



New South Wales

# Impounding Amendment (Shared Bicycles and Other Devices) Bill 2018

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Impounding Act 1993*:

- (a) to give impounding officers appointed by local councils or by other public authorities additional power to move or impound shared bicycles and other devices that are provided for hire as part of a sharing service and that have been left in a public place, and
- (b) to authorise the regulations to prescribe a code of practice for sharing services that imposes enforceable obligations or restrictions on operators and former operators of sharing services.

This is achieved by making amendments that add to the circumstances in which a shared device can be immediately impounded or is taken to have been abandoned in a public place by the operator of the service (whether the shared device was left there by the operator, by a user of the operator's sharing service or by any other person), as follows:

- (a) devices that are causing an obstruction or safety risk can be impounded immediately, or moved to another location, by an impounding officer,
- (b) devices that are causing an obstruction or safety risk are taken to have been abandoned by the operator if they are not moved within 3 hours of the operator being notified of their location by an impounding officer, by a user of the sharing service or by any other person (who may give that notice by email or SMS text message),
- (c) devices that have been left in the same place for 7 days or more are taken to have been abandoned if they are not moved within 4 days of the operator being notified of their location by an impounding officer, a user or any other person.

The amendments also confer power on impounding officers to issue removal notices for shared devices that are left in a public place, or are otherwise provided by an operator of a sharing service, in contravention of the requirements specified in the proposed amendments, the regulations or a code of practice. If the operator fails to comply with the notice, the operator is taken to have abandoned the shared device.

It is an offence to abandon an article in a public place. The amendments increase the maximum penalty that applies if an operator of a sharing service abandons a shared device in a public place in contravention of some of the new requirements from 5 penalty units (\$550) to 25 penalty units (\$2,750). If the offence is dealt with by penalty notice, the fine is \$500.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

## Schedule 1 Amendment of Impounding Act 1993 No 31

**Schedule 1 [1]** inserts additional provisions about the impounding of shared devices, as follows:

- (a) **Proposed section 19A** makes it clear that the proposed provisions (which are specifically about shared devices) confer additional powers on impounding officers, but do not limit a power to impound an article that is a shared device under any other provision of the Act.
- (b) **Proposed section 19B** defines terms used in the proposed provisions. *Device* is defined to mean a bicycle or any other thing for transporting persons that is prescribed by the regulations.
- (c) **Proposed section 19C** defines *sharing service* as an arrangement (including an arrangement in writing or one established through a smartphone application) that has certain listed features, including that the devices are not hired from the premises of the operator of the sharing service or a fixed docking station and are not required to be returned to the operator, the premises from which they were picked up, a fixed docking station or other specified premises.
- (d) **Proposed section 19D** provides that a shared device is not to be left in a public place in a way that causes an obstruction or safety risk. The proposed section gives an impounding officer the power to immediately impound a shared device that has been left in a public place if the impounding officer believes on reasonable grounds that the shared device has been left in a way that causes an obstruction or safety risk. Alternatively, the impounding officer may move the shared device. An operator of a sharing service must ensure that a shared device that has been left in a public place in contravention of the proposed section is removed within 3 hours after the operator is notified of the contravention by an impounding officer, a user or any other person. If the operator fails to do so, the operator is taken to have abandoned the shared device in a public place (which is an offence under section 32 of the Act).
- (e) **Proposed section 19E** provides that a shared device is not to be left in a public place, in the same location, for more than 7 days. An operator of a sharing service must ensure that a shared device that has been left in a public place in contravention of the proposed section is removed within 4 days after the operator is notified of the contravention by an impounding officer, a user or any other person. If the operator fails to do so, the operator is taken to have abandoned the shared device in a public place (which is an offence under section 32 of the Act).
- (f) **Proposed section 19F** provides that the regulations may make further provision for the obligations of operators of sharing services, including by prescribing a code of practice (which may impose enforceable obligations or restrictions on operators and former operators of sharing services, including by creating offences).

- (g) **Proposed section 19G** authorises an impounding officer to issue a removal notice to an operator of a sharing service requiring the operator to remove a shared device left in a public place if the impounding officer believes on reasonable grounds that the shared device has been left in the place, or provided by the operator, in contravention of the Act, the regulations or a code of practice (whether or not the contravention constitutes an offence).
- (h) **Proposed section 19H** provides that the operator of a sharing service is taken to be the owner of any shared device that is branded with the name of the operator or the operator's business unless the contrary is proven.
- (i) **Proposed section 19I** allows for the service of notices on operators of sharing services by email and, if the operator has consented to service in that manner, by SMS text message or other electronic means.

**Schedule 1 [2]** provides that the maximum penalty for the offence of abandoning a shared device in a public place is:

- (a) in the case of a shared device taken to be abandoned under proposed section 19D or 19E—25 penalty units, or
- (b) in any other case—5 penalty units.

**Schedule 1 [3]** provides for proceedings for an offence against the regulations or a code of practice to be heard by the Local Court.

**Schedule 1 [4]** updates a note to reflect the additional circumstances in which a shared device may be impounded.

## **Schedule 2      Amendment of Impounding Regulation 2013**

**Schedule 2 [3]** makes the offence of abandoning a shared device an offence that can be dealt with by penalty notice and provides for a penalty of \$500 in such a case.

**Schedule 2 [1] and [2]** make consequential amendments.