Tow Truck Bill 2023

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28 July 2023

Transport and Resources Committee
Parliament House
Cnr George and Alice Streets Brisbane Qld 4000

Dear Committee,

RE: RACQ'S SUBMISSION ON THE INQUIRY INTO THE TOW TRUCK BILL 2023 (the Bill)

The Royal Automobile Club of Queensland (RACQ) is Queensland's largest member-owned mutual, and we exist solely for the benefit of our more than 1.7 million members. Throughout our 118-year history, we have actively engaged with Government in the interests of our members, sharing our expertise and recommendations on a wide range of policy areas including road safety, transport and infrastructure, e-mobility, energy, natural hazard resilience, and disaster management. Our membership makes up a significant portion of Queensland's population, and we have a presence in more than 60 per cent of Queensland homes.

RACQ is one of the largest providers of car insurance in Queensland, receiving more than 100,000 motor claims[1] each year. RACQ seeks to settle all its motor claims in a fair and timely manner providing the best outcomes possible for our members and third parties. RACQ holds considerable policy expertise and is in a unique position to comment on the experience of Queensland motorists when they interact with towing providers which may assist the Queensland Parliament in this Inquiry.

Following a review of the Bill, and the existing 1973 Tow Truck Act, RACQ has identified areas where existing offences have been deleted or significantly changed. RACQ is concerned that this may have the effect of lessening existing protections for vulnerable motorists.

RACQ believes that watered down protections and lack of proper enforcement of legislative requirements can unnecessarily place upward pressure on insurance premiums, lead to repair issues and intimidating, coercive conduct by towing providers if these issues are not addressed in this Bill. Many motorists find themselves in extremely vulnerable situations on the side of a road every day and are seeking honest, ethical, and appropriate assistance in these circumstances. Queensland motorists need this Bill to protect them and ensure that towing providers helping them are acting in their best interests – not self-interests. Vulnerable motorists should not be exploited and RACQ seeks appropriate provisions in this Bill that protect them.

Considering the short timeframe given to RACQ to respond to the Inquiry, our submission focuses on the following four key areas of importance in the legislation and makes recommendations on each.

- Information privacy and disclosing sensitive information,
- Incentives/considerations for towing services,
- Conduct by towing providers, and
- The *Tow Truck Bill 2023* and subsequent regulations.

[1] RACQ Annual Report 2021-2022

1. Information Privacy – Section 63 of the Bill 'Disclosing sensitive information'

RACQ's key concern relates to towing owners/operators (towing providers) providing information about motorists involved in a collision to third party Accident Management Companies (AMC), Credit Repair (CR) and/or Credit Hire (CH) operators (collectively third-party providers).

RACQ welcomes the decision to continue protection provisions on disclosing sensitive information and strengthening penalties in this Bill. However, we believe that legislation needs to address a gap that relates to sharing of information to a third-party provider **for reward**. In addition, more needs to be done in the areas of educating motorists about their rights and effectively enforcing the new legislation. Without these important elements, there is a risk the legislation will become a weak instrument that does more harm than good.

RACQ understands that there is an existing mechanism for motorists to complain about information being provided by towing providers to third-party providers, but our experience indicates that there is a possible lack of awareness amongst the motoring public that this avenue exists. What further complicates this, in our opinion, is that often a motorist may not even be aware that information has been supplied by the towing provider to a third-party provider either at all, or only later, and by that stage the leak of their personal information is not their primary concern. Often by the time a motorist considers how the third-party provider has obtained their personal information they feel a sense of shame that they have been 'scammed' by third-party providers and are not motivated to investigate how the third-party provider obtained their information at the outset.

RACQ has built considerable experience in managing and settling motor claims made against RACQ insured drivers by third-party providers for Credit Repair (CR) and Credit Hire (CH). CR/CH involves a third-party managing repairs to a damaged vehicle and/or providing replacement hire vehicle to a 'not at fault' driver following an accident.

Third-party providers require information, including personal details, to successfully engage with (or 'capture') a 'not at fault driver', as soon as possible following a collision, before that individual engages either their own insurer or the at-fault insurer for repairs and/or a replacement vehicle (if the parties are insured). The timeliness of this capture of a 'not at fault' motorist is a key component of a third-party provider's business model.

RACQ's experience is that third-party providers often obtain information about the parties involved in a collision via 'Google Spoofing'[2]. However, towing providers are also frequently involved at the scene, capturing the details of the involved parties and are also responsible for referring this information to a third-party provider (in exchange for an incentive).

RACQ's experience also indicates that the capturing of this information is often combined with a towing provider's 'ad-hoc' assessment at the scene as to which party is at fault for the collision. This 'assessment' and a verbal assurance that the 'at fault' insurer 'will take care of everything' is conducted for the purposes of encouraging a motorist to provide their details to the towing operator[3] so that they in turn can pass this on to a third-party provider (not the 'at fault insurer').

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[2] Occurs when a person searches for the name of an insurer and is directed via a web-based search engine to a third party accident management company rather than their insurer. See recent media article on how this works in practice. https://9now.nine.com.au/a-current-affair/aussie-car-crash-victims-sound-alarm-over-third-party-claims-managers/47f8d83f-fbfb-46e4-b9b0-6c2d4e307c32

[3] Query whether an appraisal of 'fault' and discussion of same with an individual for the purposes of encouraging provision of information would constitute 'Claims Handling' as a financial service noting recent amendments to the

A 'not at fault' party who is encouraged to provide their details is typically contacted and engaged by a third-party provider. The provider makes a claim on the motorist's behalf often while they are unaware that they are not dealing with their own insurer or the 'at fault' insurer'. Frequently, this even involves litigation being issued in the name of the 'not at fault party' without their knowledge.

CR and CH claims result in the following adverse outcomes for Queensland motorists:

(i) Increase in average repair and hire costs for the 'at fault insurer' (and subsequent increase in insurance premiums for all Queensland motorists);
(ii) Inferior repair quality (often without the provision of 'lifetime repair guarantees' that might have been available had a motorist dealt with their own comprehensive insurer at first instance);
(iii) Increase in complaints from motorists when they become aware their insurer or the 'at fault' insurer has not actually been involved in the management of their claim from the outset;
(iv) Motorists' information being shared without their knowledge;
(v) Motorists entering contracts without their knowledge and/or without full knowledge and understanding of the terms and conditions of the 'contract' (see Appendix 1 for an example of Judicial consideration on this issue);
(vi) Formal legal proceedings being issued in the name of the motorist without their knowledge (usually in the Queensland Magistrates Court with potential cost and credit rating implications for the motorist);
(vii) Motorists' signatures either being forged and/or being reproduced across multiple forms and contracts without their permission or knowledge;
(viii) Coercion, threats, and intimidation of motorists by third-party providers should a motorist later refuse to cooperate, once they become aware they are not dealing with their own or the 'at fault' insurer.

RACQ is aware of many claims where the towing provider has been the first point of contact in obtaining and sharing information of motorists from the scene of a collision which is subsequently passed onto third-party providers who engage in the above behaviours.

RACQ Recommendation

RACQ strongly supports the continued inclusion in the Bill of an offence in relation to the disclosure of sensitive information (and the current definition of sensitive information contained in the Bill) and welcomes the increase in penalty units from 50 to 100 penalty units with respect to this offence.

However, RACQ has concerns about the effectiveness of the current enforcement regime. RACQ notes that between April 2018 and April 2022 the Department of Transport and Main Roads (the Department) has not received any complaints and only issued one infringement notice relating to private towing (see Appendix 2).

RACQ believes the lack of complaints does not reflect our anecdotal experience of the regularity with which information is being provided by towing providers to third-party providers. It is also not indicative of the level of dissatisfaction motorists feel once they realise their information may have been disclosed by a towing provider to a third-party provider without their knowledge.

RACQ suggests that the Government consider instituting a similar education and awareness campaign as referenced in their 2019 Discussion Paper[4] providing sufficient information for towing providers about the

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Corporations Act 2001 and noting Towing Operators do not likely currently retain an Australian Financial Services License (AFSL).

[4] With respect to recent changes in 'private towing' in the Qld Government's 2019 Discussion Paper 'Your say on Queensland's Tow Truck Scheme' (the 2019 Discussion Paper at page 14)

importance of not disclosing sensitive information and for motorists to complain and report potential infringements in these instances.

RACQ also calls for a link in any offence relating to the disclosure of information to make reference to the exchange of information for consideration (or reward) from third-party providers for the repair of a vehicle (credit repair) and/or provision of a replacement vehicle (credit hire).

2. Incentives/considerations for towing services

RACQ notes that the Bill does not appear to contain an offence for towing providers who provide incentives to motorists for the engagement of their services, nor does the Bill contain an offence for incentives/consideration being provided to towing providers by third-party providers for the exchange of information.

RACQ notes that Section 23, Part 5 of the *Tow Truck Act 1973* (the 1973 Act) previously included an offence for provision or receipt of consideration for the work of repairing of a damaged motor vehicle. RACQ is of the view that this existing offence, if properly enforced, would go some way to providing a suitable deterrent to address the issue of towing providers receiving incentives/consideration from Credit Repair providers.

RACQ's experience is that some towing providers are receiving incentives from Accident Management Companies, Credit Repair Providers and Credit Hire Providers on a regular basis. These incentives are both 'off the books' in the form of cash incentives or 'on the books' in the form of structured initial lump sum payments and consequential % incentives, depending on the value of the referral.

RACQ's experience from anecdotal information provided from the industry itself to RACQ is that these incentives are considerable, often amounting to tens of thousands of dollars per annum for each individual towing operator for more active referrers (in addition to their existing salary).

RACQ believes that more needs to be done to address the issue of any incentives/consideration that towing providers seek to offer a motorist to induce a tow, and more importantly, any incentives/consideration a towing provider might receive to provide information.

RACQ strongly believes that the two issues of Information Privacy and Incentives/Consideration are inextricably linked. Without an incentive there is little, to no, incentive for a towing provider to pass information obtained at the scene of a collision onto another party.

RACQ Recommendation

RACQ strongly supports a similar section to Section 23 from the 1973 Act in the Bill. The provision should be expanded to not only include the exchange of information by a towing provider for consideration relating to the repair of a vehicle {Section 23 (1) (b) & (c)} but also the exchange of information for consideration relating to the provision of a replacement (credit hire) vehicle by a third-party provider.

3. Conduct by Towing Providers

In the daily management of motor claims, RACQ is often made aware of various incidents at the scene of a collision involving towing providers from different companies becoming engaged in heated conversations between themselves for the purposes of securing a towing authority. Often this conduct is also directed towards the motorists who have just been involved in a confronting incident to attempt to coerce them to sign an authority with one provider over another at the scene. These exchanges often result in an elongated, confusing, and traumatising experience for extremely vulnerable motorists as well as members of the public.

RACQ notes that the 1973 Act contains a specific offence in Section 24 (d) with respect to the exercise of force or undue influence while attempting to obtain consent to remove a damaged vehicle. The Bill however appears to have removed this offence.

RACQ notes that the Department's own reporting indicates that complaints have been received about driver conduct for crash towing under existing legislation[5], which in our view supports the retention of a similar offence relating to conduct in the Bill.

RACQ Recommendation

RACQ recommends that an offence similar to the offence contained in the 1973 Act be included in the Bill to address the conduct of towing providers at the scene of collisions while engaging with extremely vulnerable motorists.

Should a similar offence ultimately be retained in the Bill, RACQ believes that education and awareness have an important and continuing role to play to inform motorists about their rights under the new legislation to complain about towing providers' conduct at the scene of a collision. RACQ would also welcome consideration of an industry code of conduct to promote and facilitate appropriate and ethical conduct.

4. The Tow Truck Bill 2023 and subsequent regulations

RACQ understands that the current Inquiry is focused on the Tow Truck Bill 2023 and any subordinate legislation in the form of regulations dealing with operational issues is yet to be formulated by the Department. Notwithstanding, RACQ is hopeful that it can offer additional commentary to the Committee and Department which may assist with drafting any subordinate legislation.

In the day-to-day management of motor insurance claims one of the key areas for RACQ is providing 'fair and reasonable' settlement amounts under both the limits in our Product Disclosure Statement (PDS) to our own insured and pursuant to common law principles when an RACQ insured is 'at fault' and a claim is made by a third-party against an RACQ insured. This is important because increased claims costs have a corelative effect on potential increased premiums and in turn negatively impact affordability of insurance for all Queensland motorists.

One of the key areas which can lead to increased claims costs is through the inflation of a 'fair and reasonable' settlement amount are tow rates and storage fees.

At present Queensland towing legislation regulates certain rates for an initial tow from the scene of an accident (for up to 72 hours in a holding yard) and for storage rates for 'Private Parking' towing, only. There is no provision under current legislation for 'subsequent towing' or for storage rates for crash scene towing.

A 'subsequent tow' occurs frequently in circumstances where a tow occurs after 72 hours to a repairer or in circumstances where a vehicle from a crash scene needs to be moved from one towing operator's towing yard to another towing operator's yard. RACQ's experience is that the subsequent tows are often charged at disproportionate rates, sometimes for several hundred of dollars over the daily legislated rate and above what the rate would have been had the vehicle been towed within the stipulated 72-hour time frame, sufficient for the tow to constitute a 'first or initial tow'.

RACQ's experience with existing legislation (both the 1973 Act and its subordinate legislation) is that there is insufficient provision in the existing legislation to assist RACQ negotiate a 'fair and reasonable' rate for

[5] Department of Transport and Main Roads website for 'Tow truck complaints, infringements and audits – Tow truck complaints, infringements and audits (Department of Transport and Main Roads) (tmr.qld.gov.au)

towing and storage in circumstances which don't match the existing schedules found in the subordinate legislation.

RACQ note that other jurisdictions (NSW for example) currently have a set fee for both subsequent tows and storage fees for vehicles up to 4.5 tonnes[6], which include storage fees for crash scene towing. This would be a positive addition in Queensland.

RACQ Recommendation

RACQ requests that the Government and Committee consider including rates for subsequent tows and fixed storage which arises from crash scene tows in any subordinate legislation.

RACQ would welcome any further discussion on our submission on the Tow Truck Bill 2023 or subsequent regulations that would provide improved assurances to vulnerable motorists involved in an accident or incident in Queensland.

We understand other insurers were unaware of the Inquiry or provided with sufficient time to make submissions and so it would be prudent to consider further consultation with the insurance sector in finalising the Bill and drafting of subsequent regulations.

Government representatives can contact [redacted] General Manager Motor Claims and Assessing in the first instance for further information about this submission on [redacted] or at [redacted]

Yours sincerely,

[redacted]

[redacted]

Email: [redacted]

[6] NSW Government Maximum tow fees (from 01 July 2023) - Light-Vehicle-Tow-Truck-Fees-2023-2024.pdf (nsw.gov.au)

APPENDIX 1 (attached separately)

1. Decision of the Magistrates' Court of Victoria in the matter of Insurance Replacement Rentals Pty Ltd and Makyle Mekonnon (J10943779)

2. E-mail from Principal Policy Advisor, Karen Brown, Industry Licensing, Department of Transport and Main Roads to RACQ dated 26th July 2023

APPENDIX 2 – Complaints data received by RACQ

From: Tow Trucks <tow.trucks@tmr.qld.gov.au>
Sent: Wednesday, July 26, 2023 2:10 PM
To: <.....@racq.com.au>
Subject: RE: Tow Truck Bill 2023

Good afternoon

Thank you for your enquiry to the Department of Transport and Main Roads (TMR) about complaints and/or infringements issued as a result of disclosure of personal information related to regulated towing services.

In the five year period from 16 April 2018, no infringements have been issued relating to disclosure of personal information. One complaint, related to private property towing, related to disclosure of personal information to a third party. As a result of TMR investigation into this matter, no formal action was taken against this tow truck operator/driver. This may be due to education being provided by TMR to the towing operator/driver, insufficient evidence of breach or the complaint being subsequently withdrawn.

The Tow Truck Bill 2023 (the Bill), includes provisions related to handling of personal information in the course of operating a towing business. These provisions currently exist in the *Tow Truck Act 1973* so have merely been replicated. The penalty, however, has been increased to reflect the seriousness of the offence and better align with other similar penalties in transport legislation. Once the Bill is approved by government, the 1973 Act will be superseded and replaced by the new *Tow Truck Act 2023*.

While these provisions have been included in the Bill, it does not necessarily indicate that there is a widespread problem in personal information being disclosed.

These provisions impose obligations of confidentiality on certain persons who have access to personal information. The recent Optus data breach, for instance, and a heightened public interest in personal information being protected, has highlighted the need to regulate against breaches of disclosure of personal information. Unauthorised disclosure of personal information could have severe consequences for individuals. Inclusion in the Bill ensures that personal information is handled responsibly and securely. The main aim is to safeguard against disclosure of personal information and establish a strong deterrent against such actions.

I trust this clarifies the matter for you. If you have any further questions, please feel free to contact me.

Industry Licensing - Industry Accreditation Policy | Legislation, Standards & Accreditation
Land Transport Safety and Regulation Branch | Customer Services, Safety and Regulation Division
Department of Transport and Main Roads

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PO Box 673 | Fortitude Valley Qld 4006
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IN THE MAGISTRATES' COURT OF VICTORIA J10943779

AT MELBOURNE

BETWEEN:

INSURANCE REPLACEMENT RENTALS PTY LTD Plaintiff

-and-

MAKYLE MEKONNON Defendant

DECISION

On Friday 21 April 2017, while the Defendant, Mr Makyle Mekonnen('MM') was at work his motor vehicle, which was legally parked in a nearby street , was struck by another vehicle and damaged extensively.

MM required a rental vehicle for the time he was without his own following the accident, and the Plaintiff, Insurance Replacement Rentals Pty Ltd ('IRR') provided one to him.

IRR in this proceeding claims as against MM payment for the hire of the vehicle in the sum of $3557.40, being for the period commencing 21 April 2017 to 12 May 2017.

Only two witnesses gave evidence in the hearing, namely Ms Haley Reardon ('HR'), a director of IRR and MM.

HR stated that IRR has access to over 100 vehicles available for hire.

MM indicated to the tow truck driver who picked up his damaged vehicle, that he required a rental car essentially to get to work while he did not have access to a vehicle.

The tow truck driver passed on MM's details to HR who contacted him that evening.

In her evidence, HR stated that she knew the circumstances of the collision and that the other driver was insured.

She said that in her telephone conversation with MM she advised that the hire vehicle provided would come at no cost to him, as the amount could be recovered from the insurer of the other vehicle.

MM's recollection of this phone given in his evidence basically accords with that of HR save that she told him that he could be provided with a hire car free of cost.

HR disputes that in any conversation with MM she used the word "free" when speaking of the car hire terms.

HR emailed to MM, while he was still at his workplace a document headed "Daniels Recovery Agents Pty Ltd", (a copy of which is attached) which company she described as the agent for IRR in recovery proceedings.

MM in his evidence stated he completed the form, giving a brief description of the collision and printing and signing his name, and returned it to HR within about five minutes of receipt.

It was arranged that HR would deliver the rental car to MM's home on the morning of Saturday 22 April.

HR stated that she drove the rental car to MM's address on the Saturday morning. She recalled that he was not at home when she arrived and she waited for about twenty minutes until MM arrived and also the person HR had arranged to drive her back to her place.

It was MM's evidence that he had been home for about 10 minutes before HR arrived and then her return driver also, at about the same time.

At this meeting outside MM's residence, HR presented to him for signature an iPad depicting an IRR document headed "Rental Agreement" (a copy of which is attached).

HR recalls stating to MM that the hire of the vehicle would be at no cost to him and IRR would claim from the driver of the other car.

HR also advised that a claim could be made to recover damages in respect of his car from the other driver. Subsequently, MM advised HR that he would not pursue that as he was claiming through his vehicle's insurer.

She stated that she spent ten to fifteen minutes with MM.

In the account given by MM, he stated that HR asked him how he was feeling, to which he replied "stressed". HR responded that it was understandable, but the good thing was that he was not liable and that MM was entitled to a hire car and that a claim for its cost could be made on the insurer of the other vehicle.

MM deposed that he sought confirmation that the hire of the vehicle was free, and he stated that HR replied that it was free.

There was, he related, discussion about an excess of $1100 in the event that the rental vehicle was damaged while in his possession.

MM gave evidence that it was difficult to read the rental agreement on the iPad screen, and that he only saw one page of the agreement on the iPad.

While he signed the iPad displaying the rental agreement, MM maintained he would not have done so but for HR saying the hire of the car was free.MM stated that he only signed his name once and that he did not print nor sign his name on the iPad as it appears at the foot of the second page of the document.

MM was not given a hard copy of the rental agreement on that morning when he took possession of the hire car, though he recalled asking for a copy. As to that request, HR takes issue.

He said further that he felt a bit of pressure as the car had been delivered to his address and there were two people present when he was shown the iPad.

He also claimed that if HR had told him he may have had to lend his name to legal proceedings against the other driver and engage a solicitor, such would have scared him.

Following the expiration of the hire period, HR gave evidence that approaches were made on behalf of IRR to the insurer of the other vehicle to recover the hire cost.

Payment by the other insurer was not forthcoming and solicitors, John Curtain and Associates Pty, were instructed by Daniels Recovery Agents to pursue recovery from the other party's insurer.

By letter dated 19 May 2017, the solicitors wrote to MM seeking confirmation from him as whether he wished to retain them to commence legal proceedings. The letter advised MM that he would not be liable to pay John Curtain and Associates Pty's costs.

HR conceded in her evidence that there was no provision in the rental agreement whereby IRR would indemnify MM in respect of costs that may be ordered against him in a legal proceeding against the other driver.

Documentation was enclosed with letter for signature by MM and return.

An email was forwarded from Daniels Recovery Agents to MM, dated 24 May 2017 seeking that MM return the authority addressed to the solicitors to act on his behalf in recovery proceedings.

On receipt of the email MM contacted Daniels Recovery Agents and spoke to 'lesha', who requested that he comply with the solicitors' letter and return the signed documents.

MM sought a copy of the hire car invoice and the rental agreement. These were provided with an email to MM from lesha, dated 25 May 2017.

MM gave evidence that this was the first time he had seen the entire rental agreement.

MM did not communicate further with IRR or Daniels Recovery Agents. He stated that he was discouraged from doing so by both his own and the other party's insurer.

A letter of demand dated 11 September 2017 was sent from IRR to MM seeking payment of the sum of $3557.40 and, ultimately, a complaint was issued in April 2018.

On the whole of the evidence I am satisfied as to the following.

In the immediate aftermath and on the day following the collision in which MM's parked vehicle was 'written off' he was upset and shocked. MM made it known to HR in their initial telephone conversation and on the following day as to his state of mind.

I accept that MM was unable to absorb the contents of the Daniels Recovery document emailed to him and returned by him on the Friday evening of the accident.

On the face of it, in the circumstances of the collision as known by HR when she spoke to MM on 17th April and the following day, it would appear as a clear cut instance of negligence by the other insured driver, and recovery from the insurer could be expected. It should be noted,however, that it apparently was suggested by the adult grandchildren of the other driver that he had suffered a heart attack, which may have added a complication to the claim.

While HR is involved in numerous transactions concerning vehicle hire, obviously this was a once off for MM and I accept the substance of his evidence concerning his interaction with HR on the Friday evening and Saturday morning.

I accept that MM sought and was given assurance by HR that the hire was to be free. No qualification to that assurance was given verbally by HR and in particular nothing to suggest to MM that he may have to lend his name to a legal proceeding and potentially be exposed to an award as against him of the other party's costs.

MM was not given a reasonable opportunity to peruse the rental agreement displayed on the iPad and was not given an explanation of its terms.

The Defendant MM in his Defence, Counterclaim and submissions in the main draws on the provisions of Schedule 2 of the *Competition and Consumer Act 2010 (Cwth)* which is headed *The Australian Consumer Law* ('ACL').

It is contended essentially that IRR engaged in misleading or deceptive conduct; unconscionable conduct and that the contract between the IRR and MM was a consumer contract, as that term is defined in the ACL, which contained unfair terms.

On behalf of IRR it does not rely on clause 8(c) of Part B of the rental agreement which provides that IRR shall not be under any liability

> " for any statement, representation or promise concerning the ...existence of any other matter related to the rental of the vehicle except as set out in accordance with this agreement and the hirer acknowledges that no statement or representation or promise other than that set out in this agreement has induced him to enter into this agreement."

IRR submits that the written contract requires the co-operation of MM which was not forthcoming. Further that he may not have read the terms of the agreement does not exempt him from compliance with its terms

It is put that if MM had authorised the instigation of proceedings against the driver of the vehicle that collided with his, IRR would not pursue him for the cost of hiring the rental vehicle.

It was contended that by reason of the nature of his employment, MM was sophisticated enough in business dealings to understand how IRR operated this part of its business in recovering damages from insured 'at fault' drivers.

Reference was made by counsel for IRR to the recent decision of Magistrate Ginnane (as he then was) in *Roper v Bangs (15 June 2018)*.

I do agree with the submission on behalf of MM that the case is of little assistance in the determination of the present matter.

In *Roper v Bangs,* IRR had provided a hire vehicle to the plaintiff whose vehicle had been damaged in a collision for which the defendant was liable, and the principal issue for determination was the reasonableness of the hire costs sought to be recovered.

In the course of his judgement Ginnane M. determined that the hire agreement between the plaintiff *Roper* and IRR was valid. The contract was in essentially the same terms as the standard form agreement on which IRR relies in the present proceeding. The Magistrate was satisfied that Mr Roper understood what he was signing and described him as "...a man of some apparent business acumen and experience and is not an unsophisticated plaintiff"

I do not consider that description applies to MM. Further the issues arising from the ACL were not canvassed or considered in that case.

I am satisfied that MM entered the agreement with IRR to hire a vehicle on the unqualified representation made on behalf of IRR that it was free.

That said, MM was informed the $1100 excess should the hire car be damaged while in his possession.

If MM were to instruct lawyers to commence proceedings on his behalf, there were costs risks to MM of which he was not made aware.

I consider that the agreement was a 'consumer contract' as that term is defined in sec. 23 of the ACL.

I consider that the conduct of HR on behalf of IRR leading to MM's entry into the hire agreement was misleading or deceptive, as proscribed by sec. 18 of the ACL.

I also conclude that the conduct of IRR, through its agent HR, leading to MM proceeding to hire a vehicle from the company, can be described as unconscionable. Such conduct is prohibited by sec. 21 of the ACL.

Section 22(1) of the ACL sets out an inclusive list of matters to which a court may have regard to in determining whether there has been a contravention of sec. 21.

In this case IRR had a superior bargaining position relative to MM.

MM was provided with a standard form document to sign that was displayed on an iPad which was difficult to read, accompanied by the misleading and deficient representations made on behalf of IRR, to which I have referred.

Having concluded that the conduct of IRR leading to the formation of the contract between it and MM and which is the subject of this proceeding, breached provisions of the ACL, the legislation provides for a wide range of orders which can be made.

Pursuant to sec. 243 an order is made that the subject contract is declared to be void. Accordingly the claim for the hire costs is dismissed.

Duncan Reynolds, Magistrate

15 November 2018