

# Impounding Act 1993 No 31

[1993-31]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Personal Property Securities Legislation Amendment Act 2010 No 57](#) (not commenced — to commence on 30.1.2012)

### Authorisation

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# Impounding Act 1993 No 31



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the [Impounding Act 1993](#).

### 2 Commencement

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

### 3 Objects of this Act

The objects of this Act are:

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

### 4 Definitions

Expressions used in this Act (or in a particular provision of this Act) which are defined in the dictionary at the end of this Act have the meanings set out in the dictionary.

## Part 2 Impounding of animals and articles

### Division 1 General provisions concerning impounding

#### 5 Who can impound and what can be impounded

- (1) Impounding officers can impound certain animals and articles, as provided by this Act. The power to impound conferred by this Act on an impounding officer of Roads and Maritime Services is limited to the impounding of motor vehicles, unless the regulations otherwise provide.
- (2) Occupiers of private land can impound certain animals, as provided by this Act.
- (3) A police officer has and may exercise the powers of any impounding officer (as if he or she had been appointed as an impounding officer by each impounding authority). This does not make a police officer subject to the direction or control of an impounding authority.

**Note—**

Impounding officers are persons appointed as impounding officers by impounding authorities. See the definitions of **impounding officer** and **impounding authority** in the dictionary.

See the definition of **animal** in the dictionary for the types of animals to which this Act applies.

#### 6 Areas in which impounding officers can impound

- (1) An impounding officer may impound something under this Act only in the area of operations of the impounding officer.
- (2) This Act does not confer power on an impounding officer to enter a place that the officer could not otherwise lawfully enter.
- (3) Nothing in this Act prevents an impounding officer from entering private land at the invitation of the occupier, so long as it is within his or her “area of operations”.

**Note—**

See the definition of **area of operations** in the Dictionary for the areas in which impounding officers can impound.

#### 7 Dogs can be impounded in certain areas only

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

**Note—**

A dog may be able to be impounded in other areas under another law, such as the [Companion Animals Act 1998](#).

## **8 When is something “impounded”?**

- (1) Something is impounded as soon as an impounding officer or an occupier of private land takes possession of it under a power conferred by this Act. It continues to be impounded until it is released or disposed of in accordance with this Act.
- (2) An item does not have to be taken to a pound for it to be “impounded” for the purposes of this Act.

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

### **9 Animals unattended in public places can be impounded**

- (1) An impounding officer may impound an animal that is in a public place in the area of operations of the officer if the officer believes on reasonable grounds that the animal is unattended.
- (2) An animal is not to be regarded as being unattended for the purposes of this section:
  - (a) while the animal is in a public place in response to an invitation contained in a notice published by the relevant public authority and in accordance with any conditions specified in that notice, or
  - (b) while the animal is in a public place with the consent of the relevant public authority, or
  - (c) while the animal is in a public place and its presence there is authorised by or under an Act, or
  - (d) in the case of an animal that is stock (as defined in Part 10 of the [Rural Lands Protection Act 1998](#)) that is unattended on a road or travelling stock reserve, in any circumstances prescribed by section 138 of that Act,
  - (e) in any circumstances prescribed by the regulations for the purposes of this section.

### **10 Trespassing animals can be impounded**

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

### **11 Impounded animals to be delivered to pound**

- (1) An impounding officer must have an impounded animal delivered to a pound as soon as practicable after the animal is impounded.
- (2) An impounding officer of a council may detain an animal liable to be impounded

without impounding it. The detained animal may be placed on any land on agistment or on any land owned by or under the control of the council. It must not be detained for longer than 7 days before being impounded.

- (2A) An impounding officer of a livestock health and pest authority may detain an animal liable to be impounded without impounding it. The detained animal may be placed on any land on agistment or on any land owned by or under the control of the authority. It must not be detained for longer than 7 days before it is impounded.
- (3) The pound to which an impounded animal is to be delivered is the nearest convenient pound (if impounded by a police officer) or (if impounded by an impounding officer of an impounding authority) the nearest pound operated or used by that authority.
- (3A) For the purposes of subsection (3), an impounding officer of an impounding authority that is a livestock health and pest authority delivers an impounded animal to the nearest pound operated or used by the authority if the authority has established a private pound at some place on the land where the animal was impounded and the animal is detained in that pound.
- (4) The impounding officer (other than an impounding officer of a livestock health and pest authority) may instead destroy the animal immediately (without having it delivered to a pound) if of the opinion that:
- (a) the animal is seriously injured, diseased or starved or is otherwise in a distressed state, or
  - (b) the animal is worth less than the cost of delivering it to the pound.
- (4A) An impounding officer of a livestock health and pest authority for a district may, with the permission of the Chairperson of the authority, instead destroy the animal without having it delivered to the pound if:
- (a) in the opinion of a veterinarian employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service (for example a veterinarian who is a member of staff of a livestock health and pest authority), the animal is seriously injured, diseased or starved or is otherwise in a distressed state, or
  - (b) the animal is worth less than the cost of delivering it to the pound.
- (5) The impounding authority may recover as a debt from the owner of an animal the cost of destroying the animal and disposing of its carcass.

## **Division 3 Impounding of animals by occupiers of private land**

### **12 Occupier of private land may impound trespassing animal**

An occupier of private land may impound any animal that is trespassing on the land.



### 13 Action to be taken when identity of owner known

- (1) An occupier of private land who impounds an animal and knows or can easily find out the owner's identity must inform the owner of the animal's whereabouts within 24 hours of impounding the animal and must then either:
  - (a) immediately have the animal delivered to the nearest convenient public pound, or
  - (b) keep the animal on the land for a period of not more than 4 days and then (if the animal has not been claimed by its owner) have the animal delivered to the nearest convenient public pound.
- (2) The occupier must ensure that any animal kept on the land after it is impounded:
  - (a) is provided with adequate food, water and veterinary care, and
  - (b) is kept in a place that is well drained and maintained in a clean condition, and
  - (c) is provided with adequate shade for the climatic conditions, and
  - (d) is kept secure, and
  - (e) is separated from other animals that are diseased or, if the animal is or appears to be diseased, is kept separate from other animals.
- (3) If the owner of the animal claims the animal, the occupier must do one of the following:
  - (a) release or send the animal to its owner on payment in full of the appropriate charge,
  - (b) if the animal's owner declines to pay the appropriate charge—have the animal delivered to the nearest convenient public pound,
  - (c) release or send the animal to its owner without payment in full of the appropriate charge.
- (4) If the occupier releases or sends the animal to its owner without the appropriate charge having been paid in full and the owner does not within 7 days pay the occupier the appropriate charge in full and any costs of transporting the animal to its owner, the occupier may recover the charge and costs from the owner as a debt.
- (5) The **appropriate charge** is an amount not exceeding:
  - (a) the expenses actually incurred in providing the animal with food, water and veterinary care, and
  - (b) the cost of rectifying any loss or damage attributable to the trespassing of the animal.

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

Maximum penalty: 5 penalty units.

**Note—**

At present, a penalty unit equals \$110.

**14 Action to be taken when identity of owner not known**

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

Maximum penalty: 5 penalty units.

**Division 4 Impounding of articles**

**15 Abandoned and unattended articles can be impounded**

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

**Note—**

The [Local Government Act 1993](#) gives a council power to order the removal of an object or matter that is causing or likely to cause an obstruction.

**16 Special procedures for impounding of motor vehicles**

- (1) An impounding officer must make all reasonable inquiries in an effort to find out the name and address of the owner of a motor vehicle before the officer impounds the vehicle.
- (2) If the impounding officer's inquiries fail to reveal the name and address of the owner, the officer may proceed to impound the vehicle.
- (3) If the impounding officer's inquiries do reveal the name and address of the owner, the officer is not to impound the vehicle until notice of the proposed impounding has been given to the owner and the period specified in the notice has elapsed.
- (4) The notice to the owner must be in writing addressed to the owner and must indicate that the vehicle may be impounded unless it is removed within a specified period (not less than 3 days) and may be destroyed if its value is less than \$500 (or such other amount as may be prescribed under section 18).
- (5) A motor vehicle may be impounded immediately (without following the procedures in this section) if the vehicle is in a public place and the impounding officer is satisfied on reasonable grounds that its immediate removal is justified because it is causing an

obstruction to traffic (vehicular or pedestrian) or is or is likely to be a danger to the public.

**Note—**

Section 43 provides for police assistance in finding out who the owner of a motor vehicle is. See section 49 for the ways in which notice can be given to the owner of a vehicle.

**17 Impounded article to be delivered to pound**

- (1) An impounding officer must have an impounded article delivered to a pound as soon as practicable after it is impounded. The pound to be used is the nearest convenient pound (if it is impounded by a police officer) or (if it is impounded by an impounding officer of an impounding authority) the nearest pound operated or used by the authority.
- (2) However, an impounded article need not be delivered to a pound if the size, quantity or nature of the article concerned makes its delivery to or storage at a pound impracticable, unreasonably costly or more costly than the value of the article. In such a case, the impounded article may be left where it is impounded.
- (3) An impounded motor vehicle need not be taken to a pound if section 18 authorises it to be destroyed or otherwise disposed of.

**18 Impounded motor vehicles worth less than \$500 may be destroyed**

- (1) An impounding officer may cause an impounded motor vehicle to be destroyed or otherwise disposed of as soon as it is impounded if the impounding officer believes on reasonable grounds that the value of the vehicle is less than \$500 (or such other amount as may be prescribed).
- (2) However, a motor vehicle impounded without inquiries having been made as to its owner (on the grounds that it was causing an obstruction to traffic or was or was likely to be a danger to the public) is not to be destroyed or otherwise disposed of under this section until:
  - (a) the impounding officer has made all reasonable inquiries in an effort to find out the name and address of the owner of the vehicle, and
  - (b) (if those inquiries reveal the name and address of the owner) notice of the impounding has been given to the owner and the period specified in the notice has elapsed without an application for its release being made.
- (3) Notice to the owner must be in writing addressed to the owner and must indicate that the vehicle has been impounded and may be destroyed if its value is less than \$500 (or such other amount as may be prescribed under this section), unless its release is applied for within the period specified in the notice (not less than 3 days).

- (4) The destruction or other disposal of a motor vehicle under this section is to be carried out in accordance with the directions of the impounding authority concerned.

### **19 Police to be informed of action concerning motor vehicle**

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

## **Part 3 How impounded items are to be dealt with**

### **20 Impounding authority to notify owner**

- (1) An impounding authority must make all reasonable inquiries in an effort to find out the name and address of the owner of an impounded item and, in the case of an impounded motor vehicle, must also make a search of the Register under the [Registration of Interests in Goods Act 1986](#) for registrable interests in the vehicle.
- (2) The inquiries and search must be made as soon as practicable after the item is delivered to the authority's pound or (in the case of an article that is impounded without being delivered to a pound) as soon as practicable after the article is impounded.
- (3) If the impounding authority knows or finds out the name and address of the owner, the authority must cause notice of the impounding to be given to the owner of an impounded item as soon as practicable after becoming aware of the name or address.
- (4) If the impounding authority's search of the Register reveals a registrable interest in the motor vehicle, the authority must also cause notice of the impounding to be given to the person who claims the interest.
- (5) A notice under this section must be in writing addressed to the person to be given the notice. It must clearly indicate that the item has been impounded and will be sold or otherwise disposed of if not claimed within a stated period (not less than 7 days in the case of an animal and not less than 28 days in the case of an article).
- (6) Inquiries as to the owner of a motor vehicle need not be made under this section if those inquiries have already been made under another provision of this Act.
- (7) This section does not apply to a motor vehicle that has been destroyed or otherwise disposed of under section 18 (Impounded motor vehicles worth less than \$500 may be destroyed).

#### **Note—**

See section 49 for the ways in which notice can be given.

## **21 Care of impounded animals**

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

## **22 Injured, diseased or distressed animals can be destroyed**

- (1) An impounding authority may destroy an impounded animal held at its pound if of the opinion that the animal is seriously injured, diseased or starved or is otherwise in a distressed state.
- (2) If the impounding authority knows the identity of the owner of the animal, it must not destroy the animal unless it has informed the owner that it is proposed to destroy the animal and has given the owner a reasonable opportunity to obtain its release.
- (3) The impounding authority may recover as a debt from the owner of an animal the cost of destroying the animal and disposing of its carcass.

## **23 Owner can obtain release of impounded item**

- (1) Application may be made to an impounding authority for the release of an impounded item held by it or impounded by one of its impounding officers. The application may be made at any time before the item is sold or disposed of.
- (2) The impounding authority must release the item to the applicant if:
  - (a) the authority is satisfied on reasonable grounds that the applicant is the owner of the item, is authorised to claim the item on the owner's behalf or is otherwise entitled to lawful possession of the item, and
  - (b) all fees and charges payable in respect of the impounding, holding and disposing of the item are paid to the impounding authority, and
  - (c) the authority is satisfied that all penalties imposed in connection with the event that gave rise to the impounding have been paid, and

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

#### **24 Impounded item to be sold if not claimed**

- (1) An impounding authority must cause an impounded item to be offered for sale if the item is not released before the deadline for release (subsection (5)). The sale is to be by public auction or public tender.
- (2) The item may be disposed of otherwise than by sale if the impounding authority believes on reasonable grounds that the item has no monetary value or that the proceeds of sale would be unlikely to exceed the costs of sale.
- (3) If an impounded item offered for sale is not sold, the impounding authority may dispose of the item otherwise than by sale.
- (4) An impounding authority that has offered an impounded animal for sale may destroy the animal if it is not sold within 7 days after being offered for sale.
- (5) The **deadline for release** for an impounded item is:
  - (a) in the case of an impounded animal—7 days from the day on which notice was given to the owner of the animal under section 20 or, if reasonable inquiries by the impounding authority concerned have failed to reveal the name and address of the owner, 7 days from the day on which those inquiries were completed, or
  - (b) in the case of an impounded article—28 days from the day on which notice was given to the owner of the item under section 20 or, if reasonable inquiries have failed to reveal the name and address of the owner, 28 days from the day on which those inquiries were completed or the date on which the article was impounded (whichever is the later).
- (6) This section does not apply to a motor vehicle destroyed or otherwise disposed of under another provision of this Act.

#### **Note—**

Section 45 provides protection for people who buy impounded items.

#### **25 Proceeds of sale of impounded item**

- (1) An impounding authority holds the net proceeds of sale of an impounded item for the person who was the owner of the item immediately before its sale. The **net proceeds of sale** are the proceeds (if any) remaining after deduction of the expenses of sale and the fees and charges payable in respect of the impounding, holding and disposing of the item.
- (2) An application for payment of the net proceeds of sale may be made to the impounding authority at any time within 12 months after the item was sold.

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

**Note—**

The applicant need not be the owner.

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

## **26 Impounding fees and charges**

- (1) An impounding authority may fix the fees and charges that are to be paid in respect of the impounding, holding and disposing of an item by the authority and its impounding officers. The Commissioner of Police may by order in writing fix the fees and charges that are to be paid in respect of the impounding of an item by a police officer.
- (2) The fees and charges that may be fixed are as follows:
- a fee for walking or transporting an impounded animal to the pound or to the address of its owner and to a market or saleyard for sale,
  - a charge for providing an impounded animal with food, water and veterinary care,
  - a charge for loss or damage attributable to an impounded animal while it was unattended or trespassing,
  - a fee for conveying an impounded article to a pound,
  - a fee for storing an impounded article at the pound,
  - a fee to cover the cost of serving a notice notifying the owner of an impounded item that the item may be or has been impounded.
- (3) Fees and charges may be fixed so as to differ according to the kinds of animals or articles impounded.
- (4) A fee or charge must not exceed the corresponding maximum fee or charge (if any) prescribed by the regulations, and any amount that is fixed so as to exceed the maximum is reduced to the maximum.
- (5) Fees and charges fixed under this section are the fees and charges payable in respect of the impounding, holding and disposing of an item under this Act.
- (6) An impounding authority must remit to the Commissioner of Police any fee or charge paid to or deducted or recovered by the authority that was payable in respect of the impounding of an item by a police officer.

- (7) An impounding authority may waive payment of a fee or charge, or part of a fee or charge, in respect of the impounding of an animal in a public place that had strayed because a gate or fence had ceased to be animal proof due to fire, flood or other natural disaster.

## **27 General right to recover impounding fees and charges and damages**

- (1) An impounding authority may recover the following amounts as a debt from the person responsible for an impounded item:
- the fees and charges payable in respect of the impounding, holding and disposing of the item,
  - in the case of an animal impounded because it was trespassing—the cost of rectifying any loss or damage attributable to the trespassing of the animal.
- (2) The Commissioner of Police may recover as a debt from the owner of an impounded item the fees and charges payable in respect of the impounding of an item by a police officer.
- (3) The person responsible for an impounded item for the purposes of this section is the owner of the item unless the owner, within 21 days after being required to do so by the impounding authority by notice in writing:
- (a) supplies by statutory declaration to the impounding authority the name and address of the person (being a person who is at least 18 years of age) who was in charge of the item immediately before it was abandoned, became unattended or was permitted to trespass, or
  - (b) satisfies the impounding authority that he or she did not know and could not with reasonable diligence have ascertained that name and address.
- (4) If the owner supplies such a statutory declaration, the person named in it is the person responsible for the impounded item for the purposes of this section.
- (5) Amounts recoverable under this section can be recovered only if they have not already been paid, or deducted from proceeds of sale.
- (6) An impounding authority must pay any amount recovered by it under this section for loss or damage attributable to the trespassing of an animal on private land to the person who suffered the loss or damage.
- (7) For the purposes of subsection (6), an impounding authority is entitled to treat the owner of the land concerned as the person who suffered the loss or damage unless satisfied that the loss or damage was suffered by some other person.



## **Part 4 Establishing pounds**

### **28 Impounding authority can establish public or private pounds**

- (1) An impounding authority may establish one or more pounds on land in its area of operations or under its control, and may close any such pound. A pound may be established as a public pound or as a private pound.
- (2) A public pound is for the use of the impounding authority that established it, members of the public and other impounding authorities (in accordance with arrangements under section 29). A private pound is for the use only of the impounding authority that established it.
- (3) An impounding authority is responsible for the management and operation of a pound that it establishes.

### **29 Arrangements between authorities for use of pounds**

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

### **30 Records to be kept by impounding authority**

- (1) An impounding authority must keep a record of each impounded item received at a pound that it operates.
- (2) The record for each item must describe the item, show when it was received and contain details of its release or disposal.
- (3) The regulations may prescribe the form and contents of the record and require other records to be kept by an impounding authority.

### **31 Public may inspect records**

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

## **Part 5 Offences**

### **32 Offence of abandoning article, or leaving animal unattended, in public place**

- (1) A person who abandons an article in a public place is guilty of an offence.  
Maximum penalty: 5 penalty units.
- (2) A person who causes or permits an animal to be unattended in a public place is guilty of an offence unless the person establishes that the person took all reasonable precautions to prevent the animal from being unattended.

Maximum penalty: 5 penalty units.

- (3) A person is not to be regarded as having abandoned an article in a public place or as having caused or permitted an animal to be unattended in a public place:
  - (a) if the article or animal is in the public place in response to an invitation contained in a notice published by the relevant public authority and in accordance with any conditions specified in that notice, or
  - (b) if the article or animal is in the public place with the consent of the relevant public authority, or
  - (c) if the presence of the article or animal in the public place is authorised by or under an Act, or
  - (d) in the case of an animal that is stock (as defined in Part 10 of the *Rural Lands Protection Act 1998*) that is unattended on a road or travelling stock reserve, in any circumstances prescribed by section 138 of that Act,
  - (e) in the case of an animal, in any circumstances prescribed by the regulations for the purposes of section 9.
- (4) A court that convicts a person of an offence under this section may order the person to pay to an impounding authority the fees and charges payable in respect of the impounding, holding and disposing of the item concerned (whether or not the court imposes a penalty for the offence).

### **32A Owner liable for offences concerning motor vehicles**

- (1) The owner of a vehicle with respect to which an offence under section 32 is committed is, by virtue of this section, guilty of the offence as if the person were the actual offender, unless:
  - (a) if the offence is dealt with by way of penalty notice, the owner satisfies a person specified in the notice that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used, or
  - (b) in any other case, the court is satisfied that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used.
- (2) Nothing in this section affects the liability of an actual offender in respect of the offence but, if a penalty has been imposed on, or recovered from, any person in relation to the offence, no further penalty can be imposed on or recovered from any other person in relation to the offence.
- (3) The owner of a vehicle is not, by virtue of this section, guilty of the offence if, where the offence is dealt with by way of penalty notice:

- (a) within 21 days after service on the owner of the penalty notice for the offence, the owner gives notice in writing to a person specified in the notice (verified by statutory declaration) of the name and address of the person who was, at all relevant times, in charge of the vehicle, or
  - (b) the owner satisfies a person specified in the notice that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.
- (4) The owner of a vehicle is not, by virtue of this section, guilty of the offence if, in any other case:
- (a) within 21 days after service on the owner of a summons for the offence, the owner gives notice in writing to the informant (verified by statutory declaration) of the name and address of the person who was, at all relevant times, in charge of the vehicle, or
  - (b) the owner satisfies the court that the owner did not know, and could not with reasonable diligence have ascertained, that name and address.
- (5) If a statutory declaration supplying the name and address of a person for the purposes of this section is produced in any proceedings against the person in respect of the offence to which the declaration relates, the declaration is evidence that the person was, at all relevant times relating to that offence, in charge of the vehicle involved in the offence.
- (6) A statutory declaration that relates to more than one offence is taken not to be a statutory declaration supplying a name and address for the purposes of this section.
- (7) This section does not limit any other provision of this Act, any provision of any other Act or any provision of an instrument in force under this or any other Act.

### **33 Offence of causing or permitting animal to trespass**

- (1) A person who causes or permits an animal under his or her control to trespass in a place (other than a public place) is guilty of an offence.
- Maximum penalty: 5 penalty units.
- (2) A court that convicts a person of an offence under this section may order the person to pay to an impounding authority the fees and charges payable in respect of the impounding, holding and disposing of the animal concerned (whether or not the court imposes a penalty for the offence).

### **34 Offence of unlawfully recovering impounded item**

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

Maximum penalty: 50 penalty units.

- (2) A court that finds a person guilty of such an offence may order the person to pay to the impounding authority concerned the fees and charges that would have been payable to the authority for the release of the item had it not been recovered (whether or not the court imposes a penalty for the offence).

### **35 Offence of obstructing impounding officer**

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

Maximum penalty: 20 penalty units.

### **36 Penalty notices**

- (1) An impounding officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act stated by the regulations to be an offence to which this section applies.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court the person may pay within a time, and to a person, specified in the notice the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.

- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

### **37 Proceedings are to be heard by Local Court**

Proceedings for an offence against this Act are to be dealt with summarily before the Local Court.

## **Part 6 Applications to Administrative Decisions Tribunal**

### **38 Owner of impounded item can apply to Administrative Decisions Tribunal for review**

- (1) The owner of an impounded item may apply to the Administrative Decisions Tribunal for a review of the decision to impound the item, but only on the ground that the impounding of the item was unlawful.
- (2) The owner of an impounded item may apply to the Administrative Decisions Tribunal for a review of any fee or charge required to be paid for the release of the item (whether to an impounding authority or an occupier of private land), but only on the ground that the fee or charge has been improperly charged or incorrectly calculated or is excessive.
- (3) An application cannot be made under this section until the owner of the impounded item has given the impounding authority or occupier concerned notice in writing of intention to apply to the Administrative Decisions Tribunal.
- (4) If notice of intention to apply to the Administrative Decisions Tribunal is given, the authority must not sell or otherwise dispose of the impounded item until the time limit for an application has expired or until it has been notified that any application made has been refused or withdrawn.
- (5) This section does not affect section 22 (Injured, diseased or distressed animals can be destroyed).
- (6) An impounding authority may release an impounded item pending the determination of an application. The release of an impounded item does not affect any right of recovery that the impounding authority may have under this Act.

### **39 Time limit for applications**

- (1) This section has effect despite the provisions of the [Administrative Decisions Tribunal Act 1997](#).
- (2) The time limit for making an application for review of an impounding decision is 28 days from the date on which impounding was notified.
- (3) However, if the owner of an impounded item is not notified of the impounding of the item, there is no time limit for making an application for a review of the impounding

decision.

- (4) The time limit for making an application for review of any fee or charge required to be paid for the release of an impounded item is 28 days from the date on which application was made for the release of the impounded item.
- (5) Nothing in this section affects the operation of section 24.

#### **40 Result of application to Administrative Decisions Tribunal**

- (1) If an application for a review of an impounding decision is dismissed, the applicant is liable for any additional impounding fees incurred up to the time the impounding authority is notified of the decision on the application.
- (2) If an application for a review of an impounding results in the impounding decision being set aside, the impounding authority must release the impounded item free of all impounding fees and convey it to the applicant at the expense of the authority.

### **Part 7 Miscellaneous**

#### **41 Special power to destroy animals**

- (1) An authorised person may destroy, or remove and destroy, any animal found unattended in a public place if he or she believes on reasonable grounds that the animal is a danger to the public or is likely to die from a disease or injury from which it is suffering. The person may then dispose of the carcass of the animal.
- (2) An authorised person may remove any dead animal found in a place (whether public or not) and may dispose of the carcass of the animal.
- (3) This section does not apply to an animal that is a threatened species (as defined in the *Threatened Species Conservation Act 1995*), protected fauna (as defined in the *National Parks and Wildlife Act 1974*) or is in a national park, historic site, nature reserve, state game reserve, state conservation area, regional park (other than a park under the care, control and management of a council), karst conservation reserve or Aboriginal area (as defined in that Act).
- (4) The expense incurred in exercising a power under subsection (1) may be recovered as a debt from the owner of the animal. The expense incurred in exercising a power under subsection (2) may be recovered as a debt from either the owner of the dead animal or the occupier of the place in which it was found.
- (5) The person who has the right of recovery conferred by subsection (4) is the council under whose authority the authorised person acted or (if the authorised person is a police officer) the Commissioner of Police.
- (6) In this section:

**animal** means any creature (other than a human being).

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

#### **42 Impounding officers must have written authorisation**

- (1) An impounding officer is not authorised to impound except when in possession of a written authorisation issued by the impounding authority. This does not apply to a police officer.
- (2) The impounding officer must produce that written authorisation to a person who questions or asks for evidence of the officer's authority, when the officer is or is proposing to exercise the powers of an impounding officer.
- (3) The regulations may impose requirements on the form and contents of the authorisation.
- (4) The authorisation required by this section may be combined with and form part of another authorisation that an impounding officer has in some other capacity.

#### **43 Police required to provide assistance on request**

- (1) The officer in charge of a police station must, on request by an impounding officer or impounding authority:
  - (a) cause inquiries to be made as to the ownership of a motor vehicle, and
  - (b) within 3 business days after the request is made, furnish to the officer or authority a written statement of the result of those inquiries.
- (2) If the vehicle is or has been registered under the [Road Transport \(Vehicle Registration\) Act 1997](#), the statement may consist of particulars of the name and address of the last registered owner of the vehicle according to the records kept by Roads and Maritime Services.

#### **44 Destruction of animals to be carried out humanely**

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

#### **45 Protections from liability**

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

- (2) If an item is sold or disposed of under a power conferred by this Act, the following provisions apply:
- the buyer obtains the ownership of the item,
  - the item is discharged from any right, interest, trust or obligation to which it was subject immediately before sale,
  - the person who was the owner of the item immediately before the sale or disposal ceases to have any claim in respect of the item or any right of action in respect of the sale or disposal except as specifically provided by this Act.
- (3) A person is not prevented from recovering damages from an impounding authority in respect of the sale or disposal of an item if the person establishes that the authority, or the person who effected the sale or disposal, did not act in good faith or acted without reasonable care.

#### **46 Permit not required to deliver stock to pound**

It is not necessary for a stock permit to be in force under the [Rural Lands Protection Act 1998](#) for the purpose of having any stock (as defined in Part 10 of that Act) delivered to a pound under this Act.

#### **47 Enforcement of court orders**

An order of a court under this Act for the payment of money operates and is enforceable as a judgment made under the [Civil Procedure Act 2005](#).

#### **48 Recovery of debts arising under this Act**

An amount that this Act provides may be recovered as a debt is recoverable as such in a court of competent jurisdiction.

#### **49 Method of giving notice**

A notice may be given to a person for the purposes of this Act or the regulations in any of the following ways:

- by delivering it personally to the person,
- by posting it to the person's place of residence or place of business last known to the person giving the notice,
- in the case of notice to a body corporate, by leaving it at the registered office or principal place of business of the body with a person apparently employed there or by posting it to the body at the registered office or principal place of business of the body.

#### **50 Act binds the Crown**

This Act binds the Crown not only in right of New South Wales but also, so far as the



legislative power of Parliament permits, the Crown in all its other capacities.

## **51 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may prescribe the form and contents of any notice authorised or required to be given under this Act.

## **52 Repeals**

The following are repealed:

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

## **53, 54 (Repealed)**

## **55 Savings and transitional provisions**

Schedule 1 has effect.

## **56 Notes in the text**

Notes do not form part of this Act. They are provided to assist understanding.

## **Schedule 1 Savings and transitional provisions**

(Section 55)

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Impounding Act 1993*

*Impounding Amendment Act 1996*

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

## **2 Definitions**

In this Schedule:

**commencement day** means the day section 52 (Repeals) commences.

**impound** includes seize, remove, tow away and take possession or custody of.

**repealed law** means a law repealed by section 52.

## **3 Continuation of public pounds established under repealed laws**

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

### **3A Continuation of pounds operated by rural lands protection board**

Any pound in existence under the *Rural Lands Protection Act 1989* immediately before the commencement of this clause is taken to be a public pound established under this Act by the rural lands protection board responsible for it.

## **4 Items impounded under a repealed law**

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

commencement day) are to be dealt with in accordance with the repealed law, and

- (c) a complaint to a justice in respect of the impounding may be made and dealt with in accordance with the repealed law.

## 5 Records kept under repealed law

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

## 6 References to repealed laws

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

## 7 Application of [Impounding Amendment Act 1996](#)

A provision of this Act as in force before its amendment by the [Impounding Amendment Act 1996](#) continues to apply to the impounding of an article or animal that occurred before the commencement of that amendment.

## Dictionary

(Section 4)

**animal** means any of the following:

- cattle, horses, donkeys, mules, asses, camels, sheep, goats, pigs and deer,
- any dog that is in a national park, historic site, nature reserve, state game reserve, karst conservation area or Aboriginal area (as defined in the [National Parks and Wildlife Act 1974](#)),
- an animal (including a bird, reptile and fish) of any species prescribed by the regulations as a species of animal that can be impounded under this Act.

**area of operations** of an impounding officer means:

- in the case of an impounding officer appointed by a council, any place in the area of the council and any place in the area of another council in which that other council has authorised it to impound under this Act, but does not include the area of operations of an impounding officer appointed by the Director of National Parks and Wildlife,
- in the case of an impounding officer appointed by the Forestry Commission, a State forest, timber reserve or flora reserve (as defined in the [Forestry Act 1916](#)) and any other land owned by or under the control of the Commission,
- in the case of an impounding officer appointed by the Minister administering the [Ports and Maritime](#)

*Administration Act 1995*, any area owned by or under the control of Roads and Maritime Services,

- in the case of an impounding officer appointed by the Director of National Parks and Wildlife, a national park, historic site, nature reserve, state game reserve, state conservation area, regional park (other than a park under the care, control and management of a council), karst conservation area or Aboriginal area (as defined in the *National Parks and Wildlife Act 1974*),
- in the case of an impounding officer appointed by the Minister administering the *Crown Lands Act 1989*, vacant public land (as defined in section 153 of that Act),
- in the case of an impounding officer appointed by the Rail Corporation New South Wales, land owned by or under the control of the Corporation,
- in the case of an impounding officer appointed by Roads and Maritime Services, any road, land along or near the line of a road, land vested in Roads and Maritime Services, and a bridge, ferry or tunnel vested in or subject to the administration or control of Roads and Maritime Services,
- in the case of an impounding officer appointed by the Sydney Catchment Authority, any special area or controlled area (as defined in the *Sydney Water Catchment Management Act 1998*),
- in the case of an impounding officer appointed by the Western Lands Commissioner, any land in the Western Division of the State (as specified in section 4 of the *Crown Lands Act 1989*),
- in the case of an impounding officer appointed by the Centennial Park and Moore Park Trust, Trust lands within the meaning of the *Centennial Park and Moore Park Trust Act 1983*,
- in the case of an impounding officer appointed by the Sydney Olympic Park Authority, land within the Sydney Olympic Park Development Area within the meaning of the *Sydney Olympic Park Authority Act 2001*,
- in the case of an impounding officer appointed by the Sydney Harbour Foreshore Authority, any land within the foreshore area within the meaning of the *Sydney Harbour Foreshore Authority Act 1998*,
- in the case of an impounding officer appointed by a public authority prescribed by the regulations as an impounding authority, the place or class of places for which the public authority is prescribed by the regulations as an impounding authority,
- in the case of an impounding officer appointed by a livestock health and pest authority, any place in the district of the authority.

**Note—**

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

**article** means anything capable of ownership except a living creature.

**council** means a council under the *Local Government Act 1993*.

**exercise** of a power includes, where the power is a duty, the performance of the duty.

**impounded** has the meaning given by section 8.

**impounding authority** means each of the following authorities:

- a council,
- the Forestry Commission,
- the Minister administering the [Ports and Maritime Administration Act 1995](#),
- the Director of National Parks and Wildlife,
- the Minister administering the [Crown Lands Act 1989](#),
- the Rail Corporation New South Wales,
- Roads and Maritime Services,
- the Sydney Catchment Authority,
- the Western Lands Commissioner,
- the Centennial Park and Moore Park Trust,
- a livestock health and pest authority,
- the Sydney Harbour Foreshore Authority,
- the Sydney Olympic Park Authority,
- the Western Sydney Parklands Trust,
- a public or local authority prescribed by the regulations as an impounding authority for a particular place or class of places.

**impounding officer** means a person appointed by an impounding authority to exercise the powers of an impounding officer.

**Note—**

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

**item** means an animal or article.

**motor vehicle** means:

- (a) a motor vehicle within the meaning of the [Road Transport \(General\) Act 2005](#) and includes a caravan or trailer, and
- (b) the remains of such a vehicle, and
- (c) any article (including parts and accessories) that is secured to or in such a vehicle at the time it is impounded.

**occupier** of land includes:

- (a) a person who is managing the land on behalf of its owner or occupier, and

(b) a person who is responsible for caring for or controlling the land.

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

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

**power** includes authority, duty and function.

**private land** means:

- all land, except Crown land (as defined in the [Crown Lands Act 1989](#)) and land dedicated or reserved for a public purpose that is not managed or controlled by a reserve trust under that Act, and
- Crown land (as defined in that Act) that is the subject of a holding (as defined in that Act).

**Note—**

Land held under a lease from the Crown is treated as private land.

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

(a) whether or not payment for admission to the place is required, and

(b) whether or not the place is usually open to or frequented by the public,

and, in particular, includes:

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

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

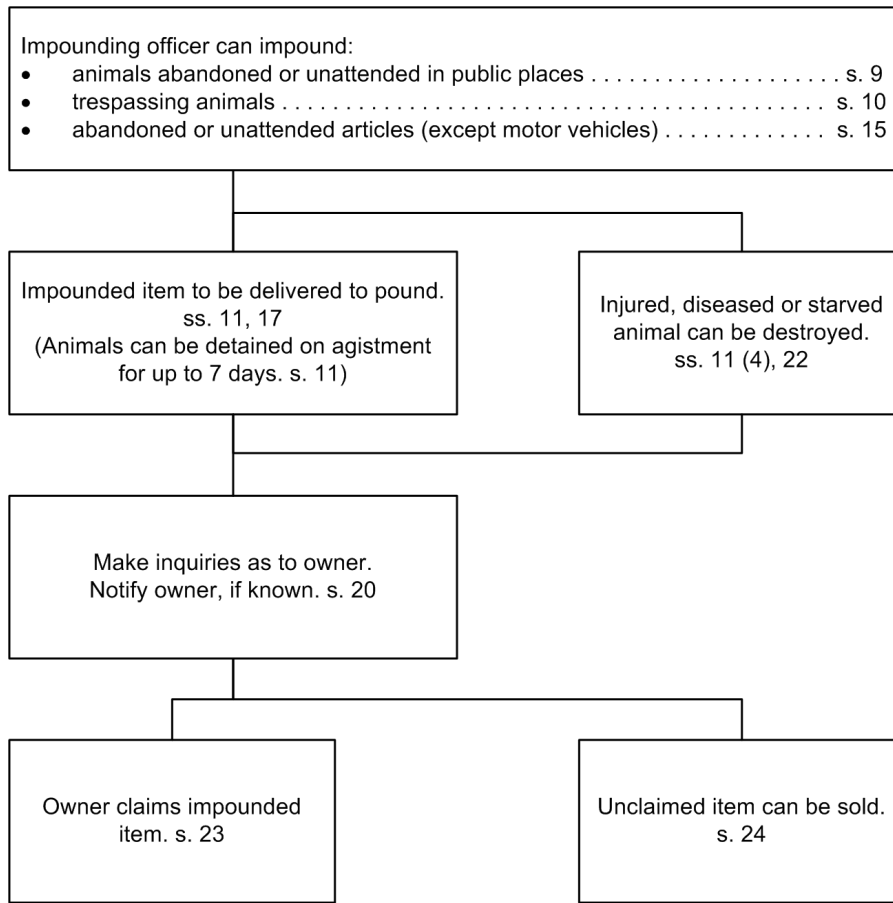
**public pound** means a pound established as a public pound under this Act.

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

**unattended**, in relation to an animal, includes abandoned or straying.

Notes Editorial note

**Impounding of animals and articles (except motor vehicles)**



**Impounding of motor vehicles**

