

Tow Truck Bill 2023

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Transport and Resources Committee
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Transport and Resources Committee

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Chair's foreword

This report presents a summary of the Transport and Resources Committee's examination of the Tow Truck Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the department.

I commend this report to the House.



Shane King MP

Chair

Recommendations

Recommendation 1

The committee recommends the Tow Truck Bill 2023 be passed. 7

Recommendation 2

That the Minister consider what extra natural justice safeguards could be provided to ensure Part 6, Division 2 of the Bill has sufficient regard to the rights and liberties of individuals in respect of the reversal of the onus of proof provisions contained therein. 13

Recommendation 3

That the Minister consider amending the statement of compatibility to better clarify the difference between charges and convictions in contemplation of Sections 31 and 32 of the *Human Rights Act 2019*, and further clarify that heavier weighting should apply in the chief executive's decision-making process in Part 1, Division 3 of the Bill to the existence of a criminal conviction than to an untested criminal charge. 18

Recommendation 4

The Minister convene a working group of all interested tow truck industry stakeholders (consisting at a minimum of all industry representatives who made written or oral submissions to this inquiry) in order to support the establishment of an industry peak body with whom government can consult about the implementation of the new Act including development of the revised Regulation. 35

Executive Summary

The Tow Truck Bill 2023 was introduced into the Legislative Assembly by the Honourable Mark Bailey MP, Minister for Transport and Main Roads and Minister for Digital Services, and referred to the Transport and Resources Committee (committee) on 13 June 2023.

Key issues examined

The key issues raised during the committee's examination of the Bill included:

- issues regarding accreditations
- issues regarding offences
- the Department of Transport and Main Roads' consultation with stakeholders
- compliance of the Bill with the *Legislative Standards Act 1992*
- compliance of the Bill with the *Human Rights Act 2019*.

The committee considered issues of fundamental legislative principle and human rights and, despite noting some concerns, on balance find that the Bill is compatible with the *Legislative Standards Act 1992* and the *Human Rights Act 2019*.

Conclusion

The committee recommends that the Bill be passed.

1 Introduction

1.1 Policy objectives of the Bill

The objectives of the Bill are to:

- maintain the framework previously provided by the *Tow Truck Act 1973* (the 1973 Act) for the towing, in regulated areas of Queensland, of motor vehicles damaged in incidents, seized by police from off-street regulated parking areas or towed from private property in certain circumstances
- maintain the requirement for persons who conduct a tow truck business or are involved in operating tow trucks in regulated areas to hold an accreditation (currently known as a 'licence' or 'certificate')
- maintain the requirement for persons who hold an accreditation to comply with duties, obligations, standards of conduct and other requirements
- modernise the existing legislation by introducing a new structure and terminology that improves consistency across accreditations administered by the Department of Transport and Main Roads (TMR)
- enhance the accreditation process, including accreditation eligibility requirements
- ensure penalties and offences are targeted and appropriate; and
- modernise enforcement powers to ensure authorised officers have suitable compliance powers.¹

1.2 Background

The *Tow Truck Act 1973* is now 50 years old. It was revised in 1997 to incorporate police seizure towing and again in 2018 to include private property towing. The 2018 revisions followed the Independent Investigation into the Towing Industry: Removal of Vehicles from Private Property (the Independent Investigation).²

The Independent Investigation made 22 recommendations focussed on including private property towing in the regulatory framework. All 22 recommendations were endorsed by the government. In 2018, legislative amendments to the 1973 Act and the Tow Truck Regulation 2009 (the Regulation) were made to support implementation of these recommendations. The government made a further commitment to reviewing the 1973 Act and Regulation to:

- ensure the broader regulatory framework is simple, precise and accessible
- ensure that, in relation to the towing services and geographic areas covered by the legislation, the regulatory framework is appropriately targeted; and
- review all offence penalties to ensure they reflect the seriousness of the relevant offences.³

In 2019, a review of Queensland's tow truck scheme and the governing legislation (the 2019 Review) was conducted by TMR. The Bill gives effect to the remaining recommendations made by the Independent Investigation and to the findings of the 2019 Review by delivering a modern tow truck

¹ Explanatory Notes, p 1.

² See Independent Investigation into the Towing Industry: Removal of Vehicles from Private Property, August 2017, https://www.tmr.qld.gov.au/_/media/busind/towtruckinvestigation/report/towing-industry-investigation-final-report.pdf?sc_lang=en&hash=1391E9947D87D07E2D10FE074E582C45

³ Explanatory Notes, p 2.

scheme in Queensland that is designed to improve road safety and deliver improved outcomes and protections for motorists, property owners and industry professionals.⁴

1.3 Legislative compliance

Our deliberations included assessing whether the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* and the *Human Rights Act 2019*.

1.3.1 Legislative Standards Act 1992

Our consideration of the Bill has noted some provisions which are potentially inconsistent with issues of fundamental legal principle, included below.

1.3.2 Human Rights Act 2019

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the *Human Rights Act 2019* (HR Act). The statement of compatibility did not contain a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights. Our assessment of the Bill's compatibility with the HR Act is included below. We find the Bill is generally compatible with human rights.

1.4 Should the Bill be passed?

We are required to determine whether to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Tow Truck Bill 2023 be passed.

⁴ Explanatory Notes, p 2.

2 Examination of the Bill

This section discusses key issues raised during our examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Fundamental legislative principles

‘Fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’.⁵ The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

2.1.1 Rights and liberties of individuals

2.1.1.1 *Offences*

To have sufficient regard to rights and liberties of individuals, the consequences of legislation should be relevant and proportionate. In line with this, a penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.⁶

In addressing the issues of fundamental legislative principle related to the Bill’s proposed increased penalties and new offences and penalties, the explanatory notes state:

Tow truck operators, drivers and assistants provide services to the community, sometimes when the community member is quite vulnerable or distressed, such as when their vehicle has been involved in a crash. Additionally, the community concern raised during the Independent Investigation into private property towing illustrates the need for robust regulation regarding private property towing services.

The proposed penalty regime is designed to encourage compliance with the new and existing requirements of the tow truck scheme by ensuring appropriate penalties are in place reflecting the seriousness of each offence.⁷

The maximum penalty for existing offences under the 1973 Act range from 20 penalty units⁸ to 200 penalty units.⁹ Clauses 63, 64, 65, 68, 79, 80, 81, 121, 122, 135 of the Bill propose to increase the maximum penalty for numerous existing offences under the 1973 Act.¹⁰ Once increased, the proposed

⁵ *Legislative Standards Act 1992* s 4.

⁶ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook* (Notebook), p 120. See also LSA, s 4(2)(a).

⁷ Explanatory Notes, p 14.

⁸ Currently, \$2,875. From 1 July 2023, \$3,096.

⁹ Currently, \$28,750. From 1 July 2023, \$30,960.

¹⁰ Specifically, clauses 63, 64, 65, 68, 79, 80, 81, 121, 122, 135 of the Bill. Explanatory Notes, p 5. The Bill also generally retains an existing offence attracting a maximum penalty of 200 penalty units (under section 36C of the repealed Act), by seeking to prohibit the use or disclosure of confidential information, except in limited circumstances. The Bill imposes an obligation of confidentiality on certain persons who have acquired or had access to confidential information, whilst performing functions under or in relation to administration of the Act (Bill, cl 144). The clause retains the existing maximum penalty of 200 penalty units (currently \$28,750, but from 1 July 2023, \$30,960).

maximum penalties for these existing offences will range from 60 penalty units¹¹ to 100 penalty units.¹²

The Bill also generally retains an existing offence attracting a maximum penalty of 200 penalty units (under section 36C of the 1973 Act), by seeking to prohibit the use or disclosure of confidential information, except in limited circumstances. Clause 144 of the Bill imposes an obligation of confidentiality on certain persons who have acquired or had access to confidential information, whilst performing functions under or in relation to administration of the Act. The clause retains the existing maximum penalty of 200 penalty units (currently \$30,960).

The Bill additionally proposes a range of new offences, with maximum penalties ranging from 50 penalty units¹³ to 160 penalty units.¹⁴

Clause 55 makes it an offence if a person operates an unauthorised tow truck to carry out regulated towing under the accreditation.¹⁵

Clause 56 makes it an offence to not store towed vehicles at premises nominated in a towing authority or at an authorised holding yard for the accreditation.¹⁶ The justification offered by the explanatory notes is to ensure the safety and security of vehicles and their contents.¹⁷

Clause 62 makes it an offence to direct a person to contravene the specified requirements, including the requirement for drivers and assistants to hold the appropriate accreditation under the Bill, and the driver requirements about obtaining towing authorities and private property towing consents and driving with only acceptable passengers in their tow trucks.¹⁸ In respect of this clause, the explanatory notes contend:

The use of unaccredited tow truck drivers circumvents the consumer protections contained in the Bill and results in motorists not receiving robust consumer protections at a time when they may be most vulnerable.

Given the significance of this offence, it carries a maximum penalty of 160 penalty units. To maintain the integrity of the scheme, there needs to be the strongest deterrent to operators failing to abide by their obligations under the legislation.¹⁹

Clause 78 makes it an offence for a person who does not hold a driver accreditation to obtain, or attempt to obtain, a towing authority.²⁰ The explanatory notes justify this as an important consumer protection measure, which is in line with the existing offence for a person who does not hold a driver

¹¹ Currently, \$8,625. From 1 July 2023, \$9,288.

¹² Currently, \$14,375. From 1 July 2023, \$15,480.

¹³ Currently, \$7,187.50. From 1 July 2023, \$7,740.

¹⁴ Currently, \$23,000. From 1 July 2023, \$24,768.

¹⁵ Maximum penalty of 50 penalty units (Bill, cl 55; Explanatory Notes, p 5).

¹⁶ Maximum penalty of 80 penalty units (Bill, cl 56; Explanatory Notes, p 5).

¹⁷ In reference to the proposed new offence providing that towed vehicles can only be stored at premises nominated in a towing authority or at an authorised holding yard for the accreditation (Bill, cl 56; Explanatory Notes, p 14).

¹⁸ Maximum penalty of 160 penalty units (Bill, cl 62; Explanatory Notes, pp 5-6).

¹⁹ Explanatory Notes, p 15.

²⁰ Maximum penalty of 60 penalty units (Bill, cl 78; Explanatory Notes, p 6).

accreditation to obtain, or attempt to obtain, a private property towing consent.²¹ Several submitters expressed reservations about this provision, which are reported below at section 2.4.5.

Clause 81 contains offences relating to dishonest behaviours, including forging an accreditation document, private property towing consent or towing authority with intent to defraud; and knowingly using an accreditation fraudulently or knowingly directing another person to fraudulently use an accreditation.²² The explanatory notes justify this as an important new protection that will promote professional conduct within the industry and safeguard vulnerable motorists.²³ Several submitters expressed reservations about this provision, which are reported below at section 2.4.7.

Committee comment

The range of proposed increased maximum penalties under the Bill, as well as the range of proposed maximum penalties for the Bill's new offences, all fall within the existing range of maximum penalties for offences under the 1973 Act. We are satisfied that both the range of proposed increased maximum penalties under the Bill, as well as the range of proposed maximum penalties for the Bill's new offences, are proportionate and relevant, and that the penalties are consistent with each other, such as to have sufficient regard to fundamental legislative principles.

However, we also note the potential for the Bill to interfere with the balance between consumer protections on the one hand and the ability of the tow truck industry to function with as little interference on the rights of individuals as possible.

2.1.1.2 Immediate suspensions

Clause 44 proposes to empower the chief executive to immediately suspend an accreditation on specified grounds²⁴ by giving the holder of an accreditation an 'immediate suspension notice'. The explanatory notes observe that this notice can be given without giving the holder an opportunity to first make representations about why the accreditation should not be suspended.

Additionally, clause 44 provides that the chief executive may immediately suspend an accreditation because of written information provided to a police officer or statements or other information given to the chief executive about the conduct of the accreditation holder, and the chief executive reasonably believes the conduct complained of or the information given justifies an immediate suspension.²⁵

²¹ In reference to the proposed new offence for a person who does not hold a driver accreditation to obtain, or attempt to obtain, a towing authority (Bill, cl 78; Explanatory Notes, p 15).

²² Maximum penalty of 60 penalty units (Bill, cls 80, 81; Explanatory Notes, p 6).

²³ In reference to proposed new offences relating to dishonest behaviours, including forging an accreditation document, private property towing consent or towing authority with intent to defraud; and knowingly using an accreditation fraudulently or knowingly directing another person to fraudulently use an accreditation. Bill, cls 80, 81; Explanatory Notes, p 16.

²⁴ Being that: the chief executive reasonably believes the holder is not an appropriate person to continue to hold the accreditation and the accreditation should be immediately suspended, or it is not in the public interest for the holder to continue to hold the accreditation and the accreditation should be immediately suspended; or public safety has been endangered, or is likely to be endangered, because of the holder's conduct while carrying out activities under the accreditation and the accreditation should be immediately suspended. Bill, cl 44(1).

²⁵ Bill, cl 44(2); Explanatory Notes, p 9.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.²⁶ These principles are developed by the common law and incorporate the following:

- something should not be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker
- procedural fairness should be afforded to the person, meaning fair procedures that are appropriate and adapted to the circumstances of the particular case.²⁷

Although conceding that immediate suspension may deprive the accreditation holder of natural justice, the explanatory notes seek to justify any inconsistency with fundamental legislative principles on the grounds that immediate suspension is limited to serious circumstances.²⁸

We note that some submissions also raised natural justice concerns with Clause 44; these are reported at section 2.3.2.

Committee comment

It appears that immediate suspension of the accreditation would likely prevent detriment, or further detriment, to consumers and the public. Although the accreditation holder is not provided with an opportunity to first make representations about why their accreditation should not be suspended, there are other natural justice safeguards in the Bill such as a requirement for an information notice to be given to the accreditation holder at the same time as the immediate suspension notice, and a requirement that, within 7 days after the day the immediate suspension notice is given to the holder of the accreditation, the chief executive must give the holder a show cause notice.

While we note the concerns raised by some submitters with respect to natural justice and the potential for vexatious complaints to the chief executive, we are satisfied that there are sufficient safeguards, fair procedures and time limits included in the Bill to justify the inclusion in the Bill of the power for the chief executive to immediately suspend an accreditation without any input from the holder of the accreditation.

2.1.1.3 Evidentiary provisions

In Part 6, Division 2 of the Bill, it is proposed that for the purposes of proceedings under the Act:

- a certificate purporting to be signed by the chief executive stating any of the specified matters²⁹ is evidence of the matter³⁰

²⁶ *Legislative Standards Act 1992* s 4(3)(b).

²⁷ Office of the Queensland Parliamentary Counsel, *Notebook*, p 25.

²⁸ For example, where allowing the person to continue to operate under the accreditation may cause harm to vulnerable motorists or compromise public safety. Explanatory Notes, p 9.

²⁹ Being a range of matters, including about certain documents and accreditations (for example, that a document is an approval or a decision under the Act, or that an accreditation was in force on a stated day).

³⁰ Bill, cl 127(1).

- the chief executive stating that³¹ a record kept by the chief executive³² did or did not include stated particulars about a specified matter is evidence of the stated matter and, in the absence of evidence to the contrary, is conclusive evidence of the stated matter³³
- the police commissioner stating that the commissioner received, or did not receive, the specified notice³⁴ is evidence of the matter.³⁵

Additionally, the Bill proposes that:

- in a complaint starting a proceeding, an allegation of the specified matters³⁶ is evidence of the matter and, in the absence of evidence to the contrary, is conclusive evidence of the matter
- if the proceeding is a review of or appeal against a decision made by the chief executive, a specified document purporting to be a report given to the chief executive for the Act,³⁷ is admissible as evidence of the matters in the document.³⁸

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation reverses the onus of proof in criminal proceedings only with adequate justification.³⁹

The explanatory notes state that in any prosecution for an offence, the prosecution bears the onus of proving each element of the offence beyond a reasonable doubt:

To do this, the prosecution must adduce admissible evidence to the court. Generally, for evidence to be admissible, it must be provided through witness testimony unless there is a statutory provision that allows for the evidence to be provided in another way, such as through a certificate or document. Allowing for documentary evidence to be directly admissible alters the usual proceedings and may be viewed as being inconsistent with the principles of natural justice and reversing the onus of proof. This is because it allows the prosecution to provide evidence without the witness necessarily being available to be cross-examined.⁴⁰

Although the explanatory notes acknowledge that the Bill includes provisions which may reverse the onus of proof (as they may require the defendant to introduce contrary evidence to the evidence provided by the certificate or allegation), the explanatory notes contend that the reversal is justified:

... where the facts in question are non-contentious, the defendant may not wish to challenge the evidence, in which case, witness testimony can be inconvenient for the witness, inefficient for the court and more costly as witnesses may be entitled to expenses and these costs may be borne by a defendant who is found guilty. In these instances, if admissible evidence can be provided though a document, it benefits all the parties to a proceeding.

Allowing certificates to be issued for particular matters contained in departmental records is a common approach to ensuring efficient court processes as it removes the need to require

³¹ On on a stated day, or for a stated period.

³² Under clause 137 of the Bill.

³³ Bill, cl 127(2).

³⁴ Being, notice under clause 61 of the Bill about the carrying out of private property towing.

³⁵ Bill, cl 127(3).

³⁶ Such as, that: a person is (or was) the owner of a motor vehicle at a time or on a day stated in the complaint; a motor vehicle is (or was) of a particular class or description; a place is (or was): a road (or part of one), a relevant off-street regulated parking area (or part of one), or a private property (or part of one); a person was an occupier of private property or another place. Bill, cl 128(1).

³⁷ Being in relation to a 'relevant person' (as defined in clause 128(3) of the Bill) and that is relevant to the proceeding.

³⁸ Bill, cl 128(2), (3).

³⁹ *Legislative Standards Act 1992* s 4(3)(d).

⁴⁰ Explanatory Notes, pp 10-11.

witnesses to attend on matters of departmental record that are unlikely to be contested. The presumptions of particular matters including that a place was “private property” or that a person was an “occupier” are also necessary to facilitate efficient and cost-effective court process. Underpinning the private property towing amendments is recognition of the rights of an occupier to remove a vehicle from their private property and this is reflected in the terminology in the Bill. However, these elements are matters the occupier or their agent (the tow truck operator) are in a better position to provide evidence of. As a result, the approach in the Bill is justified because the defendant is in the best position to establish these matters.⁴¹

In respect of Part 6, Division 2, the human rights statement of compatibility provided with the Bill states:

These provisions are also intended to deter unlawful behaviour by supporting effective prosecution of offences under the Bill. Efficient court processes support TMR in ensuring compliance with the tow truck scheme, which benefits both public safety and road safety.⁴²

Committee comment

We are satisfied with the proposed reversal of the onus in proof in circumstances where admissible evidence being provided though a document benefits all the parties to a proceeding, such as in instances where the facts in question are non-contentious and the use of a certificate or document could reduce costs and enhance administrative efficiency.

However, we note that Part 6, Division 2 of the Bill proposes that certain information introduced by way of an allegation in a complaint is (of itself) proof of that information, unless evidence to the contrary is otherwise produced. While this might be appropriate for some matters, issues such as whether a place was part of a road (or part of a relevant off-street regulated parking area) or whether a person was an occupier of private property could conceivably be contentious matters in dispute. In these circumstances, the proposed amendments appear inconsistent with the principles of natural justice, such as affording procedural fairness, and appear to reverse the onus of proof in criminal proceedings without adequate justification.

We are not satisfied with the justification which the explanatory notes provides for this interference with the rights and liberties of individuals, namely to facilitate efficient and cost-effective court processes. We note the expanded justification provided in the statement of compatibility. We urge the Minister to consider what extra safeguards could be put into place to further reduce the unnecessary burden created by this reversal of the onus of proof provision in the Bill.

Recommendation 2

That the Minister consider what extra natural justice safeguards could be provided to ensure Part 6, Division 2 of the Bill has sufficient regard to the rights and liberties of individuals in respect of the reversal of the onus of proof provisions contained therein.

⁴¹ Clause 127 of the Bill allows the chief executive to issue evidentiary certificates in relation to certain documents and in relation to an accreditation. Clause 128 of the Bill allows certain information to be introduced by way of an allegation in a complaint. Explanatory Notes, p 11.

⁴² Statement of Compatibility, p 19.

2.1.2 Institution of Parliament

2.1.2.1 Regulation-making powers and approved forms

Part 7 of the Bill proposes a range of regulation-making powers:

- In Clause 151, that the Governor in Council may make regulations on specified matters,⁴³ including to prescribe fees payable under the Act and provide for the fees to be refunded or waived, and provide for a maximum penalty of 80 penalty units for a contravention of a regulation
- In Clause 152, that a regulation may prescribe that an application made under the Act⁴⁴ must be made in the specified way and include the specified information, or provide that the chief executive may ask for further information the chief executive reasonably needs to decide an application
- In Clause 153, that a regulation may make provision for accreditation documents for a driver accreditation or an assistant accreditation⁴⁵
- In Clause 154, that a regulation may make provision for temporary holding yards for operator accreditations⁴⁶
- In Clauses 156 and 157, that a 'regulated area' means an area prescribed by regulation, and that the existing prescribed regulated areas continue, unless and until a regulation under the Act prescribes new areas⁴⁷

⁴³ The Bill specifies a range of matters associated with the administration of the tow truck scheme, including that regulations may prescribe various processes and procedures for: the making of certain applications; the giving, renewal and amendment of accreditations (such as, the form of an accreditation document); auditing of accreditation holders; technical matters (such as, the classification of, and specifications and requirements for, tow trucks); imposing charges; and the giving and receiving of consideration for specified matters. A regulation will be able to provide for various requirements, such as, in relation to the carrying out of regulated towing, and the storage and release of motor vehicles towed under an operator accreditation. A regulation will also be able to prescribe the obligations, duties and standards of conduct of persons who hold an accreditation. Bill, cl 151.

⁴⁴ Excluding applications made under the following sections of the Bill: part 5 (investigation and enforcement provisions, which include applications for entry warrants), part 6 (applications for internal and external reviews of decisions), or section 142 (providing for applications for disclosure of information about accreditations of other persons) of the Bill. Bill, cl 152(3).

⁴⁵ Including that: the documents be in the form, or partly in the form, of a card approved by the chief executive and on which information may be stored electronically and that the accreditation holder use a PIN as a security measure; and the information that may be included in the documents. Bill, cl 153.

⁴⁶ A regulation may provide for the chief executive to approve premises as a temporary holding yard for an operator accreditation if an authorised holding yard for the accreditation cannot be used (or safely used) due to the effects of an event; and must state the period of the approval. Bill, cl 154.

⁴⁷ Regulated areas are currently set out in schedule 4 of the 2009 Regulation. The Bill proposes to retain the existing regulated areas under the 2009 Regulation. Bill, cls 156, 157 and sch 3. The explanatory notes state that this provision may raise issues of fundamental legislative principle issues because allowing the areas in which the Act applies to be amended through a regulation may be viewed as having insufficient regard to the institution of Parliament. However, the committee could be satisfied because, according to the explanatory notes, any changes to regulated areas would go through a rigorous assessment process before a regulation is made, and that the department would provide practical assistance to industry, consumers and enforcement officers by publishing the boundaries of existing regulated areas on the interactive online tool. Explanatory Notes, p 17.

The Bill also specifies matters which may be prescribed by regulation⁴⁸ and proposed various provisions about the continued application of parts of the 2009 Regulation for specified purposes. It additionally includes a 'transitional regulation' may make provision about a matter for which it is necessary to make provision to achieve the transition from the operation of the repealed Act to the operation of the Act; and the Act does not provide or sufficiently provide.⁴⁹

Fundamental legislative principles include requiring that legislation has sufficient regard to the institution of Parliament. Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill:

- allows the delegation of legislative power only in appropriate cases and to appropriate persons
- sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly
- authorises the amendment of an Act only by another Act.⁵⁰

In respect of Clause 151, which empowers the Governor in Council to make regulations to provide for a maximum penalty of 80 penalty units for a contravention of a regulation, it is noted that Parliamentary committees have previously considered that subordinate legislation should not impose a penalty greater than 20 penalty units for contravention of one of its provisions.⁵¹ The explanatory notes concede that the proposed penalty is higher than is generally appropriate but observes that the Bill contains offences with maximum penalties of up to 160 penalty units.⁵²

According to the explanatory notes:

These penalty levels reflect the fact that tow truck operators, drivers and assistants will be interacting with members of the public who, on occasion, will be in a state of distress due to the crash of their vehicle. Significant penalties are therefore required to ensure compliance with the requirements of the Bill and any regulation made under the Bill.

The proposed structure ensures the most serious offences with the highest penalties (up to 160 penalty units) are contained within the Bill while other offences, still serious but warranting a lower level of penalty (up to 80 penalty units), can be dealt with in the regulation.⁵³

Clause 152 provides that;

- a regulation may prescribe that an application made under the Act must be made in the specified way and include the information stated in a notice made by the chief executive and published on the department's website, or
- provides that the chief executive may ask for further information the chief executive reasonably needs to decide an application.⁵⁴

⁴⁸ For example, see the following proposed provisions in the Bill: cls 13, 14, 17-19, 24-26, 30, 31, 38, 46, 50, 60, 61, 63, 72, 123, 131, 138, 139, and 144.

⁴⁹ Any transitional regulation (as well, as the transitional regulation-making power itself as granted under the Bill) is proposed to expire 2 years after the day clause 181 of the Bill commences. A transitional regulation may have retrospective operation, but not to a day earlier than commencement. Bill, cl 181.

⁵⁰ *Legislative Standards Act 1992*, s 4(4).

⁵¹ Scrutiny of Legislation Committee, Alert Digest No. 4 of 1996, pp 6–7. Also noted in section 6.9 of the Queensland Legislation Handbook, <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/assets/legislation-handbook.pdf?a>

⁵² Explanatory Notes, p 16.

⁵³ Explanatory Notes, p 16.

⁵⁴ Bill, cl 152.

This clause may raise fundamental legislative principle issues relating to the delegation of legislative power, which is acknowledged in the explanatory notes.⁵⁵

According to the explanatory notes, the proposed provisions will allow a regulation to provide for the way in which applications can be made under the Act to facilitate flexible alternatives, similar to those already available under other transport regulations,⁵⁶ and which have meant that new and emerging technologies and approaches, such as mobile apps, can be adopted to enhance a customer's experience:

The amendments will enhance customer experiences by not requiring a form to be completed where there is an appropriate and more convenient alternative that the department has made available. Any breach of the fundamental legislative principles is justified by the benefits that can flow to customers from this clause and any regulation made under it.⁵⁷

Committee comment

We note that a general regulation-making power and powers to prescribe administrative features or components of an administrative system (such as an accreditation scheme) are commonplace and provide flexibility. The existing Act also contains a general regulation-making power, along with a range of other matters that may be prescribed by regulation.

We are satisfied that the proposed regulation-making powers in the Bill have sufficient regard to the institution of Parliament, particularly in light of the administrative and procedural nature of many of the proposed powers, such as to prescribe forms and procedures, along with the fact that regulations constitute subordinate legislation and attract the provisions of the *Statutory Instruments Act 1992*, including the requirement for a regulation to be tabled and be able to be subject to a parliamentary disallowance motion. We do however urge caution about the approach being adopted in this Bill to include penalties in regulation that the explanatory notes state are higher than is generally appropriate.

2.2 Human rights

A statement of compatibility for the Bill was prepared in accordance with Part 3 of the HR Act. The statement of compatibility explains that the amendments in the Bill may limit the following human rights protected by the HR Act:

- Right to recognition and equality before the law (section 15)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Right to liberty and security of person (section 29)
- Fair hearing (section 31)
- Rights in criminal proceedings (section 32).

If human rights may be subject to limitation if the Bill is enacted, we were required to consider whether the limitations are reasonable and demonstrably justifiable under section 13 of the HR Act.

⁵⁵ Explanatory Notes, p 17.

⁵⁶ For example, sections 381 to 383 of the Driver Licensing Regulation and sections 193 to 195 of the Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021. Explanatory Notes, p 17.

⁵⁷ Explanatory Notes, p 17.

In deciding whether a limit on a human right is reasonable and justifiable the following factors may be relevant—

- (a) the nature of the human right;
- (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;
- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;
- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose;
- (e) the importance of the purpose of the limitation;
- (f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;
- (g) the balance between the matters mentioned in paragraphs (e) and (f).

With respect to the human rights protected by sections 31 and 32 of the HR Act, Clause 13 of the Bill notes matters to be considered in deciding whether persons are appropriate persons to hold or continue to hold accreditations. It allows the chief executive to consider whether a person has been charged with an offence (as part of the person's criminal history). A person's criminal history is defined in Schedule 3 of the Bill as within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986* and includes:

- (a) despite section 6 of that Act—a conviction of the person to which the section applies; and
- (b) despite section 5 of that Act—a charge made against the person that has not been dealt with by a court or withdrawn or otherwise discontinued.

The Bill also requires an applicant for, or holder of, an accreditation to disclose if they are charged with, or are issued with an infringement notice for, a notifiable offence in Part 4, Division 5 of the Bill, and in Part 6, Division 2 the Bill allows for the issue of certificates for certain evidential matters and for the court to presume particular elements of an offence unless the defendant proves contrary. Concerns about Part 6, Division 2 of the Bill have already been noted in this report at section 2.1.1.3.

The human right to a fair hearing under Section 31 of HR Act entitles a person to have a criminal charge or a civil proceeding decided by a competent, independent, and impartial court or tribunal after a fair and public hearing. This right may be limited by a policy or provision which abrogates the privilege against self-incrimination or reverses the onus of proof.

Rights in criminal proceedings under Section 32 of the HR Act entitles a person charged with a criminal offence to be presumed innocent until proven guilty and to certain minimum guarantees in proceedings. This right includes the right to examine, or have examined, witnesses against the person.

Clause 13 of the Bill might limit these human rights in the following ways:

- A charge is not a conviction and cannot carry the same weight in decision making as a conviction
- the chief executive cannot make decisions about an individual's appropriateness to hold accreditation based on the existence of criminal charges not yet dealt as this is inconsistent with section 32 of the HR Act. A person charged with an offence has the human right of being presumed innocent until proven guilty. No negative reflection on a person's suitability for accreditation should flow from mere charges.

With respect to the inclusion of criminal charges in clause 13, the statement of compatibility notes:

... there is no less restrictive way to achieve the purpose of ensuring only appropriate people are accredited to carry out regulated towing. Limiting the chief executive's consideration to convictions, rather than convictions and charges, would not give the chief executive all the information needed to make a proper assessment of whether the person is an appropriate person. Allowing a person with criminal charges to carry out regulated towing, without first considering whether that person is appropriate based on their individual circumstances, poses an unacceptable risk to public safety and road safety. This would not achieve the purposes of the Bill.⁵⁸

The statement of compatibility does not acknowledge the presumption of innocence contained in section 32 of the HR Act.

Committee comment

The justifications provided in the statement of compatibility with respect to limitations on rights protected by sections 15, 24, 25 and 29 of the HR Act are extensive and apt, and we find any limitations on rights protected by those sections are reasonable and justifiable.

The presumption of innocence contained in section 32 of the HR Act is not reflected in the provision in clause 13 of the Bill which allows the chief executive to make decisions about an individual's appropriateness to hold accreditation based on the existence of criminal charges not yet dealt with. The contention contained in the statement of compatibility that allowing a person with criminal charges to carry out regulated towing, without first considering whether that person is appropriate based on their individual circumstances, poses an unacceptable risk to public safety and road safety, is not persuasive.

We find that the statement of compatibility tabled with the introduction of the Bill generally provides a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with most human rights however there is insufficient analysis contained in the statement of compatibility of the distinction that must be drawn between charges and convictions in order to protect the right to a fair hearing and rights in criminal proceedings.

Recommendation 3

That the Minister consider amending the statement of compatibility to better clarify the difference between charges and convictions in contemplation of Sections 31 and 32 of the *Human Rights Act 2019*, and further clarify that heavier weighting should apply in the chief executive's decision-making process in Part 1, Division 3 of the Bill to the existence of a criminal conviction than to an untested criminal charge.

2.3 Tow truck accreditation

Submissions regarding the accreditation provisions of the Bill addressed three clauses:

Clause	Purpose
13	Matters to be considered in deciding whether persons are appropriate persons to hold or continue to hold accreditations
14	Matters to be considered in deciding whether it is in public interest for persons to hold or continue to hold accreditations
44	Immediate suspension of accreditation

⁵⁸ Statement of Compatibility, p 20.

2.3.1 Matters to be considered in deciding whether persons are appropriate persons to hold or continue to hold accreditations

Persons who conduct a tow truck business or are involved in operating tow trucks in regulated areas are required to hold the appropriate accreditation. Under the 1973 Act, these accreditations are known as a 'licence' or 'certificate'.⁵⁹

Clauses 13 and 14 of the Bill set out the matters to be considered when the chief executive is deciding whether a person is an appropriate person to hold or to continue to hold an accreditation, and whether it is in the public interest for persons to hold or continue to hold accreditations.⁶⁰

The types of matters that the chief executive must have regard to include the person's criminal history, whether an accreditation held by the person has been previously suspended or cancelled, the person's conduct while carrying out activities under an accreditation, and whether the person is or has been subject to a control order under the *Penalties and Sentences Act 1992* or a registered corresponding control order.⁶¹

Harvey's Towing Service raised concerns about previous inconsistent and contradictory decisions by TMR around accreditation. A specific example was provided of a driver being denied accreditation with one company, but then receiving accreditation after that person moved to another company.⁶²

Harvey's Towing Service and Clayton's Towing Service called for clear guidelines and consistency around how the chief executive decides whether a person may hold or continue to hold an accreditation.⁶³

In response, TMR stated:

Given the wide and varied criminal and traffic histories that can be presented to TMR, each application must be assessed on its individual merits. This means that the decision maker, delegated by the chief executive, must exercise discretion to come to a reasonable and justifiable decision. This means there may be potential for an individual decision maker to make a different decision to someone else.

All decisions can be appealed. Firstly, they may be internally reviewed by TMR, and subsequently, the Queensland Civil and Administrative Tribunal (QCAT). Individuals are entitled to have these decisions reviewed if they are dissatisfied with the initial decision made by the TMR decision maker.⁶⁴

A representative of Harvey's Towing Service stated during a public hearing that:

There are a couple of solutions that we would like to put forward. One is the time limit on towing related offences, which perhaps could be brought up to five years max. We believe that particularly within a five-year period people can change their lives, mature and start contributing positively to the community and make a good life for themselves.⁶⁵

2.3.2 Amending, suspending and cancelling accreditations

Clause 44 of the Bill provides that the chief executive may, by written notice given to the holder, immediately suspend an accreditation on certain grounds where the chief executive reasonably believes:

⁵⁹ Explanatory Notes, p 1.

⁶⁰ Tow Truck Bill 2023, pp 17-19.

⁶¹ Explanatory Notes, p 20.

⁶² Submission 2, p 2, and public hearing transcript, Brisbane, 21 July 2023, p 2.

⁶³ Submission 2, pp 2-3, and Submission 6, p 3.

⁶⁴ Department of Transport and Main Roads, correspondence, 7 August 2023, pp 3-4.

⁶⁵ Public hearing transcript, Brisbane, 21 July 2023, p 2.

- the holder is not an appropriate person to continue to hold the accreditation
- it is not in the public interest for the holder to continue to hold the accreditation
- public safety has been endangered, or is likely to be endangered, because of the holder's conduct while carrying out activities under the accreditation.

We note that this report has earlier engaged with this provision at section 2.1.1.2.

At a public hearing, Mr Mark Ready, managing director of Ready Towing, noted natural justice concerns regarding Clause 44, stating:

It could engender vexatious complaints from towing operators or members of the public if all that has to happen is they write a complaint to a police officer and there is no conviction or appearance in court for it to be tested. I believe the transport department can suspend an operator's licence for up to 56 days and they can continue to apply for further extensions until the court case is heard or there is a result. That particular process will lead to a flood of inbound calls and complaints that could be considered false or vexatious.⁶⁶

A confidential submitter also highlighted concerns over accreditation being suspended 'for 56 days over an allegation that has not yet been proven in a court room as this could lead to false allegations to be made against drivers by their opposition, which would then cause financial hardship to the driver and the company that they worked for...'⁶⁷

The department responded:

The current Act allows the chief executive to immediately suspend an accreditation holder if a person complains to police about an accreditation holder's conduct and the chief executive reasonably believes that the conduct justifies immediate suspension. This provision is replicated in the Tow Truck Bill 2023.

It should be noted that all complaints are verified by TMR through their investigation process before action is taken. Immediate suspension is generally applied in response to new criminal charges and convictions which may impact the accreditation holder's suitability to hold an accreditation.⁶⁸

Committee comment

The committee notes submitter concerns about apparent inconsistencies regarding previous TMR decisions on tow truck licence and certificate applications. There is evidently the need for clear guidelines relating to how the chief executive decides a person may hold or continue to hold an accreditation. The committee strongly urges the department to engage early and comprehensively with industry about the requirements of the proposed new accreditation processes before the new Act commences, to improve industry confidence in how these intended new schemes will operate.

To that end, the committee is pleased to note that the department has undertaken to 'provide guidance during the implementation process to assist industry to understand any new requirements as a result of the new legislation.'⁶⁹ Department produced case studies or flow charts about how decisions regarding accreditations are made and what information is used when making that decision might be of significant benefit here.

⁶⁶ Public hearing transcript, Brisbane, 21 July 2023, p 13. See also, Submission 4, p 2.

⁶⁷ Submission 11, p 1.

⁶⁸ Department of Transport and Main Roads, correspondence, 7 August 2023, p 20.

⁶⁹ Department of Transport and Main Roads, correspondence, 7 August 2023, p 17.

We further note industry's stated concerns about vexatious complaints and any impacts that such complaints may have on accreditations under the new Act. The committee encourages the department to increase its communications with industry about how complaints processes are intended to operate under the proposed new scheme, and what protections will be in place regarding any vexatious or false complaints. This complements our earlier Recommendation 3 of this report regarding clarification of the weighting process to be used by the chief executive when making decisions about accreditations.

2.4 Offences and notifying particular matters

Part 4 of the Bill contains clauses related to offences as well as the various requirements of the holder of an accreditation.⁷⁰ Submissions regarding the Part 4 provisions addressed the following clauses:

Clause	Purpose
52	Establishes an offence for a person who conducts a tow truck business without the necessary operator accreditation
53	Establishes an offence for a person to drive, or offer to drive, a tow truck to carry out regulated towing if they do not hold a driver accreditation
57	Requires an operator accreditation holder to ensure all reasonable precautions are taken to prevent damage to a motor vehicle that has been towed under the accreditation while the vehicle is under the holder's control
60	Requires the holder of an operator accreditation to release, from an authorised holding yard, a motor vehicle that has been towed under an operator accreditation in specified circumstances
63	Makes it an offence for the holder of an operator accreditation or an employee to disclose sensitive information they have obtained in the course of the business unless permitted by the section
64	Requires the holders of driver accreditations not to operate a tow truck to tow a motor vehicle from the scene of an 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
74	Requires accreditation holders to notify the chief executive if they are charged with or served with an infringement notice for a notifiable offence
78	Provides that a person must not obtain, or attempt to obtain, a towing authority unless the person is the holder of a driver accreditation
81	Provides that a person should not commit certain acts of dishonesty or coercion relevant to matters within the Bill

2.4.1 Conducting tow truck business and or operating tow trucks without appropriate accreditation

At a public hearing, a departmental representative provided clarification of the offence created by Clause 52:

Ms Dumont: It is the kind of behaviour by a business owner who is generally in a position of power. They may have a more junior person in their employ or a brand new tow truck licence holder. They themselves are not committing the offence but, through the pressure of their position, they go out and say, 'I want you to go and get that particular crash tow,' knowing

⁷⁰ Tow Truck Bill 2023, pp 37-57.

that that person is not licensed to do that. They are an unaccredited person but they say, 'Go out and do it anyway.' That unaccredited person is really caught between a rock and a hard place. They either potentially risk losing their job or breaching legislation. It puts them in a really difficult position. This is about ensuring that the business owner has accountability as well.⁷¹

Harvey's Towing Services submitted in respect of Clause 53 that:

The requirement for a driver to hold a driver's certificate to drive a tow truck, creates a problem when a driver is unable to secure a driver's certificate, even though they have the licence and qualifications to drive a tow truck. The restriction to hold a driver's certificate confines the operator (owner of the business) to utilise a tow truck for regulated purposes only, and this limitation restricts the potential and substantial financial earnings available to the tow truck in performing unregulated towing such as breakdown or trade towing.

...

The towing industry is struggling to recruit drivers who can obtain a driver's certificate therefore the accessibility and opportunities for operators (owners of the business) are heavily reduced. [Harvey Towing Service] proposed that operators are required to hold a driver's certificate when performing regulated towing, and that they can perform unregulated towing in a licenced tow truck providing that they hold the appropriate driver licence required for the vehicle that they are driving.⁷²

In response the department noted:

It is a fundamental aspect of the tow truck scheme that persons are accredited by TMR to work in the regulated towing industry. This requirement ensures only appropriate persons are in a position to interact with vulnerable members of the community. For instance, TMR considers matters such as criminal and driving history in addition to their licence status.

It is an existing requirement of the legislation that all operators, drivers and assistants are required to be accredited by TMR if undertaking regulated towing services, such as crash and private property towing, in regulated areas. There is no proposal to change this requirement in the new legislation.

Regarding the concerns raised in the submission that once accredited a business can only conduct regulated services, TMR can confirm that no restrictions exist on where accredited persons or authorised tow trucks may operate. Accredited persons and authorised tow trucks may also undertake non-regulated towing services such as breakdown towing, as well as operating in locations outside regulated areas.⁷³

2.4.2 Preventing damage to vehicles under tow

Numerous industry submitters highlighted their concerns with Clause 57 surrounding the prevention of damage to towed motor vehicles. Specifically, submitters assert the Bill imposes a penalty on the tow truck operator additional to that currently faced by the tow truck business under the 1973 Act.⁷⁴

Claytons Towing Service submitted:

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.

⁷¹ Public hearing transcript, Brisbane, 11 July 2023, p 8.

⁷² Submission 2, p 3.

⁷³ Department of Transport and Main Roads, correspondence, 7 August 2023, p 4.

⁷⁴ See submissions 4, 6, 7, 9, 11 and 16.

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.⁷⁵

A confidential submitter stated:

It is hard enough to get staff already but this will make it even harder as I would have to inform a prospective driver that if they make a mistake and damage a vehicle, that they could be fined around \$7700 as well as myself could also get fined for the same incident. We already have to pay expensive insurance to cover any damage that happens to a vehicle whilst it is in our care, and to fine somebody for a genuine accident I feel is just going a little bit too far...⁷⁶

Barnes Auto Co. submitted:

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.⁷⁷

Ready Towing submitted:

... this section should be removed as (i) it would almost be considered tantamount to a breach of the common law maxim of double jeopardy and (ii) that this be replaced with the accreditation holder being lawfully obliged to provide copies of insurances to cover damages / loss for both property and vehicle.⁷⁸

In response to these concerns, TMR advised:

The suggestion that the requirement for an accreditation holder to ensure all reasonable precautions are taken to prevent damage to towed motor vehicles should be removed and replaced with the requirement to provide copies of insurances to cover damages/loss to property and vehicle is noted.

TMR notes that the Bill replicates the existing provisions in the Tow Truck Act 1973 in relation to taking reasonable precautions to prevent damage to towed motor vehicles.

Tow truck operators are responsible for ensuring vehicles are safely towed and securely stored while the vehicle is under their control. Operators must use tow trucks that are suited to the load to be carried and equipped with appropriate towing devices. Drivers and assistants must be suitably trained to ensure that tows are undertaken without causing unnecessary damage to motorists' vehicles.

Failure to take reasonable precautions may pose an immediate and severe risk to the safety of both the motor vehicle being towed and all other road users.⁷⁹

The explanatory notes state that in achieving its policy objectives, the Bill clarifies the distinction between operating a tow truck and operating a tow truck business.⁸⁰ The notes further state:

Currently, the activities associated with a tow truck are referred to as operating a tow truck (for example, sections 5 and 13 of the 1973 Act). The context of the provisions then determines whether operation refers to operating a business involving the use of tow trucks

⁷⁵ Submission 6, p 2.

⁷⁶ Submission 9, p 1.

⁷⁷ Submission 11, p 2.

⁷⁸ Submission 4, p 2.

⁷⁹ Department of Transport and Main Roads, correspondence, 7 August 2023, p 9.

⁸⁰ Explanatory Notes, p 2.

or operating the tow truck itself, such as driving the tow truck or loading a vehicle onto the tow truck.

The Bill introduces the concept of a tow truck business (see clause 10) as a business or trade that involves the operation of one or more tow trucks to carry out regulated towing. The Bill also defines the term operate, in relation to a tow truck, to mean driving or otherwise operating the tow truck for consideration or in the course of a business or trade and also includes offering to do those things. This will assist in distinguishing provisions dealing with the carrying on of a tow truck business from those dealing with the operation of a tow truck itself.⁸¹

Committee comment

We note the concerns raised by various stakeholder around the penalties the Bill might apply to the driver of a tow truck as well as to their employer, for any damage caused to a vehicle under tow, but we believe that such concerns are misplaced.

Clause 57 requires the holder of an operator accreditation to take reasonable precautions to prevent damage to a vehicle under the holder's control. Operator accreditation is defined in clause 16(2) of the Bill as holding an accreditation to conduct a tow truck business. An operator accreditation is distinct from a driver accreditation or an assistant accreditation. In our view, section 57 only applies liability for damage to a vehicle under tow to the tow truck business, not drivers or assistants. In forming this view, we note the advice from the department that the Bill replicates the existing provisions in the 1973 Act in relation to taking reasonable precautions to prevent damage to towed motor vehicles and appears to provide greater specificity as to whom that provision applies.

2.4.3 Release of vehicle from authorised holding yard

Both Barnes Auto Co. and Ready Towing raised concerns with Clause 60 and questioned whether it contradicted Section 32 of the current Regulation.⁸² This provision requires an accreditation holder to comply with a request to release a vehicle unless that holder has imposed an authorised charge that has not yet been paid.

Ready Towing submitted 'in particular, the terms 'viewing, accessing and taking of personal property' are in direct contravention of section 32 of the Tow Truck Regulation in that it prohibits charges of this nature.'⁸³

However, the department responded that:

The Regulation is silent on this matter. Following targeting industry consultation on this matter in July 2022, and subject to Government approval, it is proposed that additional clarification will be provided in the new Regulation that the operator can charge an amount for the vehicle owner to view, access or take personal property from the vehicle outside business hours but must provide the owner written notification of the charge to be incurred. That way, the owner can determine if they wish to pay the charge for afterhours access or within business hours at no cost.⁸⁴

⁸¹ Explanatory Notes, pp 3-4.

⁸² Public hearing transcript, Brisbane, 21 July 2023, p 13, and Submission 4, p 1.

⁸³ Submission 4, p 1.

⁸⁴ Department of Transport and Main Roads, correspondence, 7 August 2023, pp 7-8.

2.4.4 Disclosing sensitive information obtained in the course of tow truck business

In relation to Clause 63, the Royal Automobile Club of Queensland (RACQ), welcomed ‘the decision to continue protection provisions on disclosing sensitive information and strengthening penalties in this Bill.’⁸⁵ However, the RACQ added that the ‘legislation needs to address a gap that relates to sharing of information to a third-party provider for reward.’⁸⁶

The RACQ submission details a practice where it claims that third-party providers often obtain information about the parties involved in a collision via ‘Google Spoofing’. That is 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.⁸⁷ The submission continues:

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 so that they in turn can pass this on to a third-party provider (not the ‘at fault insurer’).

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.⁸⁸

RACQ add that ‘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.’⁸⁹

In response, TMR advised:

The Tow Truck Bill 2023 makes it an offence to disclose sensitive information other than in particular circumstances. It is proposed that infringement notices can be issued in simpler offending circumstances and the ability to seek higher court-imposed penalties for more complex disclosure breaches.⁹⁰

Clayton’s Towing Service and a confidential submitter noted that the Bill removed sections of the 1973 Act around consideration for obtaining certain information to work and risk of unscrupulous practices.⁹¹ The department stated:

Subject to Government approvals, the new Regulation will prohibit obtaining or attempting to obtain authority from the vehicle owner for carrying out a non-towing related service such as smash repair work. It is also proposed to prohibit a person offering incentive for the purpose of obtaining work or business, which is intended to capture credit hire activities. Penalties for these offences are proposed to be consistent with similar offences in the *Tow Truck Act 1973*.⁹²

⁸⁵ Submission 14, p 2.

⁸⁶ Submission 14, p 2.

⁸⁷ Submission 14, p 2.

⁸⁸ Submission 14, pp 2-3.

⁸⁹ Submission 14, p 2.

⁹⁰ Department of Transport and Main Roads, correspondence, 7 August 2023, p 24.

⁹¹ Submission 6, p 4, and Submission 7, p 2.

⁹² Department of Transport and Main Roads, correspondence, 7 August 2023, pp 15-16.

2.4.5 No towing without towing authority

Concerns were raised about Clauses 64 and 78 by various submitters.⁹³ Specifically the potential for operators to arrive at an accident scene in vehicles not suitable to complete a tow.

Clayton's Towing Service stated that the clause could:

... 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.⁹⁴

Barnes Auto Co. also emphasised the practice of inappropriate vehicles being used:

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.⁹⁵

Barnes Auto Co. proposed an amendment to this provision:

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.⁹⁶

The department advised:

Subject to Government approvals, the new Regulation will make this activity an offence. It is proposed to introduce a requirement that the tow truck stated in the towing authority must be available to load the vehicle immediately after the towing authority is signed.

...

This is anticipated to resolve issues where accredited tow truck drivers have attended the crash scene in vehicles not suitable to conduct the tow, such as motorcycles or under-sized tow trucks. It is noted that these practices have the potential to leave motorists waiting unsafely by

⁹³ Submission 6, p 4, Submission 7, p 1, and Submission 11, p 4.

⁹⁴ Submission 6, p 4.

⁹⁵ Submission 11, p 3.

⁹⁶ Submission 11, p 4.

the roadside for the appropriate tow truck to arrive. It is anticipated that the proposed requirements will alleviate any inefficiencies and potential unsafe practices.⁹⁷

Committee comment

We note TMR's assurance that the new Regulation will address the offence of unsuitably equipped vehicles being used in an attempt to arrive first to a scene to obtain a towing authority. We reiterate our earlier comment urging the department to engage early and comprehensively with the industry about implementation of the Act, which including drafting Regulations. On that matter, we note Recommendation 4 of this report.

2.4.6 Requirement for accreditation holder to provide notice on particular matters

Clause 74 requires accreditation holders to notify the chief executive if they are charged with or served with an infringement notice for a notifiable offence. Notifiable offences include, for example, offences against the Bill's provisions, the 1973 Act (for offences committed while the repealed Act is in force), the *Drugs Misuse Act 1986*, the *Heavy Vehicle National Law (Queensland) 2012*, the *Weapons Act 1990*, certain specified provisions of the Criminal Code, and corresponding offences from another jurisdiction.⁹⁸

Both Ready Towing and Barnes Auto Co. recommended that reference to the word 'infringement' in Clause 74 be removed as it could be construed as a non-notifiable offence, for example, a parking ticket.⁹⁹

Barnes Auto Co. submitted:

The interpretation could mean something as sinister as a parking ticket could be deemed a notifiable offence. 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.¹⁰⁰

In response, the department noted:

... the reference to infringement notice refers to the method in which a person is served with notice of an offence. However, the obligation to notify the chief executive only applies to notifiable offences. The Bill clarifies the current requirements for accredited persons to notify the chief executive if charged or convicted of a notifiable offence.

The list of notifiable offences has been reviewed to ensure direct relevance to the towing profession. The Bill specifies that notifiable offences are specific offences referenced in certain Acts. This includes, for example, the *Drugs Misuse Act 1986*, the *Weapons Act 1990*, the *Police Powers and Responsibilities Act 2000* and the Criminal Code.

An infringement notice issued for a parking or speeding offence, for example, would not be a notifiable offence and is not required to be reported to TMR.¹⁰¹

⁹⁷ Department of Transport and Main Roads, correspondence, 7 August 2023, pp 15, 21.

⁹⁸ Bill, cl 71; Explanatory Notes, p 6.

⁹⁹ Submission 4, p 3, and Submission 11, p 5.

¹⁰⁰ Submission 11, p 4.

¹⁰¹ Department of Transport and Main Roads, correspondence, 7 August 2023, p 8.

2.4.7 Dishonesty and coercion

Clause 81 contains several offences relating to dishonesty and coercion, including forgery, fraudulent use of an accreditation, false representation or use of force. Submissions 4, 6, 11, and 14 each highlighted various concerns about this section.

In particular:

- Ready Towing suggests that the Bill should contain provisions to prevent the use of mobile devices at accident scenes showing false information to drivers¹⁰²
- Clayton's Towing Service and Barnes Auto Co. note concern that the Bill does not adequately regulate bribery,¹⁰³ and
- RACQ submitted 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.¹⁰⁴

Ready Towing submitted it 'believes (although this could be just an oversight) that the omission of Section 23 of the current Act (Consideration for obtaining certain information or work) would fall to circumstances that would absolutely be seen as undue influence.'¹⁰⁵

Clayton's Towing Service submitted:

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.¹⁰⁶

In response to the submissions TMR advised:

TMR notes that matters relating to false advertising by businesses are regulated by Queensland's Office of Fair Trading. It is an offence to make false or misleading claims about products or services when advertising to consumers.

TMR strongly encourages any reports of false and misleading advertising by tow truck operators and drivers to be reported directly to Queensland's Office of Fair Trading via their website.

...

TMR consulted industry through the release of a discussion paper and online survey in late 2019. The survey results indicated the majority of respondents (76%) were not supportive of towing incentives or inducement as the practice may lead to coercion in what is an already stressful situation for a motorist.

¹⁰² Submission 4, p 3.

¹⁰³ Submission 6, p 4, Submission 11, p 6.

¹⁰⁴ Submission 14, p 4.

¹⁰⁵ Submission 4, p 2.

¹⁰⁶ Submission 6, p 4.

In view of this feedback, bribery provisions are proposed to be maintained, and in some instances expanded.¹⁰⁷

The department further responded to other submitter feedback on Clause 81:

It is proposed that the new regulation will prohibit the following activities in relation to obtaining a towing authority:

- An accreditation holder offering inducement to vehicle owners
- An accreditation holder offering inducement to another person in exchange for providing information about an incident such as a crash and
- A person receiving benefit in exchange for information about an incident ('spotters'). Inducements include such things as rewards, bribery, benefits or incentives. Penalties are proposed to be consistent with similar offences that exist in the current Act.¹⁰⁸

In addition, 'it is also proposed to prohibit a person offering incentive for the purpose of obtaining work or business, which is intended to capture credit hire activities. Penalties are proposed to be maintained for consistency with similar offences that currently exist in the *Tow Truck Act 1973*.'¹⁰⁹

RACQ submitted that the proposed Bill does not include a provision to address inappropriate conduct of towing providers at the scene of collisions while engaging with extremely vulnerable motorists.¹¹⁰ In response, the department said that:

The safety of persons requiring regulated towing services is a fundamental aspect of the tow truck scheme. It is imperative that accredited persons refrain from intimidation, harassment, abuse or insults while motorists and their passengers are in a vulnerable and distressed state.

TMR intends to continue to prohibit these behaviours through appropriate offence penalties proposed in the new Regulation.

TMR strongly encourages reports of inappropriate industry conduct at the scene of an incident be referred to the TMR Tow Truck Hotline. The Hotline can be contacted by phoning 1800 681 636.

Complaints to the hotline are investigated by TMR and appropriate action is taken. Conduct breaches may be addressed through education, undertaking a 'show cause' process against the operator's authority, referring matters to the Queensland Police Service or the issue of infringement notices or court proceedings.¹¹¹

2.5 Towing fees

Submitters made various comments regarding the fees currently payable for tow truck services provided under the 1973 Act. Submitters sought an increase in the fee payable for a first tow regulated by the Act, additional regulation of any second or subsequent regulated tows, an increase in the per kilometre fee payable for regulated towing and capping of rates for vehicle storage.¹¹²

The submission from Ready Towing sought an annual increase for the first tow fee in line with real inflationary costs, and a reduction in the maximum distance covered by the first tow fee from 50 kilometres to 20 kilometres.¹¹³ The department responded:

¹⁰⁷ Department of Transport and Main Roads, correspondence, 7 August 2023, pp 8-9.

¹⁰⁸ Department of Transport and Main Roads, correspondence, 7 August 2023, p 24.

¹⁰⁹ Department of Transport and Main Roads, correspondence, 7 August 2023, p 22.

¹¹⁰ Submission 14, p 1.

¹¹¹ Department of Transport and Main Roads, correspondence, 7 August 2023, p 25.

¹¹² Submission 4, p 3, Public hearing transcript, Brisbane, 21 July 2023, p 15, Submission 14, pp 5-6.

¹¹³ Submission 4, p 3.

The Queensland Government applies the Government Index Rate (GIR) annually to all government fees. This method of calculation replaced the use of Consumer Price Index in 2012. TMR's regulated fees are indexed annually each year, in accordance with the GIR, which was 3.4% for the 2023-24 year.

A standard tow fee includes transporting the crashed vehicle up to 50kms from the crash scene. Vehicle owners can nominate where they want their vehicles to be towed. This can include their home, a holding yard, or a repairer of their choice. TMR considers that 50km is a reasonable distance to enable most vehicles towed from crashes in regulated areas to be taken to the owner's preferred location.

...

Second tows are organised by the vehicle owner after the vehicle has already been towed from the scene of the crash. The vehicle owner can select an operator of their choice for this task. This selection will likely include consideration of price. Given that the vehicle owner has this choice, regulation of the second tow fee is not justified, and may have the effect of distorting market competition. There are no plans to expand regulated fees to include 'second tows'.¹¹⁴

In respect of submitter concerns around the potential capping of storage charges, the department stated:

In its early consideration of potential changes to the tow truck scheme, TMR explored capping of storage fees for crash towing. TMR engaged with regulated towing business on this matter as part of the consultation on the Bill. In response, the industry raised a number of issues for consideration.

Importantly, it was highlighted that setting an inadequate cap that does not cover industry costs may impact the willingness of some companies to deliver towing services. Conversely, setting the cap too high, could adversely impact motorists who aren't able to make meaningful cost comparisons at the time of a crash.

Due to the potential implications of setting a maximum storage charge, it was determined that the new legislative framework would not adopt a cap. Industry can therefore continue to charge reasonable fees for vehicle storage.

This decision was communicated to the towing industry in July 2022.¹¹⁵

Mr Mark Ready submitted at a public hearing about inconsistencies in the annual increase in per kilometre charges for regulated towing:

Currently, you have the maximum tow fee for a car at the scene of an accident. The pricing mechanism to increase that fee on a yearly basis was linked to the CPI. In the last two years something strange has happened at the department of transport because that no longer takes place. They have moved the tow fee into a section for government fees and offences, which it is not; it is a commercial fee rate that we charge for a service at the scene of an accident. It was originally set I think in 1999, with all of industry agreeing with the government to put that in place. Somehow that mechanism has changed without consultation with the industry.

Instead of being increased by CPI increases, they have gone back to the government charge fees. For example, this year the CPI rate would be around 6.8 per cent and we received an increase of 3.4 per cent, although fuel has gone up 200 per cent so it does not equate. Further to that, the actual rate that they base it on is now the 2021 rate—the first day—and not last year's rate, so there is something strange that has gone on there.¹¹⁶

¹¹⁴ Department of Transport and Main Roads, correspondence, 7 August 2023, p 11.

¹¹⁵ Department of Transport and Main Roads, correspondence, 7 August 2023, p 20.

¹¹⁶ Public hearing transcript, Brisbane, 21 July 2023, p 15.

Regarding the per kilometre rate payable for regulated towing, the Department advised:

The current fee for each kilometre over 50km is \$7.60 per km. This fee increases annually in line with all government fees. TMR has no plans to increase this fee outside of the annual cycle.¹¹⁷

Committee comment

We note concerns from industry that fees payable for various regulated towing activities might not be sufficient to meet increasing operational costs such as fuel prices. We reiterate our earlier comment urging the department to engage early and comprehensively with the industry about implementation of the Act. We note Recommendation 4 of this report in that regard.

2.6 Transitional provisions for regulated areas

Clause 157 of the Bill sets out the transitional provisions for regulated areas.¹¹⁸

Regulated area is defined as an area prescribed by regulation with the existing regulated areas currently set out in schedule 4 of the Regulation.¹¹⁹ The Bill maintains the same regulated areas as those prescribed by the 1973 Act.¹²⁰

Clayton's Towing Service and a confidential submitter each commented on Clause 157, noting their concerns about its potential impact on unregulated rural operators.¹²¹ Clayton's Towing Service stated:

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.¹²²

A confidential submitter added:

Our membership want to convey that we feel regulated areas should remain as they currently are. Expansion of these areas would lead to smaller, unlicensed operators, currently operating in these unregulated areas not having the volume of work to justify following the strict requirements to be a regulated operator. This would lead to extra costs to the motoring public for operators to travel further to provide help.¹²³

¹¹⁷ Department of Transport and Main Roads, correspondence, 7 August 2023, p 11.

¹¹⁸ Tow Truck Bill 2023, pp 104-105.

¹¹⁹ Explanatory Note, p 17.

¹²⁰ Explanatory Note, p 3.

¹²¹ Submission 6, p 3 and Submission 7, p 2.

¹²² Submission 6, p 3.

¹²³ Submission 7, p 2.

In response, the department stated:

TMR has examined the appropriateness of the current regulated areas as part of the legislative review process. It has been determined that no changes will be made to existing regulated areas at this time. This decision was communicated to the towing industry in July 2022.¹²⁴

2.7 Industry consultation

The committee was advised by several tow truck companies in their submissions and at the public hearing that they only became aware of the Bill as a result of the committee inquiry process and that they did not believe that adequate time had been provided for them to properly consider and respond to the Bill. Many submitters commented that they had been given limited time to review and comment.¹²⁵

TMR advised that it had undertaken extensive consultation with the towing industry in the development of the new legislation since 2019. This included public consultation in the form of a discussion paper, an industry forum, and direct engagement with individual operators. TMR submitted that the timeframe for public consideration of the Bill itself was however a matter for the Legislative Assembly and the Committee.¹²⁶

Included below are the relevant dates which applied to the timeline for the committee's inquiry:

Date	Inquiry activity
Tuesday 13 June 2023	Inquiry referred to the committee
Monday 19 June 2023	Call for submissions published on Inquiry webpage and via email to committee subscriber list
Friday, 7 July 2023	Original close of submissions date
Monday 11 July 2023	Public briefing by TMR
Friday, 21 July 2023	Public hearing
Friday, 28 July 2023	Extended close of submissions date

TMR advises that consultation with the tow truck industry was undertaken on the following dates and in the following ways:

- 30 September 2019 – Letter/email to licensed operators, accredited tow truck drivers and assistants, heavy vehicle industry representatives, local government, insurance providers and those who previously made submissions to the independent investigation on private property towing inviting them to read the upcoming “Your say on Queensland’s tow truck scheme” discussion paper and complete an online survey.
- 25 October 2019 - Tow Truck Industry Forum (all licensed operators state-wide were invited to attend)
- 28 October 2019 – “Your say on Queensland’s tow truck scheme” Discussion Paper and online survey released on Queensland Government "Get Involved" website
- 28 October 2019 – Email to licensed operators, accredited tow truck drivers and assistants, heavy vehicle industry representatives, local government, insurance providers and those who

¹²⁴ Department of Transport and Main Roads, correspondence, 7 August 2023, p 18.

¹²⁵ Submission 5, p 1, Submission 6, p 1, Submission 8, p 1, Submission 9, p 1, Submission 10, p 1, Submission 11, p 1, Submission 12, Submission 13, p 1, Submission 15, p 1, Public hearing transcript, Brisbane, 21 July 2023, pp 7 and 10.

¹²⁶ Department of Transport and Main Roads, correspondence, 7 August 2023, p 11.

previously made submissions to the independent investigation on private property towing notifying discussion paper and online survey were live

- 28 October 2019 – Email to licensed operators with copy of the 25 October forum presentation
- 4 November 2019 – Met with RACQ to discuss discussion paper policy proposals
- 4 November 2019 – Met with RACQ to discuss discussion paper policy proposals
- 6 November 2019 – Heavy Vehicle Industry Forum – all licensed operators providing heavy vehicle towing services were invited to attend
- 13 November 2019 – Email reminder to read discussion paper and complete online survey
- November 2019 – Met with National Transport Insurance on heavy vehicle towing issues
- 6 January 2020 – Met with Queensland Police Service on towing matters
- 28 July 2020 – Progress email to licensed operators, accredited tow truck drivers and assistants, heavy vehicle industry representatives, local government, insurance providers and those who previously made submissions to the independent investigation on private property - Delays to planned implementation of legislative reforms
- January 2021 – Met with Queensland Trucking Association to discuss heavy vehicle towing
- Specific email consultation with tow truck licensed operators:
 - 3 November 2021 – email consultation around holding yard storage fees
 - 31 May 2022 – email consultation around length of storage periods for crashed vehicles
- 27 June 2022 – Post Implementation Report released
- 1 July 2022 – Met with Clayton's Towing to discuss the Post Implementation Review
- 12 July 2022 – Email to licensed operators seeking feedback on proposed policy changes
- 24 October 2022 – Email seeking feedback on proposed viewing charges
- 17 March 2023 – Email to heavy vehicle licensed operators seeking feedback on class 4 tow truck exemptions
- 10 May 2023 – Email to licensed operators seeking feedback on proposed offences where penalties apply.¹²⁷

However, it appears that the department did not circulate a draft bill to the industry or otherwise give notice to the industry prior to the tabling of the Bill. At a public hearing, the committee heard from various industry representatives regarding their concern at the consultation process undertaken by TMR:

Ms Clayton: Many years ago there was a forum that was quite generalised in terms of getting industry together and it was quite broad. I think there might be further discussions by other companies today about when there has been legislation pushed through in the industry without consultation with the industry. Certain topics we have been contacted about, via email, to give opinions on. In terms of the consultation before today, I would say it was quite limited. As I said, it was only parliament that gave us notice of this bill so we have spent the week trying to go through the bill and see how it impacts our business. We find we need more time and more consultation.

...

¹²⁷ Department of Transport and Main Roads, correspondence, 7 August 2023, pp 12-13.

I would say that overall we have not been overly satisfied to date and would like it to be better. Part of that is consulting with the key industry players, which you are doing today so thank you for that.

Mr WATTS: Just to clarify so that I am absolutely clear: you are saying that the department, in preparing this bill, has not spoken to senior industry stakeholders that you are aware of?

Ms Clayton: We cannot speak for others, but we have not been contacted about the particulars of this bill. There might have been emails years ago or that general forum but nothing in particular to this bill. We received an email on Monday from TMR in regards to this bill, notifying us that it was put into parliament, but we found out on Friday afternoon through a parliamentary email about the bill.

Mr WATTS: So no round tables, meetings of industry groups or anything like that that you are aware of?

Ms Clayton: No. I attended a forum, I would say, in probably 2019 or 2018. That was a general forum.

Mr Taylor: To add to that, we are part of association and industry bodies, QTA to name one.

Ms Clayton: I am a director on the Queensland Trucking Association Board and I was not aware of the bill until Friday.¹²⁸

...

CHAIR: As part of our process, we will write a report back to the parliament before the bill gets passed and the minister will take into account our report and the findings in our report. The information you are giving us is valuable. Is there a consultative process where you would feed to the industry body that would then feed to TMR? As you said, you are mostly here today. Do you meet regularly with an industry body as a group?

Mr Morris: To be honest, not really. As I think Barnes mentioned, we have had consultations briefly in the past with a couple of forums four or five years ago, and I would say it has not been ideal. We do have opportunities to discuss with TMR certain issues that come up from time to time, but realistically I think today is all about honing in on the fact that we need to be consulted. Some of the changes that are throughout this bill have real consequences and will affect the viability of people's businesses. I cannot reiterate enough how much you guys need to take into account the things that can change and then come back to us again and continue to consult with us.

...

Mr Clayton: The Queensland Trucking Association has some involvement but there is probably not one central point as such. The associations I am involved in have multiple smaller operators in them, but there is not one central point. Perhaps that is something that will come from this. We are all sitting here talking about this, and maybe something we could take from here is that point of there being one key spokesman.¹²⁹

The Department additionally advised the committee in respect of submitter views of the need for a more central or additional towing association that it would 'welcome the formation of a consolidated towing association that represents the views of all tow truck operators, regardless of size.'¹³⁰

¹²⁸ Public hearing transcript, Brisbane, 21 July 2023, pp 7-8.

¹²⁹ Public hearing transcript, Brisbane, 21 July 2023, p 10.

¹³⁰ Department of Transport and Main Roads, correspondence, 7 August 2023, p 17.

Committee comment

The committee notes that the Queensland tow truck industry does not have an organised peak body or advocacy group to represent their specific interests. The committee believes that the establishment of such a group by the industry would significantly contribute to improved communications between the department and tow truck operators.

The committee was surprised to hear from numerous tow truck operators who stated they had been unaware of the Bill being tabled and had not seen a copy of the Bill (or any draft version) until contacted by the committee secretariat regarding potential participation in this inquiry. This is suggestive of a TMR consultation process which either involved too few industry representatives or was unsuccessful in engaging all interested industry stakeholders.

For the committee's part, its secretariat contacted (by email, phone and in some cases by post) 126 tow truck companies to notify them of this inquiry upon its receipt of the House's Bill referral.

We have noted at various junctures of this report the critical role that the Regulation will have in the implementation of this new Act. The committee encourages the department to facilitate improved communications with tow truck operators from this point forward about issues such as the Bill, its implementation process, and development of the impending Regulation.

Recommendation 4

The Minister convene a working group of all interested tow truck industry stakeholders (consisting at a minimum of all industry representatives who made written or oral submissions to this inquiry) in order to support the establishment of an industry peak body with whom government can consult about the implementation of the new Act including development of the revised Regulation.

Appendix A – Submitters

Sub #	Submitter
01	Mansell Heavy Towing
02	Harvey's Towing Service
03	Knight's Heavy Towing
04	Ready Towing
05	Caboolture City Towing
06	Clayton's Towing Service
07	Name withheld
08	Border Towing
09	Name withheld
10	Confidential
11	Barnes Auto Co.
12	Confidential
13	Bryce Steer
14	RACQ
15	David Barnbaum
16	Moreton Bay Regional Towing Association
17	Confidential

Appendix B – Officials at public departmental briefing – 11 July 2023

Department of Transport and Main Roads

- Nick Shaw, A/Deputy Director-General, Customer Services, Safety and Regulation
- Melissa Cummins, A/Executive Director, Legislation, Standards and Accreditation,
- Nadine Dumont, Director (Industry Accreditation Policy).

Appendix C – Witnesses at public hearing – 21 July 2023

Harvey's Towing Service

- Bridie Gray, Assistant General Manager
- Ashlee Foai, ICT Manager
- Scott Andriske, Facilities and Special Projects Coordinator

Barnes Auto Co.

- Matthew Taylor General Manager, Barnes Auto Co.
- Samantha Clayton, Director, Barnes Auto Co.

Clayton's Towing Service

- Mike Clayton, CEO, Claytons Towing Service
- Troy Morris, General Manager, Claytons Towing Service

Ready Towing

- Mark Ready, Managing Director, Ready Towing

Appendix D – Abbreviations and acronyms

Abbreviation	Definition
committee	Transport and Resources Committee
TMR	Department of Transport and Main Roads
GIR	Government Index Rate
HR Act	<i>Human Rights Act 2019</i>
the Independent Investigation	Independent Investigation into the Towing Industry: Removal of Vehicles from Private Property
QCAT	Queensland Civil and Administrative Tribunal
QTA	Queensland Trucking Association
RACQ	Royal Automobile Club of Queensland
the 1973 Act	<i>Tow Truck Act 1973</i>

TRANSPORT AND RESOURCES COMMITTEE

TOW TRUCK BILL 2023

STATEMENT OF RESERVATION

OPPOSITION COMMITTEE MEMBERS

The Opposition members on the Transport and Resources Committee broadly supports the intent of Tow Truck Bill 2023.

However, the Opposition does have some concerns with elements of the bill.

This Bill implements measures that have supposedly been raised in reviews undertaken in 2018 and 2019. Yet there is a sense that this legislation is being rushed. There is concern within the industry that the accompanying proposed regulations are yet to be shared.

Tow Truck Operators have raised concerns about inconsistencies with the way the department currently determines if a tow truck operator is an 'appropriate person'. The lack of clearly defined criteria is a barrier for entry in the industry at a time when there are workforce shortages. There have also been concerns raised about a lack of procedural fairness when suspending or cancelling a person's licence.

Also, the Bill imposes penalties for damage to vehicles being towed is of concern to operators, who believe that civil liability is preferable. There are concerns that the risk of penalties will lead to operators being excessively risk adverse, especially considering they already pay insurance and are responsible for damage they cause without this additional penalty. This may result in longer times to clear accident sites and additional delays for other road users.

There is concern that this legislation has been proposed without proper consultation with the tow truck industry, particularly the smaller operators.



Lachlan Millar MP
Member for Gregory
Deputy Chair

Bryson Head MP
Member for Callide

Trevor Watts MP
Member for Toowoomba North