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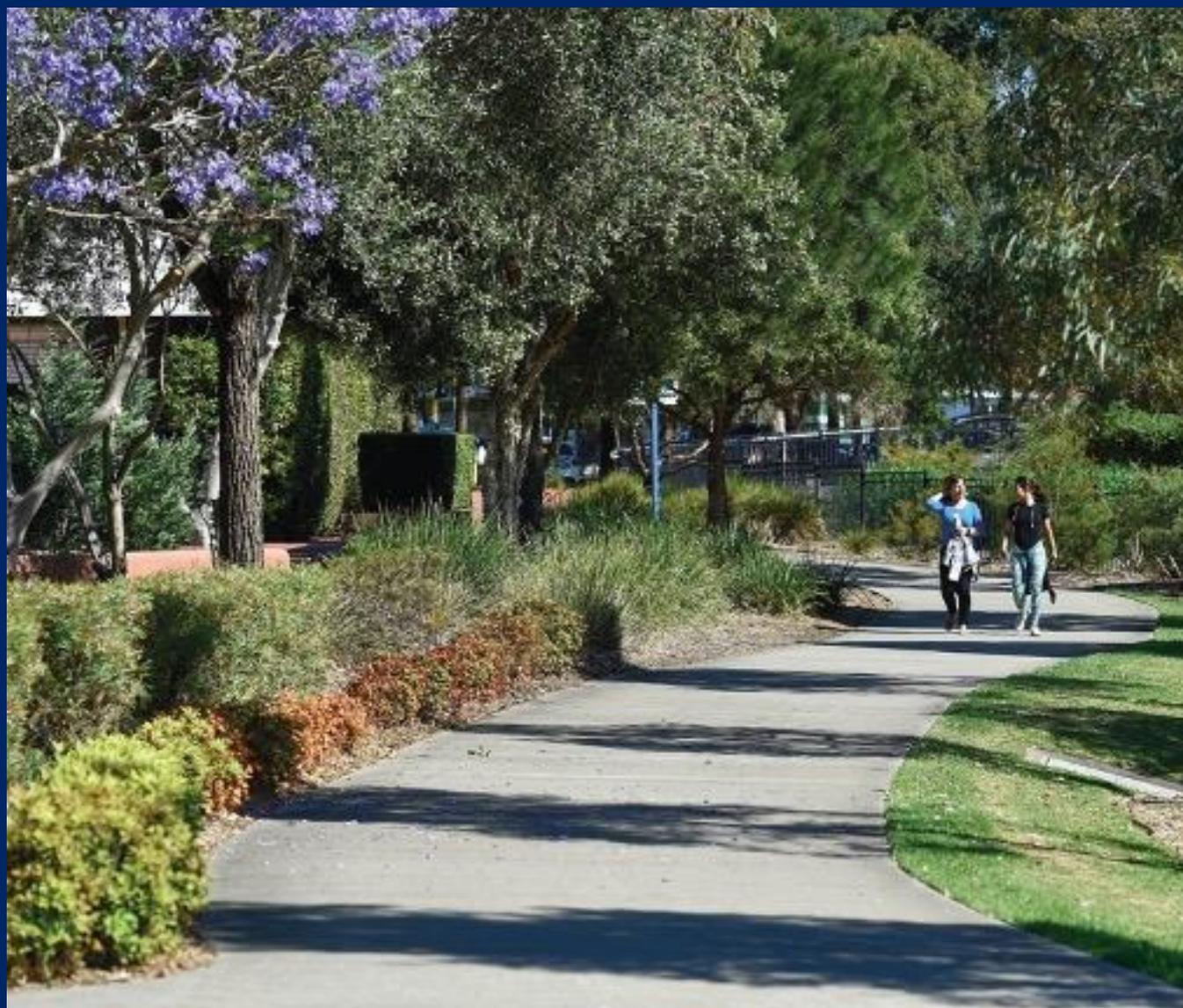


# Public Spaces (Unattended Property) Guidelines

For councils and other authorities

November 2023

2<sup>nd</sup> edition





# Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Published by NSW Department of Planning and Environment

[dpe.nsw.gov.au](https://dpe.nsw.gov.au)

Public Spaces (Unattended Property) Guidelines

First published: 1 November 2022

ISBN/ISSN: 978-1-922001-98-6

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# FOREWORD

The NSW Government is committed to balancing convenience and amenity to keep our public spaces safe, accessible and enjoyable for our community, now and into the future.

The way we use and enjoy our public places has undergone significant changes over time due to various factors such as an ageing population, social change, cultural understanding and advancements in technology. With these changes, instances of unattended property have become more prevalent on public footpaths, roads, parks and reserves, leading to concerns regarding safety and overall ambience. As people acquire more possessions and technology continues to advance these issues are becoming more common.

In response to these challenges, the NSW Government, after extensive consultation with key stakeholders, introduced new legislation, namely the *Public Spaces (Unattended Property) Act 2021* (PSUP Act), which came into effect 1 November 2022.

The PSUP Act replaces and supersedes the outdated *Impounding Act 1993*, offering stronger incentives for people to take responsibility for their property in public areas, including stock animals, vehicles, shopping trolleys, bikes and kayaks. The legislation imposes a requirement that responsible parties must remove unattended property within reasonable timeframes to avoid enforcement actions, including significant penalties.

The PSUP Act grants authorities enhanced regulatory and enforcement powers to address unattended property in public spaces and enables them to recover associated regulatory costs. Furthermore, it facilitates the temporary storage or care for unattended property and for the welfare of animals left unattended in public spaces.

The PSUP Act is supported by the *Public Spaces (Unattended Property) Regulation 2022* (PSUP Regulation) and a Code of Practice for operators of 'sharing service' items, such as share bikes and shopping trolleys, have been established. The laws acknowledge that operators of sharing service items must respond faster when their items are left in inappropriate locations or for extended periods.

By adhering to these guidelines and working collaboratively, we can ensure the responsible use of public spaces, creating a harmonious environment that benefits our entire community.

Brett Whitworth

Deputy Secretary, Local Government



# 1 INTRODUCTION



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## 1.1 How to use these Guidelines

These Guidelines support authorities to interpret and apply the *Public Spaces (Unattended Property) Act 2021* (PSUP Act or PSUP laws) to manage unattended property in public places while working cooperatively with people and other authorities.

The Guidelines should be read together with the PSUP Act, PSUP Regulation and other policies. Where these Guidelines or other guidance may be inconsistent with the PSUP Act, the PSUP Act prevails.

The Guidelines including attachments, have been issued under section 23A of the Local Government Act which confers on the “Departmental Chief Executive” of the Office of Local Government the power to prepare, adopt or vary guidelines relating to the exercise by a council of any of its functions. Councils are required to consider these Guidelines when implementing the requirements prescribed under the Act and the Regulation.

Other authorities can also benefit from following these guidelines to provide the best possible response when they are dealing with unattended property.

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## 1.2 Audience and scope

This guideline document provides information to assist councils and other authorities in implementing the provisions outlined in the PSUP Act and Regulation (PSUP framework). For a full list of authorities, please see Part 3 of these Guidelines.

Please note that these Guidelines do not offer legal advice, encompass all requirements of, or serve as a substitute for the PSUP Act. Authorised officers should consult their respective authority’s advice or seek independent legal advice when necessary. The Office of Local Government (OLG) is unable to provide authorised officers with legal or other advice pertaining to specific incidents or circumstances.

Operators of sharing services and responsible persons (as defined by the PSUP Act) are also encouraged to familiarise themselves with the information in this Guideline.

As the OLG continuously monitors the effectiveness of the PSUP laws, feedback is appreciated to determine the need for future changes or guidance. Contact details can be found at the end of the Guidelines.

## 2 WORKING WITH THE LEGISLATION



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## 2.1 Introduction

The PSUP framework empowers authorities and their authorised officers to effectively handle unattended property in public spaces. The PSUP laws repealed and replaced the *Impounding Act 1993*.

The PSUP Act puts the responsibility on owners and other responsible persons to be accountable for their items or animals in public spaces. Failure to do so may result in strong regulatory measures being taken.

Under the PSUP framework, authorised officers of councils and other public land managers are authorised to take possession of unattended items such as shopping trolleys, vehicles, animals, and other items left unattended in public places and on certain other land. The guidelines also give direction on how property taken into possession can be reclaimed, sold or disposed of.

To promptly address emerging issues regarding unattended property in public places, the PSUP Act focuses on achieving specific outcomes, while the PSUP Regulation provides detailed instructions.

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## 2.2 Regulatory framework

### 2.2.1 Preliminary considerations

#### **Guiding principles underpinning the PSUP laws**

The PSUP laws empower councils and authorities to achieve the objectives of the PSUP Act. This includes encouraging prompt and responsible action by property owners to mitigate risks caused by unattended property in public spaces and ensuring the community can enjoy these spaces.

Under the PSUP laws, authorities can:

- Deal with unattended property in public spaces.
- Take regulatory and enforcement action for offenses.
- Temporarily store or care for unattended property.
- Recover costs from responsible individuals.
- Ensure the welfare of animals left unattended.
- Guiding Principles for Regulatory Actions

Authorities should proactively and collaboratively manage unattended property in public spaces. Regulatory actions should be responsive, transparent, ethical, and based on clear policies. They should be proportional, evidence-based, and aligned with the objectives of the Act.

Authorities have the discretion to address unattended property, but they are not obligated to enforce or take possession of all items. They can move items to safer locations if necessary.

Authorities are encouraged to collaborate and can address unattended property in other operational areas under certain conditions. An MoU or agreement can be established to outline such arrangements.

### **Role of NSW Police Force**

The NSW Police Force plays a crucial role in ensuring public safety and managing traffic during emergencies, accidents, and incidents involving stock animals on the road. While they are not considered an authority under the PSUP Act, they are often the first responders in these situations.

Unlike authorities under the Act, the NSW Police Force does not have the obligations outlined in Part 4 of the Act to deal with property taken into possession. Their primary responsibility lies with maintaining law and order.

However, police officers have the power to perform the functions of an authorised officer as if they were appointed by an authority. It is important to note this does not make them subject to the direction or control of that authority.

If a police officer carries out a function of an authorised officer under the PSUP laws, they should inform the relevant authority as soon as possible afterwards.

On occasion, an authorised officer may request the NSW Police Force for the name and address of the registered operator of a motor vehicle where it relates to unattended property in public. NSW Police Force must provide written advice within 24 hours of the request to the authority or its officer.

### **Ensuring animal welfare**

Animals must be treated in a way that is consistent with community expectations and welfare laws. Authorised officers have the responsibility to balance this with other community priorities, such as managing biosecurity risks and ensuring public safety. When dealing with animals, authorised officers must consider appropriate transport, shelter, and care for the animal's needs, as well as the time the animal has been, or will be, kept at the place of care.

The PSUP framework does not include the outdated concept of a 'pound'. Instead, authorised officers have the flexibility to arrange care for an animal in any appropriate place such as a vet or shelter near where the animal was found.

Where an authority enters into an agreement for temporary care of an animal by a third party, the authority remains responsible for that animal's welfare until it is returned to the owner, sold, or rehomed.

The Act makes it clear that an animal may only be euthanised as a last resort. In strictly limited circumstances an authorised officer may euthanise an animal where:

- the authorised officer reasonably believes the animal is so severely diseased or injured, or is in such a poor physical or psychological condition, that it would be cruel to keep the animal alive, or
- there is no alternative to the immediate euthanasia of the animal because the animal is a threat to the health or safety of persons, other animals or the environment.

In such cases the authorised officer can euthanise the animal in a way that ensures a quick death and without unnecessary pain. This can only occur if a veterinary practitioner is unavailable, or if the authorised officer reasonably believes that waiting for a veterinary practitioner would be cruel or inappropriate.

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## 2.3 Applying and interpreting the Act

### 2.3.1 Key concepts

Key concepts can be found in Part 2 of the Act and have a specific meaning within the PSUP framework (the PSUP Act and Regulation) and are critical to interpreting and applying these laws.

Important key concepts are summarised below to support reading the PSUP Framework.

#### **Meaning of ‘property’**

The term **property** means an animal or an item, which are also key concepts in the Act.

Property for the purposes of the PSUP framework may be thought of as anything legally capable of ownership or of belonging to someone.

#### **Meaning of ‘unattended’**

Under the Act, **unattended** property means property not under the direct control or supervision of the responsible person.

Authorised officers may only take possession of property if they reasonably believe it to be unattended. It is a matter for authorised officers to determine, based on information obtained and observable facts, whether they reasonably believe the property is under the direct control or supervision of the responsible person. When making a determination of whether property is unattended, one consideration may be to assess whether the responsible person is in adequate physical proximity of the property to take active control of the property if needed.

Depending on the circumstances, authorised officers must also give notice before taking possession of items.

### **Meaning of ‘animal’**

Animals dealt with under the Act are limited to those that may be considered the property of a responsible person such as farming/stock animals, animals held in captivity (such as zoo animals) along with animals owned by individuals, for example goats, chickens, and rabbits. The term ‘stock’ has the same meaning as in the *Local Land Services Act 2013* (LLS Act).

The Act does not apply to cats or dogs. Cats and dogs should be dealt with under the *Companion Animals Act 1998*. The only exception is a dog in a national park or other land reserved or acquired under the *National Parks and Wildlife Act 1974*, which does fall within the PSUP framework.

The Act also doesn’t apply to feral animals (e.g. wild pigs) or native animals (other than native animals ordinarily held in captivity or farmed, e.g. emus, kangaroos etc.).

### **Meaning of ‘item’**

The Act classifies items into three classes – personal items (class 1), sharing service items (class 2) and vehicles (class 3).

The Act enables the PSUP Regulation to prescribe other things as items, and to move things between classes of items, to ensure the PSUP framework remains relevant into the future.

### **Meaning of Class 1 or ‘personal’ items**

Class 1 (personal) items are small or medium-sized things capable of ownership that can ordinarily be collected by 1 or 2 people without the need for machinery to lift, tow or move them.

Examples include baggage or personal recreational equipment such as bicycles or kayaks.

Large items such as large shipping containers, skip bins and vessels are not Class 1 items. These are generally more appropriately dealt with under planning or other laws.

### **Meaning of Class 2 items or ‘sharing service’ items**

Class 2 (sharing service) items are available for the use of the public at large, whether on payment of a fee or other benefit, including as part of a ‘sharing service’.

The term ‘sharing service’ is defined in the PSUP Act and means an arrangement under which items are provided for hire (whether or not for a fee). The arrangement may be in writing or established through a smartphone application.

Examples are shopping trolleys and share-bikes. Share e-scooters (where legally able to be used) are also regarded as Class 2 items.

### **Meaning of Class 3 items or ‘vehicles’**

Class 3 items (vehicles) are motor vehicles, which have the same meaning as that of the *Road Transport Act 2013*, and include caravans, boat trailers or other trailers, whether or not attached to a motor vehicle.

The meaning of motor vehicle also includes the remains of a vehicle and property, including parts and accessories, secured to or in a vehicle at the time it is taken possession of.

The regulations clarify that a motor vehicle used as part of a sharing service is a class 3 item.

### **Meaning of public place**

A **public place** is a place that is open to or frequented by the public whether or not payment has been received for admission and whether or not it is usually open to the public.

This may include a privately owned place which members of the public are permitted to access, including a shopping centre car park, a service station, a private gallery or museum or a thoroughfare.

### **Meaning of responsible persons for property**

The concept of **responsible person** in the PSUP Act has been defined broadly. It may include more than one person in relation to animals and each class of item. A **responsible person** is:

- the person who owns or is responsible for the property, and
- a person engaged to collect or manage the property on behalf of the property’s owner, and
- another person who is in control or possession, or entitled to possession, of the property, and
- a person who caused or engaged in conduct that was reasonably likely to result in, the property being unattended. For example, a person who leaves a shopping trolley unattended.

A responsible person may include a hirer or lessor of property, a user of the property or, for class 2 (sharing service) items a ‘scheme operator’ and for class 3 items (vehicles) a registered operator.

### **Meaning of authority**

The PSUP Act identifies **authorities** based on their responsibility for managing public land. Refer to Part 3 for a list of authorities.

### **When authorised officers have ‘possession’ of property**

The concept of **taking possession** of property applies as soon as an authorised officer uses their powers under the PSUP Act to take possession of property under the Act. Property does not have to be taken to a place of care or place of storage for it to be taken possession of.

Once an authorised officer takes possession of property under the PSUP Act, they must continue to maintain possession and responsibility for it until it is returned to its owner or disposed of under the Act.

Taking possession has replaced the outdated concept of ‘impounding’ in relation to unattended property that authorised officers may control within and/or remove from a public place.

### **Place of care and place of storage**

A **place of care** (in relation to an animal) and a **place of storage** (in relation to an item) may be anywhere appropriate for the keeping of the animal or item while it is in the possession of an authority (sections 10 and 11 of the Act).

For animals, the place of care must be appropriate to their needs and the time period they may be kept at that place. For example, it could be an animal shelter, a veterinary practice, or a place owned by a private landowner that the authority has entered into a care agreement with. While in care, the authority remains responsible to ensure the animal’s welfare.

### **Other terms in the Act**

A Dictionary (Schedule 3) of the Act provides a definition of many common terms used in the PSUP Act.

Some terms are used in the PSUP Act but not defined as they encompass a broad range of attributes or values that are complex and situation based.

While a decision to take regulatory action is a matter for authorised officers, education, training and case studies over time help to build an understanding of how to practically apply the law.

Meanwhile, some guidance on concepts not defined in the PSUP Act is below.

Any responsible person facing enforcement action under the PSUP laws not satisfied with the decision of an authority has the right of administrative appeal through the NSW Civil and Administrative Tribunal or may take legal action to appeal the merits of the decision.

### ***Amenity***

The term ‘amenity’ is used in the PSUP Act and is also commonly used in planning laws and court decisions. It generally includes the overall aesthetic value of a public space, as well as how easy it is to access, use and enjoy that public space.

Tangible aspects of amenity include traffic, noise, odour, dust and light. Intangible aspects of amenity, such as subjective perceptions, can impact on an individual’s enjoyment of a public space which may prompt a complaint to an authority. However, the matter would generally only become an amenity issue if it were a typical opinion held by ordinary people in the same locality.

For example, if one person objects strongly to a new type of shared transportation device left in public on the footpath because of its appearance, this could not be considered an amenity issue unless this objection is likely to be widely held by many or most other people in the same locality.

The authorised officer may rely on a range of facts / information to evaluate whether the general community would be likely to consider the unattended property to be interfering with public amenity.

#### *Reasonable belief*

Under the PSUP Act, authorised officers may carry out their duties if they have a ‘reasonable belief’ that property is unattended. This appropriately empowers officers to be guided by the circumstances in which something may be left unattended in public in the context of the law, policies and guidance (such as the NSW Ombudsman’s Enforcement Guidelines for Councils) in addition to the authority’s own policies and procedures.

Authorised officers should use their expert judgement, based on skills, experience and training, to examine the information obtained and observable facts of each situation on a case-by-case basis, including assessing potential risk posed by the unattended property, when determining what action to take under the PSUP Act.

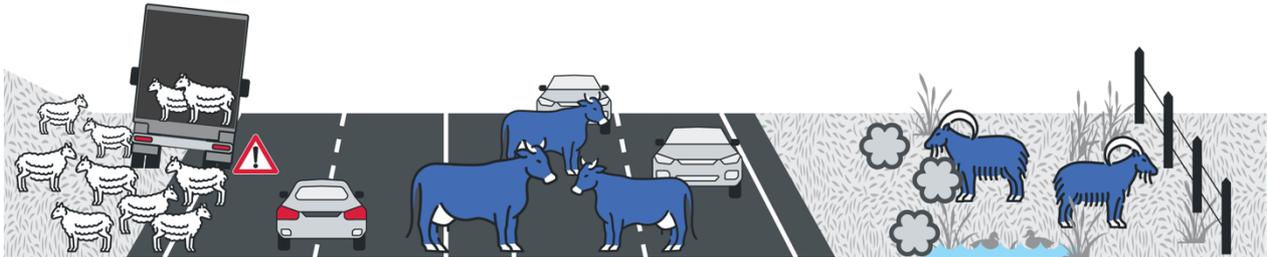
#### *Same or substantially the same place*

Under section 25 of the PSUP Act authorised officers may take possession of an item if the officer reasonably believes it is ‘unattended’. While this can occur immediately in circumstances including where the item is causing a risk or access issue, longer periods apply for items ‘left in the same or substantially the same place’ (see table on page 18).

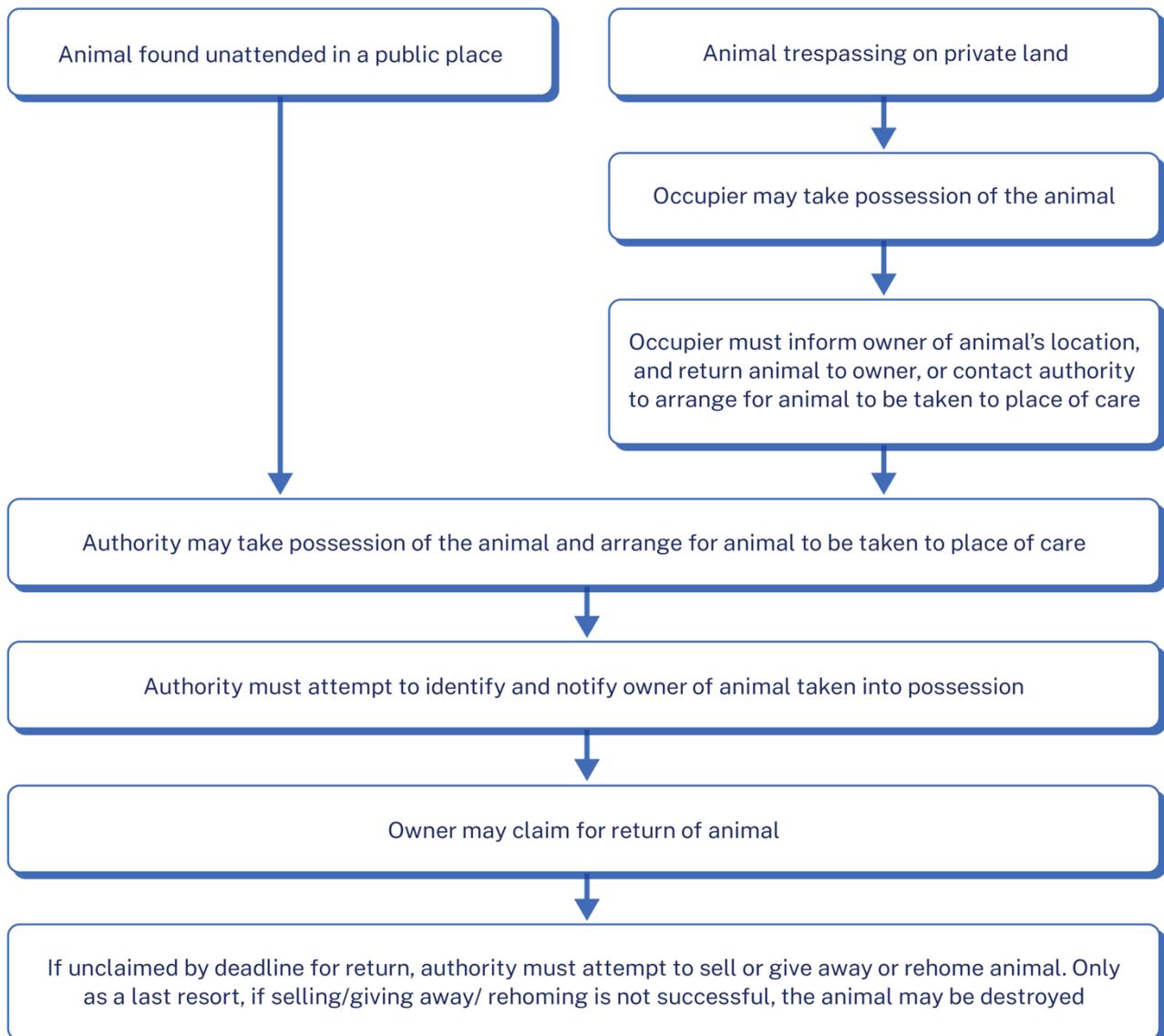
Importantly, the PSUP Act requires authorised officers to reasonably believe an item to have been ‘left in the same or substantially the same place’ to take regulatory action. The test is not a belief that the item has not been ‘moved’. The reference in the Act to ‘substantially the same place’ signals that even if the item has been ‘moved’ action can still be taken in relation to that item.

## 2.4 Key steps in regulatory process

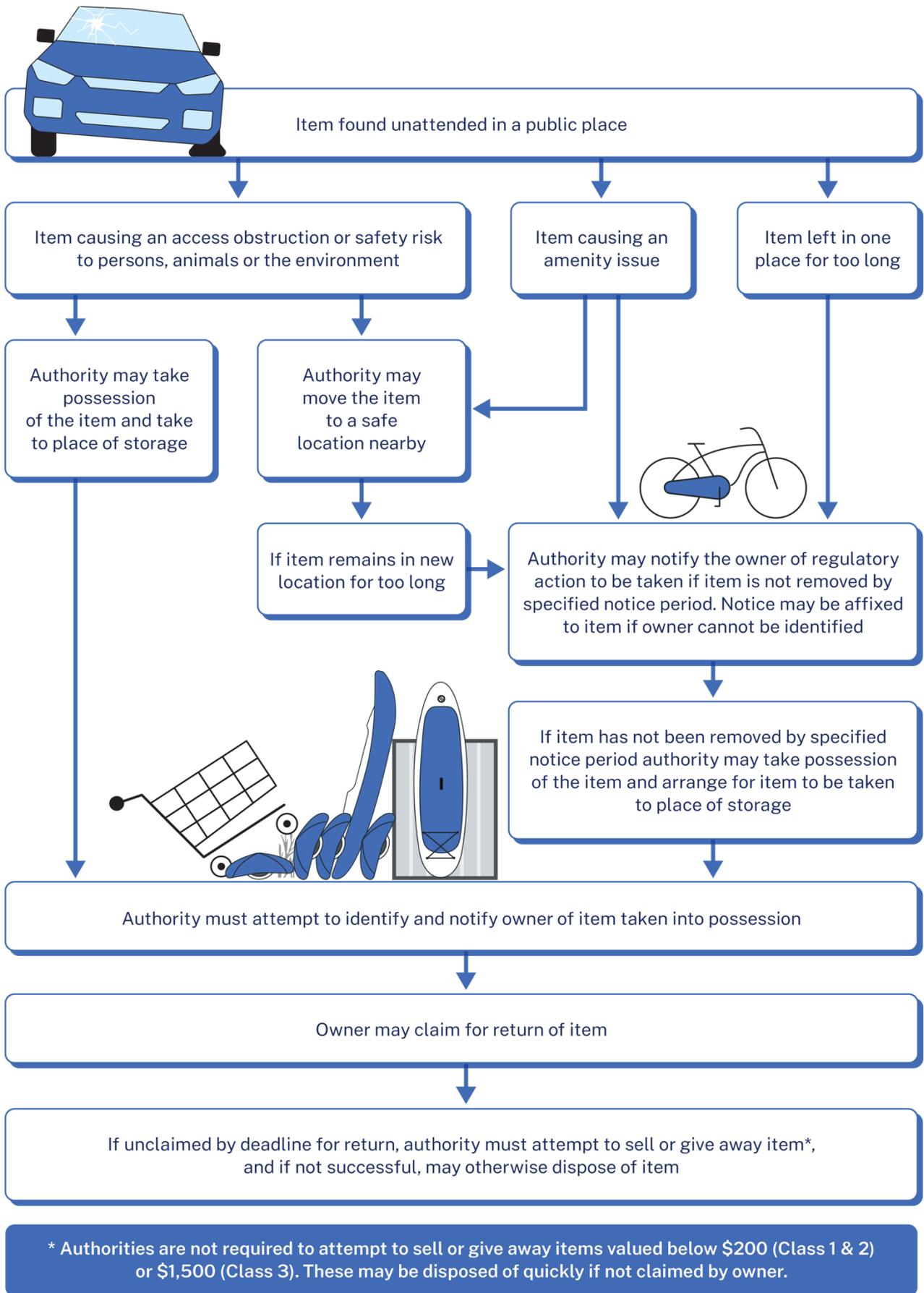
### Regulatory process for animals left or have become unattended



Animals dealt with under the Act, including those taken into possession, must be cared for in line with animal welfare laws.



## Regulatory process for vehicles, personal or shared Items



**Table 1: Unattended item periods and notice timeframes for animals and items**

Timeframe before unattended property can be taken into possession		
<b>Unattended animal in public</b>		<b>Notice Timeframe</b>
Any animal in public		Immediate – no notice
<b>Item obstructing access or posing a safety risk</b>		<b>Notice Timeframe</b>
Class 1 (personal) item		3 hours (outside of 11pm – 7am)*
Class 2 (sharing service) item		3 hours (outside of 11pm – 7am)* **
Class 3 item (vehicle)		Immediate – no notice
<b>Item causing amenity issue</b>		<b>Notice Timeframe</b>
Class 1 (personal) item		7 days
Class 2 (sharing service) item		4 days
Class 3 item (vehicle) – registered vehicle		15 days
Class 3 item (vehicle) – registered but inoperable (e.g. due to damage or missing parts)		3 days
Class 3 item (vehicle) – unregistered vehicle		3 days
<b>Item left in same or substantially the same place for too long</b>	<b>Unattended Period</b>	<b>Notice Timeframe</b>
Class 1 (personal) item	7 days or more	7 days
Class 2 (sharing service) item	7 days or more	4 days
Class 3 item (vehicle) – registered vehicle	28 days or more	15 days
Class 3 item (vehicle) – registered but inoperable (e.g. due to damage or missing parts)	15 days or more	3 days
Class 3 item (vehicle) – unregistered vehicle	15 days or more	3 days
<b>Item in contravention of Code of Practice</b>		<b>Notice Timeframe</b>
Class 2 (sharing service) item		Immediate – no notice
Deadline for return – Timeframe to hold property in possession before sale or other disposal		
Animal		7 days
Class 1, 2 and 3 items (including personal items, shopping trolleys, share bikes and vehicles)		28 days
Relevant period – Timeframe to try to sell or give way before otherwise disposing of it		
Animals and items other than shopping trolleys		14 days
Shopping trolleys		1 day

*\* A notice may not require action to be completed between the hours of 11pm to 7am. Any notice that is issued after 8pm at night will be taken to have been issued at 7am the following morning. Any notice that is issued before 7am on a given day will be taken to have been issued at 7am that day.*

*\*\* Smaller operators with fewer than 25 shopping trolleys are not required to collect unattended trolleys within a 3-hour window. Instead, these operators should be given a notice period of 4 days, regardless of whether the trolley is obstructing access, posing a risk, interfering with public amenity, or left in the same or substantially the same place for too long (section 4 of the Regulation).*

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## 2.5 Dealing with unattended property

### 2.5.1 Determining what is unattended property

#### General guidance on determining whether property is unattended

Property left unattended in public is not always a problem needing regulatory action. When someone parks a registered car safely without blocking access on a residential street outside a home, or when someone leaves a car safely in a carpark to go into a supermarket, the unattended car is not causing a problem and would not generally trigger regulatory action under PSUP laws.

An authorised officer may only take regulatory action under PSUP laws where they reasonably believe the property is unattended and has been left in public in one of the risk-based circumstances set out in s25 of the Act.

For unattended animals, an authorised officer may take regulatory action immediately, noting animals permitted on a travelling stock reserve or in other public spaces are not unattended).

For unattended items, the authorised officer must also reasonably believe the unattended item:

- poses an access obstruction or safety risk to a person, animals or the environment

or

- has been left in the same or substantially the same place for the unattended item period prescribed in the regulations or is otherwise interfering with amenity

or

- does not comply with standards in the regulations or a prescribed Code of Practice

#### Unattended item periods for items left in the same or substantially the same place

Unattended item periods help identify when different items have been left in the same or substantially the same place for too long. After the unattended item period, and provided the prescribed notice period has been met, an authorised officer may take regulatory action, such as taking possession of the item and/or issuing a fine, if they believe the item is unattended.

The unattended item periods are:

- 7 days or more – for class 1 (personal) items and class 2 (sharing service) items
- 15 days or more – for unregistered and undrivable class 3 items (vehicles)
- 28 days or more – for registered class 3 items (vehicles).

### **Considerations for unattended animals**

The PSUP Act enables authorities to work together to deal with unattended animals in public. This is critical to reducing the health and safety risks that stray animals in public may pose.

For the purposes of determining whether regulatory action is warranted, animals are not considered unattended if they are in a public place with the invitation or consent of the public authority or a law, for example, animals permitted on a travelling stock reserve.

Regulatory action may be required for an animal where the responsible person is present but has become temporarily or permanently unable to control or appropriately supervise the animal. This may be due to personal circumstances, for example if the person is injured, intoxicated or otherwise incapacitated.

### **Considerations for unattended class 2 (sharing service) items**

Class 2 (sharing service) items such as share bikes and shopping trolleys will be owned by an operator, are generally identical and are made available for use by the public. Operators must follow the *Code of Practice for Class 2 Items – Shopping Trolleys and other Sharing Service Items* to ensure their items are safe to use and clearly branded with their contact details.

Authorities should strongly encourage the public to report unattended class 2 (sharing service) items directly to the relevant operator in the first instance.

Once an authorised officer decides that regulatory action is warranted, they may issue a notice to an operator stating they believe on reasonable grounds their sharing service item is unattended.

If a class 2 (sharing service) item is not clearly branded authorised officers are encouraged to contact all relevant operators in the area regarding the item.

Authorised officers are also encouraged to tag each unique item found unattended in a public place to help verify the identity of the unattended item where its physical features are similar to other items. This may be particularly relevant to monitor whether an item has been left in the same or substantially same place for too long. Tagging may be as simple as applying a zip-tie or luggage tag.

### **Considerations for unattended class 3 items (vehicles)**

Authorised officers can take immediate regulatory action under the PSUP Act for unattended vehicles causing an access obstruction or safety risk.

When determining whether a vehicle is unattended, one consideration may be to assess whether the responsible person is in adequate physical proximity of the vehicle to take active control of it if needed.

Safely parked unregistered and undriveable vehicles may cause amenity issues in public, including pressure on residential parking in some places. Under the PSUP Act, regulatory action can happen faster for unregistered or undriveable vehicles than for registered vehicles.

For registered vehicles parked safely on a residential street for an extended period, authorised officers should take a common-sense approach when deciding to act. An attempt must always be made to issue notice to the registered operator of the vehicle to give them time to respond and remove their vehicle.

### *Determining whether a vehicle has been left in the same or substantially same place for an extended period*

When it comes to Class 3 items (vehicles) include cars, boat trailers, other trailers, motorbikes and caravans. It can sometimes be challenging to determine vehicle has been left in the same or substantially the same place for an extended period. It may be possible that the vehicle may have been moved and then reparked in the same spot over several consecutive days.

Authorities should rely on existing techniques to determine how long a class 3 vehicle has been left in the same or substantially the same place. These include marking tyres, measuring whether the position of a valve stem on a tyre has moved, taking photos from multiple angles and using CCTV footage. Over long periods, rubbish and leaves may gather near tyres.

However, councils have the discretion to determine additional factors that indicate a reasonable belief that a vehicle has been 'left in the same or substantially the same place'. This may include considering whether the vehicle has been left on the same block, or on the same length of road or in the same parking area/zone. This is a similar rule to what applies in relation to vehicles that are parked longer than indicated on a permissive parking sign under Road Rules 2014 (Rule 205, sub section (2)). A driver could be in breach of Road Rule 205 and be issued a parking fine if their vehicle had not left the length of road or the area by the end of the timeframe allowed by the relevant permissive parking signage. The Road Rules defines 'area' and 'length of a road' for the purposes of the Road Rules.

Further, under parking laws, if someone attends to their vehicle in a parking area by removing it from the permissive parking area/zone, then it may be lawful for them to re-park there but only after a suitable interval. In contrast, moving the vehicle to the 'next space' may be evidence that the vehicle is still 'parked' in the parking area and does not avoid committing an offence. Under parking laws, permissive parking signs may contribute to evidence of an offence. In some jurisdictions, drivers may be restricted from parking in the same area more than once per day.

Similarly, under the PSUP Act, councils have authority to determine that, as a general rule, where it appears that a vehicle has been removed from the same or substantially the same place for a suitable interval of time and reparked, then the 'clock' restarts. Where the officer does not reasonably believe that the vehicle has been removed, it is likely that the onus shifts to the person responsible for the vehicle to provide evidence that they took sufficient action to reset the 'clock'. In problem areas the authority may choose to erect suitable signage signalling that 'moving' the vehicle without leaving the area will not be sufficient.

### **Lost property**

Authorities will have internal policies and processes for handling lost property, including smaller items such as wallets, keys, clothing, and bags. Authorised officers should take a common-sense approach to deciding which items should be dealt with as lost property and which should appropriately be dealt with under the PSUP Act.

## **2.5.2 Responding to unattended animals**

### **Determining appropriate action for unattended animals in public**

In communities, issues may arise when animals are found wandering unattended in public areas. In such cases, authorised officers can assist in reaching informal resolutions with the owner of, or person responsible for the animals.

Where an authorised officer reasonably believes that an animal is unattended in a public place, they have the power to take possession of the animal. The authorised officer may also issue a fine or penalty on the person responsible for the animal.

If an authorised officer takes possession of an animal, they must ensure the animal is taken to a place of care or returned to the responsible person.

As an animal unattended in public could cause a health and safety issue for the animal itself, people, other animals or the environment, an authorised officer does not have to give notice to the owner before taking the animal into possession.

### **Special circumstances for animals**

An animal is not to be considered unattended if it is in a public place with the permission of the public authority responsible for the land or the law. A common example is where stock is on a travelling stock reserve in circumstances set out under the *Local Land Services Act 2013*.

## Identifying owners of unattended animals

Identifying the owner of an unattended animal may be difficult where there is no ear tag, branding, microchip or other available identification. It may also be unsafe to get close to the animal.

To try to find the owner of the animal, and if the animal has identification, authorities may search relevant registers or contact another agency that may keep records.

Authorities might also try to find an animal's owner through informal networks like 'lost and found' webpages, social media or other local channels.

## Special powers for occupiers of private land to deal with trespassing animals

Where an animal is unattended on private land without the occupier's permission, the occupier under the Act may take possession of the animal. If this happens, the occupier must ensure the welfare of the animal and:

- contact the owner or other person responsible for the animal within 24 hours and return the animal to them within 4 days (or longer, where agreed), or
- keep the animal for no more than 4 days, and by then:
  - return the animal to the owner or person responsible, or
  - contact the council or other relevant authority to arrange for the animal to be taken to a place of care.

Under the Act, the occupier of private land must be paid by the person responsible for the animal the cost of providing care to the animal, such as food, water and other listed expenses (sections 55(3) and 55(4) of the Act). If not paid, the occupier may recover the cost as a debt.

## Role of authorities and authorised officers where animals trespass on private land

If the occupier does not return the animal to the owner or responsible person, they must contact the relevant council or authority to arrange for the animal to be taken to a place of care. This must occur within 4 days of taking possession of an animal trespassing on their land. Arrangements should be negotiated between the occupier and the authority.

Occupiers may invite authorised officers onto their land to take action under the PSUP Act. It is an offence under the PSUP Act to allow an animal to trespass on private land without permission of the occupier. Authorised officers may issue a penalty to the person responsible for the animal for this offence.

## Disputes between neighbours

Authorities can sometimes become involved in a dispute between neighbours that can be very difficult to resolve. Authorities are encouraged to provide information to the community about their role in neighbourhood disputes.

Helpful resources include the Department of Primary Industries' *Land Use Conflict Risk Assessment Guide, October 2011* fact sheet and the NSW Ombudsman's *Enforcement guidelines for councils, December 2015*.

## 2.5.3 Responding to unattended items

### Risk-based action for unattended items in public places

Authorised officers must give minimum, risk-based notice to owners or others responsible for items in public before taking regulatory action.

Where Class 3 items (vehicles) are causing an obstruction or safety risk, they can be taken into possession immediately.

Table 2 below outlines options for dealing with unattended items in public depending on if they create a low, moderate or high-level risk (see Part 2.10 for further guidance on assessing risk).

This is a guide only as some situations will not neatly fit into these levels. Authorised officers should make their own decision about the best regulatory response based on local circumstances.

**Table 2: Risk-based action in relation to unattended items in public places**

Risk / issue level	Optional response
<i>Low risk/ issue</i>	<p><b>Informal response</b> – an authorised officer may informally respond, potentially including arranging for the direct return of the item to the owner.</p> <p><b>Move the item</b> – an authorised officer may move the item to another place in the same general area so that it no longer obstructs access, poses a safety risk, or interferes with public amenity . The moved item should be easy for the owner to locate or the authority must take reasonable steps to notify the owner of where the item has been moved.</p> <p>The power to move an item may be appropriate, for example, where the authorised officer reasonably believes that an item is unattended, but it is not necessary to take possession of the item. For example, the responsible person leaving a vehicle in an event clearway may not be aware that they have left their vehicle in a place they are temporarily not entitled to.</p>
<i>Moderate risk/ issue</i>	<p><b>Give notice</b> – an authorised officer may notify the owner that the item has been found unattended, is interfering with amenity and/or has been left too long, and that regulatory action may be taken if the item is not removed within a specified timeframe.</p>

Risk / issue level	Optional response
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If not removed by the owner within the specified timeframe, regulatory action may be taken (e.g. the item may be taken into possession and/or penalties may be issued).

<i>High risk/ issue</i>	<p><b>Give notice</b> – where the location and/or nature of an unattended item is an obstruction to access for vehicles or pedestrians, or poses a risk to a person, animal or the environment, an authorised officer may:</p> <ul style="list-style-type: none"><li>• for class 1 (personal) items or class 2 (sharing service) items – notify the owner that the item has been found unattended and regulatory action may be taken if the item is not removed within 3 hours (outside of 11pm – 7am) and penalties may be issued, or</li><li>• for class 3 items (vehicles) – take the vehicle into possession immediately without giving prior notice to the owner, penalties may be issued.</li></ul>
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### Small shopping trolley operator exemption

Smaller operators of shopping trolley sharing services with fewer than 25 shopping trolleys do not need to collect unattended trolleys in a 3-hour window. These operators have 4 days, regardless of whether the trolley is obstructing access, posing a risk, interfering with public amenity or left in the same or substantially the same place for too long. This minimises the regulatory cost for small businesses and recognises that there are fewer access and safety risks from trolleys in smaller rural and less densely populated urban locations.

Authorities can move an unattended trolley to a safer location until it can be collected by the operator.

Authorities should work with local operators to establish if they are a ‘small shopping trolley operator’.

### Identifying owners of unattended items

In most cases an authorised officer must attempt to identify the owner of an unattended item in a public place before taking regulatory action. See Table 1 in Part 2.4 for exceptions.

The owner of items may be identified by:

- class 1 (personal) items – looking for a name tag or label with the owner’s details, or any other identifying marker

- class 2 (sharing service) items – looking for branding that sets out the operator’s name and contact information
- class 3 items (vehicles) – looking for a registration plate or VIN and searching registers to which the authority has access for information (Refer to Using DRIVES24 to search for owners of class 3 items (vehicles) below), or if this is unsuccessful, requesting the assistance of Transport for NSW or NSW Police Force.

### **Responding to class 1 (personal) items**

It may be difficult for authorised officers to identify the owner of class 1 (personal) items where owner information has not been marked on or attached to the item via a tag or other means.

Authorities are encouraged to consider the use of informal networks like ‘lost and found’ webpages, social media or other local channels to help identify an owner of a class 1 (personal) item.

### **Responding to class 2 (sharing service) items**

#### *Code of Practice*

Operators of sharing services must comply with the mandatory *Code of Practice for Class 2 Items – Shopping Trolleys and other Sharing Service Items*. The Code requires sharing service items to be clearly branded with the name and contact details of the operator. The Code also requires a sharing service item circulating in public to be in good working order.

An authorised officer may take immediate action without notice if a sharing service item is found unattended in a public place in breach of the Code.

### **Responding to class 3 items (vehicles)**

#### *Suspected link to crime*

If an authorised officer suspects a class 3 item (vehicle) has been involved in a crime, they should make immediate contact with NSW Police Force before taking any regulatory action. This is to ensure potential evidence connected with the vehicle is not compromised or destroyed.

### *Fines for unregistered vehicles left standing on a roadside*

Due to the introduction of the PSUP laws, there are changes to the *Road Transport Act 2013* and to the *Road Transport (General) Regulation 2021*.

Local councils can now issue fines under transport laws to the last known registered operator of an unregistered vehicle parked on a roadside 15 days after the registration lapses. Police and transport authorities already had these powers.

To reduce time that unregistered vehicles are left on public land, all authorities can attach fines directly to a vehicle, rather than first identifying the last known registered operator.

Fines may apply to all motor vehicles including cars, trailers, and combinations of both.

Authorised officers can choose which legislation they act under when responding to unregistered class 3 item (vehicle) parked on a roadside.

### *Using DRIVES24 to search for owners of class 3 items (vehicles)*

Authorities must take reasonable steps to identify and notify the owner of an unattended class 3 item (vehicle), including searching registers such as the NSW registrable vehicles register under the *Road Transport Act 2013*.

Transport for New South Wales (TfNSW) own and operate the DRIVES24 system. Authorities can seek access to DRIVES24 to conduct searches around abandoned vehicles. Authorities without access are encouraged to apply.

Vessel owner details are not available from DRIVES24 but authorities can request this information from TfNSW.

### *Entering a class 3 item (vehicle) to identify the responsible person*

An authorised officer may, without or before taking possession of an unattended class 3 item (vehicle), enter the vehicle to identify the person responsible for the vehicle. This may include an authority or their agent taking reasonable steps to enter the vehicle (for example, by-passing locking mechanisms). Authorities are encouraged to consider exhausting other means of owner identification before using invasive means such as by-passing locking mechanisms to enter a vehicle. Authorities should also take reasonable steps to ensure that, to the extent possible, property is protected from damage.

### *Police assistance with owner identification*

Authorised officers can ask NSW Police Force to make enquiries about the name and address of the owner of a class 3 item (vehicle). This should be a last resort after all other means of identifying the owner (e.g. DRIVES24) are exhausted.

If requested, NSW Police Force must provide written advice to the authorised officer or authority within 24 hours. This advice should include information on registration, including the name and address of the last registered operator of the vehicle.

#### *Vehicles with interstate registration*

Authorised officers should contact NSW Police Force to help identify the owner of unattended class 3 items (vehicles) with interstate registration if they do not have access to interstate vehicle registration systems.

## 2.5.4 Giving notice of an unattended item prior to taking possession

### **Written notice that regulatory action may be taken**

Where an unattended item is left in a circumstance for which a notice timeframe applies (see Table 1 in Part 2.4) the authorised officer must give written notice before regulatory action is taken

The written notice must include:

- that the authorised officer believes the item is unattended in a public place,
- the time and date when the authorised officer may take possession of the item and any minimum notice period.

If the item is not removed by the specified time and date, and the authorised officer believes the item is unattended, the item may be taken into possession. Penalties may also be issued.

Authorised officers are encouraged to notify owners promptly about unattended items to help reduce the volume of unattended property in public places.

### **Notification methods**

Authorised officers must provide notice in writing to the owner of or person responsible for an unattended item. This can be done in person or sent to a postal or electronic address (email, web-based reporting system, text message). Note that electronic notice should only be provided where the recipient has given permission for that form of communication to be used for the purpose of receiving notices.

Posted notifications are considered to have been served on the 7<sup>th</sup> day after it was posted, according to the *Interpretation Act 1987*.

If an authorised officer can't identify the owner or their contact details, written notice should be attached directly to the item.

### *Giving notice for class 2 (sharing service) items*

Class 2 (sharing service) items, such as shopping trolleys and share bikes, must be branded with the operator's contact details so that the public and authorised officers can quickly notify them of any of their items found unattended. Authorised officers should notify operators of unattended class 2 (sharing service) items using these contact details, wherever possible.

Authorised officers should only ever attach a notice to a sharing service item as a last resort if there is no alternative. The operator may not know the location of the item and may not easily become aware of the attached notice.

Authorised officers are encouraged to consider the quickest, most effective notification method, keeping in mind the priority is for the item to be removed as soon as possible.

### **Information provided on notices of unattended items**

Important information in a notice of an unattended item includes:

- name of owner / responsible person except where the notice is affixed to the item
- description of the unattended item including its location
- the date and time that the item was observed to be unattended and a description of the risk-based circumstances of the item (e.g. obstructing access, impacting public amenity etc.)
- the date (and time if applicable) on which the authority may take the item into possession if they believe it remains unattended (i.e. by which date and time the unattended item must be collected/removed)
- details of any penalty/fine that may be issued if the item remains unattended
- how to contact the authority with any questions
- where to go for further information, such as a link to the authority's website, on:
  - PSUP framework, including relevant policies, and
  - any Culturally and Linguistically Diverse (CALD) services.

### **Notice periods for unattended items**

Table 1 in Part 2.4 sets out the timeframes after which unattended items may be taken into possession by authorised officers, taking into account any relevant unattended item periods and any relevant notice periods for each class of item in different circumstances.

For items left in the same or substantially the same place for too long, the notice period may overlap with the unattended item period to streamline regulatory processes, but the timing advised for regulatory action should be after the unattended item period.

*For example, the unattended item period for a registered vehicle left in the same or substantially the same place for too long is 28 days. The relevant written notice period is 15 days. If appropriate, notice may be given on day 14 of the unattended item period and finish 1 day after the relevant notice period.*

## Minimum notice

The minimum notice periods under the PSUP Act for unattended items, penalties and directions are:

- 3 hours – for all property (other than shopping trolley operators with fewer than 25 trolleys)
- 4 days – for shopping trolley operators with fewer than 25 trolleys.

(Section 4 of the Regulation)

A notice issued after 8pm is considered to have been issued at 7am the following morning.

A notice given before 7am is considered to have been issued at 7am on that day.

These provisions ensure that owners are given a reasonable timeframe to respond to notices about unattended property before any further regulatory action is taken.

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## 2.6 Dealing with property taken into possession

### 2.6.1 Identifying and notifying owners of property taken into possession

#### Identifying and notifying owners of unattended property taken into possession

After taking possession of an unattended animal or item, the authorised officer must take reasonable steps to identify the owner (section 29 of the Act) as soon as possible. This includes:

- For animals:
  - checking a form of identification worn by, or information in a microchip implanted in, the animal
  - searching registers to which the authority has access for information about the animal, for example National Livestock Identification System.

*Wherever possible authorised officers are encouraged to identify the owner and arrange for the animal to be collected or returned before taking it to a place of care.*

- For items:

- checking items for identifying labels (class 1)
- checking branding (class 2)
- checking registration details and relevant registers about the vehicle (class 3).

Refer to Part 2.5.3 for further detail on how to identify an item's owner.

### **Notice of property taken into possession**

After taking possession of unattended property, an authorised officer must notify the owner as soon as possible (if the owner is known).

Notices must be served in writing. Refer to Part 2.4 regarding notification methods

Where there are multiple items belonging to a single owner, authorities should not stockpile items or provide a consolidated notification on a later date. This unnecessarily delays the return of items to their owner.

### **Information provided on notices of property taken into possession**

Important information to highlight prominently on or with a notice of property that has been taken into possession includes:

- name of owner / responsible person
- description of the unattended property
- where the property is currently located
- the date and time the property was taken into possession
- the date (and time if applicable) by which the property must be collected, following which, the property may be disposed of by the authority
- instructions for how to collect the property
- details of any penalty/fine issued under the PSUP Act, as well as any additional penalty/fine that may be issued if the property is not collected
- details of any fees that must be paid due to the property being taken into possession
- how to contact the authority with any questions
- where to go for further information, such as a link to the authority's website, on:
  - PSUP framework, including relevant policies, and
  - any Culturally and Linguistically Diverse (CALD) services.

### **Notification to NSW Police Force of class 3 item (vehicle) taken into possession**

An authorised officer must, as soon as practicable, notify NSW Police Force whenever a class 3 item (vehicle) has been taken into possession.

## 2.6.2 Minimum holding periods for property taken into possession

### Length of time property must be held in possession

Known as the Deadline for Return, an authority must hold property taken into possession for a specific time period (section 32 of the Act) before further action is taken, such as trying to sell, give away or dispose of the property. This allows for enough time for an owner to be notified, apply for return of the property and arrange for it to be collected.

If the owner does not collect their property by the Deadline for Return, the authority must try to sell or give away the property. If this is unsuccessful, they can arrange to dispose of the item.

**Table 3: Deadline for Return**

Class of Property	Deadline for Return
Animals	<ul style="list-style-type: none"><li>• 7 days from the day the owner was notified</li></ul> or <ul style="list-style-type: none"><li>• if reasonable steps failed to identify the name and address of the owner then 7 days from the day these steps were completed</li></ul>
Class 1 (personal) items	<ul style="list-style-type: none"><li>• 28 days from the day the owner was notified</li></ul>
Class 2 (sharing service) items	or
Class 3 items (vehicles)	<ul style="list-style-type: none"><li>• if reasonable steps failed to identify the name and address of the owner then 28 days from the day these steps were completed OR the day the property was taken into possession, whichever is the later date</li></ul>

## 2.6.3 Return of property taken into possession

### Return of property to owner

It is the owner's responsibility for their property to be collected. If satisfied the applicant is the owner, or their authorised representative, and any payable fees have been paid, the authority must return the property to the applicant.

Authorities are encouraged to work with owners to negotiate a suitable collection strategy and timeframe.

## 2.6.4 Recovering costs for property taken into possession

### Fees for unattended property in a public place

Authorities may charge an owner a fee for property taken into possession for:

- walking or transporting an animal to a place of care, to the address of the responsible person, to a market or to a sale yard
- providing an animal taken into possession with food, water or veterinary care
- loss or damage caused by the animal while it was unattended, including on private land without the permission of the occupier of the land
- transporting an item to a place of storage
- storing an item at a place of storage
- any cost of notifying the owner of property that the property has been taken to a place of care.

Authorities should be reasonable when deciding their fees. Councils must consult on and publish all fees and charges in accordance with the *Local Government Act 1993*.

### Fees for costs incurred by private landowners / occupiers

A private landowner/occupier may be reimbursed for costs incurred while exercising functions under sections 23 and 24 of the PSUP Act. The responsible person for the animal must pay the private landowner/occupier the fees set out in a notice given by the landowner/occupier (section 55(3) of the Act). If the responsible person does not pay the amount due, the landowner/occupier may recover the amount as a debt.

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## 2.7 Place of care or storage for property

### 2.7.1 Place of care for animals

#### Declaring a “place of care” for animals

The PSUP Act provides for flexibility to establish temporary and longer-term places of care for animals taken into possession. These include:

- locating an animal on nearby private land with the permission of the occupier or owner of the land, or
- transporting the animal to a suitable shelter or other care facility, which may include using shelters managed by other authorities or privately through shared or contract arrangements.

Any place of care nominated by an authority must meet minimum animal welfare laws and standards. A stock permit does not need to be in force under the *Local Land Services Act 2013* to have stock delivered to a place of care.

## 2.7.2 Storing items

### Declaring a “place of storage” for items

Authorities have flexibility to determine the most suitable place to hold an unattended item that has been taken into possession. This will significantly reduce risk and cost by making it easier to establish temporary or multiple facilities, or to share facilities with other authorities.

Property does not have to be taken to a place of storage for it to be taken possession of. Options for taking an item into possession include

- taking the item to a storage facility operated by the authority
- taking the item to a storage facility run by another operator that the authority has an arrangement with
- moving the item to a place in the same general area where it was left unattended (no longer obstructing access, posing a safety risk, or interfering with public amenity).

### Appropriate storage standards

Authorities are required to take reasonable steps to ensure that items taken into possession remain in the condition they were in at the time they were taken into possession and that they are, to the extent possible, protected from damage.

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## 2.8 Selling or disposing of property

### 2.8.1 General considerations

When disposing of property, authorities must try to first sell the property then give it away during a minimum period known as the ‘relevant period’. The relevant period is 14 days for animals and for all classes of items except for shopping trolleys. An authority is required to try to sell or give away a shopping trolley for at least 1 day before disposal due to the low market value and demand to purchase second-hand shopping trolleys.

At the end of the relevant period, if the authority couldn’t sell or give away the property, the authority may recycle, rehome, or dispose of the property.

Before selling or disposing of a class 3 item (vehicle), an authority must search the Personal Property Securities Register under the *Personal Property Securities Act 2009* for security interests in the vehicle. If someone has a security interest in the vehicle, the authority must notify them of the proposed sale or disposal.

Before selling or disposing of a class 3 item (vehicle), an authority must consider any response from the NSW Police Force.

## 2.8.2 Selling or disposing of property

### Items worth less than a certain amount may be destroyed

Some items that are taken into possession are of such a low value that there is limited benefit in storing the item and attempting to sell or give it away.

- For Class 1 (personal) items and Class 2 (sharing service) items, the value is below \$200.
- For Class 3 items (vehicles), the value is below \$1,500.

If an authority considers the value of an item to be below the above values, it can dispose of the item without having to wait the entire Deadline for Return period. The authorised officer must take all reasonable steps to identify the item's owner and notify them that:

- the item has been taken into possession
- the owner must apply for the return of the item in a specified period (no less than 3 days after notice is given), and
- the item will be destroyed if the owner has not applied for the return of the item within the specified period.

The item may only be destroyed if the owner does not apply for the return of the item within the specified period.

### All reasonable efforts must be made to sell, give away or rehome animals

The Act makes it clear that all reasonable efforts must be made to sell, give away or rehome animals.

Destroying an animal should be the absolute last option an authority considers. Unlike other items, there is no minimum value applied to an animal relating to its destruction.

### Determining the value of property

Resources that may assist with valuing property include:

- monitoring common sales platforms such as Redbook, eBay, Gumtree, Facebook Marketplace, and other targeted websites such as carsales.com.au

- monitoring sales prices from common auction providers for example vehicle auctioneers
- engaging a suitably qualified/experienced valuer for complex or unique items.

Authorised officers can seek help from in house asset valuation experts to value property taken into possession.

### **Offering property for sale**

Authorities must first offer the property for sale, and if the property does not sell, the authority can try to give it away.

The authority does not have to try to sell the property if they believe its value is less than the cost of offering it for sale. For example, if the cost of trying to sell a vehicle is estimated at \$2,500 (i.e. to cover auction costs), and the vehicle is valued at \$2,000, then the authority does not have to try to sell it as the costs exceed the vehicle value. The authority must try to give the property away during the relevant period before disposing of it.

### **What does “trying to sell or give away property” involve?**

Options to sell or give away unclaimed property during the relevant period, including both animals and items include:

- selling by public auction or public tender
- selling through established auction houses or sales agents
- advertising for sale or giving away on the authority’s website / via social media / via sales platforms such as eBay, Gumtree, Facebook Marketplace, or carsales.com.au
- donating to charity organisations
- donating to other targeted organisations.

### **Use of auctions / sale agents**

Authorities may wish to hire an auction provider or sale agent to sell an item, particularly for larger or more valuable items, such as vehicles.

### **Giving away items to targeted user groups**

Authorities might consider giving away items to targeted user groups. For example, donating a wheelchair to an organisation that supports people with a disability, or donating a vehicle to NSW Fire and Rescue for rescue operator training and skill development exercises. An authority may consider donating instead of destroying vehicles.

### **Other disposal or destruction of property**

If an authority cannot sell or give away property in the relevant period, they may recycle, rehome, destroy or dispose of the property. Authorities can decide the best approach for each item and may need to balance resource and environmental considerations.

## **2.8.3 Other considerations**

### **Contents inside class 3 items (vehicles)**

Details for how authorised officers must treat contents of class 3 items (vehicles) taken into possession are in the Regulations.

Vehicle contents may be dealt with as standalone items under their relevant class (for example: tools are class 1 (personal) items, a motorbike is a class 3 item (vehicle) at the point in time where the vehicle is going to be sold, given away, or otherwise disposed of.

An authorised officer must not sell, give away, destroy or dispose of an item until they have tried to identify the item's owner and notify them. This step is not needed if the authorised officer believes the owner of the vehicle contents is the same person as the owner of the class 3 item (vehicle) and the authority has tried to notify the owner that the vehicle has been taken into possession.

### **Owner able to claim net proceeds**

After an item is sold, an authority may keep the following amounts from the proceeds of the sale:

- costs incurred in selling the property, and
- any fee related to the item being taken into possession.

An owner of property sold by an authority may claim any remaining proceeds of the sale in the following time periods after the sale:

- for a class 1 (personal) item or a class 2 (sharing service) item – within 3 months of the sale, or
- for a class 3 item (vehicle) or an animal – within 6 months of the sale.

After this, an authority may keep any remaining amount from the sale that is not claimed.

Authorities should have clear policies and procedures for owners making a claim for the proceeds of sale of their property.

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## **2.9 Offences and Penalties**

The Act includes a strong penalty framework for offences to encourage people to take responsibility for their property or face strong penalties.

## Key offences and penalties

Key offences that may trigger a Penalty Infringement Notice (PIN or fine) or a penalty under the Act include:

- leaving an item or animal unattended in a public place
- causing or permitting an animal to trespass.

## More serious offences and penalties

Some offences do not have corresponding penalty notice offences as they are more serious offences that need to be determined by a court. These include:

- occupier of private land failing to take prescribed action
- recklessly or negligently leaving an item unattended in certain circumstances.

## Penalty notices to operators for unattended class 2 (sharing service) items

Under the Regulation a penalty notice for the offence of leaving a class 2 (sharing service) item unattended in public may not be issued to a sharing service operator unless the authorised officer has given the operator the minimum, risk-based notice of the unattended item). This provision ensures that the operator is given an opportunity to remove the unattended item before a penalty is issued.

## Compounding fines

The Act includes a unique 'compounding' fine for class 2 (sharing service) items and animals as these have a high likelihood of being clustered together. This includes trolleys left at a bus stop, or a herd of sheep escaped through a broken fence.

The approach recognises that the impact of a cluster of unattended items or animals is incrementally greater than one item or animal, but not cumulatively greater. This means that 2 items or animals is not double the impact, 3 items or animals is not triple the impact and so on. This approach does not over-burden the owner with multiple fines at the full amount.

The compounding fines are capped at twice the amount of a single fine. For example, the fine for 11 class 2 (sharing service) items is  $\$660 + \$66 \times 10 = \$1,320$ , so it does not exceed a reasonable proportion of the maximum penalty that may be imposed by a court.

If there are more than 11 articles, the authorised officer can choose to issue a PIN for each of the 11 articles or pursue the penalty for a higher number of articles through the court.

The table under Schedule 1 of the Regulation sets out all the penalty notice offences under the Act. See also Appendix A. Higher penalties and fines may apply to a corporation.

**Table 4: Compounding fines**

Offence	Number of Items/Animals	PIN (individual owner)	PIN (corporation)
Offence of leaving a Class 2 (sharing service) item unattended in public place [S37(1)]	1 item	\$660	\$1,320
	2 – 11* items	\$66 for each additional item	\$132 for each additional item
Offence of leaving an animal unattended in public place [S37(2)]	1 animal	\$660	\$660**
	2 – 11 animals	\$66 for each additional animal	\$66 for each additional animal
Offence of causing or permitting an animal to trespass on private land without the permission of the occupier of the land [S40(1)]	1 animal	\$660	\$660
	2 – 11 animals	\$66 for each additional animal	\$66 for each additional animal

\* The maximum PIN that can be applied is for 11 items/animals. If there are more than 11 items/animals, the Authorised Officer can choose to issue a PIN for up to 11 of the items/animals or pursue a higher penalty through the courts.

\*\*There is no higher fine amount for a corporation for leaving an animal unattended. Animals can at times become unattended through no fault of the owner/responsible person.

## Revenue NSW Fixed Penalty Handbooks

Revenue NSW coordinates the update and release of the Local Government Fixed Penalty Handbooks and provides advice on any legislation updates to councils, other authorities, and third-party vendors via its weekly newsletter.

## 2.10 Miscellaneous

### Authorised officers may give directions to responsible persons

An authorised officer may give a written notice to a person responsible for unattended property directing them to remove it or prevent it from becoming unattended again. For example, a direction may be given to repair a fence to contain an animal, or to make and comply with a plan of management for preventing property becoming unattended. In some cases, it may be appropriate to align the direction requirements with licence conditions or requirements of other legislation.

The direction must be notified in writing, include a suitable timeframe for compliance, must be reasonable and proportionate, and not require action between the hours of 11pm and 7am.

### Assessing risk

Risk is a key factor that authorised officers must assess in deciding if regulatory action is needed for an unattended item. Authorities should have a risk assessment process in place to assist their officers to decide the level of risk when considering what action to take for an unattended.

Considerations might include:

- density of the location around vehicular traffic, foot traffic and other use by the public
- severity of the obstruction
- likelihood that the item may harm a person, animal or the environment. In the case of risk to the environment, the pace at which harm may happen. For example, a car leaking petrol into a creek will cause harm more quickly than a car left in a clearing
- the extent to which public amenity is being impacted.

### Homeless Persons Protocol

The Protocol for Homeless People in Public Places published by the Department of Communities and Justice is based on the following principles:

- People experiencing homelessness have the same rights as any member of the public to:
  - be in public places
  - participate in public activities or events
  - carry with them and store their own belongings
  - request or decline support or assistance.

Before taking possession of an unattended item or animal, if an authorised officer believes that the owner is homeless, they must consider the principles of the Protocol and any other policy adopted by the authority to give effect to the Protocol (section 8 of the Regulation).

While the Protocol does not override the law, authorised officers may use their own judgement for unattended property that they believe belongs to a homeless person. Some scenarios where this may apply include:

- an unattended vehicle that a homeless person may be sleeping in or have left due to lack of stable accommodation, or
- an unattended shopping trolley used by a homeless person to store and transport personal items.

Authorised officers are encouraged to consider whether regulatory action is needed and if it is, consider an appropriate notice period and whether a penalty or fine is necessary.

### **Stolen or vandalised unattended items**

Property may be left unattended or abandoned in a public place due to being vandalised or stolen. The owner of the property is responsible for investigating this through other legal avenues and authorised officers do not have a role in this. However, in the case of class 3 items (vehicles), an authorised officer should report an unattended vehicle to NSW Police Force if they suspect the vehicle was stolen.

### **Large items**

Other than class 3 items (vehicles), large items that cannot be collected by 1-2 people are not under the PSUP framework. This includes items such as skip bins, shipping containers, and large vessels.

Large items are dealt with under other laws including:

- *Maritime Safety Act 1988*
- *Environmental Planning and Assessment Act 1979*
- *Protection of the Environment Operations Act 1997, or*
- *Uncollected Goods Act 1995.*

### **Code of Practice**

All class 2 (sharing service) items must comply with the standards set out in the Code of Practice for sharing service items. Retailers and other operators are expected to ensure their sharing service items comply with the Code for the safe and successful operation of these items in public places.

Authorised officers may take possession of a sharing service item if it is unattended in a public place and is in breach of the Code. This includes if it is not appropriately branded or not in good working condition.

An unattended class 2 (sharing service) item in breach of the Code is an offence under the Act and authorised officers may issue a penalty notice to sharing service operators. An authorised officer may also issue a direction to a sharing service operator to make their item compliant with the Code.

Sharing service operators are strongly encouraged to ensure that their sharing service items comply with the Code to prevent regulatory action under the Act.

### **Personal liability**

An authorised officer, or person acting under the direction of an authorised officer, is not personally liable for anything done in good faith and for the purpose of exercising a function under the PSUP laws.

An authority may be liable for the actions of a person or officer authorised on their behalf in exercising their function. For example, if a council ranger causes a vehicle to be scratched while taking it into possession, they are not personally liable for that damage. Instead, the council will be liable for the damage.

## Record keeping

Authorised officers are encouraged to keep adequate records for property found unattended in a public place, including where giving notices, including:

- a description of the unattended property, including its location
- the date(s) and time(s) that the property was observed to be unattended, and
- the date (and time if applicable) by which, if the unattended property is not removed, the property may be taken into possession.

Authorities must keep a record of all property taken into possession by authorised officers. Further details are provided in the Act and Regulation.

## Signage

Authorities may wish to erect signs in public places where unattended or abandoned property is a common issue. For example, along a foreshore where kayaks are frequently stored, or around bus stops where shopping trolleys may be left. Signs should have consistent, easily recognisable symbols, clear information about responsible property ownership and potential consequences if property is found unattended in the area.

In respect of signs left in public places by businesses or members of the community, in some cases these could be treated as class 1 items under PSUP laws. In such cases, written notice must be provided to the owner of the unattended class 1 item prior to the item being taken into possession. If the owner can't be readily identified, written notice can be attached directly to the item.

In some cases, however, councils and other authorities may find that unapproved signage can be more quickly and effectively dealt with under other regulatory processes, such as:

- *Local Government Act 1993* – council approvals for displaying signage in public places
- *Environmental Planning and Assessment Act 1979* – advertising and other signage
- *Roads Act 1993* – advertising and other signage
- *Protection of the Environment Operations Act 1997* and *Waste Avoidance and Resource Recovery Act 2001* – littering.

## Council policies and procedures

Councils are encouraged to develop appropriate policy and procedures, in consultation with their local community, in relation to local enforcement action under the PSUP laws. The NSW

Ombudsman has issued Enforcement Guidelines for Councils and a Model Compliance and Enforcement Policy that may be used to inform this development. Councils may wish to incorporate policy about unattended property into existing council policies such as parking policy or procedures. Some elements that may be appropriate to include are:

- Regulatory principles
- Enforcement approach
- Application of key concepts (e.g. “same or substantially the same place”)
- Prioritisation of unattended property types, circumstances and locations for regulatory action
- Internal appeals processes

Councils should also communicate and implement any such policies fairly and consistently to ensure there is a common understanding by the community of how the council will apply the PSUP laws within its local government area.

# 3 FURTHER INFORMATION AND RESOURCES



## 3.1.1 Additional Resources

Additional resources can be found at [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au).

**Table 5: List of Additional Resources**

Resource	Description/Purpose/Audience
<a href="#"><u>Public Spaces Unattended Property Act 2021</u></a>	Parent Act
<a href="#"><u>Public Spaces (Unattended Property) Regulation 2022</u></a>	Statutory Instrument+
<a href="#"><u>Code of Practice for Class 2 Items (Shopping Trolleys and other Sharing Service Items)</u></a>	Code setting out required standards for Class 2 (sharing service) items
<a href="#"><u>Public Spaces (Unattended Property) Guidelines (these guidelines)</u></a>	Guidance for authorities under the Act
<a href="#"><u>Frequently asked questions</u></a>	Answers to questions likely to be raised by the community
<a href="#"><u>Fact sheet – Animals</u></a>	
<a href="#"><u>Fact sheet – Class 1 (personal) Items</u></a>	
<a href="#"><u>Fact sheet – Class 2 (sharing service) items</u></a>	Additional information to assist community in understanding the PSUP laws.
<a href="#"><u>Fact sheet – Class 3 items (vehicles)</u></a>	
<a href="#"><u>Infographic – Animals</u></a>	
<a href="#"><u>Infographic – Class 1 (personal) Items</u></a>	Authorities may use these to educate their communities and key stakeholders.
<a href="#"><u>Infographic – Class 2 (sharing service) items</u></a>	
<a href="#"><u>Infographic – Class 3 items (vehicles)</u></a>	

Resource	Description/Purpose/Audience
<a href="#">NSW legislation</a>	To view other legislation that the PSUP framework may reference visit the NSW legislation website. This is the primary source for NSW legislation managed by the Parliamentary Counsel's Office
Enforcement guidelines for councils – December 2015	<a href="#">NSW Ombudsman's</a> enforcement guidance and model policy for councils when undertaking enforcement practices
Model Compliance and Enforcement Model Policy	
Protocol for Homeless People in Public Places	<a href="#">Department of Communities and Justice</a> guidance to assist government, non-government organisations, and private businesses to interact and engage with people experiencing homelessness, so they are treated respectfully, with dignity, and do not face discrimination
Circulars to councils	Refer to <a href="#">OLG website</a> for circulars relevant to the PSUP framework

## 3.1.2 Key contacts

For further information about the Public Spaces (Unattended Property) framework please contact the Policy Team at the Office of Local Government (OLG), Department of Planning and Environment on (02) 4428 4100 or [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au) or via post to Locked Bag 3015, NOWRA NSW 2541.

The [NSW Government Directory](#) provides the contact details for all government departments, agencies, offices and entities within New South Wales.

## 3.1.3 Authorities and authorised officers

### Authorities

- Centennial Park and Moore Park Trust
- a council
- Forestry Corporation of New South Wales

- Local Land Services
- the Minister administering the *Crown Land Management Act 2016*
- Newcastle Port Corporation (known as the Port Authority of New South Wales) and other Port Corporations that may be established under the *Ports and Maritime Administration Act 1995*
- NSW Trains
- Parramatta Park Trust
- Place Management NSW
- Secretary of the Department of Planning and Environment (for *National Parks and Wildlife Act 1974*)
- Sydney Metro
- Sydney Olympic Park Authority
- Sydney Trains
- Transport for NSW
- Transport Asset Holding Entity
- the Regulatory Authority within the meaning of the *Water NSW Act 2014*
- Residual Transport Corporation of New South Wales
- Royal Botanic Gardens and Domain Trust
- Western Sydney Parklands Trust
- Venues NSW

### **Authorised officers**

Authorised officers are appointed by an Authority for the purposes of the PSUP framework, as evidenced by an official appointment record held by the Authority. Each authorised officer must also be issued with an identification document, which may be physical or electronic.

During the first year of implementing the PSUP laws, written authorisation issued under the *Impounding Act 1993* is considered an identification document issued under the PSUP laws.

### **Relationship to other legislation**

The PSUP Act makes several references to other NSW legislation. Most references relate to terms in the Dictionary to the Act or an Authority that the PSUP Act and Regulation recognises as an authority with an area of operations.

There are a small number of references to other legislation where further information about the relationship is provided below. All NSW legislation can be publicly accessed via the NSW legislation website at <https://legislation.nsw.gov.au/>.

**Table 6: Related Legislation**

Act/Regulation referenced	Relationship
<i>Administrative Decisions Review Act 1997</i>	Applications for review to the Civil and Administrative Tribunal (section 34 Act).
<i>Civil Procedure Act 2005</i>	Court orders for payment of money (section 51 Act).
<i>Companion Animals Act 1988</i>	See key concepts – Animals.
<i>Crown Land Management Act 2016</i>	Private land meaning (Dictionary to Act).
<i>Fines Act 1996</i>	Responsible person liable for offences involving property (section 39 of the Act). Penalty notices (section 49 of the Act).
<i>Government Information (Public Access) Act 2009</i>	Records of property taken possession of must be available for inspection (clause 18(2) Regulation).
<i>Local Government Act 1993</i>	Council meaning (Dictionary to Act).
<i>Personal Property Securities Act 2009</i>	See key concepts – Vehicles.
<i>Road Transport Act 2013</i> and related instruments	See key concepts – Vehicles.
<i>Road Transport (General) Regulation 2021</i>	Alternative regulatory powers available to NSW Police Force, road authorities and councils in relation to unattended vehicles on roads.
<i>Veterinary Practice Act 2003</i>	Destruction of animals in possession in certain circumstances – definition of veterinary practitioner (section 22(3) of the Act).

## 3.1.4 Accessibility

The Office of Local Government is committed to accessibility so that information is available to everyone. This includes people with disability who may use assistive technology to read or listen to content in these Guidelines.

Please contact us if you:

- are having trouble accessing any information in these Guidelines
- need information in these Guidelines in an alternative format
- have suggestions on how we can improve the accessibility of the Guidelines.

# Appendix A – Offences and Penalties

**Table 7: Offences and penalties under the Act and the Regulation**

Act Provision	Penalty notice – individual	Penalty notice – body corporate	Maximum penalty – court imposed
<i>Section 24(1)</i> – occupier of private land failing to take prescribed action	N/A	N/A	25 penalty units
<i>Section 28(4)</i> – responsible person failing to comply with written notice (a) for an individual (b) for a body corporate	See below	See below	(a) 50 penalty units (b) 125 penalty units
<i>Section 28(4)</i> – penalty notices for an animal for a class 1 (personal) item for a class 2 (sharing service) item for a class 3 item (vehicle)	\$1,320 \$660 \$1,320 \$1,320	\$2,640 \$1,320 \$2,640 \$2,640	
<i>Section 37(1)</i> – leaving an item unattended in a public place (a) for an individual (i) for a class 3 item (vehicle)  (ii) for a class 2 (sharing service) item (A) for the first class 2 (sharing service) item (B) for each additional class 2 (sharing service) item, in the same public place or circumstance (iii) otherwise (b) for a body corporate	See below	See below	(i) 25 penalty units for each day, or part thereof day, but not more than a maximum of 75 penalty units (ii) (A) 25 penalty units (B) 5 penalty units, but not more than a maximum of 50 penalty units (iii) 25 penalty units (b) 125 penalty units

Act Provision	Penalty notice – individual	Penalty notice – body corporate	Maximum penalty – court imposed
<p><b>Section 37(1)</b> – penalty notices</p> <p>for a class 1 (personal) item</p> <p>for a class 2 (sharing service) item, not in the same public place or circumstance as another class 2 (sharing service) item</p> <p>for 2-11 class 2 (sharing service) items, in the same public place or circumstance</p> <p>for a class 3 item (vehicle)</p>	<p>\$330</p> <p>\$660</p> <p>for the first item – \$660, and for each additional item – \$66</p> <p>\$660</p>	<p>\$660</p> <p>\$1,320</p> <p>for the first item – \$1,320, and for each additional item – \$132</p> <p>\$1,320</p>	
<p><b>Section 37(2)</b> – leaving an animal unattended in a public place, including penalty notices</p> <p>(a) for the first animal</p> <p>(b) for each additional animal in the same public place</p>	<p>See below</p>	<p>See below</p>	<p>(a) 25 penalty units</p> <p>(b) 5 penalty units, but not more than a maximum of 50 penalty units</p>
<p><b>Section 37(2)</b> – penalty notices</p> <p>for leaving a single animal in a public place</p> <p>for 2-11 animals in the same public place</p>	<p>\$660</p> <p>for the first animal – \$660, and for each additional animal – \$66</p>	<p>\$660</p> <p>for the first animal – \$660, and for each additional animal – \$66</p>	

Act Provision	Penalty notice – individual	Penalty notice – body corporate	Maximum penalty – court imposed
<p><b>Section 38</b> – recklessly or negligently leaving item unattended in certain circumstances</p> <p>(a) for an individual</p> <p style="padding-left: 20px;">(i) for a class 3 item (vehicle)</p> <p style="padding-left: 20px;">(ii) for a class 2 (sharing service) item</p> <p style="padding-left: 40px;">(A) for the first class 2 (sharing service) item</p> <p style="padding-left: 40px;">(B) for each additional class 2 (sharing service) item</p> <p style="padding-left: 20px;">(iii) otherwise</p> <p>(b) for a body corporate</p>	N/A	N/A	<p>(a)</p> <p style="padding-left: 20px;">(i) 50 penalty units for each day, or part there of day, but not more than a maximum of 150 penalty units</p> <p style="padding-left: 20px;">(ii)</p> <p style="padding-left: 40px;">(A) 50 penalty units</p> <p style="padding-left: 40px;">(B) 10 penalty units, but not more than a maximum of 100 penalty units</p> <p style="padding-left: 20px;">(iii) 50 penalty units</p> <p>(b) 250 penalty units</p>
<p><b>Section 40(1)</b> – causing or permitting animal to trespass</p> <p>(a) for the first animal</p> <p>(b) for each additional animal</p>	See below	See below	<p>(a) 25 penalty units</p> <p>(b) 5 penalty units, but not more than a maximum of 50 penalty units</p>
<p><b>Section 40(1)</b> – causing or permitting animal to trespass</p> <p>for a single animal on private land without permission</p> <p>for 2-11 animals on the same private land without permission</p>	<p>\$660</p> <p>for the first animal – \$660, and for each additional animal – \$66</p>	<p>\$660</p> <p>for the first animal – \$660, and for each additional animal – \$66</p>	
<p><b>Section 41(1)</b> – unlawfully recovering property</p>	N/A	N/A	50 penalty units

Act Provision	Penalty notice – individual	Penalty notice – body corporate	Maximum penalty – court imposed
<b>Section 42(3)</b> – failing to recover property as required (a) for an individual (b) for a body corporate	See below	See below	(a) 25 penalty units (b) 125 penalty units
<b>Section 42(3)</b> – penalty notices for an animal	\$660	\$1,320	
for a class 1 (personal) item	\$330	\$660	
for a class 2 (sharing service) item	\$660	\$1,320	
for a class 3 item (vehicle)	\$660	\$1,320	
<b>Section 43</b> – obstructing authorised officer	N/A	N/A	100 penalty units

# Appendix B – Guidance for authorised officers on special arrangements for stock animals in emergencies (PSUP Act - section 19)

## Introduction

In response to tragic and fatal accidents on roads in NSW involving livestock in recent years, section 19 of the [Public Spaces \(Unattended Property\) Act 2021](#) (PSUP Act) sets out special arrangements that may be put in place in emergency situations involving unattended stock animals where there is an unacceptable risk to the health or safety of persons.

Section 19 of the PSUP Act enables an authorised officer to place one or more unattended stock animals on any practicable premises in the vicinity, without taking possession of the animal, in certain emergency situations as outlined below, if the authorised officer has made a reasonable attempt to obtain the relevant landowner or occupier's consent.

The provisions recognise that in certain emergency situations involving stock animals it may not be possible for an authorised officer to immediately take an unattended stock animal to a place of care but failure to quickly move the animal poses an unacceptable risk to the health or safety of persons.

These additional powers should only be used in emergency situations, as the consequences of moving stock onto premises could be significant. For example, an unattended stock animal placed on a property could introduce a biosecurity risk to a valuable stud, or could impregnate selectively bred cattle, creating a significant issue for the landholder, their business and their animals.

Where these powers are used, it is important that steps are taken to minimise the potential impact of the unattended stock animal/s on the premises or private land on which they are placed. These include contacting the landowner or occupier, looking for biosecurity or industry accreditation signs to be adhered to, and taking steps to quarantine the stock animal/s away from other livestock on the property to prevent and minimise biosecurity and other animal health and welfare risks.

Prior to exercising powers under section 19, and while making arrangements during and immediately following emergencies where unattended stock animals pose a significant risk to public health and safety, a range of matters must be considered. Guidance on these matters is included below.



## Role of NSW Police officers in stock emergencies

In the event of an emergency involving stock animals, police officers are often first responders. Their primary role is to ensure public safety and they can put in place interim measures to manage traffic if required.

NSW Police is not an authority under the PSUP Act, however police officers are empowered under the Act to carry out the functions of an authorised officer including those set out under section 19, if required, to maintain public health and safety. When police officers exercise these powers, they do so on behalf of the relevant PSUP authority within whose jurisdiction they are operating, such as the relevant local NSW council or Local Land Services (LLS).

While police may put in place interim measures to mitigate immediate threats to public safety, it is suggested that authorities have arrangements in place for an authorised officer to attend and move the stock animals as soon as possible, including after standard business hours. This allows police to assist with other emergencies and needs in the local community.

Most general duties police officers do not have the relevant training, equipment, or access to data to identify stock owners and will generally hand over control of stock animals in emergencies and control of the site to the nearest local authority which would be better placed to deal with unattended animals in these situations.

## When can action be taken under section 19?

Section 19 provides that special arrangements for stock animals in emergencies may be made if an authorised officer reasonably believes:

1. the animal is a stock animal that is unattended\* **AND**
2. appropriate arrangements cannot be made to take possession of the animal **AND**
3. failure to move the animal poses an unacceptable risk to the health or safety of persons.

\* Note section 18(2)(d) of the PSUP Act outlines when a stock animal is not unattended. For further information see section 2.5.2 Responding to unattended animals – Special circumstances for animals in relation to travelling stock reserves.

## What action can be taken under section 19?

Under section 19 of the PSUP Act, the authorised officer may arrange for an unattended stock animal to be kept on any practicable premises in the vicinity, including on private land. If private land is the most appropriate option, the authorised officer can arrange this **IF** they have made reasonable attempts to:

1. obtain consent of the owner or occupier of the private land **AND**

2. comply with their reasonable requests in relation to temporarily keeping the animal on their land until it can be removed.

The authorised officer must arrange for the stock animal to be removed from the private land as soon as reasonably practicable after the emergency ends unless the owner or occupier of the land agrees to the animal remaining on the land.

### **What should generally be considered an ‘emergency’ involving stock for the purposes of section 19?**

For the purposes of section 19 of the PSUP Act, a determination of whether a situation constitutes an emergency involving stock animals should be based on the extent to which the unattended stock animal presents an unacceptable risk to human life.

Examples of situations that may be considered an emergency for the purposes of section 19 of the PSUP Act include but are not limited to:

- an accident involving a stock truck rollover causing stock animals to be uncontained / unrestrained and wandering on a public road in a way that poses a significant risk to motorists travelling on the road
- unattended and unidentified stock animals wandering near or on public land/road where the property they strayed from cannot be easily identified, they are posing an unacceptable risk to the health or safety of persons, and they cannot be safely returned before arranging movement to a place of care.
- a stock animal on the road after hours including at night that cannot be easily seen by motorists travelling on the road and where it has not been possible, after reasonable attempts, to contact the animal’s owner or make arrangements to immediately take the animal to a place of care.

In some situations, such as during a State significant flood, bushfire or other natural disaster, alternative emergency arrangements may be triggered that would better manage the situation than section 19 of the PSUP Act – see below under “When should section 19 NOT be used” for further details.

### **When should section 19 NOT be used?**

#### *State emergencies*

In some situations, such as during a State significant flood, bushfire or other natural disaster, a state of emergency declaration may be triggered (*State of Emergency and Rescue Management Act 1989*). These declarations trigger a range of other appropriate powers and arrangements led by an appointed combat agency that should be followed during the appropriate period of the emergency instead of using section 19 of the PSUP Act.

Under the NSW State Emergency Management Plan (EMPLAN), developed in accordance with the *State Emergency and Rescue Management Act 1989*, the NSW Department of Primary Industries (DPI) is the appointed combat agency for biosecurity (animal and plant) emergencies and will lead other agencies and councils in prevention of, preparation for, response to and recovery from emergencies affecting animals and plants.

Section 19 must never be used in contravention of an emergency order under the Biosecurity Act.

A biosecurity Emergency Order under the *Biosecurity Act 2015* (Biosecurity Act) prevails over section 19 of the PSUP Act.

This means that authorised officers cannot use powers under section 19 of the PSUP Act if an emergency order is in place that would prevent placing stock on a private owner's land. Information about biosecurity emergency orders can be found on the DPI website.

It is also important to be aware of other requirements under the *Biosecurity Act 2015*, including the general biosecurity duty to take reasonable steps to manage biosecurity risks, and management tools including biosecurity zones and control orders. If these tools are in place, placement of stock animals on affected properties should be avoided.

### *Other emergencies*

Section 19 should only be used in emergency circumstances where the unattended stock animal is posing an unacceptable risk to the health or safety of persons and alternative arrangements to take possession of the animal cannot be made.

Section 19 should not be invoked if appropriate arrangements can be made by an authorised officer to take an unattended stock animal to an appropriate place of care or arrange for it to be returned to its owner or carer immediately. For example, it is common for stock animals to stray through broken fences from time to time in rural areas and these situations are often resolved informally by authorised officers and/or community members.

In these types of situations, if an authorised officer is unable to arrange for the stock animal to be returned to and contained within the property they strayed from they should use section 18 of the PSUP Act. Section 18 provides general powers for officers to take possession of unattended animals in public and to a place of care immediately. Powers under section 18 can be used without notice due to the inherent risk that any animal unattended in public may pose to people, other animals and the environment, even in non-emergency situations.

### **What may be a reasonable attempt to contact and obtain consent of the landowner or occupier?**

Before arranging for a stock animal to be kept on private land, an authorised officer must make reasonable attempts to obtain the consent of the landowner or occupier of that land and comply with any reasonable requests they make in relation to temporarily keeping the stock animal on their land.

While not an exhaustive list, the following actions are considered appropriate examples to demonstrate a reasonable attempt to contact and obtain landowner or occupier consent:

- Look at signage on gates/fencing to identify contact details and contact by phone

- Door knock at dwelling(s) on premises if deemed safe to do so
- Check local records for last known property owner and contact by phone
- Contact LLS for landholder contact details
- Contact stock and station agents for landholder contact details
- Check for signage on access points to see if there is a biosecurity management plan in place and who to contact about that plan.

Consideration of actions that may be reasonable in the circumstances should be informed by an appropriate risk assessment (see *Authorised officer health and safety* below for further information). In some cases, once reasonable attempts have been exhausted, it may not be possible to obtain landowner/occupier consent before moving a stock animal onto private land.

If there are no other options available and a stock animal is moved to private land without the landowner or occupier's consent, reasonable efforts should be made to identify and contact the landowner or occupier as **soon as possible** after moving the animal onto the private land. In these circumstances, reasonable efforts should also be made to quarantine the animal from any other livestock on the land.

See **Other important considerations** below for matters to be given due consideration before taking action under section 19 of the PSUP Act.

It is important to check for any biosecurity or industry accreditation signage **prior** to making arrangements to keep a stock animal on private land, as there may be a biosecurity management plan, biosecurity order or other management tool in place that must be complied with. There could also be a biosecurity emergency to be aware of even if no biosecurity Emergency Order is in place.

### **What may be a reasonable attempt to comply with the reasonable requests of a landowner or occupier?**

Where contact has been made, an authorised officer must make reasonable attempts to comply with any reasonable requests of the landowner or occupier in relation to temporarily keeping the stock animal on their land.

While not an exhaustive list, the following may constitute reasonable requests by the landowner or occupier:

- that the stock animal be placed in a particular paddock or area to quarantine from other stock, where practicable, to minimise biosecurity or animal welfare risks

- that the authorised officer work with the landowner or occupier and other authorities, particularly LLS which may have the expertise and equipment, to use temporary fencing to separate the stock animal on the property from other animals and areas of agricultural production as soon as practicable to minimise biosecurity and animal welfare risks
- that the authorised officer comply with a request to prevent, eliminate or minimise biosecurity risks
- that basic requirements for the stock animal, including food, water, veterinary treatment etc. are provided by the owner, responsible person for the animal and/or the authorised officer
- that the authorised officer agree to a maximum time period for holding the animal e.g. 24 hours, by which time alternative arrangements will be made by an authorised officer

Where reasonable requests are unable to be complied with, alternative options for moving the stock animal should be considered, such as whether there is other nearby land where landowner/occupier consent can reasonably be obtained.

### **Cooperation and collaboration between authorities**

Regardless of who is first to respond to an emergency involving stock animals, it is recommended that all relevant authorities, such as the local NSW council and LLS are notified of the emergency as soon as possible and that authorities work together to manage the situation.

In relation to biosecurity considerations, authorised officers may wish to consider contacting the Department of Primary Industries (DPI). For animal health and welfare issues, authorised officers may wish to consider contacting RSPCA NSW and Animal Welfare League NSW.

Under the PSUP Act, authorised officers are empowered to deal with unattended property in public, including stock animals, in another authority's area of operation if:

1. an arrangement is in place between authorities to allow the exercise of functions on each other's area, or
2. if the authorised officer reasonably believes it is necessary to exercise the functions outside their area of operations in the interests of public health or safety, as may be the case in the event of an emergency involving stock animals.

Authorities under the PSUP Act are encouraged to establish and share Memorandums of Understanding (MoUs) or other mutual agreements with each other and relevant agencies to set out agreed arrangements for dealing with emergencies involving stock animals in accordance with section 19 of the PSUP Act. Given differing circumstances at the local level, these may best be discussed and developed at the local level, potentially through a Local Traffic Committee of the relevant council.

An important consideration that should be clear from the outset when dealing with an emergency involving stock animals is to determine which authority will be the lead authority responsible for dealing with the animal in these situations. This includes which authority is responsible for managing after hours emergencies so that police can appropriately hand over to the appropriate authority once public safety risks have been mitigated. This may be agreed upon on a case-by-case basis depending on the circumstances or may be prescribed in an MOU or other mutual agreement.

### **Who is responsible for the stock animal while placed on a nearby premises under section 19?**

Section 19 of the PSUP Act enables an authorised officer to place an unattended stock animal on a nearby premises **without taking possession of the animal**. This simplifies the process for the owner or other person responsible for the animal immediately prior to the emergency to collect the animal as soon as practicable after the emergency ends.

The owner of the stock animal or other responsible person should continue to maintain responsibility for ensuring the immediate health, safety, and welfare of the animal during the period that the animal has been placed on the nearby premises. In practical terms arrangements for the provision of food, water, shelter etc. while on the nearby premises may need to be negotiated between the responsible person/owner of the stock animal and the authorised officer, and potentially the private landowner/occupier as well. See *Animal welfare and safety* below for further information about relevant requirements.

Where the owner or responsible person cannot be quickly identified, or is unable or unwilling to act, the authorised officer should consider whether it is appropriate to immediately take possession of the stock animal to ensure continuous care.

### **What are the obligations of an authorised officer who has taken action to place a stock animal on a nearby premises under section 19?**

#### *Removing animal as soon as practicable*

Where a stock animal has been placed on private land during a stock emergency, the authorised officer must arrange for the animal to be removed from the private land as soon as reasonably practicable after the emergency ends unless the owner or occupier of the land agrees to the animal remaining on the land.

The authorised officer may arrange for the stock animal to be taken to a place of care in accordance with Section 18 of the PSUP Act or otherwise return the animal to its owner or other responsible person.

### *Notifying relevant authority*

Where an authorised officer has taken action under section 19 on behalf of another authority, they should notify the relevant authority of action taken as soon as practicable. Notification should include:

- description of the stock, including species, number, breed (if known), approximate age, appearance (colour, horns, wool length, etc.) and identification (ear tags, brands, earmarks) where possible
- time, date and place of emergency involving stock animal/s
- time, date and premises that stock animal/s were placed on during the emergency
- name, address and contact details (if known) of owner or occupier of premises where the stock animal is held
- any requests made by the landowner or occupier and reasonable requests complied with in relation to keeping of the stock animal/s
- condition and welfare of the stock animal/s, including any actions taken to provide for the animal's welfare

Where the landowner or occupier of the premises is known to the authorised officer, they should also provide the name and contact details (if known) for contacting in relation to removing the stock animal from their premises.

### **Other important considerations:**

Before taking action under section 19 of the PSUP Act, authorised officers should give due consideration to the following matters:

#### *Authorised officer health and safety*

Emergencies involving stock animals can at times take place in remote areas or outside of daylight hours and these circumstances can increase the risk of hazards and dangers for authorised officers. It is essential that authorised officers responding to such emergencies prioritise their own health and safety and avoid taking action that may put themselves in danger. This includes, for example, ensuring colleagues are aware of their location and the circumstances of the emergency and seeking additional back-up where possible, taking action to make the situation as safe as possible (such as setting up warning signs along the road in the event of a stock truck accident) and taking care to prevent injury if needing to handle or guide a stock animal to a new location. Authorities are

encouraged to have appropriate risk assessment processes in place for stock emergencies to inform action taken by authorised officers.

### *Animal welfare and safety*

The *Prevention of Cruelty to Animals Act 1979* (POCTAA) provides for the welfare of animals in NSW.

The authorised officer should work with the responsible person or owner of the stock animal to ensure that an animal that is kept on a premises under section 19 of the PSUP Act is provided with access to proper and sufficient food, water, and shelter, and is provided with veterinary treatment where necessary. The premises should be suitable to protect the stock animal from injury or illness and should prevent escape. Wherever possible the stock animal should be kept separate from any other existing animals on the premises, particularly to protect from cross-contamination or breeding. If necessary, authorised officers should seek specific guidance relevant to the circumstances from DPI, LLS, RSPCA NSW, Animal Welfare League NSW, or an appropriately qualified veterinarian.

The PSUP Act makes it clear that **an animal may only be euthanised as a last resort**. In strictly limited circumstances an authorised officer may euthanise an animal where:

- the authorised officer reasonably believes the animal is so severely diseased or injured, or is in such a poor physical or psychological condition, that it would be cruel to keep the animal alive, or
- there is no alternative to the immediate euthanasia of the animal because the animal is a threat to the health or safety of persons, other animals or the environment.

In these circumstances the authorised officer may euthanise the animal in a way that causes a quick death and without unnecessary pain. This can only occur if a veterinary practitioner is not available, or if the authorised officer reasonably believes waiting for a veterinary practitioner would be cruel or otherwise inappropriate.

### *General biosecurity considerations and obligations*

*The Biosecurity Act 2015* provides a framework for the prevention, elimination and minimisation of biosecurity risks posed by biosecurity matter, and for the management of biosecurity matter, carriers and potential carriers. Under the Biosecurity Act there is a general biosecurity duty on people to be aware of potential biosecurity risks related to their day-to-day work, hobbies, business and industry, and to take action to prevent the introduction and spread of pests, diseases, weeds

and contaminants. For example, some measures an authorised officer could take to prevent, eliminate or minimise biosecurity risks include:

- isolating stock that show signs of a disease to minimise the risk of disease spread to other stock on a property or neighbouring properties
- checking their footwear and gear so they don't transfer unwanted pests or diseases
- checking for and complying with biosecurity management plans.

Emergencies involving unattended stock animals can create biosecurity risks or concerns. Therefore, it is essential that any decision to place a stock animal on nearby land appropriately considers the potential or the real biosecurity risks of the situation.

For example, if diseased stock animals are moved onto a private property and infect other stock it could have economic, environmental and social impacts on the landowner/occupier, their animals and their business, with the potential for significant long-term consequences. It is important to consider the potential consequences prior to moving stock animals onto private property under section 19, particularly in circumstances where the landowner/occupier cannot be contacted and the conditions of the farm, in relation to biosecurity and breeding for example, are unknown.

The PSUP Act sets out that where there are any inconsistencies between the Biosecurity Act and section 19 of the PSUP Act, provisions under section 19 of the PSUP Act prevail except in circumstances where an emergency order is in place under the Biosecurity Act.

However, it is still important to be aware that there could be a significant biosecurity risk even if there is no emergency order in place. Emergency orders are one of the management tools under the *Biosecurity Act 2015*, but there could be a biosecurity zone or control order in place, or the property may be subject to a biosecurity direction.

Authorised officers should assess biosecurity risks on a case-by-case basis. This includes consideration of any biosecurity duties and emergency orders currently in place under the Biosecurity Act and information available at the location of the emergency about the unattended stock animal, such as documentation contained within a stock truck and any visible signs of disease, as well as looking for signage on property gates or fencing indicating that a Biosecurity Management Plan is in place. Where such signs are found, the authorised officer should contact the property owner using the contact details provided on the sign to understand any relevant biosecurity issues and comply with reasonable measures. NSW has specific legislation around Biosecurity Management Plans. Any farm implementing a plan under this legislation will have a sign on each access point with details for a contact person who can provide instructions. If contact details are not provided, or no such sign can be found, authorised officers are encouraged to seek guidance from DPI or LLS in relation to any biosecurity considerations that may be relevant to the situation.

### *NLIS stock identification and tracing obligations*

The National Livestock Identification System (NLIS) is Australia's system for the identification and traceability of cattle, sheep and goats. The NLIS combines three elements to enable the lifetime traceability of stock animals:

1. All livestock are identified by a visual or electronic eartag/device.
2. All physical locations are identified by means of a Property Identification Code (PIC)
3. All livestock location data and movements are recorded in a central database.

Authorised officers are encouraged to work with LLS and the responsible person/owner of the stock animal to ensure that any NLIS identification and tracing obligations are met as soon as possible following action taken under section 19 of the PSUP Act.

### *Record keeping*

Authorised officers should ensure that adequate records are kept of actions taken under section 19 of the PSUP Act when dealing with stock animals in an emergency. Relevant information that should be recorded includes:

- Date, time and location of emergency / arrival of responding officer
- Description of emergency
- Description of unattended stock animal/s including species, breed (where known), and identification tag information if available
- Description of actions taken to identify stock animal's owner (and owner contact details where known)
- Description of actions taken to identify private landowner or occupier (where relevant) (and private owner / occupier's contact details where known)
- Description of actions taken to relocate stock animal to premises in nearby vicinity including consideration of animal welfare requirements, biosecurity, any reasonable requests of the owner/occupier etc.
- Date and time that stock animal was returned to responsible person/owner
- Lead authority and authorised officer contact details

Maintaining adequate records about actions taken in response to an emergency is particularly important in order to demonstrate, if required to do so, that the authorised officer had a reasonable belief that action undertaken was consistent with the PSUP Act and appropriate in the circumstances. In addition, these records will enable fulfilment of the general obligations relating to animal welfare, biosecurity, stock identification and tracing required for the NLIS.

## Other resources

The following resources provide further guidance relevant to stock emergencies:

### 1. Transport for NSW

- Animals on Country Roads:

<https://roadsafety.transport.nsw.gov.au/stayingsafe/drivers/animalsoncountryroads/index.html>

What to do after a crash:

<https://roadsafety.transport.nsw.gov.au/stayingsafe/emergencies/after-a-crash.html>

### 2. Local Land Services

- Good fences make good neighbours: [https://southeast.lls.nsw.gov.au/\\_old/resource-hub/newsletters/2019/october/good-fences-make-good-neighbours](https://southeast.lls.nsw.gov.au/_old/resource-hub/newsletters/2019/october/good-fences-make-good-neighbours)

- Rural living handbook – A guide for rural landholders

[https://www.lls.nsw.gov.au/\\_data/assets/pdf\\_file/0007/1147804/Rural-Living-Handbook-2020.pdf](https://www.lls.nsw.gov.au/_data/assets/pdf_file/0007/1147804/Rural-Living-Handbook-2020.pdf)

### 3. Department of Primary Industries

- Straying Stock *Biosecurity Act 2015*:

[https://www.dpi.nsw.gov.au/\\_data/assets/pdf\\_file/0003/723180/Straying-Stock.pdf](https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0003/723180/Straying-Stock.pdf)

- Livestock movements in emergencies – NLIS and General Biosecurity Duty:

[https://www.dpi.nsw.gov.au/\\_data/assets/pdf\\_file/0005/1217048/livestock-movements-in-emergencies-nlis-and-general-biosecurity-duty.pdf](https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0005/1217048/livestock-movements-in-emergencies-nlis-and-general-biosecurity-duty.pdf)

- Management of animal transport accident responses policy:

[https://www.dpi.nsw.gov.au/\\_data/assets/pdf\\_file/0007/541519/policy-management-of-livestock-transport-accidents-responses.pdf](https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0007/541519/policy-management-of-livestock-transport-accidents-responses.pdf)

### 4. NSW Police Force

- Straying Stock on Public Roads factsheet:

[https://www.police.nsw.gov.au/\\_data/assets/image/0005/632219/Rural\\_Crime\\_Straying\\_Stock\\_Factsheet.jpg](https://www.police.nsw.gov.au/_data/assets/image/0005/632219/Rural_Crime_Straying_Stock_Factsheet.jpg)