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# Public Spaces (Unattended Property) Guidelines

For councils and other authorities

1 November 2022





# Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Published by NSW Department of Planning and Environment

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Public Spaces (Unattended Property) Guidelines

First published: 1 November 2022

ISBN/ISSN: 978-1-922001-92-4

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# FOREWORD

The NSW Government is committed to balancing convenience and amenity to keep our public spaces safe, accessible and enjoyable for our community, now and into the future.

The way we use and enjoy our public places has significantly changed over time due to an ageing population, social change, cultural understanding and technology. In our public places, property may be left unattended on public footpaths, roads and in parks and reserves, thus creating safety and amenity issues. These issues are becoming more common as people own more property and as technology continues to evolve.

That is why on 1 November 2022, following consultation with key stakeholders, the NSW Government commenced new laws – the *Public Spaces (Unattended Property) Act 2021* (PSUP Act).

The new laws repeal and replace the outdated *Impounding Act 1993* to create much stronger incentives for people to be responsible for their property in public – such as stock animals, vehicles, shopping trolleys, bikes and kayaks. Where property is left unattended in public, those responsible must attend to it within reasonable timeframes or face enforcement action, including strong penalties.

There are now much stronger regulatory and enforcement powers for authorities to deal with property left unattended in public as well as recover regulatory costs. Under the new laws, authorities can more easily temporarily store or care for unattended property and for the welfare of animals left unattended in public.

The PSUP Act is supported by the *Public Spaces (Unattended Property) Regulation 2022* (PSUP Regulation) and a Code of Practice for operators of ‘sharing service’ items, such as share bikes and shopping trolleys. The laws targeting sharing service items recognise that operators must respond faster if they are left in the wrong place or for too long.

The new laws support the Premier’s Priority to create quality green, open and public spaces for local communities to enjoy both now and into the future.

For the purpose of the *Local Government Act 1993*, these Guidelines are being published under section 23A of that Act. Councils will need to take the Guidelines into consideration before exercising any of their functions under the PSUP Act.

Melanie Hawyes

**Deputy Secretary, Crown Lands and Local Government**

# 1 INTRODUCTION



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## 1.1 How to use these Guidelines

These Guidelines support authorities to interpret and apply the ‘new laws’ – *Public Spaces (Unattended Property) Act 2021* (PSUP Act or ‘new laws’) to manage unattended property in public places while working cooperatively with people and other authorities.

The Guidelines are issued under section 23A of the *Local Government Act 1993*. They set out information that councils must consider when working under the PSUP Act.

Other authorities can also benefit from following these guidelines to provide the best possible response when they are dealing with unattended property.

The Guidelines cover:

- key concepts (Part 2)
- summary of offences and penalty Infringement Notices (PINs) (Part 2 and Appendix A)
- information for councils and other authorities to consider when undertaking regulatory and enforcement functions under the PSUP Act (Part 2)
- further useful information and resources (Part 3)

The Guidelines should be read together with the PSUP Act, PSUP Regulation and other policies. Where these Guidelines or other guidance may be inconsistent with the PSUP Act, the PSUP Act prevails.

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## 1.2 Audience and scope

Inside you will find information to help councils and other public land managers implement the new provisions in the PSUP Act and Regulation (PSUP framework). For a full list of authorities, please see Part 3 of these Guidelines.

Note that the Guidelines do not provide legal advice, cover all requirements of, or act as a substitute for the PSUP Act. Authorised officers should refer to their own authority’s advice or independent legal advice as required. The Office of Local Government (OLG) cannot provide legal or other advice to authorised officers on specific incidents or circumstances.

Operators of sharing services and responsible persons (as defined by the PSUP Act) are also encouraged to read and understand the information in the Guideline.

As the OLG monitors how effective the new laws are, feedback is welcome to help decide if more changes or guidance is needed in future. Contact details are provided at the end of the Guidelines.

## 2 WORKING WITH THE LEGISLATION



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## 2.1 Introduction

The PSUP framework gives power to authorities and their authorised officers to help manage unattended property in public places. The new laws repeal and replace the *Impounding Act 1993*.

The new laws put the onus on owners and other responsible persons to be accountable for their items or animals or face strong regulatory action.

The PSUP framework allows authorised officers of councils and other public land managers to take possession of shopping trolleys, vehicles, animals, and other items in public places and on certain other land. They also give direction on how property taken into possession can be reclaimed, sold or disposed of.

To be able to respond quickly to emerging issues on unattended property in public places, the PSUP Act has been designed to be outcomes based, and the PSUP Regulation to have the detail.

This part of the Guidelines (Part 2) summarises key parts of the PSUP Act and includes extra guidance that councils must consider. Other authorities are encouraged to follow this guidance, where relevant.

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## 2.2 Regulatory framework

### 2.2.1 Preliminary considerations

#### Guiding principles underpinning the new laws

Councils and other authorities are empowered to fulfil the **objects** of the PSUP Act (section 3 of the Act) including to:

- encourage owners and others responsible for property to act quickly and responsibly to mitigate risks to access, safety and amenity that may be caused by property being left unattended in public; and
- ensure public spaces can continue to be used, shared and enjoyed by the whole community.

To achieve this, under the new laws, authorities can:

- deal with property left unattended in public
- take regulatory and enforcement action for offences
- temporarily store or care for unattended property
- recover costs for dealing with unattended property from the responsible person/s, and
- care for animals to ensure their welfare.

#### Guiding principles for regulatory and enforcement action

Authorities are encouraged to act proactively and collaboratively with community, other authorities and State agencies to manage unattended property in public.

Authorised officers have wide discretion under the PSUP Act, but their regulatory action should be based on the following principles:

- responsive and prompt
- consistent and transparent
- ethical and accountable with good administrative practice
- firm but fair, following clear internal policies and procedures
- discretionary in making decisions and considering appropriate penalties
- proportionate to the nature of an offence, circumstance, harm caused and the offender
- informed by a preliminary assessment with decisions based on evidence
- proactive and collaborative, and
- aware of the objects of the Act and take action to best meet these objects.

### **Discretion and obligation under the Act**

Responding to community needs is important but authorities must balance public safety and amenity with their available resources and competing priorities. Authorised officers do not have to enforce, issue penalties, or take possession of all unattended property in public. Authorised officers can instead simply move an unattended item to a safer location if it poses an access or safety risk (section 27 of the Act).

Once an authorised officer takes possession of property under the Act, the relevant authority must store or care for it – taking all reasonable care – until it may be returned to the owner, sold or disposed of.

### **Supporting collaboration between authorities**

The NSW Government encourages authorities to work collaboratively across areas of operation to deal with unattended property in public places. For a full list of authorities, refer to Part 3.

Under Section 47 of the Act, authorised officers can deal with unattended property in public in another authority's area of operation if:

- an arrangement is in place between authorities to allow the exercise of functions on each other's area, or
- the authorised officer reasonably believes it is necessary to exercise the functions outside their area of operations in the interests of public health or safety.

An authorised officer cannot issue a penalty outside their own area of operations.

Authorities may choose to set out a Memorandum of Understanding (MoU) or agreement outlining arrangements across operational areas under the PSUP framework.

### **Role of NSW Police**

Police officers are often first responders and work to ensure public safety following accidents and emergencies at times for road accidents involving stock animals.

NSW Police is not an authority under the Act and has none of the obligations of an authority under Part 4 of the Act to deal with property taken into possession.

However, police officers are empowered to carry out the functions of an authorised officer in the same way as if the police officer had been appointed by an authority. This does not make a police officer subject to the direction or control of that authority (section 48 of the Act).

If a police officer carries out a function of an authorised officer under the PSUP laws, they should notify the relevant authority as soon as possible afterwards.

Police officers are not expected to carry out a primary role under the Act. Primary responsibility under the Act rests with the appropriate authority.

From time to time, an authorised officer may ask NSW Police for the name and address of the registered operator of a motor vehicle where it relates to unattended property in public. NSW Police must provide written advice within 24 hours of the request to the authority or its officer (section 56 of the Act).

### **Ensuring animal welfare**

Animals must be cared for in a way that is consistent with community expectations and welfare laws (section 3 of the Act).

Authorised officers must balance this with other community priorities to manage biosecurity risks and ensure public safety. Authorised officers must consider appropriate transport, shelter, and care for the animal's needs, as well as the time the animal has been, or will be, kept at the place of care.

The PSUP framework does not include the outdated concept of a 'pound'. The authorised officer has flexibility to arrange care for an animal in any appropriate place such as a vet or shelter near where the animal was found.

Where an authority enters into an agreement for temporary care of an animal by a third party, the authority is responsible for that animal's welfare until it is returned to the owner, sold, or rehomed.

The Act makes it clear that an animal may only be euthanised as a last resort (section 32 of the Act). In strictly limited circumstances an authorised officer may euthanise an animal where:

- the authorised officer reasonably believes the animal is so severely diseased or injured, or is in such a poor physical or psychological condition, that it would be cruel to keep the animal alive, or
- there is no alternative to the immediate euthanasia of the animal because the animal is a threat to the health or safety of persons, other animals or the environment.

In these circumstances the authorised officer may euthanise the animal in a way that causes the animal to die quickly and without unnecessary pain. This can only occur if a veterinary practitioner is not available, or if the authorised officer reasonably believes waiting for a veterinary practitioner would be cruel or otherwise inappropriate (section 22 of the Act).

### **'Grace' period**

To give the community and retail sector time to adjust to the new laws, authorised officers will not be able to issue a penalty before 1 May 2023 for the offence of leaving certain types of property unattended including:

- animals (typically stock animals)
- shopping trolleys, and

- personal recreational devices such as kayaks and bicycles.

In the grace period, authorised officers are encouraged to issue a warning to the responsible person advising them that their property has been left unattended. The warning should include the nature of the offence and explain that if the property is unattended after 1 May 2023, they may receive a fine. The warning should include the relevant penalty infringement notice (PIN) amount that would ordinarily need to be paid.

During this time, authorities should develop clear policies and procedures and a local communications strategy to promote the new requirements to their community. The grace period will give the community time to adjust to the new laws where they are substantially different.

It also gives time to operators of shopping trolley services to implement and comply with branding requirements in the *Code of Practice for Class 2 Items – Shopping Trolleys and other Sharing Service Items*.

Penalties for the above offences will take effect from 1 May 2023 (section 24 of the Regulation).

The grace period does not apply to class 3 items (vehicles) and shared transportation such as bikes and e-scooters as the new laws are not substantially more onerous than the existing laws for these items.

The grace period does not apply to more serious offences including failing to comply with a direction or failing to recover property taken into possession.

### **Special arrangements for stock animals in emergencies**

Special arrangements for stock animals to be temporarily kept on private land in emergencies (section 19 of the Act) did not start on 1 November 2022. Further guidance is being developed to support authorities to work with regional and rural communities to ensure public safety while minimising biosecurity risk. The special arrangements will start by Proclamation once the guidance has been completed.

### **Transitional arrangements relating to the *Impounding Act 1993* (from 1 November 2022)**

Any item that had been abandoned or left unattended for the purposes of the *Impounding Act 1993* but not yet impounded under that Act may be dealt with as unattended property under the PSUP Act after 1 November 2022.

Any item that had been impounded under the *Impounding Act 1993*, but not yet returned to the owner, or destroyed or otherwise disposed of, must continue to be dealt with under the *Impounding Act 1993* until it is returned to the owner or destroyed or otherwise disposed of.

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## **2.3 Applying and interpreting the Act**

### **2.3.1 Key concepts**

Key concepts (Part 2 of the Act) have a specific meaning within the PSUP framework (the PSUP Act and Regulation) and are critical to interpreting and applying these laws.

Important key concepts are summarised below to support reading the guidelines.

### Meaning of ‘property’

The term **property** means an animal or an item, which are also key concepts in the Act.

Property for the purposes of the PSUP framework may be thought of as anything legally capable of ownership or of belonging to someone.

Anything that is not ‘property’ may not be dealt with under the PSUP framework.

### Meaning of ‘unattended’

Powers under the PSUP framework are directly related to the concept of ‘unattended’ in relation to property.

**Unattended** property means property not under the direct control or supervision of the responsible person.

Authorised officers may only take possession of property if they reasonably believe it to be unattended. Depending on the circumstances, authorised officers must also give notice before taking possession of items.

### Meaning of ‘animal’

**Animals** dealt with under the Act are limited to those that may be considered the property of a responsible person such as farming/stock animals, animals held in captivity (such as zoo animals) along with animals owned by individuals, for example goats, chickens, and rabbits. The term ‘stock’ has the same meaning as in the *Local Land Services Act 2013* (LLS Act).

The Act does not apply to cats or dogs. Cats and dogs should be dealt with under the [Companion Animals Act 1998](#). The only exception is a dog in a national park or other land reserved or acquired under the [National Parks and Wildlife Act 1974](#), which does fall within the PSUP framework.

### Meaning of ‘item’

The Act classifies items into three classes – personal items (class 1), sharing service items (class 2) and vehicles (class 3).

The Act enables the PSUP Regulation to prescribe other things as items, and to move things between classes of items, to ensure the PSUP framework remains relevant into the future.

### Meaning of Class 1 or ‘personal’ items

**Class 1 (personal) items** are small or medium-sized things capable of ownership that can ordinarily be collected by 1 or 2 people without the need for machinery to lift, tow or move them.

Examples include baggage or personal recreational equipment such as bicycles or kayaks.

Large items such as large shipping containers, skip bins and vessels are not Class 1 items. These are generally more appropriately dealt with under planning or other laws.

### Meaning of Class 2 items or ‘sharing service’ items

**Class 2 (sharing service) items** are available for the use of the public at large, whether on payment of a fee or other benefit, including as part of a ‘sharing service’.

The term 'sharing service' is defined in the PSUP Act and means an arrangement under which items are provided for hire (whether or not for a fee). The arrangement may be in writing or established through a smartphone application.

Examples are shopping trolleys and share-bikes. Share e-scooters (where legally able to be used) are also regarded as Class 2 items.

### Meaning of Class 3 items or 'vehicles'

**Class 3 items (vehicles)** are motor vehicles, which have the same meaning as that of the *Road Transport Act 2013*, and include caravans, boat trailers or other trailers, whether or not attached to a motor vehicle.

The meaning of motor vehicle also includes the remains of a vehicle and property, including parts and accessories, secured to or in a vehicle at the time it is taken possession of.

The regulations clarify that a motor vehicle used as part of a sharing service is a class 3 item.

### Meaning of public place

A **public place** is a place that is open to or frequented by the public whether or not payment has been received for admission and whether or not it is usually open to the public.

This may include a privately owned place which members of the public are permitted to access, including a shopping centre car park, a service station, a private gallery or museum or a thoroughfare.

### Meaning of responsible persons for property

The concept of **responsible person** in the PSUP Act has been defined broadly. It may include more than one person in relation to animals and each class of item. A **responsible person** is:

- the person who owns or is responsible for the property, and
- a person engaged to collect or manage the property on behalf of the property's owner, and
- another person who is in control or possession, or entitled to possession, of the property, and
- a person who caused or engaged in conduct that was reasonably likely to result in, the property being unattended. For example, a person who leaves a shopping trolley unattended.

A responsible person may include a hirer or lessor of property, a user of the property or, for class 2 (sharing service) items a 'scheme operator' and for class 3 items (vehicles) a registered operator.

### Meaning of authority

The PSUP Act identifies authorities based on their responsibility for managing public land. Refer to Part 3 for list of authorities.

### When authorised officers have 'possession' of property

The concept of **taking possession** of property applies as soon as an authorised officer uses their powers under the PSUP Act to take possession of property under the Act.

Once an authorised officer takes possession of property under the PSUP Act, they must continue to maintain possession and responsibility for it until it is returned to its owner or disposed of under the Act.

Taking possession has replaced the outdated concept of ‘impounding’ in relation to unattended property that authorised officers may control within and/or remove from a public place.

### **Place of care and place of storage**

A **place of care** (in relation to an animal) and a **place of storage** (in relation to an item) may be anywhere appropriate for the keeping of the animal or item while it is in the possession of an authority (sections 10 and 11 of the Act).

For animals, the place of care must be appropriate to their needs and the time period they may be kept at that place. For example, it could be an animal shelter owner, a vet or a private landowner that the authority has entered into a care agreement with. While in care, the authority remains responsible to ensure the animal’s welfare.

These expressions have replaced the outdated term ‘pound’ in relation to an (implied) single facility in which an item may be stored and where an animal may be cared for.

### **Other terms in the Act**

A Dictionary (Schedule 3) of the Act provides a definition of many common terms used in the PSUP Act.

Some terms are used in the PSUP Act but not defined as they encompass a broad range of attributes or values that are complex and situation based.

While a decision to take regulatory action is a matter for authorised officers, education, training and case studies over time help to build an understanding of how to practically apply the law. Meanwhile, some guidance on concepts not defined in the PSUP Act is below.

Any responsible person facing enforcement action under the PSUP laws not satisfied with the decision of an authority has the right of administrative appeal through the NSW Civil and Administrative Tribunal (Part 5, sections 34 – 36 of the Act) or may take legal action to appeal the merits of the decision.

### ***Amenity***

The term ‘amenity’ is used in the PSUP Act and is also commonly used in planning laws and court decisions. It generally includes the overall aesthetic value of a public space, as well as how easy it is to access, use and enjoy that public space.

Tangible aspects of amenity include traffic, noise, odour, dust and light. Intangible aspects of amenity, such as subjective perceptions, can impact on an individual’s enjoyment of a public space which may prompt complaint to an authority. However, the matter would generally only become an amenity issue if it were a typical opinion held by ordinary people in the same locality.

For example, if one person objects strongly to a new type of shared transportation device left in public on the footpath because of its appearance, this could not be considered an amenity issue unless this strong objection is widely held by many or most other people in the same locality.

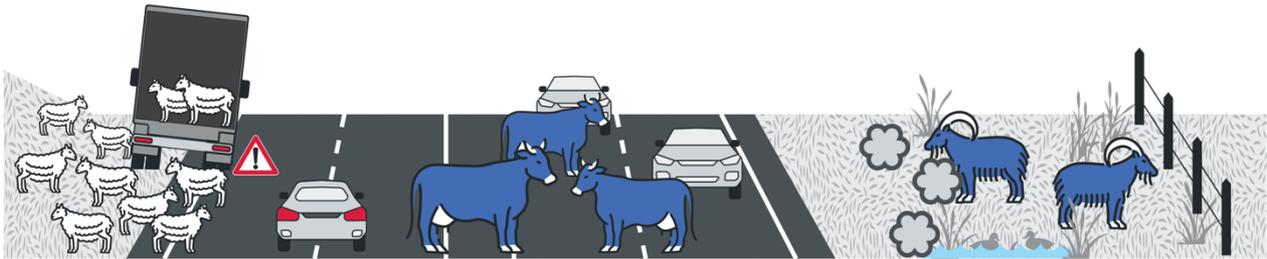
### *Reasonable belief*

Under the PSUP Act, authorised officers may carry out their duties if they have a ‘reasonable belief’ that property is unattended. This appropriately empowers officers to be guided by the circumstances in which something may be left unattended in public in the context of the law, policies and guidance (such as the NSW Ombudsman’s Enforcement Guidelines for Councils) in addition to the authority’s own policies and procedures.

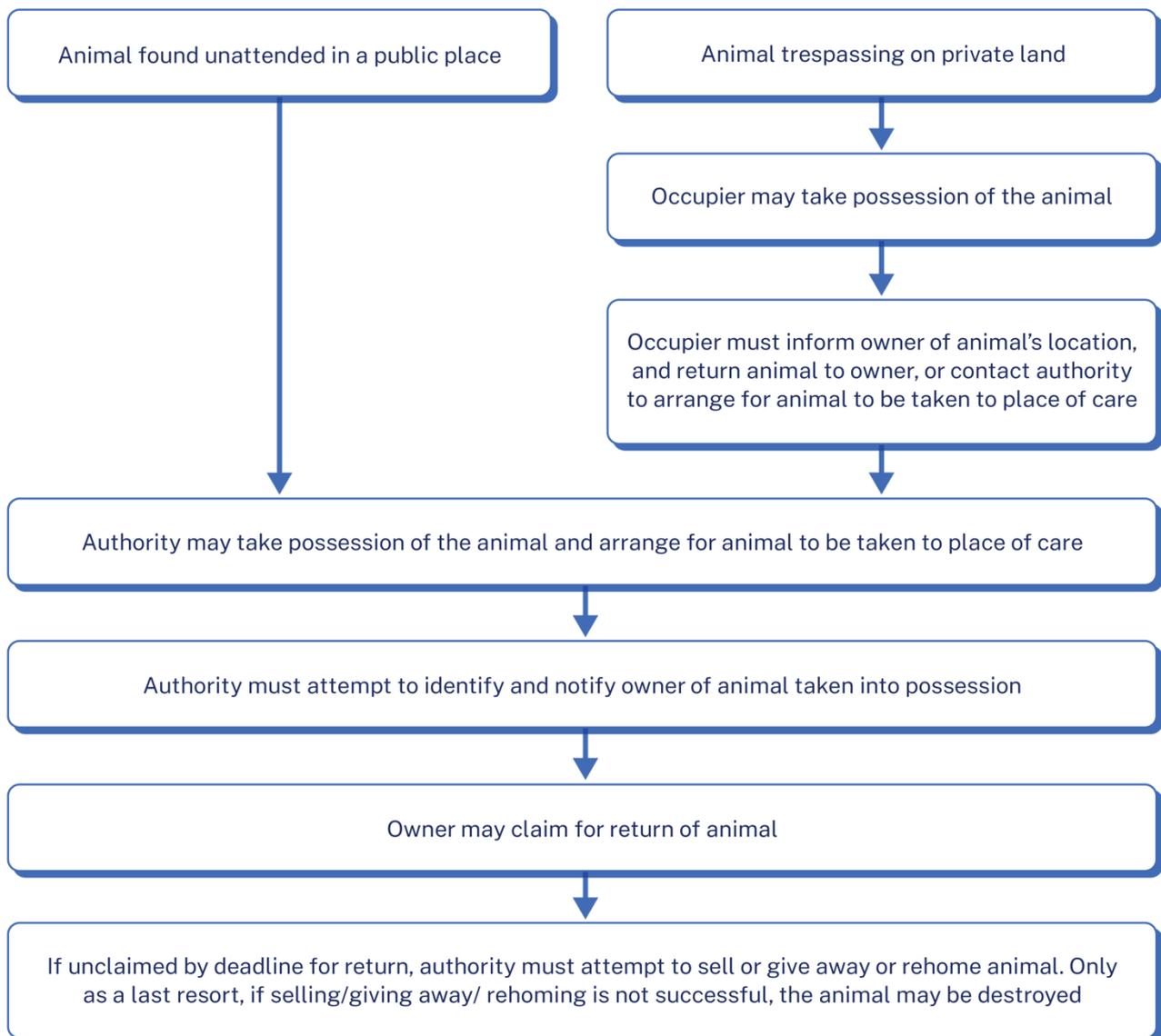
Authorised officers should use their expert judgement, based on skills, experience and training, to examine each situation on a case-by-case basis, including a risk assessment, to determine what action to take under the PSUP Act.

## 2.4 Key steps in regulatory process

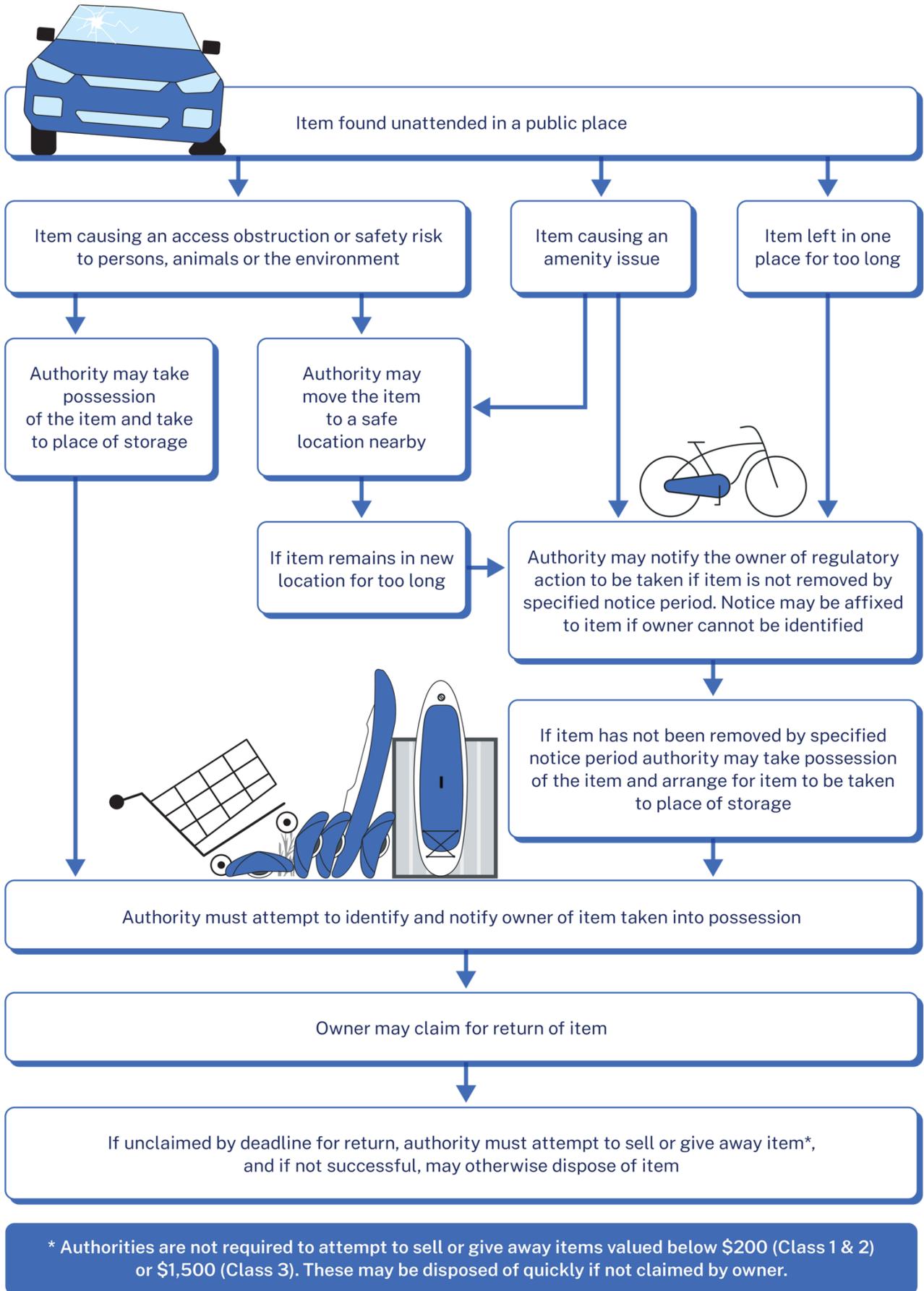
### Regulatory process for animals left or have become unattended



Animals dealt with under the Act, including those taken into possession, must be cared for in line with animal welfare laws.



## Regulatory process for vehicles, personal or shared Items



**Table 1: Unattended item periods and notice timeframes for animals and items**

<b>Timeframe before unattended property can be taken into possession</b>		
<b>Unattended animal in public</b>		<b>Notice Timeframe</b>
Any animal in public		Immediate – no notice
<b>Item obstructing access or posing a safety risk</b>		<b>Notice Timeframe</b>
Class 1 (personal) item		3 hours (outside of 11pm – 7am)*
Class 2 (sharing service) item		3 hours (outside of 11pm – 7am)* **
Class 3 item (vehicle)		Immediate – no notice
<b>Item causing amenity issues or left in same place for too long</b>	<b>Unattended Period</b>	<b>Notice Timeframe</b>
Class 1 (personal) item	7 days or more	7 days
Class 2 (sharing service) item	7 days or more	4 days
Class 3 item (vehicle) – registered vehicle	28 days or more	15 days
Class 3 item (vehicle) – registered but inoperable vehicle (e.g. due to damage or missing parts)	15 days or more	3 days
Class 3 item (vehicle) – unregistered vehicle	15 days or more	3 days
<b>Deadline for return – Timeframe to hold property in possession before sale or other disposal</b>		
Animal		7 days
Class 1, 2 and 3 items (including personal items, shopping trolleys, share bikes and vehicles)		28 days
<b>Relevant period – Timeframe to try to sell or give way before otherwise disposing of it</b>		
Animals and items other than shopping trolleys		14 days
Shopping trolleys		1 day

\* A notice may not require action to be completed between the hours of 11pm to 7am. Any notice that is issued after 8pm at night will be taken to have been issued at 7am the following morning. Any notice that is issued before 7am on a given day will be taken to have been issued at 7am that day.

\*\* Smaller operators with fewer than 25 shopping trolleys are not required to collect unattended trolleys within a 3-hour window. Instead, these operators should be given a notice period of 4 days, regardless of whether the trolley is obstructing access, posing a risk, interfering with public amenity or left in the same place for too long (section 4 of the Regulation).

Refer to Part 2.9 and Appendix A for information about offences and penalties.

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## 2.5 Dealing with unattended property

### 2.5.1 Determining what is unattended property

#### General guidance on determining whether property is unattended

Authorities will often be alerted to unattended property directly from members of the public.

Property left unattended in public is not always a problem needing regulatory action. When someone parks a registered car safely without blocking access on a residential street outside a home, or when someone leaves a car safely in a carpark to go into a supermarket, the unattended car is not causing a problem and would not generally trigger regulatory action under PSUP laws.

**An authorised officer may only take regulatory action under PSUP laws where they reasonably believe the property is unattended.**

For **unattended animals**, an authorised officer may take regulatory action immediately, noting animals permitted on a travelling stock reserve or in other public spaces are not unattended (section 18 of the Act).

For **unattended items**, the authorised officer must also reasonably believe the unattended item:

- poses an **access obstruction** or **safety risk** to a person, animals or the environment
- or
- has been left in the same place for the **unattended item period** prescribed in the regulations or is otherwise interfering with **amenity**
- or
- does not **comply** with standards in the regulations or a prescribed Code of Practice (section 25 of the Act).

#### Unattended item periods for items left in the same place

Unattended item periods help identify when different items have been left in or around the same place for too long (section 19 of the Regulation). After the unattended item period, and following the prescribed notice period, an authorised officer may take regulatory action if they continue to believe the item is unattended.

The unattended item periods are:

- 7 days or more – for class 1 (personal) items and class 2 (sharing service) items
- 15 days or more – for unregistered and undrivable class 3 items (vehicles)
- 28 days or more – for registered class 3 items (vehicles).

## **Determining whether an animal is unattended**

The PSUP Act enables authorities to work together to deal with unattended animals in public. This is critical to reducing the health and safety risks that stray stock animals in public may pose. The PSUP Act does not apply to cats or dogs (except dogs in national parks). Cats and dogs come under the [Companion Animals Act 1998](#).

Animals are not unattended if they are in a public place with the invitation or consent of the public authority or a law, for example, animals permitted on a travelling stock reserve (section 18 of the Act).

An animal may become unattended where the responsible person is present but has become temporarily or permanently unable to control or appropriately supervise the animal. This may be due to personal circumstances, for example if the person is injured, intoxicated or otherwise incapacitated.

## **Determining whether a class 1 (personal) item is unattended**

Class 1 (personal) items are generally owned by an individual person or a small number of people, often for personal recreational use. This will include items such as baggage, surfboards, stand-up paddle boards, bicycles, kayaks and canoes.

Tagging each unique item is encouraged to help authorised officers verify the identity of the item, for example with a zip tie or luggage tag.

## **Determining whether a class 2 (sharing service) item is unattended**

Class 2 (sharing service) items such as share bikes and shopping trolleys will be owned by an operator, are generally identical and are made available for use by the public. Operators must follow the *Code of Practice for Class 2 Items – Shopping Trolleys and other Sharing Service Items* to ensure their items are safe to use and clearly branded with their contact details.

Authorities should strongly encourage the public to report unattended class 2 (sharing service) items directly to the relevant operator in the first instance.

Once an authorised officer decides that regulatory action is warranted, they may issue a notice to an operator stating they believe on reasonable grounds their sharing service item is unattended.

If a class 2 (sharing service) item is not clearly branded authorised officers are encouraged to contact all relevant operators in the area regarding the item.

Authorised officers are also encouraged to tag each unique item found unattended in a public place to help verify the identity of the item. Tagging may be as simple as applying a zip-tie or luggage tag.

## **Determining whether a class 3 item (vehicle) is unattended**

Class 3 items (vehicles) include cars, boat trailers, other trailers, motorbikes and caravans. It may sometimes be difficult to work out if a class 3 item (vehicle) has been left in the same place for an extended period. It may have been driven away and reparked in the same spot over several consecutive days.

Authorities should rely on existing techniques to determine how long a class 3 item (vehicle) has been left in the same place. These include marking tyres, measuring whether the position of a valve

stem on a tyre has moved, taking photos from multiple angles and using CCTV footage. Over long periods, rubbish and leaves may gather near tyres.

Authorised officers can take immediate regulatory action under the PSUP Act for vehicles causing an access obstruction or safety risk.

Safely parked **unregistered** and **undriveable** vehicles may cause amenity issues in public, including pressure on residential parking in some places. Under the PSUP Act, regulatory action can happen faster for unregistered or undriveable vehicles than for registered vehicles.

For **registered vehicles** parked safely on a residential street for an extended period, authorised officers should take a common-sense approach when deciding to act. An attempt must always be made to issue notice to the registered operator of the vehicle to give them time to respond and attend to their vehicle.

### **Lost property**

Authorities will have internal policies and processes for handling lost property, including smaller items such as wallets, keys, clothing, and bags. Authorised officers should take a common-sense approach to deciding which items should be dealt with as lost property, and which should appropriately be dealt with under the PSUP Act.

## **2.5.2 Responding to unattended animals**

### **Determining appropriate action for unattended animals in public**

In rural communities, issues with wandering stock animals are often resolved informally and it may be appropriate for an authorised officer to help reach an informal resolution.

Where an authorised officer reasonably believes that an animal is unattended in a public place, the authorised officer may take possession of the animal (section 18 of the Act). The authorised officer may also issue a fine or penalty on the responsible person.

If an authorised officer takes possession of an animal, they must ensure the animal is taken to a place of care or returned to the responsible person.

As an animal unattended in public could cause a health and safety issue for the animal itself, people, other animals or the environment, an authorised officer does not have to give notice to the owner before taking the animal into possession.

### **Special circumstances for animals**

An animal is not unattended if it is in a public place with the permission of the public authority responsible for the land or the law (section 18 of the Act). A common example is where stock is on a travelling stock reserve in circumstances set out under the *Local Land Services Act 2013*.

### **Identifying owners of unattended animals**

Identifying the owner of an unattended animal may be difficult where there is no ear tag, branding, microchip or other available identification. It may also be unsafe to get close to the animal.

To try to find the owner of the animal, and if the animal has identification, authorities may search relevant registers or contact another agency that may keep records.

Authorities might also try to find an animal's owner through informal networks like 'lost and found' webpages, social media or other local channels.

### **Special powers for occupiers of private land to deal with trespassing animals**

Where an animal becomes unattended on private land without the occupier's permission, the occupier may take possession of the animal (sections 23-24 of the Act). If this happens, the occupier must ensure the welfare of the animal and:

- contact the owner or other person responsible for the animal within 24 hours and return the animal to them within 4 days (or longer, where agreed), or
- keep the animal for no more than 4 days, and by then:
  - return the animal to the owner or person responsible, or
  - contact the council or other relevant authority to arrange for the animal to be taken to a place of care.

Under the Act, the occupier of private land must be paid the cost of providing care to the animal, such as food, water and other listed expenses (sections 55(3) and 55(4) of the Act). If not paid, the occupier may recover the cost as a debt.

### **Role of authorities and authorised officers where animals trespass on private land**

If the occupier does not return the animal to the owner or responsible person, they must contact the relevant council or authority to arrange for the animal to be taken to a place of care. This must occur within 4 days of taking possession of an animal trespassing on their land. Arrangements should be negotiated between the occupier and the authority.

Occupiers may invite authorised officers onto their land to take action under the PSUP Act. It is an offence under the PSUP Act to allow an animal to trespass on private land without permission of the occupier. Authorised officers may issue a penalty for this offence (see Part 2.9 regarding offences and penalties).

### **Disputes between neighbours**

Authorities can sometimes become involved in a dispute between neighbours that can be very difficult to resolve. Authorities are encouraged to develop clear policies and procedures about their role in neighbourhood disputes.

Helpful resources include the Department of Primary Industries' [Land Use Conflict Risk Assessment Guide, October 2011](#) fact sheet and the NSW Ombudsman's [Enforcement guidelines for councils, December 2015](#).

## **2.5.3 Responding to unattended items**

### **Risk-based action for unattended items in public places**

Authorised officers must give minimum, risk-based notice to owners or others responsible for items in public before taking regulatory action (section 25 of the Act and section 9 of the Regulation).

Where Class 3 items (vehicles) are causing an obstruction or safety risk, they can be taken into possession immediately.

Detailed timeframes are listed in Table 1 in Part 2.4.

Table 2 below outlines options for dealing with unattended items in public depending if they create a low, moderate or high-level risk (see Part 2.10 for further guidance on assessing risk).

This is a guide only as some situations will not neatly fit into these levels.

Authorised officers should make their own decision about the best regulatory response based on local circumstances.

**Table 2: Risk-based action in relation to unattended items in public places**

Risk / issue level	Optional response
<i>Low risk/ issue</i>	<p><b>Informal response</b> – an authorised officer may informally respond, potentially including arranging for the direct return of the item to the owner.</p> <p><b>Move the item</b> – an authorised officer may move the item to another place in the same general area so that it no longer obstructs access, poses a safety risk, or interferes with public amenity (section 27 of the Act). The moved item should be easy for the owner to locate or the authority must take reasonable steps to notify the owner of where the item has been moved (section 11 of the Regulation).</p> <p>The power to move an item may be appropriate, for example, where the authorised officer reasonably believes that an item is unattended, but it is not necessary to take possession of the item. For example, the responsible person leaving a vehicle in an event clearway may not be aware that they have left their vehicle in a place they are temporarily not entitled to.</p>
<i>Moderate risk/ issue</i>	<p><b>Give notice</b> – an authorised officer may notify the owner that the item has been found unattended, is interfering with amenity and/or has been left too long, and regulatory action may be taken if the item is not removed within a specified timeframe.</p> <p>If not removed within the timeframe, regulatory action may be taken (e.g. the item may be taken into possession and/or penalties may be applied).</p>

## Risk / issue level

## Optional response

### High risk/ issue

**Give** notice – where the location and/or nature of an unattended item is an obstruction to access for vehicles or pedestrians, or poses a risk to a person, animal or the environment, an authorised officer may:

- **for class 1 (personal) items or class 2 (sharing service) items** – notify the owner that the item has been found unattended and regulatory action may be taken if the item is not removed within 3 hours (outside of 11pm – 7am), or
- **for class 3 items (vehicles)** – take the vehicle into possession immediately without giving prior notice to the owner.

If not removed within the timeframe, regulatory action may be taken (e.g. the item may be taken into possession and/or penalties may be applied).

## Small shopping trolley operator exemption

Smaller operators of shopping trolley sharing services with fewer than 25 shopping trolleys do not need to collect unattended trolleys in a 3-hour window. These operators have 4 days, regardless of whether the trolley is obstructing access, posing a risk, interfering with public amenity or left in the same place for too long. This minimises the regulatory cost for small businesses and recognises that there are fewer access and safety risks from trolleys in smaller rural and less densely populated urban locations.

Authorities can move an unattended trolley to a safer location until it can be collected by the operator.

**Authorities should work with local operators to establish if they are a ‘small shopping trolley operator’.**

## Identifying owners of unattended items

In most cases an authorised officer must attempt to identify the owner of an unattended item in a public place before taking regulatory action. See Table 1 in Part 2.4 for exceptions.

The owner of items may be identified by:

- **class 1 (personal) items** – looking for a name tag or label with the owner’s details, or any other identifying marker
- **class 2 (sharing service) items** – looking for branding that sets out the operator’s name and contact information
- **class 3 items (vehicles)** – looking for a registration plate or VIN and searching registers to which the authority has access for information (Refer to Using DRIVES24 to search for owners of class 3 items (vehicles) below), or if this is unsuccessful requesting the assistance of NSW Police.

## **Responding to class 1 (personal) items**

It may be difficult for authorised officers to identify the owner of class 1 (personal) items where owner information has not been marked on or attached to the item via a tag or other means.

Authorities are encouraged to consider informal networks like 'lost and found' webpages, social media or other local channels to help identify an owner of a class 1 (personal) item taken into possession.

## **Responding to class 2 (sharing service) items**

### *Code of Practice*

Operators of sharing services must comply with the mandatory *Code of Practice for Class 2 Items – Shopping Trolleys and other Sharing Service Items*. The Code requires sharing service items to be clearly branded with the name and contact details of the operator. The Code also requires a sharing service item circulating in public to be in good working order.

An authorised officer may take immediate action without notice if a sharing service item is found unattended in a public place in breach of the Code.

## **Responding to class 3 items (vehicles)**

### *Suspected link to crime*

If an authorised officer suspects a class 3 item (vehicle) has been involved in a crime, they should make immediate contact with NSW Police before taking any regulatory action. This is to ensure potential evidence connected with the vehicle is not compromised or destroyed.

### *Fines for unregistered vehicles left standing on a roadside*

Due to the new laws, there are changes to the *Road Transport Act 2013* and to the *Road Transport (General) Regulation 2021*.

Local councils can now issue fines under transport laws to the registered operator of an unregistered vehicle parked on a roadside 15 days after the registration lapses. Police and transport authorities already had these powers.

To reduce time that vehicles are left on public land, all authorities can attach fines directly to a vehicle, rather than first identifying the registered operator.

Fines may apply to all Class A motor vehicles including cars, trailers, and combinations of both.

Authorised officers can choose which legislation they act under when responding to unregistered class 3 item (vehicle) parked on a roadside.

### *Using DRIVES24 to search for owners of class 3 items (vehicles)*

Authorities must take reasonable steps to identify and notify the owner of an unattended class 3 item (vehicle), including searching registers such as the NSW registrable vehicles register under the [Road Transport Act 2013](#).

Transport for New South Wales (TfNSW) own and operate the DRIVES24 system. Authorities can seek access to DRIVES24 to conduct searches around abandoned vehicles. Authorities without access are encouraged to apply.

Vessel owner details are not available from DRIVES24 but authorities can request this information from TfNSW.

### *Entering a class 3 item (vehicle) to identify the responsible person*

An authorised officer may, without or before taking possession of an unattended class 3 item (vehicle), enter the vehicle to identify the person responsible for the vehicle (section 25 of the Act). This may include an authority or their agent taking reasonable steps to enter the vehicle (for example, by-passing locking mechanisms).

### *Police assistance with owner identification*

Authorised officers can ask NSW Police to make enquiries about the name and address of the owner of a class 3 item (vehicle) (section 56 of the Act). This should be a last resort after all other means of identifying the owner (e.g. DRIVES24) are exhausted.

If requested, NSW Police must provide written advice to the authorised officer or authority within 24 hours. This advice should include information on registration, including the name and address of the last registered operator of the vehicle.

### *Vehicles with interstate registration*

Authorised officers should contact NSW Police to help identify the owner of unattended class 3 items (vehicles) with interstate registration if they do not have access to interstate vehicle registration systems.

## 2.5.4 Giving notice of an unattended item prior to taking possession

### **Written notice that an item is unattended**

If the authorised officer can identify the owner or person responsible for the unattended item and before taking an action (such as taking possession), they must give written notice (section 9 of the Regulation).

The written notice must include:

- that the authorised officer believes the item is unattended in a public place,
- the time and date when the authorised officer may take possession of the item and any minimum notice period (refer to minimum timeframes set out in Part 2.3).

If the item is not removed by the specified time and date, and the authorised officer believes the item is still unattended, the item may be taken into possession. Penalties may also be issued.

Authorised officers are encouraged to notify owners promptly about unattended items to help reduce the frequency of unattended property in public places.

### **Notification methods**

Authorised officers must provide notice in writing to the owner or person responsible for an unattended item. This can be done in person or sent to a postal or electronic address (email, web-based reporting system, text message).

Posted notifications are considered to have been served on the 7<sup>th</sup> day after it was posted, according to the *Interpretation Act 1987*.

If an authorised officer can't identify the owner or their contact details, written notice can be attached directly to the item.

### *Giving notice for class 2 (sharing service) items*

Class 2 (sharing service) items, such as shopping trolleys and share bikes, must be branded with the operator's contact details for the public and authorised officers to quickly notify them of any of their items found unattended. Authorised officers should notify operators of unattended class 2 (sharing service) items using these contact details, wherever possible.

Authorised officers should only ever attach a notice to a sharing service item as a last resort if there is no alternative (section 9(5) of the Regulation). The operator may not know the location of the item and may not easily become aware of the attached notice.

Authorised officers are encouraged to consider the quickest, most effective notification method, keeping in mind the priority is for the item to be removed as soon as possible.

### **Information provided on notices of unattended items**

Important information to highlight prominently in a notice of an unattended item includes:

- name of owner / responsible person
- description of the unattended item including its location
- the date and time that the item was observed to be unattended
- the date (and time if applicable) on which the authority may take the item into possession if they believe it remains unattended (i.e. by which date and time the unattended item must be collected/removed)
- details of any penalty/fine that may be issued if the item remains unattended
- how to contact the authority with any questions
- where to go for further information, such as a link to the authority's website, on:
  - PSUP framework, including relevant policies, and
  - any Culturally and Linguistically Diverse (CALD) services.

### **Notice periods for unattended items**

Table 1 in Part 2.4 sets out the timeframes after which unattended items may be taken into possession by authorised officers, taking into account any relevant unattended item periods and any relevant notice periods for each class of item in different circumstances.

For items not causing an access obstruction or risk, minimum written notice periods are:

- 7 days – for class 1 (personal) items
- 4 days – for class 2 (sharing service) items
- 3 days – for unregistered or undrivable class 3 items (vehicles)
- 15 days – for registered class 3 items (vehicles)

Written notice may overlap with the unattended item period to streamline regulatory processes, but the timing advised for regulatory action should be after the unattended item period (section 9 of the Regulation).

For example, the unattended item period for a kayak left in the same place for too long is 7 days. The relevant written notice period is also 7 days. If appropriate, notice may be given on day 4 of the unattended item period and finish 3 days after the relevant notice period.

## Minimum notice

The minimum notice periods under the PSUP Act for unattended items, penalties and directions are:

- 3 hours – for all property (other than shopping trolley operators with fewer than 25 trolleys)
- 4 days – for shopping trolley operators with fewer than 25 trolleys.

(Section 4 of the Regulation)

A notice issued after 8pm is considered to have been issued at 7am the following morning.

A notice given before 7am is considered to have been issued at 7am on that day.

These provisions ensure that owners are given a reasonable timeframe to respond to notices about unattended property before any further regulatory action is taken.

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## 2.6 Dealing with property taken into possession

### 2.6.1 Identifying and notifying owners of property taken into possession

#### Identifying and notifying owners of unattended property taken into possession

After taking possession of an unattended animal or item, the authorised officer must take reasonable steps to identify the owner (section 29 of the Act) as soon as possible. This includes:

- For animals:
  - checking a form of identification worn by, or information in a microchip implanted in, the animal
  - searching registers to which the authority has access for information about the animal, for example National Livestock Identification System.

*Wherever possible authorised officers are encouraged to identify the owner and arrange for the animal to be collected or returned before taking it to a place of care.*

- For items:
  - checking items for identifying labels (class 1)
  - checking branding (class 2)
  - checking registration details and relevant registers about the vehicle (class 3).

(section 13 of the Regulation).

Refer to Part 2.5.3 for further detail on how to identify an item's owner.

### **Notice of property taken into possession**

After taking possession of unattended property, an authorised officer must notify the owner as soon as possible (if the owner is known).

Notices must be served in writing. Refer to Part 2.4 regarding notification methods

Where there are multiple items belonging to a single owner, authorities should not stockpile items or provide a consolidated notification on a later date. This unnecessarily delays the return of items to their owner.

### **Information provided on notices of property taken into possession**

Important information to highlight prominently on or with a notice of property that has been taken into possession includes:

- name of owner / responsible person
- description of the unattended property
- where the property is currently located
- the date and time the property was taken into possession
- the date (and time if applicable) by which the property must be collected, following which, the property may be disposed of by the authority
- instructions for how to collect the property
- details of any penalty/fine issued under the PSUP Act, as well as any additional penalty/fine that may be issued if the property is not collected
- details of any fees that must be paid due to the property being taken into possession
- how to contact the authority with any questions
- where to go for further information, such as a link to the authority's website, on:
  - PSUP framework, including relevant policies, and
  - any Culturally and Linguistically Diverse (CALD) services.

### **Notification to NSW Police of class 3 item (vehicle) taken into possession**

An authorised officer must, as soon as practicable, notify NSW Police when a class 3 item (vehicle) has been taken into possession (section 10 of the Regulation). If a vehicle is suspected of having been involved in a crime, authorised officers are encouraged to make immediate contact with NSW Police prior to taking any regulatory action to ensure that potential evidence connected with the vehicle is not compromised or destroyed.

## **2.6.2 Minimum holding periods for property taken into possession**

### **Length of time property must be held in possession**

Known as the Deadline for Return, an authority must hold property taken into possession for a specific time period (section 32 of the Act) before further action is taken. This includes trying to sell,

give away or dispose of the property. This allows for enough time for an owner to be notified, apply for return of the property and arrange for it to be collected.

If the owner does not collect their property by the Deadline for Return, the authority must try to sell or give away the property. If this is unsuccessful, they can arrange to dispose of the item (see Part 2.8).

**Table 3: Deadline for Return**

Class of Property	Deadline for Return
<b>Animals</b>	<ul style="list-style-type: none"><li>• 7 days from the day the owner was notified</li></ul> or <ul style="list-style-type: none"><li>• if reasonable steps failed to identify the name and address of the owner then 7 days from the day the steps were completed</li></ul>
<b>Class 1 (personal) items</b>	<ul style="list-style-type: none"><li>• 28 days from the day the owner was notified</li></ul>
<b>Class 2 (sharing service) items</b>	or
<b>Class 3 items (vehicles)</b>	<ul style="list-style-type: none"><li>• if reasonable steps failed to identify the name and address of the owner then 28 days from the day the steps were completed</li></ul> OR the day the property was taken into possession, whichever is the later date

## 2.6.3 Return of property taken into possession

### Return of property to owner

A person may apply for the return of property taken into possession before the Deadline for Return (section 30 of the Act).

It is the owner's responsibility for their property to be collected. If satisfied the applicant is the owner, or their authorised representative, and any payable fees have been paid, the authority must return the property to the applicant.

Authorities are encouraged to work with owners to negotiate a suitable collection strategy and timeframe.

## 2.6.4 Recovering costs for property taken into possession

### Fees for unattended property in a public place

Authorities may charge an owner a fee for property taken into possession for (section 55(4) of the Act):

- walking or transporting an animal to a place of care, to the address of the responsible person, to a market or to a sale yard
- providing an animal taken into possession with food, water or veterinary care

- loss or damage caused by the animal while it was unattended, including on private land without the permission of the occupier of the land
- transporting an item to a place of storage
- storing an item at a place of storage
- any cost of notifying the owner of property that the property has been taken to a place of care.

Authorities should be reasonable when deciding their fees. Councils must consult on and publish all fees and charges (section 532 of the *Local Government Act 1993*).

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## 2.7 Place of care or storage for property

### 2.7.1 Place of care for animals

#### **Declaring a “place of care” for animals**

The PSUP Act provides for flexibility to establish temporary and longer-term places of care for animals taken into possession (sections 10 and 21 of the Act). These include:

- locating an animal on nearby private land with the permission of the occupier or owner of the land, or
- transporting the animal to a suitable shelter or other care facility, which may include using shelters managed by other authorities or privately through shared or contract arrangements.

Any place of care nominated by an authority must meet minimum animal welfare laws and standards.

A stock permit does not need to be in force under the *Local Land Services Act 2013* to have stock delivered to a place of care (section 59 of the Act).

### 2.7.2 Storing items

#### **Declaring a “place of storage” for items**

Authorities have flexibility to determine the most suitable place to hold an unattended item that has been taken into possession. This will significantly reduce risk and cost by making it easier to establish temporary or multiple facilities, or to share facilities with other authorities.

Property does not have to be taken to a place of storage for it to be taken possession of (section 27 of the Act). Options for taking an item into possession include (section 26 of the Act):

- taking the item to a storage facility operated by the authority
- taking the item to a storage facility run by another operator that the authority has an arrangement with
- moving the item to a place in the same general area where it was left unattended (no longer obstructing access, posing a safety risk, or interfering with public amenity).

### Appropriate storage standards

Authorities are required to take reasonable steps to ensure that items taken into possession remain in the condition they were in at the time they were taken into possession and that they are, to the extent possible, protected from damage (section 10 of the Regulation).

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## 2.8 Selling or disposing of property

### 2.8.1 General considerations

If property is not collected by the owner by the 'Deadline for Return', the authority must dispose of the property (section 32 of the Act) (see Table 3 in Part 2.6.2).

Authorities must try to first sell the property then give it away during a minimum period known as the 'relevant period'. The relevant period is 14 days for animals and for all classes of items except for shopping trolleys (section 17 of the Regulation). An authority is required to try to sell or give away a shopping trolley for at least 1 day before disposal due to the low market value and demand to purchase secondhand shopping trolleys.

At the end of the relevant period, if the authority couldn't sell or give away the property, the authority may recycle, rehome, or dispose of the property (see Part 2.8.2).

Before selling or disposing of a class 3 item (vehicle), an authority must search the Personal Property Securities Register under the [Personal Property Securities Act 2009](#) for security interests in the vehicle. If someone has a security interest in the vehicle, the authority must notify them of the proposed sale or disposal.

Before selling or disposing of a class 3 item (vehicle), an authority must consider any response from the NSW Police.

### 2.8.2 Selling or disposing of property

#### Items worth less than a certain amount may be destroyed

Some items that are taken into possession are of such a low value that there is limited benefit in storing the item and attempting to sell or give it away (section 31 of the Act).

- For Class 1 (personal) items and Class 2 (sharing service) items, the value is below \$200.
- For Class 3 items (vehicles), the value is below \$1,500.

If an authority considers the value of an item to be below the above values, it can dispose of the item without having to wait the entire Deadline for Return period. The authorised officer must take all reasonable steps to identify the item's owner and notify them that:

- the item has been taken into possession
- the owner must apply for the return of the item in a specified period (no less than 3 days after notice is given), and
- the item will be destroyed if the owner has not applied for the return of the item within the specified period.

The item may only be destroyed if the owner does not apply for the return of the item within the specified period.

See below in relation to property found inside vehicles.

### **All reasonable efforts must be made to sell, give away or rehome animals**

Section 32 of the Act makes it clear that all reasonable efforts must be made to sell, give away or rehome animals.

Destroying an animal should be the absolute last option an authority considers. Unlike for items, there is no minimum value applied to an animal relating to its destruction.

### **Determining the value of property**

Resources that may assist with valuing property include:

- monitoring common sales platforms such as Redbook, eBay, Gumtree, Facebook Marketplace, and other targeted websites such as carsales.com.au
- monitoring sales prices from common auction providers for example vehicle auctioneers
- engaging a suitably qualified/experienced valuer for complex or unique items.

Authorised officers can seek help from in house asset valuation experts to value property taken into possession.

### **Offering property for sale**

Authorities must first offer the property for sale, and if the property does not sell, the authority can try to give it away.

The authority does not have to try to sell the property if they believe its value is less than the cost of offering it for sale. For example, if the cost of trying to sell a vehicle is estimated at \$2,500 (i.e. to cover auction costs), and the vehicle is valued at \$2,000, then the authority does not have to try to sell it as the costs exceed the vehicle value. The authority must try to give the property away during the relevant period before disposing of it.

### **What does “trying to sell or give away property” involve?**

Options to sell or give away unclaimed property during the relevant period, including both animals and items include:

- selling by public auction or public tender
- selling through established auction houses or sales agents
- advertising for sale or giving away on the authority’s website / via social media / via sales platforms such as eBay, Gumtree, Facebook Marketplace, or carsales.com.au
- donating to charity organisations
- donating to other targeted organisations.

### **Use of auctions / sale agents**

Authorities may wish to hire an auction provider or sale agent to sell an item, particularly for larger or more valuable items, such as vehicles.

### **Giving away items to targeted user groups**

Authorities might consider giving away items to targeted user groups. For example, donating a wheelchair to an organisation that supports people with a disability, or donating a vehicle to NSW Fire and Rescue for rescue operator training and skill development exercises. An authority may consider donating instead of destroying vehicles.

### **Other disposal or destruction of property**

If an authority cannot sell or give away property in the relevant period, they may recycle, rehome, destroy or dispose of the property. Authorities can decide the best approach for each item and may need to balance resource and environmental considerations.

## **2.8.3 Other considerations**

### **Contents inside class 3 items (vehicles)**

Details for how authorised officers must treat contents of class 3 items (vehicles) taken into possession are in the Regulation (section 16 of the Regulation).

Vehicle contents may be dealt with as standalone items under their relevant class (for example: tools are class 1 (personal) items, a motorbike is a class 3 item (vehicle)) at the point in time where the vehicle is going to be sold, given away, or otherwise disposed of.

If the value of any item is less than \$200, the authorised officer may arrange for it to be destroyed or disposed of. If the value of any item is more than \$200, then attempts should be made to sell or give it away before disposing of it, as per the usual processes.

In both cases, an authorised officer must not sell, give away, destroy or dispose of an item until they have tried to identify the item's owner and notify them. This step is not needed if the authorised officer believes the owner of the vehicle contents is the same person as the owner of the class 3 item (vehicle) and the authority has tried to notify the owner that the vehicle has been taken into possession.

### **Owner able to claim net proceeds**

After an item is sold, an authority may keep the following amounts from the proceeds of the sale:

- costs incurred in selling the property, and
- any fee related to the item being taken into possession (see Part 2.6.4).

An owner of property sold by an authority may claim any remaining proceeds of the sale in the following time periods after the sale:

- for a class 1 (personal) item or a class 2 (sharing service) item — within 3 months of the sale, or
- for a class 3 item (vehicle) or an animal — within 6 months of the sale.

After this, an authority may keep any remaining amount from the sale that is not claimed.

Authorities should have clear policies and procedures for owners making a claim for the proceeds of sale of their property.

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## 2.9 Offences and Penalties

The Act includes a strong penalty framework for offences to encourage people to take responsibility for their property or face strong penalties (Part 6 of the Act).

### Key offences and penalties

Key offences that may trigger a Penalty Infringement Notice (PIN or fine) or a penalty under the Act include:

- leaving an item or animal unattended in a public place
- causing or permitting an animal to trespass.

### More serious offences and penalties

Some offences do not have corresponding penalty notice offences as they are more serious offences that need to be determined by a court. These include:

- occupier of private land failing to take prescribed action
- recklessly or negligently leaving an item unattended in certain circumstances.

### Penalty notices to operators for unattended class 2 (sharing service) items

Under section 22 of the Regulation a penalty notice for the offence of leaving a class 2 (sharing service) item unattended in public may not be issued to a sharing service operator unless the authorised officer has given the operator the minimum, risk-based notice of the unattended item (refer to Part 2.5.3). This provision ensures that the operator is given an opportunity to remove the unattended item before a penalty is issued.

### Compounding fines

The Act includes a unique ‘compounding’ fine for class 2 (sharing service) items and animals as these have a high likelihood of being clustered together. This includes trolleys left at a bus stop, or a herd of sheep escaped through a broken fence.

The approach recognises that the impact of a cluster of unattended items or animals is incrementally greater than one item or animal, but not cumulatively greater. This means that 2 items or animals is not double the impact, 3 items or animals is not triple the impact and so on. This approach does not over-burden the owner with multiple fines at the full amount.

The compounding fines are capped at twice the amount of a single fine. For example, the fine for 11 class 2 (sharing service) items is  $\$660 + \$66 \times 10 = \$1,320$ , so it does not exceed a reasonable proportion of the maximum penalty that may be imposed by a court.

If there are more than 11 articles, the authorised officer can choose to issue a PIN for 11 articles or pursue the penalty for a higher number of articles through the court.

The table under Schedule 1 of the Regulation sets out all the penalty notice offences under the Act. See also Appendix A. Higher penalties and fines may apply to a corporation.

**Table 4: Compounding fines**

Offence	Number of Items/Animals	PIN (individual owner)	PIN (corporation)
Offence of leaving a Class 2 (sharing service) item unattended in public place [S37(1)]	1 item	\$660	\$1,320
	2 – 11* items	\$66 for each additional item	\$132 for each additional item
Offence of leaving an animal unattended in public place [S37(2)]	1 animal	\$660	\$660**
	2 – 11 animals	\$66 for each additional animal	\$66 for each additional animal
Offence of causing or permitting an animal to trespass on private land without the permission of the occupier of the land [S40(1)]	1 animal	\$660	\$660
	2 – 11 animals	\$66 for each additional animal	\$66 for each additional animal

\* The maximum PIN that can be applied is for 11 items/animals. If there are more than 11 items/animals, the Authorised Officer can choose to issue a PIN for up to 11 of the items/animals or pursue a higher penalty through the courts.

\*\*There is no higher fine amount for a corporation for leaving an animal unattended. Animals can at times become unattended through no fault of the owner/responsible person.

## 2.10 Miscellaneous

### Authorised officers may give directions to responsible persons

An authorised officer may give a written notice to a person responsible for unattended property directing them to remove it or prevent it from becoming unattended again (section 28 of the Act). For example, a direction may be given to repair a fence to contain an animal, or to make and comply with a plan of management for preventing property becoming unattended. In some cases, it may be appropriate to align the direction requirements with licence conditions or requirements of other legislation.

The direction (section 12 of the Regulation) must be notified in writing, include a suitable timeframe for compliance, must be reasonable and proportionate, and not require action between the hours of 11pm and 7am (see Part 2.5.4 for notification methods).

### Assessing risk

Risk is a key factor that authorised officers must assess in deciding if regulatory action is needed for an unattended item. Authorities should have a risk assessment process in place to assist their officers to decide the level of risk when considering what action to take for an unattended item (see Table 2 in Part 2.5.2).

Considerations might include:

- density of the location around vehicular traffic, foot traffic and other use by the public
- severity of the obstruction
- likelihood that the item may harm a person, animal or the environment. In the case of risk to the environment, the pace at which harm may happen. For example, a car leaking petrol into a creek will cause harm more quickly than a car left in a clearing
- the extent to which public amenity is being impacted.

## Homeless Persons Protocol

The **Protocol for Homeless People in Public Places** published by the Department of Communities and Justice is based on the following principles:

- People experiencing homelessness have the same rights as any member of the public to:
  - be in public places
  - participate in public activities or events
  - carry with them and store their own belongings
  - request or decline support or assistance.

Before taking possession of an unattended item or animal, if an authorised officer believes that the owner is homeless, they must consider the principles of the Protocol and any other policy adopted by the authority to give effect to the Protocol (section 8 of the Regulation).

While the Protocol does not override the law, authorised officers may use their own judgement for unattended property that they believe belongs to a homeless person. Some scenarios where this may apply include:

- an unattended vehicle that a homeless person may be sleeping in or have left due to lack of stable accommodation, or
- an unattended shopping trolley used by a homeless person to store and transport personal items.

Authorised officers are encouraged to consider whether regulatory action is needed and if it is, consider an appropriate notice period and whether a penalty or fine is necessary.

## Stolen or vandalised unattended items

Property may be left unattended or abandoned in a public place due to being vandalised or stolen. The owner of the property is responsible for investigating this through other legal avenues and authorised officers do not have a role in this. However, in the case of class 3 items (vehicles), an authorised officer is encouraged to report an unattended vehicle to NSW Police if they suspect the vehicle was stolen.

## Large items

Other than class 3 items (vehicles), large items that cannot be collected by 1-2 people are not under the PSUP framework. This includes items such as skip bins, shipping containers, and large vessels.

Large items are dealt with under other laws including:

- *Maritime Safety Act 1988*
- *Environmental Planning and Assessment Act 1979*
- *Protection of the Environment Operations Act 1997, or*
- *Uncollected Goods Act 1995.*

### **Code of Practice**

All class 2 (sharing service) items must comply with the standards set out in the Code of Practice for Sharing Service Items (section 19(2) of the Regulation). Retailers and other operators are expected to ensure their sharing service items comply with the Code for the safe and successful operation of these items in public places.

Authorised officers may take possession of a sharing service item if it is unattended in a public place and is in breach of the Code. This includes if it is not appropriately branded or not in good working condition.

An unattended class 2 (sharing service) item in breach of the Code is an offence under the Act and authorised officers may issue a penalty notice to sharing service operators. An authorised officer may also issue a direction to a sharing service operator to make their item compliant with the Code.

Sharing service operators are strongly encouraged to ensure that their sharing service items comply with the code to prevent regulatory action under the Act.

### **Personal liability**

An authorised officer, or person acting under the direction of an authorised officer, is not personally liable for anything done in good faith and for the purpose of exercising a function under the PSUP laws.

An authority may be liable for the actions of a person or officer authorised on their behalf in exercising their function (section 57 of the Act). For example, if a council ranger causes a vehicle to be scratched while taking it into possession, they are not personally liable for that damage. Instead, the council will be liable for the damage.

### **Record keeping**

Authorised officers are encouraged to keep adequate records for property found unattended in a public place, including where giving notices, including:

- a description of the unattended property, including its location
- the date(s) and time(s) that the property was observed to be unattended, and
- the date (and time if applicable) by which, if the unattended property is not removed, the property may be taken into possession.

Authorities must keep a record of all property taken into possession by authorised officers. Details are in section 33 of the Act and section 18 of the Regulation.

## **Signage**

Authorities may wish to erect signs in public places where unattended or abandoned property is a common issue. For example, along a foreshore where kayaks are frequently stored, or around bus stops where shopping trolleys may be left. Signs should have consistent, easily recognisable symbols, clear information about responsible property ownership and potential consequences if property is found unattended in the area.

# 3 FURTHER INFORMATION AND RESOURCES



## 3.1.1 Additional Resources

Additional resources can be found at [www.dpie.nsw.gov.au/unattendedproperty](http://www.dpie.nsw.gov.au/unattendedproperty) and [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au).

**Table 5: List of Additional Resources**

Resource	Description/Purpose/Audience
<a href="#"><i>Public Spaces Unattended Property Act 2021</i></a>	Parent Act
<i>Public Spaces (Unattended Property) Regulation 2022</i>	Statutory Instrument+
Code of Practice for Class 2 Items (Shopping Trolleys and other Sharing Service Items)	Code setting out required standards for Class 2 (sharing service) items
Public Spaces (Unattended Property) Guidelines (these guidelines)	Guidance for authorities under the Act
Frequently asked questions	Answers to questions likely to be raised by the community
Fact sheet – Animals	
Fact sheet – Class 1 (personal) Items	
Fact sheet – Class 2 (sharing service) items	
Fact sheet – Class 3 items (vehicles)	Additional information to assist community in understanding the new laws.
Infographic – Animals	
Infographic – Class 1 (personal) Items	Authorities may use these to educate their communities and key stakeholders.
Infographic – Class 2 (sharing service) items	
Infographic – Class 3 items (vehicles)	
<a href="#">NSW legislation</a>	To view other legislation that the PSUP framework may reference visit the NSW legislation website. This is the primary source for NSW legislation managed by the Parliamentary Counsel's Office

Resource	Description/Purpose/Audience
<a href="#">Enforcement guidelines for councils – December 2015</a>	NSW Ombudsman’s enforcement guidance for councils when undertaking enforcement practices
<a href="#">Protocol for Homeless People in Public Places</a>	Department of Communities and Justice guidance to assist government, non-government organisations, and private businesses to interact and engage with people experiencing homelessness, so they are treated respectfully, with dignity, and do not face discrimination
Circular to councils	Refer to <a href="#">OLG website</a> for circulars relevant to the PSUP framework

### 3.1.2 Key contacts

For further information about the Public Spaces (Unattended Property) framework please contact the Policy Team at the Office of Local Government (OLG), Department of Planning and Environment on (02) 4428 4100 or [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au) or via post to Locked Bag 3015, NOWRA NSW 2541.

The [NSW Government Directory](#) provides the contact details for all government departments, agencies, offices and entities within New South Wales.

### 3.1.3 Authorities and authorised officers

#### Authorities

- Centennial Park and Moore Park Trust
- a council
- Forestry Corporation of New South Wales
- Local Land Services
- the Minister administering the *Crown Land Management Act 2016*
- Newcastle Port Corporation (known as the Port Authority of New South Wales) and other Port Corporations that may be established under the *Ports and Maritime Administration Act 1995*
- NSW Trains
- Parramatta Park Trust
- Place Management NSW
- Secretary of the Department of Planning and Environment (for *National Parks and Wildlife Act 1974*)
- Sydney Metro
- Sydney Olympic Park Authority

- Sydney Trains
- Transport for NSW
- Transport Asset Holding Entity
- the Regulatory Authority within the meaning of the *Water NSW Act 2014*
- Residual Transport Corporation of New South Wales
- Royal Botanic Gardens and Domain Trust
- Western Sydney Parklands Trust
- Venues NSW

### Authorised officers

Authorised officers are appointed by an Authority for the purposes of the PSUP framework. Each authorised officer must be issued with an identification document, which may be physical or electronic.

During the first year of implementing the PSUP laws, written authorisation issued under the *Impounding Act 1993* is considered an identification document issued under the PSUP laws.

### Relationship to other legislation

The PSUP Act makes several references to other NSW legislation. Most references relate to terms in the Dictionary to the Act or an Authority that the PSUP Act and Regulation recognises as an authority with an area of operations.

**There are a small number of references to other legislation where further information about the relationship is provided below.**

**Table 6: Related Legislation**

Act/Regulation referenced	Relationship
<i>Administrative Decisions Review Act 1997</i>	Applications for review to the Civil and Administrative Tribunal (section 34 Act).
<i>Civil Procedure Act 2005</i>	Court orders for payment of money (section 51 Act).
<i>Companion Animals Act 1988</i>	See key concepts – Animals.
<i>Crown Land Management Act 2016</i>	Private land meaning (Dictionary to Act).
<i>Fines Act 1996</i>	Responsible person liable for offences involving property (section 39 of the Act). Penalty notices (section 49 of the Act).

Act/Regulation referenced	Relationship
<i>Government Information (Public Access) Act 2009</i>	Records of property taken possession of must be available for inspection (clause 18(2) Regulation).
<i>Local Government Act 1993</i>	Council meaning (Dictionary to Act).
<i>Personal Property Securities Act 2009</i>	See key concepts – Vehicles.
<i>Road Transport Act 2013</i> and related instruments	See key concepts – Vehicles.
<i>Road Transport (General) Regulation 2021</i>	Alternative regulatory powers available to NSW Police, road authorities and councils in relation to unattended vehicles on roads.
<i>Veterinary Practice Act 2003</i>	Destruction of animals in possession in certain circumstances – definition of veterinary practitioner (section 22(3) of the Act).

### 3.1.4 Accessibility

The Office of Local Government is committed to accessibility so that information is available to everyone. This includes people with disability who may use assistive technology to read or listen to content in these Guidelines.

Please contact us if you:

- are having trouble accessing any information in these Guidelines
- need information in these Guidelines in an alternative format
- have suggestions on how we can improve the accessibility of the Guidelines.

# Appendix A – Offences and Penalties

**Table 7: Offences and penalties under the Act and the Regulation**

Act Provision	Penalty notice – individual	Penalty notice – body corporate	Maximum penalty – court imposed
<b>Section 24(1)</b> – occupier of private land failing to take prescribed action	N/A	N/A	25 penalty units
<b>Section 28(4)</b> – responsible person failing to comply with written notice (a) for an individual (b) for a body corporate	See below	See below	(a) 50 penalty units (b) 125 penalty units
<b>Section 28(4)</b> – penalty notices for an animal for a class 1 (personal) item for a class 2 (sharing service) item for a class 3 item (vehicle)	\$1,320 \$660 \$1,320 \$1,320	\$2,640 \$1,320 \$2,640 \$2,640	
<b>Section 37(1)</b> – leaving an item unattended in a public place (a) for an individual (i) for a class 3 item (vehicle)  (ii) for a class 2 (sharing service) item (A) for the first class 2 (sharing service) item (B) for each additional class 2 (sharing service) item, in the same public place or circumstance (iii) otherwise (b) for a body corporate	See below	See below	(i) 25 penalty units for each day, or part there of day, but not more than a maximum of 75 penalty units  (ii) (A) 25 penalty units  (B) 5 penalty units, but not more than a maximum of 50 penalty units  (iii) 25 penalty units (b) 125 penalty units
<b>Section 37(1)</b> – penalty notices for a class 1 (personal) item for a class 2 (sharing service) item, not in the same public place or circumstance as another class 2 (sharing service) item for 2-11 class 2 (sharing service) items, in the same public place or circumstance  for a class 3 item (vehicle)	\$330 \$660  for the first item – \$660, and for each additional item – \$66 \$660	\$660 \$1,320  for the first item – \$1,320, and for each additional item – \$132 \$1,320	

Act Provision	Penalty notice – individual	Penalty notice – body corporate	Maximum penalty – court imposed
<p><b>Section 37(2)</b> – leaving an animal unattended in a public place, including penalty notices</p> <p>(a) for the first animal</p> <p>(b) for each additional animal in the same public place</p>	See below	See below	<p>(a) 25 penalty units</p> <p>(b) 5 penalty units, but not more than a maximum of 50 penalty units</p>
<p><b>Section 37(2)</b> – penalty notices for leaving a single animal in a public place for 2-11 animals in the same public place</p>	<p>\$660 for the first animal – \$660, and for each additional animal – \$66</p>	<p>\$660 for the first animal – \$660, and for each additional animal – \$66</p>	
<p><b>Section 38</b> – recklessly or negligently leaving item unattended in certain circumstances</p> <p>(a) for an individual</p> <p>(i) for a class 3 item (vehicle)</p> <p>(ii) for a class 2 (sharing service) item</p> <p>(A) for the first class 2 (sharing service) item</p> <p>(B) for each additional class 2 (sharing service) item</p> <p>(iii) otherwise</p> <p>(b) for a body corporate</p>	N/A	N/A	<p>(a)</p> <p>(i) 50 penalty units for each day, or part there of day, but not more than a maximum of 150 penalty units</p> <p>(ii)</p> <p>(A) 50 penalty units</p> <p>(B) 10 penalty units, but not more than a maximum of 100 penalty units</p> <p>(iii) 50 penalty units</p> <p>(b) 250 penalty units</p>
<p><b>Section 40(1)</b> – causing or permitting animal to trespass</p> <p>(a) for the first animal</p> <p>(b) for each additional animal</p>	See below	See below	<p>(a) 25 penalty units</p> <p>(b) 5 penalty units, but not more than a maximum of 50 penalty units</p>

Act Provision	Penalty notice – individual	Penalty notice – body corporate	Maximum penalty – court imposed
<b>Section 40(1)</b> – causing or permitting animal to trespass for a single animal on private land without permission for 2-11 animals on the same private land without permission	\$660  for the first animal – \$660, and for each additional animal – \$66	\$660  for the first animal – \$660, and for each additional animal – \$66	
<b>Section 41(1)</b> – unlawfully recovering property	N/A	N/A	50 penalty units
<b>Section 42(3)</b> – failing to recover property as required (a) for an individual (b) for a body corporate	See below	See below	(a) 25 penalty units (b) 125 penalty units
<b>Section 42(3)</b> – penalty notices for an animal for a class 1 (personal) item for a class 2 (sharing service) item for a class 3 item (vehicle)	\$660 \$330 \$660 \$660	\$1,320 \$660 \$1,320 \$1,320	
<b>Section 43</b> – obstructing authorised officer	N/A	N/A	100 penalty units