

# Impounding Act Review

Developing a regulatory framework for shopping trolleys in NSW

---

Stakeholder Workshop Options Paper

# Contents

---

<b>INTRODUCTION .....</b>	<b>3</b>
<b>BACKGROUND .....</b>	<b>4</b>
<b>About the Impounding Act .....</b>	<b>4</b>
<b>NSW GOVERNMENT ACTION.....</b>	<b>5</b>
<b>Consultation feedback to date .....</b>	<b>5</b>
<b>Next steps in the review process .....</b>	<b>6</b>
<b>How to have your say on this options paper .....</b>	<b>6</b>
<b>Where to go for further information .....</b>	<b>6</b>
<b>PROPOSED WAY FORWARD – OPTION 4.....</b>	<b>7</b>
<b>Theme 1 - Reshape the Act to focus on outcomes the community expects.....</b>	<b>7</b>
<b>Theme 2 - Move some key provisions from the Act to subordinate laws.....</b>	<b>7</b>
<b>Theme 3 - Offences and penalties.....</b>	<b>7</b>
<b>Theme 4 – Modernise and clarify key regulatory processes and definitions.....</b>	<b>8</b>
<b>Theme 5 – Align Act with other laws.....</b>	<b>8</b>
<b>What could the preferred Option mean for shopping trolleys? .....</b>	<b>9</b>
<b>ISSUES TO THINK ABOUT .....</b>	<b>10</b>
<b>Question to consider .....</b>	<b>10</b>
<b>APPENDIX 1 - SUMMARY OF RELEVANT FEEDBACK.....</b>	<b>11</b>
<b>Key themes – Strategic directions .....</b>	<b>11</b>
<b>Key themes – Operational directions relevant to shopping trolleys .....</b>	<b>12</b>

# Introduction

Thank you for agreeing to take part in a stakeholder workshop to help shape an up-to-date regulatory framework to better manage animals and items, including shopping trolleys, in New South Wales.

The workshop is part of a consultation process being delivered by the Office of Local Government, the Department of Planning, Industry and Environment (DPIE) in June 2021 as part of a review of the *Impounding Act 1993* (the Act). As part of this consultation, public land managers (including councils), government agencies, industry (including businesses) and peak user groups representing the wider public will be asked to provide views on what should be included in a more effective regulatory framework and how best to implement it.

Public feedback on an earlier discussion paper has been considered when developing preferred options to change the Act. The Government has asked for an open discussion amongst key stakeholders to help to test these preferred options. This briefing paper has been prepared to provide background information and to pose questions for discussion at the stakeholder workshops.

Three workshops will be held in June 2021: one focusing on shopping trolleys, one on stock animals and one on vehicles, including boat trailers.

Given the importance to many of these issues to the community, Mr Mark Coure MP, Member for Oatley is chairing the shopping trolleys and vehicles workshops on behalf of the NSW Government.

What	When	Where	Stakeholders Invited
Shopping Trolleys Chair: Mr Mark Coure, MP Member for Oatley	15 June, 9.30am-11.30am (9:00am registration)  11.30-12.30 (Act process issues raised by impounding authorities)	Wesley Conference Centre, 220 Pitt Street, Sydney (nearest train station, Town Hall)	Public land managers Government agencies Industry Peak User Groups Community Groups
Stock Animals	17 June, 9.30am-11.30am  11.30-12.30 (Act process issues raised by impounding authorities)	Zoom Meeting  Online workshop	Public land managers Government agencies Industry Peak User Groups
Vehicles, including Boat Trailers and other Trailers Chair: Mr Mark Coure, MP Member for Oatley	29 June, 2.00-4.00pm  4.00-5.00pm (Act process issues raised by impounding authorities)	Zoom Meeting  Online workshop	Public land managers Government agencies Industry Peak User Groups Community Groups

# Background

---

## About the Impounding Act

The *Impounding Act 1993* (the Act) provides powers for local councils and NSW Government authorities managing public land (impounding authorities) to deal with safety, access and amenity issues caused by unattended items and animals left in public places.

Impounding authorities may take to a pound any items or animals they determine on reasonable grounds to be abandoned or unattended. They may issue penalties for the offence of abandoning or leaving things unattended in public. They may also sell or dispose of items and animals not collected by the owner in certain circumstances. The Act gives private land holders or tenants special powers to impound animals trespassing on their land.

The Minister for Local Government, the Hon. Shelley Hancock MP, is responsible for administering the Act.

## The changing use and value of public space

The ways that people use public space has significantly changed over time. A greater number of different items are being used or kept in public areas as the population grows and people own more items such as cars, trailers, boats, bikes and scooters. As a society we are becoming more likely to dispose of items more frequently.

Shopping trolleys have been used in NSW since the mid-1970s. They provide a valuable service to consumers transporting their goods from supermarkets to their car and/or home. However, it is clear from ongoing feedback to the Government that they continue to create concerns and impose costs on councils and the community, including:

- Safety and accessibility (build-up of trolleys, obstruction of walkways and trip hazards)
- Amenity (visual appearance, clutter)
- Vandalism and theft of trolleys
- Users not following rules to return trolleys
- Adequacy of infrastructure and programs to safely manage trolleys
- Cost to councils and community of disposing of impounded trolleys, and
- Cost to the environment of trolleys dumped in waterways and other public places.

Some local councils and community members continue to report high volumes of complaints. For example, a number disability advocacy groups reported access and safety issues for vision impaired people who may be injured by improperly placed trolleys.

While the Government strongly supports the food retail industry and acknowledges the vital role that supermarkets and other retailers play in serving consumer needs, it recognises the need to balance this service with making sure that the whole community can safely use and enjoy public spaces.

The increasing value of public places is underpinned by the current Premier's Priority - [Greener Public Places](#) - to create more quality green, open and public spaces across urban areas.

# NSW Government action

---

In 2015 and 2018, respectively, the NSW Government responded to public concern about use of boat trailers and share bikes in public places by amending the Act to create specific new provisions for those items. The Act has not been comprehensively reviewed in 28 years and has not generally kept pace with changing use of public space and technology.

In late 2019, following ongoing concerns raised by stakeholders about shopping trolleys, vehicles and trailers, the Minister for Local Government initiated a review of the Act. This recognised that a holistic solution is needed to ensure that the Act is effective in meeting community expectations and delivering on the Government's priorities, now and into the future. The review process is being led by the Office of Local Government.

## Consultation feedback to date

In response to a comprehensive discussion paper focusing on both strategic and operational issues, the Government received 85 submissions from diverse stakeholders, including 38 councils, 29 community members, 8 industry organisations, 7 peak organisations and 3 NSW Government entities. A summary of relevant feedback is provided at Appendix 1. Correspondence and other information was also reviewed.

Most feedback indicates that the Act is no longer fit-for-purpose. The Act is seen by many as overly prescriptive, out-dated, and ineffective in holding people responsible for abandonment to account. There was also strong support to amend the Act to better encourage owners to take greater responsibility for items and stock found in public, as well as to improve how regulators recover impounding and disposal costs for items never claimed.

## Four broad options for legislative change have been considered

---

### 1. No change –

- » The Act is working well. Leave it as it is.
- 

### 2. Minor change to ensure currency, clarity, and consistency with other laws -

- » Update definitions and processes (including monetary and timeframe thresholds for action), review existing offences and penalties and align the Act with other, more contemporary laws including animal welfare, biosecurity and transport laws.
- 

### 3. Introduce additional obligations for high risk problem items -

- » Act provides for risk-based definitions and obligations that may be tailored to each problem item in separate sections or divisions.
  - » **Plus** minor changes to ensure currency, clarity and consistency with other laws (Option 2).
- 

### 4. Change Act to focus on outcomes and create codes of practice, as required (PREFERRED OPTION) –

- » Reframe the Act to focus on the outcomes the community expects, such as placing more responsibility on owners for their items and animals and giving impounding authorities stronger regulatory powers to deal more swiftly and effectively with items.

**This is the preferred option** as it would facilitate the development of standards of behaviour in regulations and/or Codes of Practice that could be more flexibly changed over time, including safety, service levels for reporting and responding to complaints, offences and penalties, storage, communication for the regulated community (eg. owners of items, animals) and for impounding authorities (eg. councils).

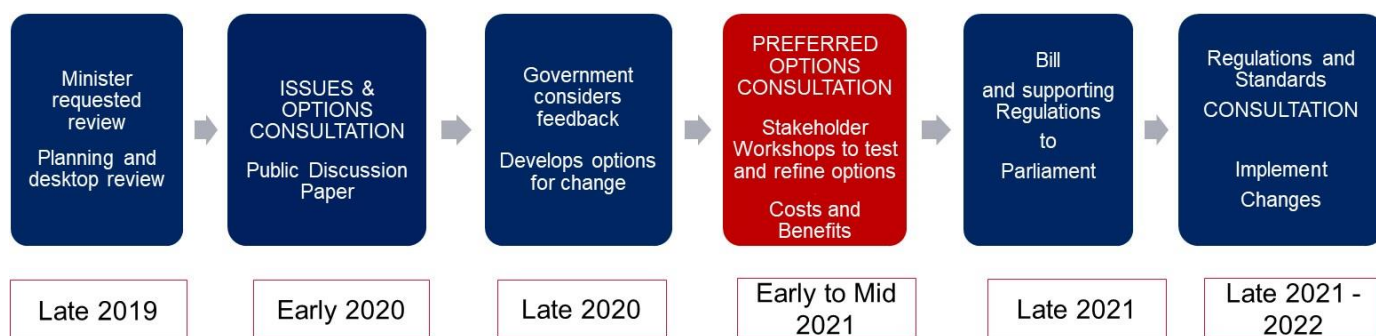
## Next steps in the review process

The NSW Government is consulting with impounding authorities, businesses, advocates and other key stakeholders on issues of most concern to the public as part of the development of a Bill to take to the NSW Parliament.

The workshop is part of that process.

A Better Regulation Statement examining the full range of costs and benefits of each option is concurrently being developed to test all four options set out above, to support the Government's decision-making process.

IF change is required, legislation is expected to be introduced to Parliament later this year, as shown in the diagram below.



## How to have your say on this options paper

If you would like to provide further feedback after the workshop, or were unable to attend the workshop and would like to provide feedback on this options paper, please mail or email feedback by **Friday 25 June 2021** to:

### Impounding Act Review

Locked Bag 3015

Nowra NSW 2541

Email: [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)

## Where to go for further information

### Policy Team, NSW Office of Local Government

Email: [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)

Phone: (02) 4428 4100

Agency Website: [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au)

# Proposed way forward – Option 4

---

Below are some key themes in relation to the Government's preferred option, **Option 4**, to facilitate today's discussion on shopping trolleys. We encourage you to consult within your organisation about this preferred option and the key themes prior to attending the workshop so that you can best represent your organisation.

## Theme 1 - Reshape the Act to focus on outcomes the community expects

Option 4 proposes that the Act focus on outcomes the community expects to hold to account those responsible for abandoned or unattended items and animals in public.

This Option proposed that, the Act will be renamed and restructured to focus on outcomes to meet the following primary objective:

- i. **to safeguard shared use and enjoyment of public spaces by providing laws to prevent, eliminate and minimise risks to safety, amenity and access arising from items and animals left abandoned or unattended in public places.**

To support this objective, it is proposed that the Act should:

- i. place increased onus on those responsible for animals and items in public places
- ii. provide impounding authorities with the ability to issue penalty notices and take other regulatory action, such as impounding, for offences
- iii. protect animals dealt with under the Act from harm consistent with community expectations and contemporary animal welfare laws
- iv. provide more flexible and efficient temporary and longer-term options to store abandoned or unattended items and shelter animals, and
- v. allow impounding authorities to more effectively recovery costs from those people responsible for items and animals.

## Theme 2 - Move some key provisions from the Act to subordinate laws

The Act contains obligations that owners must meet to prevent their item or animal from being declared abandoned or unattended. The owner may then face a fine or other regulatory action. For example, share bike operators (commercial enterprises) must collect share bikes causing an obstruction or safety risk in public within 3 hours.

Option 4 proposes that, while certain minimum standards must remain in the Act, many obligations on owners, such as longer timeframes to respond, product safety and branding, communication, data sharing and reporting, will more flexibly be set out in regulations and, if necessary for an item, a Code of Practice. It is also proposed to set out key details of the impounding process in subordinate laws – this would provide the flexibility to adjust matters such as the monetary threshold for being able to destroy a motor vehicle (currently \$500) and notice periods.

Importantly, these provisions would be developed in consultation with key stakeholders, such as those attending this workshop and would not become law until sufficient time had passed to prepare for any key changes. Further, this would enable the Government to more quickly respond to new issues or technologies as they arise (such as new shared devices on public land) or change standards more easily over time, if needed.

## Theme 3 - Offences and penalties

Option 4 proposes to review and recalibrate the offences, penalties and penalty notice amounts under the Act to:

- better capture people who are responsible for the location of items and animals
- align these penalties with penalties for offences of a commensurate nature under other laws
- differentiate, in setting penalties, between offences committed by a corporation and an individual
- consider imposing stronger penalties on repeat offenders, and
- categorise offences by the size or level of risk an item causes (an abandoned vehicle poses a higher risk and cost to the community than a bike).

This approach was, in part, implemented for share bikes in 2018 under the Act, higher penalties (25 Penalty Units (\$2,750) or a \$500 fine) to recognise that share bike operators are corporations.

## **Theme 4 – Modernise and clarify key regulatory processes and definitions**

Option 4 proposes to update certain regulatory processes including grounds for action, monetary thresholds for action, timings for action and costs. Some of this detail may be moved to subordinate legislation.

Option 4 also proposes to update and clarify definitions, including 'unattended', 'animal', 'owner'/'user' (instead to be 'responsible person') and 'pound' (instead to be 'storage place' for items or 'shelter' for animals) and enable certain definitions to be updated via future regulations. These changes would better meet community expectations expressed through feedback, clarify when action may be taken by impounding authorities and provide increased flexibility to respond to future changes.

## **Theme 5 – Align Act with other laws**

Option 4 proposes to amend provisions to repair any gaps or overlaps with other laws with which the Act intersects – for example, by aligning its provisions with those of more contemporary laws, such as ensuring the welfare of animals dealt with under the Act.

The Impounding Act intersects approximately ten other Acts. Option 4 may also require consequential changes to some of these other laws.

Option 4 would also be supported by guidance and education to encourage responsible behaviour of all key stakeholders, including owners and users of items as well as impounding authorities.



# What could the preferred Option mean for shopping trolleys?

Option 4 for shopping trolleys could adopt elements of the provisions put in place for share bikes in 2018. However, many provisions could be in the regulations and (potentially) a Code of Practice rather than the Act. This could include setting out key details of requirements for:

- clearer responsibilities for businesses that loan shopping trolleys to proactively collect trolleys within a regulated, risk-based timeframe
- once a timeframe has been passed, deeming that trolley to be 'abandoned', enabling regulatory action to be taken
- clearer responsibilities for impounding authorities to notify shopping trolley owners before 'starting the clock' and to impounded trolleys in a certain way
- clear branding of trolleys to identify and contact the owner of the item if needed
- data sharing to identify patterns of trolley abandonment
- more relaxed standards for smaller businesses with fewer trolleys, for example exemptions for small businesses with less than 20 trolleys
- more stringent requirements for businesses with a poor track record in managing trolleys, and
- transitional arrangements.

**Importantly, this would not require businesses to implement any single shopping trolley containment method. Businesses could choose the most appropriate and cost-effective method to suit their local circumstances, so long as they can meet their obligations.**

A starting point for a future Code of Practice could be to draw useful content from the voluntary NSW Code of Practice for the Management of Shopping Trolleys, developed in 2004 by the (then) Local Government Association of NSW, Shires Association of NSW and the Australian Retailers Association NSW.

# Issues to think about

---

The following issues and questions have been designed to encourage feedback on shopping trolleys and what should be covered by a future Code of Practice. We encourage you to consult within your organisations (where relevant) about these issues prior to the stakeholder workshops.

## Question to consider

**What is your view on the outcomes-based framework presented as the government's preferred option?**

- Do you support the proposed objectives?
- Do you support the proposed framework for penalties and offences?

**What alternative ways to better manage trolleys should be considered?**

- Do you think the other options the Government considered are preferable? Why?
- What other options do you think could work?
- How could non-regulatory options, such as user and community education, support better outcomes for the community?

**Why do you think the Government wants to create a Code of Practice under the Act for regulating shopping trolleys now?**

- Why do you think past action has not worked well and the community remains dissatisfied?
- What are the key opportunities under the proposed model for a Code of Practice?
- What are the key risks and concerns under the proposed model for a Code of Practice?

**How could a Code of Practice help manage trolleys more responsibly?**

- What would need to be included in a Code of Practice to make it flexible enough to meet the needs of different sized operators?
- What is a reasonable timeframe to leave a trolley unattended before regulatory action is taken?
- What should happen if a Code of Practice is breached?

**What specific requirements could be in a Code of Practice?**

- A Code of Practice would set minimum standards specifically for shopping trolleys.
- What roles and responsibilities should trolley owners have under a Code, in relation to:
  - complaint response times
  - safety
  - data sharing
  - user education
  - communication
- What roles and responsibilities should impounding authorities have under a Code?

# Appendix 1 - Summary of relevant feedback

At the end of March 2021, consultation feedback closed on a Discussion Paper providing public feedback about whether the Act is meeting its objectives at a strategic level and in relation to how it operates in practice. 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 items and animals to reduce risk. In total, 85 submissions were received from diverse stakeholders including 38 councils, 29 community members, 8 businesses /industry organisations, 7 peak organisations and 3 NSW Government entities. A greater number of larger, urban councils responded (61%), a quarter from regional areas (24%) and only a few from rural areas (16%).

## Key themes – Strategic directions

Question	Key themes
Balancing community needs and shaping public places into the future	<ul style="list-style-type: none"> <li>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.</li> <li>This would allow updates to the law to reflect changing technology and needs.</li> <li>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.</li> <li>Many believe solutions must be applied flexibly to meet diverse needs of communities.</li> </ul>
Strategic framework 'fit for purpose' to regulate impounding	<ul style="list-style-type: none"> <li>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, they tended to support a performance, or outcomes-based Act.</li> <li>There is wide support to create a simpler Act supported by regulations or codes of practice that set out how to achieve those outcomes for specific types of items – such as for trolleys. Emerging technology and issues could then be more readily addressed.</li> <li>In contrast, a minority of councils that would like to retain the current process-based objectives and focus of the Act but simplify it and remove red tape.</li> <li>Many supported the Act focusing more on promoting owner and user responsibility.</li> <li>Many respondents supported improving cost recovery mechanisms to help recover regulatory costs.</li> </ul>
Integration with NSW policy and other legislation	<ul style="list-style-type: none"> <li>Many believe the Act is outdated and not aligned to other Acts, such as the Protection of the Environment Operations Act. Proposals included updating the Impounding Act to reduce duplication and improve clarity where laws intersect, as well as consequential changes to other laws, as needed.</li> </ul>
Encouraging responsible behaviour	<ul style="list-style-type: none"> <li>Most believe offences and penalties in the Act do not promote responsible behaviour. It is almost impossible to identify people abandoning items and, if identified, to enforce penalties that may apply.</li> <li>Some suggested the Act provide shared responsibility for a range of people and encourage 'whole-of-life' responsibility for items like trolleys where the owner is not the user.</li> <li>Many items are of low value so there is no economic incentive for owners to recover items.</li> <li>Some councils report that their fees do not cover impounding costs but increasing fees would reduce collection of items and increase disposal costs for the community.</li> <li>There is wide support for public education as key in promoting responsibility.</li> </ul>
Innovation and emerging technology	<ul style="list-style-type: none"> <li>Submissions support a more flexible impounding framework to deal with emerging technologies. Key items noted include driverless cars, e-bikes, segways, and scooters.</li> <li>New technologies are both a problem and a potential solution – solutions include GPS tracking, electronic tagging, geofencing, CCTV, reporting apps, coin deposits and QR codes.</li> <li>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.</li> </ul>

## Key themes – Operational directions relevant to shopping trolleys

- Shopping trolleys attracted more comments than other issues for most respondents. **Nearly three-quarters (73%) of submitters responding to this issue believe the laws are not adequate for shopping trolleys**, including most metropolitan and regional councils, community members, some businesses and a State-owned corporation.
- Retail supermarkets and most rural councils believe provisions are adequate.
- Many submissions discussed high numbers of trolleys in their area, for example:
  - A State-owned corporation claims it removes 900 trolleys from stormwater networks annually
  - Several inner-city councils together collected more than 1,000 trolleys from streets and parks during two blitzes in 2019, including 550 in one week; and
  - Disability advocacy groups and councils believes trolleys create access issue and safety hazard for people with disabilities, older and vulnerable people, due to cluttered access ways.
- Retrieval from waterways is often complex and hazardous.
- Community members are frustrated about the frequency of trolleys being abandoned and feel powerless, with many reporting no action appears to be taken by retailers or councils.
- Many councils report they are unable to act and that the barrier to action is a lack of clarity about the term 'abandoned' for trolleys, lack of retailer identity on some trolleys, red tape and impounding costs (for 28 days prior to offering for sale). They state retailers have little incentive to collect abandoned and impounded trolleys given their low value. One inner-city council reported in one year, only 100 trolleys were claimed by retailers with 300 being destroyed.
- Large 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 others sought change and suggested ways to limit wayward trolleys and improve how quickly and cheaply they may be found, collected and returned.
- Suggestions for dealing with trolleys included mandatory containment, potentially for businesses with more than a certain number of trolleys (say 20) or more than a number of fines in a set period. Examples are:
  - Legislated standards for trolleys with risk-based times for collection – including ability to immediately move or impound a trolley causing risk or face penalty
  - Mandating one of a range of containment technologies such as perimeter wheel locking; coin-operated trolleys; geo-fencing; GPS trackers; and
  - Higher/escalating penalties, including for not collecting an impounded trolley.
- Regarding dealing with impounded items, many councils reported procedures are complicated, onerous and overly lengthy. Councils are required to store low cost items for 28 days and advertise them for sale (including, in theory, trolleys). Storage of bulky items is expensive. Councils and the community want easier, quicker disposal processes for items of low value, more consistent impounding processes and better incentives for owners to claim them.
- Regarding penalties, many submissions stated these are low, poorly enforced and do not promote responsibility. Most common suggestions were to increase these, potentially with higher penalties for corporations, and consider new offences and penalties, including on-the-spot fines for a broader range of offences, to encourage responsibility for failure to remove items from public or collect them from pounds.
- Concerns were raised and suggestions made to clarify certain key terms/ concepts (by regulations where possible for flexibility) such as: abandoned, amenity, danger to public, move, obstruction, public place, public land, responsible person, unattended (for specific items) and whether a single impounding process should be applied to a group of items (say, 20 trolleys).