STATE GOVERNMENT LEGISLATION AND REGULATIONS GOVERNING
LOCAL GOVERNMENTS’ MANAGEMENT OF ABANDONED SHOPPING
TROLLEYS

RELEVANT LEGISLATION

• Local Government Act 1995:
  o 3.39: Power to remove and impound.
    ▪ (1) “An employee authorised by a local government for the
      purpose may remove and impound any goods that are involved
      in a contravention that can lead to impounding.”

Analysis: Refers only to impounding and not to the removal of goods by owners.
Also, it makes no reference to a requirement of notice.

• Local Government Act 1995:
  o 3.42: Impounded non-perishable goods.
    ▪ (1) “When any non-perishable goods have been removed and
      impounded under section 3.39 the local government is required
      to…”-
      • (b) “Give the alleged offender notice that the goods
        may be collected from a place specified during such
        hours as are specified.”

Analysis: Refers to giving notice, but only in the context of collecting goods after
they have been impounded, not to notification for prior removal or
notification that goods are to be impounded.

• Litter Act 1979:
  o 5: Interpretation.
    ▪ “Litter” includes – (b) any articles or material abandoned or
      unwanted by the owner or the person in possession thereof…”

Analysis: The definition of litter under the Litter Act 1979 could easily extend to
abandoned shopping trolleys.

• Litter Act 1979:
  o 23 Littering.
    ▪ “Any person who deposits litter, or causes litter to be deposited,
      on any land or on or into any waters commits an offence…
      Penalty $1,000”

Analysis: Abandoning shopping trolleys, or causing trolleys to be abandoned (in the
case of trolley owners), is a fineable offence of up to $1,000.

• Litter Act 1979:
  o 26 Authorised Officers.
    ▪ (1) “For the purposes of the Act an authorised officer is:
      (c) within the district of a local government, any person who is –
      (i) a member of the council of the local government
      (ii) an employee of the local government; or
      (iii) an honorary inspector appointed by the local government
        under section 27AA.”
Analysis: Local Government employees, etc are considered authorised officers for the purposes of enforcing the provisions of the Litter Act 1979.

- **Litter Act 1979:**
  - 27 Powers of Authorised Officers.
    - (2) “An authorised officer who finds a person contravening sections 23, 24 or 24A may order that person to –
      - (a) remove the material the subject of the offence from the land or waters; or
    - (3) A person shall not –
      - (a) fail to comply with a requisition directed to him under subsection (1) or (2) by an authorised officer...Penalty $1,000.”

Analysis: Local Government employees are able to order trolley owners to remove abandoned shopping trolleys and penalise those who fail to comply with that order.

- **Litter Act 1979:**
  - 30 Infringement Notices.
    - (1) “Where an authorised officer has reason to believe that a person has committed any such offence against this Act as is prescribed for the purposes of this section the authorised officer may serve on that person a notice, in the prescribed form (in this section called an infringement notice) informing the person that, if he does not wish to be prosecuted for the alleged offence in a court, he may pay to an officer specified in the notice, within the time therein specified, the amount of the penalty prescribed for the offence, if dealt with under this section.

Analysis: Local Government employees are able to issue infringement notices to those who fail to comply with provisions under the Act, namely, shopping trolley owners.

**RELEVANT GOVERNMENT REGULATIONS**

- **Local Government (Uniform Local Provisions) Regulations 1996:**
  - 6. Obstructing public thoroughfare – Sch. 9.1 cl. 3(1)
    - (1) “A person who, without lawful authority, places on a public thoroughfare anything that obstructs it commits an offence if the person fails to remove the obstruction when requested by the local government to do so”.

Analysis: It is doubtful whether the regulation extends to the owners of shopping trolleys. The regulation only applies to thoroughfares and not to public space in general. It also refers to a ‘person’s failure to remove’, implying that offenders must be requested to remove goods, and must fail to do so, before impounding can take place.

- **Local Government (Functions and General) Regulations 1996:**
  - 29. Contraventions that may lead to impounding of goods – s. 3.37
(1) “A contravention of a regulation or local law made under the Act can lead to the impounding of goods involved in the contravention if”-
   - (a) “It occurs in a public place; and
   - (ii) “Where the regulation or local law prohibits or regulates the placement of the goods, the goods are located in a place contrary to that regulation or local law.”

(“Public place” includes a place that is on private property that the public are allowed to use).

Analysis: According to this regulation, shopping trolleys would need to be abandoned in a public place (within the “public place” definition) for the City to have authority to impound them. There is no mention of giving notice to owners in this regulation regarding the impounding of goods.
DISCUSSION PAPER

MANAGEMENT OF ABANDONED SHOPPING TROLLEYS

Introduction
For many years Local Government has been confronted with the challenge of how to manage the issue of abandoned shopping trolleys. This challenge has been compounded by the lack of a universal approach to the issue not only within Western Australia but across Australia and the fact that many of the contracts that are let for trolley collection are centralised within the company head office and as such do not have regard for the unique circumstances that may exist in the diverse jurisdictions across Australia.

As Local Government must rely on Local Laws for control the different approaches that are taken is quite diverse and there is some suggestion that this causes confusion with the retailer as to what rules apply in individual areas. The Working Party sees that this confusion can only be resolved by state-wide legislation preferably not as subsidiary legislation such as a Local Law.

Background
Local Government in WA has tried a number of ways to address the issue including incorporating the power to impound abandoned trolleys within their Local Laws, raising the concerns with supermarket owners/operators, examining the adoption of a code of practice, approaching shopping centre management, examining various locking/deposit devices and raising the issue through a motion to the 2004 Australian Local Government General Assembly.

After the Western Australian Local Government Association (the Association) in 2003 rejected the proposed Code of Practice which had been developed in conjunction with the Retail Traders Association, a Working Party was set up involving representatives of four metropolitan Local Governments and the Association with the following Terms of Reference (ToR):

State Council agreed to establish a Working Party on Abandoned Shopping Trolleys, comprising of four Council Officer representatives, together with representation from the Association with the following Terms of Reference:

a. develop prevention strategies for discussion with the Retail Traders Association (and where appropriate retail traders direct);

b. review the current model Local Laws to determine more effective enforcement measures to strengthen the ability for Local Government to manage the issue; and

c. examine the level (if any) of Local Governments responsibility for public liability or legal action in regard to abandoned shopping trolleys.

It was also agreed that the Working Party would report through the Governance Policy Team to State Council.

During its research the Working Party also noted a media release from NRMA Insurance in November 2003 indicating that damage to cars alone cost the community about $1m per annum. The release suggested that there were about 1000 incidents per year covered by NRMA policies.

Consideration of Issues
In considering the above ToR the Working Party discussed or reviewed the following issues:

- current legislation for control of abandoned shopping trolleys;
• effectiveness of current Local Law;
• possible legislation for control of abandoned shopping trolleys;
• role of retail industry and shopping centres;
• Retail Traders Association proposed Code of Practice for abandoned shopping trolleys;
• use of locking mechanisms including the payment of a deposit; and
• Local Government liability or legal action.

Current legislation for control of abandoned shopping trolleys
A review of current legislation covering the issue of abandoned implements (such as vehicles, trolleys etc) showed there was no specific legislation in Western Australia that gives a specific head of power to manage abandoned trolleys. Whilst Section 3.1 and Section 3.5 of the *Local Government Act 1995* may provide sufficient head of power, it is doubtful that the desired powers to impound a trolley without the need to give notice is able to be used within a local law due to the limitations that are able to be imposed on subsidiary legislation by the Parliament. There is a need to include a stricter enforcement process on shopping trolley management arrangements.

It seems there is no specific legislation in any Australian jurisdiction as other states have relied on the Retail Traders Association voluntary Code of Practice to manage the issue. As will be commented on later the Working Party was of the view that such Code is not effective.

In view of the lack of specific legislation the only course that can be followed by a Local Government is to use local laws, which as already mentioned is in the view of the Working Party inadequate to effectively impose obligations on the retail industry.

Interestingly in the United Kingdom the Environmental Protection Act 1990 provides some very clear powers for the local authority to seize a shopping trolley found on public land and in some circumstances on private land and to require payment by the owner. A copy of the extract of the Act has been attached to this discussion paper.

In conclusion whilst it is fair to say that there is legislation available for some level of control the legislation does not provide Local Government in Western Australia a suitable head of power to enforce management of abandoned shopping trolleys.

Effectiveness of current Local Law
The current provisions in the model Activities in Thoroughfares and Public Places and Trading Local Law read as follows:

*Division 2 - Shopping trolleys*

**4.3 Interpretation**

*In this Division –*

"*retailer*" means a proprietor of a shop in respect of which shopping trolleys are provided for the use of customers of the shop; and

"*shopping trolley*" means a wheeled container or receptacle supplied by a retailer to enable a person to transport goods.

**4.4 Shopping trolley to be marked**

A retailer shall clearly mark its name or its trading name on any shopping trolley made available for the use of customers.

**4.5 Person not to leave trolley in public place**

A person shall not leave a shopping trolley in a public place other than in an area set aside for the storage of shopping trolleys.

**4.6 Retailer to remove abandoned trolley**

(1) If a shopping trolley is found in a public place, other than in an area set aside for the storage of shopping trolleys, the local government may advise (verbally or in writing) a retailer whose name is marked on the trolley of the location of the shopping trolley.
(2) A retailer shall remove a shopping trolley within 24 hours of being so advised under subclause (1), unless:

(a) requests the local government to collect and deliver the shopping trolley to the retailer; and

(b) pays any fee for that collection and delivery (imposed and determined under and in accordance with sections 6.16 to 6.19 of the Act) within the period specified by the local government.

4.7 Retailer taken to own trolley

In the absence of any proof to the contrary, a shopping trolley is to be taken to belong to a retailer whose name is marked on the trolley.

It is considered by the Working Party that the current provisions of the Local Law do not provide enough power to be an effective deterrent and encouragement for the retail industry to be seen to be acting responsibly in ensuring that the trolleys are removed without the Local Government being required to intervene. Even when the Local Government does intervene it is required to give notice to the retailer, who is the owner of the trolley, 24 hours to remove the abandoned trolley.

The Local Law also allows the retailer to request a Local Government to collect and deliver the trolley back to the retailer and for the retailer to pay the cost of that service. The ability to have the trolley removed more quickly than granting the 24 hours notice to the retailer is an issue of concern to Local Government that has been considered, however there is a general belief that introducing a shorter period would not be favoured by the State Parliamentary, Joint Standing Committee on Delegated Legislation who review all Local Laws. It is noted however that in 1998 the Town of Vincent was successful in establishing a Local Law with a time limit of 3 hours which is seen to be a more reasonable approach from a Local Government perspective.

In summary it is considered that the head of power within the Local Government Act 1995 is not sufficient to allow a Local Government to introduce a Local Law that enables abandoned trolleys to be impounded within a reasonable time and therefore cannot be used as an effective deterrent.

Possible legislation for control of abandoned shopping trolleys

The Working Party is of the view that as there is no legislation that gives Local Government effective powers without the need for subsidiary legislation such as a Local Law, which then in turn has inconsistency of approach and rules applying across the state. In the opinion of the Working Party there is a strong need to introduce changes to appropriate legislation which can be applied state-wide without the need for subsidiary legislation such as Local Laws. The legislation developed in the UK would seem to be a good model on which to base any legislative change and perhaps the most appropriate legislation could be the Litter Act.

In discussions with a retailer it has been suggested that an alternative to the introduction of legislation would be for Local Government to introduce laws making it illegal to remove a trolley from the shopping precinct and that Local Governments should be encouraged to enforce the provisions by issuing infringements against offenders. From a Local Government perspective it is doubtful whether there is such a head of power for the laws to be developed and enforced. It would also seem that Local Government would in these situations being used to undertake a role that rightly should be solved at the source of the problem ie at the supermarket door. The other concerns are the extensive policing required and that Local Government would be seen in a negative light by the community.

The Working Party sees the benefit of having a suitable head of power to enforce effective management of abandoned shopping trolleys as the prime outcome of this review.

Role of retail industry and shopping centres in abandoned shopping trolley management

The Working Party believe that many of the issues that have been identified could be addressed if the retail industry and to a lesser extent shopping centres took a higher responsibility and allowed collection contracts to be awarded at a local/state level, rather than nationally. Within the shopping
centre it would seem to make sense for a single operator to be engaged to collect all trolleys for that
centre rather than a multi number of contractors and contracts, depending upon who is the retailer.
This would allow all trolleys to be collected rather than as is understood a contractor to one retailer
will not collect the trolley of another retailer.

It is also understood that there is not a 6 day a week collection process as the contracts only allow a
certain number of hours for collection. It would seem that if there was rationalisation at areas such as
shopping centres with a single contractor then collection could be undertaken 6 days per week.

Local Government is keen to work cooperatively with the retail industry generally, but particularly in
large shopping centres, to find solutions of abandoned trolleys, which it is, understood costs millions
of dollars nationally each year for not only the collection process but also the recovery of impounded
trolleys. Whilst legislation is a prime goal of the working party there are many avenues to be explored
that may not require the implementation of legislative controls.

Retail Traders Association proposed Code of Practice for abandoned shopping trolleys
Some two years ago the Retail Traders Association (RTA) and the Association worked on developing
a Code of Practice for retail industry to abide by in managing shopping trolleys. It is unfortunate that
the Code was well advanced (4th draft) before the Association was invited to become involved. The
end result was a document that was unacceptable to Local Government as it was felt the emphasis was
on Local Government to provide a free service to the retail industry for notification of abandoned
trolleys.

The Working Party is of the view that the Code lacked any real benefit to the community as it was
about the collection process, not how to avoid the trolleys being abandoned in the first place. It was
also a voluntary guideline to follow which was seen as having an increased role for Local
Government to play and no improvement in the current legislative framework.

It is strongly suggested that the Association maintain its previous stance on the implementation of the
Code of Practice, as it does nothing to enhance the ability of Local Government to enforce the
management of shopping trolleys. It is likely when the issue of any additional restrictions are
“floated” that the Code will once again be promoted as a suitable method of addressing the problem.

Shopping trolley management systems
Whilst this paper discusses in some detail various options that can be used to “enforce” a shopping
trolley management regime, including appropriate legislation, it is also about seeking solutions to a
problem without the necessity of imposing penalties.

There is considerable value in the retail industry and Local Government working together to find
achievable solutions other than those that are considered unsatisfactory, such as a voluntary “Code of
Practice” (see previous discussion). To achieve this it is felt that a detailed “Shopping Trolley
Management Plan” should be prepared by each retailer or centre in consultation with Local
Government. This plan would not be about the collection process but about how the various retailers
would manage the control of shopping trolleys.

The plan could include measures such as introducing locking mechanisms, ways to rationalise
shopping trolley collection process ie one collector per centre, what opportunities there are for
limiting people being able to remove trolleys from retail outlets ie trolleys for internal use only in
supermarkets with other trolleys for external use, community education program and how Local
Government can assist in phasing in any changes that may arise from the process. It is possible that a
model plan could be created in consultation with the various parties.

Despite the desire for Local Government to have some overriding legislation it also recognises that
there are considerable challenges for the retail industry and wishes to work with the industry to
achieve a satisfactory outcome that will be of a long term benefit to the community without the need
to enforce legislation.

Within the Management Plan some comment is made about the issue of introducing a locking
mechanism. If such a decision was introduced it would be proposed that such a mechanism may
require the payment of a deposit, which is then returned when the trolley is returned to the main
collection point. This system would provide shoppers with an incentive to return the trolley or at least if they do not someone will use their initiative to recover the deposit. According to research a suitable system has been available in Europe for some time where the use of a coin operated release mechanism permits the shopper to release the trolley from a collection point and then upon return of the trolley to a collection point the shopper recovers the coin deposit.

It is understood that there is at least one supermarket in Perth metropolitan area that operates the system of deposit payment and return. Discussions with one major supermarket retailer indicated that some trials were being conducted in NSW to test the acceptance of the deposit concept and depending upon the outcome more trials may be conducted or it may become policy of the retailer.

Research undertaken by the Working Party identified that the major retailer had about 15,000 trolleys in Western Australia and spent in the vicinity of $2m per annum on trolley collection both inside and outside the shopping facility environs.

Whilst the details of the proportion of those funds spent on collection both inside and outside the facility are not available, if an assumption is made that one-third of the cost ie $660,000 is the cost of collecting outside then some cost benefit analysis can be developed.

In dealing with trolleys outside the centres and based on the above assumption that would equate to a cost of approx $44 per trolley being spent on outside collection, which could be all but eliminated if a management plan was developed that required some form of locking mechanism/deposit. It is acknowledged that the cost of installing the mechanism is about $60 which would require a payback period of approx 18 months.

If the return rate for trolleys within the centre was also almost eliminated then the overall economic advantage to the retailer would be significant, which in turn could translate into a cost saving to the community through lower prices on the supermarket shelf.

The Working Party sees the introduction of a locking/deposit mechanism as only one alternative for the management of the trolleys amongst many other opportunities that would encourage the return of the trolley to the centre. It is acknowledged that such a system may not stop trolleys being left outside the centre precinct which is the cause of the main concern, but it is felt the number of abandoned trolleys will be less than at present.

It is realised that the major difficulty is that if one retailer chooses to undertake the process in a shopping centre where there is more than one retailer and the other does not the potential loss of market share may be considerable. This is an area where shopping centre management could play a significant role.

An alternative suggestion made during the Working Party discussions was the capacity of retailers to provide at a discount price suitable shopping trolleys that could be used by people attending the retail outlet. The retailers have been quite successful at introducing a bag as a minimal cost, to reduce the number of plastic bags consumed, so it would be a natural extension of the same theme.

Another suggestion that the Working Party believe should be considered by the retailers and Local Government is the manner in which shopping centre car park precincts are designed so that a greater emphasis is given to the management of shopping trolleys. This could include more bays for storing trolleys and limiting the points where trolleys can be removed from the centre to name several.

In addition to the above suggestions there are a number of other mechanisms that could assist with the management of shopping trolleys that might also be considered by the retailers. Some of these options do not require a payment or deposit by the customers. For example some shopping centres are using a relatively simple wheel modification that locks the wheels of shopping trolleys when it is wheeled over certain surfaces. Wheels simply drop into a grid surface and rubber stoppers prevent movement. The installation of this system of control at exit points with strategically placed bollards will greatly assist and prevent customers from removing trolleys from shopping precincts.
The Working Party is of the view that if retail industry were prepared to uniformly introduce a range of trolley management strategies irrespective of what they may be then there will be a long term cost benefit to the retail industry and in turn the community.

Local Government liability or legal action
Discussions with Local Government Insurance Services indicate that Local Government does not have a liability as the property is in the ownership of a retailer.

Conclusion
The Working Party in considering this matter has suggested that whatever actions are undertaken they need to be done in a cooperative way with the retail industry but such action must have the ability to implement legislative change if encouragement and persuasion is not successful. As this is not a problem experienced by all Councils it is felt that Local Laws with certain guaranteed enforcement provisions would give a Council the opportunity to implement what legislation is considered appropriate for their area.

The Working Party has reviewed a range of matters in discussing the issue of abandoned shopping trolleys. It is very apparent that the first priority is to press for a long term solution through the introduction of suitable specific legislative powers so that Local Government can manage the enforcement without the need to resort to subsidiary legislation such as regulation or local laws. This remains the prime focus of the Working Party

The Working Party is of the view that the Retail Traders Association Voluntary Code of Practice will not be effective as there are no punitive measures that can be applied if a retailer does not conform to the requirements. It also seems to place a larger burden on Local Government which is not acceptable. The Code is about a collection process whereas the Working Party believes that this is accepting the problem exists and not trying to change the behaviour and the community culture.

In proposing a management plan the Working Party has flagged a number of options that could be adopted by the retail industry such as using a single collector for each centre rather than a collector for each retailer, introducing a locking mechanism with or without a deposit, shopping centre car park designs, providing suitable trolleys at a discount to discourage using a shopping trolley to transport purchases home and identifying particular “hotspots” to conduct education of the users of the trolleys (eg large blocks of flats).

The overall opinion of the Working Party is that a management plan would enable all parties to address the respective challenges and concerns and to look at ways of trying to stop the problem at the source. It may be possible to develop a model plan through consultation with all parties. It would however require goodwill on behalf of the industry and Local Government.

GOVERNANCE POLICY TEAM RESOLUTION – February 2005
That the Discussion Paper and recommendations be referred back to the Shopping Trolley Working Party to:

1. Develop in more detail the specific legislative changes that it is seeking, with some consideration being given to granting Local Government a suitable head of power to “pick up and dispose” of abandoned trolleys without the need for them to be impounded,

2. Review the issue of a potential deposit scheme as the Governance Policy Team are of the opinion that this approach may be an unsatisfactory solution to trolleys abandoned outside of the precincts of the shopping centre.

WORKING PARTY ADDITIONAL COMMENTS
The Working Party has subsequently met to consider the resolution from the Governance Policy Team. In reviewing the discussion paper it is noted that some emphasis has been placed on the deposit scheme, which was not the intended outcome as the Working Party recognises that it would be unfortunate if the proposal for legislative change was diverted by a debate on just one option that may not be popular with retailers. As a consequence some changes have been made to the discussion paper to try and more effectively reflect the outcomes that are desirable to be achieved. The Working Party acknowledge that the primary aim of their work is to achieve a significant level of change in trolley management practices outside of the centre precincts and the legislative change is to be to some degree a last resort but none the less an important component of the overall package of reform.
The Working Party also reviewed the suggestion from the Governance Policy Team relating to the legislative change and whilst aware of what is trying to be achieved feel that it is highly unlikely there would be any chance of getting legislation that would allow the “pick up and disposal” without any advice to the trolley owner.

The preferred course would be legislation that enabled the Council to impound the trolley without notice so that it could be done immediately it is spotted. Once impounded the owner would be advised and given 28 days to collect the trolley and pay the relevant costs. Failure to collect the trolley will result in disposal by whatever means the Council determined most appropriate. It was felt that to encourage the retailer to collect the trolley the owner of the property would be liable for all costs whether they collected the trolley or not. If the trolley was sold the sale price would be deducted from the charges to the owner. In other words the owner would be liable for the cost of impounding and the retention cost whilst it was in the pound and should it be sold the amount received would reduce the impoundage fees.

It is not proposed to implement an infringement regime as it was felt that the impoundment processes would be adequate to encourage compliance in the longer term. At present under the relevant model Local Laws there are only two penalties that a Council can impose one being for leaving a trolley which would be against the person who left the trolley, not the owner and the other is failure to collect the trolley within the specified time after being notified. Anecdotal evidence suggests that neither of these provisions is used and infringements are not issued. The value of infringements as an enforcement mechanism is therefore of questionable value.

**WORKING PARTY RECOMMENDATION**

That the Discussion Paper and recommendations be referred to the June 2005 meeting of the State Council for consideration:

1. **That the Local Government Act 1995 be amended to allow a Local Government to make local laws that allow the following:**
   a) seize any shopping trolley without appropriate notice,
   b) serve on the shopping trolley owner, if known, notice of seizure and give 28 days to recover the shopping trolley. Such notice should be given within 7 days of impounding the shopping trolley,
   c) shopping trolley owner to be responsible for all costs, as determined by the Council, for the seizure and impoundment until collected,
   d) authority for the Council to dispose of the shopping trolley after 28 days. Such disposal to include selling or as otherwise determined, but such action shall not be taken until after reasonable enquiries are undertaken as to the ownership of the shopping trolley where it is unknown,
   e) authority for the Council to retain the proceeds from any sale and to recover the balance of the costs from the shopping trolley owner.

2. **That concurrently with the progress of any legislation, discussions be held with both the Retail Traders Association and individual retailers on a range of measures to address the concerns including:**
   f) considering using a single collection operator for each centre in lieu of each retailer having their own,
   g) providing suitable trolleys at discount prices to discourage use of shopping trolleys to transport purchases,
   h) introducing a suitable locking mechanism with or without a deposit scheme,
   i) identifying “hotspots” and conducting an education program,
   j) improving shopping centre car parks to make it harder to remove trolleys from the precinct.