



New South Wales

Public Spaces (Unattended Property) Bill 2021

Explanatory note

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

Overview of Bill

The objects of this Bill are to—

- (a) encourage persons responsible for property to act quickly and responsibly to mitigate risks to access, safety and amenity that may arise from the property being left unattended, and
- (b) to ensure public spaces can continue to be used, shared and enjoyed by the community as a whole, and
- (c) to empower occupiers of private land to take possession of stray animals on the land.

Outline of provisions

Part 1 Preliminary

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.

Clause 3 sets out the objects of the proposed Act.

Part 2 Interpretation and application of Act

Division 1 Definitions

Clause 4 provides for the Dictionary in the proposed Act, Schedule 3 to define certain terms used in the proposed Act.

Division 2 Key concepts

Clause 5 defines *animal*, for the purposes of the proposed Act, to include aquatic animals and terrestrial animals. An animal does not include companion animals within the meaning of the *Companion Animals Act 1998*, other than dogs in national parks. Other animals prescribed by regulations under the proposed Act are also excluded from the application of the proposed Act.

Clause 6 defines a *class 1 item*, for the purposes of the proposed Act, as a small or medium-sized thing capable of ownership, except a living creature, that can ordinarily be collected by 1 or 2 persons without the need for machinery to lift, tow or otherwise move the thing. The proposed section also specifies, without limiting the definition, that baggage, personal recreation equipment that is not available for hire and other personal items are class 1 items.

Clause 7 defines a *class 2 item*, for the purposes of the proposed Act, as 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.

The proposed section also specifies, without limiting the definition, that share-bikes and shopping trolleys are class 2 items.

Clause 8 defines a *class 3 item*, for the purposes of the proposed Act, as a motor vehicle. The proposed section also specifies, without limiting the definition, that hire-cars are class 3 items.

Clause 9 defines *items*, for the purposes of the proposed Act, as the following—

- (a) class 1 items,
- (b) class 2 items,
- (c) class 3 items,
- (d) another thing prescribed by the regulations to be an item for the proposed Act.

The proposed section also provides that if a thing is within 1 or more of the classes of items referred to in the proposed section, regulations made under the proposed Act may prescribe which class of items the thing falls within.

Clause 10 defines *place of care* for an animal, for the purposes of the proposed Act, as a place appropriate for the keeping of the animal while the animal is in the possession of an authority, having regard to the animal's needs and the period of time the animal has been, or is likely to be, kept at the place. An *authority* is defined for the purposes of the proposed Act as a public authority or local authority prescribed by the regulations under the proposed Act as an authority for a particular place or class of places.

Clause 11 defines *place of storage* for an item, for the purposes of the proposed Act, as a place appropriate for the storage of the item while the item is in the possession of an authority.

Clause 12 provides that for the purposes of the proposed Act, an authorised officer or an occupier of private land has *possession* of property, as defined in proposed section 13—

- (a) as soon as the officer or occupier takes possession of the property under the proposed Act, and
- (b) continues to have possession of the property until the property is returned or disposed of under the proposed Act.

It is not necessary for property to be taken to a place of care or place of storage for it to be taken possession of for the purposes of the proposed Act.

Clause 13 defines *property*, for the purposes of the proposed Act, as an animal or an item.

Clause 14 defines *public place*, for the purposes of the proposed Act, as a place that is open to or frequented by the public, whether or not payment for admission to the place is required and whether or not the place is usually open to or frequented by the public. The proposed section also specifies, without limiting the definition, that a public place includes a place dedicated or reserved for a public purpose and a place that, although privately owned, is a place to which the public are permitted to have access or use for certain purposes. A public place does not include a place declared by the regulations under the proposed Act not to be a public place.

Clause 15 specifies that the *responsible persons* for property are—

- (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.

The proposed section also specifies certain persons, in relation to class 1, class 2 and class 3 items, that are responsible persons for property. The regulations under the proposed Act may prescribe additional persons to be responsible persons for property or a class of property.

Clause 16 defines *unattended*, for the purposes of the proposed Act, in relation to property, to mean that the property is not under the direct control or supervision of the responsible person.

Division 3 Application of Act

Clause 17 provides for the proposed Act to bind the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

Part 3 Dealing with unattended property

Division 1 Unattended animals

Clause 18 enables a person appointed by an authority (an *authorised officer*) to take possession of an animal if the officer reasonably believes the animal is unattended and the animal is in a public place or on private land without the permission of the occupier of the land. The proposed section specifies the circumstances in which an animal is not unattended. The proposed section also enables the regulations under the proposed Act to provide for additional matters in relation to authorised officers taking possession of animals.

Clause 19 provides for special arrangements for the keeping of stock, within the meaning of the *Local Land Services Act 2013*, in an emergency if an authorised officer reasonably believes—

- (a) an animal that is stock is unattended, and
- (b) appropriate arrangements cannot be made for the officer to take possession of the animal, and
- (c) failure to move the animal poses an unacceptable risk to the health or safety of persons.

The authorised officer may, without taking possession of the animal, arrange for the animal to be kept on any practicable premises in the vicinity of the place at which the animal was left unattended, including private land in certain circumstances. If the animal is kept on private land, the authorised officer must arrange for the animal to be removed from the private land as soon as reasonably practicable after the emergency ends unless the owner or occupier of the land agrees to the animal remaining on the land. The proposed section enables the regulations under the proposed Act to provide for additional matters in relation to the proposed section. The proposed section also provides for the consequences of any inconsistency between the proposed section and the *Biosecurity Act 2015*.

Clause 20 specifies the areas under the *National Parks and Wildlife Act 1974* in which an authorised officer may take possession of a dog under the proposed Act.

Clause 21 requires an authorised officer to ensure an animal taken possession of by the officer is taken to a place of care or returned to the responsible person for the animal. An animal taken to a place of care continues to be in the possession of the authority that appointed the authorised officer while the animal is at the place of care. An authority may nominate a place of care as the place of care to which an authorised officer appointed by the authority may take an animal the officer takes possession of.

Clause 22 enables an authorised officer to destroy an animal, in a way that causes the animal to die quickly and without unnecessary pain, if—

- (a) after taking possession of an animal under the proposed Division, an authorised officer reasonably believes—
 - (i) the animal is so severely diseased or injured, or in so poor a physical or psychological condition, that it is cruel to keep the animal alive, or
 - (ii) there is no alternative to the immediate destruction of the animal because the animal is a threat to the health or safety of persons, other animals or the environment, and
- (b) one of the following circumstances exists—
 - (i) a veterinary practitioner is not available,
 - (ii) the authorised officer reasonably believes waiting for a veterinary practitioner would be cruel or otherwise inappropriate.

Division 2 Unattended animals on private land

Clause 23 enables an occupier of private land to take possession of an animal that is unattended on the land without the occupier's permission.

Clause 24 specifies certain actions that must be taken by an occupier of private land if the occupier takes possession of an animal, depending on whether—

- (a) the occupier knows the identity of the responsible person for the animal and wishes to return the animal to the responsible person, or
- (b) the occupier does not know the identity of the responsible person for the animal but is taking reasonable steps to identify the responsible person, or
- (c) the occupier does not wish to return the animal to the responsible person for the animal or is unwilling to take reasonable steps to identify the responsible person.

The proposed section makes it an offence for an occupier to fail to take the relevant action required by the proposed section.

The proposed section requires the responsible person for the animal to pay to the occupier of the private land the amount payable under proposed section 55 for the period during which the animal was in the occupier's possession. If the responsible person for the animal does not pay the occupier that amount, the occupier may recover the amount from the responsible person as a debt.

Division 3 Items

Clause 25 enables an authorised officer to take possession of an item if the officer reasonably believes certain matters. If the unattended item is a motor vehicle, the authorised officer may enter the vehicle for the purposes of identifying the responsible person for the vehicle without or before taking possession. The regulations under the proposed Act may provide for additional matters in relation to authorised officers taking possession of items, including the matters specified in the proposed section.

Clause 26 requires an authorised officer to do certain things if the officer takes possession of an item under the proposed Division. Regulations under the proposed Act may provide for additional matters relating to the functions of authorised officers in relation to items the officers have taken into possession, including the matters specified in the proposed section.

Clause 27 specifies the actions an authorised officer may take if the officer reasonably believes an item is unattended but it is not necessary to take possession of the item. Regulations under the proposed Act may provide for additional matters relating to dealing with items that are not taken into the possession of authorised officers, including requirements about notices to be given to owners of, and other responsible persons for, the item.

Division 4 Miscellaneous

Clause 28 provides that if an authorised officer becomes aware of unattended property and the officer is able to identify the responsible person for the property, the officer may give the person a written notice directing the person to remove the unattended property or prevent the property becoming unattended again. The authorised officer may give the responsible person a written notice whether or not the person is committing an offence under the proposed Act by leaving the property unattended.

The proposed section makes it an offence for the responsible person to fail to comply with a written notice given to the person under the proposed section.

The regulations under the proposed Act may provide for additional matters relating to notices under the proposed section, including the matters specified in the proposed section.

Part 4 Dealing with property taken into possession

Clause 29 requires an authority to take reasonable steps to identify the owner of property as soon as practicable after taking possession of the property under the proposed Act and before destroying or otherwise disposing of the property. If the authority identifies the owner, the authority must take reasonable steps to notify the owner, in accordance with the regulations under the proposed Act, that the property is in the authority's possession. The regulations under the proposed Act may provide for additional matters in relation to an authority's obligation to identify and notify owners of property.

Clause 30 enables a person to apply to an authority for the return of property taken into possession by an authorised officer at any time before the property is sold or otherwise disposed of. The authority must return the property to the applicant if certain matters are satisfied.

Clause 31 enables an authorised officer who takes possession of an item to arrange for the item to be destroyed or otherwise disposed of as soon as the officer takes possession of the item if the officer reasonably believes the value of the item is less than—

- (a) the amount prescribed by the regulations under the proposed Act, or
- (b) the amount specified by the proposed section in relation to a particular class of item.

An authorised officer must not arrange for an item to be destroyed or otherwise disposed of until the authorised officer has taken all reasonable steps to identify the item's owner and, if the owner is identified, notify the owner of certain matters. The proposed section specifies certain requirements that must be met in relation to a notice given to the owner of an item.

The proposed section provides that the destruction or other disposal of an item is to be carried out as directed by the authority.

Clause 32 requires an authority to arrange for property taken possession of by an authorised officer appointed by the authority to be disposed of if the property is not returned before the deadline for return, as specified by the proposed section. The proposed section specifies the manner in which property may be disposed of, including by selling the property. However, an authority is not required to offer the property for sale if, in the authority's opinion, the value of the property is less than the cost of offering the property for sale.

The proposed section provides that an animal may be destroyed under the proposed section only if, despite all reasonable efforts made by the authority, the animal is unable to be sold, given away or rehomed. The proposed section does not apply to property destroyed or otherwise disposed of under section 31 or another provision under the proposed Act. The regulations under the proposed Act may provide for additional matters in relation to the proposed section.

Clause 33 requires an authority to keep a record of all property that is taken possession of by authorised officers appointed by the authority. The proposed section specifies the matters which a record must include. Records under the proposed section must be available for inspection by members of the public in accordance with the regulations under the proposed Act.

Part 5 Applications to Civil and Administrative Tribunal

Clause 34 enables certain persons to apply to the Civil and Administrative Tribunal for an administrative review of certain decisions made under the proposed Act.

An application may not be made until the responsible person for the property has given the authority or occupier written notice of the intention to apply to the Civil and Administrative Tribunal. If notice of intention to apply is given, the authority or occupier must not sell or otherwise dispose of the property until—

- (a) the time limit for an application has expired and an application has not been made, or
- (b) if an application is made—the application has been finally determined or the application has been refused or withdrawn.

The requirement for the authority or occupier not to sell or otherwise dispose of the property under the proposed section does not affect the operation of proposed section 22.

The proposed section enables an authority or occupier to return property in the authority's or occupier's possession pending the determination of an application. However, the return of property under the proposed section does not affect a right of recovery the authority or occupier may have under the proposed Act.

Clause 35 specifies the time limit for making the following applications—

- (a) for an application for an administrative review of a decision to take possession of property—28 days from the date on which the responsible person for the property was notified possession had been taken,
- (b) for an application for an administrative review of an amount required to be paid for the return of property—28 days from the date on which an application was made for the return of the property.

The proposed section provides that there is no time limit for making an application for an administrative review of a decision to take possession of property if the responsible person for the property is not notified possession of the property has been taken. Subject to the requirement in proposed section 34(4) for the authority or occupier not to sell or otherwise dispose of property if notice of intention to apply to the Civil and Administrative Tribunal has been given, proposed section 32 continues to apply.

Clause 36 provides for the following consequences in relation to an application for an administrative review of a decision to take possession of property—

- (a) if the application is dismissed, the applicant is liable for additional fees incurred up to the time the authority is notified of the decision on the application,
- (b) if the application results in the decision being set aside, the authority must—
 - (i) return the property free of all fees, and
 - (ii) return the property to the applicant at the expense of the authority.

Part 6 Offences

Clause 37 makes it an offence for a person to leave an item unattended in a public place in certain circumstances. The proposed section also specifies that it is an offence for a person to leave an animal unattended in a public place unless the person establishes the person took all reasonable precautions to prevent the animal from being left unattended.

The proposed section sets out the circumstances in which a person is not to be regarded as having left property unattended in a public place. A court that convicts a person of an offence under the proposed section may order the person to pay to an authority the fees payable in relation to taking

possession of, holding and disposing of the property, whether or not the court imposes a penalty for the offence.

Clause 38 makes it an offence for a person to recklessly or negligently leave an item unattended in a public place in certain circumstances.

Clause 39 provides that the responsible person for property in relation to which an offence under proposed section 37 is committed is guilty of the offence as if the person were the actual offender, unless—

- (a) if the offence is dealt with by way of penalty notice—the responsible person satisfies a person specified in the notice that the property was, at the relevant time, stolen property or otherwise illegally taken or used, or
- (b) otherwise—the court is satisfied the property was, at the relevant time, stolen property or otherwise illegally taken or used.

The proposed section does not affect the liability of an actual offender for the offence but, if a penalty has been imposed on or recovered from a person for the offence, no further penalty may be imposed on or recovered from another person for the offence.

The proposed section provides for circumstances in which the responsible person for property is not, under the proposed section, guilty of an offence. The proposed section also provides for an approved nomination notice, within the meaning of the *Fines Act 1996*, section 38 to be given by the responsible person for property served with a penalty notice in certain circumstances, and the consequences that flow from the provision of an approved nomination notice.

The proposed section does not limit another provision of the proposed Act or another Act.

Clause 40 makes it an offence for a person to allow an animal under the person's control to be on private land without the permission of the occupier of the land. A court that convicts a person of an offence under the proposed section may order the person to pay to an authority the amount payable under proposed section 55 in relation to taking possession of, keeping and disposing of the animal, whether or not the court imposes a penalty for the offence.

Clause 41 makes it an offence for a person to, without lawful authority, recover or attempt to recover, or incite or assist another person to recover, property the person knows has been taken into the possession of an authority under the proposed Act. A court that convicts a person of an offence under the proposed section may order the person to pay to the authority the fees that would have been payable to the authority for the return of the item had it not been recovered, whether or not the court imposes a penalty for the offence.

Clause 42 enables an authority in possession of property to, by written notice given to the responsible person for the property, require the person to collect the property by—

- (a) the day stated in the notice, not less than 14 days from the day the notice is given to the responsible person, or
- (b) the later day agreed between the authority and the responsible person.

The proposed section makes it an offence for a person not to collect the property within the time period required under the notice.

Clause 43 makes it an offence for a person, without reasonable excuse, to obstruct an authorised officer exercising or attempting to exercise a function under the proposed Act.

Part 7 Enforcement and legal proceedings

Division 1 Authorised officers

Clause 44 provides for an authority to appoint persons to be authorised officers.

Clause 45 requires an authority to issue each authorised officer appointed by the authority with an identification document. The identification document may be an electronic document displayed on a device. The proposed section specifies matters that must be included in an identification document. An authorised officer, in exercising functions under the proposed Act, must, if asked

by a person affected by the exercise of a function, produce the officer's identification document to the person.

Clause 46 provides that an authorised officer has the functions conferred by the proposed Act or regulations under the proposed Act.

Clause 47 provides that an authorised officer may exercise functions under the proposed Act only in the officer's area of operations, and specifies circumstances in which an authorised officer may exercise functions outside the officer's area of operations. An authorised officer's **area of operations** is the area prescribed by the regulations for the authorised officer. The proposed Act does not prevent an authorised officer from entering private land at the invitation of the occupier if the land is within the officer's area of operations, but does not confer power on an authorised officer to enter a place the officer could not otherwise lawfully enter.

Clause 48 provides that a police officer has and may exercise the functions of an authorised officer as if the police officer had been appointed by each authority, but is not subject to the direction or control of an authority.

Division 2 Legal proceedings

Clause 49 enables offences prescribed by the regulations under the proposed Act as penalty notice offences to be dealt with by the issue of a penalty notice rather than through court proceedings. An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence in the authorised officer's area of operations.

Clause 50 provides for proceedings for an offence against the proposed Act or regulations under the proposed Act are to be dealt with summarily before the Local Court.

Clause 51 provides that an order of a court under the proposed Act for the payment of money operates and is enforceable as a judgment made under the *Civil Procedure Act 2005*.

Clause 52 enables an authority or the Commissioner of Police to recover certain amounts payable under the proposed Act by the person responsible for property taken possession of by an authorised officer or police officer, respectively. The amounts may only be recovered if they have not already been paid or deducted from the proceeds of sale of the property. The proposed section provides for the circumstances in which the person responsible for property is taken to be the owner of the property and allows the owner to nominate another person as the person responsible if that person was in control or had supervision of the property immediately before it was left unattended. An authority is required to pay an amount recovered by the authority under the proposed section for loss or damage attributable to an animal being on private land without the permission of the occupier of the land to the person who suffered the loss or damage. An authority may treat the owner of the land as the person who suffered the loss or damage unless satisfied the loss or damage was suffered by another person.

Clause 53 specifies that amounts that the proposed Act provides may be recovered as a debt are recoverable in a court of competent jurisdiction.

Clause 54 provides that if there is more than one responsible person for property, each of the responsible persons is jointly and severally responsible for the property under the proposed Act and liable for an amount that may be recovered as a debt under the proposed Act in relation to the property.

Part 8 Miscellaneous

Part 8 contains various provisions relating to the general operation of the proposed Act, including provisions relating to the following—

- (a) fees that are payable in relation to the exercise of a function under the proposed Act,
- (b) a requirement for NSW Police to provide certain assistance to an authorised officer or an authority on request,
- (c) the protection of certain persons from personal liability for anything done in good faith and for the purposes of exercising a function under the proposed Act,

- (d) the consequences that flow from selling or disposing of property under the proposed Act,
- (e) that a stock permit is not required to be in force under the *Local Land Services Act 2013* for the purpose of having stock delivered to a place of care,
- (f) the service of documents,
- (g) the power to make regulations.

The proposed Part also repeals the *Impounding Act 1993*.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other legislation

Schedule 2.1[1] amends the *Road Transport Act 2013*, section 183(1) to insert a definition of **class A motor vehicle** as a consequence of the proposed amendment at Schedule 2.1[2]. The term has the meaning prescribed by the regulations.

Schedule 2.1[2] amends the *Road Transport Act 2013* to include an offence involving certain unregistered registrable vehicles standing on a road within the meaning of a **designated offence** for the purposes of Part 7.3, Division 2 of that Act. Division 2 provides for the responsible person for a vehicle to be taken to be guilty of a designated offence unless the person satisfies an authorised officer or the court of certain matters.

Schedule 2.2[1] amends the *Road Transport (General) Regulation 2021* to insert a definition of **class A motor vehicle**.

Schedule 2.2[3] prescribes the offence of using an registrable vehicle on a road, in the circumstance in which a class A motor vehicle is left standing, whether or not a trailer is attached, as a penalty notice offence under the *Road Transport Act 2013*. **Schedule 2.2[2]** makes a consequential amendment.

Schedule 3 Dictionary

Schedule 3 defines certain words and expressions used in the proposed Act.