



New South Wales

Local Government Amendment (Parking and Wheel Clamping) Bill 1998

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 *Local Government Act 1993 (the Principal Act)* by:

- (a) providing that an owner of private land may enter into an agreement with the local council under which the land is set aside as a free parking area, so attracting the provisions of that Act with respect to the control of parking in free parking areas, and
 - (b) making it an offence for a person to immobilise a vehicle, by means of wheel clamps or by means of any other device prescribed by the regulations, except in certain circumstances, and
 - (c) making it an offence for a person who takes possession of a vehicle to fail to release the vehicle on demand to a person who has the right to possession or control of the vehicle, or to demand payment for its release, except in certain circumstances.
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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.

Clause 3 is a formal provision giving effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

Schedule 1 Amendments

Free parking areas

Schedule 1 [1] and **[4]** amend the Principal Act so as to give effect to the object referred to in paragraph (a) of the Overview above.

Schedule 1 [1] inserts proposed section 650 (6) into the Principal Act so as to provide that an owner of private land may enter into an agreement with the council under which all or part of the land is to be set aside for use as a free parking area.

Schedule 1 [4] amends the definition of *free parking area* in the Dictionary to the Principal Act so as to provide that an area the subject of an agreement under proposed section 650 (6) is a free parking area for the purposes of the Act.

As a result of these amendments, the existing provisions of the Principal Act dealing with such matters as signs, notices and the issuing of penalty notices in relation to free parking areas will apply to land subject to such an agreement.

Immobilisation and detention of vehicles

Schedule 1 [2] amends the Principal Act so as to give effect to the objects referred to in paragraphs (b) and (c) of the Overview above by inserting proposed Part 5A (proposed sections 651A–651C) into Chapter 16.

Proposed section 651A provides that proposed Part 5A applies to the whole of the State.

Proposed section 651B (1) prohibits a person from immobilising a vehicle that is owned by another person, by means of wheel clamps or by means of any other device prescribed by the regulations, unless the person has the permission of the owner. The maximum penalty for such an offence is to be 20 penalty units (currently \$2,200). Proposed section 651B (2) provides that this prohibition does not affect any right a person may have as the driver or person in control of the vehicle, under a court order or under a credit contract with respect to the vehicle. Proposed section 651B (3) provides that an owner

or occupier of premises is not in charge of a vehicle merely because the vehicle is left on those premises.

Proposed section 651C (1) prohibits a person who takes possession of a vehicle that has been left on premises from failing to release the vehicle on demand to a person who has the lawful right to possession or control of the vehicle, or from demanding payment for or in relation to the release of the vehicle. The maximum penalty for such an offence is to be 20 penalty units (currently \$2,200). Proposed section 651C (2) provides that this prohibition does not give a person the right to take possession of a vehicle if the person does not have that right apart from the proposed section, but does not affect any right to detain a vehicle that a person may have under the *Impounding Act 1993* or any other Act, under a lien, under a court order or under an agreement or arrangement with respect to the vehicle. Proposed section 651C (3) abolishes the common law remedy of distress damage feasant to the extent that it applies to a vehicle left on premises.

Schedule 1 [3] amends Schedule 8 to the Principal Act so as to enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

First print



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Local Government Amendment (Parking and Wheel Clamping) Bill 1998

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The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment (Parking and Wheel Clamping) Act 1998*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Local Government Act 1993 No 30

The *Local Government Act 1993* is amended as set out in Schedule 1.

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Schedule 1 Amendments

(Section 3)

[1] Section 650 Free parking areas

Insert after section 650 (5) (after the penalty provision):

- (6) The owner of any private land may enter into an agreement with the council under which the land, or any part of the land, is set aside for use as a free parking area. 5

[2] Chapter 16, Part 5A

Insert after section 651: 10

Part 5A Immobilisation and detention of vehicles

651A Application of Part

This Part applies to the whole of the State.

651B Immobilisation of vehicles

- (1) A person must not immobilise a vehicle owned by any other person by means of wheel clamps, or by means of any other device prescribed by the regulations, except with the consent of that other person. 15
- Maximum penalty: 20 penalty units.
- (2) This section does not affect any right to immobilise a vehicle that a person may have: 20
- (a) as the driver or person in charge of the vehicle, or
- (b) under the terms of a court order, or
- (c) under the terms of a credit contract (within the meaning of the *Consumer Credit (New South Wales) Code*) in force with respect to the vehicle. 25

- (3) For the purposes of this section, an owner or occupier of premises is not in charge of a vehicle merely because the vehicle has been left on those premises.

651C Unlawful detention of vehicles

- (1) A person who takes possession of a vehicle that has been left on premises must not: 5
- (a) fail to release the vehicle on demand to any person having a lawful right to the possession or control of the vehicle, or
 - (b) demand any payment for or in relation to the release of the vehicle. 10
- Maximum penalty: 20 penalty units.
- (2) This section does not give any person a right to take possession of a vehicle if the person does not have that right apart from this section, but does not affect any right to detain a vehicle that a person may have: 15
- (a) under the *Impounding Act 1993* or any other Act, or
 - (b) under a lien, or
 - (c) under the terms of a court order, or 20
 - (d) under the terms of an agreement or arrangement in force with respect to the vehicle.
- (3) The remedy at common law of distress damage feasant is abolished to the extent to which it would otherwise be available in relation to a vehicle left on premises. 25

[3] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts

Insert at the end of clause 1 (1):

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[4] Dictionary

Insert “, and includes any area of land the subject of an agreement referred to in section 650 (6)” after “fee or charge” in the definition of *free parking area*.

LOCAL GOVERNMENT AMENDMENT (PARKING AND WHEEL CLAMPING) BILL

Schedule of the amendment referred to in the Legislative Council's Message of 17 June 1998.

Page 3, Schedule 1. Insert after line 8:

- (7) It is the duty of the Director-General to establish guidelines to be followed by councils in relation to agreements of the kind referred to in subsection (6), including guidelines as to:
 - (a) the circumstances in which a council may enter into such an agreement, and
 - (b) the matters for which such an agreement must or must not make provision, and
 - (c) the exercise by a council of any functions conferred on it by such an agreement.
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