

Tow Truck Bill 2023

Submission No: 6
Submitted by: Clayton's Towing Service
Publication: Making the submission public but withholding your name
Attachments: See attachment
Submitter Comments:

28 July 2023

Committee Secretary
Transport and Resources Committee
Parliament House, George Street
Brisbane Qld 4000

Dear Committee Secretary,

Clayton's Towing Service, a company that has been operational since 1970, boasting over 50 years of experience. Founded by Bill & Mary Clayton, who remain actively involved in the business to this day, we specialise in Light & Heavy towing and cover an extensive geographical area in Queensland, from Burpengary to Bowen. With 180 dedicated employees, we possess 150 units featuring 90 licensed Tow Trucks spread across 15 authorised holding yards.

While we generally support the majority of the changes proposed in the Bill, there are a few specific concerns that we wish to address..

Background

Consultation with the industry is imperative: Prior to implementing any future charges, it is crucial to engage in meaningful consultation with relevant stakeholders. With respect, we have not been properly consulted about the bill thus far in that the process has not been as thorough as it could have been and it has been rushed. Further, we have not been consulted *at all* about the regulations this far, contrary to what TMR suggested in an email dated 21 July 2023.

To be clear, we require an opportunity to be consulted about the regulations. This opportunity is particularly necessary in circumstances where penalty/offence provisions are apparently going to be included in the regulations, not just the bill.

Relatedly, we would like to draw your attention to a pertinent matter mentioned in an email received from the industry licensing department - TMR on 24/07/2023.

"The Bill will replace the current Tow Truck Act 1973 once the parliamentary process is completed. A new regulation is also being developed to support the new Act. Matters that TMR has previously consulted on, with the tow truck industry, will be included in the Regulation".

We request access to the details of previous consultations between TMR and the Tow Truck industry before their implementation. As evident from this submission, we strongly urge the Transport and Resources Committee to facilitate additional feedback prior to implementing any changes, especially those concerning regulated fees. By doing so, the entire industry can gain a comprehensive understanding and work together to prevent any unintended consequences.

1.

Part 1, Div 1, Clause 3, 2c regulating charges

Regulating the charges that may be imposed in relation to regulated towing.

A prime example highlighting the importance of consultation is the case of Private Property Tow away regulation charges. These charges were introduced without seeking input from reputable Tow Truck License Holders, resulting in significant negative consequences.

Property owners are now facing challenges in dealing with illegally parked cars, as no tow truck operators are willing or able to provide the necessary services due to the lack of viability and improper regulation. This concerning situation was verified during a recent audit conducted by the Department of Main Roads

Inspectors, which revealed a complete absence of licensed operators undertaking such work on the Sunshine Coast.

Given this predicament, there are now legitimate concerns that the same detrimental outcome could unfold in the accident towing sector if changes are implemented without a comprehensive understanding of their potential unintended consequences. It is essential to recognise and appreciate the invaluable services currently provided by towing operators. With that in mind, the government must ensure that, as requested above, any alterations to regulations are carefully considered through collaborative consultations to preserve the viability of these essential services.

2.

Part 1 General Provisions - Division 3; Clause 13 and 14

In deciding whether a person is an appropriate person to hold or continue to hold an accreditation.

We believe that there should be clear guidelines set out relating to how it is determined the chief executive decides whether a person may hold or continue to hold an accreditation.

3.

Part 4 Offences and notifying particular matters

57 Preventing damage to towed motor vehicles, 69 Preventing damage to towed motor vehicles, 70 Preventing damage to towed motor vehicles.

The above clauses set out to make it a finable offence to the Company, Assistant operator and operator should it be deemed damage has occurred during the towing or whilst in the care of the towing business.

It is of utmost importance to emphasise that businesses should not be penalised for damages in situations whilst conducting regulated towing operations. We find certain sections of the regulations to be excessively vague and susceptible to varying interpretations. For instance, if an operator commits an error leading to damage, these regulations arguably now enable fines to be imposed on both the operator and the business.

The financial responsibility for such incidents already rests with the company conducting the operations, and we must have the necessary insurance coverage in place. Introducing further penalties on the business based on subjective opinions, which may have been a momentary lapse in judgment, is an undue burden that should be avoided.

To ensure fairness and clarity, we strongly advocate for refining or removing these sections of the regulations and establishing a framework that distinguishes genuine negligence from unintentional errors. This approach will protect businesses from undue fines while ensuring accountability for any actual wrongdoing during towing operations.

To be clear, what we suggest in this regard is:

1. Rather than any criminal/quasi-criminal penalty for breach, which is heavy handed, operators such as ourselves should be exposed to civil liability for the damage caused.
2. If the criminal/quasi-criminal penalty for breach is to be maintained:
 - a. "reasonable precautions" must be clearly defined, so that industry can know what it means; and
 - b. The new definition must take account of the regular circumstances that I have described above, so as to ensure that such circumstances do not give rise to an undeserved penalty for breach.

4.

Section 64, 78 Requirement to obtain towing authority.

The holder of the driver accreditation must not operate a tow truck to tow the motor vehicle from the scene of the incident or place of seizure unless the authorising person for the vehicle has signed or has, by notice given to the holder, approved a towing authority authorising the holder to tow the vehicle from the scene or place

The above-mentioned clauses can potentially lead to unethical practices, where any operators can arrive at an accident scene using unlicensed vehicles such as motorbikes or utility vehicles. Such vehicles may not be suitable for completing the tow, but they can acquire the towing authority. Consequently, the appropriate tow truck capable of handling the job might not be available for some time, causing traffic jams and delays for the public.

To address this issue effectively, an amendment to the act is warranted, mandating that the holder of the tow truck authority must designate the tow truck present at the scene. Furthermore, the nominated tow truck must have the capacity to perform the job. This amendment will help prevent unscrupulous practices and ensure that only suitable tow trucks are deployed, minimising traffic disruptions and delays for the public.

5.

Part 8, Division 2, Subdivision 1 - 157 Existing regulated areas

Considering the expansion of regulated areas without fully comprehending the potential impact on unregulated rural operators, many of whom are already facing challenging circumstances.

The implementation of new regulations would impose significant financial burdens on rural operators, making it challenging for them to comply with the additional costs. This situation could lead to their departure, leaving certain areas underserved. Furthermore, even aligning council boundaries with regulated areas or minor changes could exacerbate the already dire outcomes for these operators and areas.

6.

Part 5 Offences, Division 1 - Offences relating to conducting tow truck businesses and operating tow trucks.

We wish to express our concerns about the apparent removal of certain sections from the new Bill, specifically *Part 4, Division 1, Section 22 (authority to repair) and Section 23 (Consideration for obtaining certain information to work)*.

By eliminating these clauses, there is a risk of exposing the industry to unscrupulous practices, such as offering incentives and employing coercion tactics to secure work, which could have negative consequences.

The government may intend to re-enact the former ss 21 and 22 by regulation. Assuming the bill is passed in its present form, it would have power to do that under rr 151(2)(p), 151(2)(q) and 151(3)(b). However, if this is the intention, there is no reason to do it via the regulations rather than the bill. We urge that these important provisions be included in the Bill to ensure maximum visibility of, and compliance with, them.

7.

Bribery

Bribery was not expressly dealt with under the 1973 (“former”) Act. In our view the bill does not, or not adequately, regulate bribery. In our Industry bribery can become a significant issue that arises in various situations. For example, in collaboration with aligned industries like Auto Repair Centres, there is a potential for financial gain by towing damaged vehicles to their repair centres, often accompanied by the offer of a bribe to facilitate the process. Another common problem involves one approved driver offering cash bribes to another approved driver from another company, encouraging them to leave the accident scene, thereby enabling the briber to gain the accident tow, this is a tactic that may be utilised by unscrupulous companies. It is not clear whether this falls within proposed sections 80 and 81. If it does, this should be made clear in the bill. If it doesn’t, this should not be left to the regulations. Instead, we urge that it be included in the bill, for the same reasons as above.

Conclusion

In conclusion, we believe that the proposed Tow Truck Bill 2023 shows promise and is moving in the right direction, offering improved regulatory guidelines for the industry. However, to ensure its effectiveness, we strongly advocate for ongoing and detailed consultations, particularly about the proposed new regulations, before implementing any significant changes.

We welcome the opportunity to engage in discussions about any matters that may arise in the future.

Yours sincerely

[Redacted signature block]