



Office of
Local Government

Impounding Act 1993

BOAT TRAILER IMPOUNDING GUIDELINES FOR COUNCILS

Strengthening local government



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TABLE OF CONTENTS

1. INTRODUCTION.....	4
2. ENACTING THE LEGISLATIVE POWERS	6
3. WHEN IS A BOAT TRAILER CONSIDERED TO HAVE BEEN MOVED?.....	10
4. IDENTIFYING AND NOTIFYING OWNERS OF UNATTENDED TRAILERS.....	11
5. OTHER CONSIDERATIONS	13
ANNEXURE 1: GAZETTE ORDER TEMPLATE	14
ANNEXURE 2: BOAT TRAILER IMPOUNDING ENFORCMENT PRINCIPLES	15

1. INTRODUCTION

1.1 What this Guideline is about

- 1.1.1. This Guideline provides information for authorised impounding officers about the exercise of functions under the *Impounding Act 1993* (the Act) with respect to the enforcement of provisions relating to the impounding of unattended boat trailers (section 15A).
- 1.1.2. This version incorporates amendments made to the Act by *the Impounding Amendment (Unattended Boat Trailers) Act 2015*. [Council circular 16-09](#) provides more information about the changes.

1.2 Who this Guideline is for

- 1.2.1. This Guideline is for persons authorised as impounding officers under the Act. An impounding officer means a person appointed by an impounding authority to exercise the powers of an impounding officer.
- 1.2.2. The Act prescribes the following impounding authorities:
- a council,
 - the Minister administering the *Forestry Act 2012*,
 - the Minister administering the *Ports and Maritime Administration Act 1995*,
 - the Chief Executive of the Office of Environment and Heritage,
 - the Minister administering the *Crown Lands Act 1989*,
 - the Rail Corporation New South Wales,
 - Roads and Maritime Services,
 - the Regulatory Authority within the meaning of the *Water NSW Act 2014*,
 - the Western Lands Commissioner,
 - the Centennial Park and Moore Park Trust,
 - Local Land Services,
 - the Sydney Harbour Foreshore Authority,
 - the Sydney Olympic Park Authority,
 - the Western Sydney Parklands Trust,
 - a public or local authority prescribed by the regulations as an impounding authority for a particular place or class of places.

1.3 What this Guideline doesn't do

- 1.3.1 This Guideline does not provide legal advice and it is not intended to be an exhaustive statement of impounding law. It is also not a substitute for reading the provisions of the impounding legislation.
- 1.3.2 If impounding officers have any concerns, they should seek advice from a supervisor/manager or other appropriate officer of the impounding authority or, in some cases, be guided by independent legal advice.

1.3.3 The Office of Local Government (OLG) sets the policy and legislative framework within which impounding authorities manage their impounding responsibilities with respect to boat trailers. However, it cannot provide legal advice to impounding authorities and doesn't generally give advice to impounding officers on specific incidents or circumstances.

2. ENACTING THE LEGISLATIVE POWERS

2.1 Legislative requirements

2.1.1 Section 15A (1) of the Act states that a:

declared area in relation to an impounding officer's area of operations, means the whole or any part of that area that is declared by the impounding authority that has appointed the officer, by order published in the Gazette, to be a declared area for the purposes of this section in relation to the officer

2.2 Overview of the declaration process

2.2.1 Council will need to:

- a) Ensure it has undertaken an appropriate level of community consultation regarding the introduction of the powers (to inform council's decision whether or not to adopt the powers).
- b) If it chooses to proceed, adopt a resolution to Gazette the powers. The resolution will need to specify the area where the powers will apply (including a map) and give the Council's General Manager the power to make the order in the Gazette (see "Resolution" section below).
- c) Arrange for the Order to be published in the NSW Government Gazette (see "Gazetta" section below) and continue to promote the commencement of the powers to local residents and boaters.
- d) Provide a description of the declared area and an electronic copy of the map to OLG for inclusion on the Boat Trailers webpage: www.olg.nsw.gov.au/boattrailers
- e) Commence enforcement on the day that the Order is published, bearing in mind that the 28 day period for the boat trailer to not move (which can trigger the enforcement process) is NOT retrospective under the legislation.

2.3 Consultation prior to gazetta

2.3.1 Prior to gazetting declared areas impounding authorities should undertake community consultation in relation to the areas intended to be declared.

2.3.2 At a minimum, this should involve:

- a) Clearly communicating the powers available to impounding authorities to impound boat trailers, including the circumstances in which impounding can occur, and the appropriate timeframes for notification, holding of impounded items etc.
- b) A clear description of the areas which the impounding authority intends to declare for the purposes of enforcing boat trailer impounding powers. As a matter of good practice, this should include a map of the proposed declared

areas, particularly in cases where specific streets or areas within a local government area are proposed to be declared.

- c) Complying with the relevant public notice principles of the *Local Government Act 1993* (ie: 28 day minimum public notice period).

2.3.3 For further information about Community Engagement methods see:

<https://www.olg.nsw.gov.au/councils/integrated-planning-and-reporting/development-and-support/community-engagement>

2.4 Resolution of council and map

2.4.1 Council should use the following wording in its report:

It is recommended that:

1. By Order of the Council made by this resolution the area described in the report [identify with pin point reference to item in the report] be, on and from [insert date that the area is to become a declared area], a declared area for the purposes of section 15A(1) of the Impounding Act 1993.

2. The General Manager arrange for the publication of this Order in the Gazette and for the Order to contain details of the area declared.

2.4.2 Council should include a map in the relevant council report, which clearly depicts the proposed declared area.

2.4.3 Examples of declared area maps can be found on the OLG Boat Trailer webpage: www.olg.nsw.gov.au/boattrailers

2.4.4 Maps of this nature can be sourced from Spatial Client Services unit of the Land and Property Information. For further information visit: <http://www.lpi.nsw.gov.au/> or call 1300 052 637.

2.4.5 Councils should ensure that the relevant report to council also outlines the consultation that council has undertaken with the local community on the issue.

2.5 Gazettal process

2.5.1 The Gazette Order should take the form of the Order template, which is included at Annexure 1 of this guideline. An editable version of the template is available for download at the OLG Boat Trailer Parking webpage.

2.5.2 The Gazette Order should be accompanied by a map which clearly indicates the boundary of the declared area. Examples of maps can be found on the OLG Boat Trailer webpage.

2.5.3 In order to organise the publication of the Order in the NSW Government Gazette, the impounding authority should follow the process set out on the Gazette webpage http://www.legislation.nsw.gov.au/Gazettal_IS.pdf

2.6 Publication on council website

2.6.1 Declared areas, once gazetted, should be clearly publicised on the Council's website. This should include a map of the declared areas.

2.7 Notification to Office of Local Government (OLG)

2.7.1 Impounding authorities must also notify OLG of the details of their declared areas, to ensure that these are captured on the centralised boat trailer impounding webpage.

2.7.2 Such notification should be made, in writing to olg@olg.nsw.gov.au and marked to the attention of the Policy Team.

2.8 Boat Trailer Impounding Policies

2.8.1 All impounding authorities opting-in to utilise boat trailer impounding powers should have in place a publicly available boat trailer policy.

2.8.2 A Boat Trailer Impounding Policy should address, at a minimum:

- a. An overview of the powers available to the impounding authority under the legislation, including an explanation of the requirements for moving a boat trailer as set out in the legislation (see section 3 of this guideline),
- b. An overview of the areas in which the impounding authority will enforce the powers (ie: a description of the declared areas, including a map),
- c. The nature of the enforcement approach that the impounding authority will take (ie: whether enforcement will be based on complaints etc.),
- d. An overview of the procedures which impounding officers will use when undertaking enforcement action (see section 4 of this Guideline).

2.8.3 In drafting local boat trailer impounding policies, councils should also take into consideration the *Boat Trailer Impounding Enforcement Principles* contained at Annexure 2 of this guideline.

2.8.4 The policy should be reviewed by the impounding authority from time to time.

2.9 Signage

2.9.1 While there are no specific signage requirements under the *Impounding Act 1993*, prior to the commencement of a new declared area, the impounding authority should consider the use of temporary signage advising of the impending commencement of the new powers.

2.9.2 After an area has been declared, impounding authorities should also consider the placement of permanent signage.

- a. In case where the entire local government area (LGA) has been Gazetted as a declared area, signage should be placed at boat ramps as a promotional measure.
- b. In case where specific parts of the LGA have been Gazetted as a declared area (eg: a small number of streets within an LGA, or parts of a particular street), signage should be placed at:
 - i. the outer limits of the declared area (eg: in the case where a whole local government area is a declared area, at the boundaries of adjoining local government areas),
 - ii. the site of specific known high boat trailer use areas within in the declare area, and
 - iii. other suitable intervals within the declared area.

2.9.3 It is recommended that signs use consistent, easily recognisable symbols and include a map of the declared area.

2.9.4 Graphic representation on signs is an option. The International Organisation for Standardisation (ISO) provides advice on methods that can be used to create different types of prohibition signs (ISO 7010-2003 Safety Signs used in Workplaces and Public Areas). This can be read with ISO 3864-3:2012 (Design Principles for Graphical Symbols for use in Safety Signs) which is used to ensure symbols and signs have the intended meaning and can be comprehended by persons as they enter the area the sign applies to. The Standard provides sizing requirements and font sizes for letters used in symbols.

2.9.5 Impounding authorities are encouraged to utilise symbols on their signage which don't rely on high levels of literacy.

2.9.6 In cases where specific areas have been declared (eg: a small number of streets within an LGA, or parts of a particular street), the councils may also wish to consider the use of Roads and Maritime Services (RMS) *No Parking – Motor Vehicles Less than 4.5 t GVM* signage. However, such signage must be established in line with the *Guide to the Delegation to councils for the regulation of traffic – including the operation of Local Traffic Committees*, a copy of which can be downloaded at: http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/lcguidev13_i.pdf

3. WHEN A BOAT TRAILER IS CONSIDERED TO HAVE BEEN MOVED

3.1.1 Section 15A (2) of the Act states that:

An impounding officer may impound a boat trailer in the officer's area of operations if the officer believes on reasonable grounds that the boat trailer is in a declared area and has not been moved for at least 28 days (or such other period as is specified by the regulations).

3.1.2 Section 15A (3) of the Act states that:

A boat trailer that is on a road is not moved for the purposes of this section if it is only moved along the same road and without passing an intersection with another road. An intersection with a road related area is to be disregarded for the purposes of this subsection unless it is related to a different road.

3.1.3 It is ultimately a matter for impounding officers to satisfy themselves that a boat trailer has not moved, in accordance with the legislative requirements, before taking any appropriate action. However, in doing so, impounding officers may wish to consider the comments made during the Parliamentary debate when the relevant provisions were introduced to the Impounding Amendment (Unattended Boat Trailers) Bill 2015.

“...the Bill now provides that in order for a boat trailer that is parked on a road to be considered to have been moved, the trailer must have been shifted from one road to another or, at least along the same road and past an intersection with another road. This again will promote greater turnover in boat trailer parking and will put beyond doubt that merely moving a boat trailer a metre or so will not enable a boat trailer owner to circumvent this new legislative scheme”.¹

3.1.4 Impounding Authorities should continue to rely on existing enforcement techniques to determine how long a vehicle has been parked 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, where available, CCTV. Over long periods, rubbish and leaves may also accumulate near tyres.

3.1.4 Impounding authorities may wish to seek legal advice if further clarification is required.

¹ The Hon Paul Toole MP (then Minister for Local Government) speaking to the introduced amendments on in the Legislative Assembly on 16 September 2015:
<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-67502>

4. IDENTIFYING AND NOTIFYING OWNERS

4.1 Minimum standards for owner identification when a boat is attached to a boat trailer

- 4.1.1 When undertaking enforcement action involving the potential impounding of a boat that is attached to a boat trailer, impounding authorities are reminded to take into consideration:
- a. that the owner of the vessel may differ to the owner of the boat trailer - attempts should therefore be made to identify the owner of both the trailer and the vessel before impounding action is take,
 - b. the vessel is likely to be significantly more valuable than that of the boat trailer, and therefore there is likely to be significantly higher expectation from boat owners as to the appropriate handling and care taken by impounding officers when undertaking enforcement action involving vessels.
- 4.1.2 As a guide to the minimum standards for identifying **both** boat trailer and boat owners prior to any impounding action being taken, it is recommended that the special procedures for impounding of motor vehicles, as set out in section 16 of the Act (as set out below) be taken into consideration by impounding officers:

Section 16 special procedures for impounding of motor vehicles

- (1) An impounding officer must make all reasonable inquiries in an effort to find the name and address of the owner of a motor vehicle before the officer impounds the vehicle.
- (2) If the impounding officer's inquiries fail to reveal the name and address of the owner, the officer may proceed to impound the vehicle.
- (3) If the impounding officer's inquiries do reveal the name and address of the owner, the officer is not to impound the vehicle until notice of the proposed impounding has been given to the owner and the period specified in the notice has elapsed.
- (4) *N/A- Does not apply to boat trailers and boats.*
- (5) A motor vehicle may be impounded immediately (without following the procedures in this section) if the vehicle is in a public place and the impounding officer is satisfied on reasonable grounds that its immediate removal is justified because it is causing an obstruction to traffic (vehicular or pedestrian) or is likely to be a danger to the public.

- 4.1.3 In addition to making appropriate efforts to contact the owners of both the boat trailer and the boat in question, it is recommended that impounding officers put a visible notice of intention to impound sticker on the boat trailer as soon as possible after the expiry of the 28 period.

4.2 Identifying boat trailer owners

4.2.1 Council rangers currently have a number of options under the Act, and in partnership with RMS, to identify a registered owner, impound vehicles and issue penalty notices for unregistered vehicles. These options include the ability to:

- Send a licence holder inquiry form to RMS to check registration details, including contact details for the registered owner of a vehicle that may have been abandoned.
- Access the online DRIVES 24 database that contains registration information, under an agreement with RMS.
- Attend a RMS office to obtain the information.
- Impound the vehicle if the owner is unable to be found under section 16 (2) of the Impounding Act and that the impounding officer has made all reasonable attempts to identify the registered owner, section 16 (1).

4.2.2 Council rangers are encouraged to contact their nearest RMS centre if they require information about accessing the DRIVES 24 database or the licence holder inquiry form.

4.3 Identifying boat owners

4.3.1 RMS has implemented a system to give council rangers access to boat owner details (on application) within 2 days.

4.3.2 The RMS request application form is available for download on the OLG Boat Trailer webpage:

<http://www.olg.nsw.gov.au/sites/default/files/RMS%20Form%20%E2%80%93%20Request%20for%20Boat%20Registration%20Information%20by%20Local%20Councils.pdf>

4.4 Seasonal consideration

4.4.1 When enforcement action is being undertaken in non-peak boating periods, consideration should be given to the need for additional notification time for boat trailer and boat owners who cannot be contacted.

5. OTHER CONSIDERATIONS

5.1 Impounding fees

5.1.1 Each council is authorised to set its own fees, so they will vary from council to council. The fee that an owner will have to pay to obtain the release of a vehicle will generally comprise the following components:

- a) an impounding fee,
- b) a towing fee (this is generally calculated on the distance that the vehicle has to be towed to reach the pound),
- c) a storage fee (calculated on a daily basis), and
- d) a release fee.

5.1.2 Any such fees levied by councils should be done so in a fair and transparent way. The *Local Government Act 1993* requires each council to set fees and charges through its annual budgeting process, which includes a mandatory public notification period.

5.2 Residential Parking Permits

5.2.1 The RMS Permit Parking Policy provides councils discretion to issue residential parking permits to residents with boat trailers.

5.2.2 If a resident's parking scheme applies on a street within a declared area, and the boat-owner qualifies for an official resident's parking permit for the boat trailer, then the impounding provisions do not apply provided the owner displays an official resident's parking permit on the trailer.

5.2.3 It is ultimately a matter for each council to determine whether it is appropriate to introduce such a scheme (or amend an existing scheme to include boat trailers), in line with the RMS Resident Parking Scheme guidelines. While councils are encouraged to implement such schemes where appropriate, neither the OLG or Minister for Local Government can direct councils to do so.

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ANNEXURE 1: GAZETTE ORDER TEMPLATE

Note: An editable version of which is available for download at the OLG Boat Trailer Parking webpage

IMPOUNDING ACT 1993

Boat Trailer Impounding Area Order

Under the provisions of section 15A (1) of the *Impounding Act 1993* (NSW), the following areas are declared for the purposes of boat trailer impounding.

Add Description

Append Map (see section 2.4 of this guideline for further information re mapping)

Dated this (DATE) day of (MONTH) (YEAR)

NAME, GENERAL MANAGER, COUNCIL

ANNEXURE 2: BOAT TRAILER IMPOUNDING ENFORCEMENT PRINCIPLES

While not limiting the discretion of impounding officers when enforcing the legislation, the following principles should guide enforcement action taken by impounding officers:

- Enforcement action should be prioritised in the case of boat trailers that:
 - pose a specific amenity, safety or visual pollution issue; or
 - are a source of legitimate complaint from residents (either before or after the commencement of the pilot).
- When undertaking enforcement action involving the potential impounding of a boat that is attached to a boat trailer, pilot councils will take into consideration:
 - that the owner of the vessel may differ to the owner of the boat trailer, and make appropriate efforts to identify the owner of both the trailer and the vessel before impounding action is taken, and
 - the need for the appropriate handling and care of the boat by impounding officers or their contracted impounding agents.
- Councils should appropriately communicate their powers to boat owners and residents (e.g. through the distribution of communications material produced by the Office of Local Government, and through other measures such as temporary signage in high boat trailer usage areas).
- Any council commencing with the boat trailer impounding powers in the non-boating season (ie: April to September), should take into consideration the potential impact this may have on the ability of boat trailer/boat owners to be informed of impending enforcement action and take appropriate measures to address this (e.g. by making exhaustive efforts to contact the owner of the trailer and/or boat in question, and by placing notice of intention to impound stickers on a vessel as early as possible in the enforcement process).