

Review of the *Impounding Act 1993*

Discussion Paper Submissions Summary Report

July 2020

Background

The *Impounding Act 1993* (the Act) provides a framework for local councils and State authorities managing public land to deal with safety and amenity issues caused by animals and articles left in public places by impounding them when they believe on reasonable grounds that they have been left abandoned or unattended. Private occupiers can also impound animals trespassing on their land. The Act also creates offences for abandonment and procedures for impounding, release and disposal of articles and animals.

The ways that people use public space has significantly changed over time. Far more articles are being used or kept in public areas - such as cars, trailers, boats, shared bicycles and scooters. At the same time, while specific issues caused by boat trailers and share bikes were dealt with by specific amendments to the Act in 2015 and 2018 respectively, the Act has not been comprehensively reviewed in 28 years.

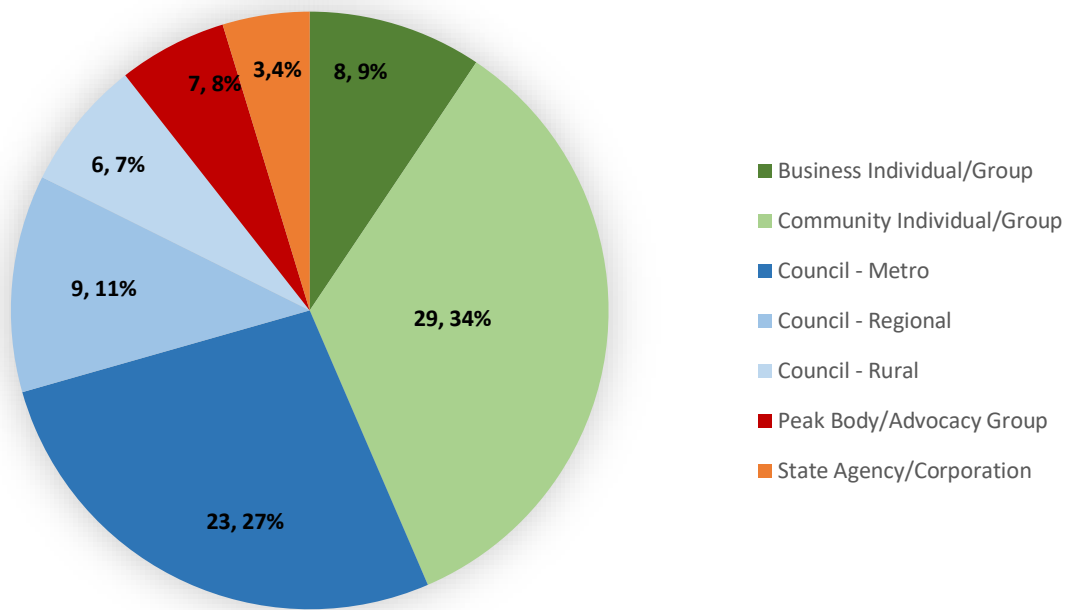
In late 2019, the Minister for Local Government initiated a comprehensive review into the Act. This recognised that a more holistic solution is needed to ensure that the Act remains effective into the future.

Feedback on Discussion Paper

In December 2019 a Discussion Paper was released to seek public feedback on the Act. This Paper sought views about whether the Act is meeting its objectives at a strategic level and in relation to how it operates in practice. In particular, the paper canvassed how a new Act could help communities use and enjoy public places more safely and easily, without impediment from abandoned items, and how to ensure owners better manage stock to minimise safety and biosecurity risk in rural areas.

In response to the Discussion Paper, a total of 85 submissions were received from diverse stakeholders including 38 councils, 29 community members, eight businesses/industry organisations, seven peak organisations and three NSW Government entities.

A mix of large and small councils responded to the paper. A greater number of larger, more urbanised councils responded, with three-fifths of council submissions from Greater Sydney (23 or 61% of councils), a quarter from regional areas (9 or 24% of councils) and only a few from rural areas (6 or 16% of councils). **Appendix 1** provide a full list of who made a submission.



Key themes – Strategic directions

The majority of submitters responding to questions on strategic directions feel that the Act should be amended to improve how councils and other authorities can deal with problem articles and animals to keep public spaces safe, accessible and enjoyable to spend time. The table below sets out key themes of feedback received about the Act at a strategic level.

Question	Key themes
Balancing community needs and shaping public places into the future	<ul style="list-style-type: none"> • There is wide support to shift the focus of the Act to protecting quality public spaces rather than providing specific, narrower powers to deal with individual problems. • This would allow updates to the law to reflect changing technology and needs over time. • There is general support for a shift that allows the public interest to be promoted over private interests and to better protect public amenity, noting that this is difficult to define. • Many believe solutions must be applied flexibly to meet diverse needs of different communities.
Strategic framework 'fit for purpose' to regulate impounding	<ul style="list-style-type: none"> • Many councils and community members believe the Act is no longer 'fit for purpose' as it is prescriptive, outdated and supports a reactive approach to regulation. Instead, the Act could become performance, or outcomes based instead of prescribing procedures to follow. • There is wide support to create a simpler Act supported by regulations, and potentially mandatory Codes of Practice, that set out how to achieve those outcomes for specific types of items – such as for trolleys and motor vehicles. Emerging issues could then be more readily addressed quickly and effectively. • In contrast, a minority of councils that would like to retain the current process-based objectives and focus of the Act still but just simplify it and remove red tape to improve its effectiveness. • Many feel the Act should focus more on promoting owner and user responsibility for items as well as improved cost recovery mechanisms to better cover regulatory costs.
Integration with NSW policy and other legislation	<ul style="list-style-type: none"> • Many respondents believe that the Act is outdated and not well aligned to a number of other NSW Acts that also apply to the same (or similar) items or animals in practice, including the Biosecurity, Companion Animals, Local Land Services, Local Government, Road Transport, Prevention of Cruelty to Animals and Protection of the Environment Operations Acts. • It is proposed that the Act be updated, drawing on more recent laws, to reduce confusion and duplication and provide a basis for providing clearer guidance where laws intersect. • One key area nominated for harmonisation is animal welfare, impounding and pound management generally under the Act, Companion Animals, Local Land Services and Prevention of Cruelty to Animals laws.
Encouraging responsible behaviour	<ul style="list-style-type: none"> • The vast majority of respondents believe that the offences and penalties under the Act do not promote responsible behaviour. A number suggested the Act should provide shared responsibility for a range of duty holders and encourage 'whole-of-life' responsibility, particularly for items like trolleys where the owner is not the user. • Most feedback indicates that it is almost impossible to identify people abandoning items and, even when they are identified, to enforce penalties that may apply. In addition, most items are of low value so there is no economic incentive for owners to recover items, particularly given impounding fees. • Some councils report that their fees do not cover impounding costs but increasing fees is not an option as it would reduce collection of items and increase disposal costs ultimately borne by the community.

	<ul style="list-style-type: none"> There is wide support for public education as key in reinforcing responsible behaviour.
Innovation and emerging technology	<ul style="list-style-type: none"> A key issue is growing vehicle ownership increasing demand for parking spaces in urban areas. Submissions support a more flexible impounding framework to deal with emerging technologies. Key items noted include drones, driverless cars, e-bikes (recreational and share bikes), segways, and scooters (recreational, shared and mobility). New technologies are both a problem to be solved and a potential way to reduce concerns – options noted include GPS tracking, electronic tagging, geofencing for trolleys, CCTV, reporting apps, coin deposits and mandatory branding with QR codes. At the same time, regulators can benefit from technology to reduce costs, such as by using surveillance to collect evidence, accessing databases to track items and animals and using SMS or email to provide notice to owners about their property. While amending the Act could authorise one or more of these technological solutions, considering these issues in planning and design of public spaces is seen by some as a better long-term objective. It was also proposed that time-limited, regional responses to specific issues could be used to pilot approaches to emerging issues in future to test issues before applying them across the State.

Key themes – Operational directions

This section of the Discussion Paper focused on whether specific provisions in the different parts of the Act are still effective and, if not, the key issues and suggestions to improve them.

Question	Key themes
Effectiveness of who can impound and what can be impounded	<ul style="list-style-type: none"> A small majority (58%) of submission, including most community and half of council submitters responding to this issue, think the provisions are not working well in practice. Key issues for councils are confusion about which agency is responsible for impounding in different circumstances and lack of information sharing. Councils would like clearer statements of responsibility and liaison arrangements with agencies including Local Land Services for animals and NSW Police and Transport for NSW for motor vehicles. Key issues for the community and business are about how long it takes to get cars and trailers impounded. Shopping trolleys, cats and stray stock are also a source of frustration. There is a general view that councils have inadequate powers and penalties are too low.
Effectiveness of impounding animals	<ul style="list-style-type: none"> It is clear that impounding stock is an issue in regional NSW. Just under two-thirds of submitters responding to this question believe that animal impounding provisions are working well. However, when metropolitan councils are discounted (as they do not generally impound stock), views of regional and rural councils and community members about the effectiveness of impounding animals are evenly divided. Animal welfare advocates are dissatisfied with animal impounding. A key issue is that the provisions for establishing and managing pounds and for impounding are not clear and are not flexible enough, particularly in regional and rural areas. This issue has grown in significance as a greater variety of animals are kept as stock and expectations for pound standards have increased, making pounds more difficult and costly to manage. There is also wide support for expanding the definition of animal under the Act and aligning it with definitions in more modern, intersecting laws on biosecurity and Local

	<p>Lands Services. Many community members would like cats to be covered under this law to better address roaming behaviour and extend impounding powers for councils.</p> <ul style="list-style-type: none"> • In terms of compliance and enforcement, councils believe they have insufficient powers to deal with irresponsible animal owners (e.g. a farmer impounded stock on his land at a cost to him that was never repaid). Many councils and community members favour increased penalties and/or control orders or other incentives to require effective fencing. • Councils have also raised that the Biosecurity Act prevents temporarily containing stray stock on roads in adjacent private paddocks. As leaving animals on roadsides is a high safety risk, councils would like the power to use adjoining paddocks when required for public safety. • Animal welfare advocates have also raised concerns about outdated provisions for destroying animals of low value, outdated euthanasia provisions, pound standards, animal identification and rehoming.
Effectiveness of impounding shopping trolleys	<ul style="list-style-type: none"> • Shopping trolleys attracted more comments than other issues for most respondents. <u>Nearly three-quarters (73%) of submitters responding to this issue believe the laws are not adequate for shopping trolleys</u>, including most metropolitan and regional councils and community members. Some businesses and most rural councils believe the provisions are adequate. • Many submissions provided details about high numbers of trolleys in their area, for example: <ul style="list-style-type: none"> ○ A State-owned corporation claims it removes 900 trolleys from stormwater networks each year, and ○ Several inner-city councils collected more than 1,000 trolleys from streets and parks during two blitzes in 2019, including 550 in one week. ○ Trolleys left in public places cluttering roadsides and pathways, bus stops, parks and in waterways (which are hazardous and complicated to manage). Disability advocacy groups believe trolleys create access issue and safety hazard for people with disabilities, which councils say extends to older and vulnerable people. • Community members are frustrated about the frequency of trolleys being abandoned and feel powerless, with many reporting that no action appears to be taken by retailers or councils. Many councils agree that they are unable to act and report that barriers to action are lack of a clear definition of 'abandoned' for trolleys, lack of retailer identity on some trolleys, red tape and cost in impounding trolleys (which must be kept for 28 days then, in theory, offered for sale) and that retailers have little incentive to collect abandoned and impounded trolleys given their low value and inability to hold them responsible. <ul style="list-style-type: none"> ○ For example, an inner-city council claims only 100 trolleys were collected by retailers with the other 300 being destroyed. • Retailers have submitted that they take trolley management seriously and outlined investment in collection, reporting options and willingness to work with councils. They are concerned about the cost of mandatory containment and would strongly prefer improved communication with councils instead. • Almost all other submitters sought change and suggested ways to limit wayward trolleys and improve how quickly and cheaply they may be found, collected and returned to retailers. • Suggestions include mandatory measures for retailers with more than a certain number of trolleys (say 20), or more than a number of fines in a set period, including:

	<ul style="list-style-type: none"> ○ Legislated standards for trolleys with risk-based times for collection – including ability to immediately move or impound a trolley causing public risk – or face a large penalty ○ Mandating one of a range of containment technologies such as perimeter wheel locking; coin-operated trolleys; geo-fencing; GPS trackers and mandatory branding; and ○ Higher and escalating penalties, including for not collecting an impounded trolley.
Effectiveness of impounding boat trailers	<ul style="list-style-type: none"> • Those most affected by these provisions in Greater Sydney believe the provisions are not effective. Views on whether boat trailer provisions are effective appear evenly divided amongst all submitters answering this question, with two-thirds of these councils. • However, discounting regional and rural councils, <u>the majority (79%) of submitters believe the provisions are not effective.</u> • Groups most dissatisfied are metropolitan councils, community and business members. Councils in ‘declared areas’, where boat trailer provisions apply, also mostly (82%) expressed dissatisfaction while a small number of councils indicated the Act is somewhat effective but requested key process improvements. • Community members believe there are still many boat trailers in streets causing safety issues, particularly on corners in narrow streets and on intersections blocking visibility. There is also confusion around ‘declared areas’ where further provisions apply. • Councils and communities believe the provisions have not changed behaviour and are a burden to apply (owners can wait 43 days then simply move their trailer around the block). • Most respondents that sought change would like to see reduced timeframes to move boat trailers e.g. within 14 days then an additional 3 days to move the boat prior to impounding in line with cars and an offence for non-compliance by boat trailer owners. • Many councils and some community members want the framework to apply to all trailers, from box trailers to caravans, horse floats, camper trailers and advertising trailers, given they all can pose a similar nuisance and similar safety risks in communities. • Some submissions suggested introducing permit parking, better signage, exemptions for owners parking outside their residence and grant funding for off-street parking. One council noted that the use of ‘No Parking – Motor Vehicles excepted’ signage in certain residential problem areas has been effective. • One recreational boating community advocacy group indicated further data is needed to comment on effectiveness and believes the laws unfairly target trailers. However, the group also observes that <i>“a compulsorily 28-day movement of all boat trailers from one place to another—akin to a “musical chairs” solution—cause more aggravation and friction within the community than is already the case.”</i>
Effectiveness of impounding motor vehicles and other items	<p>Vehicles</p> <ul style="list-style-type: none"> • Impounding vehicles attracted a significant number of comments, more than any issue other than shopping trolleys, especially from councils. • <u>Most (59%) believe these provisions are not working well</u>, particularly metropolitan councils, members of the community and business, and a State-owned corporation. • Feedback indicates that abandoned vehicles are creating amenity, safety, environmental and cost issues. The longer vehicles are left, the higher the risk of vandalism and fire. However, it is often cheaper and easier to dump vehicles than take them to waste facilities. • Many believe that all trailers cause issues and should be better regulated.

	<ul style="list-style-type: none"> • Most councils, particularly in metropolitan areas, find the impounding and disposal process lengthy and an unnecessarily burdensome process, particularly as the vast majority of cars are unregistered, old and of low value. • Key issues for authorities include identifying and contacting vehicle owners, getting vehicles moved by their legal owner, establishing grounds for impounding a vehicle and moving cars blocking driveways, powers of entry to vehicles and removing licence plates. • Specific proposals made to streamline and improve this process included: <ul style="list-style-type: none"> ◦ giving councils powers to act on vehicles blocking driveways or causing safety or access issues (including outside scrap metal and panel beater yards) ◦ giving councils powers to fine parked unregistered motor vehicles (as Police and Transport for NSW can and councils can for unregistered trailers) ◦ extending council powers to private places open to the public like service stations ◦ reducing the 3 days' notice period to 24 hours ◦ defining 'unattended' in relation to unregistered or unroadworthy vehicles ◦ increasing the value of a vehicle that can be destroyed from \$500 to at least \$1000, and ◦ reversing the onus so that owners are obliged to act (as for share bikes) and providing other incentives for owners to take cars to waste facilities. <p>Other items – homeless belongings, watercraft and share bikes</p> <ul style="list-style-type: none"> • Some councils noted issues dealing with belongings of homeless people and seek guidance. • Others want better provisions to deal with private bikes and watercraft cluttering accessways. • Most commenting on share bikes are satisfied with the new scheme, only making minor suggestions such as broadening its scope to deal with other shared devices – e.g. trolleys.
<p>Effectiveness of how impounded items are dealt with (including fees and charges)</p>	<ul style="list-style-type: none"> • <u>Two-thirds (67%) of submissions responding believe the provisions are generally working well.</u> Community groups and/or individuals were more likely to believe the provisions are not working well, noting some people confuse impounding fees set to recover costs, with penalties set by law to encourage compliance. • Many councils believe the procedures in the Act are complicated, onerous and overly lengthy – for example, councils are required to store low cost items for 28 days and advertise them for sale, including cars valued at over \$500 and, in theory, shopping trolleys. • Impounding fees are viewed as a 'Catch-22' as there is little incentive for owners to claim items, given that impounding fees often exceed the item's value, but councils believe they should charge impounding fees as otherwise impounding costs place an unfair burden on ratepayers. • Other issues are storage capacity, particularly for bulky items like trolleys, vehicles and large animals. • Councils and the community want easier and quicker disposal processes for items of low value, shorter times to claim vehicles, more consistent impounding processes, better incentives for owners to claim property, an offence with a penalty for failing to claim goods and animals (to help recover costs), a simpler cost recovery process, the owner's contact details on shared devices and more flexibility to deal with hardship. • Animal welfare groups want to ensure euthanasia by a vet, where possible, tagging of impounded animals for tracing and reuniting or rehoming over impounding, where possible.

<p>Effectiveness of establishing pounds</p>	<ul style="list-style-type: none"> Just over half of all submissions responded on this, and <u>most (73%) believe the provisions for establishing pounds are working well.</u> However, many regional and rural councils and animal welfare groups believe the provisions are not working well. Councils believe the requirement to establish a pound and provisions on contracting out pound management are unrestrictive and unclear— this is a critical issue as companion animal and local land service pounds are also established under this Act. They also report a lack of pounds in convenient locations, creating high operating costs that cannot be recovered. Submissions from many councils and from a legal advocacy group, ask for more flexibility and clarity about establishing and sharing pounds in regional and rural areas, and/or alternative agistment options to reduce costs and travel time. Welfare organisations believe there is a lack of clear standards and codes of practice for animal pounds (these are currently a Prevention of Cruelty to Animals Act issue).
<p>Effectiveness of offences and penalties</p>	<ul style="list-style-type: none"> Approximately <u>two-thirds (65%) of all responding submissions believe that these provisions are not working well,</u> including a vast majority (88%) of the public and businesses. Most submissions indicated that penalties for offences are low and poorly enforced. This is an insufficient deterrent and does not promote responsible ownership. There is also a lack of relevant offences and penalties in the Act or other laws that councils can apply, such as for failure to move a boat trailer, failure to remove an unregistered car, or failure to collect items from a pound. A further key issue is that on the spot fines can generally only be issued for the act of abandoning an article or animal in public. All other offences must be dealt with via courts, which councils say is cumbersome and resource-intensive, and many fines are unpaid. The most common suggestions were to increase penalties, including creating higher penalties for corporations, and to create new offences and penalties to encourage responsible behaviour including for failure to: <ul style="list-style-type: none"> prevent animal trespass on private land deliver an impounded animal from their land to a public pound in specified time remove article as directed from public place collect impounded item or animal after notice contain a cat (noting cats are dealt with under the Companion Animals Act) move a boat trailer after 28 days move an unregistered car from the roadside move a vehicle blocking a driveway state name/address when requested by an authorised officer, and giving correct information to an authorised officer. A peak organisation also supports converting many lower-order offences to penalty notice offences to streamline and simplify regulatory action, with higher penalties for corporations.
<p>Effectiveness of applications to the Civil and Administrative Tribunal</p>	<ul style="list-style-type: none"> <u>Most (80%) submitters believe these provisions are working well</u> (although most also noted they had no direct experience in this). The only suggestion was to reduce appeal time in which an owner of an impounded item can appeal a decision by an impounding authority to impound their item to 3 months if the authority has made all reasonable attempts to find them.

	<ul style="list-style-type: none"> A business law firm noted inconsistency in that impounding under the Local Land Services Act cannot be appealed.
Effectiveness of miscellaneous provisions	<ul style="list-style-type: none"> Of those responding, two-thirds (65%) believe the provisions are working well, particularly councils. Other groups are more likely to believe the provisions are not working well. Key issues raised and suggestions to address them are: <ul style="list-style-type: none"> require councils to contact a vet prior to deciding to destroy an animal and, where possible, euthanise the animal consistent definitions with more modern legislation, such as the Biosecurity and Local Land Services Act ensure all enforcement officers, such as rangers, are able to carry one written authorisation in the form of an identification card for all regulatory functions shorten the current 3-day timeframe for Police to respond to a council on vehicle owner identity, including by shifting to electronic processes review who impounding officer should inform of impounded vehicles give councils direct access to RMS DRIVES vehicle database – to get hull identification number details to facilitate owner identification and cost recovery allow councils to impound and issue fines for unsightly car parts on private land, and expand liability protections for authorities for accidental damage during impounding.
Effectiveness of definitions	<ul style="list-style-type: none"> Over half (53%) of respondents believe the provisions are not working well. Key issues and specific suggestions for improvement are to clarify certain key terms and concepts, by regulations where possible for flexibility, including the terms: animal, abandoned, amenity, danger to the public, motor vehicle, move, obstruction, public place, public land, responsible person and unattended (for specific items). Councils and others would also like key concepts clarified such as: <ul style="list-style-type: none"> whether items that are with or fixed to a vehicle or trailer may also be impounded whether a single impounding process may or should be applied to a group of items (for example, 20 trolleys) concepts that can be subjective, such as those matters that may be considered in determining a belief on ‘reasonable grounds’. matters which should be considered in determining whether a danger exists minimum standards for amenity, and how to determine relevant ownership in relation to animals, particularly stock animals. <p>Impounding authorities listed in the Act</p> <ul style="list-style-type: none"> No issues were raised about the list of impounding authorities currently in the Act or regulations.

Next steps

Submissions received reflect a keen interest across councils, the community and industry in getting the impounding framework right to ensure public places are protected from safety, access and clutter issues caused by items and animals abandoned by irresponsible owners and users.

The submissions will be considered by the NSW Government in its review of the Act to support the value the community places on protecting public places for all to enjoy now and into the future.

Appendix 1 – Submissions

In total, **85** submissions were received in response to the *Review of the Impounding Act 1993 Discussion Paper*. These are listed below in stakeholder groupings.

Local Government (38)	Community Individuals and Groups (29)
Local Government NSW (LGNSW)	Albury Wodonga Area Crime Whinge & Whine
Bathurst Regional Council	Bayview Church Point Residents
Blacktown City Council	Free Space
Broken Hill City Council	Naremburn Progress Association
Byron Shire Council	Community individuals (25)
Camden Council	
City of Canada Bay Council	Business Individuals and Groups (8)
Central Coast Council	
Coffs Harbour City Council	Coles Group
Coolamon Shire Council	Holy Moses dog walking and pet care
Edward River Council	Lindsay Taylor Lawyers
Fairfield City Council	Weta Sydney
Georges River Council	Woolworths
The Hills Shire Council	Farmer
Hornsby Shire Council	Other business individuals (2)
Inner West Council	
Kiama Municipal Council	Peak Advocacy Groups (7)
Ku-ring-gai Council	Animal Care Australia
Liverpool City Council	Animal Welfare League (AWL) QLD
Lismore City Council	Australian Veterinary Association (AVA)
Newcastle City Council	Disability Council of NSW
North Sydney Council	Law Society of NSW
Northern Beaches Council	RSPCA
Parramatta City Council	Recreational Fishing Alliance NSW
Penrith City Council	Boat Owners Association - late submission and therefore not counted in quantitative analysis
Port Stephens Council	State Government Agencies/Corporations (3)
Randwick City Council	Crown Lands
Ryde City Council	Hunter Water Corporation
Singleton Council	Local Land Services
Southern Sydney Regional Organisation of Council (SSROC)	
The Council of the City of Sydney	
Tenterfield Shire Council	
Upper Lachlan Shire Council	
Warrumbungle Shire Council	
Waverley Council	
Willoughby City Council	
Wollongong City Council	
Woollahra Municipal Council	