



New South Wales

# Impounding Amendment (Shared Bicycles and Other Devices) Bill 2018

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Impounding Act 1993*:

- (a) to give impounding officers appointed by local councils or by other public authorities additional power to move or impound shared bicycles and other devices that are provided for hire as part of a sharing service and that have been left in a public place, and
- (b) to authorise the regulations to prescribe a code of practice for sharing services that imposes enforceable obligations or restrictions on operators and former operators of sharing services.

This is achieved by making amendments that add to the circumstances in which a shared device can be immediately impounded or is taken to have been abandoned in a public place by the operator of the service (whether the shared device was left there by the operator, by a user of the operator's sharing service or by any other person), as follows:

- (a) devices that are causing an obstruction or safety risk can be impounded immediately, or moved to another location, by an impounding officer,
- (b) devices that are causing an obstruction or safety risk are taken to have been abandoned by the operator if they are not moved within 3 hours of the operator being notified of their location by an impounding officer, by a user of the sharing service or by any other person (who may give that notice by email or SMS text message),
- (c) devices that have been left in the same place for 7 days or more are taken to have been abandoned if they are not moved within 4 days of the operator being notified of their location by an impounding officer, a user or any other person.

The amendments also confer power on impounding officers to issue removal notices for shared devices that are left in a public place, or are otherwise provided by an operator of a sharing service, in contravention of the requirements specified in the proposed amendments, the regulations or a code of practice. If the operator fails to comply with the notice, the operator is taken to have abandoned the shared device.

It is an offence to abandon an article in a public place. The amendments increase the maximum penalty that applies if an operator of a sharing service abandons a shared device in a public place in contravention of some of the new requirements from 5 penalty units (\$550) to 25 penalty units (\$2,750). If the offence is dealt with by penalty notice, the fine is \$500.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

## Schedule 1 Amendment of Impounding Act 1993 No 31

**Schedule 1 [1]** inserts additional provisions about the impounding of shared devices, as follows:

- (a) **Proposed section 19A** makes it clear that the proposed provisions (which are specifically about shared devices) confer additional powers on impounding officers, but do not limit a power to impound an article that is a shared device under any other provision of the Act.
- (b) **Proposed section 19B** defines terms used in the proposed provisions. *Device* is defined to mean a bicycle or any other thing for transporting persons that is prescribed by the regulations.
- (c) **Proposed section 19C** defines *sharing service* as an arrangement (including an arrangement in writing or one established through a smartphone application) that has certain listed features, including that the devices are not hired from the premises of the operator of the sharing service or a fixed docking station and are not required to be returned to the operator, the premises from which they were picked up, a fixed docking station or other specified premises.
- (d) **Proposed section 19D** provides that a shared device is not to be left in a public place in a way that causes an obstruction or safety risk. The proposed section gives an impounding officer the power to immediately impound a shared device that has been left in a public place if the impounding officer believes on reasonable grounds that the shared device has been left in a way that causes an obstruction or safety risk. Alternatively, the impounding officer may move the shared device. An operator of a sharing service must ensure that a shared device that has been left in a public place in contravention of the proposed section is removed within 3 hours after the operator is notified of the contravention by an impounding officer, a user or any other person. If the operator fails to do so, the operator is taken to have abandoned the shared device in a public place (which is an offence under section 32 of the Act).
- (e) **Proposed section 19E** provides that a shared device is not to be left in a public place, in the same location, for more than 7 days. An operator of a sharing service must ensure that a shared device that has been left in a public place in contravention of the proposed section is removed within 4 days after the operator is notified of the contravention by an impounding officer, a user or any other person. If the operator fails to do so, the operator is taken to have abandoned the shared device in a public place (which is an offence under section 32 of the Act).
- (f) **Proposed section 19F** provides that the regulations may make further provision for the obligations of operators of sharing services, including by prescribing a code of practice (which may impose enforceable obligations or restrictions on operators and former operators of sharing services, including by creating offences).

- (g) **Proposed section 19G** authorises an impounding officer to issue 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 the shared device has been left in the place, or provided by the operator, in contravention of the Act, the regulations or a code of practice (whether or not the contravention constitutes an offence).
- (h) **Proposed section 19H** provides that the operator of a sharing service is taken to be the owner of any shared device that is branded with the name of the operator or the operator's business unless the contrary is proven.
- (i) **Proposed section 19I** allows for the service of notices on operators of sharing services by email and, if the operator has consented to service in that manner, by SMS text message or other electronic means.

**Schedule 1 [2]** provides that the maximum penalty for the offence of abandoning a shared device in a public place is:

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

**Schedule 1 [3]** provides for proceedings for an offence against the regulations or a code of practice to be heard by the Local Court.

**Schedule 1 [4]** updates a note to reflect the additional circumstances in which a shared device may be impounded.

## **Schedule 2      Amendment of Impounding Regulation 2013**

**Schedule 2 [3]** makes the offence of abandoning a shared device an offence that can be dealt with by penalty notice and provides for a penalty of \$500 in such a case.

**Schedule 2 [1] and [2]** make consequential amendments.



New South Wales

# Impounding Amendment (Shared Bicycles and Other Devices) Bill 2018

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New South Wales

# Impounding Amendment (Shared Bicycles and Other Devices) Bill 2018

No. , 2018

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## A Bill for

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.

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**The Legislature of New South Wales enacts:**

1

**1 Name of Act**

2

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

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4

**2 Commencement**

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

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<b>Schedule 1</b>	<b>Amendment of Impounding Act 1993 No 31</b>	1
<b>[1] Part 2, Division 5</b>		2
	Insert after Division 4 of Part 2:	3
<b>Division 5</b>	<b>Additional powers in relation to shared devices</b>	4
<b>19A</b>	<b>Preliminary</b>	5
	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.	6 7 8
<b>19B</b>	<b>Definitions</b>	9
(1)	In this Division:	10
	<i>code of practice</i> means a code of practice prescribed by the regulations under this Division.	11 12
	<i>device</i> means:	13
	(a) a bicycle, or	14
	(b) any other thing used for transporting persons that is prescribed by the regulations as a device for the purposes of this Act.	15 16
	<i>leave</i> a shared device includes park a shared device.	17
	<i>operator</i> of a sharing service means a person who carries on the business of providing the sharing service.	18 19
	<i>shared device</i> means any device that is provided for hire under a sharing service.	20 21
	<i>sharing service</i> —see section 19C.	22
	<i>user</i> means a person who hires a shared device under a sharing service.	23
(2)	In this Division, a power to impound or move a shared device includes a power to unlock the device.	24 25
<b>19C</b>	<b>Sharing service—meaning</b>	26
(1)	In this Division, <i>sharing service</i> means an arrangement (including an arrangement in writing or one established through a smartphone application) under which:	27 28 29
	(a) devices are provided for hire (whether or not a fee is payable), and	30
	(b) the devices are self-locking, or access to the devices is otherwise able to be limited, including remotely, and	31 32
	(c) the devices are not hired from the premises of the operator of the sharing service or from a fixed docking station, and	33 34
	(d) the devices are not required to be returned to:	35
	(i) the operator, or	36
	(ii) the premises from which they were picked up, or	37
	(iii) a fixed docking station, or	38
	(iv) other specific premises, and	39
	(e) any other features prescribed by the regulations exist.	40

(2)	The regulations may:	1
(a)	declare any arrangement or type of arrangement made in connection with a device to be within the definition of <i>sharing service</i> for the purposes of this Division, or	2 3 4
(b)	exclude any arrangement or type of arrangement made in connection with a device from that definition of <i>sharing service</i> .	5 6
(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.	7 8 9 10
<b>19D</b>	<b>Impounding shared devices that are causing an obstruction or safety risk</b>	11
(1)	A shared device is not to be left in a public place in a way that causes an obstruction or safety risk.	12 13
(2)	An impounding officer may immediately impound a shared device if:	14
(a)	the shared device has been left in a public place, and	15
(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.	16 17
(3)	An impounding officer may, instead of impounding a shared device under subsection (2), move the device to another place.	18 19
(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.	20 21 22 23 24
(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.	25 26 27
	<b>Note.</b> Abandoning an article in a public place is an offence under section 32.	28
(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.	29 30
(7)	For the purposes of this section, a shared device causes an <i>obstruction or safety risk</i> :	31 32
(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	33 34 35 36
(b)	in any other circumstances prescribed by the regulations.	37
<b>19E</b>	<b>Impounding abandoned shared devices</b>	38
(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.	39 40
(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.	41 42 43 44 45

(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.	1 2 3
	<b>Note.</b> 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 5
(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.	6 7
<b>19F</b>	<b>Regulations relating to sharing services</b>	8
(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.	9 10 11
(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:	12 13 14
	(a) protecting the public amenity of land on which shared devices are used or left,	15 16
	(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,	17 18 19
	(c) managing any public liability of impounding authorities incurred in connection with the carrying on of business by an operator of a sharing service,	20 21 22
	(d) planning for the operation of an integrated transport network.	23
(3)	The regulations may prescribe a code of practice that provides for any of the matters referred to in subsection (1) or (2).	24 25
(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).	26 27 28
(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.	29 30 31 32
(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.	33 34 35 36
<b>19G</b>	<b>Impounding shared devices not moved in accordance with a removal notice</b>	37
(1)	An impounding officer may issue a notice (a <b>removal notice</b> ) 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:	38 39 40
	(a) the shared device is owned by the operator, and	41
	(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).	42 43 44
(2)	The removal notice must:	45
	(a) give particulars of the shared device and its location, and	46
	(b) specify the alleged contravention, and	47

(c)	specify the time by which the shared device must be removed.	1
(3)	The period of time given for compliance with the removal notice must be:	2
(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	3 4 5
(b)	if paragraph (a) does not apply—a period of time that is reasonable in the circumstances.	6 7
(4)	A removal notice may be varied or revoked by a subsequent notice.	8
(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.	9 10 11
	<b>Note.</b> 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.	12 13
(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.	14 15 16
	<b>Note.</b> Under section 32 there is an increased penalty for abandoning shared devices under sections 19D and 19E.	17 18
(7)	This section does not limit a power to impound a shared device conferred on an impounding officer by another provision of this Division.	19 20
<b>19H</b>	<b>Ownership of shared devices</b>	21
	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.	22 23 24
<b>19I</b>	<b>Notice to operators</b>	25
(1)	A notice under this Division may be given:	26
(a)	by giving the notice by email to an email address specified by the operator for the service of documents of that kind, or	27 28
(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	29 30 31 32 33
(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.	34 35 36
(2)	This section is in addition to, and does not limit, section 49.	37
<b>[2]</b>	<b>Section 32 Offence of abandoning article, or leaving animal unattended, in public place</b>	38 39
	Omit the penalty provision from section 32 (1). Insert instead:	40
	Maximum penalty:	41
(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	42 43
(b)	in any other case—5 penalty units.	44

<b>[3] Section 37 Proceedings are to be heard by Local Court</b>	1
Insert “, the regulations or a code of practice” after “Act”.	2
<b>[4] Notes</b>	3
Insert after the matter relating to abandoned or unattended articles (except motor vehicles):	4
Impounding officers have additional powers to impound bicycles or other devices that are part of a sharing service (see Division 5 of Part 2).	5
	6

<b>Schedule 2</b>	<b>Amendment of Impounding Regulation 2013</b>	1
<b>[1] Clause 5 Penalty notice offences</b>		2
Insert before the table to the clause:		3
(2) In this clause:		4
<i>abandoned shared device</i> means a shared device (within the meaning of		5
Division 5 of Part 2 of the Act) that is taken to have been abandoned by an		6
operator of a sharing service under section 19D or 19E of the Act.		7
<b>[2] Clause 5, table</b>		8
Insert “or an abandoned shared device” after “motor vehicle” where firstly occurring.		9
<b>[3] Clause 5, table</b>		10
Insert before the matter relating to section 32 (2):		11
		12
Section 32 (1) (article being an abandoned shared device)	\$500	