

Tow Truck (Towing from Private Property) Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Tow Truck (Towing from Private Property) Amendment Bill 2017 (the Bill).

Policy objectives and the reasons for them

In Queensland, the towing of a motor vehicle from the scene of a crash on a road (accident towing) is regulated by the *Tow Truck Act 1973* and *Tow Truck Regulation 2009*.

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

Property owners currently have a common law 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;

The Palaszczuk Labor Government has concluded a three-month inquiry into tow truck practices headed up by former District Court Judge Michael Forde. For many Queenslanders, the review is symptomatic of a do-nothing government. In contrast, the Liberal National Party Opposition has listened, planned and is acting in the best interests of Queenslanders.

The Bill amends the *Tow Truck Act 1973* with the purpose of expanding existing requirements on accident towing to towing from private property.

The provisions in the Bill are intended to protect vehicle owners being towed from private property and clarify the responsibilities of all parties.

The Bill will seek to do the following:

- Create a head of power for setting towing fees from private property. A regulation will be able to set the maximum fee that can be charged for towing and storing a motor vehicle. The Minister will be able to set different fees for metropolitan and non-metropolitan areas.
- Create a head of power to regulate the distance a vehicle can be towed without the vehicle owner's written consent. The amendments to the *Tow Truck Act 1973*, will allow the Minister to prescribe a maximum distance a vehicle from private property can be towed without the vehicle owner's written consent.
- Set minimum signage standards
- Expand consideration of an appropriate person to hold a tow truck licence to include complaints made against a person when performing the activities under the Act.
- Create an obligation for the Chief Executive to establish a complaints management process for operations that occur under the Act and publish statistics annually about the number of complaints received against tow truck licence holders and the outcome of these complaints.

Alternative ways of achieving policy objectives

Amending the *Tow Truck Act 1973* has been considered the best way of achieving the policy outcomes of the Bill.

Consultation

Liberal National Party Members of Parliament have consulted local constituent concerns regarding this issue.

The Queensland Law Society was also consulted on a draft of the Bill. While raising issues of clarification on provisions contained in the Bill, correspondence from the Queensland Law Society to the Office of the Leader of the Opposition was broadly supportive of the proposed amendments, stating:

“The Society has previously advocated for standards to be imposed on tow truck drivers and for the introduction of set fees that represent the real cost of towing a car, thereby removing financial incentives for nefarious activity. Such fees should be comparable to fees to which proper contractors charge for removal from clear ways.”

Notes on provisions

Clause 1 states that this Act may be cited as the Tow Truck (Towing from Private Property) Amendment Act 2017.

Clause 2 states that this Act amends the *Tow Truck Act 1973*.

Clause 3 adds to the long title of the *Tow Truck Act 1973*, reflecting the additional provisions regarding signage in this bill.

Clause 4 amends section 4C of the *Tow Truck Act 1973* and allows for the chief executive to consider complaints made about a person when determining who an appropriate person is to hold a licence or certificate.

Clause 5 amends section 12 of the *Tow Truck Act 1973*. The clause allows for a regulation to set the maximum distance a vehicle may be towed from private property. The clause also allows for a regulation to prescribe a maximum fee or charge for being towed from private property. The clause makes exemptions from the regulations for when the written consent of the owner is obtained.

The regulations described in the clause may prescribe different distances or charges depending on the location from where the vehicle is being towed. Clause 5 provides a definition of private property being a place that is not open to the public.

Clause 6 inserts new sections 21I and 21J into the *Tow Truck Act 1973*. New section 21I applies to a person who is in control of or responsible for managing a private car park and authorizes a tow truck licence holder to tow vehicles from the car park. That person must ensure warning signs are installed and are clearly visible to motorists and that the signs state the conditions by which a vehicle might be towed from the property.

New section 21J applies to a tow truck licence or certificate holder and requires them not to tow a vehicle unless the owner's consent is acquired or warning signs are installed as per s21I.

Clause 7 inserts a new part 6A into the *Tow Truck Act 1973*. New Part 6A requires the chief executive to establish and maintain a tow truck complaints management process which will apply to holders of a tow truck licence or certificate. The chief executive must also publish annual statistics about the number of complaints received and the outcome of each.

Clause 8 is a consequential renumbering as a result of the amendments to s12.

Clause 9 creates transitional provisions for the amendments outlined in this Bill. This ensures the obligation on a tow truck licence holder not to charge more than the maximum fee or to tow a vehicle further than the maximum distance binds new and existing licence holders after the passing of the Bill.

Clause 10 creates a Dictionary definition for 'relevant car park' separate from the definition created in the *Transport Operations (Road Use Management) Act 1995*.