

Independent Investigation into the Towing Industry:

Removal of Vehicles from Private Property

Report August 2017

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***Disclaimer:** The information contained in this report, particularly in relation to the legal basis for removing vehicles from private property, is intended to provide general context for the purpose of the investigation only. It does not constitute legal advice and should not be relied upon as such. Persons should seek their own independent legal advice in relation to their particular circumstances.*

Chairperson's foreword

I am pleased to present this report for the Independent Investigation into the Towing Industry: Removal of Vehicles from Private Property. The report includes an examination of private property towing practices and the regulation of the towing industry, and the investigation's conclusions and recommendations in accordance with its terms of reference.

The investigation into private property towing was commissioned by the Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply, the Honourable Mark Bailey MP, on 15 May 2017, and the investigation team commenced work the next day.

The investigation was assisted by a range of stakeholders including towing operators, private property occupiers, motorists, and government and non-government bodies and organisations. Valuable information was received via the Department of Transport and Main Roads' tow truck hotline, written submissions and interviews. The responsiveness of the towing industry is particularly noted; contributions were received by those involved in private property towing, those who have previously been involved, and those who have not provided private property towing but who offered their views of the practices being investigated.

A range of issues was brought to the investigation's attention, and identified by the investigation team through research and consideration of a range of sources. These issues included the limited parking in inner city regions, poor signage, predatory towing practices, unauthorised parking damaging occupiers' businesses, excessive towing and storage fees, intimidation and aggressive conduct of towing operators, and anxiety and distress suffered by motorists.

From the outset, the investigation was cognisant of the need to balance the rights of private property occupiers, towing operators and motorists, and the recommendations outlined in this report aim to address the issues raised in a manner that is fair and balances the rights of all parties.

It is noted the hotspots, where the majority of reported incidents of private property towing occurred, are in inner city regions where restaurant, retail and entertainment precincts are concentrated but where parking spaces are often limited. The growth of high density living will likely add to the problems of limited parking. As demand for already limited parking will increase in the foreseeable future, it is imperative for government to act on the issues regarding private property towing.

The investigation urges government to consider the recommendations outlined in this report, and to quickly enact proposed changes. The recommendations are not complex, and will go some way to address the concerns in relation to private property towing. To assist government progress recommendations involving changes to the tow truck regulatory framework, should they be accepted, the investigation has prepared an overview of suggested legislative changes.

I would like to thank all stakeholders and community members who contributed to the investigation; their contributions have been invaluable.

It is also appropriate to thank the team who have assisted in this investigation. Their commitment to the task has been outstanding.

A handwritten signature in black ink, appearing to read 'Michael Forde', written in a cursive style.

Michael Forde
Chairperson
Towing Industry Investigation

Recommendations

Recommendation 1 32

Include private property towing in the tow truck regulatory framework, requiring private property towing to be performed in regulated areas by accredited drivers and assistants using licensed tow trucks.

Recommendation 2 32

Increase the penalties for operating an unlicensed tow truck, or operating or being employed in connection with the use of a tow truck without a driver or assistant accreditation, to ensure penalties are a deterrent to noncompliance.

Recommendation 3 32

Require tow truck licensees performing private property towing to have an *occupier's approval to remove* evidencing an arrangement between the occupier and licensee for the removal of a vehicle, and a copy of the approval to be given to a motorist whose vehicle is removed, if requested.

Introduce penalties for removing a vehicle without an *occupier's approval to remove* and for failing to provide a copy of the approval to a motorist when requested.

Recommendation 4 32

Require tow truck licensees to notify the Queensland Police Service as soon as practicable after removing a vehicle from private property.

Introduce a penalty for failing to notify the Queensland Police Service about the removal of a vehicle as soon as practicable.

Recommendation 5 32

Impose conduct requirements on tow truck licensees, drivers and assistants for private property towing including:

- ▶ prohibiting intimidating, harassing, abusing, insulting, injuring or threatening to injure anyone
- ▶ prohibiting damaging or threatening to damage any property
- ▶ requiring reasonable steps be taken to locate the motorist before loading a vehicle onto a tow truck and, if the motorist is located, prohibiting loading the vehicle unless the motorist is unable or unwilling to immediately move the vehicle, and
- ▶ if a motorist returns while a vehicle is being loaded but before it is completely loaded, prohibiting the continued loading of the vehicle and requiring the release of the vehicle unless the motorist is unable or unwilling to then immediately move the vehicle.

Introduce a penalty for failing to comply with the conduct requirements for private property towing.

Recommendation 6 36

Set a maximum fee of \$250 for a standard private property tow.

Introduce a penalty for charging more than the maximum fee for a standard private property tow.

- Recommendation 7** **36**
 Set a maximum fee of \$150 for the onsite release of a vehicle loaded onto a tow truck but not removed from the private property.
 Introduce a penalty for charging more than the maximum fee for an onsite release.
- Recommendation 8** **36**
 Prohibit a vehicle being removed from private property if the onsite release fee has been paid or tendered.
 Introduce a penalty for removing a vehicle after the onsite release fee has been paid or tendered.
- Recommendation 9** **37**
 Prohibit a call-out fee being charged for a tow truck driver attending private property to perform a private property tow where the motorist is located or returns before the vehicle is loaded onto the tow truck.
- Recommendation 10** **37**
 Provide that the vehicle owner is liable for fees payable in relation to the removal of a vehicle from private property, and the vehicle must be returned to its owner or their agent after payment of fees.
- Recommendation 11** **39**
 Set a maximum fee of \$25 per day for storing a vehicle that has been removed from private property.
 Introduce a penalty for charging more than the maximum fee for storing a vehicle removed from private property.
- Recommendation 12** **39**
 Prohibit charging separate fees for incidental activities associated with private property towing such as administration fees, or fees for making an inventory of personal belongings.
 Introduce a penalty for charging separate fees for incidental activities.
- Recommendation 13** **41**
 Require that a vehicle removed from private property may only be taken, by the most direct route, to the nearest holding yard of the tow truck licensee.
- Recommendation 14** **42**
 Prohibit a tow truck licensee, driver or assistant from disclosing information about the removal of a vehicle from private property except as permitted under the *Tow Truck Regulation 2009*.
- Recommendation 15** **43**
 Ensure personal information about a vehicle's owner, driver or other party connected to a regulated towing service may only be disclosed by a tow truck licensee, driver or assistant as permitted under the *Tow Truck Regulation 2009*.

- Recommendation 16** **43**
Prevent a person associated with a towing operator who is given information in accordance with the *Tow Truck Regulation 2009*, from disclosing that information to anyone except as permitted under the *Tow Truck Regulation 2009*.
- Recommendation 17** **45**
Develop guidelines outlining minimum signage standards to promote visible, clear, comprehensive and consistent signs. The guidelines should include information regarding sign size, positioning and illumination, content and design such as colours, and text style to enhance readability.
- Recommendation 18** **52**
Establish a central unit within the Department of Transport and Main Roads that is accountable for oversight of compliance activities.
Develop new policies and procedures to support a more rigorous approach to administering, monitoring and enforcing the tow truck regulatory framework.
- Recommendation 19** **52**
Publish information about complaint management and enforcement on the Department of Transport and Main Roads' website every six months, including:
- ▶ number of complaints received and the outcome for each complaint (outcomes should be by category to maintain the privacy of the complainant and respondent)
 - ▶ number of infringement notices issued and matters dealt with by a court, and
 - ▶ number of audits conducted and the outcome.
- Recommendation 20** **53**
Provide focussed training to Department of Transport and Main Roads and Queensland Police Service officers involved in the administration, monitoring and enforcement of the tow truck regulatory framework to ensure appropriate levels of knowledge and understanding.
- Recommendation 21** **54**
Improve awareness of rights and obligations about private property parking and towing by:
- ▶ running an education and awareness campaign
 - ▶ publishing information on the Department of Transport and Main Roads' or other suitable government website, and
 - ▶ incorporating information into Department of Transport and Main Roads' publications such as *Your Keys to Driving in Queensland* and programs aimed at education for motorists and industry.
- Recommendation 22** **54**
Develop information for motorists, occupiers and towing operators regarding any changes to the tow truck regulatory framework as a result of the investigation.

Matters for further consideration

Matter for consideration 1 **56**

Review the *Tow Truck Act 1973* and *Tow Truck Regulation 2009* to ensure the regulatory framework is simple, precise, accessible and appropriately targeted to achieve the policy objectives.

Matter for consideration 2 **57**

Review the towing services covered by the *Tow Truck Act 1973* and *Tow Truck Regulation 2009* to ensure the regulatory framework is appropriately targeted to achieve the policy objectives.

Matter for consideration 3 **58**

Review the geographic areas covered by the *Tow Truck Act 1973* and *Tow Truck Regulation 2009* to ensure the regulatory framework is simple, precise and accessible and coverage is appropriately targeted to achieve the policy objectives.

Matter for consideration 4 **59**

Consider whether tow truck licences and accreditations should be issued for longer than one year to balance the need for regulation of the towing industry with the burden regulation imposes on government and industry.

Matter for consideration 5 **59**

Consider extending the restrictive two-week period for renewing a tow truck licence or accreditation to increase flexibility and ensure adequate time for applications to be lodged and assessed prior to the licence or accreditation expiring.

Matter for consideration 6 **60**

Review all offences under the *Tow Truck Act 1973* and *Tow Truck Regulation 2009* to ensure penalties appropriately reflect the seriousness of the offence with reference to other offences within tow truck legislation and in comparison to similar offences within transport legislation.

Matter for consideration 7 **60**

Consider increasing the maximum penalty that may be imposed under the *Tow Truck Regulation 2009* to ensure compliance with legislative principles and the imposition of sufficiently serious penalties to deter noncompliance.

Matter for consideration 8 **61**

Consider the purpose of criminal history checks for applicants and holders of tow truck licences and accreditations and, if necessary, amend the *Tow Truck Act 1973* and *Tow Truck Regulation 2009* to ensure the suitability requirements clearly achieve the intended objectives.

Glossary and abbreviations

Glossary

Australian Consumer Law¹

National law for fair trading and consumer protection, including laws about consumer rights, product safety, unfair contract terms and redress options.

Authorised officer

A police officer or other person appointed by the Department of Transport and Main Roads under the *Transport Operations (Road Use Management) Act 1995*.

Breakdown towing

Removing broken down vehicles from roads.

Common law

Law made by the courts through decisions made when hearing cases. The decisions guide the courts so when similar cases arise the law is applied in the same way.

Compliance towing

Removing vehicles illegally parked on roads, such as in designated clearways or no standing areas, or impounded under the 'anti-hooning laws'.²

Contract

An agreement that is intended to be legally enforceable.

Controlled area

An area of private property for which the occupier has entered into an arrangement with the local government for them to regulate, monitor and enforce parking, and which is identified as an off-street regulated parking area in local law.³

Controlled area towing

Removing vehicles seized by police officers from a controlled area.

Conversion

The intentional interference with goods belonging to another in a manner inconsistent with that person's rights.

Crash towing

Removing damaged vehicles from crash scenes, including scene clean up and vehicle storage.

Damage

In the context of the common law, damage is injury, loss or harm. It may be tangible, such as the destruction of property or economic loss, or intangible such as injury to reputation.

Damages

The means by which the court orders payment of compensation to a person for a civil wrong.

Detinue

The wrongful detention of goods belonging to another after a proper demand for their return has been made.

Disqualifying offence

An offence under the *Criminal Code Act 1899*, or an offence committed in another jurisdiction that corresponds to an offence under the *Criminal Code Act 1899*.

Distress damage feasant

A self-help remedy entitling an occupier to seize and detain goods wrongfully on their land and causing damage, until compensation for the damage is paid.

Ejecting

A self-help remedy entitling an occupier to remove goods wrongfully on their land by moving them to a suitable private property or public place.

Estoppel

A legal principle stopping a person taking a position inconsistent with their earlier position or conduct.

Genuine pre-estimate of damage

In the context of private property towing, the cost of work undertaken by a towing operator such as the cost of going to the site, loading the vehicle, towing it to a holding yard, unloading and storing it, and an appropriate mark-up for other fixed costs.

Holding yard

A place for the storage of towed vehicles. Holding yards under the tow truck regulatory framework must comply with legislative requirements.

Indictable offences

Offences considered more serious than summary offences; they are prosecuted by way of an indictment and are generally heard and determined in the District Court or Supreme Court.

Nominal damages

A token monetary payment awarded to indicate a tort was committed and a person's legal rights infringed, even though no injury, loss or harm was caused.

Occupier

A person who has a legally enforceable right to possess or control a premises or land; it is not necessary they actually be in occupation. For leased premises the tenant is the occupier.

Onsite release

The release of a vehicle that has been completely loaded onto a tow truck prior to it being removed from private property.

Penalty

In the context of a contract, a penalty is a requirement to pay an amount that is not a genuine pre-estimate of damage and is out of all proportion to the damage caused.

Penalty unit

A set amount of money used to calculate a financial penalty for an offence - currently \$126.15. Financial penalties are calculated by multiplying the value of a penalty unit by the number of penalty units assigned to an offence.

Private property

In the context of this report, private property is publicly accessible private roads or land in the control of an occupier, but does not include roads or land controlled by a local government or the State.

Private property towing

Removing vehicles parked on private property where the vehicles may be trespassing or parked in contravention of the conditions for parking.

Regulated area

The geographic areas the tow truck regulatory framework applies to.⁴

Road

Road in the context of this report means a road as defined in the *Transport Operations (Road Use Management) Act 1995*, which includes an area open to or used by the public and is developed for or has as one of its uses the driving of motor vehicles, and an area dedicated to public use as a road, but does not include an area declared under a regulation not to be a road.

Storage

Holding a vehicle at a holding yard until it is recovered by the vehicle's owner or their agent.

Summary offences

Offences considered less serious than indictable offences; they may be heard and determined by a Magistrate rather than a judge and jury.

Tort

A civil wrong for which the wronged party may seek compensation from the wrongdoer. Torts include trespass, nuisance, negligence and defamation.

Tow truck regulatory framework

The TT Act and TT Regulation comprise the tow truck regulatory framework in Queensland.

Towing authority

An approved form completed and signed by the vehicle's owner or their agent, or an authorised officer, approving the towing of a vehicle from a crash scene or controlled area.

Towing operator

A person who operates a towing business providing one or more towing services; they may drive the tow truck or employ a driver.

Trade towing

Moving vehicles under prearranged private or commercial agreements, such as moving vehicles to mechanics or insurers, or delivering vehicles to dealerships for sale.

Trespass to goods

The direct and intentional or negligent interference with goods belonging to another person.

Trespass to land

The direct and intentional or negligent entry onto another's land without permission, or remaining on another's land after permission to be there has been revoked.

Unregulated areas

The geographic areas the tow truck regulatory framework does not apply to.

Abbreviations

BCCM Act	<i>Body Corporate and Community Management Act 1997 (Qld)</i>
CCTV	Closed Circuit Television
CLRO Act	<i>Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld)</i>
CPI	Consumer Price Index
Criminal Code	<i>Criminal Code Act 1899 (Qld)</i>
DTMR	Department of Transport and Main Roads
GST	Goods and Services Tax
the investigation	Independent Investigation into the Towing Industry
LG Act	<i>Local Government Act 1993 (Qld)</i>
PPR Act	<i>Police Powers and Responsibilities Act 2000 (Qld)</i>
Privacy Act	<i>Privacy Act 1998 (Cth)</i>
QPS	Queensland Police Service
RACQ	Royal Automobile Club of Queensland
SO Act	<i>Summary Offences Act 2005 (Qld)</i>
SPE Regulation	<i>State Penalty Enforcement Regulation 2014 (Qld)</i>
TOPT Act	<i>Transport Operations (Passenger Transport) Act 1994 (Qld)</i>
TORUM Act	<i>Transport Operations (Road Use Management) Act 1995 (Qld)</i>
TT Act	<i>Tow Truck Act 1973 (Qld)</i>
TT Regulation	<i>Tow Truck Regulation 2009 (Qld)</i>

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1 About the investigation

This chapter provides an introduction to the towing industry investigation, including the purpose and context for the investigation, and the methodology used to conduct the investigation into the removal of vehicles from private property.

1.1 Purpose of the investigation

The independent investigation into the tow truck and vehicle removal industry was commissioned by the Queensland Government in response to rising public concerns about the towing of vehicles from private property. Former District Court Judge, Mr Michael Forde was appointed to conduct the investigation and provide a written report to the Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply.

The terms of reference required the investigation to examine and make recommendations regarding the removal of vehicles from private property, noting:

It is important that a balance be struck between what is fair and reasonable from a community perspective and a property owner's right to remove vehicles parked without permission on their property or against signed parking conditions.⁵

Specifically, the terms of reference require the investigation to provide advice regarding:

- ▶ whether there is a need for legal clarification of the circumstances where a vehicle parked on private property may be legally towed and if there are other mechanisms for regulating the practice beyond existing transport regulations
- ▶ whether minimum signage standards should be established for private parking
- ▶ whether fees for towing and storage should be regulated and in what manner
- ▶ whether the maximum distance a vehicle may be towed should be restricted
- ▶ whether consumer protections such as limiting 'spotting' practices are needed
- ▶ whether existing licensing and accreditation schemes could be expanded to cover the removal of vehicles from private property
- ▶ how privacy can be adequately protected when motorists interact with towing operators
- ▶ education and communication measures that could be implemented, and
- ▶ enforcement of any proposed regulatory reforms, including by which agencies.

The full terms of reference for the investigation are at [Appendix A](#).

It is important to note that while the investigation considered private property towing in the holistic context of the towing industry, it did not undertake a general review of the scope or operation of the TT Act and TT Regulation.

1.2 Context of the investigation

1.2.1 Parking frustrations

Queensland's transport system is dominated by private vehicles.⁶ Finding a place to park, particularly in inner city regions where parking spaces around popular restaurant, retail and entertainment precincts may be limited, can be a frustrating experience for motorists.

Limited parking availability can also be frustrating for occupiers located in high demand areas. Inconsiderate or ill-informed actions of motorists can result in occupiers being prevented from using, or being required to take measures to protect, parking spaces they have a right to use.

Parking frustrations experienced by both motorists and occupiers will likely intensify with the growing trend towards greater urbanisation and higher density living in inner city regions, and the increasing demand for parking in these areas.⁷

It is not surprising that the majority of grievances presented to the investigation relate to South East Queensland,⁸ and more specifically to the Brisbane and Gold Coast city regions. Areas where unauthorised parking and removal of vehicles occur include parking spaces associated with retail shops and convenience stores, medical centres, cafes and restaurants, fitness centres, and residential premises.

1.2.2 Public interest in private property towing

Public interest in the removal of vehicles from private property arises from a number of competing perspectives. The divergent views of community members, including motorists, occupiers and the towing industry, create a tension-laden environment and the potential for conflict.

Motorists

Vehicle ownership is deeply entrenched in the Australian culture, and plays an important role in people's lives whether for employment, recreation, general mobility or status.⁹ The removal or loss of a vehicle can consequently have significant impacts, and result in considerable distress for the vehicle's owner.

Many community members, particularly those affected by the removal of their vehicle, regard private property towing as unethical, opportunistic and disproportionate to the unauthorised parking transgression.

While there is no general right to park on private property, and many who park illegitimately acknowledge their fault, there is nonetheless a view that removing the vehicle is not warranted and is unfair. Concerns were also raised about emotional distress, and potential personal safety implications associated with the removal of vehicles.

Private property occupiers

Where there is a premium on available parking, some occupiers regard unauthorised parking as illegitimate, frustrating and detrimental to their operations and rightful use of parking spaces. They consider private property towing as necessary to protect their interests and enforce their rights.

As resolving unauthorised parking on private property is generally outside the jurisdiction of QPS or the relevant local government, pursuing the matter through civil action is the most likely avenue for aggrieved occupiers. However, pursuing legal action is generally not an attractive option, involving substantial time and cost, and doing little to resolve the immediate issue of an unauthorised vehicle. Consequently, private property towing is used as a self-help mechanism to resolve unauthorised parking.

Towing operators

There are diverging views among towing operators regarding private property towing practices. Towing operators commonly regard private property towing as a legitimate practice to address unauthorised parking and enforce occupiers' rights. However, the actions of some towing operators are viewed by other operators as detrimental to the industry's professional integrity. Information provided to the investigation suggests private property towing is open to abuse from opportunistic operators employing questionable business practices.

1.3 Process of the investigation

The methodology for the investigation included reviewing legislation and common law and judgments, considering submissions and calls to the DTMR tow truck hotline, meeting with identified stakeholders, and reviewing other materials such as media, documents, reports and correspondence.

Review of legislation

The investigation reviewed a wide range of Queensland legislation including the TT Act, TT Regulation, TORUM Act, Criminal Code, SO Act, LG Act, CLRO Act, *Fair Trading Act 1989* (Qld), BCCM Act, and a range of legislation authorising the removal and detention of vehicles from specified areas such as universities.

Relevant Commonwealth and Australian state and territory legislation was also considered including the *Competition and Consumer Act 2010* (Cth), *Tow Truck Industry Act 1998* (NSW), *Tow Truck Industry Regulation 2008* (NSW), *Local Government Act 1993* (NSW), *Accident Towing Services Act 2007* (Vic), *Road Safety Act 1986* (Vic), *Motor Vehicles Act 1959* (SA), *Motor Vehicles (Accident Towing Roster Scheme) Regulation 2015* (SA), *Road Traffic (Tow Truck) Regulations 1975* (WA) and *Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulation* (NT).

Common law and judgments

A range of Australian and overseas common law, and court and tribunal judgments was examined in conducting the investigation. The common law and judgments assisted the investigation in understanding the legal complexities involved in the removal of vehicles from private property and are examined in chapter 3.

Submissions

Submissions were invited from all interested parties via the towing industry investigation webpage. Identified stakeholders were also written to, inviting submissions about the investigation's terms of reference.

The investigation received 41 written submissions from a range of stakeholders including towing operators, occupiers, motorists with experience having their vehicle towed, consumer and industry representative bodies, and legal organisations.

The majority of submissions addressed the investigation's terms of reference, or provided information regarding submitters' experiences or concerns with the removal of vehicles from private property. The submissions provided valuable information, assisting the investigation in its examination of the issues.

Tow truck hotline

The investigation considered records of calls made to the DTMR tow truck hotline. Details of the experiences, concerns and suggestions of 368 people about the removal of vehicles from private property were documented from 8 May to 21 July 2017. Records of calls from an additional 53 people concerned issues outside the scope of the investigation.

The hotline assisted the investigation in understanding the practical experiences of motorists, occupiers and towing operators, and facilitated the identification of 'hotspots' where the removal of vehicles from private property is reported to be most prevalent. The majority of grievances about the removal of vehicles from private property related to the Brisbane inner city region and the Gold Coast. Map of the suburbs where reported vehicle removals commonly occurred is at [Appendix B](#).

Meetings

Meetings were held with a range of identified stakeholders from state government agencies, local governments, towing operators, occupiers and representative organisations to inform the investigation.

Other

The investigation also reviewed relevant media and public commentary, and considered a range of documents, reports, correspondence and phone calls, identified, received or made during the investigation.

2 The towing industry

This chapter provides information about the towing industry including the range of services provided, the size and structure of the industry, and the regulatory framework.

2.1 Towing industry services

The Queensland towing industry plays an important role in the state's road transport system, contributing to the safe and efficient operation of the road network. The industry provides a range of towing services influencing road users and other parties' experiences of the road network.

Towing services can be grouped into six main categories: crash towing, controlled area towing, compliance towing, private property towing, breakdown towing, and trade towing. Some of these services are regulated under the TT Act and TT Regulation.

2.1.1 Crash towing

Crash towing involves the removal of damaged vehicles from road crash scenes. The provision of this service is regulated; in regulated areas (see [Appendix C](#)) the service may only be provided by accredited drivers using licensed tow trucks, and the maximum fees for standard services are capped.

Crash towing is regulated due to the generally distressing circumstances in which the need for the service arises. Regulation is intended to ensure the safe and orderly clearing of the scene and provide some protection to motorists. While motorists may choose the towing operator, emotional or physical trauma and the need to quickly clear the scene may impede their ability to make rational and informed decisions. A police officer may also authorise the service, such as where the motorist is injured and unable to make the required arrangements.

DTMR advised it generally does not receive complaints about crash towing, however the investigation notes some concerns were raised in submissions and via the hotline.

2.1.2 Controlled area towing

Controlled area towing involves removing vehicles seized by police officers from controlled areas. The circumstances in which vehicles may be parked in controlled areas and the circumstances in which they may be seized and removed from the areas are regulated. This service may only be provided in regulated areas (see [Appendix C](#)) by accredited drivers using licensed tow trucks.

As this towing service is authorised by police officers, without motorists' knowledge, the removal of vehicles may cause motorists some distress. However, the regulation of the seizure and removal of vehicles from these areas, as well as the regulation of the towing service, minimise the potential vulnerability of motorists.

DTMR advised it generally does not receive complaints about controlled area towing.

2.1.3 Compliance towing

Compliance towing involves removing vehicles illegally parked on a road, such as in clearways or no standing areas, or impounded under the 'anti-hooning laws'.

Clearways and no standing areas are used to regulate on-road parking to minimise congestion and promote efficient traffic flow during peak periods. Local government officers and authorised officers authorise the removal of vehicles parked illegally on a road, however this towing service is not regulated.

As compliance towing for illegally parked vehicles is authorised in the absence of the motorist, the removal of the vehicle may cause distress. However, the regulation of parking on roads and the removal of vehicles only under the authority of local government officers or police officers minimise the potential for motorists to be exploited.

The removal of vehicles impounded under the 'anti-hooning laws' may also cause distress to motorists. However, this type of towing is unique in that it is a sanction imposed by police officers under the PPR Act as a consequence of motorists committing particular offences. The regulations governing this type of towing minimise the potential for exploitation of motorists.

DTMR advised it generally does not receive complaints about compliance towing, however the investigation notes some concerns were raised in submissions and via the hotline.

2.1.4 Private property towing

Private property towing involves the removal of vehicles parked on private property where the vehicles may be trespassing or parked in contravention of the conditions for parking. Vehicles may be removed under arrangements between an occupier and towing operator. As motorists do not authorise the vehicles' removal, the removal may cause distress and potentially make motorists vulnerable to exploitation.

DTMR advised that private property towing services are the subject of complaints, including the absence or inadequacy of signage, being stranded without a vehicle, the fees charged, the behaviour of the tow truck driver or business owner, privacy concerns, and the inconvenience of the location for recovering the vehicle.

2.1.5 Breakdown towing

Breakdown towing involves removing vehicles that have broken down on a road. This towing service is generally provided by companies offering roadside assistance, such as RACQ, as well as insurance companies and vehicle dealerships. However, the motorist may choose any towing operator to remove their vehicle.

Where the breakdown occurs on a motorway or in a tunnel, and the rapid removal of the vehicle is important for safety and traffic management, entities such as DTMR or toll road operators may intervene to quickly clear the vehicle from the road.

While motorists may experience some level of stress, depending particularly on the time and location of the breakdown, they have the ability to protect themselves from potential exploitation by planning for breakdowns such as through roadside assistance coverage, and by using a towing operator of their choice.

DTMR advised it generally does not receive complaints about breakdown towing.

2.1.6 Trade towing

Trade towing involves moving vehicles under prearranged private or commercial agreements. Vehicles may be moved for a range of reasons, including moving a vehicle to a mechanic for repairs, delivering a purchased vehicle to a buyer, moving a vehicle to an insurer for inspection, or delivering a vehicle to a dealership for sale.

As trade towing is prearranged, customers have the opportunity to choose a towing operator that best suits their price, location and service requirements. Businesses or individuals regularly using trade towing services may also be able to negotiate contracts with preferred towing operators.

Due to the generally planned nature of trade towing, customers are unlikely to be emotionally or physically distressed and there is less likely to be a level of urgency that could make customers vulnerable to exploitation.

DTMR advised it generally does not receive complaints about trade towing.

2.2 Size and structure of the towing industry

As at 31 May 2017, there were 116 tow truck licensees,¹⁰ 533 licensed tow trucks, 780 accredited tow truck drivers and 43 accredited tow truck assistants in Queensland.

However, there are more than 900 businesses¹¹ advertising towing services in Queensland,¹² suggesting the majority of towing operators provide services that are not regulated.

The majority of tow truck licensees are located in South East Queensland; 56 percent of licensees are in the greater Brisbane, Gold Coast and Sunshine Coast areas. Similarly, the majority, approximately 69 percent, of businesses advertising towing services are located in the greater Brisbane, Gold Coast and Sunshine Coast areas.¹³

2.3 Regulatory framework for the towing industry

The TT Act and TT Regulation, administered by DTMR, comprise the tow truck regulatory framework in Queensland. This regulatory framework applies only to the performance of crash towing or controlled area towing in regulated areas (see [Appendix C](#)). The framework does not regulate compliance towing, private property towing, breakdown towing or trade towing.

The regulatory framework includes a combination of tow truck licensing, driver and assistant accreditation, and fee regulation.

2.3.1 Tow truck licence

A person may only operate a tow truck, providing crash towing or controlled area towing in regulated areas if the truck is licensed and they hold the licence.¹⁴ Before granting a tow truck licence, DTMR must be satisfied the person is an appropriate person to hold a licence and the vehicles specified in the application and their equipment are suitable for use as tow trucks.¹⁵

In considering whether someone is an appropriate person to hold a licence DTMR must consider a range of factors including their criminal history, traffic history, capability to perform regulated towing activities, prior conduct while performing regulated towing activities, and whether they have had a tow truck licence or accreditation suspended or cancelled.¹⁶

Tow truck licensees must comply with a range of conditions such as offering towing services 24 hours a day seven days a week, having a holding yard as a place of safe storage, taking reasonable precautions to prevent loss or damage to vehicles, and keeping the required records (see 4.2 for further information).¹⁷

Licensed tow trucks must comply with specified design, construction, equipment and serviceability requirements and have a current certificate of inspection.¹⁸ Tow trucks must also display, on both sides, the name, business address and telephone number of the licence holder, the vehicle's classification and licence number.¹⁹

2.3.2 Driver and assistant accreditation

A person must hold a tow truck driver accreditation to operate a licensed tow truck providing crash towing or controlled area towing in regulated areas. Similarly, those employed in connection with the provision of these services must hold an assistant accreditation.²⁰ Before granting a driver or assistant accreditation, DTMR must be satisfied the person is an appropriate person to hold an accreditation, and may refuse to grant an accreditation if the person has been convicted of a disqualifying offence.²¹

In line with tow truck licences, DTMR must consider a range of factors in assessing whether someone is an appropriate person to hold a tow truck accreditation. These factors include their criminal history, traffic history, capability to perform regulated towing activities, prior conduct while performing regulated towing activities and whether they have had a tow truck licence or accreditation suspended or cancelled.²²

Tow truck drivers performing crash towing or controlled area towing must comply with legislated obligations, including not towing a vehicle unless a towing authority has been properly and fully completed, and towing the vehicle only to the address specified on the authority by the most direct route. Tow truck drivers and assistants must be neatly dressed.²³

2.3.3 Enforcement

Tow truck licensees, drivers or assistants may commit an offence if they fail to comply with the requirements of the TT Act or TT Regulation. A person who commits an offence may be issued an infringement notice, requiring them to pay a fine, or they may be required to appear in court.

Additionally, DTMR can take action to suspend or cancel a tow truck licence or accreditation for a range of reasons including that the holder failed to comply with a condition of their licence or accreditation, has been convicted of a relevant offence, or is no longer an appropriate person to hold the licence or accreditation (see 4.8 for further information).²⁴

2.3.4 Regulation of fees and charges

The maximum amount that may be charged for standard crash towing services in regulated areas has been prescribed in the TT Regulation since at least 1999.²⁵ A standard crash tow includes up to one hour working time at the scene preparing the vehicle for towing and cleaning up the site, moving the vehicle up to 50 kilometres to the location stated in the towing authority, and up to 72 hours storage in a holding yard.

The TT Regulation sets a maximum fee of \$348.95 for a standard tow, and an additional \$6.90 for each kilometre in excess of the 50 kilometres distance threshold.²⁶ These fees are indexed to increase annually in line with government indexation policy.

For crash towing services that are not standard, such as where additional time is required at the crash scene or more than 72 hours storage is required, and for controlled area towing, the licensee 'may only charge an amount that is reasonable in the circumstances'.²⁷ DTMR has the authority to investigate fees for regulated towing services.²⁸

The imposition of fees for viewing a stored vehicle during business hours, or for moving the vehicle from a position within the holding yard to the entrance is expressly prohibited.²⁹ Storage fees may only be imposed two days after notice is provided to the vehicle's owner or their agent.³⁰

3 Removing vehicles from private property - the law

This chapter examines the legal basis for removing vehicles from private property, reviewing the relevant common law and legislative framework for parking on private property and removing unauthorised vehicles. The chapter also examines the applicability of other laws including transport law, criminal and summary offence laws and consumer law.

3.1 Introduction

The rights of occupiers to control parking on their property, and the often competing rights of motorists to maintain possession of their vehicle, are central to the investigation into the removal of vehicles from private property. These rights are derived from the common law, and their application to protect occupiers and motorists' rights is complex and potentially confusing.

Occupiers have a right to the quiet possession and enjoyment of their land free from interference. This right will be infringed where unauthorised parking intrudes on their possession or enjoyment of the property. Two common law bases that may justify the removal of unauthorised vehicles from private property are trespass to land and contract. However, their application depends on the particular situation, including the circumstances of the vehicle entering onto the property, the presence of signs or barriers, any damage caused by the vehicle, and the conduct of the occupier and the motorist.

Under trespass, the entry of an unauthorised vehicle onto the property would likely entitle the occupier to pursue civil action through a court, but it would not always entitle them to remove the vehicle. A contract between the occupier and motorist, arising from the implied consent to the conditions of parking, may provide a basis for the occupier to remove an unauthorised vehicle.

Inherently in opposition to occupiers' rights, motorists have a right for their vehicle not to be interfered with or damaged. Where a vehicle is removed from private property and detained, the motorist may be able to pursue a civil action in trespass to goods, conversion or detainment. However, the occupier may contend they are legally justified in removing the vehicle on the basis of trespass to land or a contractual right.

The removal of vehicles from private property may also invoke other legislation including the TORUM Act, Criminal Code, SO Act and Australian Consumer Law.

It is relevant to note that in some locations legislation authorises local governments, universities and major sports facilities to remove and detain vehicles in specified circumstances.

3.2 Common law

3.2.1 Trespass to land

A person who intentionally or negligently enters onto land in another's possession without that person's consent, or other lawful authority, is trespassing.³¹ Mistakenly believing they are allowed to enter onto the property does not excuse the trespass.³² A motorist becomes a trespasser if they intentionally or negligently enter onto private property; it is immaterial whether they know they are parking on private property, the unauthorised entry creates a trespass.

A person whose entry was initially authorised may also become a trespasser if they exceed the conditions of the authorised entry in either purpose or duration.³³ A motorist who parks on property belonging to one business, with its permission to attend that business, becomes a trespasser if they leave the vehicle parked there while they go elsewhere, or leave the vehicle parked there for longer than was authorised even if they remain on the premises.

The motorist would have a defence to trespass if they have the occupier's permission to park there and they comply with any conditions of the parking area; their parking is authorised.³⁴

As trespass is an injury to possession, only the person with exclusive possession and control of the land has a right to take action against a trespasser.³⁵ If a trespassing vehicle is on property where parking spaces are individually controlled, the person who may take legal action is the person with control of the space where the vehicle is parked.

An occupier can take action against a trespasser whether or not they cause any damage.³⁶ However, the type of action they can take will differ depending on whether the trespasser caused any damage, and the nature of any damage caused.

If an occupier takes action they are not entitled to take, such as removing a vehicle parked in compliance with the conditions of parking, they may commit a tort or a criminal offence under Queensland law such as unlawfully possessing a vehicle.³⁷

Remedies for trespass to land

The occupier has a number of common law remedies available to deal with trespassers depending on the circumstances of the trespass including, seeking a court order for damages, or pursuing the self-help remedies of ejecting the vehicle or distress damage feasant. However, the law does not generally encourage self-help remedies and observations have been made that these remedies should be strictly limited.³⁸ Occupiers should also consider any legislative constraints to pursuing self-help remedies.

It would be prudent for occupiers considering pursuing self-help remedies to obtain independent legal advice.

Court ordered damages

An occupier may seek a court order for damages as compensation for the trespass. If the trespass results in the occupier suffering no damage, they would be entitled to nominal damages in recognition of the wrongful actions of the motorist. The occupier may also be entitled to a reasonable fee for the trespasser's use of their property, even if it was not otherwise being used.

If the trespass results in actual damage to the property, the occupier would be entitled to compensation to put them back in the position they would have been in without the damage being done.³⁹ If the trespass was wilful or reckless the court may also order aggravated or exemplary damages.⁴⁰

Ejecting the vehicle

An occupier may be entitled to remove goods trespassing on their land by moving them to a suitable private property or public place.⁴¹

Occupiers could potentially utilise this self-help remedy to remove a vehicle trespassing on their property by moving it a reasonable distance to other land in their possession or to a road or other public place; the vehicle cannot be moved onto someone else's property. The cost of moving the vehicle, as well as compensation for any damage caused by the trespassing vehicle, may be recovered from the motorist through a court order for damages.

The practicality of ejecting a vehicle as a means for occupiers to manage trespassing vehicles may be limited as it requires access to a place of safekeeping for the vehicle within inner city regions. Additionally, if the occupier suffers actual damage because of the trespassing vehicle, this self-help remedy does not permit the detention of the vehicle as security for compensation for the damage.⁴²

Distress damage feasant

Distress damage feasant is a self-help remedy entitling an occupier to seize and detain goods unlawfully on their land until they are compensated for damage caused by the goods.⁴³ Exercising this remedy has been cited as a legal basis for private property towing; the occupier removes and detains a vehicle trespassing on their property until the vehicle's owner pays the relevant compensation.⁴⁴

As damage is a critical element of distress damage feasant, for an occupier to have an entitlement to remove and detain a trespassing vehicle they must be able to demonstrate they have suffered actual damage. Damage will clearly be suffered where the trespasser causes physical damage to the property⁴⁵ such as hitting a fence, cutting a chain, or driving through a garden. Damage may also be suffered if the vehicle blocks access or restricts a delivery, or prevents the occupier, a customer or another authorised person from using the parking space.⁴⁶

However, where a trespasser parks in a commercial parking space when the business is not trading, it is unclear whether the presence of the vehicle results in damage. Authorities in overseas jurisdictions are divided as to whether the cost of removing and detaining the trespassing vehicle is actual damage justifying the remedy of distress damage feasant.⁴⁷

In a New Zealand case⁴⁸ the court found that the cost of removing an unlawfully parked vehicle amounted to actual damage, justifying distress damage feasant. However, the reasoning in a subsequent English case⁴⁹ indicates it would 'defy logic' to allow reliance on the cost of removing the vehicle alone to justify removing the vehicle. The court held 'the loss must already have occurred or be apprehended at the moment the remedy is put into operation'.⁵⁰

A recent QCAT decision preferred the reasoning in the English case stating 'in the absence of actual loss, why would the owner engage in the circuitous nonsense of contriving a fee merely for the purpose of detaining the vehicle to then reclaim the fee'.⁵¹

It should be noted that in Queensland distress damage feasant has been abolished in relation to detaining vehicles, such as by wheel clamping. However, the abolition of distress damage feasant 'does not limit a right a person may have to remove or cause to be removed, from land a vehicle parked or stopped on the land'.⁵²

Occupiers seeking to rely on distress damage feasant to justify removing vehicles from their property should consider whether they have suffered actual damage. In the absence of actual damage it is doubtful they would be able to rely on distress damage feasant as the legal justification for removing a vehicle.

In circumstances where there is actual damage the occupier will also need to consider the practicality of relying on distress damage feasant as there is uncertainty as to whether the cost of towing a vehicle would be claimable as compensation before the vehicle is released:

*...a flat charge for the release of the vehicle, imposed irrespective of the period of the trespass and the time of day or night at which it occurs, and paid not to the leaseholder who has suffered the damage but to augment the profit of an agent who has suffered no damage, has no compensatory element at all.*⁵³

Distress damage feasant is also not available if the goods are in use or under the control of the person they belong to, even if they are trespassing on the occupier's land.⁵⁴ A trespassing vehicle cannot be seized and detained if the motorist returns and retakes possession or control of the vehicle; the motorist's presence and ability to remove the vehicle offers a mechanism for remedying the trespass.

3.2.2 Contract

An enforceable contract is formed where an offer is made by one person and accepted by another, consideration is provided for the offer, the terms of the agreement are sufficiently certain, and the parties intend to create legal relations.

Occupiers may make an offer to the general public⁵⁵ by placing a sign at the entrance to the parking area setting out the terms on which parking is permitted, and stating the consequences if a motorist parks contrary to the terms. Motorists may impliedly accept the terms by parking in the area, and as they will derive a benefit from parking this would provide consideration for the contract.⁵⁶

The terms of the parking agreement and motorists' acceptance must be sufficiently certain. Motorists must understand their rights and obligations, and the consequences of breaching the terms. In most private property parking situations occupiers rely on signs to convey the terms of the offer. To be sufficiently certain, signage would likely need to include clear terms about the times and purpose of permissible parking, that vehicles parked contrary to the terms may be removed, that motorists are responsible for towing and storage fees, and vehicles will be retained until fees are paid.

The signage may also influence whether there is an intention for the parties to be legally bound. Where signage is vague or incomplete it may be difficult to argue the parties intended for the agreement to have legal consequences.⁵⁷ In determining whether there was an intention for the parties to be legally bound, the particular circumstances must generally be looked at objectively; the subjective belief or understanding of the occupier or motorist will not govern contractual obligations.⁵⁸

As parking agreements are usually commercial in nature, there would be a sound basis for the parties being found to have intended for the agreement to have legal consequences.⁵⁹ However, occupiers seeking to rely on contract to justify removing vehicles should consider the clarity, content, and prominence of their signage. In the absence of highly visible, clear, precise and authoritative signage, it is doubtful they would be able to rely on contract as the legal justification for removing a vehicle.

Similar to trespass, if an occupier takes action they are not entitled to take, such as removing a vehicle where a contract has not been formed, or where a contract has been formed but the terms were not breached, they may commit a tort or a criminal offence under Queensland law such as unlawfully possessing a vehicle.⁶⁰

Potential limitations of the law of contract

Even where an occupier can establish that a contract exists there are a number of potential limitations on their ability to enforce the contract.

Fee is a penalty

The amount payable for breaching the terms of the contract must be a genuine pre-estimate of the damage and not a penalty. A penalty is punishment for non-compliance with contractual obligations, imposing additional or different liability than the damage suffered.⁶¹ Penalties are not enforceable.⁶²

Where the occupier and motorist agreed upon towing and storage fees, as evidenced on signage, but the fees are extravagant, exorbitant, unconscionable or out of all proportion, a court may find the fees to be a penalty, and unenforceable.⁶³

Where an amount is not pre-agreed, the fees are not stipulated on signage, a court may infer the motorist consented to the reasonable cost of towing and storing the vehicle, which may not necessarily be the amount the towing operator seeks to charge.

In the context of private property towing, a towing fee of \$550 or more may, in comparison to the standard fee for crash towing, be perceived as excessive and therefore unenforceable as a penalty. Further, charging a fixed amount irrespective of whether a vehicle is released onsite at the parking area or is towed to a holding yard and then released, would also likely constitute a penalty as the same fee for differing circumstances would not constitute a genuine pre-estimate of the damage suffered.

Status of the driver

While contract may justify the removal of unauthorised vehicles from private property, complexities may arise where the motorist was not the owner of the vehicle and the owner was not present when the vehicle was parked. An owner who was not present is not party to the contract.

Where a vehicle parked by someone other than the owner is lawfully removed and detained pending payment of the towing fee, the owner may be entitled under the common law to demand the return of the vehicle without paying the fee.

If the towing operator requires payment prior to releasing the vehicle, this would amount to an intention to assert temporary dominion over the vehicle and an action in conversion may be available (see 3.2.4 for discussion about conversion).⁶⁴ If the operator refused to return the vehicle to the owner, an action in detinue may also arise (see 3.2.4 for discussion about detinue). An action in conversion or detinue would need to be heard by a court, with the associated costs and delays.

Where the vehicle's owner was present when it was parked they would likely be considered to have consented to the conduct of the driver and be estopped from claiming they were not bound by the contract and demanding the vehicle's return.⁶⁵

There may be additional difficulties in enforcing a contract against a motorist who is under 18 unless it can be shown the contract is for necessities; the things necessary to maintain a person in the life they are accustomed.⁶⁶ Where the motorist is under 18 but was acting as an agent for an adult vehicle owner and the owner was in the vehicle when it was parked, the contract may be enforceable against the owner.

The generally unknown identity of the driver of the vehicle, and any passengers, may present potential difficulties for occupiers, and towing operators acting as their agent, enforcing contractual rights.

3.2.3 Agency arrangements

Someone other than the occupier may only take action against unauthorised vehicles if they are acting as the occupier's agent, and then only to the extent the occupier would be entitled to personally act. An agent acts on behalf and with the authority of the occupier.⁶⁷ Towing operators have no lawful authority to take action against unauthorised vehicles based on trespass or breach of contract if they are not acting as the occupier's agent.

Whether an agency relationship exists is determined on a case-by-case basis considering the substance of the agreement and the circumstances of the relationship.⁶⁸ An agreement envisaging a towing operator acting in their own interests, rather than on behalf of the occupier, would not give rise to an agency relationship.

In *R v Howson*⁶⁹ the court found an arrangement authorising a towing operator to remove vehicles from private property did not constitute an agency relationship and the operator was acting as the occupier's licensee. The towing operator fixed the towing and storage fees independently of the occupier and had no obligation to account to the occupier; the towing operator was not acting on behalf of the occupier.

Where there is no agency relationship, a towing operator has no legal entitlement to remove an unauthorised vehicle. A towing operator working independently and without the authority of the occupier may be liable at common law for tortious actions and may commit a criminal offence under Queensland law.

Where an agency relationship does exist, the occupier is generally responsible for the conduct of the agent, providing the agent is operating within the scope of the authority.⁷⁰ If the towing operator does something they are not legally entitled to do, even if it is within the scope of the agency arrangement, they may commit a tort or an offence under Queensland law and the occupier and towing operator may be jointly and severally liable for the tortious acts of the operator.⁷¹

3.2.4 Trespass to goods, conversion and detinue

As the removal of a vehicle by its very nature involves moving someone else's goods, towing a vehicle from private property whether done on the basis of trespass to land or contract, may give rise to claims for trespass to goods, conversion or detinue.

Trespass to goods

A person who intentionally or negligently interferes with goods in the possession of another without their consent, or other lawful authority, commits a trespass to goods. A mistaken belief that they are allowed to move, handle, use or otherwise interfere with the goods does not excuse a trespass.⁷² A person is liable for their trespass whether or not they cause any damage to the goods.⁷³

Occupiers or towing operators removing or otherwise impinging on a motorist's possession of a vehicle would, in the absence of express or implied consent or other authority, commit a trespass. The driver or vehicle owner may seek a court order for damages as compensation for the trespass.

Conversion

A person who intentionally deals with goods belonging to another in a way repugnant to that person's right to possession of the goods commits conversion.⁷⁴ This may occur through the destruction or alteration of the goods, or their sale, detention or transfer to a third party who has no authority to receive them. In a civil action, conversion is not excused by a mistaken belief the person is allowed to interfere with the goods.⁷⁵

The removal of a vehicle parked on private property, and holding the vehicle until towing and storage fees are paid, would likely constitute an intention to temporarily deny the motorist of possession and amount to conversion.⁷⁶

Removing and detaining a vehicle may be justifiable if the occupier or towing operator can demonstrate the consent of the motorist. However, a towing operator who believes they have a legal justification to remove the vehicle, but who is mistaken, may be liable for an action in conversion. The occupier for whom the towing operator is acting may also be liable for the operator's tortious actions.

In line with an action for trespass to goods, the driver or vehicle owner may seek a court order for damages as compensation for the conversion.

Detinue

Detinue is the wrongful detention of goods belonging to another by unreasonably refusing to return the goods after a proper demand for their return has been made.⁷⁷

The removal and continued detention of a vehicle in defiance of a proper demand for its return may constitute detinue, and the towing operator and occupier for whom they are acting may be liable in a civil action.

The driver or vehicle owner may seek a court order for the return of the vehicle, or payment of the vehicle's value, as well as damages.

Consent as a defence for trespass to goods, conversion or detinue

The removal of a vehicle from private property may be justifiable where the motorist was aware of the consequences of their unauthorised parking⁷⁸ and consented to the vehicle being towed, or voluntarily accepted the risk it might be towed.⁷⁹

This may occur where there are clear, unambiguous and prominent signs outlining the conditions of parking, and the possible consequences of parking without authorisation or contravening the conditions of parking. If the motorist voluntarily accepted the risk their vehicle may be towed and detained until a reasonable fee was paid, they may be found to have consented to the consequences. However, it would be difficult to establish a motorist accepted a charge that was unreasonable or exorbitant.⁸⁰

Where the motorist expressly or impliedly consented to what occurred, they cannot later complain about the consequences; consent would render lawful conduct that would otherwise be tortious.⁸¹ It may be argued that by parking on the property the motorist impliedly consented to the conditions, risks and consequences set out in the signage, and consent may consequently operate as a defence against claims the motorist may otherwise have in trespass to goods, conversion or detainment.

3.3 Legislation regulating parking in specified areas

3.3.1 Local governments

Local governments are authorised to regulate parking on roads or in controlled areas in their local government area, and may authorise the removal of vehicles in certain circumstances.⁸²

An occupier may enter into an arrangement with the local government for them to regulate the use of their parking area. Under these arrangements the parking area becomes a controlled area and the local government assumes the role of regulating, monitoring and enforcing parking.⁸³

The management of parking in controlled areas occurs through the installation of official traffic signs specifying the conditions for the parking area including the times and purposes for which vehicles may park, the type of vehicles that may park and any fee that applies. The local government may issue an infringement notice if a vehicle is parked in contravention of the conditions applying to the parking area.⁸⁴

The investigation identified a number of areas where local governments have arrangements to regulate commercial parking areas such as shopping complexes, medical centres and caravan parks, and other parking areas around community centres and bowls clubs. However, these arrangements do not appear to be common. The majority of parking areas with arrangements for local government management appear to be spaces associated with the local government such as parking for council buildings, public parks, playgrounds, and libraries.

Local governments generally do not enforce parking in controlled areas by removing offending vehicles. The local government may however authorise the removal of a vehicle from a controlled area if its presence is hazardous or a contravention of the TORUM Act, and the motorist cannot be readily found or fails to remove the vehicle when asked.⁸⁵

3.3.2 Universities and major sports facilities

Legislation also authorises universities and major sports facilities, such as the Brisbane Cricket Ground and Townsville Stadium, to control traffic on their land including authorising the removal and detention of vehicles.

Authorised persons may seize, remove and hold vehicles parked in contravention of regulatory notices or signs at universities or major sports facilities if it is necessary for the safety and convenience of traffic, and the motorist cannot be immediately located or is not willing or able to remove the vehicle. The vehicle's owner must pay the cost of seizing, removing, holding and returning the vehicle.⁸⁶

3.4 Other relevant laws

3.4.1 Unlawful use, possession or interference

Transport law offence

Under section 135 of the TORUM Act a person commits an offence if, without the consent of the person in lawful possession of the vehicle, they:

- ▶ drive or otherwise use the vehicle on a road
- ▶ wilfully interfere with any mechanism or part of, or equipment attached to, the vehicle on a road or elsewhere, or
- ▶ detain the vehicle parked on a road or elsewhere by attaching an immobilising device or placing an immobilising device near the vehicle.⁸⁷

This section does not apply to a police officer or someone acting at their direction.

Whether the removal of a vehicle parked on private property constitutes an offence will depend on the meanings of 'use a vehicle on a road' and 'wilfully interfere with any mechanism or other part of ... a vehicle', whether the action constitutes detaining a vehicle, and whether the person in lawful possession of the vehicle consented to the action.

Using a vehicle on a road

Using a vehicle has been held to have a wide definition,⁸⁸ however it is uncertain whether 'use a vehicle on a road' would extend to loading or moving a vehicle on a tow truck. In considering the meaning of the word 'use' the High Court stated 'generally, while a motor vehicle, or any other mechanism, is out of action in the sense that it cannot readily be set in motion as required, it can seldom be said to be in use'.⁸⁹

Moving a vehicle on a tow truck is arguably analogous to moving any goods, such as furniture, building materials or fresh produce, and it is doubtful the transportation of goods on a truck would constitute use on a road. However, moving a vehicle by towing it behind a tow truck where part of the vehicle is on the road, may constitute use of the vehicle on a road; this situation is more analogous to the towing of trailers, which are considered to be 'used' on roads.⁹⁰

Wilfully interfering with a mechanism or part of the vehicle

This offence relevantly involves interfering with the mechanisms or parts of a vehicle. An equivalent provision in Western Australian legislation was considered in *Collidge v Russo*.⁹¹ In this case the provision was interpreted as applying to mechanisms or parts of the vehicle rather than the vehicle as a whole, and required ‘that the object interfered with is changed in some way’.⁹² Opening a car door or opening and rummaging through a glove box were interpreted as not amounting to interfering with mechanisms or parts of a vehicle.

Applying this reasoning, it is unlikely that the removal of a vehicle in the absence of a mechanism or part of the vehicle being changed in the process would constitute interference.

If a mechanism or part of a vehicle was interfered with, to constitute an offence the interference would also need to be wilful. The interference would be wilful if the person intended to damage, destroy, remove or otherwise interfere with the mechanism or part, or if they deliberately did an act aware the interference was the likely consequence and recklessly did the act despite the risk.⁹³

Detaining a vehicle

The offence of detaining a vehicle was introduced in 1997, primarily to prohibit wheel clamping.⁹⁴ However, this offence could potentially arise where a vehicle is detained by a towing operator using a ‘device that effectively detains the vehicle’, depending on the circumstances and manner in which the vehicle is detained. It is arguable that to commit an offence for detaining a vehicle under this section the vehicle must be detained where it was parked.

Consent

Where towing a vehicle amounts to use of the vehicle on a road, wilful interference with a mechanism or part of the vehicle or detaining the vehicle, the person may commit an offence if the use, interference or detention occurred without the consent of the person in lawful possession of the vehicle.⁹⁵ Consent is required to be ‘given expressly’ in relation to the detention of a vehicle.⁹⁶ The absence of a similar requirement in relation to use or wilful interference makes it likely that implied consent may be sufficient.

Where the person in lawful possession of a vehicle has by parking impliedly consented to the towing of the vehicle (see discussion at 3.2.4) or entered into a contract that authorised towing the vehicle (see discussion at 3.2.2), use or wilful interference that is incidental to towing may also be subject to the person’s implied consent. In these circumstances, the implied consent may mean the use or wilful interference is not an offence under section 135 of the TORUM Act. Implied consent would not be sufficient in relation to the detention of a vehicle.

Criminal and summary offences

Offences for unlawfully using or possessing a vehicle are contained in the Criminal Code and SO Act.⁹⁷ The two offences are substantially similar, with the SO Act providing an alternative summary offence to the indictable Criminal Code offence.

Under these provisions a person commits an offence if, without the consent of the person in lawful possession, they:

- ▶ unlawfully use a vehicle, or
- ▶ have a vehicle in their possession with the intent to temporarily or permanently deprive the person in lawful possession of the use and possession of the vehicle.⁹⁸

Unlawful use of a vehicle

An offence of unlawful use of a vehicle would not apply in relation to private property towing, as use in this context means use as a conveyance; the person must have travelled in the vehicle whether as a driver or passenger.⁹⁹

Possession of a vehicle

An offence of unlawful possession of a vehicle may apply in the private property towing context. A towing operator who has a vehicle under their control, through loading it onto the tow truck or detaining it at their holding yard, would likely have possession of the vehicle for the purpose of the Criminal Code.¹⁰⁰

Consent

A person will not commit an offence for unlawfully using or possessing a vehicle if the person who had lawful possession of the vehicle consented to the use or possession.

Similar to the offence under the TORUM Act, where the motorist who had lawful possession of the vehicle impliedly consented to the towing of the vehicle, or entered into a contract that authorised the vehicle being towed, the elements of a charge of unlawful use or possession of a vehicle may not be established.

Defences

A person may have a defence to a criminal offence if they did the act under an honest and reasonable but mistaken belief about the relevant facts,¹⁰¹ or in relation to property did the act in the exercise of an honest claim of right and without intention to defraud.¹⁰²

A towing operator who honestly and reasonably, but mistakenly, believed the motorist in lawful possession of the vehicle consented to its removal as a consequence of the unauthorised parking may be able to raise the defence of 'mistake of fact' if charged with a criminal offence. Alternatively, a towing operator who without any intention to defraud removed a vehicle in the honest belief they were lawfully entitled to, may be able to raise a 'claim of right' defence.

3.4.2 Other criminal and summary offences

Extortion

A person commits extortion if they make a demand without reasonable cause with the intent to gain a benefit or cause a loss, and with a threat to cause detriment to someone other than themselves.¹⁰³

A towing operator's claim for towing and storing fees with the implication that if the fees are not paid the vehicle will not be released may satisfy the demand and threat elements of extortion. However, the requirement that the demand be made without reasonable cause may provide a barrier to a successful prosecution. If a towing operator honestly and reasonably believed they were lawfully authorised to remove a vehicle and claim payment of the fees prior to releasing it, they may have had a reasonable cause to make the demand.

Assault

Assault is unlawfully touching, striking or otherwise applying force to another person. Attempting or threatening to touch, strike or apply force, where the person has an actual or apparent ability to carry out the attempt or threat is also assault.¹⁰⁴

Information provided to the investigation alleges some towing operators are making threats of physical violence either during the process of removing vehicles from parking areas, or in the subsequent interactions for the release of the vehicle.

As the removal of vehicles can result in highly emotive interactions, both towing operators and motorists need to ensure their behaviour remains appropriate and does not constitute an offence under the Criminal Code.

Wilful damage

A person commits an offence if they wilfully and unlawfully destroy or damage property.¹⁰⁵

A vehicle is wilfully damaged if it is rendered imperfect or inoperative, and the person intended to cause the damage, or knowing the damage was the likely consequence of an act, deliberately and recklessly did the act despite the risk.¹⁰⁶ Unless authorised, justified or excused by law the damage would be unlawful.¹⁰⁷

Information provided to the investigation suggests vehicles may have been damaged while being removed from private parking areas. It is alleged that gearboxes and tyres were damaged due to vehicles being dragged onto tow trucks without proper protective equipment or precautions being used.

While removing a vehicle may be lawful if appropriately authorised, it is doubtful the authority would extend to legally justify or excuse damage caused to the vehicle during the removal process. Intentional or reckless acts that damage vehicles being removed from parking areas may expose towing operators to a charge of wilful damage.

Trespass offence

A person commits a trespass offence if they unlawfully enter or remain in a dwelling, a place used for a business purpose, or a yard for a dwelling or business purpose.¹⁰⁸

Similar to liability for trespass under the common law, a person who unlawfully enters into the dwelling, place used for a business purpose or yard will commit a summary offence for trespassing. However, a police officer will only commence proceedings for a trespassing offence if the person cannot give a reasonable explanation of why they are there.¹⁰⁹

Where someone parks on private property without authority, an explanation that they genuinely misunderstood the nature of the parking area coupled with a willingness to immediately move the vehicle may be sufficient for the police officer to not progress a trespassing offence.

3.4.3 Consumer law

Australian Consumer Law regulates fair trading and provides consumer protections in Australia.¹¹⁰ The law prohibits misleading or deceptive conduct, unconscionable conduct and unfair terms in standard form consumer contracts.¹¹¹

Australian Consumer Law may apply to private property towing in relation to misleading or deceptive signage, representations or conduct that are unconscionable, or where a contract contains an unfair term. However, as Australian Consumer Law only applies to conduct if it occurs in trade or commerce, difficulties may arise in applying consumer law to private property towing due to uncertainty as to whether a commercial relationship would be created between the motorist and towing operator.

Where Australian Consumer Law does apply, a motorist may have additional grounds to recover loss or damage suffered as a result of the prohibited conduct,¹¹² and could consider submitting a complaint to the Office of Fair Trading.¹¹³

Legal action in relation to Australian Consumer Law may supplement other civil actions available to a motorist but in itself is unlikely to provide an immediate or practical solution for the timely release of a towed vehicle.

3.4.4 Body corporate laws

Similar to other occupiers, body corporates may have common law rights to remove unauthorised vehicles parked on common property. However, additional complexities arise for body corporates due to the requirements of the BCCM Act, particularly the processes for managing contraventions of by-laws. As different requirements would apply depending on who owns an unauthorised vehicle, a body corporate may face challenges on a practical level in identifying and distinguishing between vehicles parked by trespassers, and those parked by owners, lessees and invitees.¹¹⁴

3.5 Conclusion

The legal basis for removing vehicles parked on private property is generally derived from the common law. Occupiers do not have an express statutory right to remove unauthorised vehicles and towing operators have no lawful authority to remove vehicles from private property unless acting as an agent for an occupier who is entitled to remove the vehicles.

While the interaction of the competing rights of occupiers to control parking on their property and of motorists to maintain possession of their vehicle is complex, the investigation does not recommend regulating the legal basis on which vehicles may be removed from private property. The law of contract, through the use of highly visible, clear, precise and authoritative signage, provides an avenue for occupiers to lawfully remove unauthorised vehicles.

Occupiers seeking to control parking by removing unauthorised vehicles, should carefully consider their circumstances and signage to ensure a lawful basis for removing the vehicles is established. Towing operators should also consider the circumstances and signage at properties they are engaged to remove vehicles from, to satisfy themselves that a lawful basis for removing the vehicles has been established. Those who are uncertain should obtain independent legal advice; if an occupier, or towing operator acting as their agent, takes action they are not entitled to take, they may commit a tort or a criminal offence.

The investigation suggests occupiers seeking to control parking outside of business hours consider erecting barriers to restrict access to the parking area after hours rather than seeking to remove unauthorised vehicles. Preventing access may be a clearer and more effective method of controlling after hours parking. It is also suggested occupiers consider approaching their local government to discuss arrangements for the local government to assume control of regulating, monitoring and enforcing parking; any arrangement would need to be mutually agreeable to both the occupier and local government.

Motorists parking on private property also have a responsibility to ensure they understand and comply with the conditions of a parking area. If motorists are uncertain whether parking is permitted, or is subject to conditions, they would be well advised to find alternative parking.

The investigation recognises the removal of vehicles from private property can cause distress and result in highly emotive interactions. It is therefore incumbent on both towing operators and motorists to consider the appropriateness of their behaviour to ensure it conforms to social standards of courtesy and does not constitute an offence under the Criminal Code.

4 Consideration of towing industry reforms

This chapter examines the issues identified in the investigation's terms of reference, considering the existing regulation of the towing industry and identified areas of concern, drawing conclusions and making recommendations for reform.

4.1 Introduction

As outlined in 2.3, the TT Act and TT Regulation comprise the regulatory framework for the towing industry; it includes a combination of tow truck licensing, driver and assistant accreditation, and fee regulation.

This framework does not apply to private property towing, and consequently towing practices vary significantly between towing operators in relation to how they identify and perform towing services, the tow trucks they use, their business premises and holding yards, and the fees they charge. Additionally, because private property towing is unregulated, the practices are not subject to monitoring or enforcement by DTMR or QPS under the tow truck licensing and accreditation scheme.

4.2 Towing licences and accreditations

The tow truck licensing and accreditation scheme does not apply to private property towing; a tow truck licence is not required and those performing the service are not required to hold a driver or assistant accreditation.

There are no regulated consistent requirements regarding suitability, conduct, tow trucks, business premises or record keeping governing these services. There does appear to be some consistency in relation to towing operators advising QPS of vehicles removed from private property, so that if motorists contact QPS they can be advised of the relevant operator's details. However, this process is optional and towing operators have no obligation to provide the information to QPS.

The absence of regulated standards and requirements was a consistent complaint in submissions and calls to the hotline. The majority of submitters suggested the licensing and accreditation scheme should be expanded to apply to all tow trucks, drivers and assistants including those removing unauthorised vehicles from private property. For example, one submitter stated '...the whole industry professional operations would be lifted by having mandatory licensing [apply] to all tow trucks in Queensland'.¹¹⁵

Similarly, another submitter suggested:

*All towing operations should be subject to the same licensing and accreditation standards. It is a sad situation when operators who do not have the credentials to work in the regulated industry are allowed carte blanche in the unregulated one.*¹¹⁶

However, some submitters did not support extending the licensing and accreditation scheme to private property towing, distinguishing a motorist involved in a crash from one who chooses to park on private property. These submitters suggested the issues and sensitivities involved in crash towing are not present in private property towing. One submitter stated 'extending the scope of the legislation to include all the unlicensed (sic) tow trucks in Queensland would be impractical'.¹¹⁷

Another submitter raised concerns that extending the licensing and accreditation scheme may have adverse consequences:

*...extending the existing scheme under the TT Legislation to Private Towing may be detrimental to the public interest, because it would reduce the number of tow truck operators that could undertake Private Towing.*¹¹⁸

There was also a suggestion that 'imposing regulations on property owners via the Transport Act ... would be a more effective approach than expanding the existing licensing and accreditations schemes'.¹¹⁹

The investigation considered whether the tow truck licensing and accreditation scheme should be expanded from a number of perspectives including the requirements and conditions under the regulatory framework, the recent review of tow truck licensing in New South Wales, and regulation in other states.

Current requirements and conditions

A person must not operate a tow truck, providing crash towing or controlled area towing in regulated areas, unless the truck is licensed and they are the holder of the licence.¹²⁰ To be eligible for a tow truck licence, and to continue to hold a licence, the person must satisfy a range of requirements and conditions.

Tow truck drivers must not perform regulated towing services unless they hold a driver accreditation, and a person must not be employed in connection with the provision of regulated towing services unless they hold an assistant accreditation.¹²¹ Similar to tow truck licences, to be eligible to be granted and to hold a driver or assistant accreditation, a range of requirements and conditions must be satisfied.

Suitability requirements

Before granting or renewing a tow truck licence or a driver or assistant accreditation, DTMR must be satisfied the person is an appropriate person to be licensed or accredited. DTMR must consider:¹²²

- ▶ their criminal and traffic history
- ▶ whether they are subject to a domestic violence order or control order¹²³
- ▶ any charges or convictions for offences under the TT Act or disqualifying offences
- ▶ prior conduct while performing regulated towing activities
- ▶ their capability to perform regulated towing activities, and
- ▶ whether a licence or accreditation has been previously suspended or cancelled.

Tow truck licensees, drivers and assistants must notify DTMR if they are charged with or convicted of a disqualifying offence, or they are convicted of an offence under the TT Act while they hold a licence or accreditation.¹²⁴

Conduct requirements

Specific conduct requirements apply at the scene of a crash; tow truck licensees, drivers and assistants must not:

- ▶ intimidate, harass, abuse, insult, wilfully injure, or threaten to wilfully injure anyone
- ▶ wilfully damage or threaten to wilfully damage any property
- ▶ prejudice the delivery of first aid or medical treatment, or
- ▶ obtain or attempt to obtain authority to tow from a vehicle owner or their agent if they appear unable to make an informed decision.¹²⁵

Tow truck requirements

Only licensed tow trucks may be used for regulated activities. Licensed tow trucks must comply with specified design, construction, equipment and serviceability requirements to ensure suitability for use as a tow truck.¹²⁶

A tow truck must not be used unless it is in a good and serviceable condition, and is equipped with means to support the vehicle being towed. The tow truck must have a valid certificate of inspection; the purpose of annual inspections is to ensure the tow truck is properly equipped, well maintained and safe.¹²⁷

Licensed tow trucks must display, on both sides, the name, business address and telephone number of the licensee, the truck's classification and the licence number. No other advertising or markings may be displayed on the truck.¹²⁸

Business premises requirements

Tow truck licensees must conduct business from premises owned or leased only by them, that conform with the relevant local government requirements.¹²⁹

They must have a holding yard that complies with regulated requirements including being enclosed by a structurally sound fence or wall at least 2.1 metres high with lockable gates or doors that are kept closed and locked other than when a vehicle is being moved into or out of the yard. An area that does not satisfy these requirements may be permitted for use as a holding yard if DTMR considers another barrier is sufficient to prevent the unauthorised entry of persons onto the premises and the unauthorised removal of vehicles. The holding yard must also comply with the requirements of the LG Act.¹³⁰

The business premises must have communication equipment suitable for the deployment of mobile units at the premises and in the tow trucks.¹³¹

Record keeping requirements

Records of every crash tow or controlled area tow performed in a regulated area must be kept by licensees. The records must include the:

- ▶ name and address of the person who gave the licensee information about the crash or vehicle seized from a controlled area
- ▶ location, date and time of the crash or vehicle seized from a controlled area
- ▶ make and registration or other identification number of involved vehicles, and
- ▶ registration or other identification number of tow trucks at the scene.¹³²

Records must be kept for at least one year.¹³³

Operating requirements and conditions

DTMR may impose any conditions it deems necessary on a licence.¹³⁴ However, all licences are subject to a range of conditions in relation to regulated towing activities, including:

- ▶ licensees must offer towing services 24 hours a day, seven days a week¹³⁵
- ▶ vehicles must not be towed unless a towing authority has been completed by the owner or their agent, or an authorised officer¹³⁶
- ▶ vehicles must not be towed anywhere other than the address stated in the towing authority, and must not be subsequently moved without written authorisation from the owner or their agent¹³⁷
- ▶ licensees and drivers must take reasonable precautions to prevent loss or damage to a towed vehicle¹³⁸
- ▶ licensees must ensure an inventory is made of all property in a towed vehicle and must keep the property safe until it is returned to the owner or their agent¹³⁹
- ▶ vehicles must not be towed if anyone is in them, and only a tow truck driver or assistant, or the towed vehicle's driver, owner or owner's agent, may travel as a passenger in a tow truck going to or from the scene of a crash or a controlled area.¹⁴⁰

While undertaking regulated towing activities, tow truck drivers and assistants must carry their accreditation, however tow truck licences must be kept safe at the place of business stated in the licence.¹⁴¹ If a licence or accreditation is damaged, lost or stolen, or if the holder changes their name or address they must notify DTMR.¹⁴²

Tow truck licensees, drivers and assistants must not advertise or promote the business of anyone other than the licensee, and must not seek towing work for anyone other than the licensee. They must be neatly dressed, and their clothing must not display advertising or markings other than the name of the wearer, and the business name, address or telephone number of the licence or accreditation holder.¹⁴³

New South Wales review of tow truck licensing

In New South Wales all towing services are regulated, all tow truck operators must be licensed and all drivers accredited.¹⁴⁴

The tow truck licensing and accreditation scheme was recently reviewed by the New South Wales Independent Pricing and Regulatory Tribunal. The review determined that ongoing licensing and accreditation was necessary in New South Wales ‘to ensure good industry performance and to protect consumers’.¹⁴⁵ In particular, the review found it was important that operators and drivers meet the suitability requirements of the scheme to keep ‘undesirable persons out of the industry’.¹⁴⁶

Other jurisdictions

Private property towing is regulated to some degree in South Australia and Victoria. South Australia regulates all towing services within the greater Adelaide metropolitan area; in this area tow trucks must be approved and drivers must be accredited.¹⁴⁷ In Victoria, where an occupier has entered into an agreement for the local government to control their parking area, vehicles may only be removed if the tow truck is licensed and the towing operator and driver are accredited.¹⁴⁸

Conclusion

As outlined in chapter 3, there is no general right to park on private property and occupiers may, depending on the circumstances, have a lawful right to remove unauthorised vehicles. While the investigation does not recommend regulating the rights of occupiers to remove unauthorised vehicles, it does recommend regulating private property towing to address issues identified during the investigation.

The investigation is of the view that regulating private property towing is an appropriate mechanism to respond to, and deter, inappropriate conduct. Regulation will introduce minimum standards for tow trucks, business premises and holding yards, and for the suitability and conduct of tow truck licensees, drivers and assistants.

It is recommended the tow truck regulatory framework be amended to provide that private property towing may only be performed in regulated areas by accredited drivers and assistants using licensed tow trucks. Applying the licensing and accreditation scheme to private property towing would extend the:

- ▶ design, equipment and annual inspection requirements to tow trucks performing these services, ensuring they are properly equipped, well maintained and safe
- ▶ suitability and conduct requirements to towing operators, drivers and assistants, ensuring they are appropriate persons to hold a licence or accreditation
- ▶ authority for DTMR to monitor and enforce safety and conduct standards, ensuring services are provided in a professional and reasonable manner and consumers are appropriately protected.

The investigation is of the view the licensing and accreditation scheme should be extended to private property towing, and applied to crash towing and controlled area towing, through express provision in the TT Act. The current drafting of the TT Act applies the scheme to all towing services with the TT Regulation then exempting all services except crash towing and controlled area towing. This creates a regulatory framework that is difficult to understand; a person reading the TT Act would not know it only applies to two types of towing services.

The drafting of the TT Act also raises questions regarding the appropriateness of delegating the ‘power to change the application or effect of the legislation’¹⁴⁹ by restricting the operation of the TT Act through the TT Regulation. Matters that are highly technical, uncertain or subject to frequent change are generally regulated.¹⁵⁰ However, the services covered by the tow truck licensing and accreditation scheme have been amended only once in 40 years. It does not appear that a regime of regulated exemptions is needed to provide flexibility to manage frequent change or uncertainty in the application of the scheme to different towing services.

In extending the licensing and accreditation scheme to private property towing, the investigation recommends that tow truck licensees be required to have an *occupier’s approval to remove*, which may either be an individual approval for the removal of a specific vehicle or a general approval for the removal of vehicles on the basis of an agreement between a licensee and occupier. It is also recommended that the motorist have a right to receive a copy of the *occupier’s approval to remove* if they request it; allowing motorists to request a copy of the approval will encourage transparency and accountability in the removal of vehicles from private property.

The investigation does not intend for an *occupier’s approval to remove* to provide a legal basis for the tow truck licensee to remove a vehicle, rather it would evidence an arrangement between the occupier and licensee, providing a record of the approval given by the occupier for the removal of a vehicle. The responsibility to ensure there is a legal basis for removing a vehicle remains with the occupier and licensee.

The investigation also recommends that tow truck licensees be required to notify QPS as soon as practicable after removing a vehicle from private property. The notification should include details of the licensee performing the removal, the registration or other identifying number of the vehicle, the location the vehicle was towed from, the date and time it was removed, the address of the holding yard the vehicle was moved to, and the details of the occupier authorising the removal of the vehicle.

The requirement to notify QPS could be facilitated through an online system, aspects of which could also be accessible to motorists, to streamline information sharing and allow motorists to quickly and easily determine if their vehicle has been towed. Enabling motorists to use an online service may create efficiencies allowing QPS resources to be redirected to other matters. The online service could also be used for other towing services such as compliance towing.

Further, to mitigate the potential for conflict between motorists and towing operators, the investigation recommends that tow truck licensees, drivers and assistants be subject to specific conduct requirements at private property. It is recommended the existing requirements prohibiting intimidating, harassing, abusing, insulting, injuring or threatening to injure anyone and damaging or threatening to damage any property, be applied to conduct associated with private property towing.

The investigation also recommends additional requirements obligating licensees, drivers and assistants to take reasonable steps to locate the motorist before loading the vehicle onto the tow truck and, if the motorist is located, only loading the vehicle if the motorist will not or cannot immediately move the vehicle. This is consistent with obligations on police officers under the PPR Act when authorising the removal of a vehicle from a controlled area; a vehicle may be removed if the officer cannot immediately find the motorist, or the motorist is unable or unwilling to move the vehicle.

Additionally, the investigation recommends that if after commencing the process of loading the vehicle onto the tow truck, but before the vehicle is completely loaded, the motorist returns and is willing and able to immediately remove the vehicle from the parking area, the tow truck licensee, driver or assistant must not continue loading the vehicle and must release the vehicle to the motorist.

For the licensing and accreditation scheme to be effectively applied to private property towing, appropriate penalties should be imposed to sanction noncompliance and deter recidivist behaviour. Consequently, the investigation recommends the penalties for operating an unlicensed tow truck, or operating or being employed in connection with the use of a tow truck without a driver or assistant accreditation, be increased to ensure they provide an effective deterrent to noncompliance.

It is recommended that performing regulated activities in an unlicensed tow truck incur an infringement notice fine of \$1,513 (12 penalty units) and a maximum court imposed penalty of \$20,184 (160 penalty units).¹⁵¹ This substantially increases the current fine of \$252 (2 penalty units) and maximum penalty of \$5,046 (40 penalty units). The recommended penalties align with the comparable offence of operating a passenger transport service without an operator authority, and are broadly consistent with the penalties imposed in other jurisdictions.¹⁵²

A lesser penalty is recommended for operating or being employed in connection with the use of a tow truck when not the holder of a driver or assistant accreditation. An infringement notice fine of \$756 (6 penalty units), increased from \$252 (2 penalty units), and a maximum court imposed penalty of \$10,092 (80 penalty units), increased from \$5,046 (40 penalty units) are recommended for this offence. The imposition of a lesser penalty for drivers and assistants is consistent with the driver related offence for providing passenger transport services without a driver authorisation and the penalties imposed in other jurisdictions.¹⁵³

The investigation also recommends that penalties be introduced for removing a vehicle from private property without an *occupier's approval to remove*, for failing to provide a copy of the approval to a motorist when requested, for failing to notify QPS about the removal of a vehicle as soon as practicable, and for breaching the conduct requirements for private property towing.

An overview of the proposed legislative amendments is at [Appendix D](#).

Recommendation 1

Include private property towing in the tow truck regulatory framework, requiring private property towing to be performed in regulated areas by accredited drivers and assistants using licensed tow trucks.

Recommendation 2

Increase the penalties for operating an unlicensed tow truck, or operating or being employed in connection with the use of a tow truck without a driver or assistant accreditation, to ensure penalties are a deterrent to noncompliance.

Recommendation 3

Require tow truck licensees performing private property towing to have an *occupier's approval to remove* evidencing an arrangement between the occupier and licensee for the removal of a vehicle, and a copy of the approval to be given to a motorist whose vehicle is removed, if requested.

Introduce penalties for removing a vehicle without an *occupier's approval to remove* and for failing to provide a copy of the approval to a motorist when requested.

Recommendation 4

Require tow truck licensees to notify the Queensland Police Service as soon as practicable after removing a vehicle from private property.

Introduce a penalty for failing to notify the Queensland Police Service about the removal of a vehicle as soon as practicable.

Recommendation 5

Impose conduct requirements on tow truck licensees, drivers and assistants for private property towing including:

- ▶ prohibiting intimidating, harassing, abusing, insulting, injuring or threatening to injure anyone
- ▶ prohibiting damaging or threatening to damage any property
- ▶ requiring reasonable steps be taken to locate the motorist before loading a vehicle onto a tow truck and, if the motorist is located, prohibiting loading the vehicle unless the motorist is unable or unwilling to immediately move the vehicle, and
- ▶ if a motorist returns while a vehicle is being loaded but before it is completely loaded, prohibiting the continued loading of the vehicle and requiring the release of the vehicle unless the motorist is unable or unwilling to then immediately move the vehicle.

Introduce a penalty for failing to comply with the conduct requirements for private property towing.

4.3 Fees and charges

4.3.1 Towing fees

The towing fees imposed when a vehicle is removed from private property are not regulated and are determined by the towing operator. The towing fees charged, and how fees are imposed for 'onsite release' if the motorist returns prior to the vehicle being removed, vary between towing operators. Information received by the investigation indicates towing fees range from \$220 to \$920, excluding storage fees and additional costs of towing large vehicles or trailers.

Excessive towing fees were a consistent complaint in calls to the hotline. The majority of complainants, 74.4 percent, reported towing fees in excess of \$500. Only 3.4 percent reported towing fees of less than \$400. The majority of submitters, interviewees and callers to the hotline suggested private property towing fees should be capped; 'regulation of fees would assist in disbanding "rogue" operators and overpricing'.¹⁵⁴ However, there was a range of views regarding the cap amount. Some suggested the maximum fee should be aligned with the fee for crash towing at \$348.95, others suggested a higher cap of at least \$440, while some suggested a lesser amount of \$200.

For example, one submitter stated 'charges should be governed via legislation with a capped maximum fee no greater than the government gazetted fee as outlined in the Tow Truck Regulations'.¹⁵⁵ Another submitter stated a fair fee 'is no less than \$440.00 with 72 hours max of free storage'.¹⁵⁶ While another submitter stated the current maximum charge is 'ridiculously high', suggesting the charge should be reduced by 50 percent 'to reduce the predatory nature of the whole industry', and that private property towing would not be predatory 'if it wasn't so lucrative'.¹⁵⁷

The investigation also identified differing practices in relation to fees for the onsite release of a vehicle in the parking area. Some towing operators required payment of the full towing fee if they attended the parking area whether or not the vehicle was loaded onto the tow truck at the time the motorist returned. Others required payment of a lesser 'call-out fee' whether or not the vehicle was loaded at the time the motorist returned, while others required payment of a call-out fee if the vehicle was loaded but would not charge any fee if the vehicle had not been loaded.

Some towing operators spoken to during the investigation suggested a fee for onsite release was appropriate given the towing operator has been required to attend the parking area, but that it should be in the nature of a call-out fee rather than a towing fee. A fee of between \$100 and \$150 was suggested as appropriate.

The investigation considered the issue of the perceived excessive towing fees from a number of perspectives including the current regulated fee requirements in Queensland, a recent New South Wales review of tow truck fees, towing fee regulation in other states, and QCAT consideration of towing fees.

Current regulation of fees

As outlined at 2.3.4, the TT Regulation sets the maximum amount that may be charged for standard crash towing in regulated areas at \$348.95. This amount includes:

- ▶ up to one hour of working time at the scene cleaning up and preparing the vehicle for towing
- ▶ moving the vehicle up to 50 kilometres, and
- ▶ 72 hours storage in a holding yard.¹⁵⁸

Any other fees charged in relation to crash towing and controlled area towing must be reasonable, and DTMR may investigate the fees charged.¹⁵⁹

A vehicle towed to a holding yard must be released to its owner, or their agent, after payment of fees for towing and storage has been made.¹⁶⁰ Vehicle owners are liable for towing fees where the towing authority was signed by an authorised officer.¹⁶¹

New South Wales review of tow truck fees

The New South Wales Independent Pricing and Regulatory Tribunal recently undertook a comprehensive review of tow truck fees in New South Wales. The review included an examination of whether fee regulation was necessary and if so the appropriate level for regulation.

The review determined that maximum fees should be regulated for crash towing and stolen vehicle recovery towing as 'the absence of a regulated fee would leave the consumer open to being overcharged'.¹⁶² The investigation was advised that private property towing is not common in New South Wales.¹⁶³

To determine the appropriate level of regulation the review used market surveys, confidential price information and cost modelling, to estimate an average cost of \$100 per hour for towing operators to provide towing services.¹⁶⁴

As the principle costs in providing services are the same irrespective of the type of towing service provided (cost of the truck, labour, fuel) the key variable in the cost of providing towing services is the time taken.¹⁶⁵ The New South Wales review estimated the following times for various towing services:

- ▶ two and a quarter hours for accident towing, including the work involved at the crash scene and moving the vehicle up to 10 kilometres
- ▶ one hour for breakdown or trade towing,¹⁶⁶ moving the vehicle up to 10 kilometres, and
- ▶ one and a half hours for stolen vehicle recovery towing, including work to load the vehicle without the electrical system turned on and any clean up.¹⁶⁷

Based on these figures, and adjusted for inflation, the review recommended the maximum base fees be capped at \$235 for accident towing and \$155 for stolen vehicle recovery towing, exclusive of GST.¹⁶⁸ These fees came into effect on 1 July 2016, and increased by CPI on 1 July 2017 to \$238 and \$157 respectively, exclusive of GST.¹⁶⁹ Breakdown and trade towing fees are not regulated in New South Wales.

Other jurisdictions

Fees for crash towing are regulated in South Australia and Victoria. South Australia sets maximum base fees of \$354 for crash towing during business hours and \$408 for crash towing outside business hours. These fees are inclusive of GST.¹⁷⁰ Victoria sets maximum base fees for crash towing, inclusive of GST, of \$216.20 for towing during business hours and \$290 for towing outside business hours.¹⁷¹

Consideration by QCAT

The reasonableness of towing fees in Queensland has been considered by QCAT in relation to compliance towing. In these cases, the tribunal determined reasonable fees for vehicles impounded under the 'anti-hooning laws', were \$260.60 for the towing service including 72 hours storage (equivalent to 80 percent of the regulated fee, \$325.75, at the time of the decision) and an additional \$21.66 administration fee. A towing fee of \$314.57 was considered unreasonable in the circumstances.¹⁷²

Conclusion

The charging of towing fees that are in many cases considered excessive was a key issue of concern during the investigation.

The current operation of the market indicates a failure to establish reasonable market driven fees, leaving motorists vulnerable to exploitation. Due to the nature of private property towing, and the current practices of some towing operators, the investigation recommends that the maximum fee for private property towing be regulated.

Considering the regulated fee for crash towing, regulated fees in other jurisdictions and QCAT consideration of towing fees, the investigation recommends the maximum fee for standard private property towing be set at \$250. This fee would include the cost of moving a vehicle from the parking area to the holding yard and 72 hours storage. It is recommended the maximum fee not include a fixed distance, with additional kilometre fees payable for longer distances, as this may result in vehicles being moved greater distances to maximise fees.

Similar to the regulated fee for crash towing, it is recommended that if a private property tow is not 'standard', for example it requires the use of extraordinary equipment, the towing operator would be permitted to charge an amount that is reasonable in the circumstances. However, it is anticipated most private property towing would be a standard tow and would not justify the charging of higher fees. The reasonableness of any higher fees would be subject to investigation by DTMR, in line with current arrangements, and may result in action being taken by DTMR.

In recognition of the differing scenarios that arise in relation to private property towing, the investigation also recommends that a maximum fee of \$150 be set for the onsite release of a vehicle that has been loaded onto the tow truck. While recommending a maximum fee for onsite release, the investigation encourages towing operators to exercise reasonableness in charging such a fee, and supports the continued practice of operators using discretion in charging an onsite release fee.

Further, to support the maximum fee for the onsite release of a vehicle, the investigation recommends that tow truck drivers be prohibited from removing vehicles if the onsite release fee is paid. The motorist should be given a reasonable time to pay or tender the fee before further action is taken to remove the vehicle.

The investigation also recommends prohibiting call-out fees for attending a parking area where the motorist is located, or returns, before the vehicle has been loaded and is prepared to move the vehicle. The investigation is of the view this appropriately balances the competing rights of occupiers and motorists, and mitigates the potential for conflict.

Additionally, to clarify the intended operation of the tow truck regulatory framework in relation to private property towing and provide a level of certainty to both towing operators and vehicle owners in relation to the payment of fees, the investigation recommends that the TT Act and TT Regulation be amended to provide:

- ▶ vehicles must be released to the owner or their agent after payment of fees,¹⁷³ and
- ▶ owners are liable for fees in relation to the removal of vehicles from private property or the onsite release (noting that such a provision in itself does not provide legal authority for vehicles to be removed and does not limit the right to pursue civil action regarding removal of the vehicle).¹⁷⁴

The investigation also recommends that penalties be introduced for charging more than the maximum fees for a standard private property tow or onsite release of a vehicle. A penalty should also be introduced if a vehicle is removed after the onsite release fee is paid or tendered.

An overview of the proposed legislative amendments is at [Appendix D](#).

Recommendation 6

Set a maximum fee of \$250 for a standard private property tow.

Introduce a penalty for charging more than the maximum fee for a standard private property tow.

Recommendation 7

Set a maximum fee of \$150 for the onsite release of a vehicle loaded onto a tow truck but not removed from the private property.

Introduce a penalty for charging more than the maximum fee for an onsite release.

Recommendation 8

Prohibit a vehicle being removed from private property if the onsite release fee has been paid or tendered.

Introduce a penalty for removing a vehicle after the onsite release fee has been paid or tendered.

Recommendation 9

Prohibit a call-out fee being charged for a tow truck driver attending private property to perform a private property tow where the motorist is located or returns before the vehicle is loaded onto the tow truck.

Recommendation 10

Provide that the vehicle owner is liable for fees payable in relation to the removal of a vehicle from private property, and the vehicle must be returned to its owner or their agent after payment of fees.

4.3.2 Storage fees

Storage fees are not regulated for any towing services.¹⁷⁵ Information received by the investigation indicated storage fees in relation to private property and other towing services range from \$26 per day to in excess of \$80 per day.

The majority of towing operators spoken to during the investigation indicated most vehicles towed from private property are recovered within 24 hours, prior to any storage fees being payable. However, some submitters and callers to the hotline raised storage fees as an issue particularly for those who could not afford the towing fee and accumulated additional costs while trying to borrow or otherwise source money for the fee.

While the quantum of storage fees is not regulated, the TT Regulation does prohibit storage fees being charged in relation to crash towing and controlled area towing unless two days' notice has been provided to the vehicle's owner or their agent.¹⁷⁶

The investigation considered the reasonableness of storage fees from a number of perspectives, including the recent fee review in New South Wales, regulation in other states, QCAT consideration of storage fees and comparison to parking fees.

New South Wales review of tow truck fees

The New South Wales review of tow truck fees included an examination of whether fees for the storage of vehicles should be regulated and if so the appropriate fee level.

The review determined that storage fees should be regulated, with the price 'set at a level that encourages more efficient use of storage facilities'.¹⁷⁷ The review determined appropriate storage fees were \$23 per day in metropolitan areas and \$14 per day in non-metropolitan areas, exclusive of GST.¹⁷⁸ In making the determination the review considered the cost of storage in different areas and benchmarking against long term parking rates, and assumed a holding yard utilisation rate of 40 to 45 percent in metropolitan areas and 20 to 25 percent in non-metropolitan areas.

These regulated fees came into effect on 1 July 2016 and remain in effect; they did not increase by CPI on 1 July 2017.

Other jurisdictions

Storage fees for vehicles moved to a holding yard following a crash are regulated in South Australia and Victoria.

South Australia sets maximum storage fees of \$14 per day if the vehicle is uncovered and \$25 per day if stored under cover. These fees are inclusive of GST.¹⁷⁹ Victoria limits storage fees, inclusive of GST, to \$11.16 per day if the vehicle is uncovered and \$16.58 per day if stored under cover.¹⁸⁰

Consideration by QCAT

The reasonableness of storage fees has also been considered by QCAT in relation to compliance towing, specifically regarding vehicles impounded under the 'anti-hooning laws'. In these cases, the tribunal determined that \$25.78 per day was not a reasonable storage fee, and \$10 per day was reasonable.¹⁸¹

Queensland benchmarking

The investigation considered parking costs as a comparison for storage costs. Examining a selection of areas in South East Queensland, where parking costs are highest, identified casual parking costs for one day stays in Brisbane city ranged from \$55 to \$80, in Fortitude Valley from \$31 to \$41, in inner city suburbs such as Milton, Woolloongabba, Hamilton and Kelvin Grove from \$15 to \$50, and in the Gold Coast from \$8 to \$20.

As a comparison, airport parking for the Brisbane Airport ranged from \$10 to \$70 per day for stays of one day, and from \$9 to \$22 per day for stays of seven days.

Conclusion

While storage fees were not of primary concern in the majority of grievances regarding private property towing, with most vehicles recovered before storage fees were incurred, the investigation was concerned by the level of some of the fees imposed.

The investigation is of the view storage fees charged by some towing operators are excessive. Similar to towing fees, the investigation's review indicates a market failure to establish reasonable storage fees. The investigation was also concerned that regulation of private property towing fees, without also regulating storage fees, may create a situation where some towing operators increase storage fees as a means to retain current profit levels.

Consequently, to protect consumers from potential exploitation the investigation recommends the regulation of storage fees for private property towing. Considering the regulated storage fees in other jurisdictions, QCAT consideration of storage fees and parking fees in Queensland, the investigation recommends that a maximum fee for storing a vehicle removed from private property be set at \$25 per day. A penalty should be introduced for charging more than the maximum storage fee.

The current restriction in the TT Regulation prohibiting the imposition of storage charges unless two days notice has been provided to the vehicle's owner, or their agent, should not apply to private property towing as such notification is not practical given privacy considerations in relation to motorists' contact details. However, the investigation suggests that storage charges be included on signage at the parking area.

The investigation also recommends that government consider whether regulated storage fees should apply to crash towing and controlled area towing.

An overview of the proposed legislative amendments is at [Appendix D](#).

Recommendation 11

Set a maximum fee of \$25 per day for storing a vehicle that has been removed from private property.

Introduce a penalty for charging more than the maximum fee for storing a vehicle removed from private property.

4.3.3 Other fees

Some towing operators impose other fees such as administration fees and out of hours release fees in addition to towing and storage fees for private property towing. While this practice does not appear to be common, there is a risk it may become more prevalent if towing and storage fees are capped as additional fees may be seen by some towing operators as a means to 'make up the difference' and maximise profits.

Towing operators charging excessive fees for incidental activities relating to crash towing in New South Wales necessitated increasingly prescriptive regulation regarding prohibited fees.¹⁸² In New South Wales separate fees may not be charged for fuel, cleaning the tow truck, taking or producing photographs, storing personal belongings, moving the vehicle within the holding yard, after hours access to the vehicle without prior notice of a fee, preparing or sending documents, notifying the vehicle's owner of storage fees, or administration work.¹⁸³

As part of regulating towing and storage fees for private property towing, the investigation recommends prohibiting separate fees for incidental activities. The TT Regulation currently prohibits fees for viewing a stored vehicle during business hours and for moving a vehicle within the holding yard.¹⁸⁴ The investigation recommends expanding these restrictions to ensure additional fees are not used as a means for towing operators to circumvent the towing and storage fee caps (see [Appendix E](#) for a list of fees that could be prohibited).

Recommendation 12

Prohibit charging separate fees for incidental activities associated with private property towing such as administration fees, or fees for making an inventory of personal belongings.

Introduce a penalty for charging separate fees for incidental activities.

4.4 Towing distances

Motorists whose vehicles are removed from private property quite clearly have limited transport options to recover the vehicle from the towing operator. Unless motorists are able to arrange transport with friends or family, they must use public transport, taxis or other ride sharing options and pay the associated costs. The location to which the vehicle is towed and the distance from the place it was parked can obviously have accessibility and cost implications for motorists.

Some submitters and callers to the hotline suggested the maximum distance a vehicle could be towed from the parking area should be limited. For example, submitters stated ‘people who have their cars taken should not have to travel too far to retrieve them’¹⁸⁵ and ‘[i]f vehicles are towed to a location in close proximity to where their vehicle was parked, this will facilitate the ease of retrieving their vehicle’.¹⁸⁶ Of those who specified a maximum distance, most proposed a limit of 20 to 25 kilometres.

Conversely, other submitters raised potential challenges with limiting maximum distances due to restrictions on where holding yards may be located under local government planning schemes and the costs associated with inner city premises:

*Private car park owners should not be without a towing service because they are in an isolated or metropolitan area where towing companies cannot afford, or cannot economically justify having a storage [holding] yard.*¹⁸⁷

Authoritative information on the distances vehicles are towed from private property is not generally available; as the towing operators are not required to be licensed, the locations of their holding yards and the parking areas they provide services to are not known. However, information from callers to the hotline suggests the majority of vehicles removed from private property are moved less than 10 kilometres; 90 percent were moved to a holding yard less than 10 kilometres from the parking area, 97 percent were moved less than 25 kilometres.

Conclusion

Being required to travel excessive distances to recover vehicles towed from private property would clearly place a significant impost on motorists. However, based on the available data excessive distances do not appear to be a substantial issue as the majority of vehicles are moved less than 10 kilometres.

Consequently, the investigation is of the view it is not necessary or desirable to introduce regulations restricting the maximum distance a vehicle may be towed. Excessive distances are not prevalent and regulation may prevent an occupier with a genuine and substantial parking problem from removing offending vehicles. For example, where a vehicle has been parked in an occupier’s clearly signed private parking area for a week and they would like it removed as it is adversely affecting business, if there is no holding yard within the maximum towing distance from the property no towing operator would be permitted to move it.

To limit the likelihood of vehicles being moved excessive distances, the investigation recommends that the regulation of private property towing services include a requirement that vehicles may only be taken to the nearest holding yard of the tow truck licensee, by the most direct route, in line with requirements for crash and controlled area towing.¹⁸⁸ However, it is noted that by regulating a maximum towing fee there would be little incentive for vehicles to be moved further than necessary, as this would limit the availability of the tow truck for other work.

It is suggested DTMR monitor any complaints regarding towing distances (see discussion at 4.8 about administration and enforcement) to ensure the distances do not become excessive.

Recommendation 13

Require that a vehicle removed from private property may only be taken, by the most direct route, to the nearest holding yard of the tow truck licensee.

4.5 Privacy and disclosure of information

Identity crime is a growing problem in the Queensland community and the rise of this type of crime brings legitimate concerns about the possible misuse of personal information, particularly information in identification documents such as driver licences.¹⁸⁹

A number of submitters and callers to the hotline expressed concerns regarding privacy and their personal information, particularly in relation to providing their driver licence or similar identification to towing operators to recover their vehicles. While it was acknowledged that identification needs to be provided to recover a towed vehicle, concerns were raised that towing operators may not be bound by the Privacy Act and would not be bound by the information disclosure provisions under the TT Act.

Towing operators with a turnover of more than \$3million must comply with the Australian Privacy Principles under the Privacy Act in relation to the collection, use and disclosure of personal information. This includes not using or disclosing information for a purpose other than the reason it was collected, unless the person consents or the use or disclosure is required or authorised by law.¹⁹⁰ Towing operators with a turnover of \$3million or less are not bound by the Australian Privacy Principles.

Under the TT Regulation, information about a crash or a vehicle seized from a controlled area that is obtained by a tow truck licensee, driver or assistant acting under the authority of their licence or accreditation, may only be disclosed to:

- ▶ the owner of the vehicle involved in the crash or seized from a controlled area, or the owner's agent
- ▶ an authorised officer, or
- ▶ the tow truck licensee, driver or assistant's employer or employees.¹⁹¹

The investigation was also advised that some towing operators publish photographs of unauthorised vehicles, prior to their removal from the parking area, on social media. While it is understood the intent of publishing the photographs is to demonstrate the vehicles were parked in contravention of signs also depicted in the photograph, the practice has been perceived by some as ‘shaming’ motorists.

Conclusion

Providing appropriate identification to the towing operator to recover a vehicle is important to mitigate the risk of a vehicle being given to the wrong person. However, the investigation acknowledges the legitimacy of concerns about possible misuse of personal information provided for this purpose.

As part of regulating private property towing services, the investigation recommends that the TT Regulation be amended to restrict the disclosure of information about the removal of a vehicle from private property. This would prohibit a tow truck licensee, driver or assistant from disclosing information about the removal of the vehicle to anyone other than the owner of the vehicle or their agent, an authorised officer, or the licensee, driver or assistant’s employer or employee.

The investigation also recommends that the TT Regulation be clarified to expressly restrict the disclosure of the personal information of the vehicle owner, driver or other party connected to regulated towing services. The current wording of the regulation may be interpreted to apply only to information about the crash or seizure of the vehicle and not to information about the vehicle owner, driver or other involved party. The personal information of the vehicle owner, driver or other involved party should be expressly protected.

It is also recommended additional protections be included in the TT Regulation to prevent a person associated with the towing services, such as the licensee or other employee, who is given information from then disclosing the information. This would prevent someone, such as an employee of the tow truck licensee, who receives information in the course of their duties, from disclosing that information to anyone other than the owner of the vehicle or their agent, an authorised officer, or the licensee, driver, assistant or other employee.

An overview of the proposed legislative amendments is at [Appendix D](#).

Recommendation 14

Prohibit a tow truck licensee, driver or assistant from disclosing information about the removal of a vehicle from private property except as permitted under the *Tow Truck Regulation 2009*.

Recommendation 15

Ensure personal information about a vehicle's owner, driver or other party connected to a regulated towing service may only be disclosed by a tow truck licensee, driver or assistant as permitted under the *Tow Truck Regulation 2009*.

Recommendation 16

Prevent a person associated with a towing operator who is given information in accordance with the *Tow Truck Regulation 2009*, from disclosing that information to anyone except as permitted under the *Tow Truck Regulation 2009*.

4.6 Signage

Occupiers have different approaches and requirements regarding unauthorised parking; some impose maximum parking times, some limit parking to customers whilst on the premises, some take a lenient view to unauthorised parking outside of business hours, and some limit parking to authorised vehicles 24 hours a day seven days a week.

Irrespective of the occupier's particular requirements, adequate signage is integral to the lawful removal of vehicles from private property. The conditions on signs form the basis of the contract between the occupier and motorist, and the occupier's right to remove vehicles is generally defined by signs. There are however no regulated standards governing the size, content or location of signs for private property parking.

Signs must also comply with Australian Consumer Law and must not mislead or deceive. This includes using plain English and clearly stating the key terms of the contract, the conditions on which parking is permitted and the consequences of non-compliance, making sure the important terms are not in fine print. For example, it could be misleading to display a sign stating the maximum cost of the vehicle being removed is \$400 and the motorist subsequently being charged \$600.¹⁹²

Members of the investigation team visited some of the reported hotspots, and other inner city sites, around Brisbane to view parking area signage. All sites visited were found to have some signage, however the nature, size and positioning of signs varied substantially. At some sites the signs were appropriately detailed, of a reasonable size and positioned both at the parking area entrances and throughout the parking area. However, at other sites the signs were very limited in their content, written in very small print, too small to be readily visible, poorly lit, or positioned in a manner that may result in them not being seen or motorists being confused as to their application.

Inadequate signage was a consistent theme in submissions and calls to the hotline with multiple reports that signs were small, not visible on entry to the parking area, ambiguous about the areas they applied to, obscured, unclear, or inaccurate regarding the towing costs. For example, one submitter stated 'the signs were not clearly visible and contained false statements regarding charges'.¹⁹³

However, the investigation also notes the numerous instances where motorists reported there was adequate signage but assumed it was reasonable to park contrary to the signs because the premises were vacant, it was outside of business hours, they were not going to be very long, there were plenty of vacant spaces, they had parked there before or other people were parked there.

There was consensus from submitters and interviewees - motorists, occupiers, towing operators and representative groups - that signage should be highly visible and clearly worded, with easily understood conditions. However, there were differing views on whether minimum standards should be imposed for private parking area signage.

Some submitters and callers to the hotline were strongly in favour of regulating signs, with one submitter suggesting there should be 'minimum standards for size, position and frequency of signage in commercial private car parks', including:

*...the business hours of the relevant business/es, the maximum amount which can be charged for towing and storage, the name and phone number of the towing operator and clearly state in easy English the risk that unauthorised vehicles will be towed...*¹⁹⁴

Other submitters expressed concerns that mandatory standards would not appropriately accommodate occupiers' diverse parking requirements, limiting their ability to manage parking areas and imposing additional and unnecessary costs. Many large retail centres have their own parking management systems including signage and electronic gates controlling access; the requirements of these centres would be vastly different to a small strip of retail outlets.

The design and installation of regulated traffic signs is governed by the Manual of Uniform Traffic Control Devices. The manual sets the size, shape, colour and content of signs and where they are positioned on the road network, and requires signs conveying information applying both day and night be illuminated or reflective. Regulated traffic signs frequently use symbols to convey messages as symbols can generally be seen and interpreted at a greater distance and can assist to overcome language and literacy barriers.

Codes of practice for occupiers controlling parking on private land also prescribe signage requirements regarding the positioning, content and construction of signs. For example, Parking Australia's *Code of Practice for Enforcement on Private Land* specifies that signs:

- ▶ be placed at all entrances in a manner obvious to the driver, with additional signs within the site to ensure drivers are aware of the conditions of parking
- ▶ be positioned at least 120mm and not more than 1900mm from ground level
- ▶ be professionally made to convey the importance of the information and constructed of sturdy material
- ▶ use colours with sufficient contrast between the background and the writing to make the text clearly legible, and
- ▶ be readable during the hours of application; if applicable at night the sign must be illuminated or made of reflective material.¹⁹⁵

Conclusion

The importance of clear, highly visible signage outlining the parking conditions for private property cannot be overemphasised. Appropriate signage is critical to mitigate or remove conflict between motorists and towing operators and in most circumstances to the occupier and towing operator as their agent having a lawful right to remove vehicles.

Signs should be prominently displayed and provide clear, unambiguous and authoritative information about the conditions for parking. However, given that parking on private property is not a regulated matter¹⁹⁶ the investigation is of the view signage for private property should not be regulated. Occupiers seeking to enforce their rights by removing unauthorised vehicles from their property should clearly display the conditions on which motorists may park.

While the investigation does not consider it appropriate to regulate signs on private property it does recommend guidelines be developed to promote visible, clear, comprehensive and consistent signs. Guidelines would also support the education of motorists, occupiers and towing operators about private property towing, and may alleviate the potential for conflict.

The investigation is of the view that signs should be displayed at each entrance to the parking area, and with sufficient frequency within the area to be visible from any parking space subject to the signs. This might, depending on the circumstances, require a sign at each individual parking space as prominent notice to motorists about unauthorised parking. The positioning should also ensure signs are clearly visible day and night; there must be sufficient lighting for motorists to observe and read the signs. Signs should be of a sufficient size to be obvious to motorists, and to contain the required information. Signs should be maintained to ensure they remain highly visible and the information remains clearly legible.

Further, the signs should simply and clearly state the conditions of the parking area such as the times the restrictions apply, whether the motorist must remain on the premises, any time limits for parking, and the relevant boundaries of the area. If the parking conditions apply only to particular spaces, this should be clearly identified. The signs should also detail the consequences of not complying with the conditions, that is the vehicle may be towed, the costs associated with recovering the vehicle and a contact phone number for the towing operator. To enhance motorists' perceptions of the legitimacy of the towing operator's arrangement with the occupier, the sign should also include the towing operator's name.

It would also be beneficial if signs included a symbol depicting a vehicle being towed to clearly convey the potential consequences of unauthorised parking, and to overcome language and literacy barriers.

Recommendation 17

Develop guidelines outlining minimum signage standards to promote visible, clear, comprehensive and consistent signs. The guidelines should include information regarding sign size, positioning and illumination, content and design such as colours, and text style to enhance readability.

4.7 Predatory practices and consumer protection

4.7.1 Spotters

Spotters are individuals paid to watch parking areas and alert occupiers or towing operators when motorists trespass or otherwise breach the parking conditions. Engaging spotters facilitates the swift removal of unauthorised vehicles.

Spotting is not prohibited for private property towing, and complaints about short timeframes between motorists parking their vehicle and it being removed would suggest some parking areas are being monitored. However, whether the monitoring is being undertaken by a paid spotter or by the occupier or towing operator themselves is unknown.

The payment of spotters' fees is prohibited in relation to regulated towing services. The TT Act prohibits a person from giving or receiving money or another valuable thing, for information about a crash or vehicle seizure for the purpose of obtaining, or enabling someone else to obtain, a towing authority to remove a vehicle.

Spotters' fees were prohibited with the enactment of the TT Act in 1973 in relation to crash towing to address a problem with multiple towing operators being alerted to a crash, racing to the scene, and causing motorists further distress through aggressive bidding for the towing job.¹⁹⁷ The prohibition of spotters was extended to apply to vehicles seized by a police officer from controlled areas in 1997 when the TT Act was amended to apply the regulatory framework to this type of towing.

It was suggested by some submitters and callers to the hotline, that spotters' fees should be prohibited for private property towing, in line with the prohibitions for regulated towing services. For example, one submitter suggested the use of spotters 'should be stamped out and be part of a sanctions scheme that would potentially see a company lose its licence to operate'.¹⁹⁸ Comparably, another submitter stated:

...we know of private car park operators who have allowed towing operators to install cameras for the purpose of identifying cars parked improperly so as to remove them quickly and without proper notice to the owner/driver.

*We strongly disagree with these practices. We would support regulations that expressly prohibit spotting and predatory practices and impose penalties on any person engaging in such conduct.*¹⁹⁹

The engagement of spotters for private property towing can be distinguished from those for crash towing and controlled area towing. An occupier may engage a person, or assign an existing employee, to monitor a parking area and arrange for unauthorised vehicles to be removed. It would be unreasonable to prohibit an occupier from engaging or assigning someone to monitor and enforce the conditions of their parking area. Similarly, where a towing operator is contracted by an occupier to perform towing services it would be unreasonable to prohibit the operator from monitoring the parking area, in line with the terms of the agreement, to provide effective services.

Some submitters and callers to the hotline identified this differentiated position regarding the use of spotters, noting that limiting spotters in the context of private property towing may not be practical. For example, one submitter stated ‘where parking is limited and or being misused by the general public, we believe there is a valid argument for spotting practices’.²⁰⁰ Similarly, another submitter stated:

In some situations, the only way to identify which cars should or should not be parked is to have someone observing or "spotting"...

It is not predatory to seek to enforce your private property rights. It is not a consumer protection to facilitate unauthorised parking or to make it more difficult for a private property owner to identify who is trespassing on their private property.²⁰¹

The investigation did not identify any other Australian state or territory that prohibits spotters’ fees in relation to private property towing.

Conclusion

While it is understandable that motorists may feel aggrieved by the active monitoring of parking areas and the swift removal of unauthorised vehicles, the investigation is of the view that this aggravation needs to be balanced against the rights of the occupier.

Where adequate signage has been installed advising motorists of the parking conditions (see discussion at 4.6), the investigation considers that occupiers, and towing operators acting as their agent, should not be prevented from engaging someone to monitor and enforce the conditions of the parking area.

The investigation does not however countenance the opportunistic use of spotters by towing operators working unlawfully without the authority of the occupier. In these circumstances, the towing operator may commit an offence of unlawful possession of a vehicle under the Criminal Code and the spotter may be liable for aiding and abetting the commission of the offence.²⁰²

Additionally, the investigation believes the predatory nature of some spotting practices would be removed by regulating private property towing and capping towing fees, as the opportunity for substantial financial gain would be limited. Further, regulation would apply record keeping requirements to private property towing, and the name and address of the person who provided information about the unauthorised vehicle would be recorded. The investigation believes the increased transparency and capacity for information to be inspected and considered by DTMR, would also restrain predatory practices.

4.7.2 Other practices

CCTV cameras

CCTV cameras are installed to monitor parking areas for a variety of reasons including security, safety and in some cases to enforce parking conditions.

In relation to enforcing parking conditions, the use of CCTV is in the investigation's view very similar to the use of spotters. Where motorists can clearly ascertain the parking area conditions from appropriate signage, it would be unreasonable to prohibit occupiers or towing operators acting as their agent, from using CCTV to monitor and enforce parking conditions.

'Kickbacks'

Some arrangements between the occupier and the towing operator may involve the occupier receiving part of the fee from the towing operator. It was suggested by some submitters and callers to the hotline that payments to the occupier, 'kickbacks', should be prohibited for private property towing.

Information received by the investigation indicates this practice is not prevalent. However, where a towing operator makes a payment to the occupier the payment may be categorised as a spotter's fee or a type of compensation collected by the towing operator on the occupier's behalf for loss suffered by the unauthorised parking.

While the investigation acknowledges motorists may feel aggrieved by the occupier receiving a portion of the towing fee, it does not consider that such a distribution of the fee should be prohibited. Similar to some spotting practices, the investigation believes any predatory nature of kickbacks would be restricted by the regulation of private property towing and the capping of fees as this would restrain opportunities for substantial financial gain.

Bait cars

Bait cars are vehicles parked on private properties by towing operators to entice motorists to park there under the assumption that parking is permitted. Information from callers to the hotline indicates a number of motorists suspect the use of bait cars in the parking areas their vehicles were towed from, although this practice appears to be very limited.

It is understandable that motorists may feel tricked if their vehicle is removed from a parking area while others are not, however the presence of another vehicle in a parking area should not be taken as permission to park. A vehicle parked on private property may be 'bait', or may belong to another motorist trespassing on the property, to a person authorised to park there, or to the occupier of the property.

While the investigation does not support deceptive behaviour, it does not consider it practical to prohibit, and enforce through regulation, the use of alleged bait cars. However, by regulating private property towing the use of bait cars or other deceptive behaviour, if proved, could be considered by DTMR in determining whether someone is an appropriate person to continue to hold a tow truck licence.

It is also important to note that ultimately motorists are responsible for determining if they are permitted to park on the property, and complying with any conditions of parking. If signage indicates parking is not permitted, or it is not clear if parking is permitted or what conditions apply, motorists would be well advised to find alternative parking regardless of whether other vehicles are parked there.

Removing vehicles outside business hours and without delays

Occupiers have different approaches and requirements regarding unauthorised parking, with some electing to take a strict approach enforcing parking conditions 24 hours a day seven days a week even when the business is not trading, and removing vehicles immediately if the conditions of parking are breached.

Representations were made to the investigation that the removal of vehicles should be prohibited where a business had no need for the use of the parking spaces, such as outside of business hours. It was also suggested motorists should be given a grace period during which a vehicle cannot be removed; it was submitted the period during which unauthorised parking should be allowed could be up to one hour.

While acknowledging the limited availability of parking in inner city regions may cause frustration for motorists, the investigation does not support the position that occupiers should mandatorily be required to permit motorists to park on their property outside of business hours. Occupiers pay for the use of the property as either owners or tenants and are entitled to enforce their rights to exclusive possession. Additionally, the investigation does not consider that such a requirement should be imposed given the potential occupier's liability if a motorist is injured on the property, particularly at night, and the potential consequences for the occupier's insurance.

Similarly, while the investigation encourages reasonableness in the removal of vehicles from private property, it does not believe mandatory grace periods should be imposed. Obligating an occupier to permit motorists to park without authority for a minimum period would tip the scales substantially in favour of motorists to the detriment of occupiers' rights and may, in effect, formally endorse unauthorised parking.

By regulating private property towing services, any predatory conduct by towing operators performing private property towing could be audited with conduct considered and, if appropriate, acted upon by DTMR.

4.8 Administration and enforcement

The TT Act and TT Regulation are administered by DTMR, with monitoring and compliance predominantly undertaken by DTMR with some enforcement undertaken by QPS.

DTMR advised that tow trucks, business premises and holding yards are inspected when an application for the initial grant of a tow truck licence is made to ensure compliance with regulatory requirements. However, once a licence is granted there is no structured monitoring or inspections to ensure ongoing compliance when an application is made to renew the licence. DTMR also advised that a person's criminal history is assessed when an application for the initial grant of a licence or accreditation is made and, if the person declares new criminal matters, when an application for renewal is made. Advice is provided to DTMR daily regarding licence and accreditation holders' criminal histories.

DTMR also advised that monitoring and enforcement of compliance with regulatory requirements is predominantly ‘complaint driven’; there is no regular scheduled monitoring or routine auditing of tow truck licensees, drivers or assistants.

DTMR transport inspectors are responsible for investigating and taking appropriate action in relation to complaints about tow truck licensees, drivers and assistants, with the assistance of local customer service centres and policy guidance from the industry licensing unit.

A transport inspector may issue an infringement notice to licensees, drivers or assistants who commit an offence under the TT Act or TT Regulation. DTMR may also commence court proceedings if for example the nature or severity of the offence justifies it being dealt with by a court. Police officers can issue infringement notices, or notices to appear in court for tow truck offences.

DTMR advised that in the five years from 2012 to 2016, 212 infringement notices were issued by DTMR and QPS for offences under the TT Act or TT Regulation (see [Appendix F](#)).²⁰³

DTMR may also take action to suspend or cancel a licence or accreditation if:

- ▶ it was issued in error, or based on false or fraudulent information or documents
- ▶ the holder has been convicted of an offence against the TT Act, or has been charged or convicted of a disqualifying offence
- ▶ the holder has failed to comply with a condition of their licence or accreditation
- ▶ the holder stops being a tow truck licensee, driver or assistant
- ▶ the holder cannot properly drive the tow truck because of a medical condition
- ▶ the tow truck is no longer suitable for use under the licence
- ▶ the holder has given false or misleading information to an authorised officer
- ▶ public safety has been, or is likely to be, endangered by holder’s conduct
- ▶ the holder is no longer an appropriate person, or
- ▶ it is in the public interest for the licence or accreditation to be suspended or cancelled to ensure the reputation of the industry or meet the expectation the public will not be subject to assault, or aggressive, coercive or otherwise inappropriate behaviour.²⁰⁴

The investigation identified one case where DTMR cancelled a tow truck licence.²⁰⁵ This cancellation occurred as a result of QPS advising DTMR the licensee had been convicted of the offence of riot and sentenced to a short term of imprisonment.

A person whose licence or accreditation is suspended or cancelled may apply to DTMR for a review of the decision. If the person disagrees with the reviewed decision they may then apply to QCAT for further review.²⁰⁶

A range of complaints has been investigated by DTMR. DTMR advised 30 complaints were investigated in 2016 ranging from allegations of assault and abusive behaviour to incorrect signage on tow trucks. These investigations resulted in infringement notices in two cases, formal warnings in two cases, referral to QPS in one case, education or advice in eight cases, an audit of the business premises in one case, and a determination no further action was required in 16 cases.

Where a complainant is dissatisfied with the way DTMR handles their complaint they may contact the Queensland Ombudsman and request the Ombudsman investigate the actions and decisions of DTMR.

A number of submitters and callers to the hotline expressed dissatisfaction with the current management of complaints and monitoring and enforcement of compliance with the tow truck regulatory framework. Concerns were raised particularly in relation to the effectiveness of extending the framework to include private property towing under the current compliance arrangements. For example, one submitter stated 'more regulation doesn't work if the enforcement mechanisms that are currently available are not properly resourced'.²⁰⁷

There was a broad consensus from submitters that DTMR, in conjunction with QPS, should continue to monitor and enforce compliance, however it was suggested the processes could be improved.

For example, one submitter stated:

*The towing industry would benefit from a hotline and department who can deal with all towing industry related complaints, the ideal department would be the Department of Transport and Main Roads however ... there are very few employees of TMR that understand the towing industry from all aspects including regulations, licencing (sic) and documentation.*²⁰⁸

Other submitters suggested a Towing Ombudsman or other governing body should be established to manage complaints and enforce compliance with the tow truck regulatory framework.

Conclusion

A comprehensive and authoritative approach to administering, monitoring and enforcing the tow truck regulatory framework is essential to the effective operation of the licensing and accreditation scheme.

The investigation is of the view that the current approach to administering, monitoring and enforcing the tow truck licensing and accreditation scheme could be significantly improved. Monitoring and enforcement activities should be planned, structured and risk based to ensure resources are appropriately focussed.

The investigation recommends that responsibility for administering, monitoring and enforcing the tow truck licensing and accreditation scheme, as extended to private property towing, continues to reside with DTMR, with supporting enforcement performed by QPS. However, the investigation recommends that a central unit within DTMR, separate from transport inspectors, be established with accountability for oversight of compliance activities to ensure appropriate administration, monitoring and enforcement.

While the investigation supports regional enforcement, it is of the view that these activities need to be coordinated by a central unit. There currently appears to be a disconnect between the various areas involved in monitoring and enforcement, and this disconnect may have adversely affected the management of complaints, including appropriate action being taken.

The central unit would be responsible for ensuring enforcement activities are appropriately planned, structured and risk based. Information from regional enforcement units would be provided to the central unit at least monthly for the identification of any patterns or systemic issues that should be addressed through additional enforcement, education, training or changes to the regulatory framework. DTMR policies and procedures would need to be reviewed and revised to support a more rigorous approach to compliance through oversight from the central unit.

To support ongoing monitoring, the investigation recommends the continuation of the tow truck hotline. The hotline was an important source of information for the investigation in identifying and understanding issues, and may be a useful tool for DTMR in monitoring complaints and identifying any patterns or systemic issues.

The investigation also recommends the introduction of an audit program for tow truck licensees. Licensees' tow trucks, business premises, holding yards and records should be randomly, but regularly, audited as a mechanism to detect contraventions of legislative obligations and encourage ongoing compliance.

Finally, to ensure transparency and accountability the investigation recommends that information about complaint management and enforcement activities be published on the DTMR website every six months. This information should include the:

- ▶ number of complaints received and the outcome for each complaint (outcomes should be by category to maintain the privacy of the complainant and respondent)
- ▶ number of infringement notices issued and matters dealt with by a court, and
- ▶ number of audits conducted and the outcome.

Recommendation 18

Establish a central unit within the Department of Transport and Main Roads that is accountable for oversight of compliance activities.

Develop new policies and procedures to support a more rigorous approach to administering, monitoring and enforcing the tow truck regulatory framework.

Recommendation 19

Publish information about complaint management and enforcement on the Department of Transport and Main Roads' website every six months, including:

- ▶ number of complaints received and the outcome for each complaint (outcomes should be by category to maintain the privacy of the complainant and respondent)
- ▶ number of infringement notices issued and matters dealt with by a court, and
- ▶ number of audits conducted and the outcome.

Recommendation 20

Provide focussed training to Department of Transport and Main Roads and Queensland Police Service officers involved in the administration, monitoring and enforcement of the tow truck regulatory framework to ensure appropriate levels of knowledge and understanding.

4.9 Education and awareness

As outlined in chapter 3, the legal basis for removing vehicles parked on private property and the competing rights of occupiers, towing operators acting as their agent, and of motorists is complex. It was apparent during the investigation that motorists, occupiers and towing operators were not always aware of their rights and obligations in relation to parking on, and removing vehicles from, private property.

In particular, the investigation notes instances where it was reported:

- ▶ motorists assumed they were permitted to park on private property after having seen clear signs prohibiting or restricting parking
- ▶ occupiers believed they had an inherent right to remove unauthorised vehicles without understanding the legal basis, obligations and risks of removing vehicles, and
- ▶ towing operators removed vehicles without the authority of the occupier, or with agreements that would likely not establish an agency arrangement authorising the removal of vehicles.

The investigation was unable to identify any information developed by government to assist motorists, occupiers or towing operators in understanding their rights and obligations in relation to private property towing in Queensland.

Additionally, the investigation also noted a number of signs at sites around Brisbane warning that unauthorised vehicles would be wheel clamped. While wheel clamping is not within the scope of the investigation, as it has been prohibited in Queensland for 20 years, these signs reiterate the investigation's broader concern that occupiers are not aware of their rights and obligations regarding managing parking on their property.

Conclusion

The investigation recommends an education and awareness campaign be undertaken to inform motorists, occupiers and towing operators of their rights and obligations in relation to private property parking and towing. In particular, the campaign should include information regarding potential consequences for motorists if they park illegitimately, including the possibility of being stranded if their vehicle is towed, and for occupiers and towing operators if they unlawfully remove a vehicle. The campaign should include information regarding any changes implemented as a result of the investigation.

Additionally, while not directly concerning the removal of vehicles from private property, it is also suggested that the campaign may be an opportunity to remind occupiers that wheel clamping is prohibited in Queensland.

Education should be ongoing with information published on the DTMR or other suitable government website and incorporated into DTMR publications such as *Your Keys to Driving in Queensland* and programs aimed at education for motorists and industry. A fact sheet could provide information about rights and obligations regarding private property parking and towing (see [Appendix G](#) for an example fact sheet).

Recommendation 21

Improve awareness of rights and obligations about private property parking and towing by:

- ▶ running an education and awareness campaign
- ▶ publishing information on the Department of Transport and Main Roads' or other suitable government website, and
- ▶ incorporating information into Department of Transport and Main Roads' publications such as *Your Keys to Driving in Queensland* and programs aimed at education for motorists and industry.

Recommendation 22

Develop information for motorists, occupiers and towing operators regarding any changes to the tow truck regulatory framework as a result of the investigation.

5 Matters for further consideration

This chapter outlines broader issues regarding the tow truck regulatory framework identified during the course of the investigation. The investigation highlights these matters for further consideration.

5.1 Introduction

As noted in 1.1, while the investigation considered private property towing in the broad context of the towing industry, it did not undertake a comprehensive review of the current scope or operation of the TT Act and TT Regulation. Nevertheless, a range of broader issues in relation to the tow truck regulatory framework became apparent during the course of the investigation.

5.2 Holistic review of tow truck legislation

The licensing and accreditation scheme under the TT Act and TT Regulation has not been substantially reviewed for at least a decade. While reviewing the operation of the regulatory framework as it currently applies was outside the investigation's scope, the investigation did identify a range of issues.

Consequently, the investigation recommends that government conduct a holistic review of the TT Act and TT Regulation to ensure they provide an effective and contemporary framework for the regulation of the towing industry. The review should have particular regard to:

- ▶ clarifying the intended operation of the licensing scheme, particularly whether the person or the tow truck should be licensed
- ▶ simplifying and enhancing the flexibility of the TT Act, which could include moving details to the TT Regulation
- ▶ ensuring the legislation facilitates and encourages effective policies and processes
- ▶ removing duplication and inconsistencies between the TT Act and TT Regulation
- ▶ dealing with obligations and concepts in a consolidated manner, removing the fragmentation of requirements between the TT Act and TT Regulation
- ▶ including appropriate and comprehensive regulation making powers, and
- ▶ drafting provisions that are contemporary, simple, precise and accessible.

The investigation recommends that the review also consider how the TT Act and TT Regulation interact with other legislation. In particular, it is recommended that consideration be given to amending section 135 of the TORUM Act to clarify its intended operation in relation to towing services (see 3.4.1 for discussion about section 135 of the TORUM Act).

It is noted the TT Regulation is scheduled to expire in 2019, and the investigation recommends that the review of the TT Act and TT Regulation be undertaken to align with the regulation being remade. Further, the investigation suggests that regular reviews of the TT Act and TT Regulation be undertaken to ensure the regulatory framework remains relevant and adapts to address emerging issues in the towing industry.

Matter for consideration 1

Review the *Tow Truck Act 1973* and *Tow Truck Regulation 2009* to ensure the regulatory framework is simple, precise, accessible and appropriately targeted to achieve the policy objectives.

5.3 Towing services

The tow truck regulatory framework currently applies only to crash towing and controlled area towing. The framework has applied to crash towing since it was introduced in 1973, and was expanded in 1997 to apply to controlled area towing.

A number of submitters and callers to the hotline suggested the tow truck regulatory framework should apply to all towing services, citing New South Wales' regulation of all towing services as a more effective scheme.

Effective licensing and accreditation schemes operate by imposing requirements on particular products or services, persons, locations or a combination of these elements. Coverage should be targeted to most efficiently achieve the intended policy objectives with minimal compliance and administrative burden; the most appropriate coverage is generally based on mitigating risk.²⁰⁹

DTMR states the main purpose of the tow truck regulatory framework is 'to regulate and control the towing of damaged vehicles from the scene of an incident and subsequent handling and storage of those vehicles'.²¹⁰ However, this does not address the regulation of controlled area towing; there does not appear to be a clear statement of the purpose for regulating controlled area towing.

The appropriate services to be covered by the tow truck regulatory framework depend on the overarching policy objectives. If the objectives of regulation are to ensure only appropriate persons operate, drive or are employed in connection with tow trucks and that trucks are properly equipped, well maintained and safe, these objectives are arguably equally applicable to most, if not all, towing services. Alternatively, if the objective of regulation is to impose standards on specific towing services where, due to the nature or circumstances of the service, additional requirements are necessary, this objective may be achieved through selective application of the regulatory framework.

Further, if private property towing is regulated, as recommended by the investigation, this may create perceived anomalies in the regulation of towing services as private property towing has strong parallels with compliance towing, particularly the removal of illegally parked vehicles.

The investigation recommends that government review the towing services covered by the regulatory framework to determine whether the regulation should be limited to certain services and, if so, whether the appropriate services are currently regulated, or if different or additional services should be covered by the regulatory framework. In reviewing the services covered by the regulation consideration should also be given to whether maximum fees should be set for all existing, and any additional, regulated services. It is noted the TT Act currently provides that a maximum fee may be set for compliance towing in relation to vehicles impounded under the 'anti-hooning laws'.²¹¹

Matter for consideration 2

Review the towing services covered by the *Tow Truck Act 1973* and *Tow Truck Regulation 2009* to ensure the regulatory framework is appropriately targeted to achieve the policy objectives.

5.4 Regulated areas

The tow truck regulatory framework applies only to regulated areas, predominantly in South East Queensland but also covering major towns such as Cairns, Mackay and Rockhampton.

The application of the regulatory framework to only regulated areas appears to have been in effect since at least 1999, however the reasons regulated areas were introduced and the basis for selecting the areas could not be ascertained. It is presumed the regulated areas are those where population density made it likely multiple towing operators were competing for towing work, creating a perceived need for consumer protection. The regulated areas are currently defined by local government area boundaries, as they existed on 14 March 2008.²¹²

A number of submitters and callers to the hotline questioned limiting the application of the regulatory framework to only regulated areas, and suggested that regulation of the towing industry should occur across Queensland. Gympie and Tiaro in particular were raised during the investigation as apparent anomalies; the shire of Noosa to the south and the city of Maryborough to the north are regulated areas, however Gympie and Tiaro in between are not regulated areas.

As outlined above, the most effective way to target coverage of the tow truck regulatory framework depends on the overarching policy objectives; the policy objectives inform whether the scheme should be limited to certain areas and, if so, which areas.

If regulating the towing industry is intended to ensure only appropriate persons are engaged in the towing industry and that trucks are properly equipped, maintained and safe, these objectives are arguably equally applicable to areas outside the current regulated areas. Alternatively, if the objective of regulating the industry is to impose standards on specific geographic areas where circumstances necessitate additional requirements, this objective may be achieved through selective application of the framework to regulated areas.

While amending the regulated areas was not necessary to address the issues regarding private property towing as all complaints reviewed by the investigation occurred in regulated areas, the investigation recommends that government review the areas covered by the tow truck regulatory framework. At minimum, the investigation suggests the regulated areas be redefined to reflect contemporary local government areas, rather than those in place nine years ago, in line with the principle that legislation should be simple, precise and accessible.

Matter for consideration 3

Review the geographic areas covered by the *Tow Truck Act 1973* and *Tow Truck Regulation 2009* to ensure the regulatory framework is simple, precise and accessible and coverage is appropriately targeted to achieve the policy objectives.

5.5 Licence and accreditation duration

Tow truck licences may only be issued for one year. Driver and assistant accreditation is also issued for one year, although it may be issued for up to five years. Licences and accreditation may be renewed however, the period during which an application to renew may be made is limited to two weeks before it is due to expire.

There is a general principle that licensing and accreditation schemes should impose the minimum burden necessary to achieve the policy objectives.²¹³ In line with this principle, the investigation recommends that government consider whether tow truck licences or accreditations should be issued for a longer period; they should be issued for the maximum appropriate duration, limited by the need to reassess that licence and accreditation holders continue to meet the requirements. Issuing licences and accreditations for longer periods could more appropriately balance the need for regulation of the towing industry with the burden regulation imposes on government and industry.

Other industry authorities issued by DTMR are granted for between one and five years; dangerous goods vehicle licences are issued for one year, dangerous goods driver licences are issued for three years, and operator accreditation (taxi, limousine, school, charter, tourist or community transport service operators) and driver authorisations (taxi, rideshare and limousine drivers) are issued for one to five years.

The investigation also recommends that government consider extending the restrictive two-week period during which licence and accreditation holders may renew their authority. This could allow tow truck licensees, drivers and assistants more flexibility in managing their affairs and ensure adequate time for applications to be lodged and assessed prior to the licence or accreditation expiring.

Matter for consideration 4

Consider whether tow truck licences and accreditations should be issued for longer than one year to balance the need for regulation of the towing industry with the burden regulation imposes on government and industry.

Matter for consideration 5

Consider extending the restrictive two-week period for renewing a tow truck licence or accreditation to increase flexibility and ensure adequate time for applications to be lodged and assessed prior to the licence or accreditation expiring.

5.6 Penalties for offences

The TT Act and TT Regulation prescribe a range of offences for persons who contravene or fail to comply with the requirements of the tow truck regulatory framework. Some offences may be dealt with through the issue of an infringement notice, requiring the person to pay a fine, while other offences must be dealt with by a court.

The majority of offences in the TT Act have maximum court imposed penalties of 40 penalty units (\$5,046), and the TT Act provides that penalties in the TT Regulation must have a maximum court imposed penalty of no more than 20 penalty units (\$2,523).

The investigation recognises the important role of penalties in encouraging compliance. While the investigation did not undertake a comprehensive review of penalties under the tow truck regulatory framework, a preliminary review identified some significant irregularities within the framework and in comparison to similar offences under transport legislation.

For example, the infringement notice fine issued to a person for operating an unlicensed tow truck (\$252) is less than the infringement notice fine issued to a licence holder who charges in excess of the maximum regulated fee for a standard crash tow (\$504). The disparity between the fines for these offences may not appropriately reflect the severity and potential risks associated with the contraventions. A selection of penalties imposed for offences under the TT Act and TT Regulation is outlined at [Appendix H](#), together with penalties for comparable offences in New South Wales and Victoria.

Similarly, the infringement notice fine for knowingly making a false statement on an application under the TT Act (\$252) is substantially less than the infringement notice fine for providing information the person knows is false or misleading under the TORUM Act (\$756). The fines for similar offences within transport legislation should arguably be more closely aligned to ensure consistency and avoid disparity in the perceived seriousness of the offences.

The investigation also noted a number of offences in the TT Regulation prescribe maximum penalties of more than 20 penalty units.

Consequently, the investigation recommends that government review all offences under the TT Act and TT Regulation to ensure penalties appropriately reflect the seriousness of the offence with reference to other offences within tow truck legislation and in comparison to similar offences within transport legislation.

As part of this review, it is recommended that government consider increasing the maximum penalty that may be imposed under the TT Regulation to ensure compliance with legislative principles, and the imposition of sufficiently serious penalties to deter noncompliance. The investigation notes that the TOPT Act and TORUM Act prescribe that a regulation may impose a maximum penalty of no more than 80 penalty units.

Matter for consideration 6

Review all offences under the *Tow Truck Act 1973* and *Tow Truck Regulation 2009* to ensure penalties appropriately reflect the seriousness of the offence with reference to other offences within tow truck legislation and in comparison to similar offences within transport legislation.

Matter for consideration 7

Consider increasing the maximum penalty that may be imposed under the *Tow Truck Regulation 2009* to ensure compliance with legislative principles and the imposition of sufficiently serious penalties to deter noncompliance.

5.7 Criminal histories

The TT Act requires DTMR, in considering whether someone is an appropriate person to hold a tow truck licence or accreditation, to consider the person's criminal history. The definition of criminal history means their criminal history under the CLRO Act and charges for certain offences.²¹⁴ The TT Regulation similarly prescribes that an application for driver or assistant accreditation may be refused if the person has been convicted of a disqualifying offence for which the rehabilitation period under the CLRO Act has not expired.²¹⁵

The CLRO Act provides that rehabilitation periods apply to certain convictions after which the convictions generally cannot be disclosed. A rehabilitation period only applies to convictions where the person was either not sentenced to imprisonment, or was sentenced to a period of not more than 30 months. The rehabilitation period is five years unless the person is convicted on indictment in which case the period is 10 years. A rehabilitation period does not apply to any convictions where the person was sentenced to a period of imprisonment of more than 30 months; these convictions remain disclosable for the person's lifetime.

A conviction to which a rehabilitation period applies may be disclosed if the person against whom it is recorded wants to disclose it, or a permit to disclose is granted. A conviction may also be disclosed, and considered, for the purpose of assessing a person's fitness to be admitted to a profession, occupation or calling if they are expressly required by law to disclose their criminal history or the entity assessing their fitness is expressly required by law to consider their criminal history.

Criminal histories in relation to tow truck licences and accreditations are considered by DTMR in accordance with internal departmental guidelines. However, the different language used in referring to the CLRO Act in the TT Act and TT Regulation creates some uncertainty regarding the extent of the criminal history to be considered.

There are also inconsistencies in the consideration of criminal histories in comparison to other transport legislation.²¹⁶ For example, the TOPT Act, which deals with passenger transport operator accreditation and driver authorisations, specifically excludes the application of rehabilitation periods under the CLRO Act to consider a person's criminal history in its entirety.²¹⁷ The CLRO Act also provides that a person is not required to disclose a charge for an offence that has not been determined. Consequently, in other transport legislation where criminal history is intended to include charges, specific provision has been made to exclude the operation of the CLRO Act, such a provision is not present in the TT Act.

The investigation recommends that government consider the purpose of assessing the criminal history of applicants and holders of tow truck licences and accreditations, to determine the appropriate scope for disclosure and consideration of charges and convictions, and ensure the TT Act and TT Regulation clearly achieve that purpose.

Matter for consideration 8

Consider the purpose of criminal history checks for applicants and holders of tow truck licences and accreditations and, if necessary, amend the *Tow Truck Act 1973* and *Tow Truck Regulation 2009* to ensure the suitability requirements clearly achieve the intended objectives.

Appendix A - Terms of reference

Department of Transport and Main Roads

Terms of Reference - Independent Investigation

Preamble

In Queensland, the towing of a motor vehicle from the scene of a crash or police seizure under the *Police Powers and Responsibilities Act 2000*, is regulated by the *Tow Truck Act 1973* (TT Act) and *Tow Truck Regulation 2009* (TT Regulation). The TT Act and TT Regulation apply only in regulated areas which are mainly limited to South East Queensland and the urban local government centres along the East Coast.

All other forms of towing, including the removal of vehicles and associated fees from private property, are not currently subject to the legislative provisions.

At common law, property owners have a right to deal with vehicles parked on private land. These rights apply where vehicles are trespassing or if vehicle owners do not obey the terms and conditions for parking on the land which are usually displayed on a sign. Owners/Managers of private parking areas frequently arrange for tow truck operators to remove vehicles on their behalf.

There has been increasing community discontent and recent media attention surrounding practices involving the removal of parked motor vehicles from private property. Common issues raised include:

- motor vehicles being removed without the owner's permission, which has left vehicle owners stranded and feeling vulnerable;
- the level of fees being charged by the tow truck operator (between \$400 - \$1000);
- the absence, lack of clarity or poor placement of signage outlining the terms and conditions of parking;
- vehicles having to be retrieved from the tow truck operator sometimes many kilometres away;
- the behaviour or other conduct of the tow truck driver;
- privacy fears by handing over their Queensland Drivers Licence or other form of identification.

Successive governments have been challenged in addressing certain aspects of the tow truck industry. In particular, private and breakdown towing remain beyond the scope of current legislation despite some similarity in the nature of the work undertaken with currently regulated aspects of the industry. It is clear that some current practices within the industry fall short of community expectation. It is important that a balance be struck between what is fair and reasonable from a community perspective and a property owner's right to remove vehicles parked without permission on their property or against signed parking conditions

Nature of Investigation

The Minister for Main Roads, Road Safety and Ports has commissioned Mr Michael Forde to conduct an independent investigation into the removal of vehicles from private property, as per the Terms of Reference, and provide a written report back to the Minister within 3 months. The Department of Transport and Main will provide administrative and secretariat support for the investigation.



Scope of Investigation

The independent investigation will examine and recommend possible regulatory and other reforms or recommendations with regard to aspects of the tow truck and vehicle removal industry not already covered by provisions in the TT Act or TT Regulation.

The independent investigation will advise the Minister on, but not necessarily be limited to, the following matters:

- a. Whether there is a need for legal clarification of the circumstances where a vehicle parked on private property may be legally towed on behalf of the property owner.
- b. Whether there are other appropriate mechanisms for regulating these practices beyond existing transport regulations.
- c. Whether minimum standards should be established for signage in private parking. Such requirements could include outlining the terms and conditions of parking, the location and frequency of signage or other variables impacting the signage.
- d. Whether fees and charges for towing and storage should be regulated and in what manner.
- e. Whether there should be restrictions on the maximum distance which a vehicle may be towed from where it was first parked.
- f. Whether there is a need for consumer protections such as limiting predatory practices and acts such as 'spotting'.
- g. Whether existing licensing and accreditation schemes under the TT Act and TT Regulation could be expanded to cover, the practice of removing parked vehicles from private car parks and private roads accessible to the public.
- h. How privacy can be adequately protected when motor vehicle drivers interact with tow truck entities.
- i. What supporting education and other industry communication measures could be implemented to improve consumer understanding.
- j. How any proposed regulatory reforms would be enforced, including which agencies could undertake the task.
- k. Other matters as related to the terms of engagement.

Stakeholders

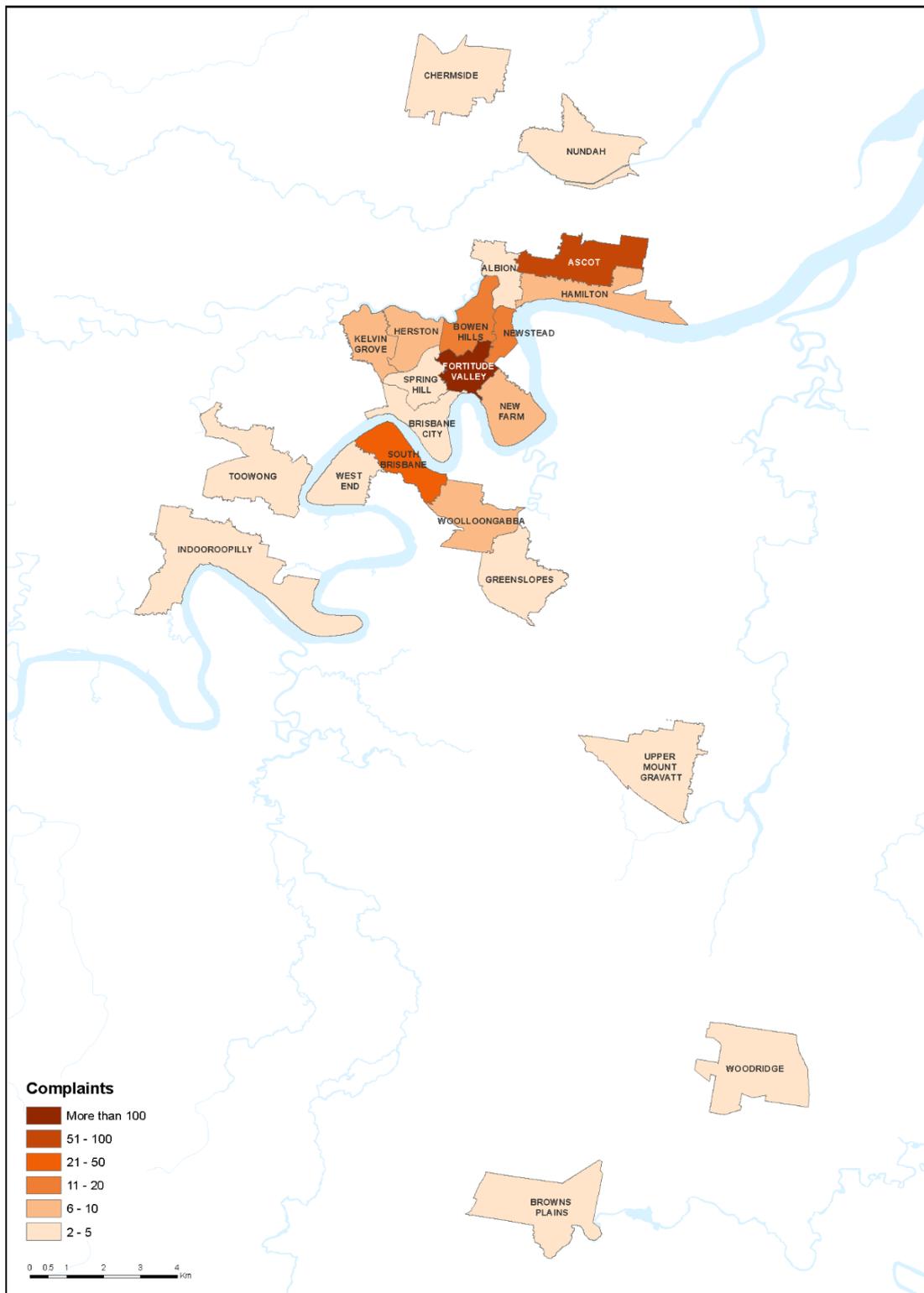
The independent investigation will incorporate appropriate input and consultation from key stakeholders including key government agencies and major community stakeholders such as the following:

- Department of Transport and Main Roads
- Department of Premier and Cabinet
- Queensland Police Service
- Department of Justice and Attorney-General
- RACQ
- Brisbane City Council
- Local Government Association, Queensland
- Queensland Tow Truck Industry
- Queensland Consumer Association.
- Queensland Tow Truck operators
- Queensland Hotels Association
- Relevant Associations covering Car Park Managers, Small Business & Restaurant Owners

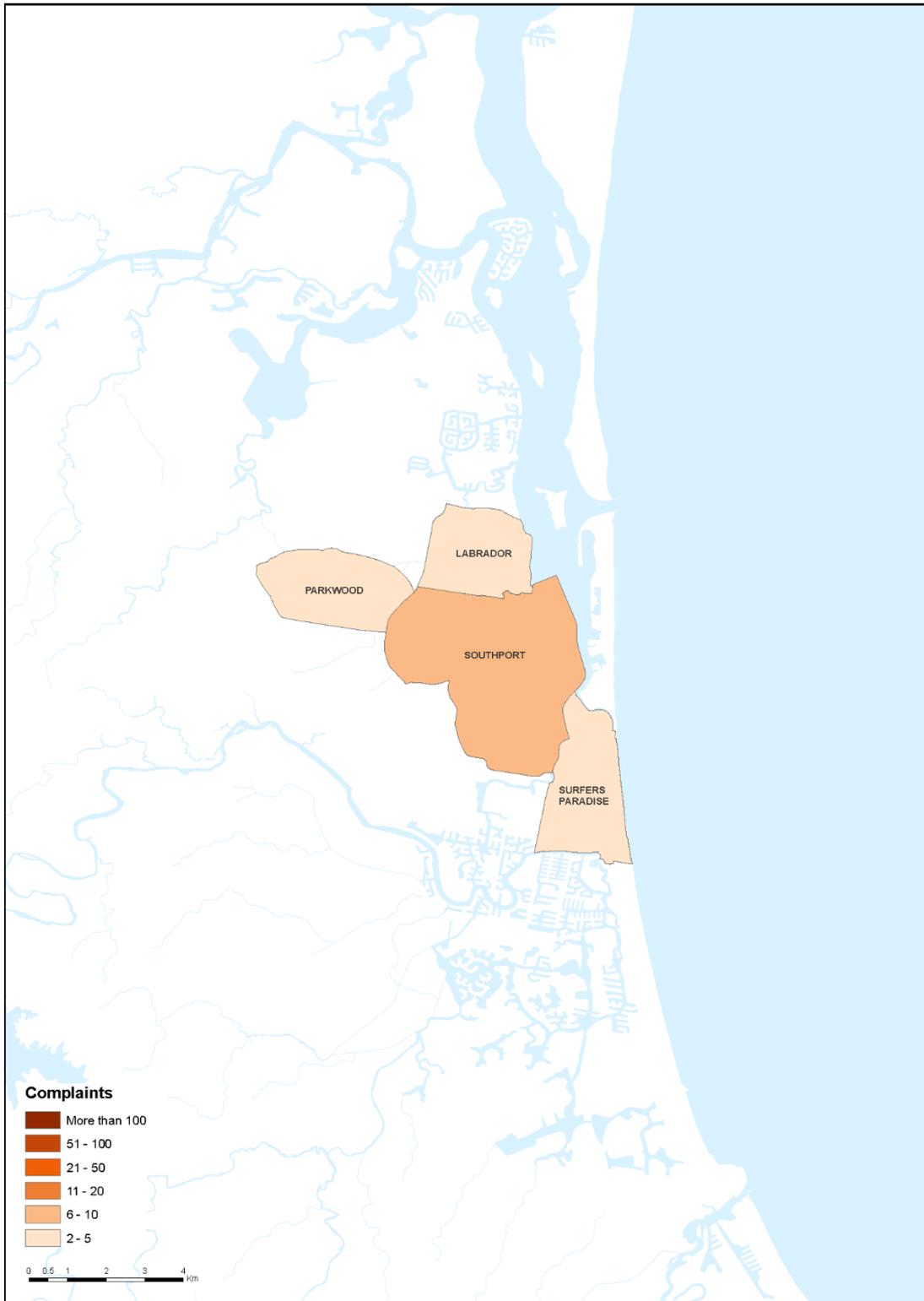
The investigation will need to include a means by which the wider Queensland community can have a say in the investigation and the possible measures being considered.

Appendix B - Tow truck hotline

Brisbane 'hotspots'



Gold Coast 'hotspots'



Appendix D - Overview of legislative changes proposed by the investigation

The investigation recommends that the TT Act and TT Regulation be amended to apply, with some variation, to private property towing. The following information provides an overview of key legislative changes that could be implemented to achieve the recommended outcomes.

Licences and accreditation

It is intended that in relation to private property towing, all tow trucks must be licensed and all tow truck drivers and others employed in connection with performing the towing service must be appropriately accredited. It is also intended that penalties for failing to comply with these requirements be increased to ensure they are an effective deterrent to noncompliance.

The requirement for tow trucks to be licensed to perform private property towing could be achieved by amending section 5 of the TT Act to specify that a person must hold a licence to operate a tow truck towing a damaged, seized or removed vehicle in a regulated area. This amendment could also increase the maximum penalty for contravening the requirement to 160 penalty units.

Similarly, the requirement for drivers and assistants to be accredited could be achieved by amending section 13 of the TT Act to specify that a person must hold:

- ▶ a driver accreditation to operate a tow truck towing a damaged, seized or removed vehicle in a regulated area, and
- ▶ a driver or assistant accreditation to travel in a tow truck going to the scene of an incident, seizure or removal of a vehicle or to be employed on or in connection with the use of a tow truck at the scene of an incident, seizure or removal of a vehicle in a regulated area.

This amendment could also increase the maximum penalty for contravening the requirement to 80 penalty units.

These amendments could be supported by the inclusion of definitions for removed vehicle, private property, occupier and owner (as currently defined in the TT Regulation) within schedule 2, such as:

removed, for a motor vehicle, means a motor vehicle that has been removed, or is to be removed, from private property without the express approval of the owner of the vehicle but does not include a motor vehicle lawfully removed from private property under another law.

This definition does not limit the exercise of a power over a vehicle that a person may have as the holder of a security interest in the vehicle.

private property means publicly accessible private roads or land in the control of an occupier, but does not include roads or land controlled by a local government or the State.

occupier means a person who has a legally enforceable right to possess or control a premises or land.

owner of a motor vehicle includes—

- (a) a joint owner or a part owner of the vehicle
- (b) for a motor vehicle registered under the *Transport Operations (Road Use Management - Vehicle Registration) Regulation 2010* or under a corresponding law of another State—every person in whose name the vehicle is registered
- (c) for a motor vehicle the subject of a hiring agreement or a hire-purchase agreement or a leasing agreement, the person who has the use of the vehicle as hirer or lessee under the agreement, and
- (d) a person who is authorised to have and has control, charge or management of the vehicle.

Section 40 of the TT Regulation could consequently be amended as the exemption from the licensing and accreditation requirements for all services except crash towing and controlled area towing would not be required. The section could instead provide what is a regulated area for the purpose of sections 5 and 13 of the TT Act.

An amendment to section 43 of the TT Act should also be made to ensure appropriate authority is provided to make the provision in a regulation.

The SPE Regulation could also be amended to increase the infringement notice fine for operating an unlicensed tow truck to 12 penalty units and the infringement notice fine for performing towing services without holding an appropriate driver or assistant accreditation to 6 penalty units.

It is noted the requirement for tow trucks to be licensed, and drivers and assistants accredited, to perform private property towing could also be achieved through amendment to section 40 of the TT Regulation. If this approach is taken the investigation suggests amendments be made to the TT Act - section 43 to ensure appropriate authority is provided to make such a provision in a regulation, section 5 and 13 to note the exemption provided for in the regulation, and section 13 to remove references to 'scene of an incident or seizure of a motor vehicle'.

It is also suggested further amendments be made as part of a broader review of the TT Act to move conditions applicable to specific services to the regulation - any flexibility to exempt the operation of the Act through a regulation is significantly complicated if provisions detailed in the TT Act need to be modified and replicated in the TT Regulation to effectively change the services the licensing and accreditation scheme applies to.

Occupier's approval to remove

It is intended that to undertake private property towing licensees be required to have an *occupier's approval to remove* for the removal of a vehicle from a private property, tow truck drivers be required to carry a copy of the approval, and licensees and drivers be required to provide a copy of the approval to a vehicle's owner or their agent, if requested.

The requirement to have an *occupier's approval to remove* could be achieved by amending section 12 of the TT Act to provide that a person must not tow a removed vehicle unless the person has an *occupier's approval to remove* for the private property where the removed vehicle is, or was, located. This could be supported by the inclusion of a definition of *occupier's approval to remove* within schedule 2, such as:

occupier's approval to remove means a document, in the approved form, evidencing an arrangement between an occupier and the holder of a tow truck licence for the removal of a motor vehicle from a private property. An occupier's approval to remove includes a single approval for the removal of a specific motor vehicle or a general approval for the removal of motor vehicles from a private property.

A new provision could also be added clarifying that an *occupier's approval to remove* does not provide a legal basis for the removal of a vehicle from private property.

An amendment could be made to section 40 of the TT Act, if necessary, to ensure the new provision is included as a licence condition for which non-compliance is an offence and which would incur a maximum penalty of 40 penalty units.

The requirements for tow truck drivers to carry a copy of the *occupier's approval to remove*, and for a vehicle's owner or their agent to be provided a copy of the approval if requested could be achieved by amendments to the TT Regulation. A new section could be inserted into the TT Regulation to provide that a tow truck driver performing private property towing must carry an *occupier's approval to remove* for the private property where a removed vehicle is, or was, located. The provision could also require a tow truck licensee or driver to provide a copy of the *occupier's approval to remove* to the owner of the removed vehicle, as soon as practicable and within two business days of a request being made. The new section could include a maximum penalty of 20 penalty units for contravening the requirements.

The SPE Regulation could also be amended to introduce infringement notice fines for not complying with the requirements to carry a copy of the *occupier's approval to remove* or to provide a copy of the *occupier's approval to remove* to the vehicle's owner if requested.

Notification to QPS

It is intended that tow truck licensees be required to notify QPS as soon as practicable after a vehicle is removed from private property. It is not intended that notification be required in relation to vehicles that are released onsite.

The requirement to provide notice of a removed vehicle could be achieved by inserting a new section into the TT Regulation to provide that a licensee must as soon as practicable after a vehicle is towed from private property, but within one hour of the removed vehicle arriving at the holding yard, provide a *notice of removed vehicle* to QPS.

This would be supported by the inclusion of a definition of *notice of removed vehicle* within the new section, such as:

notice of removed vehicle means a notice, on the approved form, provided to the police commissioner about the removal of a motor vehicle from a private property.

The new section could include a maximum penalty of 20 penalty units for contravening the provision.

Additionally, to facilitate enforcement of the requirement that a *notice of removed vehicle* be provided as soon as practicable, an amendment could be made to section 25 of the TT Regulation to require licensees to keep records about private property tows including the date and time a removed vehicle arrives at the holding yard.

The SPE Regulation could also be amended to introduce an infringement notice fine for not complying with the requirement to notify QPS.

Fees

It is intended that maximum fees be set in relation to private property towing and storage, and call-out fees and separate fees for incidental activities be prohibited.

Setting maximum fees could be achieved by amending section 32 of the TT Regulation to provide that a tow truck licensee must not charge more than the stated amount for a standard private property tow and may for a tow that is not a standard private property tow only charge a reasonable amount. This could be supported by the inclusion of a definition of standard private property tow within section 32, such as:

standard private property tow means removing the motor vehicle from private property to the holding yard, and up to 72 hours storage in the holding yard.

Additional amendments could be made to section 32, if necessary, to ensure the existing maximum penalties of 20 penalty units for charging more than the stated amount for a standard crash tow or charging an amount that is not reasonable also apply to the requirements for private property towing.

A new section could also be inserted into the TT Regulation to provide that a tow truck licensee must not charge more than the set amount for the onsite release of a removed vehicle, or storage of a towed vehicle, with a maximum penalty of 20 penalty units imposed for contravening these obligations, consistent with the penalty under section 32. This could similarly be supported by definitions of onsite release and loaded within the new section, such as:

onsite release means releasing a motor vehicle loaded onto a tow truck for the purpose of performing a standard private property tow but not removed from the private property.

loaded means the motor vehicle is supported by, and secured to, the tow truck with no further action required to move the motor vehicle.

Schedule 3 could be amended to prescribe the maximum fees that may be charged:

- ▶ standard private property tow— \$250 (including GST)
- ▶ onsite release— \$150 (including GST)
- ▶ storage— \$25 per calendar day (including GST).

Prohibiting call-out fees and separate fees for incidental activities could be achieved by inserting a new section prohibiting the charging of a call-out fee and fees for activities in connection with private property towing such as fuel costs, administrative work, taking or producing photographs, preparing or sending documents or information, making an inventory of personal belongings, storing personal belongings, viewing or accessing a vehicle during business hours, viewing or accessing a vehicle outside business hours unless prior notice of fees is given, and moving a vehicle within the holding yard or to the entrance of the holding yard. The section could include a maximum penalty of 20 penalty units for charging separate fees or call-out fees.

To support these amendments changes would also be required to:

- ▶ section 36 to ensure fees for onsite release and storage can be investigated
- ▶ section 31 to provide that owners, as defined in schedule 2, are liable for the payment of any onsite release, towing or storage fees in relation to removed vehicles where the vehicle was trespassing or parked in contravention of the conditions of parking on the private property.

It is noted that to implement these changes an amendment to section 43 of the TT Act is required to provide authority to make a regulation about the full range of fee matters.

The SPE Regulation could also be amended to introduce infringement notice fines for charging more than the set amount for a standard private property tow, onsite release of a vehicle or storage of a vehicle, charging more than a reasonable amount for towing a removed vehicle, or charging a prohibited fee.

Privacy

It is intended that information about the removal of a vehicle from private property, as well as the personal information of a vehicle owner, driver or other party connected to regulated towing services be protected from inappropriate disclosure.

Preventing inappropriate disclosure of information about private property towing could be achieved by amending section 21 of the TT Regulation to provide that tow truck licensees, drivers and assistants may only disclose information obtained while acting under the authority of their licence or accreditation:

- ▶ if the information is about the removal of a vehicle— to the owner of the vehicle or their agent, an authorised officer, or the licensee, driver or assistant’s principal, employer, agent or employee, and
- ▶ if the information is personal information of the vehicle owner, driver or other party connected to crash towing, controlled area towing and private property towing— to the owner of the vehicle or their agent, an authorised officer, or the licensee, driver or assistant’s principal, employer, agent or employee.

This amendment could be supported by the inclusion of a definition of ‘personal information’ within section 21, such as:

personal information means information, whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information. Personal information includes an individual’s name, date of birth, address and phone number.

If necessary, further amendments could be made to section 21 to ensure the existing maximum penalty of 20 penalty units for contravening the current disclosure restrictions also apply to contraventions of the additional restrictions.

Additional protections could also be introduced by amending section 21 of the TT Regulation to prevent a licensee, driver or assistant, or a principal, employer, agent or employee, who is given information under the section from then disclosing the information to anyone other than the owner of the vehicle or their agent, an authorised officer, or the licensee, driver or assistant or their principal, employer, agent or employee. The amendment could include a maximum penalty of 20 penalty units for contravening this restriction.

Conduct requirements

It is intended that tow truck licensees, drivers and assistants undertaking private property towing be subject to specific conduct requirements.

Imposing specific conduct requirements could be achieved by inserting a new section into the TT Regulation. This section could provide that a tow truck licensee, driver and assistant must not when acting in relation to private property towing cause or threaten wilful injury to a person, intimidate, harass, abuse or insult a person, or cause or threaten wilful damage to a person’s property.

The new section could also impose conduct requirements regarding loading and removing vehicles from private property including that a tow truck licensee, driver and assistant may only commence loading a removed vehicle onto a tow truck, if the licensee, driver and assistant cannot reasonably find the person in control of the vehicle, or can find the person but reasonably believe they are unable or unwilling to move the vehicle immediately. If after commencing loading the vehicle the person in control of the vehicle returns before the vehicle is completely loaded and is willing and able to immediately remove the vehicle, the vehicle must be released it to the person.

Additionally, the new section could provide that a vehicle loaded onto a tow truck at the scene of a removal, must be released if the onsite release fee has been paid or tendered in relation to the removed vehicle, or if the person in control of the vehicle is present, the person has not been given reasonable time to pay the onsite release fee.

The new section could include a maximum penalty of 20 penalty units for contravening the conduct requirements. The SPE Regulation could also be amended to introduce infringement notice fines for contravening the conduct requirements.

Licence and accreditation conditions

It is intended that the existing requirements for crash towing and controlled area towing will generally apply to private property towing, with some variations.

Applying, or excluding, the existing requirements could be achieved by:

- ▶ amending section 12 of the TT Act to:
 - ◆ require a tow truck licensee, driver and assistant to take all reasonable precautions to prevent loss from, or damage to, a removed vehicle being towed and while under the control of the licensee
 - ◆ require the licensee to ensure that an inventory is made of property in a removed vehicle at the time it arrives at the holding yard and to keep the inventory at the licensee's business premises
 - ◆ prohibit a person from breaking into a removed vehicle for the purpose of making an inventory of property, if the vehicle is locked the inventory is to include the property visible from outside the vehicle
 - ◆ require a tow truck licensee to move a removed vehicle to the licensee's nearest holding yard
 - ◆ prohibit a person from moving a removed vehicle from the holding yard to another location without the written authority of the owner or their agent
 - ◆ prohibit a person from refusing to deliver a removed vehicle, that has been loaded onto a tow truck or moved to a holding yard, to the vehicle's owner or their agent after payment of reasonable fees for towing and storing the vehicle
 - ◆ prohibit a person other than an accredited driver or assistant from accompanying a driver when proceeding to the scene of a removal or towing a removed vehicle
 - ◆ prohibit a person obtaining or attempting to obtain an *occupier's approval to remove* unless they hold a tow truck licence
 - ◆ prohibit a tow truck causing an obstruction on a road or standing at the scene of a removal for longer than required to connect the towing equipment to a removed vehicle
 - ◆ prohibit a removed vehicle being towed while a person is in the vehicle
- ▶ amending section 30 of the TT Regulation to require tow truck drivers to move a removed vehicle, as soon as practicable, to the nearest holding yard by the most direct route
- ▶ amending section 34 of the TT Regulation to exclude the requirement to provide two days' notice before imposing storage fees for removed vehicles, and
- ▶ amending section 37 of the TT Regulation to require licensees to keep movable property found in a removed vehicle safe until returned to the owner or their agent.

The SPE Regulation could also be amended to introduce an infringement notice fine for moving a removed vehicle to the nearest holding yard other than by the most direct route.

Appendix E - Prohibition of separate fees

As outlined in 4.3.3, the investigation recommends prohibiting separate fees for incidental activities to ensure additional fees are not used as a means to circumvent the towing and storage fee caps.

It is suggested DTMR consider preventing a separate fee being charged for the following activities in connection with private property towing:

- ▶ fuel costs
- ▶ phone calls, or other acts, to secure towing work
- ▶ taking or producing photographs
- ▶ preparing or sending documents or information (including notification to QPS)
- ▶ any other administrative work
- ▶ accessing the vehicle to retrieve personal belongings
- ▶ making an inventory of, or storing, personal belongings
- ▶ viewing or accessing the vehicle during business hours
- ▶ viewing or accessing the vehicle outside business hours unless prior notice of the fees is given to the person
- ▶ moving the vehicle within the holding yard or to the entrance of the holding yard, and
- ▶ other activities required to undertake the towing work.²¹⁸

Appendix F - Towing infringements issued

Infringements issued by DTMR and QPS – 2012 to 2016

Description	Number
Operating an unlicensed tow truck	5
Falsely representing a vehicle as a licensed tow truck	2
Contravening a condition of a tow truck licence	37
Operating a tow truck without a driver accreditation	7
Intimidating, harassing, abusing or insulting someone at a crash scene	2
Charging in excess of the maximum fee for a standard tow	5
Assaulting, resisting or obstructing an authorised officer	1
Threatening or using abusive or insulting language to an authorised officer	7
Driver failing to properly complete a towing authority	55
Failing to answer questions or provide information or assistance to an authorised officer, or providing false or misleading information	5
Failing to produce a licence, accreditation, record or other document when requested	35
Licensee failing to keep required records	1
Failing to produce driver accreditation before offering to tow a damaged vehicle	3
Attempting to obtain authority to tow a second vehicle before the first is removed	7
Failing to carry a document evidencing a condition imposed on an accreditation	2
Giving, agreeing or offering to give valuable consideration to obtain repair work	1
Advertising or promoting another business or wearing clothing displaying unauthorised advertising or markings	3
Failing to notify DTMR of a change of name or address	32
Failing to attach a change of address label to an accreditation	2
Total	212

Appendix G - Example fact sheet

Fact sheet - private property parking and towing

Private property owners and occupiers

- You must ensure you have a legal basis to remove unauthorised vehicles from your property. There is no general right to remove vehicles parked on private property. If you are not legally entitled to remove a vehicle, you may be charged with a criminal offence or sued for interfering with or detaining the vehicle.
- You should display highly visible, unambiguous signs clearly stating the conditions for parking, and the consequences for not complying with parking conditions. Using the DTMR guideline for signs may assist with ensuring good signage.
- You can be liable for the acts of your towing operator, ensure you understand their business practices.
- If you need to restrict parking 24 hours a day 7 days a week consider erecting barriers to stop motorists accessing the parking area outside business hours.

Towing operators and drivers

- You can only remove vehicles from private property if you are an accredited driver using a licensed tow truck.
- You must have authority from the property owner or occupier to remove vehicles from their property. Ensure the occupier, and you as their agent, have a legal basis for removing a vehicle. If you are not legally entitled to remove a vehicle, you may be charged with a criminal offence or sued for interfering with or detaining the vehicle.
- You must only charge reasonable fees for towing and storing a vehicle, and you must not charge more than the maximum fees for standard private property tows or onsite release.
- You must notify the Queensland Police Service as soon as practicable after removing a vehicle from private property.
- Be courteous to motorists, the situation will be less stressful for all involved if everyone remains calm and courteous.

Motorists

- You are responsible for determining if you are permitted to park somewhere and for complying with any conditions of parking. There is no general right to park on private property.
- You should read signs carefully before leaving your vehicle. Don't assume it's ok to park just because the premises are vacant, it's outside business hours, you aren't going to be very long, there are plenty of vacant spaces, you have parked there before or other people are parked there.
- You should find somewhere else to park if signs indicate parking is not permitted or if it's not clear whether parking is permitted.
- If you think your car has been towed contact the towing operator using details on the signs, or contact the Queensland Police Service via PoliceLink.
- Having your vehicle towed can be emotional but be courteous to towing operators, the situation will be less stressful for all involved if everyone remains calm and courteous.

Appendix H - Towing offence penalties

Comparison with other jurisdictions

Description		Queensland	New South Wales	Victoria
Operating an unlicensed tow truck	Infringement notice	\$ 252	\$ 2,200	\$ 1,586
	Maximum court penalty	\$ 5,046	\$ 11,000	\$ 9,514
Driving a tow truck without driver accreditation	Infringement notice	\$ 252	\$ 1,100	\$ 1,269
	Maximum court penalty	\$ 5,046	\$ 5,500	\$ 9,514
Contravening a condition of a tow truck licence	Infringement notice	\$ 252 <i>Offences under TT Act</i> \$ 504 <i>Offences under TT Regulation</i>	\$ 1,100	\$ 1,269
	Maximum court penalty	\$ 5,046 <i>Offences under TT Act</i> \$ 2,523 <i>Offences under TT Regulation</i>	\$ 5,500 or 6 months imprisonment or both	\$ 4,757
Providing false or misleading information to an authorised officer	Infringement notice	\$ 252	No prescribed infringement amount	No prescribed infringement amount
	Maximum court penalty	\$ 2,523	\$ 8,250 or 6 months imprisonment or both	\$ 7,928
Failing to keep prescribed records	Infringement notice	\$ 252	\$ 1,100	\$ 198
	Maximum court penalty	\$ 2,523	\$ 5,500	\$ 1,585
Charging in excess of regulated fees	Infringement notice	\$ 504	No prescribed infringement amount	No prescribed infringement amount
	Maximum court penalty	\$ 2,523	No prescribed maximum penalty	\$ 4,757
Carrying an unauthorised person as a passenger in a tow truck	Infringement notice	\$ 252	\$ 1,100	\$ 634
	Maximum court penalty	\$ 5,046	\$ 5,500	\$ 9,514
Giving, receiving or offering 'spotters' fees' in relation to crash towing	Infringement notice	\$ 252	\$ 550	No prescribed infringement amount
	Maximum court penalty	\$ 5,046	\$ 2,750	\$ 4,757
Failing to carry driver accreditation while performing regulated towing activities	Infringement notice	\$ 252	\$ 550	\$ 238
	Maximum court penalty	\$ 2,523	\$ 2,750	\$ 2,378
Failing to advise of a change of name or address	Infringement notice	\$ 126	\$ 550	\$ 238
	Maximum court penalty	\$ 2,523	\$ 2,750	\$ 1,585

Endnotes

- ¹ *Competition and Consumer Act 2010* (Cth) sch 2
- ² Chapter 4 of the *Police Powers and Responsibilities Act 2000* (Qld) prescribes the circumstances and process for impounding vehicles under the ‘anti-hooning laws’.
- ³ *Transport Operations (Road Use Management) Act 1995* (Qld) s 104.
- ⁴ *Tow Truck Regulation 2009* (Qld) s 40, sch 4. The cities of Brisbane, Bundaberg, Cairns, Caloundra, Gold Coast, Hervey Bay, Ipswich, Logan, Mackay, Maryborough, Redcliffe, Rockhampton and Toowoomba, and the shires of Beaudesert, Boonah, Caboolture, Esk, Gatton, Kilcoy, Laidley, Maroochy, Noosa, Pine Rivers and Redland, and the parishes of Clement and Hinchinbrook in the county of Gray and Beor, Bohle, Coonambelah, Ettrick, Halifax, Hervey, Lansdowne, Magnetic, Margenta, Rokeby, Ross, Stuart and Wyoming in the County of Elphinstone. The references to the shires or cities listed are those declared as local government areas under the *Local Government Act 1993* as in force as at 14 March 2008.
- ⁵ Queensland Department of Transport and Main Roads, *Terms of Reference - Independent Investigation* (2017).
- ⁶ Private vehicle use accounted for 90.6 percent of travel in Brisbane in 2010. Australian Government Department of Infrastructure and Transport, *Public Transport Use in Australia’s Capital Cities: Modelling and Forecasting*, Report 129, (2013) 157.
- ⁷ Queensland Department of Infrastructure, Local Government and Planning, *Shaping SEQ: Draft South East Queensland Regional Plan* (2016) 22.
- ⁸ Seventy percent of Queensland’s population lives in South East Queensland. Queensland Department of Infrastructure, Local Government and Planning, *Shaping SEQ: Draft South East Queensland Regional Plan* (2016) 15.
- ⁹ Carey Curtis and Nicholas Low, *Transport and Mobility: Institutional Barriers to Sustainable Transport*, (Ashgate Publishing Group, 2012) 54.
- ¹⁰ Three of the tow truck operators’ licences had expired but were eligible to be renewed within a three month period.
- ¹¹ It is noted that 900 businesses advertising towing services may not be comprised of 900 unique businesses entities, and may include businesses advertising their services in multiple locations resulting in multiple advertisements for the same business.
- ¹² Yellow Pages, *Results for Towing Services in Queensland*, (accessed 22 May 2017) <www.yellowpages.com.au/search/listings?clue=towing+services&locationClue=queensland&lat=&lon=&selectedViewMode=list>.
- ¹³ Yellow Pages, *Results for Towing Services in Greater Brisbane*, (accessed 22 May 2017) <www.yellowpages.com.au/search/listings?clue=Towing+services&locationClue=greater+brisbane&lat=&lon=&selectedViewMode=list>; Yellow Pages, *Results for Towing Services in Gold Coast*, (accessed 22 May 2017) <www.yellowpages.com.au/search/listings?clue=Towing+services&locationClue=gold+coast&lat=&lon=&selectedViewMode=list>; Yellow Pages, *Results for Towing Services in Sunshine Coast*, (accessed 22 May 2017) <www.yellowpages.com.au/search/listings?clue=Towing+services&locationClue=sunshine+coast&lat=&lon=&selectedViewMode=list>.
- ¹⁴ *Tow Truck Act 1973* (Qld) s 5; *Tow Truck Regulation 2009* (Qld) s 40.
- ¹⁵ *Tow Truck Act 1973* (Qld) s 6.
- ¹⁶ *Tow Truck Act 1973* (Qld) s 4C. Other matters may also be considered in determining whether a person is an appropriate person to hold a tow truck licence.
- ¹⁷ *Tow Truck Act 1973* (Qld) s 12(2); *Tow Truck Regulation 2009* (Qld) ss 14, 25. DTMR may grant an exemption from the requirement to offer towing services 24 hours a day seven days a week, and to have a holding yard that complies will all legislated obligations.
- ¹⁸ *Tow Truck Act 1973* (Qld) s 12(2)(a), (d).
- ¹⁹ *Tow Truck Regulation 2009* (Qld) sch 1.
- ²⁰ *Tow Truck Act 1973* (Qld) s 13; *Tow Truck Regulation 2009* (Qld) s 40.

- ²¹ *Tow Truck Act 1973* (Qld) s 14A; *Tow Truck Regulation 2009* (Qld) s 10. A disqualifying offence is defined under the *Transport Operations (Road Use Management) Act 1995* (Qld) to mean a disqualifying offence, or serious offence, under the *Working with Children (Risk Management and Screening) Act 2000* (Qld), an offence against a provision of the Criminal Code mentioned in schedule 2, or an offence against the *Drugs Misuse Act 1986* (Qld), part 2, an offence similar to these offences committed outside Queensland.
- ²² *Tow Truck Act 1973* (Qld) s 4C. Other matters may also be considered in determining whether a person is an appropriate person to hold a driver or assistant accreditation.
- ²³ *Tow Truck Act 1973* (Qld) s 12(2); *Tow Truck Regulation 2009* (Qld) ss 18, 27, 30.
- ²⁴ *Tow Truck Act 1973* (Qld) s 21A.
- ²⁵ *Tow Truck Regulation 1999* (Qld) s 54, sch 3.
- ²⁶ *Tow Truck Regulation 2009* (Qld) s 32, sch 3.
- ²⁷ *Tow Truck Regulation 2009* (Qld) s 32(2).
- ²⁸ *Tow Truck Regulation 2009* (Qld) s 36.
- ²⁹ *Tow Truck Regulation 2009* (Qld) ss 33, 35.
- ³⁰ *Tow Truck Regulation 2009* (Qld) ss 14, 25, 26, 34.
- ³¹ LexisNexis, *Halsbury's Laws of Australia* (at 1 March 2016) 415 Tort, '2 Torts Derived from Trespass' [415-480] referring to *Plenty v Dillon* (1991) 171 CLR 635 at 639.
- ³² *Moore v Devanjul Pty Ltd & Ors (No 5)* [2013] QSC 323 citing *Basely v Clarkson* (1681) 83 ER 565.
- ³³ LexisNexis, *Halsbury's Laws of Australia* (at 1 March 2016) 415 Tort, '2 Torts Derived from Trespass' [415-485] referring to *Cowell v Rosehill Racecourse Co Ltd* (1937) 56 CLR 605 at 630-631.
- ³⁴ Westlaw, *The Laws of Australia* (at 27 May 2016) 33 Torts, '9 Defences' [33.9.200]; Westlaw, *The Laws of Australia* (at 27 May 2016) 33 Torts, '9 Defences' [33.9.260] referring to *Arthur v Anker* [1997] QB 564.
- ³⁵ LexisNexis, *Halsbury's Laws of Australia* (at 1 March 2016) 415 Tort, '2 Torts Derived from Trespass' [415-505] referring to *Cooper v Crabtree* (1882) 20 CH D 589 at 592-3.
- ³⁶ LexisNexis, *Halsbury's Laws of Australia* (at 1 March 2016) 415 Tort, '2 Torts Derived from Trespass' [415-480] referring to *Plenty v Dillon* (1991) 171 CLR 635 at 639.
- ³⁷ Unlawful possession of a motor vehicle is an offence under section 408A of the Criminal Code.
- ³⁸ *R v Howson* (1966) 55 DLR (2d) 583 at 596.
- ³⁹ Harvey McGregor, *McGregor on Damages* (Sweet & Maxwell, 19th ed, 2014) at [37-003].
- ⁴⁰ Carolyn Sappideen and Prue Vines (eds), *Fleming's The Law of Torts* (Thomson Reuters, 10th ed, 2011) at [3.80].
- ⁴¹ *R v Howson* (1966) 55 DLR (2d) 583 at 593.
- ⁴² *Arthur v Anker* [1997] QB 564 at 574 refers to *Lloyd v Director of Public Prosecutions* [1992] 1 All ER 982, 991.
- ⁴³ LexisNexis, *Halsbury's Laws of Australia* (at 1 March 2016) 415 Torts, '2 Torts Derived from Trespass' [415-470] referring to *Arthur v Anker* [1997] QB 564 at 573-575.
- ⁴⁴ See Community Development Committee, Parliament of Victoria, *Review of the Practice of Immobilising and Removing Trespassing Vehicles on Private Property* (1997).
- ⁴⁵ *Forhan v Hallet* (1959) 19 DLR 2d 756; *R v Howson* (1966) 55 DLR (2d) 583 at 596.
- ⁴⁶ *Forhan v Hallett* (1959) 19 DLR 2d 756 at 759; *Arthur v Anker* [1997] QB 564 at 575.
- ⁴⁷ *Forhan v Hallett* (1959) 19 DLR 2d 756 at 759; *Jamieson's Tow & Salvage Ltd v Murray* [1984] 2 NZLR 144 at 148; *Arthur v Anker* [1997] QB 564 at 575, 579-580, *R v Howson* (1966) 55 DLR 2d 582 at 597.
- ⁴⁸ *Jamieson's Tow & Salvage Ltd v Murray* [1984] 2 NZLR 144.
- ⁴⁹ *Arthur v Anker* [1997] QB 564 at 575. This case involved wheel clamping.
- ⁵⁰ *Arthur v Anker* [1997] QB 564 at 580.
- ⁵¹ *Marcel v Cactus Towing Pty Ltd* [2016] QCAT 532 at [22].

- ⁵² *Transport Operations (Road Use Management) Act 1995* (Qld) s 135.
- ⁵³ *Arthur v Anker* [1997] QB 564 at 576.
- ⁵⁴ *Jamieson's Tow & Salvage Ltd v Murray* [1984] 2 NZLR 144 at 150.
- ⁵⁵ *Carlill v Carbollic Smoke Ball Co* [1893] 1 QB 256.
- ⁵⁶ LexisNexis, *Halsbury's Laws of Australia* (30 March 2015) 110 Contract, 'II Formation of Contract' [110-560] referring *Longridge v Dorville* (1821) 106 ER 1136 at 1138.
- ⁵⁷ Westlaw, *The Laws of Australia* (at 1 March 2012) 7 Contract: General Principles, '1 Formation' [7.1.220] referring to *South Australia v Commonwealth* (1962) 108 CLR 130 at 154-155.
- ⁵⁸ Westlaw, *The Laws of Australia* (at 1 March 2012) 7 Contract: General Principles, '1 Formation' [7.1.230] referring to *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165 at 179.
- ⁵⁹ *Ermogenous v Greek Orthodox Community of SA Inc* [2002] 209 CLR 95.
- ⁶⁰ Unlawful possession of a motor vehicle is an offence under s 408A of the Criminal Code.
- ⁶¹ *Andrews v Australia New Zealand Banking Group Ltd* (2012) 247 CLR 205 at [9].
- ⁶² *AMEV-UDC Finance Ltd v Austin* (1986) 162 CLR 170 at 192.
- ⁶³ *Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd* [1915] AC 79; *AMEV-UDC Finance Ltd v Austin* (1986) 162 CLR 170 at 190.
- ⁶⁴ *Wellington City Council v Singh* [1971] NZLR 1025 at 1028; *Penfolds Wines Pty Ltd v Elliott* (1946) 74 CLR 204 at 229; *Wilson v New Brighton Panelbeaters Ltd* [1989] 1 NZLR 74; Carolyn Sappideen and Prue Vines (eds), *Fleming's The Law of Torts* (Thomson Reuters, 10th ed, 2011) at [4.60].
- ⁶⁵ *Tappenden v Artus* [1964] 2 QB 185 at 199.
- ⁶⁶ Westlaw, *The Laws of Australia* (at 1 July 2012) 7 Contract: General Principles, '3 Parties' [7.3.230] referring to *Bojczuk v Gregorcowicz* [1961] SASR 128.
- ⁶⁷ LexisNexis, *Halsbury's Laws of Australia* (14 July 2014) 15 Agency, '1 Nature and Formation - Agency' [15-5].
- ⁶⁸ LexisNexis, *Halsbury's Laws of Australia* (14 July 2014) 15 Agency, '1 Nature and Formation - Agency' [15-5] referring to *Alliance Craton Explorer Pty Ltd v Quasar Resources Pty Ltd* (2013) 296 ALR 465; *South Sydney District Rugby League Football Club Ltd v News Ltd* [2000] FCA 1541.
- ⁶⁹ (1966) 55 DLR (2d) 582 at 594-595. This was a criminal case.
- ⁷⁰ LexisNexis, *Halsbury's Laws of Australia* (14 March 2014) 15 Agency, '7 Relations between Principal and Third Persons' [15-255] referring to *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165 at 193; LexisNexis *Halsbury's Laws of Australia* (1 March 2016) 415 Tort, '1 General Principles of the Law of Torts' [415-170] referring to *Kooragang Investments Pty Ltd v Richardson & Wrench Ltd* [1981] 2 NSWLR 1 at 5.
- ⁷¹ LexisNexis, *Halsbury's Laws of Australia* (at 1 March 2016) 415 Tort, '1 General Principles of the Law of Torts' [415-80] referring to *Colonial Mutual Life Assurance Society v Producers and Cities Co-op Assurance Co of Australia Ltd* (1931) 46 CLR 41 at 63; LexisNexis, *Halsbury's Laws of Australia* (at 1 March 2016) 415 Tort, '2 Torts Derived from Trespass' [415-180] referring to *JF & BE Palmer Pty Ltd v Blowers and Lowe Pty Ltd* (1987) 75 ALR 509 at 511.
- ⁷² *Colvill v Reeves* (1811) 170 ER 1257; *Wilson v New Brighton Panelbeaters Limited* [1989] 1 NZLR 74.
- ⁷³ Westlaw, *The Laws of Australia* (at 1 June 2016) 33 Torts, '8 Trespass and Intentional Torts' [33.8.770] referring to *Kirk v Gregory* (1876) 1 Ex D 55.
- ⁷⁴ *Penfolds Wines Pty Ltd v Elliott* (1946) 74 CLR 204; *Bunnings Group Ltd v CHEP Australia Ltd* [2011] NSWCA 342.
- ⁷⁵ Westlaw, *The Laws of Australia* (at 27 May 2016) 33 Torts, '9 Defences' [33.9.150] referring to *Rendell v Associated Finance Pty Ltd* [1957] VR 604.
- ⁷⁶ *Wellington City v Singh* [1971] NZLR 1025 at 1029.
- ⁷⁷ Westlaw, *The Laws of Australia* (at 1 June 2016) 33 Torts, '8 Trespass and Intentional Torts' [33.8.910] referring to *Grant v YYH Holdings Pty Ltd* [2012] NSWCA 360.
- ⁷⁸ *Vine v Waltham Forest London Borough Council* [2000] 4 All ER 169.

- ⁷⁹ *Vine v Waltham Forest London Borough Council* [2000] 4 All ER 169; *Arthur v Anker* [1997] QB 564.
- ⁸⁰ *Arthur v Anker* [1997] QB 564 at 573.
- ⁸¹ *Arthur v Anker* [1997] QB 564.
- ⁸² *Transport Operations (Road Use Management) Act 1995* (Qld) ss 101, 104. Written agreement with DTMR is required in relation to busways and state-controlled roads.
- ⁸³ *Transport Operations (Road Use Management) Act 1995* (Qld) s 104.
- ⁸⁴ *Transport Operations (Road Use Management) Act 1995* (Qld) ss 101, 102, 108.
- ⁸⁵ *Transport Operations (Road Use Management) Act 1995* (Qld) s 100.
- ⁸⁶ *Queensland University of Technology Act 1998* (Qld) sch 1; *James Cook University Act 1997* (Qld) sch 1; *Central Queensland University Act 1998* (Qld) sch 1; *Griffith University 1998* (Qld) sch 1; *University of Queensland Act 1998* (Qld) sch 1; *University of Southern Queensland Act 1998* (Qld) sch 1; *University of the Sunshine Coast 1998* (Qld), sch 1; *Major Sports Facilities Act 2001* (Qld) sch 1.
- ⁸⁷ *Transport Operations (Road Use Management) Act 1995* (Qld) s 135(1).
- ⁸⁸ *Elliott v Grey* [1959] 3 All ER 733; *NSW Government Insurance Office v RJ Green & Lloyd Pty Ltd* (1966) 114 CLR 437.
- ⁸⁹ *Government Insurance Office (NSW) v King* [1960] HCA 60.
- ⁹⁰ Under the *Transport Operations (Road Use Management - Vehicle Registration) Regulation 2010* (Qld) trailers must be registered to be ‘used on a road’.
- ⁹¹ [1984] WAR 1.
- ⁹² *Collidge v Russo* [1984] WAR 1 at 2.
- ⁹³ *R v Lockwood; ex parte Attorney-General* [1981] Qd R 209.
- ⁹⁴ Queensland, *Parliamentary Debates*, Legislative Assembly, 8 October 1997, p 3693 (Vaughan Johnson, Minister for Transport and Main Roads).
- ⁹⁵ A person in lawful possession of the vehicle is included in the definition of ‘owner’ for the purpose of section 135 of the *Transport Operations (Road Use Management) Act 1995* (Qld).
- ⁹⁶ *Transport Operations (Road Use Management) Act 1995* (Qld) s 135(1A). Unlawful use, interference or detention of a vehicle is punishable by up to \$5,046 (40 penalty units) or six months imprisonment.
- ⁹⁷ *Criminal Code* (Qld) s 408A; *Summary Offences Act 2005* (Qld) s 25. The crime of unlawful use or possession of a vehicle is punishable by seven years imprisonment. The summary offence of unlawful use or possession of a vehicle is punishable by up to 20 penalty units or one year imprisonment.
- ⁹⁸ *Criminal Code* (Qld) s 408A.
- ⁹⁹ Supreme and District Court of Queensland, Supreme and District Courts Criminal Directions Benchbook, *Direction No 191.1 Unlawful Use of a Motor Vehicle ect s 408A(1)(a)*, March 2017.
- ¹⁰⁰ *Criminal Code* (Qld) s 1; *R v Judkins* [1979] Qd R 527.
- ¹⁰¹ *Criminal Code* (Qld) s 24.
- ¹⁰² *Criminal Code* (Qld) s 22.
- ¹⁰³ *Criminal Code* (Qld) s 415. Extortion is punishable by 14 years imprisonment, or in certain circumstances of aggravation life imprisonment.
- ¹⁰⁴ *Criminal Code* (Qld) ss 245, 335. Common assault is punishable by three years imprisonment, other forms of assault such as assault occasioning bodily harm and serious assault incur higher penalties.
- ¹⁰⁵ *Criminal Code* (Qld) s 469. Wilful damage is punishable by 5 years imprisonment.
- ¹⁰⁶ *R v Zischke* [1983] 1 Qd R 240; *R v Lockwood; ex parte Attorney-General* [1981] Qd R 209.
- ¹⁰⁷ *Criminal Code* (Qld) s 458.
- ¹⁰⁸ *Summary Offences Act 2005* (Qld) s 11.
- ¹⁰⁹ *Police Powers and Responsibilities Act 2000* (Qld) s 634.

- ¹¹⁰ The *Competition and Consumer Act 2010* (Cth) sets out a single consumer law for Australia. The Australian Consumer Law applies in Queensland - *Fair Trading Act 1989* (Qld) s 16.
- ¹¹¹ *Australian Consumer Law* (Cth) ss 18(1), 20(1), 21(1), 23(1).
- ¹¹² *Australian Consumer Law* (Cth) s 236.
- ¹¹³ *Fair Trading Act 1989* (Qld) s 11.
- ¹¹⁴ Parking in breach of by-laws is being considered in a review of property laws; see Queensland University of Technology, *Queensland Government Property Law Review Options Paper Body corporate governance issues: By-laws, debt recovery and scheme termination* (2014); Queensland University of Technology, *Government Property law Review: Options Paper Recommendations Body corporate governance issues: By-laws, debt recovery and scheme termination* (2017).
- ¹¹⁵ Submission number 29.
- ¹¹⁶ Submission number 25.
- ¹¹⁷ Submission number 12.
- ¹¹⁸ Submission number 30.
- ¹¹⁹ Submission number 30.
- ¹²⁰ *Tow Truck Act 1973* (Qld) s 5; *Tow Truck Regulation 2009* (Qld) s 40.
- ¹²¹ *Tow Truck Act 1973* (Qld) s 13; *Tow Truck Regulation 2009* (Qld) s 40.
- ¹²² *Tow Truck Act 1973* (Qld) ss 4C, 6, 14A. Other matters may also be considered in determining whether a person is an appropriate person to hold a tow truck licence or accreditation.
- ¹²³ A control order is a court order intended to prevent, restrict or disrupt involvement in serious crime.
- ¹²⁴ *Tow Truck Regulation 2009* (Qld) s 15A.
- ¹²⁵ *Tow Truck Regulation 2009* (Qld) s 20.
- ¹²⁶ *Tow Truck Act 1973* (Qld) s 6.
- ¹²⁷ *Tow Truck Act 1973* (Qld) s 12(2)(a),(d); *Tow Truck Regulation 2009* (Qld) s 38, sch 1; *Transport Operations (Road Use Management - Vehicle Standards and Safety) Regulation 2010* s 28(2)(c).
- ¹²⁸ *Tow Truck Regulation 2009* (Qld) s 19; sch 1.
- ¹²⁹ *Tow Truck Regulation 2009* (Qld) s 14(1)
- ¹³⁰ *Tow Truck Regulation 2009* (Qld) s 14, sch 5.
- ¹³¹ *Tow Truck Regulation 2009* (Qld) s 14(1)(d).
- ¹³² *Tow Truck Regulation 2009* (Qld) s 25.
- ¹³³ *Tow Truck Regulation 2009* (Qld) s 26.
- ¹³⁴ *Tow Truck Act 1973* (Qld) s 10.
- ¹³⁵ *Tow Truck Regulation 2009* (Qld) s 14(1)(a). An exemption may be granted from this condition.
- ¹³⁶ *Tow Truck Act 1973* (Qld) s 12(2)(e).
- ¹³⁷ *Tow Truck Act 1973* (Qld) s 12(2)(i),(j).
- ¹³⁸ *Tow Truck Act 1973* (Qld) s 12(2)(g).
- ¹³⁹ *Tow Truck Act 1973* (Qld) s 12(2)(h); *Tow Truck Regulation 2009* (Qld) s 37.
- ¹⁴⁰ *Tow Truck Act 1973* (Qld) s 12(2)(l),(p).
- ¹⁴¹ *Tow Truck Regulation 2009* (Qld) ss 16, 17.
- ¹⁴² *Tow Truck Regulation 2009* (Qld) ss 14A, 15, 15A.
- ¹⁴³ *Tow Truck Regulation 2009* (Qld) ss 18, 19.
- ¹⁴⁴ *Tow Truck Industry Act* (NSW) 1998 ss 15, 23.
- ¹⁴⁵ New South Wales Independent Pricing and Regulatory Tribunal, *Review of Tow Truck Fees and Licensing in NSW: Transport - Final Report*, (2014) p 41.
- ¹⁴⁶ New South Wales Independent Pricing and Regulatory Tribunal, *Review of Tow Truck Fees and Licensing in NSW: Transport - Final Report*, (2014) p 42.

- ¹⁴⁷ *Motor Vehicles Act 1959* (SA) s 98D; *Motor Vehicles (Accident Towing Roster Scheme) Regulation 2015* (SA) s 15.
- ¹⁴⁸ *Road Safety Act 1986* (Vic) ss 90B, 90D, 90F; *Accident Towing Services Act 2007* (Vic) ss 8, 56, 98.
- ¹⁴⁹ Office of the Queensland Parliamentary Counsel, *Fundamental legislative principles: the OQPC notebook* (2008) p 148.
- ¹⁵⁰ Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs - The institution of Parliament – subordinate legislation* (2014) p 4.
- ¹⁵¹ The maximum penalty that may be imposed by a court is substantially higher than the infringement notice penalty to facilitate the discretion of the court - the magistrate or judge considers whether the circumstances of the offence and whether it is a repeat offence justify a higher penalty.
- ¹⁵² Providing a public passenger service in Queensland without an operator authorisation incurs a fine of \$1,513 (12 penalty units) and a maximum penalty of \$20,184 (160 penalty units) - *Transport Operations (Passenger Transport) Act 1994* (Qld). In Victoria the fine is \$1,586 and the maximum penalty is \$9,514, and in New South Wales the fine is \$2,200 and the maximum penalty is \$11,000.
- ¹⁵³ Operating a public passenger service in Queensland without a driver authorisation incurs a fine of \$1,261 (10 penalty units) and a maximum penalty of \$12,615 (100 penalty units) - *Transport Operations (Passenger Transport) Act 1994* (Qld). In Victoria the fine is \$1,269 and the maximum penalty is \$9,514, and in New South Wales the fine is \$1,100 and the maximum penalty is \$5,500.
- ¹⁵⁴ Submission number 13.
- ¹⁵⁵ Submission number 22.
- ¹⁵⁶ Submission number 11.
- ¹⁵⁷ Submission number 37.
- ¹⁵⁸ *Tow Truck Regulation 2009* (Qld) s 32.
- ¹⁵⁹ *Tow Truck Act 1973* (Qld) s 12(2)(r); *Tow Truck Regulation 2009* (Qld) ss 32, 36.
- ¹⁶⁰ *Tow Truck Act 1973* (Qld) s 12(2)(k).
- ¹⁶¹ *Tow Truck Regulation 2009* (Qld) s 31. Owner is defined in the TT Regulation to include the owner, registered operator, and person authorised to have control, charge or management of the vehicle.
- ¹⁶² New South Wales Independent Pricing and Regulatory Tribunal, *Review of Tow Truck Fees and Licensing in NSW: Transport - Final Report*, (2014) p 50.
- ¹⁶³ Discussions with Roads and Maritime Services June 2017.
- ¹⁶⁴ New South Wales Independent Pricing and Regulatory Tribunal, *Review of Tow Truck Fees and Licensing in NSW: Transport - Final Report*, (2014) pp 61-63.
- ¹⁶⁵ New South Wales Independent Pricing and Regulatory Tribunal, *Review of Tow Truck Fees and Licensing in NSW: Transport - Final Report*, (2014) p 63.
- ¹⁶⁶ In New South Wales, the terms breakdown and trade towing include all towing services other than crash towing.
- ¹⁶⁷ New South Wales Independent Pricing and Regulatory Tribunal, *Review of Tow Truck Fees and Licensing in NSW: Transport - Final Report*, (2014) p 69.
- ¹⁶⁸ New South Wales Independent Pricing and Regulatory Tribunal, *Review of Tow Truck Fees and Licensing in NSW: Transport - Final Report*, (2014) p 71.
- ¹⁶⁹ *Tow Truck Industry Regulation* (NSW) 2008 ss 40C, 40D, 40ZB.
- ¹⁷⁰ South Australia, *The South Australian Government Gazette*, No. 40, 7 July 2016. These towing fees include the first 20 kilometres travelled; additional fees apply if the vehicle is towed more than 20 kilometres.
- ¹⁷¹ Victoria, *Victorian Government Gazette*, No. S210, 20 June 2017. These towing fees include the first 8 kilometres travelled, additional fees apply if the vehicle is towed more than 8 kilometres.
- ¹⁷² *Tow.Com.Au Pty Ltd v Kelvin Warren Avery* [2016] QCAT 397 at [40]; *Tow.Com.Au Pty Ltd v Mark Iain Fuller* [2016] QCAT 398 at [41].

- ¹⁷³ Section 12(2)(k) of the *Tow Truck Act 1973* (Qld) provides by way of a licence condition that a vehicle towed from a crash scene or a controlled area must be released to its owner, or their agent, after payment of reasonable charges.
- ¹⁷⁴ Under section 31 of the *Tow Truck Regulation 2009* (Qld) the owner of a vehicle is liable for towing charges if the vehicle is towed under a towing authority signed by an authorised officer. Owner is defined to include the owner, registered operator, and person authorised to have control, charge or management of the vehicle.
- ¹⁷⁵ Storage of the vehicle for up to 72 hours is included in the maximum towing fee for crash towing, but the amount that may be charged for storage is not regulated.
- ¹⁷⁶ *Tow Truck Regulation 2009* (Qld) s 34.
- ¹⁷⁷ New South Wales Independent Pricing and Regulatory Tribunal, *Review of Tow Truck Fees and Licensing in NSW: Transport - Final Report*, (2014) p 7.
- ¹⁷⁸ *Tow Truck Industry Regulation* (NSW) 2008 ss 40T, 40ZB.
- ¹⁷⁹ South Australia, The South Australian Government Gazette, No. 40, 7 July 2016.
- ¹⁸⁰ Victoria, *Victorian Government Gazette*, No. S210, 20 June 2017.
- ¹⁸¹ *Tow.Com.Au Pty Ltd v Kelvin Warren Avery* [2016] QCAT 397 at [44]; *Tow.Com.Au Pty Ltd v Mark Iain Fuller* [2016] QCAT 398 at [43].
- ¹⁸² New South Wales Independent Pricing and Regulatory Tribunal, *Review of Tow Truck Fees and Licensing in NSW: Transport - Final Report*, (2014) p 48.
- ¹⁸³ *Tow Truck Industry Regulation 2008* (NSW) ss 40V, 40Y, 40ZD.
- ¹⁸⁴ *Tow Truck Regulation 2009* (Qld) ss 33, 35.
- ¹⁸⁵ Submission number 25.
- ¹⁸⁶ Submission number 5.
- ¹⁸⁷ Submission number 14.
- ¹⁸⁸ *Tow Truck Regulation 2009* (Qld) s 30.
- ¹⁸⁹ Office of the Australian Information Commissioner, *Scanning Proof of Identity Documents* (accessed 29 June 2017) <www.oaic.gov.au/privacy-law/privacy-archive/privacy-resources-archive/information-sheet-private-sector-20-2007-scanning-proof-of-identity-documents>.
- ¹⁹⁰ *Privacy Act 1988* (Cth) sch 1.
- ¹⁹¹ *Tow Truck Regulation 2009* (Qld) s 21.
- ¹⁹² Australian Consumer Law (Cth) s 18; Queensland Government, *Rules for Private Car Park Businesses* (accessed 1 June 2017) <www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/selling-your-products-and-services/selling-services/car-park-rules/>.
- ¹⁹³ Submission number 5.
- ¹⁹⁴ Submission number 35.
- ¹⁹⁵ Parking Australia, *Code of Practice for Enforcement of Private Land*, May 2016.
- ¹⁹⁶ While parking on private property is regulated for controlled areas this is differentiated for the purpose of this report from the regulation of private property parking.
- ¹⁹⁷ Queensland, *Parliamentary Debates*, Legislative Assembly, 10 April 1973, pp 3843-3847 (Keith Hooper, Minister for Transport). Section 23 of the TT Act prohibits spotters' fees.
- ¹⁹⁸ Submission number 23.
- ¹⁹⁹ Submission number 30.
- ²⁰⁰ Submission number 13.
- ²⁰¹ Submission number 20.
- ²⁰² *Criminal Code* (Qld) ss 7, 8, 408A. Liability for an offence will depend on the particular circumstances and the availability of any defences.
- ²⁰³ From 2012 to 2016 six matters were heard by a court because the person challenged an infringement notice or DTMR chose to prosecute the matter.
- ²⁰⁴ *Tow Truck Act 1973* (Qld) s 21A.

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- ²⁰⁵ *Jackson v The Department of Transport and Main Roads* [2014] QCAT 527.
- ²⁰⁶ The purpose of a review by QCAT is to produce the correct and preferable decision and involves a fresh hearing on the merits - *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 20.
- ²⁰⁷ Submission number 27.
- ²⁰⁸ Submission number 13.
- ²⁰⁹ Pricewaterhouse Coopers, *A Best Practice Approach to Designing and Reviewing Licensing Schemes - Guidance Material* (2013) pp 41-42. This document was prepared to assist the New South Wales Independent Pricing and Regulatory Tribunal in its review of tow truck fees and licensing.
- ²¹⁰ Queensland Department of Transport and Main Roads, *Tow Trucks* (accessed 29 May 2017) <www.tmr.qld.gov.au/Business-and-industry/Accreditations/Tow-truck-licensing-scheme.aspx>.
- ²¹¹ *Tow Truck Act 1973* (Qld) s 43(2)(r).
- ²¹² *Tow Truck Regulation 2009* (Qld) s 40.
- ²¹³ Pricewaterhouse Coopers, *A Best Practice Approach to Designing and Reviewing Licensing Schemes - Guidance Material* (2013) pp 44-45.
- ²¹⁴ *Tow Truck Act 1973* (Qld) s 4C, sch 2.
- ²¹⁵ *Tow Truck Regulation 2009* (Qld) s 10.
- ²¹⁶ For example *Transport Operations (Passengers Transport) Act 1994* (Qld), *Transport Operations (Marine Safety) Act 1994* (Qld); *Transport Operations (Road Use Management) Act 1995* (Qld).
- ²¹⁷ *Transport Operations (Passenger Transport) Act 1994* (Qld) sch 3.
- ²¹⁸ The list of fees is based on fees prohibited under the *Tow Truck Industry Regulation 2008* (NSW).

