

Tow Truck Bill 2023

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

Dear Mr King and Committee,

I am writing as a representative of Barnes Auto Co to provide feedback and convey our concerns regarding the Tow Truck Bill 2023 recently introduced into the Queensland Parliament. Barnes Auto Co. has had a presence in the automotive and service industry since its inception in 1903. During this time, Barnes has forged itself as a market leader in the Heavy Towing and Recovery space. Our service area encompasses South East QLD and extends to Northern NSW and as far west as the NT.

We appreciate the initiative taken by TMR in drafting a bill that aims to modernise the regulation of our industry. However, we believe that there are a few aspects of this bill that need to be re-evaluated, as they may inadvertently have implications that could potentially impede our operations and adversely impact public safety and traffic efficiency.

Background

Firstly, and most importantly, we respectfully suggest that the industry consultation process regarding this bill has been less than adequate. Key industry stakeholders' involvement and consultation in shaping the legislation affecting our field are crucial for creating comprehensive, effective, and practical regulations.

In the future, we strongly recommend that Queensland Parliament engage in more intensive consultation with industry representatives before drafting legislation that will impact our sector. Our firsthand experience and in-depth understanding of the industry are invaluable resources that can contribute to the development of well-rounded, practical legislation.

We would like to use this opportunity to request more proactive engagement with our industry, especially for crucial consultations regarding legislative drafts and updates. We remain fully committed to offering our insights and experiences to shape a balanced, fair, and beneficial legislative framework for all involved parties.

We have not been consulted about the proposed new regulation as yet, contrary to what TMR suggested in an email dated 21 July 2023, and we require an opportunity to be consulted. This opportunity is particularly necessary in circumstances where penalty/offence provisions are proposedly going to be included in the regulations, not just the bill.

Preventing Damage to Towed Vehicles - Clauses 69, 70, 57

Following on from our Witness Statement, we would like to emphasise the complexities surrounding the provision requiring towing operators to ensure all reasonable precautions to prevent damage to vehicles during towing operations. As a reputable towing company entrenched in the industry, we fully comprehend the gravity of our role, investing upwards of \$200,000 per annum in insurance alone to safeguard our clients' interests.

However, the practicalities of towing operations are far more intricate and dynamic than can be covered by a broad legislative statement. These operations frequently take place in high- stress environments, under poor lighting, adverse weather conditions, and often, at the scene of accidents with inherent risks of incidental damage.

Furthermore, we find ourselves tasked with the responsibility of swiftly clearing roadways to prevent further accidents or traffic congestion, a factor that contributes to Queensland public's broader welfare. The cessation of traffic flow on major highways not only increases travel times and disrupts transportation of goods but could also lead to secondary accidents. The significant financial burden of highway closures to the government and public is another crucial aspect that should be considered while examining these clauses. The closure of a major highway for emergency recovery operations can cost the economy millions of dollars per hour. This enormous cost is due to factors such as lost productivity, delayed deliveries, wasted fuel, environmental damage, and the cumulative impact of traffic congestion in adjacent areas. Thus, while we strive to prevent further damage to the vehicles we handle, it's essential to understand that our operations also play a pivotal role in minimising broader economic impacts by facilitating the timely reopening of major transportation routes. This broader economic context underscores the importance of pragmatism and flexibility in legislating towing practices. Balancing these significant public concerns with preventing additional damage to often already significantly damaged vehicles is a task that demands careful judgement, and the potential for incidental damage is an unfortunate reality.

Another significant concern associated with these damage prevention clauses is the potential of penalising our drivers. Given the intrinsic complexity and unpredictability of recovery operations, it's unrealistic to expect zero damage incidents, despite our best efforts and intent. The possibility of fines could create a fear-driven work environment, hampering the morale, safety and operational efficiency of our drivers. Currently, we are already facing a challenging environment due to a shortage of skilled drivers in our industry. Introducing the possibility of fines for drivers could exacerbate this issue, making it even more difficult to attract and retain the necessary talent to provide our services effectively and safely. Considering the existing pressures on our workforce, it is essential that legislation does not unduly penalize those on the front lines, managing complex situations to keep our roadways clear and safe.

The penalties outlined in these clauses for such incidental damages seem unduly punitive and do not adequately take into account the complex operating environment and the diverse challenges we regularly encounter. We respectfully suggest a re-evaluation of these clauses to provide a more balanced view of our industry's realities, focusing on promoting safety and responsibility without imposing undue penalties on operators.

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; and
 - c. It must be thoroughly consulted with multiple industry experts – particularly given there are no Australian industry guidelines, accredited courses or 'best practice' guidance for towing and recovery procedures.

Obtaining Towing Authorities - Clauses 78, 64

The legislation, in its present state, allows any holder of a driver accreditation to attend the scene of an incident, irrespective of the suitability of their vehicle or equipment. It opens the door to allow operators rush to an accident scene in ill-equipped vehicles such as Tilt Trays, Utes, or even motorcycles. These vehicles, rather than the necessary licensed equipment, attend the scene in order to solicit and in many cases the persons involved in the accident will use the first company on scene. They are often in a vulnerable or heightened state, and generally are easily convinced and can feel obliged to comply with the tactics enabled by the respondent.

These vehicles are often wholly inadequate for managing the immediate requirements of the scene. These are however the more cost-efficient option for the respondent rather than say a Class 4 Heavy Tow Truck with a cost of over a million dollars. The result is an inefficient process that leaves accident scenes unattended for unacceptable lengths of time - up to four hours in some instances – as all parties including emergency services await the arrival of a properly equipped tow truck.

This extended waiting period for a capable tow truck isn't simply inconvenient; it's a critical road safety and traffic management issue. Extended highway blockages lead to significant traffic congestion, causing delays that can inhibit emergency services and significantly disrupt the public. The problem extends beyond mere inconvenience for motorists trapped in these traffic jams. The broader socioeconomic implications include decreased productivity due to delayed delivery of goods and services, and the impact on communities and the economy at large can be substantial.

To highlight this point further, our business sought clarification from TMR on April 8, 2020, in regards to this behaviour and provided numerous examples where other industry operators had attended heavy vehicle accidents in inadequately equipped vehicles (namely Utes) in an attempt to obtain towing authorities. Many times, they were successful. This behaviour still occurs despite feedback received from TMR in April 2020 stating that Section 22 of the Regulation makes it an offence for the holder of an approval acting under the authority of the approval to remain at the scene of an incident if the tow truck the holder is operating is not classified to tow a motor vehicle involved in the incident. A driver may attend a scene of a crash to administer first aid and contact emergency services if required, however must not obstruct other towing services from responding to the required tow.

In order to address this situation and improve overall efficiency and safety, we suggest an amendment to the current legislation. This amendment should mandate that only those respondents who are operating suitably equipped tow trucks are permitted to attend and obtain or attempt to obtain a towing authority. A requirement for the holder of the accreditation to have a tow truck at the scene that is capable of carrying out the necessary work, as nominated on the towing authority, would resolve the existing problems. Implementing such regulations would expedite the clearing of accident scenes, thereby reducing congestion and minimising disruption to public and emergency services. This would also serve to enhance our industry's professionalism by ensuring that all roadside incident management is undertaken by qualified and appropriately equipped professionals. This approach aligns with our shared objective of delivering safe, efficient, and effective services in a professional manner.

Operator Accreditation – Clause 16

Given the lack of 'best practices' regarding enforcement and a lack of awareness and training provided to these authorities the perimeters and some of the rigmarole industry is subject to regarding Operator Accreditation requires attention. An example here is TMR's process of Operator Licensing, whereby an operator needs to hold the relevant class license for 3 years or participate in a 'Q-SAFE' test conducted by TMR to obtain accreditation which has exhaustive delays at the time of booking. Currently, there are no towing industry practices guidance's, no industry courses or uniform procedures provided for our industry. On this basis, we support the removal of the Q-SAFE test on the grounds that we are the industry experts and through our internal training processes should deem whether a suitably licensed driver is competent to perform tow truck duties.

Accreditation Holders notification of Particular Matters – Clause 74

This section applies to the holder of an accreditation, if any, of the following persons, (each a relevant person) is charged with, or served with an infringement notice for a notifiable offense for the accreditation. Like other industry members, we would seek further clarification regarding this or the removal of the term 'infringement notice'. The interpretation could mean something as sinister as a parking ticket could be deemed a notifiable offense. Again, we are dealing with significant driver shortages in the transport sector and minor infringements (if reportable), such as the example given could further inhibit the industry to recruit and retain suitably qualified operators.

Offences of dishonesty and coercion – Clause 81

We reference the current Tow Truck Bill 1973, namely clauses 22; Authority to repair and 23; Consideration for obtaining certain information or work. Unless we are mistaken, clauses 81 (d) is not intended to replicate existing sections 22 and 23. It therefore appears these clauses are no longer represented in the proposed Tow Truck Bill 2023.

To provide context, we would like to see legislation governing the offering of incentives such as cash or bribery of any kind to obtain valuable information or to obtain a tow authority remain. It is also crucial that any attempts to obtain an authority to repair remain clearly prohibited. Ensuring this unethical behaviour remains excluded from our industry is paramount to ensure integrity and equality while conducting road emergency operations.



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We acknowledge there may be regulation power governing this however would advocate for it to be included in the Bill to ensure maximum visibility of, and compliance with, these important provisions.

As to bribery specifically, this was not expressly dealt with under the 1973 ("former") Act. In our view the bill does not, or not adequately, regulate bribery. Bribery is a concern in our industry because there is potential for industry members to advertise and provide incentives of various kinds (including but not limited to, cash payments) to either derive benefit or advantage from information on the location of an incident, to deter the other operators on scene and/or to ultimately secure a tow authority. In an industry such as ours with many regulations, it is pivotal this behaviour is eradicated from the industry to align to the intended purposes of updating this act and facilitating best practice in the tow truck industry by providing a balanced framework to carry out regulated towing. 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.

In conclusion, we believe the proposed Tow Truck Bill 2023 has the potential to make significant improvements in our industry's regulatory framework if it addresses the above- mentioned areas. We urge that it requires careful consideration and refinement considering the concerns we have raised. We appreciate your attention to these matters and are available to provide any additional information or engage in further discussions to clarify our concerns.

Kind Regards

Matt Taylor | General Manager

