

# Tow Truck Bill 2023

## Statement of Compatibility

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (the Human Rights Act), I, Mark Craig Bailey, Minister for Transport and Main Roads and Minister for Digital Services, make this statement of compatibility with respect to the Tow Truck Bill 2023.

In my opinion, the Tow Truck Bill 2023 is compatible with the human rights protected by the Human Rights Act. I base my opinion on the reasons outlined in this statement.

### Overview of the Bill

The *Tow Truck Act 1973* (the Act) and the *Tow Truck Regulation 2009* (the Regulation) provide for the towing of motor vehicles from the scene of a crash, police seizure from off-street regulated parking areas (such as a shopping centre) and towing of vehicles from private property in certain circumstances, in regulated areas of Queensland. All other forms of towing are not covered by the regulatory framework.

In addition to regulating the towing of vehicles, the Act also provides a framework for the control and subsequent handling and storage of vehicles, the handling of confidential information, the enforcement of requirements in the Bill and the process for administrative review of decisions under the Bill.

The scheme was expanded in 1997 to incorporate police seizure towing and again in 2018 to include private property towing as a result of the *Independent Investigation into the Towing Industry: Removal of Vehicles from Private Property* (the Investigation).

As the Investigation considered the full range of issues relating to the reforms and conducted extensive consultation with a wide range of stakeholders, an exemption from the regulatory impact analysis process was approved by Cabinet, with a review of the private property reforms to commence within two years of implementation.

In 2019, the Department of Transport and Main Roads (TMR) commenced the post-implementation review (Review) to assess the impact and effectiveness of the private property reforms. In addition, the Review conducted a broader, more comprehensive review of Queensland's tow truck scheme to ensure the overall scheme meets the current and future needs of Queensland motorists and industry.

The Tow Truck Bill 2023 (Bill) gives effect to the recommendations made by the Investigation and the findings of the Review by delivering a more modern tow truck scheme in Queensland that is responsive to current and emerging operational concerns, improves road safety and delivers improved outcomes and protections for motorists, property owners and industry professionals.

The main purposes of the Act as outlined in clause 3 of the Bill are—

- to facilitate best practice in the tow truck industry by providing a balanced framework for regulating the operation of tow trucks to carry out regulated towing;
- to protect the public by ensuring tow trucks carrying out regulated towing are operated in a safe, competent and professional way and at a reasonable cost to consumers; and
- to protect public safety and the safety of the road network through ensuring the following in regulated areas—
  - the safe and efficient removal of motor vehicles damaged in an incident from the scene of the incident and seized motor vehicles from the place of seizure; and
  - the safe removal of motor vehicles parked on private property.

## **Human Rights Issues**

### **Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

The amendments in the Bill may limit the following human rights:

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

### **If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)**

#### ***Right to recognition and equality before the law (section 15)***

##### **(a) the nature of the right**

Clause 15 (Right to recognition and equality before the law) provides that every person has the right to recognition as a person before the law, that every person is equal before the law and that laws should not be discriminatory. The term 'discrimination' includes direct and indirect discrimination under the *Anti-Discrimination Act 1991* and may include additional characteristics not covered by that Act.

The Bill may limit this right by:

- allowing the chief executive to refuse an application for an accreditation if satisfied the applicant is not an appropriate person or it would not be in the public interest for the person to hold the accreditation. This may result in discrimination between certain sectors of society, such as those with and without a criminal history;
  - applying the tow truck scheme only to specific types of towing services (*regulated towing*) within select geographical regions (*regulated areas*). Industry operators who carry out regulated towing within regulated areas have an additional regulatory burden of accreditation, while motorists outside of the scheme do not benefit from the consumer protections in the Bill: and
  - providing for court-imposed fines for failing to comply with the requirements of the Bill, which may disproportionately impact a person from a lower socio-economic group.
- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

#### *Eligibility for accreditation*

The purpose of allowing the chief executive to refuse an application on prescribed grounds is to protect the public by ensuring only appropriate people are accredited to carry out regulated towing. Tow truck operators, drivers and assistants provide services to the community, sometimes when the community member is quite vulnerable or distressed, such as when their vehicle has been involved in a crash. They also have an important role in ensuring public safety by clearing debris and keeping roads safe for other motorists. It is essential that these services are not carried out by a person who poses a heightened risk to public safety or who is unsuitable to work in a role involving vulnerable people and their property.

#### *Regulated towing and regulated areas*

The Bill carries over the existing scope of regulated towing and the current regulated areas from the Regulation. The purpose of regulating a subset of towing services and prescribing regulated areas is to strike a balance between the public interest and regulatory burden on industry.

Regulation of towing services in Queensland was established to ensure orderly and controlled clearing of vehicles and to protect motorists and their property while in difficult and stressful situations. The scheme regulates towing only in circumstances where there is a need for additional consumer protection.

The regulatory scheme is necessary in highly developed areas in Queensland where there is a need for quick and responsive towing to keep traffic flowing safely. Applying the scheme to high density areas also provides consumer protection to motorists due to numerous competing operators and potential concerns about inappropriate, unprofessional or exploitative behaviour toward motorists.

These purposes are consistent with a free and democratic society based on human dignity, equality and freedom.

### *Court-imposed fines*

Providing that a court can impose fines if requirements in the Bill are not complied with is necessary for the effective regulation of the towing industry. The purpose of regulating the tow truck industry is to protect motorists from potential exploitation and from unsafe towing practices. This is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

### *Eligibility for accreditation*

Giving the chief executive the power to refuse an accreditation on certain grounds is designed to ensure persons are appropriate for the task and the conduct of accredited persons is efficient and professional.

There is a rational relationship between the limitation and its specific purpose. By requiring an accreditation to carry out regulated towing, the Bill brings accredited persons into the overall regulatory framework, which ensures they are appropriate persons and applies mandatory requirements for conduct while carrying out regulated towing. It also gives TMR the power to monitor and enforce safety and conduct standards, ensuring services are provided in a professional and reasonable manner and consumers are appropriately protected.

The Bill clearly identifies matters the chief executive must have regard to when deciding applications for accreditations. They include matters such as the person's criminal history, their conduct while carrying out activities under the accreditation, any past suspension or cancellation of their accreditation, and the public's expectation that they will not be subject to assault, or aggressive, coercive or inappropriate behaviour. These considerations go to the heart of the person's ability to perform tasks without posing a risk to vulnerable motorists, their property, or public safety generally.

### *Regulated towing and regulated areas*

Distinguishing between different types of towing services and geographical areas in Queensland is necessary to ensure the tow truck scheme only applies to the extent needed to meet the purposes of the Bill without imposing an unnecessary regulatory burden on industry.

The Investigation noted that licensing and accreditation schemes are most effective when targeted to achieve the intended policy objectives with minimal compliance and administrative burden, with coverage of the scheme based on mitigating risk. It recommended the government review the towing services covered by the scheme to ensure the regulatory framework was appropriately targeted to achieve the policy objectives.

The Investigation also noted that the current regulated areas were those where population density made it likely multiple towing operators were competing for towing work, creating a perceived need for consumer protection, and recommended that the government review the geographic areas covered by the current Act and Regulation to ensure the regulatory framework

is simple, precise and accessible and coverage is appropriately targeted to achieve the policy objectives.

As part of the Review, TMR released a discussion paper proposing options, including that:

- the scheme be extended to all towing services, including breakdown towing, trade towing or compliance towing (that is, towing of illegally parked cars on a road or vehicles impounded under anti hooning laws); and
- regulated areas were removed entirely, by either applying the regulatory scheme to the entire State or deregulating the entire tow truck industry in Queensland.

In relation to regulated towing, the Review found there was little support from submissions for extending the scheme and not enough evidence that additional consumer protection was needed. In most cases of unregulated towing, a motorist could arrange their choice of towing operator based on considerations like price, reputation, punctuality, behaviour of the operator or through affiliation with a motoring organisation, such as the Royal Automobile Club of Queensland (RACQ), or an insurance provider. These competition elements provided a distinct advantage to the motorist, which mitigated any need for government intervention. In contrast, government regulation of towing of damaged or seized vehicles, or towing from private property, was vital to protecting consumers who may be disadvantaged in the transaction, particularly if they were in a vulnerable or emotional state.

For regulated areas, the Review concluded these should be retained. This would ensure that service standards and consumer protections are maintained in locations where multiple towing operators may be competing for work, while also improving clarity about when the requirements in the Act applied.

#### *Court-imposed fines*

There is a direct relationship between the offence provisions and their penalties in the Bill and the purpose of protecting motorists from exploitation and unsafe towing practices. The penalties will encourage compliance with the requirements of the Bill. They will promote towing practices that are safe and deter against practices that exploit motorists.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

#### *Eligibility for accreditation*

There is no less restrictive way to achieve the purpose of these amendments in the Bill. Allowing the chief executive to refuse to grant an accreditation on the prescribed grounds is necessary to maintain integrity of the scheme and protect consumers.

The impact on human rights is already limited by regulating only a small portion of towing activities and only those where the motorist may be vulnerable and in need of extra protection. No other towing activities require an accreditation.

#### *Regulated towing and regulated areas*

There is no less restrictive way to achieve the purpose of these amendments in the Bill.

Both the Investigation and Review concluded that it is necessary to regulate certain towing services to provide necessary consumer protection and public safety benefits. Industry regulation is the only way to achieve the purposes of the Bill.

TMR considered removing regulated areas by either extending the regulatory scheme to all of Queensland or deregulating the tow truck industry to create equality across the state. Neither option was suitable or able to achieve the purposes of the Bill.

Extending the scheme to all of Queensland was considered to impose a significant financial and operational burden on towing operators outside the current regulated areas, and this was not justifiable for operators in less populated areas with lower volumes of towing work. Motorists and insurers may be negatively affected if additional industry costs were passed on to them.

Deregulating the tow truck industry would remove all existing consumer protections in the current Act and Regulation. This is inconsistent with the recommendations of the Investigation and findings of the Review.

The regulatory framework is designed to provide protections for industry and motorists. Deregulation would remove the government's mechanism for ensuring safe, fair, orderly and timely towing services and protection of vulnerable motorist. There may also be negative impacts that include an increase in intimidatory and unsafe practices by tow truck operators, drivers and assistants, and operators taking advantage of vulnerable motorists by charging excessive fees for services.

Applying the tow truck scheme to prescribed towing services within prescribed geographical areas is the only reasonable way available to achieve the purposes of the Bill.

#### *Court-imposed fines*

There is no less restrictive and reasonably available way to promote compliance with requirements of the Bill than imposing penalties for failure to comply. Importantly, a court may impose a penalty that is lower than the maximum penalty in the Bill and may take into account a range of factors in deciding a penalty, including an individual's socio-economic circumstances. All persons, including those of lower socio-economic status who may have lesser financial capacity to pay a financial penalty, can avoid the impact of the fine by complying with the requirements of the Bill.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

#### *Eligibility for accreditation*

The Bill strikes an appropriate balance between an individual's right to recognition and equality and the need to promote professional conduct and protect public safety. The matters the chief executive must consider are relevant and appropriately reflect a person's ability to carry out regulated towing without posing an unacceptable safety risk.

*Regulated towing and regulated areas*

The Bill strikes the right balance between consumer protection and regulatory impact on industry.

Defining regulated towing in the Bill clearly defines the scope of the regulatory scheme and ensures it applies only to towing services with a clear and justifiable need for regulation.

Carrying over existing regulated areas and including a head of power to amend or declare additional regulated areas will ensure that only areas that have sufficient population, crashes and industry competition are subject to regulation, and provides flexibility for these areas to be updated in future following further consultation and analysis.

*Court-imposed fines*

Imposing financial penalties for non-compliance with the Bill provides a proportionate response to encourage towing practices that are safe and that do not exploit motorists. While the imposition of a financial penalty may disproportionately impact a person from a lower socio-economic group, the importance of maintaining the punishment and deterrent effect of penalties for applicable offences outweighs the impact on the right.

(f) any other relevant factors

Nil

***Property rights (section 24)***

(a) the nature of the right

This right protects the right of all people to own property and protects them from being arbitrarily deprived of their property. Property is broadly interpreted and includes real and personal property, including contractual rights, leases, shares, patents and debts. Property may include statutory rights and non-traditional or informal rights, such as licence to enter or occupy land, and other economic interests.

The Bill may limit the right to property by:

- enabling accredited persons to tow vehicles from private property without the consent of the vehicle's owner;
- providing for court-imposed fines for failing to comply with the requirements of the Bill; and
- establishing investigation and enforcement powers for authorised officers under the Bill, including powers to enter places, powers that are exercisable following entry and powers to seize property, as well as providing for forfeiture of seized things in certain circumstances.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

*Private property towing*

The purpose of regulating towing from private property is to protect motorists and reduce the potential for exploitation by the towing industry. The Bill does not provide the legal basis for removing parked vehicles from private property – this right generally arises from the common law. Rather, once a right to tow a vehicle from private property has arisen, the Bill regulates the way in which that towing is to be undertaken to deliver a clear legislative framework that is fair and reasonable, and which strikes a balance between industry, motorists, and private property occupiers.

*Court-imposed fines*

The failure to pay a fine may result in enforcement action including, for example, vehicle immobilisation or seizure and sale of property (for example, a vehicle owned by the individual), as provided for under the *State Penalties Enforcement Act 1999* (SPE Act).

Providing that a court can impose fines for offences in the Bill is necessary for the effective regulation of the towing industry. The purpose of regulating the tow truck industry is to protect motorists from potential exploitation and from unsafe towing practices. This is consistent with a free and democratic society based on human dignity, equality and freedom.

*Investigation and enforcement*

The purpose of the powers of authorised officers in Part 5 of the Bill is to provide a modernised framework for the investigation and enforcement of tow truck offences. This framework ensures authorised officers have appropriate powers while also providing appropriate protections for accredited persons in the exercise of these powers.

The Bill also allows for seized property to be forfeited to the State in prescribed circumstances. The purpose of forfeiture to the State is to prevent further offending behaviour and to finalise an investigation in the event that the owner cannot be found.

These are purposes consistent with a free and democratic society based on human dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

*Private property towing*

Regulating towing of vehicles from private property provides an appropriate balance between the competing property rights of motorists and occupiers. There is a clear relationship between the Bill and this purpose.

In 2018, the Investigation was commissioned after multiple reports of predatory and intimidating behaviour by towing operators and drivers toward motorists. The Investigation noted the divergent and often competing interests of stakeholders, including motorists, property



occupiers and the towing industry. It also examined the complex legal environment in which private property towing occurred and acknowledged the competing rights of occupiers to control parking on their property against the right of motorists to maintain possession of their vehicle.

The Investigation identified community concerns, including emotional distress and possible safety issues where motorists may be left stranded and vulnerable. To address these concerns, discourage inappropriate behaviour within the tow truck industry and better protect Queensland motorists, while also allowing private property owners and occupiers to manage their parking areas, the Investigation recommended including private property towing within the existing regulatory scheme.

Where a vehicle is towed involuntarily from private property in a regulated area, this is done to enable the enforcement of a land occupier's legitimate legal rights against a vehicle owner who parks unlawfully on the property. The Bill ensures that when this towing occurs, it is conducted according to a regulatory regime designed to protect the vehicle owner from exploitation.

The Review found that the private property reforms had introduced a significant level of protection for motorists and reduced the potential for exploitation.

#### *Court-imposed fines*

There is a direct relationship between the offence provisions and their penalties in the Bill and the purpose of protecting motorists from exploitation and unsafe towing practices. The penalties will send a strong deterrent message to encourage compliance with the requirements of the Bill. This will promote towing practices that are safe and that do not exploit motorists.

#### *Investigation and enforcement*

Any limitation on property rights from the investigation and enforcement powers in the Bill ensures the tow truck scheme can be effectively enforced to deliver the intended benefits to consumers and the general community.

In its final report, the Investigation recommended that the Government review the current Act and Regulation to ensure the regulatory framework is simple, precise, accessible and appropriately targeted to achieve the policy objectives.

As part of the Review, TMR considered the offences, penalties and enforcement powers in the Act and identified amendments to strengthen compliance and enforcement outcomes, protect vulnerable motorists and promote road safety.

The investigation and enforcement framework in Part 5 of the Bill gives effect to the findings of the Review by introducing a modern enforcement framework.

The powers of authorised officers support the efficient and effective investigation of offences under the Bill, by allowing an authorised officer to enter places and seize things without the need for a warrant in appropriate limited circumstances. These are where: the authorised officer has been given consent; the place is open to the public; or the place is the place of business or authorised holding yard for an operator accreditation and is open for entry at the time.

An authorised officer's powers after entry include searching and inspecting the place, taking samples for examination, taking documents or extracts of documents, or photographing the place. The authorised officer can also bring any equipment and materials necessary for exercising their powers into the place and remain there for the time necessary to achieve the purpose of entry.

These powers all have the purpose of facilitating investigation of offences against the Bill, allowing evidence to be gathered, and ensuring compliance with the requirements of the tow truck scheme.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There are no less restrictive and reasonably available ways to achieve the purposes of the Bill.

#### *Private property towing*

As noted above, the Human Rights Act protects against the deprivation of property. This includes the substantial restriction on a person's use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use their property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it).

A motorist's ability to use and enjoy their property is affected when their vehicle is towed without their consent. Conversely, a property occupier's ability to use and enjoy their property is affected when a motorist illegally parks on their property. It is necessary to balance these competing rights.

Regulating private property towing provides a clear, transparent, and enforceable framework for balancing the rights of motorists and occupiers. Prohibiting towing of vehicles parked illegally on private property would unreasonably limit the property rights of property occupiers. Deregulating private property towing would be inconsistent with the Investigation and deprives motorists of the protections in the Bill, which are designed to help protect their property rights.

#### *Court-imposed fines*

There is no less restrictive and reasonably available way to promote compliance with requirements of the Bill than imposing penalties for failure to comply. Importantly, a court may impose a penalty that is lower than the maximum penalty in the Bill and may take into account a range of factors in deciding a penalty, including an individual's socio-economic circumstances.

Importantly, there are several protections built into the fine enforcement system under the SPE Act which ensure that the seizure and sale of property or vehicle immobilisation because of non-payment of a fine would only occur infrequently. In terms of seizure and sale, the State Penalties Enforcement Registry (SPER) only undertakes this activity where it has registered an interest over the property to be seized. The SPE Act sets out the minimum amount that must

be owed by a debtor before SPER can register an interest over property, or before vehicle immobilisation can occur.

### *Investigation and enforcement*

The alternative to providing authorised officers with power to enter places and powers after entry is to require a warrant in all circumstances. This does not achieve the purposes of the Bill and is unnecessarily restrictive. In the absence of a warrant, an authorised officer may only enter a place where the occupier consents, the place is a public place, or where it is a place of business under an operator accreditation or an authorised holding yard that is open for entry. These circumstances are appropriately limited and facilitate an efficient investigation process.

There are appropriate safeguards to prevent arbitrary interference with property rights. Before asking for consent, an authorised officer must produce proof of their identity, explain the purpose of entry to the occupier, including the powers intended to be exercised, and that the occupier: is not required to consent; may consent subject to conditions; and may revoke their consent at any time (clause 88). The authorised officer must also tell the occupier that if the authorised officer makes a help requirement, it is an offence not to comply with the requirement unless they have reasonable excuse (clause 99). This ensures the occupier is given all the relevant information about the implications of giving consent and allows the occupier to make an informed decision about whether to give consent and whether to impose conditions on their consent.

When entering under warrant, the authorised officer must present their identity card or another document evidencing the officer's appointment and a copy of the warrant for the occupier (clause 95). A warrant may only be granted on application to a magistrate. In deciding whether to issue the warrant, the magistrate must be satisfied there are reasonable grounds for suspecting that there is at the place or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against the Bill (clause 91).

An authorised officer's exercise of powers following entry is subject to any conditions of the consent or terms of the warrant (clause 96). There is also a duty of authorised officers to exercise their powers in a way that avoids inconvenience and minimises damage, a requirement to give notice of any damage, and the availability of compensation from the State for loss arising from the exercise of a power by an authorised officer (clauses 118 – 120).

An authorised officer may only seize certain property in prescribed circumstances, such as the evidence for which a warrant was issued, or property the authorised officer reasonably believes is evidence of an offence against the Bill and seizure is necessary to prevent the thing being hidden, lost, destroyed or used to commit the offence (clauses 100 and 101). There are important safeguards set out in clause 106 to 108 of the Bill, including a requirement to give a receipt for a seized thing, a requirement to give access to a seized thing, and a requirement for the chief executive to return a seized thing within six months of seizure, unless a proceeding is commenced, and as soon as it is no longer necessary to keep the seized thing as evidence of an offence.

No less restrictive alternative would be as effective in facilitating investigations and enforcing compliance with the tow truck scheme.

There are appropriate safeguards to ensure property is not arbitrarily forfeited to the State. A seized thing may only be forfeited if the chief executive: cannot find the thing's owner; cannot return the thing to the owner; or reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it is seized. The chief executive must give an information notice for the forfeiture decision, which allows the owner to apply for review of the decision under Part 6 of the Bill.

If the Bill did not allow for forfeiture of property, TMR would be unable to dispose of seized things, and would bear the cost and inconvenience of storing abandoned property for no purpose or benefit.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

*Private property towing*

The Bill strikes a fair balance by delivering a legislative framework for fair and reasonable private property towing practices. To the extent that it limits property rights, it does so to recognise and balance the competing rights and interests of industry, motorists and private property owners and occupiers.

*Court-imposed fines*

Imposing financial penalties for non-compliance with the Bill provides a proportionate response to encourage towing practices that are safe and that do not exploit motorists.

*Investigation and enforcement*

The powers in Part 5 of the Bill have the purpose of facilitating the investigation of offences against the Bill, and to ensure compliance with the safeguards in the regulatory scheme. The powers go no further than is necessary to achieve that purpose. Ultimately, they strike a fair balance between those purposes and the right to property.

- (f) any other relevant factors

Nil

***Privacy and reputation (section 25)***

- (a) the nature of the right

The right to privacy and reputation protects against unlawful or arbitrary interference with a person's privacy, family, home or correspondence. The scope of privacy is very broad, extending to an individual's private life more generally.

The Bill may limit the right to privacy and reputation by:

- requiring the chief executive to consider a person's criminal history when deciding whether to grant an accreditation;

- requiring an applicant for, or holder of, an accreditation to notify the chief executive and other relevant parties if charged with a notifiable offence or issued an infringement notice for a notifiable offence;
- requiring a person to provide personal details and documents that may contain personal information during an investigation by an authorised officer; and
- allowing the exchange of personal information between TMR and the Queensland Police Commissioner.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

*Criminal history*

The purpose of allowing the chief executive to access information about a person's convictions and charges in their criminal history is to protect and promote public safety.

*Notification requirements*

The purpose of requiring a person to notify the chief executive is to protect and promote public safety by giving the chief executive information relevant to whether the person is suitable to hold an accreditation.

The purpose of requiring a person to notify other executive officers or partners if charged with a notifiable offence is to ensure any person whose rights or interests may be affected is informed and aware of the potential impact.

*Powers of authorised officers*

The purpose of requiring a person to give their name and address to an authorised officer (clause 113) or produce a document to an authorised officer (clause 115) is to facilitate the investigation and enforcement of tow truck offences, in order to protect and promote public safety.

*Information sharing*

The purpose of allowing the exchange of information between TMR and the police commissioner is to protect public safety by enhancing TMR's ability to monitor and enforce compliance with the Bill.

These are purposes consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

*Criminal history*

As discussed under the right to equality and recognition above, it is essential that regulated towing services are not carried out by a person who poses a heightened risk to public safety or

is unsuitable to work with vulnerable people and their property. This purpose is supported by allowing the chief executive to access the person's criminal history.

A person's criminal history under the Bill includes all convictions, even if the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired, as well as any charges. It is appropriate for the chief executive to access and consider this broad range of information, as this is relevant to a person's character and how they might interact with members of the public.

Certain offences, such as those involving violence or abuse, theft, or intimidation, would make a person unsuitable for a role dealing with members of the public and their property. Similarly, certain charges, or a history of being charged with multiple criminal offences, may demonstrate a pattern of behaviour making a person unsuitable to hold an accreditation. For example, it would be inappropriate to allow a person facing charges of sexual assault to attend to a distressed individual at an isolated crash scene.

#### *Notification requirements*

Similar to the discussion of criminal history above, it is essential that the chief executive is swiftly notified of any significant matter impacting a person's suitability to hold an accreditation and can take action to amend, suspend or cancel the accreditation under Part 4 of the Bill, if appropriate. This supports the public safety purpose of the Bill.

A *notifiable offence* is defined in clause 71 of the Bill and includes, for example, certain offences under the Criminal Code, offences relating to illicit drugs or illegal weapons and an evasion offence under section 754 of the *Police Powers and Responsibilities Act 2000*. These are more serious or significant offences that may have a greater impact on, or more immediate impact on, public safety. This warrants more serious consideration by the chief executive about whether the person should be granted, or allowed to continue to hold, an accreditation. Depending on the circumstances, a credible accusation of a notifiable offence may also be grounds for immediately suspending the accreditation to prevent public safety being endangered.

Where the applicant for, or holder of, the accreditation is a corporation or a partnership, any action taken by the chief executive to amend, suspend or cancel the accreditation will affect all the executive officers or partners, even if these parties weren't involved in the conduct leading to the charge of a notifiable offence. This affects their rights and interests in the accreditation. For example, if the accreditation is suspended based on the conduct of one member of a partnership, all partners will be financially impacted while regulated towing activities are suspended.

Requiring a person to inform other executive officers or partners of the charge upholds the procedural rights of these parties by informing them of anything that may affect their ability to carry out their ordinary business activities. Notification also allows executive officers and partners to take any appropriate action to ensure the accreditation isn't affected. For example, a corporate accreditation holder may choose to expel an executive officer charged with a serious notifiable offence to remove grounds for the chief executive to amend, suspend or cancel the accreditation.

### *Powers of authorised officers*

Any limitation on the right to privacy and reputation from the powers of authorised officers is to ensure the tow truck scheme can be effectively enforced.

An authorised officer who is investigating a potential offence under the scheme must be able to establish basic facts. Allowing an authorised officer to request a person's name and address, and to require evidence that these personal details are correct, ensures the officer can verify the person's identity. Allowing an authorised officer to require a person to produce a document, such as an accreditation document or a private property towing consent, ensures the officer can verify information such as whether the person is entitled to carry out regulated towing, or is complying with requirements under the scheme.

These powers all have the purpose of facilitating investigation and enforcement of offences within the Bill.

### *Information sharing*

The Bill also supports this public safety objective by ensuring TMR can both keep relevant information about accreditation holders and ensure this information is accurate and up to date.

Clause 139 of the Bill allows the Police Commissioner to notify the chief executive if an accreditation holder's criminal history changes. This exchange of information enables the chief executive to act swiftly to protect the public by immediately suspending the accreditation or issuing a show cause notice to the holder in appropriate circumstances.

Clause 145 of the Bill empowers the chief executive to enter into an information sharing arrangement with the police commissioner for information. By allowing the chief executive to enter into an information sharing agreement, the Bill facilitates, for example, TMR receiving daily information about criminal history from the Queensland Police Service, which helps ensure greater security and protection for consumers and the broader community.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There is no less restrictive way to achieve the purposes of the Bill.

### *Criminal history and information sharing*

If the chief executive is unable to access up to date criminal history information about an applicant or accreditation holder, or to consider this information as part of the decision-making process, it may result in an inappropriate person being granted an accreditation.

The Bill provides safeguards for the confidential treatment of the information. An information sharing agreement entered into under clause 145 may only relate to information that assists the chief executive to perform functions under the Tow Truck Act or the police commissioner to perform the commissioner's functions.

If information is disclosed contrary to clause 145 or any other requirement in the Bill, this is an offence under clause 144. Clause 144 prohibits the use or disclosure of personal information except if the disclosure is: necessary to perform the person's functions under or relating to the

Bill; otherwise required or permitted by law; with the consent of the person to whom the information relates; or a part of proceedings before a court or tribunal. Unauthorised use or disclosure is an offence attracting a maximum penalty of 200 penalty units or \$28,750. This high maximum penalty reflects the seriousness of the offence.

*Notification requirements*

If the chief executive is not informed of charges of notifiable offences in a timely manner, this may cause delays in taking action against the accreditation holder to preserve and promote public safety. Likewise, if partners in partnerships or executive officers in corporations that hold accreditations are not informed if a partner or executive officer is charged with a notifiable offence then they will be unable to take precautions to protect their customers.

In addition to the privacy protections in clause 144, the Bill also provides some protections for notification of charges. The notification requirements do not apply where a person's accreditation is surrendered or otherwise stops having effect, or for partners in partnerships or executive officers in corporations that hold an accreditation, where they stop being a partner or an executive officer. This allows an individual to choose to end their involvement in the tow truck industry if that is preferred over disclosing information about charges (Clauses 73(5), 74(5), 75(5) 76(5)).

*Powers of authorised officers*

If authorised officers did not have these information gathering powers, this may compromise TMR's ability to enforce the requirements in the Bill that support consumer protection and public safety.

The powers are appropriately limited to ensure they do not arbitrarily interfere with a person's right to privacy.

The power to require personal details only applies if an authorised officer finds a person committing an offence against the Bill or finds a person in circumstances that lead the authorised officer to reasonably suspect the person has just committed an offence against the Bill. It also applies if the authorised officer has information that leads the officer to reasonably suspect the person has just committed an offence against the Bill. The power to require evidence of the correctness of a person's stated name and address only applies if the authorised officer reasonably suspects the person has given false information.

The power to require a document to be produced only applies to documents that are given to the person under the Bill or required to be kept under the Bill, such as an accreditation document or a towing authority. Also, a person is not required to produce the document if this might incriminate them or expose them to penalty.

No less restrictive alternative would be as effective in facilitating investigations and enforcing compliance with the tow truck scheme.



- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Any limitation on an individual's right to privacy must be weighed against the need to promote public safety and ensure the safety and wellbeing of vulnerable motorists. Motorists, who may have been through a traumatic experience, are entitled to receive professional towing services without being threatened, harmed, or otherwise exposed to inappropriate behaviour, such as by travelling in a tow truck that contains illegal weapons or illicit drugs.

The Bill appropriately balances these considerations and the benefits to the community outweigh any limitation on human rights.

- (f) any other relevant factors

Nil

***Right to liberty and security of person (section 29)***

- (a) the nature of the right

The Bill may limit the right to liberty and security to the extent that it prescribes financial penalties that may be enforced under the SPE Act. The registrar of the SPER may issue an arrest and imprisonment warrant to a person for failing to pay an amount stated in an enforcement order after the person fails to pay a financial penalty. Importantly, however, the SPER Charter, provided for under section 9 of the SPE Act, preferences the use of other enforcement actions for unpaid fines over arrest and imprisonment to reduce the use of imprisonment for fine default.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Providing that a court can impose financial penalties if requirements in the Bill are not complied with is necessary for the effective regulation of the towing industry. This is consistent with a free and democratic society based on human dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

There is a direct relationship between the offence provisions and their financial penalties, and the purpose of effectively regulating the towing industry to protect motorists from exploitation and unsafe practices. The penalties send a strong deterrent message against undesirable practices and encourage compliance with the requirements in the Bill. A person can avoid the consequence of arrest and imprisonment by complying with the Bill, or paying a penalty imposed.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

It is considered that there is no less restrictive and reasonably available way to achieve the purpose of protecting motorists from exploitation and unsafe practices than by providing penalties for failure to comply with requirements of the Bill.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The importance of regulating the towing industry to protect motorists from exploitation and unsafe towing practices outweighs any limitation on the right to liberty and security.

(g) any other relevant factors

Nil

***Fair hearing and rights in criminal proceedings (sections 31 and 32)***

(a) the nature of the right

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

The human right under section 32 (Rights in criminal proceedings) entitles a person charged with a criminal offence to be presumed innocent until proven guilty and to certain minimum guarantees in proceedings. This right includes the right to examine, or have examined, witnesses against the person.

The Bill may limit these rights by:

- allowing the chief executive to consider whether a person has been charged with an offence (as part of the person's criminal history) when deciding whether to grant, amend, suspend or cancel an accreditation;
- requiring an applicant for, or holder of, an accreditation to disclose if they are charged with, or are issued with an infringement notice for, a notifiable offence; and
- allowing for the issue of certificates for certain evidential matters and allowing the court to presume particular elements of an offence unless the defendant proves contrary.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

*Criminal history*

As noted elsewhere in this statement, the purpose of allowing the chief executive to consider charges is to safeguard vulnerable motorists and ensure public safety.

*Notification requirements*

As noted above under the right to privacy, the purpose of requiring a person to notify is to protect and promote public safety by giving the chief executive information relevant to whether the person is suitable to hold an accreditation.

*Evidentiary provisions*

The purpose of the evidentiary provisions in Part 6, Division 2 of the Bill is to improve the efficiency of court proceedings, reduce inconvenience to witnesses, and help reduce costs (as witnesses may be entitled to witness expenses and this cost may be borne by a defendant who is found guilty).

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

These are purposes consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

*Criminal history*

A person's criminal history is defined in schedule 3 of the Bill, and includes a charge made against the person that has not been dealt with by a court, or that has been withdrawn or otherwise discontinued.

It is necessary to include criminal charges to ensure the chief executive is fully informed of all matters that may impact on the appropriateness of a person providing services to consumers and ensure they do not pose an unacceptable safety risk to the public or property. The existence of criminal charges not yet dealt with, and the nature of those charges, is relevant to a person's suitability to hold an accreditation.

*Notification requirements*

Similar to the discussion of criminal history above, there is a rational relationship between the limitation and its specific purpose, as it ensures the chief executive is swiftly notified of any significant matter impacting on a person's suitability to hold an accreditation and can take action to ensure consumers and the general public are protected where there is a credible allegation that an accreditation holder has engaged in serious criminal conduct.

*Evidentiary provisions*

The evidentiary provisions in the Bill will reduce the need to call witnesses for technical and non-contentious information. This reduces inconvenience for witnesses who would otherwise need to attend court, will be more efficient for court proceedings and may reduce costs relating to witnesses. There is a clear and direct relationship between any limitation and the purpose of the amendments.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

*Criminal history*

There is no less restrictive way to achieve the purpose of ensuring only appropriate people are accredited to carry out regulated towing. Limiting the chief executive's consideration to convictions, rather than convictions and charges, would not give the chief executive all the information needed to make a proper assessment of whether the person is an appropriate person.

Allowing a person with criminal charges to carry out regulated towing, without first considering whether that person is appropriate based on their individual circumstances, poses an unacceptable risk to public safety and road safety. This would not achieve the purposes of the Bill.

*Notification requirements*

There is no less restrictive way to achieve the purpose of ensuring the chief executive is informed of charges of notifiable offences in a timely manner. If the person is not required to disclose this information as soon as practicable after being charged or issued with an infringement notice, this may cause delays in taking action against the accreditation holder to preserve and promote public safety.

Notification to the chief executive under clause 73 or 74 of the Bill enlivens the chief executive's power under Part 3 to take action to amend, suspend or cancel the accreditation, if appropriate. This allows a person's rights to be adversely affected before being found guilty of the offence.

The Bill contains procedural rights for a person once they have notified under clause 73 or 74. The chief executive is not required to take action simply because the holder has been charged with, or issued an infringement notice for, a notifiable offence. If the chief executive considers the nature of the notifiable offence and decides there is no ground for taking action, the accreditation continues unaffected.

If the chief executive does decide to take action, the holder of the accreditation must first be given a show cause notice and has the opportunity to make representations in their defence. If the chief executive then decides to amend, suspend or cancel the accreditation, this decision may be reviewed or appealed under Part 6 of the Bill. Similarly, if the chief executive decides to immediately suspend the accreditation, the review and appeal rights in Part 6 apply to the suspension.

*Evidentiary provisions*

There is no less restrictive way of achieving the proposed outcome.

Any impact on a defendant's rights is mitigated by the fact they still have an opportunity to challenge the evidence in which case the prosecution will be required to establish that matter through normal processes including calling witnesses. Calling witnesses to establish each and every element of an offence, even where the defendant does not dispute that matter, would be

time-consuming for both the witnesses and the court process and costly (including potentially for a defendant who is found guilty and is required to pay witness costs).

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

*Criminal history and notification requirements*

The Bill strikes an appropriate balance between an individual's rights in criminal proceedings and the need to ensure protection for motorists and public safety by considering a person's suitability to hold an accreditation.

*Evidentiary provisions*

The information that will be able to be provided by documentary related evidence is technical, objective, administrative, and non-contentious and so is unlikely to be challenged by a defendant.

On balance, given the benefits of an efficient court process and effective prosecutions, any limitation on human rights is justified.

- (f) any other relevant factors

Nil

## **Conclusion**

In my opinion, the Tow Truck Bill 2023 is compatible with human rights under the Human Rights Act because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

**MARK BAILEY MP**  
MINISTER FOR TRANSPORT AND MAIN ROADS  
MINISTER FOR DIGITAL SERVICES