



27 March 2020

Office of Local Government
Impounding Act Review
Locked Bag 3015
Nowra NSW 2541

Attn: Wendy Forrester
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Dear Sir or Madam

Re: Submission to the Review of the Impounding Act 1993

Thank you for the opportunity to make a submission and provide feedback on the Review of the Impounding Act 1993.

In particular, we want to note our thanks for agreeing to our request for an extension to 27 March 2020, for SSROC to make this submission.

The Southern Sydney Regional Organisation of Councils Inc (SSROC) is an association of eleven local councils in the area south of Sydney Harbour, covering central, inner west, eastern and southern Sydney. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member councils cover a population of about 1.7 million, one third of the population of Sydney.

SSROC welcomes the opportunity to provide comment on the Review of the Impounding Act to help identify ways to more effectively balance the needs of residents and road users with impounding officers, local councils and other stakeholders. SSROC seeks to advocate for the needs of our member councils and bring a regional perspective to the issues raised.

General Comments

SSROC welcomes the opportunity to make a constructive contribution to the Review of the Impounding Act and has the following comments and feedback.

Strategic Directions

Principles and outcome focussed legislative reform

- In line with many other Government policy and legislative reforms, SSROC recommends moving from a highly prescriptive approach to one that is much more outcome focused.
- Accordingly, SSROC recommends that the Act itself set out a principles-based approach, with procedural aspects moved to Impounding Regulation. This would provide additional flexibility and help regulatory responses to keep pace with our rapidly changing operating environment.
- The process and rigour that needs to be applied to legislative change means that innovation and emerging technologies will often be established in an area before legislation can be established or amended. An outcomes and principles focussed legislation with accompanying regulation should improve regulatory agility.
- The Act needs to acknowledge that there will be some points of difference in every Local Government Area and needs to empower the custodians of the public spaces to implement local solutions in keeping with community expectations and changing needs, but all within a principle focused and outcomes-based framework.
- An agile and adaptive framework that can accommodate new and emerging technologies, may need to consider enabling provisions for empowering Local Councils and groups of Councils to adopt time-limited regulatory responses in conjunction with the trialling of new services. This could help Councils to better respond to local and regional contexts and needs rather than being limited by a 'one size fits all' approach through state-wide legislation.
- Greater flexibility for Councils in conjunction with an outcomes-based approach would assist impounding officers to deal with cases of individual hardship and extenuating circumstances. For example, Councils may need greater flexibility and discretion in relation to the impoundment of animals within prescribed timeframes under the legislation depending on the local circumstances and the availability of pounds and other services.

Access to real time data

- SSROC recommends that Councils have ready access to real time data related to key activities related to the Impounding Act. Access to real-time data and information on (preferably state-wide) registers would help to reduce the time and effort required by council impounding officers in establishing ownership of items and subsequent reporting.
- Councils have suggested specific consideration be given to the establishment of a state-wide register for abandoned vehicles accessible to all impounding authorities. Councils would also seek access to GIS locational data for items such as share bikes, to help streamline reporting and the follow up of items left unattended for extended periods.

- Anecdotally the recent increases in fine amounts for abandoned vehicles has done little to modify the behaviour. Research needs to be undertaken to determine the rate of recidivism and general awareness of the Act, as they may provide options for increasing voluntary compliance.

Integration with NSW policy and other legislation

- Council impounding officers have powers and responsibilities under the Impounding Act that intersect with their powers or responsibilities under the Local Government Act 1993, Companion Animals Act 1998, the Biosecurity Act 2015 and the Protection of the Environment Operations (POEO) Act 1997.
- While councils are not bound by the *Protocol for Homeless People in Public Places*, many nonetheless take it into consideration when implementing the Impounding Act. The *Protocol* was introduced to help ensure that homeless people are treated respectfully and appropriately and are not discriminated against on the basis of their situation. The *Protocol* is currently the subject of a review by the Legislative Assembly Committee on Community Services.
- Councils would welcome additional guidance on how to manage excess belongings in public space. This could be in the form of a definition of a reasonable quantum of belongings (i.e. City of Sydney defines belongings as two suitcases and a roll of bedding).
- Consideration could be given to amending the Companion Animals Act to include standalone controls for animal shelters/pounds that service companion animals exclusively.
- SSROC recommends that the Impounding Act be revised to reduce duplication with existing legislation. In cases where legislation or policies continue to intersect or overlap by necessity, Councils would welcome guidance on how the legislation can be cohesively implemented.

Who can impound and what can be impounded

Part 5 of the Act empowers impounding officers to impound certain animals and articles, including motor vehicles and boat trailers. Impounding officers are appointed by an impounding authority (usually Council or a NSW agency listed in the Act) but can also include NSW Police officers. Items that are abandoned or unattended can be impounded, however these terms are not adequately defined in the Act.

Abandoned Vehicles

Councils have advised that the NSW Police generally treat unregistered vehicles as abandoned, which they view as the regulatory domain of council's impounding officer. For example, approximately 1,000 vehicles are reported as abandoned each year in Randwick Council, with 70% of these reports coming from NSW Police. Sutherland Shire Council

receives approximately 1,500 complaints per annum concerning abandoned vehicles. 95% are found to be unregistered.

This is clearly a significant workload for Councils, and includes requesting owner details from the Police, contacting the owner and issuing a notice for the proposed impounding.

Key Issues

SSROC recommends that s16 of the Act be amended to allow for more efficient and timely removal of motor vehicles found parked on a road with expired or cancelled registration status. This amendment would provide additional powers to be conferred to authorised officers to allow for impounding to occur following a notice being affixed to the motor vehicle.

There is no clear definition of an abandoned vehicle under the current Impounding Act. Officers must rely on a number of contributing factors including the length of time a vehicle has been parked on the roadway, the condition of the vehicle, any damage to the vehicle, is the vehicle locked and secured. These factors must all be considered when considering if the vehicle has been 'abandoned'.

The Road Transport Act 1993 does not permit the use of an unregistered registerable vehicle on a public road which includes the standing / parking of the vehicle 15 days after the registration expired. Consideration should be given to include this factor in the definition of an abandoned vehicle or alternatively amending the Impounding Act to include unregistered vehicles standing on a road or road related area may be impounded after 15 days it ceased to be registered. (See also the section about improving definitions generally.)

SSROC recommends that where the vehicle registration is known, the Act require the NSW Police to provide the last registered owner details when referring an abandoned or unattended vehicle to Council. This will avoid the need for Councils to separately request those details from the Police as per section 43 of the Act.

However, not all unregistered vehicles are abandoned or unattended. In some cases, the vehicle is being lived in and therefore not abandoned (and possibly not unattended), highlighting other issues such as homelessness that councils need to consider when deciding what action to take under the Impounding Act.

An unregistered vehicle may not have a licence plate by which council impounding officers can determine the owner. Registration labels were dispensed with in 2013, and the operator of the vehicle may not be the registered owner, further complicating things. The Impounding Act does not provide any powers of entry for a police or impounding officer to use to search for the vehicle identification number (VIN). Without the VIN or other identifier, it can be very difficult to determine who the owner is. SSROC recommends the Act include a power of entry that can be used to establish ownership of an item, be it vehicle or trailer or other.

In NSW there are no requirements for those who sell an unregistered vehicle to notify authorities of the sale. Even if council can establish the VIN and last registered owner,

council may still need to contact two or three subsequent owners before they can identify the current owner. Some councils have suggested that a state-wide register for abandoned vehicles would be desirable, which Police could also access.

The current offence for abandoning a motor vehicle in a public place is not an owner onus offence which makes it very difficult to identify who was responsible for abandoning the vehicle. There is a requirement upon the owner of a vehicle to submit a notice of disposal when selling or changing ownership of a vehicle and penalties apply for failing to do so. Potentially the offence of abandoning a motor vehicle could be amended to be an owner onus offence whereby they as the vehicle owner would have to nominate the person now responsible or to whom they sold or otherwise disposed of the vehicle.

Some Councils have experienced on-going issues with abandoned vehicles in both public and private places where the Council is not authorised to impound these vehicles e.g. where there are other impounding authorities such as for national parks. This has on occasion resulted in long delays in the removal of these vehicles; increased vandalism, risk to public safety and fire risk to public assets if these vehicles are torched. SSROC recommends that the Act or regulations include options to assist councils dealing with illegally dumped cars in areas where currently council officers are not authorised to impound.

There are currently limited powers under section 68 of the Road Transport Act 2013 that allow Council Authorised Officers to issue penalty notices for unregistered trailers parked on public roads but not all vehicles. If this power was expanded to include unregistered Class A vehicles it would be an incentive for owners to remove them. This would free up further parking and reduce demands on Police resources in dealing with unregistered vehicles parked on roadways.

Inner West Council has experienced the issue of a registered trailer being attached to an unregistered car. It would be useful in such circumstances to clarify how the two items are to be treated, such as together as a single 'motor vehicle' with the car taking precedence. Alternatively treating the car and the trailer separately for making reasonable enquiries as to ownership and notification requirements, particularly in the event that the items have different owners. Also, clarification on whether, and in what circumstances, an impounding authority may decouple such items.

Vehicles causing obstructions and access issues

One of the common complaints Council officers respond to is vehicles causing obstructions and access issues on or over driveways. Neither the Impounding Act 1993 nor the Road Transport Act 2013 provides for a vehicle to be moved to eliminate the obstruction. For example, if someone wanted to exit or enter their driveway and a vehicle has been left obstructing access for at times days at a time.

Neither the Impounding Act nor the Road Transport Act adequately covers this specific issue and focus on obstructions to pedestrian and vehicular traffic, or the likelihood of causing undue traffic congestion, or potential to result in public danger. If a vehicle has been moved to prevent an obstruction or access issue the registered owner of the vehicle

should be liable for the cost incurred to do so. Alternatively the definition of traffic should be broadened to include access for residents etc.

Under section 16(5) of the NSW Impounding Act, impounding officers are able to have a motor vehicle towed and impounded “if the vehicle is in a public place and the impounding officer is satisfied on reasonable grounds that its immediate removal is justified because it is causing an obstruction to traffic (vehicular or pedestrian) or is likely to be a danger to the public”. The general interpretation of this section is that councils are not able to use this provision for immediate towing of vehicles parked across driveways. In extreme circumstances the Police could be called and might be able to remove the vehicle using their emergency powers, but there is a general reluctance to use these powers. However, if a car owner cannot be contacted, as in the above example, then nothing can be done until the driver decides to remove their vehicle.

SSROC recommends council rangers be given the authority to have vehicles impounded where they are illegally parked across driveways preventing access. Such legislation could include safeguards such as a requirement that the removal be initiated by an owner or resident of the affected property.

Shared devices including shared bikes and emerging pod-less car sharing business models

It is noted that the NSW Government introduced a shared devices framework into the Act in 2018 to mitigate the significant detrimental impacts that misuse of these devices potentially have on the safety and amenity of public spaces. This framework should also extend to other forms of shared transport or devices such as emerging pod-less car-sharing business models.

While the Act should still include necessary rule-based processes, it should also aim to promote the safety and amenity of public spaces through principle-based outcomes.

Impounding of animals

Sections 9 and 10 of the Act provide for animals that are unattended in public places or animals that are trespassing to be impounded. Where a council impounding officer impounds an animal, the Act requires the animals to be taken to a pound as soon as possible or detained for no longer than 7 days (on council land or in agistment) before taking it to the nearest pound. This has posed councils with a number of challenges.

The nearest pound may be many kilometres away, with the costs of transport outweighing the cost of the animal, or costs beyond what may be recoverable from the owners (if they can be identified). The pound or holding area may also be full or not suitable for holding that type of animal.

An issue impacting on many LGAs is the high number of unowned and straying cats. Amendments that broaden impounding powers will be at significant expense to the impounding/holding authority.

SSROC recommends that the Act should provide alternative measures for the safe-keeping of impounded animals.

Impounding of shopping trolleys

Abandoned or dumped trolleys have been problematic for councils for years and are a major clean-up problem, especially in built-up suburbs. They can litter streets, be left in parks or dumped in rivers and creeks negatively affecting amenity and the environment.

SSROC and its member councils have long been calling for better regulatory measures to require supermarkets to take responsibility for shopping trolleys, which have been a source of frustration for councils. Councils can currently fine customers caught abandoning a trolley, however this is impractical and difficult to do. Section 15 of the Act provides for Councils to impound abandoned shopping trolleys and charge impounding fees to the trolley provider. However, the cost of impounding the trolley can quickly outweigh the cost of replacing it, giving the trolley owner little reason to pay for its release from Council or prevent it from being abandoned in the first place.

SSROC believes that the legislation needs to adopt a more preventative approach to illegally dumped shopping trolleys. In almost all cases the owner of the shopping trolley has their brand clearly identified on the trolley. The Act should enable impounding officers to issue PINs to the owners of shopping trolleys found on public land. Such changes would incentivise shopping trolley owners to introduce proven measures and management systems to prevent shopping trolleys leaving their stores. This has been successfully achieved by chains such as Aldi, which use a coin deposit trolley mechanism.

It would also be useful to clarify the issue of ownership of shopping trolleys, as it should be sufficient for an impounding authority to notify the trading entity whose brand appears on the trolley. Sometimes a number of stores of the same brand may be in close proximity. Inner West Council has experienced the situation where an impounding notice was contested because it was not sent to the actual store that the trolley was from.

It has also been argued that Council should be notifying the collection contractor engaged by the store even though this is commercial information that would not be known to Council. The responsibility for shopping trolleys should be described as a non-delegable duty of the shopping entity.

SSROC recommends the Act be revised to specifically identify shopping trolleys within the Act, similar to motor vehicles, with special procedures that apply.

Consideration should be given to the following provisions in the Act, special procedures and regulations:

- recognising shopping trolleys as the property of individual supermarkets so that the trolley owner (rather than user) can be regulated and issued with fines
- requiring the owner of a shopping trolley to be clearly displayed on trolley
- enabling shopping trolleys known to be in a public place in excess of a set time period (e.g. 24 hours) to be impounded

- establishing powers for Councils to direct the collection of trolleys within 10 business days of impounding and the payment of associated administration or holding fees
- establishing powers to issue PINs to the owners of shopping trolleys found on public land
- establishing an escalating series of PINs for known entities not claiming trolleys. This would encourage the retrieval of trolleys, and reduce the likelihood of Council having to commence debt recovery procedures and/or legal proceedings
- applying similar standards and requirements to shopping trolleys as has been legislated for shared bicycles
- providing the ability to apply conditions of consent to identify where shopping trolleys are to be used by customers, and the controls to be in place to prevent trolleys from leaving the store or adjacent parking area, such as mandatory coin deposit system or perimeter wheel locking
- clarifying that impounding costs are accrued up to the time of collection or disposal by the impounding authority (whichever occurs first)
- Removing requirements for public sale or tender on shopping trolleys, as they are a unique item that the public has no interest in purchasing.

Impounding of boat trailers and other items

Councils often receive complaints from residents concerning long-term parking of boat trailers in streets with limited car parking availability. Section 15A of the Act provides for impounding officers to impound a boat trailer if on reasonable grounds they believe the trailer has not been moved for at least 28 days.

The process of dealing with a report of an unattended boat trailer is lengthy. Section 16(4) provides that for motor vehicles, the impounding officer must give notice to the owner and must indicate that the vehicle may be impounded unless it is removed within a specified period (not less than 3 days). However, for boat trailers the Act requires that the period allowed to move the trailer must specify a period not less than 15 days.

Councils believe that the timeframe allowed for boat trailers is too long. It can result in a boat trailer being parked in the same location for at least 6 weeks: it can be parked for 28 days before a notice of intention to impound, which in turn provides a further 15 days, totalling 43 days. For Council this process will entail: initial inspection; inspection after 28 days; and inspection after notice of intention to impound. Additional time may be required to organise and arrange removal, because the logistics involve more specialised equipment than a standard tow. This can add to the time and increase the cost to Councils.

SSROC recommends that the legislation be changed so that a fine can be issued to the boat trailer owner after 28 days. An alternative option is to make the notice period for moving boat trailers consistent to that for motor vehicles (i.e. the minimum 3 days after the initial 28 day period).

Section 15A (3) provides that a boat trailer that is on a road is not 'moved' for the purposes of this section if it is only moved along the same road and without passing an intersection with another road. Some people take advantage of this by moving the trailer past the next intersection, turn it around and park it on the other side of the road opposite where it was. While this currently meets the letter of the law, the desired outcome has not been achieved with the trailer still taking up car spaces at the same location. SSROC recommends that s15A (3) be revised to be clear that parking the trailer in the same section of road is unacceptable.

The definition of boat trailer includes any item on the boat trailer at the time it is impounded. This has raised several questions, including the appropriate investigation and notification requirements such as:

- Does ownership of an attached boat need to be separately investigated and how far does this responsibility extend? e.g. In tracking down the HIN, do officers have authority or an obligation to access a boat or remove any coverings to look for ownership information?
- Do the owner of the trailer and the boat need to be separately notified?
- Does s.24(2) apply to only the boat trailer itself or do any items affixed to the boat trailer also need to be considered. What if these items are covered or enclosed so cannot be viewed?
- If the boat trailer and any items on it (such as a boat) have different owners, how are the net proceeds of sale to be distributed?

SSROC suggests that the legislation s.45(1) is extended to specifically cover any item in or affixed to a validly impounded item at the time it is impounded.

Council impounding officers have advised that a boat trailer cannot be impounded if any part of it is on private property. However, there have been circumstances where the majority of the trailer is on private property but a portion (e.g. towball) is on public land. While it may not cause an immediate danger, there is potential for another vehicle or pedestrian to collide with the part of the trailer on public land (which is a liability for council). SSROC recommends that impounding officers be authorised to move or impound a boat trailer where all or part of the trailer is on public land as there are safety concerns.

Other items that can create unnecessary and significant extra work for councils is the management of small watercraft such as kayaks and dinghies. Along waterways where larger yachts or motorboats are, individuals leave small watercraft to help them get to moored boats or otherwise enjoy the waterway. Particularly around Sydney Harbour and its rivers, the already narrow and busy shoreline can be cluttered with these craft. Council officers find it difficult to know whether an item is abandoned or not, or who to contact to check, because often the craft do not have any identifying details.

SSROC suggests that the legislation include provisions to assist with the identification and management of small watercraft in public spaces. A suggestion would be to require the

craft to have a visible contact name and number (or other registration details, such as the associated car or boat registration that can be cross-referenced), otherwise it can be deemed to be abandoned.

Box trailers and vehicles used for advertising

There are an increasing number of box trailers parked on roadways often stored with equipment and sometimes waste. Effectively these trailers are being used as a storage facility on public roads occupying parking spaces. Councils have inadequate powers to direct them to be removed from public roads and cease to be used as storage facilities or any other commercial or non-commercial purpose. Any amendments to address this issue, should seek to avoid the problems identified with the current legislation for boat trailers.

Whilst the use of box trailers for the purpose of advertising is now covered under clause 27A(1) of the State Environmental Planning Policy No 64 – Advertising and Signage, it does not cover vehicles being used for the purpose of advertising as clause 27A(1) of the State Environmental Planning Policy only makes specific reference to ‘trailers’. This could be amended to include any vehicle.

Offences and penalties

It is critical that offences and penalties in the legislation provide a deterrent to undesirable behaviour. However, penalties that are too high can have a perverse outcome when the cost of purchasing a replacement is cheaper than the fees for releasing an impounded item or requires less effort than getting the item released.

Some Councils consider that current penalties do not provide sufficient incentive for owners to take responsibility for items, and that higher penalties should exist for corporations.

Councils have also highlighted that the only offences for which a PIN can be issued for are offences under s32(1) and s32(2) i.e. abandoning an article in a public place, or causing or permitting an animal to be unattended in a public place. All other offences must be dealt with via the courts, which is a cumbersome and resource-intensive process for councils and individuals.

SSROC recommends that lower-order offences be changed to penalty notice offences, to streamline and simplify regulatory action, with provision for higher penalties for corporations in repeat circumstances.

Other matters

Advertising of impounded items

Section 24 of the Act requires an impounded item (other than a motor vehicle) to be offered for sale if it is not claimed within the deadline for release. This is to occur by public

auction or public tender. The Act currently limits other, newer approaches from being used e.g. social media.

SSROC recommends that section 24 be broadened to allow other mechanisms for the fair and transparent sale of impounded items.

Definitions

As highlighted previously, a number of the definitions contained within the Impounding Act, as well as the absence of clear definitions for some of its key terms, can be problematic for those interpreting the Act and require further consideration.

The Act currently defines '*unattended*' in relation to an animal only and does not define '*abandoned*'. Both these terms need to be defined in the Act to assist impounding officers implement the Act effectively.

The current definition of '*animal*' is limiting. Councils are coming across a wide range of species that require impounding, including alpacas and llamas, that are not covered by the definition. There are also other species or new mixed species that will need to be covered by the definition.

It is noted that there are two definitions of 'animal' – one in the Act dictionary, and another at s41 of the Act. While they are for different purposes, having two definitions for the same term creates confusion and uncertainty.

Other terms which require definition include:

- '*reasonable grounds*' – Section 15 of the Act states "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." This has led to contention with individuals arguing with impounding officers about what is reasonable from their perspective.
- '*move*' – see comments under section on boat trailers for rationale.

SSROC recommends that:

- Definitions be added/revised for the terms 'unattended', 'abandoned', 'animal', 'reasonable grounds' and 'move'.
- The definitions be moved to the Regulation to enable them to be updated more readily.

Conclusion

SSROC member councils cover a large part of Greater Sydney and have a direct interest in supporting and advocating for changes to improve the implementation and operations of the Impounding Act. We welcome the consultation and recommend that the issues raised, and recommendations proposed in this submission be given further consideration.

In preparing this submission SSROC Secretariat is grateful for the assistance provided by LGNSW and is keen to see reforms and legislative changes that work well for local councils across NSW.



In order to make this submission within the timeframe for receiving comments, it has not been possible for it to be reviewed by councils or to be endorsed by the SSROC. I will contact you further if any issues arise as it is reviewed. If you have any queries please do not hesitate to contact me or Mark Nutting, SSROC's Strategic Planning Manager on 8396 3800.

Again, thank you for the opportunity to comment on the Review of the Impounding Act and we are keen to participate in any further stages of a reform process, in particular consultations about any changes that will particularly impact on local councils.

Yours faithfully

A handwritten signature in black ink that reads 'H Sloan'.

Helen Sloan
Acting General Manager
Southern Sydney Regional Organisation of Council