



Police Powers (Motor Vehicle
Impoundment) & Other
Legislation Bill 2012
Submission 020

1 February 2013

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: lacsc@parliament.qld.gov.au

Dear Sir / Madam

***Re: Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation
Amendment Bill 2012***

1. Introduction

- 1.1 The Motor Trades Association of Queensland (MTA Queensland) is pleased to respond to the Legal Affairs and Community Safety Committee's (the Committee) call for written submissions pertaining to the "Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Bill 2012) (the Bill)"
- 1.2 Members of our Independent Tow Truck Operators Division have considered the Bill in conjunction with *the Tow Truck Act 1973, Tow Truck Regulation 2009 and the Police Powers and Responsibilities Act 2000* (Chapter 4) and submit the following issues for the Committee's consideration.

2. Motor Trades Association Queensland Background

- 2.1 The MTA Queensland is the peak organisation in the State representing the specific interests of 2,500 businesses in the retail, repair and service sector of Australia's automotive industry. It is an industrial association of employers incorporated pursuant to the Industrial Relations Act of Queensland.
- 2.2 The Association represents and promotes issues of relevance to the automotive industries to all levels of government and within Queensland's economic structure.

Motor Trades Association Of Queensland

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2.3 The MTA Queensland comprises 11 separate divisions, each representative of a specialist area comprising the State's automotive industry. They are:

- Australian Automotive Dealers' Association of Queensland
- Automotive Engineers' Division
- Engine Re-conditioners' Association of Queensland
- Independent Tow Truck Operators
- Auto Parts Recyclers' Association of Queensland
- National Auto Collision Alliance
- Queensland Farm and Industrial Machinery Dealers' Division
- Queensland Motorcycle Industry Division;
- Rental Vehicle Industry Division
- Service Station & Convenience Store Association of Queensland
- Tyre and Undercar Division of Queensland
- Used Car Division

2.4 The Association is also the leading automotive training organisation in Queensland offering nationally recognised training, covering all aspects of the retail motor trades industry. The Association's training entity is the largest automotive apprentice trainer in Queensland employing 26 trainers based from Cairns to the Gold Coast and Toowoomba and Emerald.

3. The MTA Queensland Perspective

3.1 Our comments are confined to issues that have direct relevance to our Independent Tow Truck Operators Division (the Division) Membership. The issues in this submission relate to practical operational matters arising from the implementation of the legislation to which clarification would be appreciated.

4. Issues

4.1 The application of the policy measures in the Bill has ramifications for tow truck operators. These are of concern to Members of the Division to which we draw to the attention of the Committee for its consideration:

4.1.1 Police Property Holding Points and Storage

4.1.1.1 A clear understanding is required of what constitutes a Police Property Holding Point (PPHP) and the set procedures and requirements for the storage of vehicles at a PPHP.

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4.1.1.2 The Bill (or the Regulations) should indicate how the impounded motor vehicle should be stored at the PPHP and the circumstances of storage. If stored in an open yard PPHP, the impounded motor vehicle is subject to the elements such as extreme sun, rain, hail, storm damage, flood, etc. If garaged undercover in either an industrial shed or in an open air yard, the storage should be at the owner's risk.

4.1.1.3 For example, a court case involved a motor vehicle that was in an open air yard PPHP for over 14 months before the owner returned to claim it. The owner was arrested at the accident scene and incarcerated for some 13 months. In that time, the motor vehicle's condition had deteriorated. The owner, through the courts sought redress from the tow truck company. Although the police authorised the tow, the tow truck company was found to have failed to provide a reasonable standard of duty of care to the claimant's property and had to pay restitution for "damages which included paint fade costs".

4.1.1.4 Operationally, procedural guidance is required on the elements that comprise the initial inspection process for facilities deemed to be PPHP's under the planned legislation. There exists between tow truck operators some uncertainty about the inspection process.

4.1.2 Towing and Storage Fees

4.1.2.1 Clarification is required on the composition of the towing and storage fee for impounded motor vehicles. Currently impounded motor vehicle tows are charged out at the accident tow rate of \$293.80 which should cover tow and 72 hours of storage. Within the tow truck industry there is some uncertainty about the provision of storage as a component of the tow.

4.1.2.2 MTA Queensland submits that a fee schedule for impounded motor vehicle tows should be incorporated in the legislation which indicates separately the tow fee and the storage fee.

4.1.3 Licensed Tow Truck Drivers

4.1.3.1 Queensland's tow truck licensing system applies to tow truck operators and tow truck drivers who attend traffic accident scenes only. These licensed operators and drivers must comply with the legislated requirements to be licensed. Queensland tow truck licensing only applies to certain areas in the state and not the whole state.

4.1.3.2 The Queensland Police Service usually use licensed tow truck operators in the areas of this state where a Tow Truck License is required to operate a towing business. There is however, no requirement for a licensed tow truck operator to use a company tow truck driver performing

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the impounded motor vehicle tow to be licensed as a tow truck driver, other than having the compulsory appropriate driver's license. The Queensland Police Service form "QP 0907 Towing Authority for Impounding Motor Vehicles" requires the name of the tow truck driver, the business name and the business phone number of the employer. There is no provision for a tow truck driver's license number on this form, as opposed to a towing authority at an accident scene.

4.1.3.3 The tow truck driver in an accident or impoundment scenario takes control of a person's motor vehicle and personal property. It is to be expected that there should be honest and ethical conduct towards the contents of such vehicles at the PPHP or the depot.

4.1.3.4 It is the general view that all tow truck drivers should be appropriately checked and licensed to undertake accident, impounded motor vehicle tows, breakdowns and all trade towing.

5. General Comments

- 5.1 The application of the *Tow Truck Act 1973* is in urgent need of review to ensure that its application to the delivery of contemporary tow truck industry services and its operations are relevant to current circumstances and compatible with interstate legislation.
- 5.2 New South Wales' towing legislation – *Tow Truck Industry Act 1998* and the *Tow Truck Industry Regulation 2008* is generally regarded by the industry as the benchmark for the delivery of best practice tow truck operations and services.
- 5.3 Tow truck businesses, in many instances, engage in interstate work and must comply with differing legislation and pay differing fees. Ideally, the harmonisation of tow truck industry legislation would be beneficial for the tow truck industry, the Police and the impacted motor vehicle drivers or owners.
- 5.4 For example, the New South Wales legislation requires that all tow truck drivers must be licensed to undertake all forms of towing work with the license displayed at all times. Queensland only requires that the tow truck and the driver of the truck attending to an accident scene to be licensed. Under the New South Wales legislation, a Queensland registered tow truck cannot cross the border to pick up a motor vehicle in that State unless it has a New South Wales Tow Truck licence as an "Authorised Interstate Tow Truck".
- 5.5 It is the view of Members of the Division that the State of Queensland should have full licensing of all tow truck operators in Queensland for both accident and trade tows similar to the New South Wales legislation.

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5.6 In addition, it is the view of Members of the Division that consideration should be given to the establishment of an Accident Allocation Centre (similar to metropolitan Melbourne) which is responsible for arranging and allocating a tow truck for a damaged vehicle. An accident allocation system applies which provides the tow truck operator with a job number to attend an accident. This system eliminates all difficult and messy issues relating to tow trucks at accidents.

6. Conclusion

6.1 We would be pleased to provide further comment on any matters in our submission. Please contact Dani Fioretti, MTA Queensland Public Affairs Manager on [REDACTED] or by email at [REDACTED].

Yours sincerely

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MTAQ General Manager

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