

# Public Spaces (Unattended Property) Act 2021 No 38

[2021-38]



New South Wales

## Status Information

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### Authorisation

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## Contents

<b>Long title</b> .....	6
<b>Part 1 Preliminary</b> .....	6
1 Name of Act .....	6
2 Commencement .....	6
3 Objects of Act .....	6
<b>Part 2 Interpretation and application of Act</b> .....	7
<b>Division 1 Definitions</b> .....	7
4 Definitions .....	7
<b>Division 2 Key concepts</b> .....	7
5 Meaning of “animal” .....	7
6 Meaning of “class 1 item” .....	7
7 Meaning of “class 2 item” .....	8
8 Meaning of “class 3 item” .....	8
9 Meaning of “items” .....	8
10 Meaning of “place of care” .....	9
11 Meaning of “place of storage” .....	9
12 When authorised officers have “possession” of property .....	9
13 Meaning of “property” .....	9
14 Meaning of “public place” .....	9

15	Meaning of “responsible persons” for property .....	10
16	Meaning of “unattended” .....	10
	<b>Division 3 Application of Act .....</b>	<b>11</b>
17	Act to bind Crown .....	11
	<b>Part 3 Dealing with unattended property .....</b>	<b>11</b>
	<b>Division 1 Unattended animals .....</b>	<b>11</b>
18	Authorised officers may take possession of unattended animals .....	11
19	Special arrangements for stock animals in emergencies .....	12
20	Authorised officers may take possession of dogs only in certain areas .....	13
21	Authorised officers to ensure animals taken to place of care .....	13
22	Authorised officers may destroy animals taken into possession in certain circumstances .....	13
	<b>Division 2 Unattended animals on private land .....</b>	<b>14</b>
23	Occupier of private land may take possession of unattended animal on land .....	14
24	Action to be taken after occupier of private land takes possession of animal .....	14
	<b>Division 3 Items .....</b>	<b>15</b>
25	Authorised officers may take possession of items .....	15
26	Powers of authorised officers in relation to items taken into possession .....	16
27	Powers of authorised officers in relation to items not taken into possession .....	16
	<b>Division 4 Miscellaneous .....</b>	<b>17</b>
28	Authorised officers may give directions to responsible persons .....	17
	<b>Part 4 Dealing with property taken into possession .....</b>	<b>17</b>
29	Authority to take reasonable steps to identify and notify owners of property .....	17
30	Owner can obtain return of property taken possession of .....	18
31	Items worth less than certain amount may be destroyed .....	18
32	Property taken possession of may be sold or otherwise disposed of if not claimed .....	19
33	Records .....	20
	<b>Part 5 Applications to Civil and Administrative Tribunal .....</b>	<b>21</b>
34	Responsible persons for property may apply to Civil and Administrative Tribunal for administrative review	

.....	21
35 Time limit for applications .....	22
36 Result of application to Civil and Administrative Tribunal .....	22
<b>Part 6 Offences</b> .....	22
37 Offence of leaving item unattended in public place .....	22
38 Offence of recklessly or negligently leaving item unattended in certain circumstances .....	24
39 Responsible person liable for offences involving property.....	25
40 Offence of causing or permitting animal to trespass .....	26
41 Offence of unlawfully recovering property.....	26
42 Offence of failing to recover property as required .....	27
43 Offence of obstructing authorised officer .....	27
<b>Part 7 Enforcement and legal proceedings</b> .....	27
<b>Division 1 Authorised officers</b> .....	27
44 Appointment.....	27
45 Identification document.....	27
46 Functions .....	28
47 Areas in which authorised officers can exercise functions.....	28
48 Police officers .....	29
<b>Division 2 Legal proceedings</b> .....	29
49 Penalty notices .....	29
50 Proceedings are to be heard by Local Court .....	29
51 Enforcement of court orders.....	29
52 General right to recover amount .....	29
53 Recovery of debts arising under this Act .....	30
54 Joint responsible persons.....	30
<b>Part 8 Miscellaneous</b> .....	31
55 Fees payable in relation to exercise of functions under this Act.....	31
56 NSW Police required to provide assistance if asked.....	32
57 Personal liability .....	32
58 Effect of sale or disposal of property .....	33
59 Permit not required to deliver stock to place of care.....	33

60 Service of documents .....	33
61 Regulations.....	34
62 Repeal .....	34
<b>Schedule 1 Savings, transitional and other provisions .....</b>	<b>35</b>
<b>Schedule 2 (Repealed) .....</b>	<b>36</b>
<b>Schedule 3 Dictionary.....</b>	<b>36</b>

# Public Spaces (Unattended Property) Act 2021 No 38



New South Wales

An Act to encourage persons responsible for property to mitigate risks to access, safety and amenity that may arise from property being left unattended and to ensure public spaces can continue to be used, shared and enjoyed by the community by providing a scheme for dealing with unattended property; and to repeal the *Impounding Act 1993*.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Public Spaces (Unattended Property) Act 2021*.

### 2 Commencement

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

### 3 Objects of Act

The objects of this Act are—

- (a) to encourage persons responsible for property to act quickly and responsibly to mitigate risks to access, safety and amenity that may arise from the property being left unattended, and
- (b) to ensure public spaces can continue to be used, shared and enjoyed by the community as a whole by—
  - (i) empowering authorities to move and otherwise deal with property left unattended in public areas in the authority's area of control, and to take regulatory and enforcement action for offences, and
  - (ii) providing for the appropriate and efficient temporary and longer-term storage or care of unattended property, and
  - (iii) providing for the recovery of costs from responsible persons of dealing with unattended property, including costs involved in collecting and storing unattended property when responsible persons do not adequately resolve issues, and

(iv) ensuring animals dealt with under the Act are cared for in a way that is consistent with community expectations and animal welfare laws, and

(c) to empower occupiers of private land to take possession of stray animals on the land.

## Part 2 Interpretation and application of Act

### Division 1 Definitions

#### 4 Definitions

The Dictionary in Schedule 3 defines terms used in this Act.

**Note—**

The [Interpretation Act 1987](#) also contains definitions and other provisions that affect the interpretation and application of this Act.

### Division 2 Key concepts

#### 5 Meaning of “animal”

(1) In this Act, an **animal** includes—

- (a) aquatic animals, and
- (b) terrestrial animals.

(2) An animal does not include—

- (a) companion animals within the meaning of the [Companion Animals Act 1998](#), other than dogs in national parks, and

**Note—**

The operation of this paragraph means this Act does not apply to—

- (a) dogs, unless a dog is in a national park, or
- (b) cats.
- (b) other animals prescribed by the regulations as being animals to which this Act does not apply.

#### 6 Meaning of “class 1 item”

(1) In this Act, a **class 1 item** means a small or medium-sized thing capable of ownership, except a living creature, that can ordinarily be collected by 1 or 2 persons without the need for machinery to lift, tow or otherwise move the thing.

(2) Without limiting subsection (1), the following are class 1 items—

- (a) baggage,

(b) personal recreation equipment that is not available for hire,

**Examples of personal recreation equipment—**

bikes, surfboards

(c) other personal items.

**Note—**

See section 9(2) for what applies if a thing may be a class 1 item and a class 2 item or class 3 item.

**7 Meaning of “class 2 item”**

(1) In this Act, a **class 2 item** means a thing that is—

(a) capable of ownership, except a living creature, and

(b) made available for the use of the public at large, whether or not on payment of a fee or other benefit, including as part of a sharing service.

(2) Without limiting subsection (1), the following are class 2 items—

(a) share-bikes,

(b) shopping trolleys.

**Note—**

See section 9(2) for what applies if a thing may be a class 2 item and a class 1 item or class 3 item.

**8 Meaning of “class 3 item”**

(1) In this Act, a **class 3 item** means a motor vehicle.

(2) Without limiting subsection (1), hire-cars are class 3 items.

**Note—**

See section 9(2) for what applies if a thing may be a class 3 item and a class 1 item or class 2 item.

**9 Meaning of “items”**

(1) In this Act, the following things are **items**—

(a) class 1 items,

(b) class 2 items,

(c) class 3 items,

(d) another thing prescribed by the regulations to be an item for this Act.

(2) If a thing is within 1 or more of the classes of items referred to in subsection (1), the regulations may prescribe which class of items the thing belongs to for this Act.



## 10 Meaning of “place of care”

In this Act, a **place of care**, for an animal, means a place appropriate for the keeping of the animal while the animal is in the possession of an authority, having regard to—

- (a) the animal’s needs, and
- (b) the period of time the animal has been, or is likely to be, kept at the place.

## 11 Meaning of “place of storage”

In this Act, a **place of storage**, for an item, means a place appropriate for the storage of the item while the item is in the possession of an authority.

## 12 When authorised officers have “possession” of property

- (1) For this Act, an authorised officer or an occupier of private land—
  - (a) has **possession** of property as soon as the officer or occupier takes possession of the property under this Act, and
  - (b) continues to have possession of the property until the property is returned or disposed of under this Act.
- (2) Property does not have to be taken to a place of care or place of storage for it to be taken possession of for the purposes of this Act.

## 13 Meaning of “property”

In this Act, **property** means—

- (a) an animal, or
- (b) an item.

## 14 Meaning of “public place”

- (1) In this Act, a **public place** means a 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.
- (2) Without limiting subsection (1), a public place includes—
  - (a) a place dedicated or reserved for a public purpose, and
  - (b) a place that, although privately owned, is a place—
    - (i) to which members of the public are permitted to have access for the purposes of business or leisure, or

(ii) that members of the public are permitted to use as a thoroughfare.

(3) A public place does not include a place declared by the regulations not to be a public place.

### **15 Meaning of “responsible persons” for property**

(1) The **responsible persons** for property are—

(a) the person who owns or is otherwise responsible for the property, and

(b) a person engaged to collect or manage the property on behalf of the property’s owner, and

(c) another person who is in control or possession, or entitled to possession, of the property, and

(d) a person who caused, or engaged in conduct that was reasonably likely to result in, the property being unattended.

#### **Examples—**

**1** a person who opens a gate that releases an animal

**2** a person who leaves a shopping trolley unattended

(2) The responsible person for property includes—

(a) for property that is a class 1 item—a hirer or lessor of the property, and

(b) for property that is a class 2 item—the following persons—

(i) a person using the property,

(ii) a hirer or lessor of the property,

(iii) a scheme operator, and

(c) for property that is a class 3 item—the following persons—

(i) the registered operator of the vehicle,

(ii) a person who hires or leases the vehicle,

(iii) a scheme operator.

(3) The regulations may prescribe additional persons to be responsible persons for property or a class of property.

### **16 Meaning of “unattended”**

In this Act, **unattended**, in relation to property, means the property is not under the direct control or supervision of the responsible person.

## **Division 3 Application of Act**

### **17 Act to bind Crown**

This Act binds—

- (a) the Crown in right of New South Wales, and
- (b) in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

## **Part 3 Dealing with unattended property**

### **Division 1 Unattended animals**

#### **18 Authorised officers may take possession of unattended animals**

- (1) An authorised officer may take possession of an animal if the officer reasonably believes—
  - (a) the animal is unattended, and
  - (b) the animal is—
    - (i) in a public place, or
    - (ii) on private land without the permission of the occupier of the land.
- (2) For subsection (1), an animal is not unattended—
  - (a) if the animal is in a public place—
    - (i) in response to an invitation contained in a notice published by the public authority that owns or controls the public place, and
    - (ii) in accordance with any conditions stated in the notice, or
  - (b) if the animal is in a public place with the consent of the public authority that owns or controls the public place, or
  - (c) if the animal is in a public place as required or permitted by an Act or another law, or
  - (d) for an animal that is stock—if the animal is unattended on a road or travelling stock reserve in circumstances set out in the [Local Land Services Act 2013](#), section 115, or
  - (e) in other circumstances prescribed by the regulations for this section.
- (3) The regulations may provide for additional matters in relation to authorised officers

taking possession of animals including—

- (a) the matters to be considered by authorised officers in forming a reasonable belief animals are unattended including, for example, having regard to guidelines prescribed by the regulations, and
- (b) other conditions that must be satisfied before authorised officers may take possession of animals generally or a class of animals.

### **19 Special arrangements for stock animals in emergencies**

- (1) This section applies if, in an emergency, an authorised officer reasonably believes—
  - (a) an animal that is stock is unattended, and
  - (b) appropriate arrangements cannot be made for the officer to take possession of the animal, and
  - (c) failure to move the animal poses an unacceptable risk to the health or safety of persons.
- (2) The authorised officer may, without taking possession of the animal, arrange for the animal to be kept on any practicable premises in the vicinity of the place at which the animal was left unattended.
- (3) The authorised officer may arrange for the animal to be kept on private land only if the officer has made reasonable attempts to—
  - (a) obtain the consent of the owner or occupier of the private land, and
  - (b) comply with the reasonable requests of the owner or occupier of the private land in relation to the keeping of the animal on the land until the animal is removed.
- (4) 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.
- (5) The regulations may provide for additional matters in relation to the arrangements made in emergencies for animals that are stock.
- (6) To the extent of any inconsistency between this section and the *Biosecurity Act 2015*—
  - (a) if the inconsistency is between this section and an emergency order under the *Biosecurity Act 2015*—the emergency order prevails, and
  - (b) otherwise—this section prevails.

**20 Authorised officers may take possession of dogs only in certain areas**

An authorised officer may take possession of a dog under this Act only if the dog is in any of the following areas under the *National Parks and Wildlife Act 1974*—

- (a) a national park,
- (b) a nature reserve,
- (c) a karst conservation reserve,
- (d) an Aboriginal area.

**21 Authorised officers to ensure animals taken to place of care**

- (1) If an authorised officer takes possession of an animal the officer must ensure the animal is—
  - (a) taken to a place of care, or
  - (b) returned to the responsible person for the animal.
- (2) To avoid doubt, an animal taken to a place of care continues to be the possession of the authority that appointed the authorised officer while the animal is at the place of care.
- (3) An authority may nominate a place of care as the place of care to which an authorised officer appointed by the authority may take an animal the officer takes possession of.

**22 Authorised officers may destroy animals taken into possession in certain circumstances**

- (1) This section applies if, after taking possession of an animal under this Division, an authorised officer reasonably believes—
  - (a) the animal is so severely diseased or injured, or in so poor a physical or psychological condition, that it is cruel to keep the animal alive, or
  - (b) there is no alternative to the immediate destruction of the animal because the animal is a threat to the health or safety of persons, other animals or the environment.
- (2) The authorised officer may destroy the animal, in a way that causes the animal to die quickly and without unnecessary pain, if—
  - (a) a veterinary practitioner is not available, or
  - (b) the authorised officer reasonably believes waiting for a veterinary practitioner would be cruel or otherwise inappropriate.
- (3) In this section—

**veterinary practitioner** has the same meaning as in the [Veterinary Practice Act 2003](#).

## **Division 2 Unattended animals on private land**

### **23 Occupier of private land may take possession of unattended animal on land**

An occupier of private land may take possession of an animal that is unattended on the land without the occupier's permission.

### **24 Action to be taken after occupier of private land takes possession of animal**

- (1) If an occupier of private land takes possession of an animal, the occupier must—
  - (a) if the occupier knows the identity of the responsible person for the animal and wishes to return the animal to the responsible person—
    - (i) contact the responsible person for the animal within 24 hours of taking possession of the animal, and
    - (ii) return the animal to the responsible person within 4 days of taking possession of the animal or the longer period agreed with the responsible person, or
  - (b) if the occupier does not know the identity of the responsible person for the animal but is taking reasonable steps to identify the responsible person—
    - (i) keep the animal for a period of no more than 4 days from the time of taking possession of the animal, and
    - (ii) by the end of the period—
      - (A) return the animal to a person the occupier is satisfied is the responsible person for the animal, or
      - (B) contact an authority, whose area of operations includes the land, to make arrangements for the animal to be taken to a place of care, or
    - (c) if the occupier does not wish to return the animal to the responsible person for the animal or is unwilling to take reasonable steps to identify the responsible person—contact an authority, whose area of operations includes the land, to make arrangements for the animal to be taken to a place of care.

Maximum penalty—25 penalty units.

- (2) The responsible person for the animal must pay to the occupier of the private land the amount payable under section 55 for the period during which the animal was in the occupier's possession.
- (3) If the responsible person for the animal does not pay the occupier an amount due

under subsection (2), the occupier of the private land may recover the amount from the responsible person for the animal as a debt.

## **Division 3 Items**

### **25 Authorised officers may take possession of items**

- (1) An authorised officer may take possession of an item if the officer reasonably believes—
  - (a) the item is unattended, and
  - (b) the item—
    - (i) is obstructing access to or within a public place, or
    - (ii) poses a risk to persons, animals or the environment, or
    - (iii) is interfering with public amenity, or
    - (iv) has been in the same or substantially the same place for—
      - (A) the period prescribed by the regulations, or
      - (B) if no period is prescribed by the regulations—7 days or more, or
    - (v) is unattended in another circumstance prescribed by the regulations including, for example—
      - (A) the item is in a public place in contravention of a code of practice prescribed by the regulations that applies to items of that class, or
      - (B) the item does not comply with a standard prescribed by the regulations.
- (2) If the unattended item referred to in subsection (1) is a motor vehicle, the authorised officer may, without or before taking possession of the vehicle, enter the vehicle for the purpose of identifying the responsible person for the vehicle.
- (3) The regulations may provide for additional matters in relation to authorised officers taking possession of items, including—
  - (a) the matters to be considered by authorised officers in forming a reasonable belief items are unattended, including, for example, having regard to guidelines prescribed by the regulations, and
  - (b) other conditions that must be satisfied before authorised officers may take possession of items generally or a class of items, and
  - (c) matters about giving notices in relation to taking possession of items.

## **26 Powers of authorised officers in relation to items taken into possession**

- (1) If an authorised officer takes possession of an item under this Division, the authorised officer must—
  - (a) move the item to a place in the same general area in which it was left unattended so the item is no longer—
    - (i) obstructing access to or within a public place, or
    - (ii) posing a risk to persons, animals or the environment, or
    - (iii) interfering with public amenity, or
  - (b) move the item to a place of storage, or
  - (c) deal with the item as prescribed by the regulations.
- (2) The regulations may provide for additional matters relating to the functions of authorised officers in relation to items the officers have taken into possession, including—
  - (a) action that may be taken in relation to items in the possession of authorised officers, including preventing owners of, or responsible persons for, the items removing or otherwise interfering with the items, and
  - (b) requirements for action to be taken after items are in the possession of authorised officers, and
  - (c) creating offences for removing or otherwise interfering with items that have been taken into possession by authorised officers, including removal or other interference by owners of, or responsible persons for, items.

## **27 Powers of authorised officers in relation to items not taken into possession**

- (1) This section applies if an authorised officer reasonably believes an item is unattended but it is not necessary to take possession of the item.
- (2) The authorised officer may—
  - (a) move the item to another place in the same general area so that the item does not—
    - (i) obstruct access to or within a public place, or
    - (ii) pose a risk to persons, animals or the environment, or
    - (iii) interfere with public amenity, or
  - (b) return the item to the owner of the item.



- (3) The regulations may provide for additional matters relating to dealing with items that are not taken into the possession of authorised officers, including requirements about notices to be given to owners of, and other responsible persons for, the item.

## **Division 4 Miscellaneous**

### **28 Authorised officers may give directions to responsible persons**

- (1) This section applies if—
  - (a) an authorised officer becomes aware of unattended property, and
  - (b) the officer is able to identify the responsible person for the property.
- (2) The authorised officer may give the responsible person a written notice directing the person to—
  - (a) remove the unattended property, or
  - (b) prevent the property becoming unattended again.
- (3) To avoid doubt, subsection (2) applies whether or not the responsible person is committing an offence under this Act by leaving the property unattended.
- (4) The responsible person for property must comply with a written notice given to the person under this section.

Maximum penalty—

  - (a) for an individual—50 penalty units, or
  - (b) for a body corporate—125 penalty units.
- (5) The regulations may provide for additional matters relating to notices under this section, including—
  - (a) the types of action responsible persons may be required to take under notices, including limiting the types of action that may be required, and
  - (b) the periods within which actions must be taken under notices.

## **Part 4 Dealing with property taken into possession**

### **29 Authority to take reasonable steps to identify and notify owners of property**

- (1) An authority must, as soon as practicable after taking possession of property under this Act and before destroying or otherwise disposing of the property, take reasonable steps to—
  - (a) identify the property's owner, and

(b) if the authority identifies the owner—give the owner notice, as required by the regulations, that the property is in the authority’s possession.

(2) The regulations may provide for additional matters in relation to an authority’s obligation to identify and notify owners of property in the possession of the authority, including what constitutes reasonable steps to identify and notify property owners.

### **30 Owner can obtain return of property taken possession of**

(1) A person may apply to an authority for the return of property taken into possession by an authorised officer appointed by the authority.

(2) An application may be made at any time before the property is sold or otherwise disposed of.

(3) The authority must return the property to the applicant if—

(a) the authority is satisfied on reasonable grounds the applicant is—

(i) the owner of the property, or

(ii) authorised to claim the property on the owner’s behalf, or

(iii) otherwise entitled to lawful possession of the property, and

(b) an amount payable under section 55 in relation to the property is paid to the authority, and

(c) the applicant signs a receipt for the return of the property.

### **31 Items worth less than certain amount may be destroyed**

(1) If an authorised officer takes possession of an item, the officer may arrange for the item to be destroyed or otherwise disposed of as soon as the officer takes possession of the item if the officer reasonably believes the value of the item is less than—

(a) the amount prescribed by the regulations, or

(b) if an amount is not prescribed by the regulations—

(i) for a class 1 item or class 2 item—\$200, or

(ii) for a class 3 item—\$1,500.

(2) However, an authorised officer must not arrange for an item to be destroyed or otherwise disposed of until the authorised officer has taken all reasonable steps to—

(a) identify the item’s owner, and

(b) if the owner is identified notify the owner under subsection (3) that—

- (i) the item is in the possession of the authority, and
  - (ii) the period stated in the notice has ended without an application being made for the item to be released.
- (3) The notice to the owner must—
- (a) be in writing, and
  - (b) state the item is in the authority's possession, and
  - (c) state that the item may be destroyed if—
    - (i) its value is less than the amount referred to in subsection (1), and
    - (ii) the owner does not apply for the return of the item within the period, ending not less than 3 days after the notice is given, stated in the notice.
- (4) The destruction or other disposal of an item under this section is to be carried out as directed by the authority.

### **32 Property taken possession of may be sold or otherwise disposed of if not claimed**

- (1) An authority must arrange for property taken possession of by an authorised officer appointed by the authority to be disposed of if the property is not returned before the deadline for return.
- (2) Property may be disposed of as follows—
  - (a) by selling the property,
  - (b) if the property is offered for sale and does not sell—by giving the property away free of charge,
  - (c) if the property does not sell and the authority is unable to give the property away within the relevant period after the deadline for return—by making appropriate arrangements for recycling, rehoming, destroying or otherwise disposing of the property.
- (3) Despite subsection (2)(a), an authority is not required to offer the property for sale if, in the authority's opinion, the value of the property is less than the cost of offering the property for sale.
- (4) An animal may be destroyed under this section only if, despite all reasonable efforts made by the authority, the animal is unable to be sold, given away or rehomed.
- (5) This section does not apply to property destroyed or otherwise disposed of under section 31 or another provision of this Act.
- (6) The regulations may provide for additional matters relating to the sale or disposal of

property taken into possession under this Act, including how the proceeds of the sale of property are to be dealt with.

(7) In this section—

**deadline for return**, of property taken into possession, means—

(a) for an animal—

- (i) 7 days from the day on which notice was given to the owner of the animal under section 29, or
- (ii) if reasonable steps taken by the authority have failed to identify the name and address of the owner—7 days from the day on which the steps were completed, or

(b) otherwise—

- (i) 28 days from the day on which notice was given to the owner of the item under section 29, or
- (ii) if reasonable steps have failed to find the name and address of the owner—28 days from the later of the day on which
  - (A) the steps were completed, or
  - (B) the property was taken into possession.

**relevant period** means—

- (a) the period prescribed by the regulations, or
- (b) if no period is prescribed by the regulations—14 days.

### 33 Records

- (1) An authority must keep a record of all property that is taken possession of by authorised officers appointed by the authority.
- (2) A record of property taken possession of must include—
  - (a) a description of the property, and
  - (b) the date the property was taken possession of by an authorised officer, and
  - (c) the location at which the property was taken possession of, and
  - (d) if the property was taken to a place of care or storage—details about the place of care or storage, and
  - (e) the date the property was returned or otherwise disposed of, and

(f) other information prescribed by the regulations.

(3) Records of property taken possession of by authorised officers must be available for inspection by members of the public in accordance with the regulations.

## **Part 5 Applications to Civil and Administrative Tribunal**

### **34 Responsible persons for property may apply to Civil and Administrative Tribunal for administrative review**

- (1) The responsible person for property that has been taken possession of under this Act, or a person issued with a direction under this Act, may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision to—
  - (a) take possession of the property, but only on the ground that taking possession of the property was unlawful, or
  - (b) issue the direction, but only on the ground that issuing the direction was unlawful.
- (2) The responsible person for property that has been taken possession of under this Act may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of an amount required to be paid for the return of the property, whether to an authority or an occupier of private land, but only on the ground the amount—
  - (a) has been improperly charged or incorrectly calculated, or
  - (b) is excessive.
- (3) An application may not be made under this section until the responsible person for the property has given the authority or occupier written notice the responsible person intends to apply to the Civil and Administrative Tribunal.
- (4) If notice of intention to apply to the Civil and Administrative Tribunal is given, the authority or occupier must not sell or otherwise dispose of the property until—
  - (a) the time limit for an application has expired and an application has not been made, or
  - (b) if an application is made—
    - (i) the application has been finally determined, or
    - (ii) the application has been refused or withdrawn.
- (5) Subsection (4) does not affect the operation of section 22.
- (6) An authority or occupier may return property in the authority's or occupier's

possession pending the determination of an application.

- (7) The return of property under subsection (6) does not affect a right of recovery the authority or occupier may have under this Act.

### **35 Time limit for applications**

- (1) The time limit for making an application for an administrative review of a decision to take possession of property is 28 days from the date on which the responsible person for the property was notified possession had been taken.
- (2) However, if the responsible person for the property is not notified possession of the property has been taken, there is no time limit for making an application for an administrative review of the decision to take possession of the property.
- (3) The time limit for making an application for an administrative review of an amount required to be paid for the return of property is 28 days from the date on which application was made for the return of the property.
- (4) Subject to section 34(4), this section does not affect the operation of section 32.

### **36 Result of application to Civil and Administrative Tribunal**

- (1) If an application for an administrative review of a decision to take possession of property is dismissed, the applicant is liable for additional fees incurred up to the time the authority is notified of the decision on the application.
- (2) If an application for an administrative review of a decision to take possession of property results in the decision being set aside, the authority must—
- (a) return the property free of all fees, and
  - (b) return the property to the applicant at the expense of the authority.

## **Part 6 Offences**

### **37 Offence of leaving item unattended in public place**

- (1) A person must not leave an item unattended in a public place—
- (a) in a way that causes the item to obstruct access to or within a public place, or
  - (b) in a way that causes the item to pose a risk to persons, animals or the environment, or
  - (c) in a way that causes the item to interfere with public amenity, or
  - (d) so that it is in the same or substantially the same place for—
    - (i) the period prescribed by the regulations, or

- (ii) if no period is prescribed by the regulations—7 days or more, or
- (e) in another circumstance prescribed by the regulations including, for example, in contravention of—
  - (i) a code of practice prescribed by the regulations that applies to items of that class, or
  - (ii) a standard prescribed by the regulations.

Maximum penalty—

- (a) for an individual—
  - (i) for a class 3 item for which notice has been given under section 29—25 penalty units for each day, or part of a day, the item is not removed after notice is given but not more than a maximum of 75 penalty units, or
  - (ii) for a class 2 item—
    - (A) for the first item—25 penalty units, and
    - (B) for each additional item in the same public place or circumstance—5 penalty units, but not more than a maximum of 50 penalty units, or
  - (iii) otherwise—25 penalty units, or
- (b) for a body corporate—125 penalty units.

- (2) A person must not leave an animal unattended in a public place.

Maximum penalty—

- (a) for the first animal—25 penalty units, or
  - (b) for each additional animal in the same public place—5 penalty units, but not more than a maximum of 50 penalty units.
- (3) Subsection (2) does not apply if the person establishes the person took all reasonable precautions to prevent the animal from being left unattended.
- (4) A person is not to be regarded as having left property unattended in a public place—
- (a) if the property is in the public place in response to an invitation contained in a notice published by the public authority that owns or controls the place and in accordance with conditions stated in the notice, or
  - (b) if the property is in the public place with the consent of the public authority that owns or controls the place, or
  - (c) if the presence of the property in the public place is required or permitted by an

Act or another law, or

(d) for an animal that is stock—if the animal is unattended on a road or travelling stock reserve in circumstances set out in the *Local Land Services Act 2013*, section 115, or

(e) for an animal—in circumstances prescribed by the regulations for this section.

(5) A court that convicts a person of an offence under this section may order the person to pay to an authority the fees payable in relation to taking possession of, holding and disposing of the property, whether or not the court imposes a penalty for the offence.

### **38 Offence of recklessly or negligently leaving item unattended in certain circumstances**

A person commits an offence if the person recklessly or negligently leaves an item unattended in a public place—

(a) in a way that causes the item to obstruct access to or within a public place, or

(b) in a way that causes the item to pose a risk to persons, animals or the environment, or

(c) in a way that causes the item to interfere with public amenity, or

(d) so that it is in the same or substantially the same place for—

(i) the period prescribed by the regulations, or

(ii) if no period is prescribed by the regulations—7 days or more, or

(e) in another circumstance prescribed by the regulations including, for example, in contravention of—

(i) a code of practice prescribed by the regulations that applies to items of that class, or

(ii) a standard prescribed by the regulations.

Maximum penalty—

(a) for an individual—

(i) for a class 3 item for which notice has been given under section 29—50 penalty units for each day, or part of a day, the item is not removed after notice is given but not more than a maximum of 150 penalty units, or

(ii) for a class 2 item—

(A) for the first item—50 penalty units, and

(B) for each additional item in the same public place or circumstance—10 penalty



units, but not more than a maximum of 100 penalty units, or

(iii) otherwise—50 penalty units, or

(b) for a body corporate—250 penalty units.

### **39 Responsible person liable for offences involving property**

- (1) The responsible person for property in relation to which an offence under section 37 is committed is 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 responsible person satisfies a person specified in the notice that the property was, at the relevant time, stolen property or otherwise illegally taken or used, or
  - (b) otherwise—the court is satisfied the property was, at the relevant time, stolen property or otherwise illegally taken or used.
- (2) This section does not affect the liability of an actual offender for the offence but, if a penalty has been imposed on, or recovered from, a person for the offence, no further penalty may be imposed on or recovered from another person for the offence.
- (3) The responsible person for property is not, under this section, guilty of the offence if, for an offence dealt with by way of penalty notice—
  - (a) within 21 days after service on the responsible person of the penalty notice for the offence, the responsible person gives a person specified in the notice an approved nomination notice containing the name and address of the person who was at all relevant times in control of the property, or
  - (b) the responsible person satisfies a person specified in the notice the responsible person did not know, and could not with reasonable diligence have ascertained, the name and address.
- (4) The responsible person for property is not, under this section, guilty of the offence if—
  - (a) within 21 days after service on the responsible person of a court attendance notice for the offence, the responsible person gives the informant an approved nomination notice containing the name and address of the person who was at all relevant times in control of the property, or
  - (b) the responsible person satisfies the court the responsible person did not know, and could not with reasonable diligence have ascertained, that name and address.
- (5) Despite any other provision of this Act, an approved nomination notice may be provided by the responsible person for property served with a penalty notice within 90 days of the notice being served on the owner if the approved nomination notice is provided in the circumstances specified in the [Fines Act 1996](#), section 23AA or 23AB.

- (6) If the responsible person for property gives an approved nomination notice to a person or an informant for the purposes of this section, the person or informant may, by written notice served on the responsible person, require the responsible person to supply a statutory declaration for use in court proceedings that verifies the nomination contained in the approved nomination notice.
- (7) If a statutory declaration supplying the name and address of a person for this section is produced in proceedings against the person for the offence to which the declaration relates, the declaration is evidence the person was, at all relevant times for the offence, in control of the property involved in the offence.
- (8) An approved nomination notice or a statutory declaration that relates to more than one offence is taken not to be an approved nomination notice or a statutory declaration supplying a name and address for this section.
- (9) This section does not limit another provision of this Act or another Act.
- (10) In this section—  
**approved nomination notice** has the same meaning as in the [Fines Act 1996](#), section 38.

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

- (1) A person must not allow an animal under the person's control to be on private land without the permission of the occupier of the land.  
Maximum penalty—
  - (a) for the first animal—25 penalty units, and
  - (b) for each additional animal—5 penalty units, but not more than a maximum of 50 penalty units.
- (2) A court that convicts a person of an offence under this section may order the person to pay to an authority the amount payable under section 55 in relation to taking possession of, keeping and disposing of the animal, whether or not the court imposes a penalty for the offence.

#### **41 Offence of unlawfully recovering property**

- (1) A person must not, without lawful authority—
  - (a) recover or attempt to recover property the person knows has been taken into the possession of an authority under this Act, or
  - (b) incite or assist another person to recover property the person knows has been taken into the possession of an authority under this Act.

Maximum penalty—50 penalty units.

- (2) A court that finds a person guilty of an offence under this section may order the person to pay to the authority the fees that would have been payable to the authority for the return of the item had it not been recovered, whether or not the court imposes a penalty for the offence.

#### **42 Offence of failing to recover property as required**

- (1) If property is in the possession of an authority, the authority may, by written notice given to the responsible person for property, require the person to collect the property by—
  - (a) the day stated in the notice, or
  - (b) the later day agreed between the authority and the responsible person.
- (2) The day stated in the notice must not be less than 14 days from the day the notice is given to the responsible person.
- (3) The responsible person must collect the property within the period required under the notice.

Maximum penalty—

- (a) for an individual—25 penalty units, or
- (b) for a body corporate—125 penalty units.

#### **43 Offence of obstructing authorised officer**

A person must not, without reasonable excuse, obstruct an authorised officer exercising or attempting to exercise a function under this Act.

Maximum penalty—100 penalty units.

## **Part 7 Enforcement and legal proceedings**

### **Division 1 Authorised officers**

#### **44 Appointment**

An authority may appoint persons to be authorised officers for this Act.

#### **45 Identification document**

- (1) An authority must issue each authorised officer appointed by the authority with an identification document.
- (2) To avoid doubt, an identification document may be an electronic document displayed

on a device.

(3) An identification document must—

- (a) state that it is issued under this Act, and
- (b) give the name of the person to whom it is issued, and
- (c) be signed by the chief executive, however described, of the authority, and
- (d) include additional matters prescribed by the regulations.

(4) In exercising functions under this Act, an authorised officer must, if asked by a person affected by the exercise of a function, produce the officer's identification document to the person.

#### **46 Functions**

An authorised officer has the functions conferred by—

- (a) this Act, or
- (b) the regulations.

#### **47 Areas in which authorised officers can exercise functions**

- (1) Subject to subsection (2), an authorised officer may exercise functions under this Act only in the officer's area of operations.
- (2) An authorised officer may exercise functions outside the officer's area of operations if—
  - (a) the functions are exercised under an arrangement between—
    - (i) the authority that appointed the authorised officer, and
    - (ii) the authority for the area in which the officer is exercising functions, or
  - (b) the authorised officer reasonably believes it is necessary to exercise the functions outside the officer's area of operations in the interests of public health or safety, or
  - (c) the exercise of functions is in accordance with the regulations.

#### **Note—**

See section 49, which does not permit an authorised officer to issue a penalty notice outside the officer's area of operation.

- (3) This Act does not confer power on an authorised officer to enter a place the officer could not otherwise lawfully enter.

- (4) To avoid doubt, nothing in this Act prevents an authorised officer from entering private land at the invitation of the occupier if the land is within the authorised officer's area of operations.

#### **48 Police officers**

- (1) A police officer has and may exercise the functions of an authorised officer in the same way as if the police officer had been appointed by each authority.
- (2) Subsection (1) does not make a police officer subject to the direction or control of an authority.

### **Division 2 Legal proceedings**

#### **49 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence in the authorised officer's area of operations.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

**Note—**

The [Fines Act 1996](#) provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.
- (5) This section does not limit the operation of another provision of this Act or another Act relating to proceedings that may be taken in relation to offences.

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

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

#### **51 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](#).

#### **52 General right to recover amount**

- (1) An authority may recover as a debt from the person responsible for property an

amount payable under section 55 for property taken possession of by an authorised officer appointed by the authority.

- (2) The Commissioner of Police may recover as a debt from the person responsible for property taken possession of by a police officer the amount payable under section 55 in relation to the property.
- (3) The person responsible for property is taken for this section to be the owner of the property unless the owner, within 21 days after being required to do so by the authority—
  - (a) gives the authority, in the approved form, the name and address of the adult who was in control or had supervision of the property immediately before it was left unattended, or
  - (b) satisfies the authority the owner did not know and could not with reasonable diligence ascertain the name and address.
- (4) If the owner supplies the name and address of the person who was in control or had supervision of the property immediately before it was left unattended, the person named is the person responsible for the property for the purposes of this section.
- (5) Amounts recoverable under this section in relation to property may be recovered only if they have not already been paid or deducted from the proceeds of sale of the property.
- (6) An authority must pay an amount recovered by the authority under this section for loss or damage attributable to an animal being on private land without the permission of the occupier of the land to the person who suffered the loss or damage.
- (7) For subsection (6), an authority is entitled to treat the owner of the land as the person who suffered the loss or damage unless satisfied the loss or damage was suffered by another person.
- (8) A person who gives the authority a statutory declaration containing the particulars required by the approved form is taken to have given the particulars in the approved form.

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

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

### **54 Joint responsible persons**

If there is more than one responsible person for property, each of the responsible persons is jointly and severally—

- (a) responsible for the property under this Act, and
- (b) liable for an amount that may be recovered as a debt under this Act in relation to the property.

## **Part 8 Miscellaneous**

### **55 Fees payable in relation to exercise of functions under this Act**

- (1) This section applies if a provision of this Act provides that a person is entitled to be paid an amount for exercising a function under this Act in relation to property.
- (2) The amount that is to be paid in relation to an authorised officer exercising functions under this Act is the total of the fees—
  - (a) for a function exercised by an authorised officer other than a police officer—that may be charged under subsection (4) and decided, in writing, by the authority that appointed the authorised officer, and
  - (b) for a function exercised by a police officer—that may be charged under subsection (4) and decided, in writing, by the Commissioner of Police.
- (3) The amount that is to be paid in relation to an occupier of private land exercising functions under this Act in relation to an animal is—
  - (a) the total of the fees that may be charged under subsection (4) in relation to the animal, and
  - (b) stated in a notice given by the occupier to the animal's owner.
- (4) The fees that may be charged in relation to property are as follows—
  - (a) a fee for walking or transporting an animal to—
    - (i) a place of care or to the address of the responsible person for the animal, or
    - (ii) a market or sale yard for sale,
  - (b) a fee for providing an animal taken into possession with food, water or veterinary care,
  - (c) a fee for loss or damage attributable to an animal taken into possession while it was unattended, including on private land without the permission of the occupier of the land,
  - (d) a fee for transporting an item to a place of care or a place of storage,
  - (e) a fee for storing an item at a place of storage,
  - (f) a fee to cover the cost of serving a notice notifying the owner of property that the

property has been taken to a place of care.

- (5) Different fees may be decided for different classes of property.
- (6) A fee fixed under this section—
  - (a) must not exceed the maximum fee, if any, prescribed by the regulations, and
  - (b) that exceeds a maximum prescribed under paragraph (a) is reduced to the maximum.
- (7) An authority must pay to the Commissioner of Police an amount paid to or deducted or recovered by the authority that was payable in relation to property taken possession of by a police officer.
- (8) An authority may waive payment of an amount, or part of an amount, in relation to taking possession 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.
- (9) The regulations may provide for matters in relation to the amounts to be paid in relation to property taken possession of under this Act.

#### **56 NSW Police required to provide assistance if asked**

- (1) NSW Police must, if asked by an authorised officer or authority—
  - (a) make enquiries about the name and address of the owner of a motor vehicle, and
  - (b) within 24 hours after the request is made, give the officer or authority a written statement about the results of the inquiry.
- (2) If the motor vehicle is or has been registered within the meaning of the [Road Transport Act 2013](#), the statement may consist of particulars of the name and address of the last registered operator of the vehicle according to the records kept by Transport for NSW.

#### **57 Personal liability**

- (1) A protected person is not personally subject to liability for anything done—
  - (a) in good faith, and
  - (b) for the purpose of exercising a function under this Act.
- (2) The liability instead attaches to the authority on whose behalf the protected person was exercising the function.
- (3) In this section—

**done** includes omitted to be done.



***liability***—

- (a) means civil liability, and
- (b) includes action, claim or demand.

***protected person*** means—

- (a) an authorised officer, or
- (b) a person acting under the direction of an authorised officer.

**58 Effect of sale or disposal of property**

If property is sold or otherwise disposed of under this Act—

- (a) the person to whom the property is sold or otherwise disposed obtains ownership of the property, and
- (b) the property is discharged from any right, interest, trust or obligation to which it was subject immediately before the sale or other disposal, and
- (c) the person who was the owner of the property immediately before the sale or other disposal ceases to have a claim in relation to the property or a right of action in relation to the sale or disposal.

**59 Permit not required to deliver stock to place of care**

It is not necessary for a stock permit to be in force under the [Local Land Services Act 2013](#) for the purpose of having stock delivered to a place of care under this Act.

**60 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on a person may be served by the following methods—
  - (a) for an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) for an individual who has not specified an address under paragraph (b)—by post to the residential or business address of the person last known to the person serving the document,
  - (d) for a corporation—by post to the registered office or another office of the corporation or by leaving it at the registered office or other office with a person apparently over the age of 16 years,
  - (e) by email to an email address specified by the person for the service of documents

of that kind,

(f) by another method authorised by the regulations for the service of documents of that kind.

(2) This section does not affect the operation of a provision of another law or of the rules of a court authorising a document to be served on a person by another method.

(3) In this section—

**serve** includes give and send.

## **61 Regulations**

(1) The Governor may make regulations about a matter that is—

(a) required or permitted by this Act to be prescribed, or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the regulations may provide for—

(a) matters relating to authorised officers, and

(b) the giving of notices under this Act.

(3) A regulation may apply, adopt or incorporate a document as in force—

(a) at a particular time, or

(b) from time to time.

(4) The regulations may exempt—

(a) a person or class of persons from the application of a provision of this Act or the regulations, or

(b) an item or class of items from the application of a provision of this Act or the regulations.

(5) The regulations may create offences punishable by a maximum penalty of 50 penalty units.

## **62 Repeal**

The *Impounding Act 1993* No 31 is repealed.

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

### **Part 1 General**

#### **1 Transitional regulation-making power**

- (1) The regulations may contain provisions of a savings or transitional nature (a **savings or transitional provision**) consequent on the commencement of—
  - (a) a provision of this Act, or
  - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—
  - (a) for a provision of this Act—the date of assent to this Act, or
  - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not, before its publication—
  - (a) affect the rights of a person in a way prejudicial to the person, or
  - (b) impose liabilities on a person for anything done or omitted to be done.
- (6) In this section—

**person** does not include—

  - (a) the State, or
  - (b) an authority of the State.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Definitions**

In this Part—

**commencement** means the commencement of this Part.

**item** has the same meaning as in the repealed Act.

**repealed Act** means the *Impounding Act 1993* as in force before the commencement.

### 3 Unattended property

- (1) This section applies to an item that—
  - (a) before the commencement, had been abandoned or left unattended for the purposes of the repealed Act but not yet impounded under the repealed Act, and
  - (b) on the commencement, is property to which this Act applies.
- (2) From the commencement, the property may be dealt with as unattended property under this Act as if it had been left unattended on the commencement.

### 4 Property impounded before commencement

- (1) This section applies to an item that—
  - (a) had been impounded under the repealed Act, but
  - (b) immediately before the commencement, had not been—
    - (i) returned to the item's owner, or
    - (ii) destroyed or otherwise disposed of under the repealed Act.
- (2) The repealed Act continues to apply to the item until the item is returned to the item's owner or destroyed or otherwise disposed of under the repealed Act.

## Schedule 2 (Repealed)

## Schedule 3 Dictionary

section 4

**animal**—see section 5.

**area of operations**, for an authorised officer or authority, means the area prescribed by the regulations for the authorised officer or authority.

**authorised officer** means a person appointed by an authority to exercise the functions of an authorised officer.

**Note—**

Under section 48, all police officers have the powers of authorised officers. Police officers are not expected to exercise a primary role under this Act. Primary responsibility under this Act rests with the appropriate authority.

**authority** means a public authority or local authority prescribed by the regulations as an authority for a particular place or class of places.

**class 1 item**—see section 6.

**class 2 item**—see section 7.

**class 3 item**—see section 8.

**council** means a council under the [Local Government Act 1993](#).

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**items**—see section 9

**motor vehicle** means—

- (a) a motor vehicle within the meaning of the [Road Transport Act 2013](#) and includes a caravan, boat trailer or other trailer, whether or not attached to a motor vehicle, and
- (b) the remains of a vehicle, and
- (c) property, including parts and accessories, secured to or in a vehicle at the time it is taken possession of.

**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 property, means a person who alone or jointly is entitled, whether at law or in equity, to possession of the property.

**place** includes—

- (a) premises, and
- (b) an area of water, and
- (c) a means of transport.

**place of care**—see section 10.

**place of storage**—see section 11.

**private land** means—

- (a) all land, except Crown land (including Crown managed land) as defined in the [Crown Land Management Act 2016](#) for which there is no Crown land manager under that Act, and
- (b) 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.

**property**—see section 13.

**public place**—see section 14.

**responsible person**—see section 15.

**sharing service** means an arrangement, including a written arrangement or an arrangement established through a smartphone application or other electronic means, under which—

- (a) items are provided for hire, and
- (b) the items are self-locking or access to the items is otherwise able to be limited, including remotely, and
- (c) the items are not required to be returned to—
  - (i) a person, or
  - (ii) the premises from which the items are picked up, or
  - (iii) a fixed docking station, or
  - (iv) other specific premises.

**stock** has the same meaning as in the [Local Land Services Act 2013](#), Part 8.

**unattended**—see section 16.

**unattended property** means property that is unattended.

**vehicle** has the same meaning as in the [Road Transport Act 2013](#).