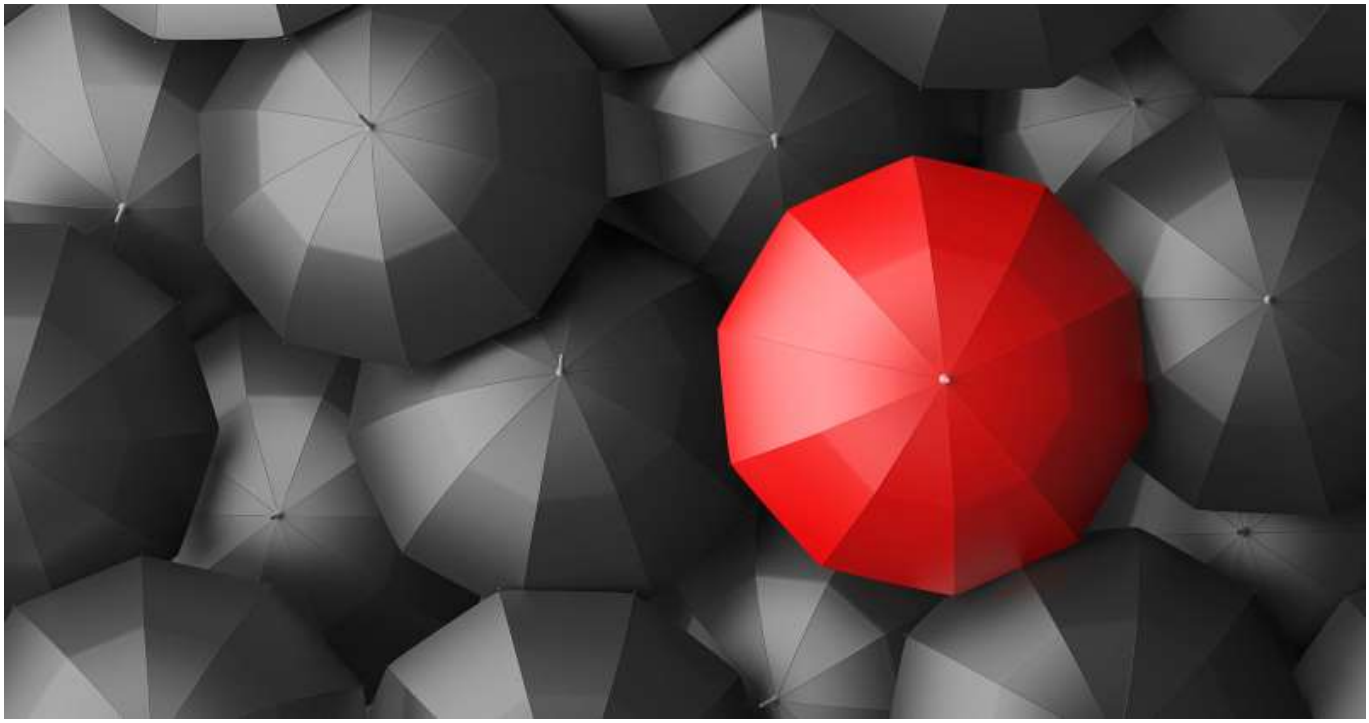
The Public Spaces (Unattended Property) Act 2021 (NSW) repeals the Impounding Act 1993 (NSW)

Date : November 20, 2023



The *Public Spaces (Unattended Property) Act 2021* (NSW) (**PSUP Act**) came into force on 1 November 2022 and will repeal the *Impounding Act 1993* (NSW) (**Impounding Act**).

The PSUP Act came about after extensive consultation with key stakeholders such as councils, members of the public, industry groups and government agencies.

The PSUP Act is now the source of regulatory powers for councils to take possession of unattended items found in public spaces. Under the PSUP Act, where property is left unattended in public, those responsible must attend to it within reasonable timeframes, or face enforcement action, including strong penalties.

The PSUP Act is supported by the Public Spaces (*Unattended Property) Regulation 2022* (NSW) (**Regulations**).

Key Changes by PSUP Act and Regulations:

Some key changes brought by the PSUP Act and Regulations are as follow:

1. *"Animal":* The meaning of 'animal' is given a broader meaning under section 5 of PSUP Act and includes aquatic animals and terrestrial animals. It does not include companion animals within the meaning of the *Companion Animals Act 1998* (NSW) with some

exceptions as stated in the Regulations.

2. *"Item"*: The PSUP Act classifies "item" into 3 classes:
    - Class 1 item – personal items of small or medium-size (except living creatures), that can ordinarily be collected by 1 or 2 persons without the need for machinery;
    - Class 2 item – sharing service items (except living creatures), made available for the use of the public at large, whether on payment of a fee or other benefit;
    - Class 3 item – Motor vehicles.

3. *Unattended Animals:* authorised officers may take possession of unattended animals that are in a public place, or on private land without the permission of the occupier of the land. Instead of taking the animals to a pound, authorised officers must ensure that the animal is taken to a place of care, i.e. a place appropriate for the keeping of the animal while the animal is in the possession of an authority (section 10), or returned to the responsible person for the animal (section 21).

4. *Abandoned or Unattended Items:* an authorised officer may now take possession of an item if the officer reasonably believes the item is unattended, *and*:'

(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,

(v) is unattended in another circumstances as 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.

5. *Notice*: The PSUP Regulations require written notice to be given by the authorised officer to owners or those responsible for class 1 or 2 items before taking possession of that item (clause 9), but class 3 items that are causing an obstruction or safety risk can be taken into possession immediately, where the authorised officer must, as soon as practicable, notify NSW Police of having taken possession of a class 3 item (clause 10). The Regulations further prescribe various time frames for possession that are to be given in each class of items.

6. *Penalty Notice Offences:* The PSUP Act significantly increases penalty amounts for breaches of the Act. Penalty notice offences are as outlined under Schedule 1 of the PSUP Regulations, and appear to be significantly higher than the *Impounding Regulation 2013* (NSW).

Transitional Provisions

There are also transitional provisions under Schedule 1 of the PSUP Act relating to the Impounding Act:

1. Any item that had been abandoned or left unattended for the purposes of the Impounding Act but not yet impounded may be dealt with as unattended property under the PSUP Act after 1 November 2022 (Schedule 1 section 3);
2. Any item that had been impounded under the Impounding Act, but not yet returned to the owner, or destroyed or otherwise disposed of, must continue to be dealt with under the Impounding Act until it is returned to the owner, destroyed or otherwise disposed of (Schedule 1 section 4).

The PSUP Act can be accessed here: https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2021-038

The PSUP Regulation can be accessed here: https://legislation.nsw.gov.au/view/pdf/asmade/sl-2022-641

If you would like more information or advice in relation to the *Public Spaces (Unattended Property) Act 2021* (NSW) or the Public Spaces (*Unattended Property) Regulation 2022* (NSW), please contact the Matthews Folbigg Local Government team on 02 9635 7966 to speak with one of our Local Government lawyers.