993*,
 - (ii) land along or near the line of a classified road,
 - (iii) a bridge, ferry or tunnel vested in, or subject to the administration or control of, the authority.

14 Transport Administration Act 1988—other transport corporations

(1) **Authority**

Each of the following—

- (a) Transport Asset Holding Entity,
- (b) Sydney Trains,
- (c) NSW Trains,
- (d) Sydney Metro,
- (e) Residual Transport Corporation of New South Wales.

(2) **Area of operations**

Land owned by or under the control of the authority.

15 Water NSW Act 2014

(1) **Authority**

Regulatory Authority.

(2) **Area of operations**

The following land—

- (a) a controlled area,
- (b) a special area.

16 Western Sydney Parklands Act 2006

(1) **Authority**

Western Sydney Parklands Trust.

(2) **Area of operations**

Land vested in or owned by the authority.