

Department of Planning and Environment

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# Code of Practice for Class 2 Items - Shopping Trolleys and other Sharing Service Items

*Public Spaces (Unattended Property) Act 2021*

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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#### **More information**

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# Part 1. Introduction

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## 1.1 Purpose

The NSW Government recognises the value that sharing service items provide to the community. Shopping trolleys, share bikes and other ‘sharing service’ items offer convenient, cost effective and environmentally friendly services to the public.

However, the NSW community also has a right to safe and enjoyable access to public spaces including parks, reserves, footpaths and roads without safety or access issues caused by unattended items.

The *Public Spaces (Unattended Property) Act 2021* (PSUP Act) balances both considerations. It works to ensure that unattended sharing service items may be used but are not left unattended in public beyond a reasonable timeframe. It creates obligations on sharing service operators to collect items left in public within risk-based timeframes or face regulatory action, and places obligations on operators of sharing services to collect their items from a place of storage, if taken into possession by an authority, within a certain timeframe.

This *Code of Practice for Class 2 Items (Shopping Trolleys and other Sharing Service Items)* (‘this Code’) is made pursuant to Section 20 of the *Public Spaces (Unattended Property) Regulation 2022*. It was developed following extensive consultation by the NSW Government throughout 2021 and 2022 to support the implementation of the new PSUP laws. It sets out minimum standards for Class 2 items (sharing service items) across NSW in addition to the requirements in the PSUP Act and regulations.

This Code should be read in conjunction with the *Public Spaces (Unattended Property) Act 2021*, *Public Spaces (Unattended Property) Regulation 2022*, and related lawful instruments.

This Code may be amended from time to time, as required.

It is noted that the Office of Local Government (OLG) cannot provide legal advice to operators of sharing services, authorities or authorised officers on specific incidents or circumstances to which the PSUP laws may be applied.

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## 1.2 Objectives and Scope

The Objectives of this Code are to provide:

1. **Required standards for sharing service items that retailers and other operators of sharing services in NSW are expected to maintain for the safe and successful management of sharing service items in public places in NSW; and**

2. **Expected standards of communication practice between authorities and operators** to ensure the safe and timely removal of unattended sharing service items from public places.

At the time of writing this code, sharing service items include shopping trolleys and share bikes. E-scooters are also within scope in NSW Government approved trial locations.

This Code does ...	This Code does not ...
<ul style="list-style-type: none"> <li>✓ Apply to all operators of sharing service items</li> <li>✓ Apply across all public places in NSW</li> <li>✓ Provide standards for sharing service items in public places additional to the mandatory requirements in the PSUP Act and regulations</li> <li>✓ Require sharing service item standards to be met, regardless of whether they are managed directly by the sharing service operator or have been contracted to another party to manage on the operator’s behalf.</li> </ul>	<ul style="list-style-type: none"> <li>✗ Apply to councils and other authorities. Authorities have obligations in relation to the exercise of their powers under the PSUP Act, the PSUP Regulations and other lawful instruments</li> <li>✗ Apply outside of public places, such as on private premises</li> <li>✗ Provide legal advice, nor cover all provisions of, nor act as a substitute for the PSUP Act or PSUP Regulations. Operators of sharing services should seek and be guided by their own legal advice.</li> </ul>

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## 1.3 Working within the PSUP laws and this Code of Practice

Sharing service operators should read and understand the requirements for sharing service items as set out in the PSUP Act, the PSUP Regulations and this Code.

Councils and other authorities are encouraged to be familiar with the required standards for sharing service items as set out in this Code.

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## 1.4 Building successful partnerships locally

The NSW Government strongly encourages sharing service operators and local councils/other authorities to build and maintain good relationships locally based on consistent communication to ensure the successful and lawful deployment and management of sharing service items.

This guidance is reiterated in the *Public Spaces (Unattended Property) Act 2021 Guidelines for Councils and Other Authorities*, along with guidance encouraging authorised officers to ensure the fair and consistent application of the law.

## Part 2. General Requirements of Sharing Service Operators

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### 2.1 Branding

Sharing service items must be clearly branded, marked or otherwise display the following information:

- Name of sharing service operator, and
- Contact phone number and email address of sharing service operator.

This required standard is intended to enable authorities and members of the community to identify and contact the operator of the sharing service item and, in the case of authorities, to serve notices.

Sharing service operators may wish to include a QR code or other information to assist authorities and members of the community to report an unattended sharing service item.

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### 2.2 Good Working Condition

Sharing service items in public places must be maintained in in good working condition.

This required standard is intended to protect community safety.

Sharing service operators are encouraged to remove from public places any sharing service item that is damaged or otherwise not in good working condition.

## Part 3. Compliance

The PSUP Act provides Authorised officers appointed by councils and other authorities may take possession of a sharing service item if the item is unattended in a public place in contravention of this Code.

Leaving a sharing service item that contravenes this Code unattended in a public place is also an offence under the PSUP Act. Authorised officers of councils and other authorities may issue a penalty notice to sharing service operators for contraventions=.

An authorised officer may also issue a direction to a sharing service operator under section 28 of the PSUP Act to make their sharing service item compliant with the provisions of this Code.

## Part 4. Monitoring and review

This Code may be amended from time to time. Updates will be communicated publicly and published on the OLG website at [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au).

Industry feedback is actively encouraged to assist OLG in the development and delivery of comprehensive policies that cater for the needs of the public, industry, and authorities.

Feedback may be provided to the following email address ([olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)) or by contacting OLG Policy on 02 4428 4100.

## Part 5. Further information

For further guidance on responsibilities relating to sharing service items left unattended in public spaces, refer to:

- *Public Spaces (Unattended Property) Act 2021*
- *Public Spaces (Unattended Property) Regulation 2022*
- *Public Spaces (Unattended Property) Act 2021 Guidelines for Councils and Other Authorities*

# Part 6. Definitions

Within this Code, and in accordance with the PSUP Act and PSUP Regulation as at their first date of publish, the following definitions apply:

**Authorised officer** means a person appointed by an authority to exercise the functions of an authorised officer as set out in the PSUP Act.

**Authority** means a public authority or local authority prescribed by the PSUP Regulation as an authority for a particular place or class of places.

**Class 2 item** means:

- (1) a thing that is —
  - (a) capable of ownership, except a living creature, and
  - (b) made available for the use of the public at large, whether or not on payment of a fee or other benefit, including as part of a sharing service.
- (2) Without limiting subsection (1), the following are class 2 items —
  - (a) share-bikes,
  - (b) shopping trolleys, and
  - (c) share e-scooters.

**Good working condition** means the item has no mechanical defects, has all necessary safety guards in place, and can be operated as intended by the manufacturer / sharing service operator.

**Public place** (as set out in the PSUP Act) means:

- (1) a place that is open to or frequented by the public —
  - (a) whether or not payment for admission to the place is required, and
  - (b) whether or not the place is usually open to or frequented by the public.
- (2) Without limiting subsection (1), a public place includes —
  - (a) a place dedicated or reserved for a public purpose, and
  - (b) a place that, although privately owned, is a place —
    - (i) to which members of the public are permitted to have access for the purposes of business or leisure, or
    - (ii) that members of the public are permitted to use as a thoroughfare.
- (3) A public place does not include a place declared by the regulations not to be a public place.



**The PSUP Act** means the *Public Spaces Unattended Property Act 2021*.

**The PSUP Regulation** means the *Public Spaces (Unattended Property) Regulation 2022*.

**Responsible person** (as set out in the PSUP Act) means:

- (a) the person who owns or is otherwise responsible for the property, and
- (b) a person engaged to collect or manage the property on behalf of the property's owner, and
- (c) another person who is in control or possession, or entitled to possession, of the property, and
- (d) 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, and

For Class 2 items, includes —

- (i) a person using the property,
- (ii) a hirer or lessor of the property, and
- (iii) a scheme operator.

**Scheme operator** means an operator of a Sharing Service.

**Sharing service** (as set out in the PSUP Act) means an arrangement, including a written arrangement or an arrangement established through a smartphone application or other electronic means, under which —

- (a) items are provided for hire, and
- (b) the items are self-locking or access to the items is otherwise able to be limited, including remotely, and
- (c) the items are not required to be returned to —
  - (i) a person, or
  - (ii) the premises from which the items are picked up, or
  - (iii) a fixed docking station, or
  - (iv) other specific premises.

**Sharing service item** (for the purposes of this Code) has the same meaning as **Class 2 item**.

**Sharing service operator** (for the purposes of this Code) has the same meaning as **Scheme operator**.

**Unattended** (as set out in the PSUP Act), in relation to property, means the property is not under the direct control or supervision of the responsible person.