

Proposed regulatory framework to support the new Public Spaces (Unattended Property) (PSUP) Act 2021

RIS Consultation Guide on Key Regulatory Proposals

A new *Public Spaces (Unattended Property) (PSUP) Act 2021* passed Parliament unopposed in November 2021. When it commences later this year, it will make those responsible for unattended property left in public attend to their property or face strong enforcement action. The new laws will better protect safety, access and amenity in public spaces in NSW for the enjoyment of the NSW community and visitors now and into the future.

The next step is to finalise the regulations that support the new Act. A **Regulatory Impact Statement** (RIS) has been drafted based on consultation workshops held with key stakeholders in May and June 2022. An analysis of costs and benefits of the preferred option is included.

This Consultation Guide summarises the key regulatory proposals in the RIS to enable industry, community, authorities (including local councils) and others to make informed submissions.

OLG invites comment over the next 21 days on the RIS and this Consultation Guide until **5pm on 3 August 2022**.

Submissions may be made using the online feedback form or in a separate written submission. Go to www.olg.nsw.gov.au and follow the link to the *Public Spaces Unattended Property Act 2021* webpage. The online Submission Form may be accessed [here](#). The Submission Form can also be downloaded from the website [here](#).

The completed Submission Form or written submission should be sent to olg@olg.nsw.gov.au or by mail to:

Office of Local Government

PSUP RIS Consultation

Locked Bag 3015

Nowra NSW 2541

OLG Policy staff are available to answer any queries in relation to the process or the proposed regulations on (02) 4428 4100.

Unattended property in a public space

1. Qualifications to definitions of types of property under the Public Spaces (Unattended Property) (PSUP) Act

For the purposes of the PSUP framework, and its objective of putting the onus on those responsible to deal with their property left unattended in public, Part 2 of the Act lists key concepts including 'property'. Property is broken into the following:

- **Animal** – The Act defines 'Animal' as any terrestrial or aquatic animal except for dogs and cats to which the Companion Animals Act applies (although dogs in national parks are not excluded).
- **Items** – The Act creates three classes of 'Item':
 - **Class 1 item** - personal items of a small or medium size that can ordinarily be collected by 1 or 2 people without needing machinery, e.g. kayaks, bicycles, small recreational items
 - **Class 2 item** - sharing service items made available for the use of the public whether or not for a fee, e.g. shopping trolleys, share bikes
 - **Class 3 item** - vehicles, including trailers, boat trailers and caravans.

The regulations may make some inclusions, exclusions and or qualifications to these definitions. Proposals include the following:

Animal – to exclude animals not ordinarily kept as 'property' such as feral animals and any native animals not held in captivity or farmed (e.g. wild emus and kangaroos would be excluded but farmed emus and kangaroos would be included).

Vehicle – for the purposes of clarification it is proposed that sharing service vehicles, such as hire cars, are class 3 items and that vehicle notification and risk-based removal timeframes apply.

Items in vehicles – based on feedback, is proposed that these may be removed from the vehicle and treated separately at the point of sale or disposal.

See pages 22-23 and page 28 of the RIS.

Unattended property in a public space

2. Risk-based unattended item periods/timeframes after which an authorised officer may take regulatory action in relation to unattended property in public

An authorised officer may take possession of property if they reasonably believe it to be unattended AND the property has been left unattended beyond risk-based timeframes based on circumstances. The risk-based timeframes proposed are:

- **Immediately**
 - for Class 1 (personal) and Class 3 (vehicles) items causing an obstruction to access, or a health or safety risk to a person, animal or the environment – authorised officer may take regulatory action.
 - for Class 2 (sharing service) items causing an obstruction to access, or a health or safety risk to a person, animal or the environment – authorised officers may immediately move Class 2 items to a safe location without taking possession, or give 3 hours' notice to the responsible person to attend to their item prior to regulatory action commencing.
- **Longer** – where an item causes an amenity issue, or has been left in one place for longer than:
 - 7 days for Class 1 personal items and Class 2 sharing service items
 - 14 days for unregistered or undrivable (e.g. following an accident) vehicles
 - 28 days for registered vehicles.

Mandatory notice periods apply following expiration of relevant timeframes (see question 4 below).

- **Animals** - Due to public safety and animal welfare reasons, authorised officers may immediately take possession of animals left unattended in public.

See page 25 of the RIS.

Unattended property in a public space

3. Reasonable steps to identify and provide written notice to a responsible person that their property is unattended and may be taken into possession

The RIS sets out proposed requirements in relation to reasonable steps that are to be taken by an authorised officer to identify and notify the owner/ responsible person that the officer reasonably believes the item is unattended, and that regulatory action may be undertaken if the item is not attended to by the responsible person within mandatory notice periods (see proposed mandatory notice periods for items in question 4 below).

The Act requires that notice must be in writing and may be provided to the owner/ responsible person in person, by post or by email (section 60).

It is proposed that the regulations:

- require written notice to include that the authorised officer reasonably believes the item is unattended, and the date and time the authorised officer may take possession of the item following any mandatory notice period that must apply.
- enable notice to be affixed to the item where it cannot otherwise reasonably be served on the responsible person.

See question 8 regarding proposed mandatory branding requirements for class 2 (sharing service) items which will facilitate responsible person identification and notice.

See page 28 of the RIS.

4. Mandatory notice period after which the authorised officer may take regulatory action

An authorised officer that reasonably believes an item is unattended must give notice to allow the owner/ responsible person time to attend to / collect items in certain circumstances prior to taking regulatory action (such as taking it into possession and/or issuing a fine).

Mandatory notice periods proposed are:

- **3 hours (from 7am if unattended after 11pm at night)** – for an unattended Class 2 sharing service item (e.g. shopping trolley) that an authorised officer reasonably believes is causing an access or safety risk
- **4 days** - for all Class 1 and Class 2 unattended items that an authorised officer reasonably believes is not causing an access or safety risk
- **15 days** – for Class 3 unattended vehicles that an authorised officer reasonably believes is not causing a safety or access risk.

Notice periods are not proposed for taking regulatory action in relation to an unattended class 1 (personal) or class 3 (vehicle) item that that an authorised officer reasonably believes is causing a safety or access risk.

The Act does not provide for notice periods for animals due to public safety and animal welfare reasons.

See page 25 of the RIS.

Property taken to a place of care / storage

5. Relevant periods in which authorities must attempt to sell / give away property taken into possession

When owners are unable to be contacted or fail to recover their property from a place of care or storage, the Act requires authorities to attempt to sell or give away the property for a 'relevant period' prior to disposing of it in other ways.

It is proposed to maintain the relevant periods prescribed in the Act (14 days), other than for shopping trolleys for which a shorter period of 1 day is proposed due to the low monetary value and limited interest if shopping trolleys were presented for sale or giving away.

See page 25 of the RIS.

6. Monetary thresholds under which items may be disposed of quickly by an authority if not claimed by the owner

The Act enables authorities to dispose of items taken into possession more quickly when they are of low value and following all reasonable attempts to identify and give notice to the owner.

It is proposed to maintain the monetary thresholds prescribed in the Act (\$1,500 for vehicles, \$200 for other items) under which items may be destroyed, or quickly disposed of, without holding them for the 'relevant period' discussed in topic 5 above.

These provisions do not apply to animals taken into care.

See page 25 of the RIS.

7. Penalty Infringement Notice (PIN) amounts for key offences under the PSUP Act

The RIS sets out proposed Penalty Infringement Notice (PIN) amounts for different types of property for the following key offences. These include:

- leaving an animal unattended (\$660) or an item unattended (\$330 for Class 1, \$660 for Class 2 or 3) in public
- causing or permitting an animal to trespass on private land (\$660)
- failing to collect from a place of care/ storage an animal (\$660) or an item (\$330 for Class 1 or 2, \$660 for Class 3)
- failing to comply with a written direction to remove unattended property or prevent property becoming unattended again within a reasonable timeframe (\$1,320 for an animal or Class 2 or 3 item, \$660 for a Class 1 item).

It is also proposed that PINs may compound for animals and Class 2 sharing service items by 10% up to 11 animals/ items.

See page 35 of the RIS

Other matters

8. Making a mandatory Code of Practice for Class 2 sharing service items

It is proposed that a Mandatory Code of Practice for Class 2 sharing service items (including shopping trolleys, share bikes and any future sharing service item) be made under the regulations that sets out minimum requirements for operators of sharing services, as well as any exemptions from legislative requirements that may be appropriate to apply to particular items and/or operators.

It is proposed that the Code sets out requirements for branding each sharing service item with preferred contact details, as well as an exemption from the requirement to attend to shopping trolleys causing access or safety issues within the 3-hour timeframe for operators with 25 or fewer shopping trolleys. It is further proposed that breaches of the requirement to brand a sharing service item would be subject to a fine or PIN of \$660.

This create flexibility to respond to emerging innovation over time quickly and effectively (e.g. sharing e-scooters if they were to become legalised in NSW).

See page 28 of the RIS