

Passed by both Houses



New South Wales

Impounding Amendment (Shared Bicycles and Other Devices) Bill 2018

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Impounding Act 1993 No 31	3
Schedule 2	Amendment of Impounding Regulation 2013	8

I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2018



New South Wales

Impounding Amendment (Shared Bicycles and Other Devices) Bill 2018

Act No , 2018

An Act to amend the *Impounding Act 1993* and the regulation under that Act with respect to the impounding of bicycles and other devices that are part of a sharing service.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Impounding Amendment (Shared Bicycles and Other Devices) Act 2018*.

2 Commencement

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

Schedule 1 Amendment of Impounding Act 1993 No 31

[1] Part 2, Division 5

Insert after Division 4 of Part 2:

Division 5 Additional powers in relation to shared devices

19A Preliminary

This Division confers additional powers on impounding officers in respect of shared devices, and does not limit a power to impound an article that is a shared device under any other provision of this Act.

19B Definitions

(1) In this Division:

code of practice means a code of practice prescribed by the regulations under this Division.

device means:

- (a) a bicycle, or
- (b) any other thing used for transporting persons that is prescribed by the regulations as a device for the purposes of this Act.

leave a shared device includes park a shared device.

operator of a sharing service means a person who carries on the business of providing the sharing service.

shared device means any device that is provided for hire under a sharing service.

sharing service—see section 19C.

user means a person who hires a shared device under a sharing service.

(2) In this Division, a power to impound or move a shared device includes a power to unlock the device.

19C Sharing service—meaning

(1) In this Division, *sharing service* means an arrangement (including an arrangement in writing or one established through a smartphone application) under which:

- (a) devices are provided for hire (whether or not a fee is payable), and
- (b) the devices are self-locking, or access to the devices is otherwise able to be limited, including remotely, and
- (c) the devices are not hired from the premises of the operator of the sharing service or from a fixed docking station, and
- (d) the devices are not required to be returned to:
 - (i) the operator, or
 - (ii) the premises from which they were picked up, or
 - (iii) a fixed docking station, or
 - (iv) other specific premises, and
- (e) any other features prescribed by the regulations exist.

- (2) The regulations may:
 - (a) declare any arrangement or type of arrangement made in connection with a device to be within the definition of *sharing service* for the purposes of this Division, or
 - (b) exclude any arrangement or type of arrangement made in connection with a device from that definition of *sharing service*.
- (3) A provision of this Act, the regulations or a code of practice that requires a shared device to be left in a particular place, or prohibits a shared device from being left in a particular place, is to be disregarded for the purpose of determining whether an arrangement is a sharing service.

19D Impounding shared devices that are causing an obstruction or safety risk

- (1) A shared device is not to be left in a public place in a way that causes an obstruction or safety risk.
- (2) An impounding officer may immediately impound a shared device if:
 - (a) the shared device has been left in a public place, and
 - (b) the impounding officer believes on reasonable grounds that the shared device has been left in a way that causes an obstruction or safety risk.
- (3) An impounding officer may, instead of impounding a shared device under subsection (2), move the device to another place.
- (4) An operator of a sharing service must ensure that any shared device owned by the operator that is left in a public place (whether by a user or any other person) in a way that contravenes this section is removed within 3 hours after the operator is notified of the contravention by an impounding officer, user or any other person.
- (5) An operator of a sharing service who fails to comply with subsection (4) in relation to a shared device is taken to have abandoned the shared device in a public place.

Note. Abandoning an article in a public place is an offence under section 32.
- (6) The regulations may prescribe a longer period than 3 hours to apply for the purposes of subsection (4) in all or any specified circumstances.
- (7) For the purposes of this section, a shared device causes an *obstruction or safety risk*:
 - (a) if the shared device is left in a way that causes an obstruction to traffic (whether vehicular or pedestrian), or that is likely to be a danger to road users or the public, including because it blocks access to a footpath, fire exit, lift, access ramp or stairs, or
 - (b) in any other circumstances prescribed by the regulations.

19E Impounding abandoned shared devices

- (1) A shared device is not to be left in a public place, in the same location, for a period of more than 7 consecutive days.
- (2) An operator of a sharing service must ensure that any shared device owned by the operator that has been left in a public place (whether by a user or any other person) in contravention of this section is removed within 4 days after the operator is notified of the contravention by an impounding officer, a user or any other person.

- (3) An operator of a sharing service who fails to comply with subsection (2) in relation to a shared device is taken to have abandoned the shared device in a public place.

Note. An impounding officer may impound the abandoned shared device under section 15. Abandoning an article in a public place is an offence under section 32.

- (4) The regulations may prescribe a longer period than 4 days to apply for the purposes of subsection (2) in all or any specified circumstances.

19F Regulations relating to sharing services

- (1) The regulations may make further provision for the obligations of operators of sharing services in respect of the operation of sharing services and shared devices.
- (2) In particular, the regulations may provide for matters relating to the safety, operation or maintenance of sharing services and shared devices, including the following:
- (a) protecting the public amenity of land on which shared devices are used or left,
 - (b) managing risks to the safety of users of sharing services, other road users, impounding officers and other members of staff of impounding authorities, and the general public,
 - (c) managing any public liability of impounding authorities incurred in connection with the carrying on of business by an operator of a sharing service,
 - (d) planning for the operation of an integrated transport network.
- (3) The regulations may prescribe a code of practice that provides for any of the matters referred to in subsection (1) or (2).
- (4) The regulations, or a code of practice, may impose enforceable obligations or restrictions on operators and former operators of sharing services (including by creating offences with a penalty not exceeding 5 penalty units).
- (5) The regulations, or a code of practice, may provide for further circumstances in which a shared device left in a public place (whether by a user or any other person) is taken, for the purposes of this Act, to have been abandoned by the operator of the sharing service that owns the shared device.
- (6) The regulations may exempt, or provide for the exemption of, unconditionally or subject to conditions, any persons, shared devices or sharing services from any or all of the provisions of this Division, the regulations under this Division or a code of practice.

19G Impounding shared devices not moved in accordance with a removal notice

- (1) An impounding officer may issue a notice (a **removal notice**) to an operator of a sharing service requiring the operator to remove a shared device left in a public place if the impounding officer believes on reasonable grounds that:
- (a) the shared device is owned by the operator, and
 - (b) the shared device has been left in the place, or has been provided by the operator, in contravention of this Act, the regulations or a code of practice (whether or not the contravention constitutes an offence).
- (2) The removal notice must:
- (a) give particulars of the shared device and its location, and
 - (b) specify the alleged contravention, and

- (c) specify the time by which the shared device must be removed.
- (3) The period of time given for compliance with the removal notice must be:
 - (a) no shorter than the period of time allowed for the removal of the shared device that is specified in relation to the contravention concerned in this Act, the regulations or a code of practice, or
 - (b) if paragraph (a) does not apply—a period of time that is reasonable in the circumstances.
- (4) A removal notice may be varied or revoked by a subsequent notice.
- (5) An operator of a sharing service who fails to comply with a removal notice relating to a shared device left in a public place (whether by a user or any other person) is taken to have abandoned the shared device in that public place.

Note. An impounding officer may impound an abandoned shared device under section 15. Abandoning an article in a public place is an offence under section 32.
- (6) If the removal notice relates to a contravention of section 19D or 19E, the operator is taken to have abandoned the shared device under the section concerned.

Note. Under section 32 there is an increased penalty for abandoning shared devices under sections 19D and 19E.
- (7) This section does not limit a power to impound a shared device conferred on an impounding officer by another provision of this Division.

19H Ownership of shared devices

For the purposes of this Act, the operator of a sharing service is taken, unless the contrary is proven, to be the owner of any shared device that is branded with the name of the operator or the operator's business.

19I Notice to operators

- (1) A notice under this Division may be given:
 - (a) by giving the notice by email to an email address specified by the operator for the service of documents of that kind, or
 - (b) if the operator to whom it is issued has requested or consented to notification by SMS text message or any other electronic means—by giving the notice by SMS text message to the mobile telephone number specified by the operator for the service of documents of that kind or giving the notice by the other electronic means, or
 - (c) in the case of a notice given by an impounding officer—in any other way agreed between the relevant impounding authority and the operator concerned.
- (2) This section is in addition to, and does not limit, section 49.

[2] Section 32 Offence of abandoning article, or leaving animal unattended, in public place

Omit the penalty provision from section 32 (1). Insert instead:

Maximum penalty:

- (a) in the case of a shared device taken to be abandoned by an operator of a sharing service under section 19D or 19E—25 penalty units, or
- (b) in any other case—5 penalty units.

[3] Section 37 Proceedings are to be heard by Local Court

Insert “, the regulations or a code of practice” after “Act”.

[4] Notes

Insert after the matter relating to abandoned or unattended articles (except motor vehicles):

Impounding officers have additional powers to impound bicycles or other devices that are part of a sharing service (see Division 5 of Part 2).

Schedule 2 Amendment of Impounding Regulation 2013

[1] Clause 5 Penalty notice offences

Insert before the table to the clause:

(2) In this clause:

abandoned shared device means a shared device (within the meaning of Division 5 of Part 2 of the Act) that is taken to have been abandoned by an operator of a sharing service under section 19D or 19E of the Act.

[2] Clause 5, table

Insert “or an abandoned shared device” after “motor vehicle” where firstly occurring.

[3] Clause 5, table

Insert before the matter relating to section 32 (2):

Section 32 (1) (article being an abandoned shared device)	\$500
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