

FIRST PRINT

IMPOUNDING BILL 1992

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Local Government Bill 1992.

The object of this Bill is to consolidate in one Act various existing laws relating to the impounding of abandoned, unattended and trespassing animals and articles (including motor vehicles).

The Bill deals with the following matters:

- empowering local councils and certain public authorities to impound animals and articles found abandoned, left unattended or trespassing on land under their control;
- empowering occupiers of private land to impound animals found trespassing on their land;
- requiring notice to be given to owners of impounded animals and articles and their rights to recover impounded items;
- the sale and disposal of items that are not claimed and the disposal of the proceeds of sale;
- the recovery of the costs incurred in connection with impounding under the authority of the proposed Act;
- the establishment of public and private pounds;
- offences concerning abandoning animals or allowing them to trespass, and unlawful recovery of impounded items;
- rights of appeal;
- miscellaneous ancillary provisions;
- consequential amendments and repeals.

The animals to which the Bill applies are listed in the definition of "animal" in Schedule 1. Dogs are affected only when in a national park or similar area.

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PART 1—PRELIMINARY

The Part deals with matters such as the commencement of the Act and its objects and lists the terms for which definitions are provided in Schedule 1.

PART 2—IMPOUNDING OF ANIMALS AND ARTICLES

Division 1—General provisions concerning impounding

The Division explains that the Act confers impounding powers on “impounding officers” (officers appointed by certain public authorities) and police officers, and provides that impounding officers can impound only within the area of operations of the public authority that appointed them.

Division 2—Impounding officers can impound abandoned, unattended and trespassing animals

Impounding officers are given power to impound animals that are abandoned or left unattended in a public place or which are trespassing (not in a public place). Impounded animals are required to be taken to a pound. An animal can be detained on agistment for up to 7 days before being impounded.

Division 3—Impounding of animals by occupiers of private land

Occupiers of private land are given power to impound animals trespassing on their land. If the owner's identity is known he or she must be notified and the animal may be kept on the land for 4 days but then must be taken to a pound. A charge is payable to the occupier for the release of an impounded animal. The animal must be taken to a pound if the owner's identity is not known.

Division 4—Impounding of articles

Impounding officers are given power to impound articles abandoned or left unattended. Special requirements apply before a motor vehicle can be impounded (including a minimum 3 days' notice to the owner). Impounded articles must be taken to a pound unless this is impractical or too costly.

An impounded motor vehicle may be destroyed or disposed of if notice has been given to the owner or the owner cannot be identified, and the vehicle is worth less than \$500.

The Police are to be informed when a motor vehicle is impounded or destroyed.

PART 3—HOW IMPOUNDED ITEMS ARE TO BE DEALT WITH

The impounding authority must inquire who the owner is of an impounded item and notify the owner that it has been impounded and how to claim it. An impounding authority has a duty to care for impounded animals but injured, diseased or distressed animals can be destroyed. The owner of an impounded item can claim it back. Impounding fees are payable by the owner. The item can be sold or disposed of if not claimed and the proceeds of sale (after deduction of authorised fees and expenses) are held for the owner. Authorised fees and expenses can be recovered from the owner even if the owner does not claim the item.

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PART 4—ESTABLISHING POUNDS

Impounding authorities can establish public pounds (for general use) or private pounds (for use only by the authority). Records are required to be kept and these are open to public inspection. A notice board is required to be erected at a pound showing when sales of impounded items are to be held and the fees and charges applicable to the pound.

PART 5—OFFENCES

The following offences are created:

- abandoning an animal or article in a public place or leaving an animal unattended in a public place (5 penalty units)
- causing or permitting an animal to trespass (5 penalty units)
- unlawfully recovering (or attempting to recover or inciting another to recover) an impounded item (50 penalty units)
- obstructing an impounding officer (20 penalty units)

PART 6—APPEALS

The owner of an impounded item is given a right of appeal against impounding on the grounds that it was unlawful and against impounding fees on the grounds that they are improper, incorrect or excessive.

PART 7—MISCELLANEOUS

Miscellaneous matters dealt with include the following:

- a special power for council officers to destroy animals that are dying or are a danger to the public;
- certificates of authority for impounding officers;
- assistance from the police;
- protection of impounding officers and authorities from liability;
- consequential repeals.

Schedule 1 deals with matters of a savings or transitional nature in consequence of the repeal of the Impounding Act 1898, Part 18 of the Local Government Act 1919 and other laws relating to impounding.

The Dictionary contains definitions of expressions used in the proposed Act.

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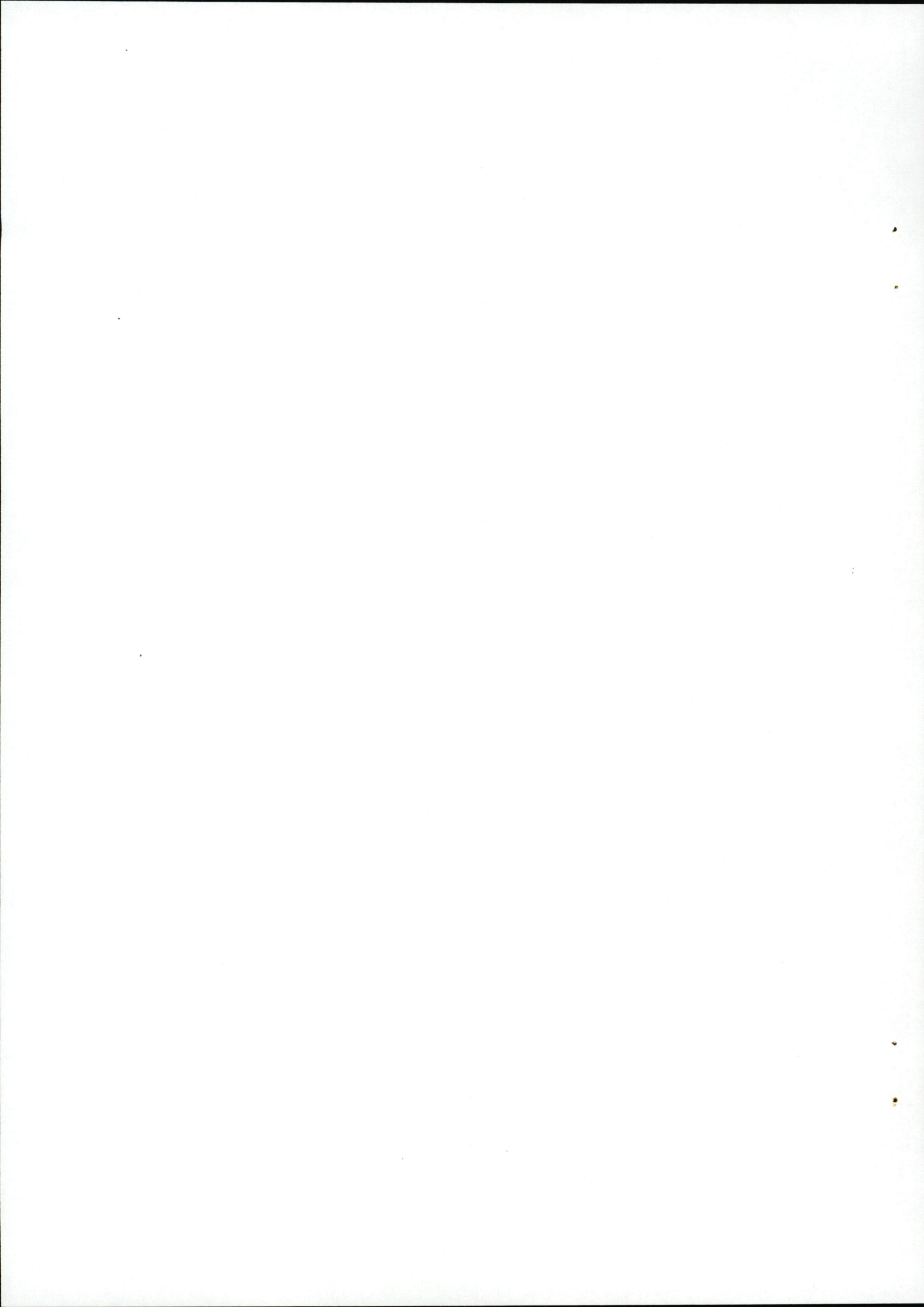
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IMPOUNDING BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to provide for the impounding of certain animals, motor vehicles and other things; to provide for their release or disposal; to provide for related matters; and to repeal the Impounding Act 1898 and certain other enactments.

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The Legislature of New South Wales enacts:

PART 1—PRELIMINARY**Short title**

1. This Act may be cited as the Impounding Act 1992.

5 Commencement

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

The objects of this Act

3. The objects of this Act are:

- 10 (a) to empower authorised persons to impound and deal with animals and articles in public places and places owned or under the control of certain public authorities if they have been abandoned or unattended or, in the case of animals, are trespassing; and
- 15 (b) to empower occupiers of private land to impound and deal with animals trespassing on their land; and
- (c) to provide for the release of impounded animals and articles that are claimed by their owners; and
- 20 (d) to provide for the disposal of impounded animals and articles that are not claimed by their owners and, if they are disposed of by sale, to provide for the disposal of the proceeds of sale.

Definitions

4. In this Act, the following expressions have the meanings set out in the Dictionary at the end of this Act:

25	animal	motor vehicle
	area of operations (of an impounding officer)	occupier (of land)
	article	owner (of an animal or article)
	council	place
	exercise (of a power)	power
30	impounded	private land
	impounding authority	public place
	impounding officer	public pound
	item	record

PART 2—IMPOUNDING OF ANIMALS AND ARTICLES**Division 1—General provisions concerning impounding****Who can impound?**

5. This Act confers power on impounding officers to impound certain animals and articles. The power to impound conferred by this Act on an impounding officer of the Roads and Traffic Authority is limited to the impounding of motor vehicles, unless the Regulations otherwise provide. 5

Power is also conferred on occupiers of private land to impound certain animals.

Each police officer has and may exercise the powers of any impounding officer (as if he or she had been appointed as an impounding officer by each impounding authority). This does not make a police officer subject to the direction or control of an impounding authority. 10

NOTE

Impounding officers are persons appointed as impounding officers by impounding authorities. See the definitions of "impounding officer" and "impounding authority" in the Dictionary. 15
See the definition of "animal" in the Dictionary for the types of animals to which this Act applies.

Areas in which impounding officers can impound 20

6. An impounding officer may impound something under this Act only in the area of operations of the impounding officer.

This Act does not confer power on an impounding officer to enter a place that the officer could not otherwise lawfully enter.

NOTE

See the definition of "area of operations" in the Dictionary for the areas in which impounding officers can impound. Nothing prevents an impounding officer entering private land at the invitation of the occupier, so long as it is within his or her "area of operations". 25
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Dogs can be impounded in certain areas only

7. A dog cannot be impounded under this Act unless it is in a national park, historic site, nature reserve, state game reserve, karst conservation reserve or Aboriginal area (as defined in the National Parks and Wildlife Act 1974).

NOTE

A dog may be able to be impounded in other areas under another law, such as the Dog Act 1966.

When is something “impounded”?

8. Something is impounded as soon as an impounding officer or an occupier of private land takes possession of it under a power conferred by this Act. It continues to be impounded until it is released or disposed of in accordance with this Act.

It is not necessary for something to be taken to a pound before it can be considered to be “impounded”.

Division 2—Impounding officers can impound abandoned, unattended and trespassing animals**Animals abandoned or unattended in public places can be impounded**

9. (1) An impounding officer may impound an animal that the officer finds in a public place in the area of operations of the officer if the officer believes on reasonable grounds that the animal has been abandoned or left unattended.

(2) An animal is not to be treated as having been abandoned or left unattended in a public place if any of the following applies:

- the animal is owned by the occupier of land that adjoins or is bisected by the place, and a boundary or dividing fence that exists or existed between the land and the place has ceased to be animal proof because of fire, flood or other natural disaster beyond the control of the occupier and the occupier has not had a reasonable opportunity to restore or repair the fence effectively;
- there exist any other circumstances prescribed by the regulations as not constituting abandonment.

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(3) The regulations may prescribe circumstances in which the provisions or a provision of subsection (2) do not apply.

Trespassing animals can be impounded

10. An impounding officer may impound an animal that the officer believes on reasonable grounds to be trespassing in a place in the area of operations of the officer (other than a public place). 5

Impounded animals to be delivered to pound

11. (1) An impounding officer must have an impounded animal delivered to a pound as soon as practicable after the animal is impounded.

(2) An impounding officer of a council may detain an animal liable to be impounded before impounding it. The detained animal may be placed on any land on agistment or on any land owned by or under the control of the council. It must not be detained for longer than 7 days before being impounded. 10

(3) The pound to which an impounded animal is to be delivered is the nearest convenient pound (if impounded by a police officer) or (if impounded by an impounding officer of an impounding authority) the nearest pound operated or used by that authority. 15

(4) The impounding officer may instead destroy the animal immediately (without having it delivered to a pound) if of the opinion that: 20

(a) the animal is seriously injured, diseased or starved or is otherwise in a distressed state; or

(b) the animal is worth less than the cost of delivering it to the pound.

(5) The impounding authority may recover as a debt from the owner of the animal the cost of destroying an animal and disposing of the carcass. 25

Division 3—Impounding of animals by occupiers of private land

Occupier of private land can impound trespassing animal

12. An occupier of private land may impound any animal that the occupier finds trespassing on the land. 30

Action to be taken when identity of owner known

13. (1) An occupier of private land who impounds an animal and knows or can easily ascertain the owner's identity must inform the owner of the animal's whereabouts within 24 hours of impounding the animal and must then either: 35

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- (a) immediately have the animal delivered to the nearest convenient public pound; or
- (b) keep the animal on the land for a period of not more than 4 days and then (if the animal has not been claimed by its owner) have the animal delivered to the nearest convenient public pound.
- 5
- (2) The occupier has a duty to ensure that any animal kept on the land after it is impounded:
- (a) is provided with adequate food, water and veterinary care; and
- (b) is kept in a place that is well drained and maintained in a clean condition; and
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- (c) is provided with adequate shade for the climatic conditions; and
- (d) is kept secure; and
- (e) is separated from other animals that are diseased or, if the animal is or appears to be diseased, is kept separate from other animals.
- 15
- (3) If the owner of the animal claims the animal, the occupier must do one of the following:
- (a) release or send the animal to its owner on payment of the appropriate charge;
- (b) if the animal's owner declines to pay the appropriate charge—have the animal delivered to the nearest convenient public pound;
- 20
- (c) release or send the animal to its owner without payment of the appropriate charge.
- (4) If the occupier releases or sends the animal to its owner without the appropriate charge having been paid and the owner does not within 7 days pay the occupier the appropriate charge and any costs of transporting the animal to its owner, the occupier may recover the charge and costs from the owner as a debt.
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- (5) The “appropriate charge” is an amount not exceeding:
- (a) the expenses actually incurred in providing the animal with food, water and veterinary care; and
- 30
- (b) the cost of rectifying any loss or damage attributable to the trespassing of the animal.

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(6) An occupier of private land who fails to comply with a requirement of this section is guilty of an offence.

Maximum penalty: 5 penalty units.

NOTE

At present, a penalty unit equals \$100.

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Action to be taken when identity of owner not known

14. An occupier of private land who impounds an animal and does not know and cannot easily ascertain the identity of the owner of the animal must have it delivered to the nearest convenient public pound within 48 hours of the impounding.

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Maximum penalty: 5 penalty units.

Division 4—Impounding of articles**Abandoned and unattended articles can be impounded**

15. An impounding officer may impound an article found in the officer's area of operations if the officer believes on reasonable grounds that the article has been abandoned or left unattended. Section 16 affects this if the article is a motor vehicle.

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NOTE

Section 121 of the Local Government Act 1992 gives a council power to order the removal of an object or matter that is causing or likely to cause an obstruction. See Order No. 27 under that section.

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Special restrictions applying to impounding of motor vehicles

16. (1) An impounding officer may not impound a motor vehicle until the officer has made all reasonable inquiries to discover the identity of the owner of the vehicle. Subsection (4) provides exceptions to this.

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(2) The vehicle may be impounded immediately if those inquiries have failed to reveal the name and address of the owner. If they have revealed the owner's name and address, the vehicle may not be impounded until at least 3 days after the necessary notice has been given to the owner.

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(3) The necessary notice is a notice in writing addressed to the owner of the motor vehicle to the effect that the vehicle will be impounded unless it is removed within a specified period (not less than 3 days). The regulations may prescribe the form and contents of the notice.

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NOTE

See section 48 for the ways in which notice can be given.

(4) The vehicle may be impounded immediately (without any inquiries as to its owner being made) if it 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 or is likely to be a danger to the public.

Impounded article to be delivered to pound

17. (1) An impounding officer must have an impounded article delivered to a pound as soon as practicable after it is impounded. The pound to be used is the nearest convenient pound (if impounded by a police officer) or (if impounded by an impounding officer of an impounding authority) the nearest pound operated or used by the authority.

(2) However, an impounded article need not be delivered to a pound if the size, quantity or nature of the article concerned makes its delivery to or storage at a pound impractical, unreasonably costly or more costly than the value of the article.

Impounded motor vehicle may be destroyed or disposed of if worth less than \$500

18. (1) An impounding officer may cause an impounded motor vehicle to be destroyed or otherwise disposed of in accordance with the directions of the impounding authority as soon as it is impounded, but only if:

(a) the impounding officer believes on reasonable grounds that the value of the vehicle is less than \$500 or such other amount as may be prescribed by the regulations; and

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(b) notice has been given to the owner of the vehicle under section 16 and that notice states (in addition to anything else it is required to state) that the vehicle may be destroyed or disposed of if its value is less than \$500 (or such other amount as may be prescribed under paragraph (a)); and 5

(c) at least 3 days have elapsed since that notice was given.

(2) Notice need not be given to the owner of the vehicle if the impounding officer has made all reasonable inquiries to discover the identity of the owner and those inquiries have failed to reveal the name and address of the owner. 10

Police to be informed of action concerning motor vehicle

19. An impounding officer who impounds a motor vehicle or causes a motor vehicle to be destroyed or otherwise disposed of must ensure that the officer in charge of the nearest police station is informed of that action as soon as practicable after it occurs. 15

PART 3—HOW IMPOUNDED ITEMS ARE TO BE DEALT WITH**Impounding authority to notify owner**

20. (1) The impounding authority must make inquiries to discover the name and address of the owner of an impounded item and, in the case of an impounded motor vehicle, must also make a search of the Register under the Registration of Interests in Goods Act 1986 for registrable interests in the vehicle. 20

This must be done as soon as practicable after the item is delivered to the authority's pound or (in the case of an article that is impounded without being delivered to a pound) as soon as practicable after the article is impounded. 25

(2) Inquiries as to the owner need not be made if the impounding authority already knows the name and address of the owner or inquiries have already been made under section 16 and have failed to reveal the name and address of the owner. If the impounding authority's search of the Register reveals a registrable interest in the motor vehicle, the authority must also cause notice of the impounding to be given to the person who claims the interest. 30

(3) If the impounding authority knows or discovers the name and address of the owner, the authority must cause notice of the impounding to be given to the owner. 35

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- (4) The notice is to be in writing addressed to the person to be given the notice. It must clearly indicate that the item has been impounded and will be sold or otherwise disposed of if not claimed within a stated period (not less than 7 days in the case of an animal and not less than 28 days in the case of an article).

NOTE

See section 48 for the ways in which notice can be given.

Care of impounded animals

21. (1) An impounding authority has a duty to ensure that any impounded animal held at its pound:
- (a) is provided with adequate food, water and veterinary care; and
 - (b) is kept in a place that is well drained and maintained in a clean condition; and
 - (c) is provided with adequate shade for the climatic conditions; and
 - (d) is kept secure; and
 - (e) is separated from other animals that are diseased or, if the animal is or appears to be diseased, is kept separate from other animals.
- (2) This duty is subject to any power or duty to destroy an animal under this or any other Act.

20 Injured, diseased or distressed animals can be destroyed

22. (1) An impounding authority may destroy an impounded animal held at its pound if of the opinion that the animal is seriously injured, diseased or starved or is otherwise in a distressed state.

(2) If the impounding authority knows the identity of the owner of the animal, it must not destroy the animal unless it has informed the owner that it is proposed to destroy the animal and has given the owner a reasonable opportunity to obtain its release.

(3) The impounding authority may recover as a debt from the owner of the animal the cost of destroying an animal and disposing of the carcass.

30 Owner can obtain release of impounded item

23. (1) Application may be made to an impounding authority for the release of an impounded item held by it or impounded by one of its impounding officers. The application may be made at any time before the item is sold or disposed of.

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(2) The impounding authority must release the item to the applicant if:

(a) the authority is satisfied on reasonable grounds that the applicant is the owner of the item, is authorised to claim the item on the owner's behalf or is otherwise entitled to lawful possession of the item; and 5

(b) all fees and charges payable in respect of the impounding, holding and disposing of the item are paid to the impounding authority; and

(c) the authority is satisfied that all penalties imposed in connection with the event that gave rise to the impounding have been paid; and

(d) the applicant signs a receipt for the release of the item. 10

Impounded item to be sold if not claimed

24. (1) The impounding authority must cause an impounded item to be offered for sale if the item is not released before the deadline for release (subclause (5)). The sale is to be by public auction.

(2) The item may be disposed of otherwise than by sale if the impounding authority believes on reasonable grounds that the item has no monetary value or that the proceeds of sale would be unlikely to exceed the costs of sale. 15

(3) If an impounded item offered for sale is not sold, the impounding authority may dispose of the item otherwise than by sale. 20

(4) An impounding authority that has offered an impounded animal for sale may destroy the animal if it is not sold within 7 days after being offered for sale.

(5) The "deadline for release" for an impounded item is:

(a) in the case of an impounded animal—7 days from the day on which notice was given to the owner of the animal under section 20 or, if reasonable inquiries by the impounding authority concerned have failed to reveal the name and address of the owner, 7 days from the day on which those inquiries were completed; or 25

(b) in the case of an impounded article—28 days from the day on which notice was given to the owner of the item under section 20 or, if reasonable inquiries by the impounding authority concerned have failed to reveal the name and address of the owner, 28 days from the day on which those inquiries were completed or the date on which the article was impounded (whichever is the later). 30
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Proceeds of sale of impounded item

25. (1) The impounding authority holds the net proceeds of sale of an impounded item for the person who was the owner of the item immediately before its sale. The "net proceeds of sale" are the proceeds (if any) remaining after deduction of the expenses of sale and the fees and charges payable in respect of the impounding, holding and disposing of the item.

(2) An application for payment of the net proceeds of sale may be made to the impounding authority at any time within 12 months after the item was sold.

(3) The authority must pay the net proceeds of sale to the applicant if satisfied that the applicant is entitled to the proceeds.

NOTE

The applicant need not be the owner.

(4) If no application is made within that 12 month period, the impounding authority may transfer the net proceeds of sale to such of its funds as it considers appropriate. The money then becomes the property of the authority.

Impounding fees and charges

26. (1) An impounding authority may fix the fees and charges that are to be paid in respect of the impounding, holding and disposing of an item by the authority and its impounding officers. The Commissioner of Police may by order in writing fix the fees and charges that are to be paid in respect of the impounding of an item by a police officer.

(2) The fees and charges that may be fixed are as follows:

- a fee for walking or transporting an impounded animal to the pound or to the address of its owner and to a market or saleyard for sale;
- a charge for providing an impounded animal with food, water and veterinary care;
- a charge for loss or damage attributable to the abandoning or trespassing of an impounded animal;
- a fee for conveying an impounded article to a pound;
- a fee for storing an impounded article at the pound;
- a fee to cover the cost of serving a notice notifying the owner of an impounded item that the item has been impounded.

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(3) Fees and charges may be fixed so as to differ according to the kinds of animals or articles impounded.

(4) A fee or charge cannot exceed the corresponding maximum fee or charge (if any) prescribed by the regulations, and any amount that is fixed so as to exceed the maximum is reduced to the maximum. 5

(5) Fees and charges fixed under this section are the fees and charges payable in respect of the impounding, holding and disposing of an item under this Act.

(6) An impounding authority must remit to the Commissioner of Police any fee or charge paid to or deducted or recovered by the authority that was payable in respect of the impounding of an item by a police officer. 10

General right to recover impounding fees and damages

27. (1) An impounding authority may recover the following amounts as a debt from the owner of an impounded item:

- the fees and charges payable in respect of the impounding, holding and disposing of the item; 15
- in the case of an animal impounded because it was trespassing—the cost of rectifying any loss or damage attributable to the trespassing of the animal.

(2) The Commissioner of Police may recover as a debt from the owner of an impounded item the fees and charges payable in respect of the impounding of an item by a police officer. 20

(3) These amounts can only be recovered if they have not already been paid, or deducted from proceeds of sale.

PART 4—ESTABLISHING POUNDS**Impounding authority can establish public or private pounds**

28. (1) An impounding authority may establish one or more pounds on land in its area of operations or under its control, and may close any such pound. A pound may be established as a public pound or as a private pound. 30

(2) A public pound is for the use of the impounding authority that established it, members of the public and other impounding authorities (in accordance with arrangements under section 29). A private pound is for the use only of the impounding authority that established it.

(3) An impounding authority is responsible for the management and operation of a pound that it establishes. 35

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Arrangements between authorities for use of pounds

29. An impounding authority may make use of a public pound established by another impounding authority if there are arrangements in place between the two authorities that authorise that use.

5 Records to be kept by impounding authority

30. (1) An impounding authority must keep a record of each impounded item received at a pound that it operates.

(2) The record for each item must describe the item and show when it was received, and contain details of its release or disposal.

10 (3) The regulations may prescribe the form and contents of the record and require other records to be kept by an impounding authority.

Public may inspect records

15 31. A member of the public is entitled to inspect free of charge any record kept by an impounding authority under this Act, whenever the authority is open for public business.

Notice board at pound

32. (1) An impounding authority must maintain a notice board at each pound that it operates.

(2) The notice board must show the following:

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- the date, time and place of any proposed sale of an impounded item;
 - the fees and charges applicable to the pound.

(3) The notice board must be exhibited in a place that is either in the public view or accessible to the public.

25 (4) The regulations may prescribe the form and contents of a notice on the notice board and may require an impounding authority to give notice to the public in some other specified manner concerning items held at its pounds.

PART 5—OFFENCES**30 Offence of abandoning animal or article in a public place**

33. (1) A person who abandons an animal or article in a public place is guilty of an offence.

Maximum penalty: 5 penalty units.

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(2) A person who leaves an animal unattended in a public place is guilty of an offence.

Maximum penalty: 5 penalty units.

(3) A person is not to be regarded as having abandoned an animal or an article in a place, or as having left an animal unattended in a place, in any of the following circumstances: 5

(a) if the person has left the animal or article in that place in response to an invitation contained in a notice published by the relevant public authority and in accordance with any conditions specified in the notice; 10

(b) if the person has left the animal or article in that place with the consent of the relevant public authority;

(c) if the person has left the animal or article in that place in accordance with an authority conferred by or under an Act.

(4) A court that convicts a person of an offence under this section may order the person to pay to an impounding authority the fees and charges payable in respect of the impounding, holding and disposing of the item concerned (whether or not the court imposes a penalty for the offence). 15

Offence of causing or permitting animal to trespass

34. (1) A person who causes or permits an animal under his or her control to trespass in a place (other than a public place) is guilty of an offence. 20

Maximum penalty: 5 penalty units.

(2) A court that convicts a person of an offence under this section may order the person to pay to an impounding authority the fees and charges payable in respect of the impounding, holding and disposing of the animal concerned (whether or not the court imposes a penalty for the offence). 25

Offence of unlawfully recovering impounded item

35. (1) A person who without lawful authority recovers or attempts to recover or incites or assists another person to recover an item that he or she knows is impounded is guilty of an offence. 30

Maximum penalty: 50 penalty units.

(2) A court that finds a person guilty of such an offence may order the person to pay to the impounding authority concerned the fees and charges that would have been payable to the authority for the release of the item 35

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had it not been recovered (whether or not the court imposes a penalty for the offence).

Offence of obstructing impounding officer

36. A person who, without reasonable excuse, obstructs an impounding officer exercising or attempting to exercise a function under this Act is guilty of an offence.

Maximum penalty: 20 penalty units.

Proceedings are to be heard by Local Court

37. Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

PART 6—APPEALS**Owner of impounded item can appeal**

38. (1) The owner of an impounded item has the following rights of appeal to the Local Court nearest to the place of impounding:

- The owner can appeal against the impounding on the grounds that the impounding of the item was unlawful.
- The owner can appeal against any fee or charge required to be paid for the release of the item (whether to an impounding authority or an occupier of private land) on the ground that the fee or charge has been improperly charged or incorrectly calculated or is excessive.

(2) An appeal cannot be made until the owner of the impounded item has given the impounding authority or occupier concerned notice in writing of intention to appeal.

(3) If notice of intention to appeal is given, the authority must not sell or otherwise dispose of the impounded item until the time limit for appeals has expired or until it has been notified that any appeal made has been refused or withdrawn.

(4) This section does not affect section 22 (Injured, diseased or distressed animals can be destroyed).

(5) An impounding authority may release an impounded item pending the determination of an appeal. The release of an impounded item does not affect any right of recovery that the impounding authority may have under section 27.

*Impounding 1992***Time limit for appeals**

39. The time limit for an appeal is:

- (a) 28 days from the date of impounding, in the case of an appeal against impounding; or
- (b) 28 days from the date on which application was made for the release of the impounded item, in the case of an appeal against an impounding fee. 5

Result of appeal

40. (1) If an appeal against impounding is disallowed, the appellant is liable for any additional impounding fees incurred until the impounding authority is notified of the decision on the appeal. 10

(2) If an appeal against impounding is allowed, the impounding authority must release the impounded item free of all impounding fees and convey it to the appellant at the expense of the authority.

PART 7—MISCELLANEOUS 15**Special power to destroy animals**

41. (1) An authorised person may destroy, or remove and destroy, any animal found at large in a public place if the officer believes on reasonable grounds that the animal is a danger to the public or is likely to die from a disease or injury from which it is suffering. The person may then dispose of the carcass of the animal. 20

(2) An authorised person may remove any dead animal found in a place (whether public or not) and may dispose of the carcass of the animal.

(3) This section does not apply to an animal that is protected fauna (as defined in the National Parks and Wildlife Act 1974) or is in a national park, historic site, nature reserve, state game reserve, state recreation area, karst conservation reserve or Aboriginal area (as defined in that Act). 25

(4) The expense incurred in exercising a power under subsection (1) may be recovered as a debt from the owner of the animal. The expense incurred in exercising a power under subsection (2) may be recovered as a debt from either the owner of the dead animal or the occupier of the place in which it was found. 30

(5) The person who has the right of recovery conferred by subsection (4) is the council under whose authority the authorised person acted or (if the authorised person is a police officer) the Commissioner of Police. 35

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(6) The expense incurred in exercising a power under this section may be recovered as a debt by the council concerned from either the owner of the animal or the occupier of the place in which the animal was found if it is not a public place.

5 (7) In this section:

“animal” means any creature (other than a human being);

“authorised person” means a police officer or a person generally or specially authorised by a council to exercise powers under this section.

10 **Impounding officers must have written authorisation**

42. (1) An impounding officer is not authorised to impound except when in possession of a written authorisation issued by the impounding authority. This does not apply to a police officer.

15 (2) The impounding officer must produce that written authorisation to a person who requests that it be produced, when the officer is or is proposing to exercise the functions of an impounding officer.

(3) The regulations may impose requirements on the form and contents of the authorisation.

Police required to provide assistance on request

20 43. The police officer in charge of a police station is required (if requested) to assist an impounding authority or impounding officer with any inquiries being made under this Act concerning a motor vehicle.

Destruction of animals to be carried out humanely

25 44. The destruction of an animal under this Act must be carried out in a humane manner and the carcass must be disposed of in a safe and hygienic manner.

Protections from liability

30 45. (1) A person who destroys an animal under a power conferred by this Act or who destroys or otherwise disposes of a motor vehicle under section 18 is not liable in damages for any loss that the owner of the animal or any other person has sustained as a result of that action and nor is any impounding authority that authorised the person, unless it is proved that the person or authority did not act in good faith.

35 (2) If an item is sold or disposed of under a power conferred by this Act, the following provisions apply:

- the buyer obtains the ownership of the item;

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- the item is discharged from any right, interest, trust or obligation to which it was subject immediately before sale;
 - the person who was the owner of the item immediately before the sale or disposal ceases to have any claim in respect of the item or any right of action in respect of the sale or disposal except as specifically provided by this Act. 5
- (3) A person is not prevented from recovering damages from an impounding authority in respect of the sale or disposal of an item if the person establishes that the authority, or the person who effected the sale or disposal, did not act in good faith or acted without reasonable care. 10
- Permit not required to deliver stock to pound**
46. It is not necessary for a transported stock statement, walking stock permit, stock licence or other authority to be in force under the Rural Lands Protection Act 1989 for the purpose of having any stock (as defined in that Act) delivered to a pound under this Act. 15
- Enforcement of court orders**
47. An order of a court under this Act for the payment of money operates and is enforceable as a judgment made under the Local Courts (Civil Claims) Act 1970.
- Method of giving notice** 20
48. A notice may be given to a person for the purposes of this Act or the regulations in any of the following ways:
- by delivering it personally to the person;
 - by posting it to the person's place of residence or place of business last known to the person giving the notice; 25
 - in the case of a body corporate, by leaving it at the registered office or principal place of business of the body with a person apparently employed there or by posting it to the body at the registered office or principal place of business of the body.
- Act binds the Crown** 30
49. This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- Regulations**
50. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or 35

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permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Repeals

51. The following are repealed:

- 5 • Impounding Act 1898;
- sections 35B, 35C and 36 of the Forestry Act 1916;
- Part 18 of the Local Government Act 1919;
- sections 267B, 267C, 300 and 510C of the Local Government Act 1919;
- 10 • sections 13UA and 13UB of the Maritime Services Act 1935;
- sections 161, 161A, 161B and 162 of the National Parks and Wildlife Act 1974;
- sections 163–165 of the Crown Lands Act 1989;
- 15 • Ordinance 30A, clause 10 of Ordinance 35A, and Ordinance 49, under the Local Government Act 1919.

Amendment of Crown Lands Act 1989 No. 6

52. The Crown Lands Act 1989 is amended by omitting section 166 (1) and by inserting instead the following subsection:

- 20 (1) For the purposes of the Impounding Act 1992, the Minister is the occupier of vacant public land.

Savings and transitional provisions

53. Schedule 1 has effect.

Notes in the text

- 25 54. Notes do not form part of this Act. They are provided to assist understanding.
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*Impounding 1992***SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 53)

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act. 5
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate: 10
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the date of publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 15

Definitions

2. In this Schedule:
- “commencement day” means the day section 51 (Repeals) commences;
- “impound” includes seize, remove, tow away and take possession or custody of; 20
- “repealed law” means a law repealed by section 51.

Continuation of public pounds established under repealed laws

3. Any public pound in existence under a repealed law immediately before the commencement day is taken to be a public pound established under this Act by the impounding authority responsible for it. 25

Items impounded under a repealed law

4. (1) A repealed law continues to apply to and in respect of the impounding of an item that occurred before the commencement day, as if this Act had not been enacted.
- (2) In particular:
- (a) the item impounded is to be released from custody or sold or otherwise disposed of in accordance with the repealed law; and 30
- (b) any proceeds of sale of the item (whether the sale was before, on or after the commencement day) are to be dealt with in accordance with the repealed law; and
- (c) a complaint to a justice in respect of the impounding may be made and dealt with in accordance with the repealed law. 35

*Impounding 1992*SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Records kept under repealed law**

- 5 5. Records kept under a repealed law in respect of a public pound must, despite the repeal of the law, be kept by the impounding authority responsible for the pound for at least 6 years after the date of the last entry in the record. Such a record is to be considered to have been made under this Act.

References to repealed laws

- 10 6. A reference in another Act, in an instrument under an Act or in any instrument of any other kind to a repealed law or a provision of a repealed law is to be read as a reference to this Act or to the corresponding provisions (if any) of this Act, as appropriate.

DICTIONARY OF EXPRESSIONS USED IN THE ACT

(Sec. 4)

animal means any of the following:

- 15 • cattle, horses, donkeys, mules, asses, camels, dromedaries, sheep, goats, pigs and deer;
- any dog that is in a national park, historic site, nature reserve, state game reserve, karst conservation area or Aboriginal area (as defined in the National Parks and Wildlife Act 1974);
- 20 • an animal (including a bird, reptile or fish) of any species declared by the Governor by order published in the Gazette to be a species of animal that can be impounded under this Act.

area of operations of an impounding officer means:

- 25 • in the case of an impounding officer appointed by a council, any place in the area of the council and any place in the area of another council in which that other council has authorised it to impound under this Act, but does not include the area of operations of an impounding officer appointed by the Director of National Parks and Wildlife;
- 30 • in the case of an impounding officer appointed by the Forestry Commission, a State forest, timber reserve or flora reserve (as defined in the Forestry Act 1916) and any other land owned by or under the control of the commission;
- 35 • in the case of an impounding officer appointed by the Maritime Services Board, any area owned by or under the control of the Board;

*Impounding 1992*DICTIONARY OF EXPRESSIONS USED IN THE ACT—*continued*

- in the case of an impounding officer appointed by the Director of National Parks and Wildlife, a national park, historic site, state recreation area, nature reserve, state game reserve or Aboriginal area (as defined in the National Parks and Wildlife Act 1974); 5
- in the case of an impounding officer appointed by the Minister administering the Crown Lands Act 1989, vacant public land (as defined in section 153 of that Act);
- in the case of an impounding officer appointed by the State Rail Authority, land owned by or under the control of the Authority; 10
- in the case of an impounding officer appointed by the Roads and Traffic Authority, any road, land along or near the line of a road, land vested in the Authority, and a bridge, ferry or tunnel vested in or subject to the administration or control of the Authority;
- in the case of an impounding officer appointed by the Water Board, any special area (as defined in the Water Board Act 1987); 15
- in the case of an impounding officer appointed by the Western Lands Commissioner, any land in the Western Division of the State (as specified in section 4 of the Crown Lands Act 1989);
- in the case of an impounding officer appointed by a public authority declared by an order of the Governor to be an impounding authority, a place or class of places for which it is declared by the order to be an impounding authority. 20

NOTE

Under section 5 a police officer is regarded as having been appointed an impounding officer by each impounding authority. This means that the area of operations of a police officer is the combined areas of operations of all appointed impounding officers.

- article** means anything capable of ownership except a living creature. 30
- council** means a council under the Local Government Act 1992.
- exercise** of a power includes, where the power is a duty, the performance of the duty.
- impounded** has the meaning given by section 8.

*Impounding 1992*DICTIONARY OF EXPRESSIONS USED IN THE ACT—*continued*

impounding authority means each of the following authorities:

- a council;
 - 5 • the Forestry Commission;
 - the Maritime Services Board;
 - the Director of National Parks and Wildlife;
 - the Minister administering the Crown Lands Act 1989;
 - the State Rail Authority;
 - 10 • the Roads and Traffic Authority;
 - the Water Board;
 - the Western Lands Commissioner;
 - a public authority declared by the Governor by order published in the Gazette to be an impounding authority for a particular place or class of places.
- 15 **impounding officer** means a person appointed by an impounding authority to exercise the powers of an impounding officer.

NOTE

20 Under section 5 all police officers have the powers of impounding officers. Police officers are not expected to exercise a primary role under this Act. Primary responsibility under this Act rests with the appropriate impounding authority.

item means an animal or article.

motor vehicle means:

- 25 (a) a motor vehicle within the meaning of the Traffic Act 1909 (including a caravan or trailer); and
- (b) the remains of such a vehicle; and
- (c) any accessories or parts belonging to such a vehicle; and
- (d) any article that is secured to or within such a vehicle at the time it is impounded.

30 **occupier** of land includes:

- (a) a person who is managing the land on behalf of its owner or occupier; and
- (b) a person who is responsible for caring for or controlling the land.

*Impounding 1992*DICTIONARY OF EXPRESSIONS USED IN THE ACT—*continued*

owner of an animal or article means any person who alone or jointly is entitled, whether at law or in equity, to possession of the animal or article.

place includes premises, an area of water and a means of transport. 5

power includes authority, duty and function.

private land means:

- all land, except Crown land (as defined in the Crown Lands Act 1989) and land dedicated or reserved for a public purpose; and
- Crown land (as defined in that Act) that is the subject of a holding (as defined in that Act). 10

NOTE

Land held under a lease from the Crown is considered to be private land.

public place means a place (other than a place declared by the regulations not to be a public place) that is open to or frequented by the public: 15

(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, 20

and, in particular, includes:

(c) any place dedicated or reserved for a public purpose; and

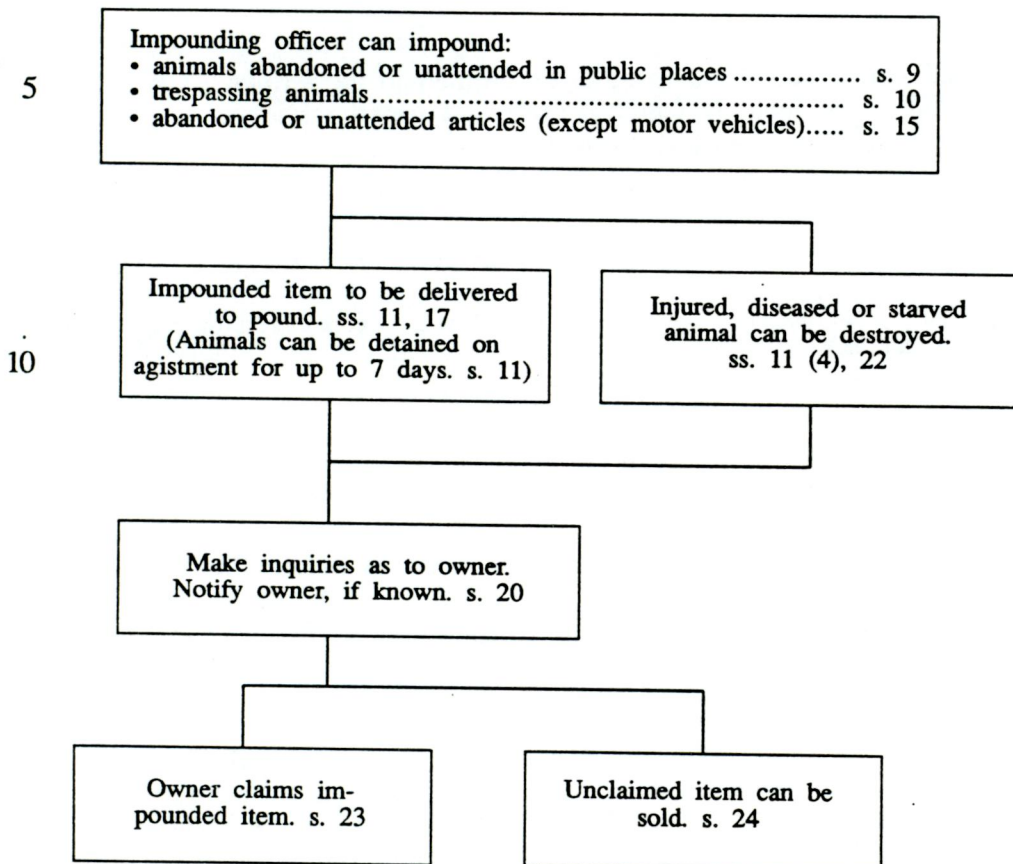
(d) a place which, although privately owned, is a place to which the public are permitted to have access, for the purposes of business or leisure or to use as a thoroughfare. 25

public pound means a pound established as a public pound under this Act and includes a pound established and operated by a rural lands protection board.

record includes a book, document, writing and any other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means. 30

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IMPOUNDING OF ANIMALS AND ARTICLES (EXCEPT MOTOR VEHICLES)

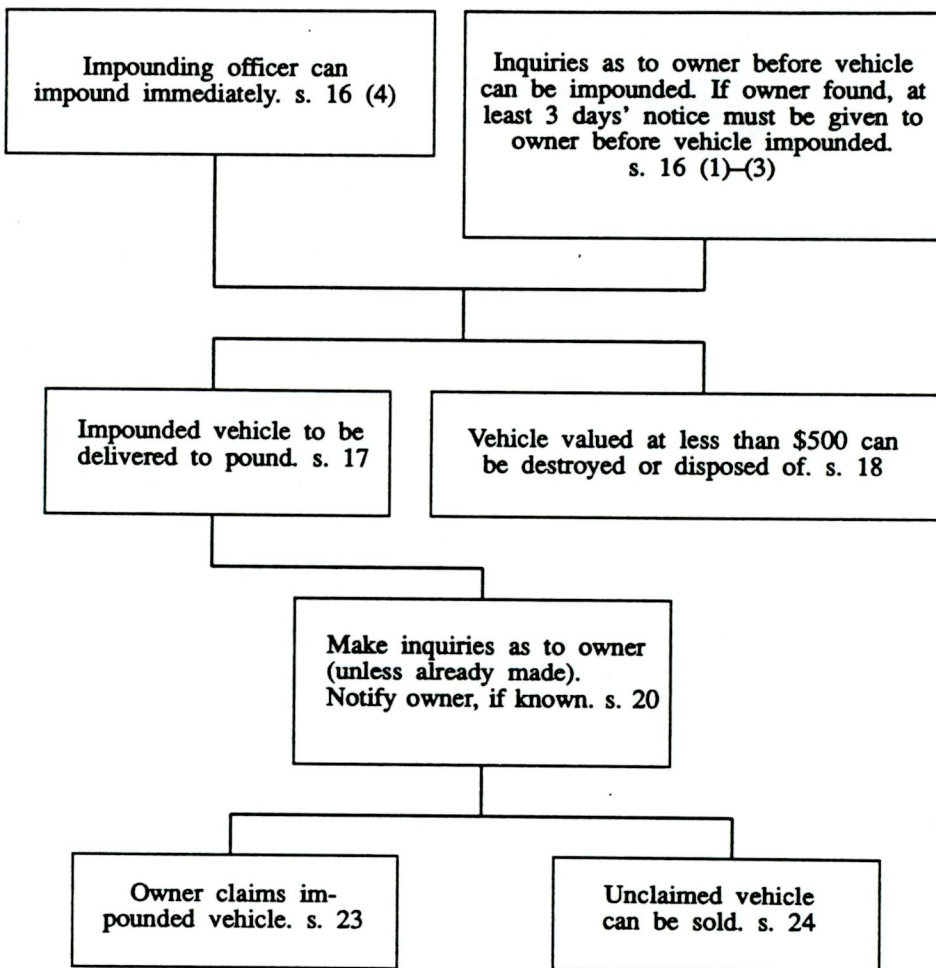


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IMPOUNDING OF MOTOR VEHICLES

VEHICLE AN OBSTRUCTION

VEHICLE NOT AN OBSTRUCTION



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