

Tow Truck Regulation 2024

Explanatory notes for SL 2024 No. 134

made under the

Photo Identification Card Act 2008

Police Powers and Responsibilities Act 2000

State Penalties Enforcement Act 1999

Tow Truck Act 2023

Transport Operations (Marine Safety) Act 1994

Transport Operations (Passenger Transport) Act 1994

Transport Operations (Road Use Management) Act 1995

Transport Planning and Coordination Act 1994

General Outline

Short title

Tow Truck Regulation 2024

Authorising laws

Section 49 of the *Photo Identification Card Act 2008*

Section 809 of the *Police Powers and Responsibilities Act 2000*

Section 165 of the *State Penalties Enforcement Act 1999*

Section 151 of the *Tow Truck Act 2023*

Section 207 of the *Transport Operations (Marine Safety) Act 1994*

Section 155 of the *Transport Operations (Passenger Transport) Act 1994*

Section 171 of the *Transport Operations (Road Use Management) Act 1995*

Section 38 of the *Transport Planning and Coordination Act 1994*

Policy objectives and the reasons for them

On 2 November 2023, the *Tow Truck Act 2023* (the Act) received royal assent. The Act repealed and remade the *Tow Truck Act 1973* (the 1973 Act) with improvements to modernise the regulation of the tow truck industry in Queensland.

The 1973 Act provided a framework for the towing, in regulated areas of Queensland, of motor vehicles involved in crashes, police seizures from off-street regulated parking areas or towed from private property in certain circumstances. The 1973 Act also provided a framework for the

subsequent handling and storage of those vehicles, the handling of confidential information, offence provisions, enforcement provisions, and administrative and review provisions.

All other forms of towing, including breakdown towing, trade towing, and compliance towing, are not covered by the regulatory framework.

The 1973 Act was revised 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 Independent Investigation).

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

The Queensland Government also committed to reviewing the 1973 Act and the 2009 Regulation to ensure:

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

In 2019, a comprehensive review of Queensland's tow truck scheme and governing legislation (the Review) was conducted by the Department of Transport and Main Roads (TMR).

The introduction and passage of the Act gave effect to the remaining recommendations made by the Independent Investigation and to the findings of the Review by delivering a more modern tow truck scheme in Queensland that is designed to improve road safety and deliver improved outcomes and protections for motorists, property owners and industry members.

To support the Act, the Tow Truck Regulation 2024 (the Regulation) will repeal the 2009 Regulation and introduce an improved and streamlined framework for operational and administrative matters. These include specific requirements related to accreditations, conduct of accredited persons, audits, offences, compliance, enforcement, and other aspects of the regulated tow truck industry.

Achievement of policy objectives

The Regulation will support the Act by providing operational details for the scheme including: administration of accreditations for operators, drivers and assistants; the form of, replacement of, and requirement to produce, accreditation documents; obligations and standards of conduct for accreditation holders; accreditation fees; provisions about charges for towing, storing, viewing or accessing, release and on-site release of vehicles; and offences relating to documents and information required to be held under the scheme.

The provisions in the Regulation have been significantly modernised and restructured. The changes to the Regulation include:

- modernising the existing legislation by introducing new terminology to improve consistency across accreditation schemes administered by TMR and by removing outdated provisions;
- removing the requirement to notify TMR of the name and address of a person acquiring a tow truck;
- extending the procedural requirements that apply to the disposal of an authorised tow truck to include any situation where an operator ceases to use the vehicle, and clarifying timeframes for these procedures, including that an operator who disposes of their only authorised tow truck has three months to acquire a new truck before the accreditation ceases;
- extending recordkeeping requirements to electronic records and extending record-keeping retention periods;
- providing alternatives to the requirement for an operator to be the sole owner or lessee of the holding yard, where an operator has responsibility and control for security of property in the holding yard;
- providing for security requirements for holding yards and offences for offering bribes or inducements in the Regulation instead of the Act, and expanding these offences to include offering consideration to the owner of the vehicle or for the purpose of obtaining work in a broader range of industries, such as vehicle insurance claims or car hire;
- modernising tow truck vehicle specifications, updating terminology for consistency with Queensland and Commonwealth transport legislation, and making minor technical improvements to requirements for tow truck equipment; and
- amending and updating offence provisions and penalties, including the amount of infringement notice fines, to ensure they are clear, appropriate, and consistent with offences of a similar nature in transport legislation.

Outdated provisions have also been removed from the Regulation. These changes include:

- removing all references to permits. The Act removed the ability for the chief executive to issue a temporary permit, as these were not used;
- removing the requirement for operators to supply communication equipment for the deployment of mobile units, as there is no longer a need to prescribe this type of technology;
- removing the requirement for an accreditation holder to sign an identity card;
- removing minimum age requirements to be eligible for a driver accreditation or assistant accreditation;
- removing the requirement for an applicant for a driver accreditation to demonstrate their ability to drive a tow truck, as this is adequately demonstrated by holding a relevant driver licence;
- avoiding duplication with the *Transport Operations (Road Use Management–Driver Licencing) Regulation 2021* by removing the requirement for applicants for a driver accreditation to declare a medical condition;
- removing the requirement that the holder of an approval be "neatly dressed". This requirement was considered unnecessary, imprecise, and potentially inconsistent with a person's right to freedom of thought, conscience, religion and belief under section 20 of the *Human Rights Act 2019*; and
- avoiding duplication with the Criminal Code by removing the offences for causing or threatening wilful injury to a person or wilful damage to a person's property. This conduct is already provided for in the Criminal Code, sections 317 and 320 (grievous bodily harm), 323 (wounding), 339 (assaults occasioning bodily harm) and 469 (wilful damage to property).

Lastly, the Regulation introduces new provisions to deal with the following matters:

- **Tow to safety services:** In Brisbane, Transurban Limited owns and operates a number of roads, bridges and tunnels in partnership with TMR. These include the AirportlinkM7 tunnel, Go Between Bridge and Gateway Motorway. Transurban's responsibilities as road manager include arranging for stationary vehicles, such as damaged or abandoned vehicles, to be towed. This is done under contract with a towing provider, who tows a damaged vehicle to the nearest safe location at no cost to the vehicles' owner (a 'tow to safety service'). The owner must then arrange a subsequent tow, if necessary.
To ensure damaged vehicles can be swiftly removed from these high-volume traffic areas, sections 49, 50 and 51 in the Regulation exempt tow to safety services from certain requirements for crash towing. These are appropriately dealt with under commercial contractual arrangements.
- **Temporary holding yards:** Part 12 of the Regulation establishes a framework for accommodating emerging and unseen events, such as fire or flooding, by facilitating quick, simple, and flexible processes for approving holding yards on a temporary basis during emergencies.
- **Auditing:** Part 13 of the Regulation establishes a framework for auditing the holder of an operator accreditation. While TMR already conducts audits, this is done under general investigation and enforcement powers. The Regulation clearly authorises and formalises the process for compliance audits, as well as establishing important procedural rights for the person being audited.

An outline of the Regulation follows, which includes a description of changes that simplify and enhance the operation of the 2009 Regulation.

Part 1: Preliminary

Part 1 establishes the preliminary matters for the Regulation by setting out the short title and commencement of the Regulation, and key terminology used throughout the Regulation.

Part 2: General provisions

Part 2, division 1 of the Regulation sets out matters the chief executive must consider when deciding whether a person is suitable to hold, or continue to hold, a driver accreditation. This division applies to a person who holds an M condition driver licence, meaning the person may only drive while carrying a current medical certificate and must comply with any conditions on that medical certificate. For example, a person with poor night vision may be limited to driving during daylight.

Where the person holds an M condition driver licence, the chief executive must consider whether the person has a valid medical certificate stating they comply with the commercial standards in the 'Assessing fitness to drive for commercial and private vehicle drivers' ('Fitness to Drive Standards') published by Austroads.

This replaces provisions in the 2009 Regulation giving the chief executive power to require an applicant to undergo a medical examination and removes unnecessary overlap with other transport legislation for the majority of applicants. Applicants who already hold a Queensland M condition heavy vehicle driver licence have already completed a commercial medical assessment under chapter 3, part 6, division 1 of the *Transport Operations (Road Use Management—Driver Licensing) Regulation 2021*. A very small number of applicants who hold a light vehicle driver

licence (C and LR) will now need to undergo a commercial medical assessment.

Part 2, division 2 of the Regulation deals with procedural requirements for applications made under the tow truck legislation. Among other matters, this division empowers the chief executive to publish notices on TMR's website about how an application may be made and to request further information before deciding an application.

Division 2 includes modifications to the standard requirements for applications relating to temporary holding yards. This facilitates flexible and responsive processes in emergencies, such as flooding, where vehicles may need to be moved to a safer location.

Part 3: Accreditations

Part 3 of the Regulation sets out a range of administrative matters relating to accreditations.

Part 3, division 1 specifies grounds for refusal of an application for an accreditation.

For an operator accreditation, the chief executive may refuse an application if a vehicle to be used as a tow truck, or any premises to be used as an authorised holding yard, under the accreditation, does not meet prescribed requirements.

For a driver accreditation, the chief executive may refuse an application if the applicant has never held an open driver licence. This is the minimum requirement to demonstrate suitability to operate a commercial tow truck. It replaces the requirement in the 2009 Regulation that an applicant has either held a driver licence continuously for three years or has completed a practical driving test for the relevant vehicle class they're applying for.

Part 3, division 2 deals with driver accreditations and assistant accreditations. This division clarifies that an accreditation document may be in the form of a smartcard and prescribes the meaning of information displayed or stored on the smartcard.

Part 3, division 3 applies to the replacement of accreditation documents, and deals with when a replacement accreditation may be requested or given, waiver of fees in certain circumstances, and requirements to return or destroy a superseded accreditation.

Part 4: Amending, suspending and cancelling accreditations

Part 4 prescribes grounds for amending, suspending or cancelling an accreditation in addition to the grounds set out in Part 3, division 2 of the Act. If the chief executive considers a ground exists, the holder of the accreditation may be issued with a show cause notice. These grounds include using, or permitting the use of, an unregistered tow truck or that an authorised holding yard no longer meets the minimum security requirements.

Part 5: Obligations and requirements for holders of accreditations and other persons

Part 5 sets out requirements for holders of accreditations.

Part 5, division 1 sets out the record-keeping requirements for an accredited operator. Sections 24 and 25 specify that the operator must record information about a regulated tow and keep this information, as well as documents made or given under the Act. This applies to both hardcopy and electronic records.

Accreditation documents and records relating to accreditations must be kept while the accreditation is in effect or five years, whichever is the shorter period. This reflects that an accreditation may be continuously renewed over decades, and an operator should not be required to keep these records for the entire duration. Five years is the longest period an accreditation can be granted or renewed under the Regulation, and this ensures a document must always be kept during the current period of a renewed accreditation.

The period for keeping records of regulated tows, as well as copies of towing authorities and towing consents, has been increased from one year to two years, to align with the time limit for bringing proceedings in section 129 of the Act.

Division 1 also imposes a requirement for accredited drivers and assistants to produce their smartcard accreditation at the request of an authorised officer unless the person has a reasonable excuse. This applies while the person is at a crash site or place of seizure, at a private property carrying out a regulated tow, or while travelling in an authorised tow truck for an operator accreditation. Reasonable excuse includes that the smartcard was lost or stolen, but does not include where the person simply failed to keep their smartcard on them.

Part 5, division 2 sets out a range of offences relating to requirements for authorised tow trucks and how they are used.

Part 5, division 2, subdivision 1 applies to holders of an operator accreditation. The requirements in this subdivision states that the holder must:

- ensure the tow truck does not display advertising for more than one tow truck business or display other restricted advertising (section 27);
- ensure the tow truck complies with relevant requirements in schedule 1 of the Regulation (section 28);
- not direct a person to contravene certain requirements related to operating tow trucks (section 29); and
- comply with certain administrative procedures when ceasing to use a vehicle as an authorised tow truck (sections 30–33).

Part 5, division 2, subdivision 2 applies to holders of a driver accreditation and states that the holder must comply with relevant requirements in schedule 1 of the Regulation.

Part 5, division 3 outlines a range of offences relating to conduct when carrying out activities under an operator accreditation.

These requirements apply to the holder of an accreditation and, if an operator accreditation is held by a corporation or partnership, to an executive officer or partner of that corporation or partnership. They include that the person must not:

- promote or advertise certain business or services unrelated to towing services (section 36);
- attempt to obtain a motorist’s authority to any other service except the towing service (section 37);
- harass, intimidate, or abuse a person while at the place of the vehicle to be towed (section 38);
- obstruct the delivery of first aid or medical treatment at a crash site (section 39);
- attempt to get a towing authority from a person who can’t give informed consent (section 40); or
- remain at a crash site unnecessarily (section 41).

Part 5, division 4 imposes obligations on accreditation holders to notify the chief executive of certain changes in details. This ensures accreditation documents can be updated to remain accurate. Division 4 also clarifies that this does not apply if the holder has already notified the chief executive under another Act.

Part 6: Provisions relating to towing of damaged and seized motor vehicles

Part 6 deals with towing a damaged or seized vehicle. It covers procedural steps that must be met before the vehicle is towed and specifies requirements for how and where the vehicle must be towed.

The Act provides that a damaged or seized vehicle must not be towed without a towing authority (section 64) and only the holder of a driver accreditation may obtain the towing authority (section 78).

Part 6 sets out the detailed requirements for obtaining and dealing with towing authorities. These were previously set out partly in the 1973 Act and partly in the 2009 Regulation. To provide greater clarity and accessibility, the Regulation consolidates the existing requirements and makes a number of clarifications and enhancements.

The requirements for towing authorities include:

- the towing authority must be properly and fully completed, including with the destination for the towed vehicle, before it is approved (section 48(2)(a)). This order of events is an important protection for consumers so that they are not giving a blank authority for their vehicle to be towed anywhere.
- a driver must not obtain, or attempt to obtain, a towing authority unless they can immediately start preparing the vehicle for towing (section 48(2)(b)). This will ensure the road network is cleared and free flowing traffic is returned without unnecessary delay.
- where the motorist has simply nominated a holding yard or has not nominated an alternative address to which the vehicle should be towed, the vehicle must be towed to the nearest holding yard operated by the relevant operator with sufficient capacity (section 48(4)).
- a driver must not obtain, or attempt to obtain, a second towing authority until the first vehicle has been towed to its destination (section 53). This ensures a fair and equitable market at multi-vehicle crash locations and reduces the incidence of conflict between competing drivers.

Part 6 also sets out requirements for conduct, including that a driver must show their smartcard accreditation when offering to tow (section 47), must not remain at a crash site or place of seizure, or obstruct traffic unnecessarily (sections 50 and 51), and must use the most efficient route when towing the vehicle (section 52).

Part 7: Provisions relating to private property towing

Part 7 deals with towing vehicles from private property. It covers the carriage and production of documents, procedural steps that must be met before the vehicle is towed, and requirements for how and where the vehicle must be towed.

‘Private property towing’ refers to towing that is carried out at the request of someone other than the vehicle’s owner. That is, where a person has parked on private property without the occupier’s consent and the occupier enforces their property rights by having the vehicle towed. Because of the seriousness of removing and keeping another person’s property without consent, Part 7 provides protections for motorists to balance their interests against the property occupier’s rights.

These include:

- the driver must first take reasonable attempts to find the owner of the vehicle before towing. If found, the owner must be given a reasonable opportunity to move the vehicle (section 56);
- if the driver has started, but not finished, preparing the vehicle for towing and the owner agrees to move the vehicle, the driver must release the vehicle without charge (section 57);
- if the driver has finished preparing the vehicle for towing, but has not yet towed the vehicle from the private property, the driver must give the vehicle's owner the opportunity to pay an on-site release charge before towing (section 58);
- if the vehicle is towed, it must only be towed and stored at an authorised holding yard (section 61); and
- the vehicle's owner is entitled to a copy of the private property towing consent to verify the operator had the occupier's permission to tow the vehicle (section 62).

Part 8: Provisions relating to storage of towed motor vehicles and movable property

Part 8 sets out requirements for authorised holding yards and dealing with property found in the towed vehicle, such as a laptop or wallet. These include that the holding yard must be kept secure, found property must be kept safe until returned to the owner, and vehicles must be released within four business hours of the owner's request.

The Regulation also strengthens existing security requirements for holding yards by introducing new offences for:

- using an authorised holding yard that does not meet minimum security requirements (section 63, maximum penalty of 50 penalty units);
- failing to ensure gates and doors are kept closed and securely locked (section 64, maximum penalty of 50 penalty units); and
- failing to promptly repair damage to a fence or gate around the holding yard (section 65, maximum penalty of 50 penalty units).

Part 8 supports the consumer protections in the Act by requiring accredited operators ensure vehicles and found property are protected from loss and damage and are returned to the owner in a reasonable time and in good condition.

Part 9: Charges

Part 9 of the Regulation sets out rules relating to charges for a regulated tow. It sets out restrictions on what an operator may charge the owner of a vehicle and when those charges may be imposed.

Part 9, division 1 defines terms used throughout the Part.

The definitions of *non-chargeable activity* and *non-chargeable matter* are used to clarify that an operator must never impose a charge for these things, as they are considered mainstream costs incurred when undertaking everyday business operations. Examples include driving the tow truck to the vehicle that needs towing, administrative tasks such as record-keeping, and the cost of fuel, tools, or equipment.

The definition of *working time* is used to determine what towing charge may be imposed, as the Regulation sets different rules depending on whether the tow involves more or less than one hour working time. Working time means the time taken to prepare a vehicle for towing. For a damaged

vehicle, working time also includes cleaning the crash site. For a private property vehicle, working time also includes taking reasonable steps to find the owner of the vehicle.

Part 9, division 2 sets out the maximum amounts that can be charged for towing, storing, or giving a person access to a motor vehicle.

This division continues the existing rules for the standard tow of a damaged vehicle or private property vehicle under the 1973 Act and 2009 Regulation, though the term ‘standard tow’ is no longer used. The Regulation sets a single capped amount that may be charged for up to 60 minutes working time, transporting the vehicle, and storing the vehicle for up to 72 hours.

For all other regulated tows, the Regulation extends the restriction on towing charges to an amount that is reasonable and justifiable in the circumstances. This enhances consumer protections by setting a more rigorous standard and clearly communicates that a towing fee must be demonstrably reasonable. This is supported by the new record-keeping requirements in Part 9, division 4 to keep any materials relied on when deciding the amount to charge.

Where the vehicle is towed to an authorised holding yard, the operator may charge for each day of storing the vehicle. This can only be imposed after the operator has first given the owner notice of the amount to be charged and, if a standard tow, after the vehicle has already been stored for 72 hours.

Division 2 also clarifies the charges that can be imposed on a vehicle owner for viewing, accessing, or taking personal property from the vehicle, or for releasing the vehicle. If the owner wants access to their vehicle outside business hours, or have their vehicle released outside business hours, an operator can charge for this service, provided the owner is advised of the additional charges in writing and agrees to the charges before accessing the vehicle. To avoid setting onerous requirements, the Regulation states that notice may be given in a range of ways, including text message or email. This service must be provided free of charge during business hours.

Part 9, division 3 sets out the circumstances where an operator may charge for releasing a vehicle on a private property before it was towed and caps the maximum charge that may be imposed. Part 7 of the Regulation sets out more detail about the on-site release of motor vehicles.

Part 9, division 4 imposes a new record-keeping requirement relating to charges. An operator must record and keep a record of any amount charged for a vehicle. If a non-standard towing charge was imposed, the operator must also record the reasons they consider the charge is reasonable and justifiable and must keep any material relied on when deciding the amount to charge. The operator must give a copy of the record and any materials to the owner of the vehicle if asked.

Part 10: Offences

Part 10 of the Regulation deals with various offences relating to accreditations and accreditation holders.

Sections 83 – 85 set out obligations relating to accreditations and other documents, including that a person must not damage or alter a document, or possess another person’s accreditation document with intent to deceive.

Sections 86 and 87 set out prohibitions on bribery or inducements for obtaining work, in order to prevent uncompetitive practices in the industry and ensure motorists are not pressured or taken advantage of while in a vulnerable position. These provisions retain the existing offences for obtaining repair work and offering incentives to people for information about crashes or seizures ('spotters'). They also:

- introduce a new offence for offering incentives to motorists to obtain a towing authority; and
- expand the prohibition on giving consideration to obtain repair work, to include work or business relating to insurance, legal services, and vehicle hire, purchase or loan.

Part 11: Exemption decisions

Part 11 of the Regulation deals with exemption decisions made under Part 7, division 1 of the Act. An exemption decision means the holder is exempt from the requirement to only store vehicles at an authorised holding yard (unless the owner has asked for it to be taken somewhere else). The chief executive may give the exemption subject to alternative requirements.

Part 11, division 1 applies if an exemption decision has been given with an alternative requirement that states a premises where the holder must store towed vehicles. It modifies certain provisions in the Regulation related to record-keeping, found property, and charges so these requirements apply as though the premises were an authorised holding yard for an operator accreditation.

Division 1 also contains an offence for private property towing, which states the vehicle must not be towed anywhere except the stated premises in the exemption decision.

Part 11, division 2 deals with revocation of an exemption decision at the request of the holder. The chief executive must revoke the exemption decision if asked and must give the holder notice of the revocation.

Part 11, division 3 deals with revocation by the chief executive. The chief executive may choose to revoke an exemption decision if satisfied of one of the prescribed grounds in section 92. Division 3 also sets out procedural rights for the holder of the exemption decision, consistent with those in Part 3 of the Act.

Part 12: Temporary holding yards

Part 12 deals with temporary holding yards in the case of an emergency, such as fire, flooding, or infrastructure failure. This Part contains provisions about the approval by the chief executive of temporary holding yards on application by the holder of an operator accreditation. It includes the matters to be considered in deciding an application for a temporary holding yard approval, and the period of the approval. It also allows for an approval to be extended on the chief executive's own initiative or on application of the approval holder.

Part 12 also modifies the application of certain provisions in the Regulation, to ensure these requirements continue to apply where an operator is using a temporary holding yard instead of an authorised holding yard.

Part 13: Audits

Part 13 establishes a new framework for auditing holders of an operator accreditation. This Part facilitates audits into an operator's business activities, premises used as a holding yard, or tow

trucks used to carry out regulated towing, in order to verify information and ensure compliance with the tow truck scheme.

Part 13 sets out procedural matters for audits to give operators written notice of a planned audit and inform them of their rights and responsibilities while the audit is being carried out. It also allows the chief executive to give a direction about correcting any non-compliance detected by the audit.

Part 14: Fees

Part 14 provides guidance on the fees payable under the Regulation for applications to grant, renew or amend an accreditation, or to replace an accreditation document. The fees are prescribed in schedule 3 of the Regulation, subject to the rules in Part 14 for rounding and adjusting. In particular, where an operator makes an application to add a new tow truck part-way through the period of accreditation, section 112 allows for pro rata of the application fee.

Part 14 also provides for the waiver or refund of fees in particular circumstances.

Part 15: Miscellaneous

Part 15 of the Regulation prescribes various matters under specific heads of power in the Act:

- section 115 prescribes the decision to revoke an exemption decision as an original decision for section 123 of the Act. This entitles an affected person to have the decision reviewed under Part 6 of the Act.
- section 116 prescribes information that the chief executive may provide with a request for a person's criminal history under section 138 of the Act. The chief executive may include information about the person's sex, details of the person's driver licence, and details of an accreditation held by the person when making the request to the police commissioner.
- section 117 prescribes information that must be included in a notification to the chief executive about a change in a person's criminal history. The police commissioner must include the sex of the person when making the notification.
- section 118 prescribes an *authorised person* under section 9 of the *Transport Planning and Coordination Regulation 2017* as a person who must comply with the confidentiality obligations in section 144 of the Act. This class of persons covers individuals involved in the administration of the State Penalties Enforcement Registry, who are authorised to access information held on a TMR database.
- section 119 specifies that a *prescribed road* means a road in a regulated area operated by a prescribed entity. The prescribed entities are the registered companies responsible for Transurban roads in Queensland.

Part 16: Transitional provisions

Part 16 contains transitional provisions to ensure the continuity of things done under the 2009 Regulation.

Part 17: Amendment of other legislation

Part 17 makes consequential amendments to other regulations as a result of the Regulation.

These include amendments to the *State Penalties Enforcement Regulation 2014* to repeal existing infringement notice offences for the 1973 Act and the 2009 Regulation and replace them with the

equivalent offences in the Act and Regulation. The amendments also include new infringement notice offences.

Schedule 1

Schedule 1 sets out the classes of tow trucks under the Regulation and the requirements for these tow trucks.

Schedule 2

Schedule 2 sets out the maximum amount that an accredited operator may charge for towing a vehicle under the Regulation, the on-site release of a vehicle at a private property, or the storage of a vehicle towed from private property.

Schedule 3

Schedule 3 contains the fees that apply under the Regulation.

Schedule 4

Schedule 4 contains the Dictionary of defined terms for the Regulation.

Consistency with policy objectives of authorising laws

The Regulation is consistent with the policy objectives in section 3 of the Act. These objectives are:

- (a) 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; and
- (b) 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
- (c) to protect public safety and the safety of the road network through ensuring the following in regulated areas—
 - (i) 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;
 - (ii) the safe removal of motor vehicles parked on private property.

All other consequential amendments are consistent with the policy objectives of the relevant authorising laws.

Inconsistency with policy objectives of other legislation

The amendments are not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There is no alternative way of achieving policy objectives as the purposes of the Act would not be achieved without the Regulation. The absence of a regulation would result in a loss of consumer protections, an inability to amend geographic areas and a lack of policy improvements that would benefit industry and the wider Queensland community.

Benefits and costs of implementation

The Regulation reduces red tape and modernises compliance requirements.

The Regulation will also benefit members of the public as it promotes timely and efficient removal of crashed vehicles from the roadside. This will reduce the impact on traffic flow and the time a vehicle is required to spend at the scene of a crash.

In addition, the Regulation caps the cost of towing of motor vehicles involved in a crash. In jurisdictions where the costs of towing from crashes are unregulated, the costs of towing are between two and three times greater than in jurisdictions with regulated fees.

The Regulation caps the maximum charge for a standard tow of a vehicle involved in a crash at 395.34 fee units (currently \$419.05) for the first 50km and 7.86 fee units (currently \$8.35) for each kilometre over 50km. Without regulation, based on an estimated 39,000 crash tows each year in regulated areas, this represents a saving to members of the public of almost \$24 million each year.

The Regulation extends existing provisions that prohibit inducements being used to obtain towing business. This benefits industry as it will help to ensure a fair and equitable market for all operators.

The Regulation applies to geographic locations in South-East Queensland and major provincial cities along the coast. The Regulation is targeted to these locations as this is where the majority of crash tows occur and therefore the need for government intervention to protect motorists is warranted.

By targeting the application of the Regulation to these areas, the right balance is achieved between regulatory burden and community benefit by focusing the application of the Regulation on areas where it is most needed. This approach ensures that costs are imposed primarily in locations where the majority of crashes occurs, maximising the overall impact and benefit.

The financial cost to the tow truck industry of the Regulation is \$2,239,644 for the first year and \$16,083,586 over ten years. The largest portion of this amount is the direct cost to both individuals and businesses of accreditation (vehicles and individuals) and security costs associated with holding yards.

Other costs to industry relate to record keeping and paperwork requirements. These are relatively minor. All businesses are already required to keep records necessary for effective compliance and enforcement activities. The additional specific record keeping requirements proposed in the Regulation are estimated to take less than 15 minutes per crash tow.

Tow truck licence holders are audited at least once every two years by TMR. This audit focusses on record-keeping, registers and holding yard inspections. Tow truck vehicles are checked by TMR compliance officers to ensure there are valid certificates of inspection and a sample of tow truck

vehicles are checked to ensure vehicle markings are correct. The preparation for an audit has been assumed to involve up to eight hours of administrative time per licence holder.

The costs of meeting security standards for approved holding yards will have a minor financial impact on the towing industry. In the absence of regulation, it is likely that tow truck operators would still adopt security measures for commercial reasons to keep vehicles secure. Customers and insurance providers have an expectation that vehicles held by towing operators are secure from theft and further damage. This can only be done by providing secure premises.

The purpose of regulating holding yards is to prescribe minimum standards and reduce the burden on consumers, who are often in a vulnerable state following a crash, from having to research each tow truck company's security provisions.

The total fees for obtaining and maintaining accreditations for all tow truck drivers and tow truck assistants is estimated to be \$87,430 per year. This fee covers TMR's administration costs of providing the scheme. Included in this fee is a national police check undertaken on all new applicants as well as upon renewal of accreditation to ensure that accreditation holders remain suitable to hold an accreditation.

The total cost to accredited operators for authorised tow truck application fees is estimated to be \$265,903 per year. This is broken down as follows:

- small operators (1–5 vehicles): 77 accreditation holders with 182 vehicles, total \$71,167.46;
- medium operators (6–15 vehicles): 18 accreditation holders with 154 vehicles, total \$60,218.62;
- large operators (more than 15 vehicles): 8 accreditation holders with 343 vehicles, total \$134,123.29.

Consistency with fundamental legislative principles

Legislation should have sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992, section 4(2)(a)*)

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a))

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Refusing applications

Sections 10 and 11 of the Regulation provide that the chief executive may refuse an application to grant, renew, or amend an accreditation on certain grounds. This may raise the fundamental legislative principle of whether the legislation makes the rights and liberties of individuals dependent on administrative power that is sufficiently defined and subject to appropriate review.

The purpose of the accreditation framework is to ensure that only appropriate persons are entitled to carry out regulated towing, and that these persons comply with legislative requirements aimed at ensuring public safety and consumer protection. The Regulation sufficiently defines the exercise of administrative power by setting out circumstances where the chief executive may refuse an application.

Section 10 states that, for an operator accreditation, the chief executive may refuse the application on the grounds including that:

- the tow truck to be used under the accreditation: is not a tow truck that meets one of the classification categories in schedule 1; is not registered under the *Transport Operations (Road Use Management) Act 1995*; or doesn't comply with the requirements for tow trucks set out in schedule 1, including requirements relating to markings; or
- the premises to be used as an authorised holding yard is not owned or leased by the applicant only or by another holder of an operator accreditation only, or the applicant does not have sufficient control over the premises to prevent unauthorised entry or theft of property stored there; or
- the premises to be used as an authorised holding yard does not have either a fence that meets prescribed minimum requirements, or another barrier around the premises that is sufficient to prevent unauthorised entry or theft of property stored there.

Where a tow truck does not meet the prescribed requirements, it is reasonable and appropriate to refuse an application. If the application were granted, the vehicle would become an authorised tow truck used to carry out regulated towing. It is justifiable to refuse an application if the vehicle isn't appropriate for that task.

In relation to authorised holding yards, it is important that the chief executive can consider relevant related matters and may refuse an application where minimum requirements are not met. The tow truck scheme applies to the storage of vehicles after they are towed and sets out requirements to ensure operators keep vehicles and personal property safe from theft and damage. Section 10 makes clear that the chief executive may refuse an application if the applicant cannot demonstrate they can store vehicles safely and securely.

Section 11 states that, for a driver accreditation, the chief executive may refuse the application on the grounds that the applicant does not, and has never, held an open driver licence, or an equivalent interstate or New Zealand licence.

This criterion replaces the requirement in the 2009 Regulation that an applicant has either held a driver licence continuously for three years or has completed a tow truck practical driving test. As part of the Review, TMR identified that these requirements were unnecessarily restrictive, onerous, and did not adequately assess a person's competency to operate a tow truck. The new requirement is fairer and more flexible, while still setting appropriate minimum standards for applicants. Failure to have ever held an open licence is an appropriate reason to refuse an application.

The decision to refuse an application to grant, renew or amend an accreditation is subject to appropriate review under Part 6 of the Act. A person is entitled to apply for internal review of the decision by the chief executive and, if dissatisfied with the outcome of that internal review, can apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of that decision.

To the extent that the Regulation infringes on fundamental legislative principles, it is considered justified to ensure the chief executive can refuse an application where an applicant is unable to meet the requirements and expectations of an accredited person. The right to internal and external review ensures that appropriate protections are in place for applicants.

Revoking exemption decisions

Section 92 of the Regulation allows for the chief executive to revoke an exemption decision made under section 130 of the Act. The grounds for revocation are where the chief executive is satisfied that:

- the decision to grant an exemption was made in error;
- the decision was obtained because of materially incorrect or misleading information or documents;
- public safety may be endangered if the decision continues to have effect; or
- it is not otherwise in the public interest for the exemption decision to continue to have effect.

An exemption decision made under section 130 of the Act allows the holder of an operator accreditation to store towed vehicles at a premises that is not an authorised holding yard for the accreditation. These exemptions are primarily used by tow to safety operators, who may need to store a crashed vehicle at a temporary safe location while the motorist arranges for the vehicle to be towed to a more permanent location, like a holding yard, smash repairer, or the person's home.

The Act defines this administrative power by setting out relevant criteria related to 'public interest' that the chief executive must consider when deciding whether to revoke an exemption decision.

Section 14 of the Act provides that, when considering whether it is in the public interest for a person to hold or continue to hold an accreditation, the chief executive must have regard to the legitimate expectation of members of the public, particularly vulnerable members of the public, that they will not be subject to assault or aggressive, coercive or otherwise inappropriate behaviour from person's involved in the tow truck industry.

Section 14(2) of the Act allows the chief executive to have regard to any other matter considered relevant, subject to the restrictions in section 15, and this is important to allow any extraordinary factors to be taken into account.

The Regulation provides appropriate review rights to accreditation holders. The chief executive must first give the holder of the operator accreditation notice of the proposed revocation and allow the holder 28 days to make representations to show why the exemption decision should not be revoked (section 93(3)). If, after considering any representations, the chief executive is still satisfied a ground exists to revoke the decision, the chief executive may revoke the exemption by notice (section 96).

Importantly, the chief executive must also give an information notice for the revocation decision. This entitles the holder of the accreditation to apply for internal and external review of the decision under Part 6 of the Act.

Replacing accreditation documents

The Regulation contains a range of minor discretionary powers for the chief executive in relation to replacement accreditation documents. These are:

- the chief executive may waive the application fee for a replacement smartcard accreditation if satisfied the person did not receive the original because it was lost or stolen, or if satisfied the original was damaged or lost because of a natural disaster (section 17(4) and (5));
- the chief executive may also waive the application fee for a replacement smartcard accreditation where the information on the accreditation was incorrect or the holder of a smartcard accreditation believes that confidential information it contains has been accessed or disclosed to an unauthorised person, if the chief executive considers it appropriate in the circumstances (section 17(5));
- the chief executive may, but is not required to, give a direction to return or destroy an original smartcard accreditation (section 20(2));
- if satisfied an accreditation holder has given correct information about a change of details, the chief executive must issue a replacement accreditation document or change of address label (section 43(3));
- if satisfied a change of address label has been damaged, lost or stolen, the chief executive must give a replacement label (section 44(3)); and
- if an accreditation is suspended, and the chief executive would otherwise be required to give a replacement accreditation document, the chief executive may choose not to give the replacement until after the period of suspension ends (sections 18(4), 43(4) and 44(4)).

While this does provide the chief executive with a discretionary administrative power, the power is limited to clearly defined circumstances and when the chief executive considers it reasonable and appropriate. It allows the chief executive to be flexible where, for example, a person has lost possessions in a flood.

While these decisions are not externally reviewable, they are unlikely to have any significant or material impact on a person's rights and the accreditation holder may still ask TMR for an internal review, which is appropriate for decisions of this nature.

LSA section 4(3)(b) – inconsistent with the principles of natural justice

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.

The principles of natural justice include that a person is entitled to be heard before an authority makes a decision adversely affecting their rights.

Withdrawal of application

Section 8 of the Regulation applies to any application made in relation to an accreditation and provides that the chief executive may ask an applicant for further information the chief executive reasonably needs to decide the application. Section 9 states if the applicant does not provide the further information within the required period, the application is taken to be withdrawn. The applicant cannot appeal the deemed withdrawal.

This may be seen to infringe on the procedural rights of the applicant. However, any infringement on the fundamental legislative principles is considered justified to ensure efficient administrative procedures for TMR, including the ability to 'close' an application where the chief executive does not have enough information to either grant or refuse the application.

Importantly, the Regulation provides appropriate protections for procedural rights. The right to natural justice includes that a person has a right to know what criteria they must meet to satisfy a requirement and to make representations in their defence. The Regulation explicitly provides for this.

Section 8 states that the chief executive must request the further information by written notice or, if the request is made verbally, the chief executive must give written notice confirming the request. The chief executive must also give a reasonable period, of at least 28 days, for the applicant to provide the information and inform the applicant that if they do not provide the information within the time period, the application is taken to be withdrawn (section 8(4)). This ensures an application will not be withdrawn without first informing the person of their rights and providing an opportunity to make representations in their defence.

LSA section 4(3)(c) – allows the delegation of administrative power only in appropriate cases and to appropriate persons

Discretion to accept alternative security arrangements for holding yards

Section 10(4) of the Regulation provides the chief executive may refuse an application for an operator accreditation if the premises to be used as a holding yard is not owned or leased by the applicant, is not owned or leased by another holder of an operator accreditation, or the applicant does not have sufficient control over the premises to prevent:

- unauthorised persons from entering the premises; and
- the unauthorised removal of motor vehicles and property from the premises.

Similarly, section 10(5) states the chief executive may refuse the application on the grounds that the premises to be used as an authorised holding yard does not meet prescribed security requirements, or does not have another barrier that is sufficient to prevent:

- unauthorised persons from entering the premises; and
- the unauthorised removal of motor vehicles and property from the premises.

This may raise the fundamental legislative principle of whether the legislation makes the rights and liberties dependent on administrative power that is sufficiently defined and subject to appropriate review.

This provision provides flexibility for the chief executive to take account of circumstances that might otherwise prohibit a person from being approved for an accreditation. For example, two towing operators may wish to share a single holding yard. The purpose of the prescribed requirements in sections 10(4) and 10(5) is to set appropriate standards for authorised holding yards and ensure that any vehicles or property held at the yard can be secured against theft and damage.

By allowing the chief executive to consider the suitability of arrangements that don't meet the prescribed requirements, the Regulation gives discretion to grant an accreditation in circumstances where the overall policy intent can be met without strict compliance. This does not compromise

the safety and security of towed vehicles or found property. It facilitates practical and responsive processes that consider the individual circumstances against the purpose and objectives of the scheme.

Importantly, the decision to refuse an application is subject to appropriate review. If an application is refused on the basis that the chief executive is not satisfied the barrier around the proposed holding yard is adequate, the applicant is entitled to apply for internal review of the decision by the chief executive and, if dissatisfied with the outcome of that internal review, can apply to QCAT for external review.

LSA section 4(3)(b) – reversal of onus of proof in criminal proceedings

Reasonable excuse

The Regulation contains a number of requirements for a person to produce a certain document or take a particular action in relation to a document. Where a person fails to comply with one of these requirements, the Regulation places an evidentiary onus on them to establish on the balance of probabilities, that they had a reasonable excuse for that failure. This applies to the following requirements:

- Sections 19 and 20 in relation to failing to return or destroy a smartcard accreditation.
- Sections 24 and 25 in relation to an operator failing to keep certain records.
- Section 26, which requires the holder of a driver accreditation or assistant accreditation to produce their smartcard accreditation to an authorised officer.
- Section 42, which requires an accreditation holder to apply for a replacement accreditation document if the holder reasonably suspects the original accreditation document has been damaged, lost or stolen.
- Sections 43 and 44 in relation to failing to notify of a change to name or address or failing to attach a change of address label to a smartcard.
- Section 45 in relation to failing to notify the chief executive that a partner has left the partnership or has died.
- Section 47, which requires the holder of a driver accreditation to produce their smartcard for inspection when offering to tow a damaged vehicle.
- Section 55 in relation to producing a private property towing consent to an authorised officer.
- Section 62, which requires an accredited operator to provide a copy of a private property towing consent within two business days of being asked.
- Section 66 in relation to keeping an inventory of found property.
- Sections 80 and 81 in relation to keeping records about imposed charges.
- Section 107, which requires the holder of an operator accreditation to comply with an audit notice.

While these provisions impose an evidentiary onus on a person to establish that they have a reasonable excuse for failing to comply with requirements in the Regulation, these provisions are considered appropriate. This is because they ensure the evidence can be produced by the party best able to satisfy the requirements of the statutory protection. The basis for establishing a reasonable excuse is particularly within the defendant's knowledge and would be more difficult for the State to exclude than it would be for the defendant to establish.

Other FLPs not listed in the Legislative Standards Act – rights and liberties of individuals***Offences and penalties***

As part of the 2019 review of the tow truck scheme, TMR conducted an extensive review of existing offences and penalties from both the 1973 Act and 2009 Regulation. This review considered the seriousness of the offence, the impact on safety or on the public, the deterrent effect and similarity with other transport legislation. As a result of the review, some existing offences will have their maximum penalties increased and some new offences will be introduced.

New offences

The Regulation introduces new offences with associated penalties. These are:

(a) Offences directed at ensuring an operator ceases to use, or to represent, a vehicle as an authorised tow truck under the accreditation (sections 30 – 33)

The 2009 Regulation set out procedural requirements upon disposal of a tow truck. ‘Disposal’ takes its ordinary meaning and applies to, for example, gifting, selling, dumping, or writing off the tow truck.

These requirements include that the operator must remove any markings from the vehicle indicating that it is authorised to perform regulated towing, must have the vehicle removed from their accreditation, must return any unused towing authorities, and must surrender their accreditation if there are no authorised tow trucks remaining on the accreditation. Failing to do any of these things is an offence.

The Regulation continues these procedural requirements and makes important clarifications about the timeframes for doing these things.

The Regulation also extends the relevant offences to other situations where the operator ceases to use an authorised tow truck. These are where:

- the operator voluntarily applies to TMR to remove the tow truck from their accreditation, and
- the owner of the vehicle notifies the operator that they can no longer use the vehicle as an authorised tow truck for the accreditation. This may occur where the accredited driver is the owner of the tow truck and is leaving to work for a different towing operator.

These offences are necessary to ensure the operator, or another person, cannot misrepresent that a tow truck is authorised to carry out regulated towing. Leaving the authorisation number clearly marked on a sold tow truck may allow the new owner to falsely claim they are authorised to tow damaged vehicles. Failing to return unused towing authorities to TMR may facilitate fraudulent use of these forms.

It is also important that these procedures are followed where the owner notifies the operator, to ensure the owner is not disadvantaged by the operator’s actions. If the operator refuses to remove the tow truck from their accreditation, this causes administrative issues that can be time consuming to resolve and may interfere with the owner’s ability to work within the towing industry for a period.

It is appropriate that these offences are retained and extended to all relevant circumstances.

(b) Damaged vehicle must be towed immediately after towing authority obtained (section 48)

Only an accredited tow truck driver can obtain, and complete, a towing authority to tow a vehicle from a crash scene. However, there have been instances where accredited tow truck drivers have attended the crash scene in other vehicles, such as motorcycles or undersize tow trucks, to obtain a towing authority and quickly depart, leaving the crashed vehicle for the relevant tow truck to remove. This has left motorists waiting at the scene of the crash for the appropriate vehicle and may create a traffic hazard by leaving roads obstructed longer than necessary.

The Regulation addresses this matter by specifying a driver must not obtain the towing authority unless the tow truck that will be used to tow the vehicle is at the scene and is in sufficient proximity to allow the driver to immediately start preparing the vehicle for towing (section 48(2)(b)).

This will ensure motorists cannot be left waiting for a tow truck after giving authority to tow the vehicle. It will also ensure the road network is cleared and free flowing traffic is returned without unnecessary delay.

(c) Failing to release a vehicle if no on-site release charge is imposed (section 59)

The 2009 Regulation allows operators to impose an on-site release charge for private property towing. If the owner of a motor vehicle returns after their vehicle has been prepared for towing, but the vehicle has not yet been towed from the private property, the owner may be charged for having the vehicle released to them. This amount is capped at 158.80 fee units and is less than the charge for towing and storing the vehicle (264.65 fee units). The on-site release provisions are designed to balance the right of an operator to charge for work already performed with the right of the owner to reclaim their vehicle.

To build on the existing protections for motorists, section 56 introduces a new offence for failing to release the motor vehicle if no on-site release charge is imposed. This offence is not a new requirement on industry. It is a clarification that ensures the Regulation comprehensively deals with on-site release. It closes a potential loophole where an operator chooses not to impose the on-site release charge in order to tow the vehicle against the owner's wishes and charge them the higher amount for towing the vehicle. Section 59 prohibits this by requiring that the vehicle must be released to the owner.

(d) Security requirements for authorised holding yards (sections 63, 64 and 65)

The Regulation strengthens security requirements for holding yards by introducing three new offences. These offences clarify that a holding yard has not met the security requirements if the fence or a gate is broken, require doors and gates to be kept securely locked, and impose a requirement to fix the fence or gate for the holding yard to be considered in secure working order.

(e) Charging for releasing a vehicle from an authorised holding yard outside of business hours (section 75)

Section 75 of the Regulation introduces a new offence for an operator imposing a charge for releasing a vehicle from an authorised holding yard outside of business hours. This offence provides an operator may only charge for this service if the owner is advised of the charge in writing, and agrees to the charge, before the vehicle is released. This service must be provided free of charge during business hours.

This offence has been introduced in response to industry feedback and provides operators and vehicle owners with more flexibility to make arrangements that work for both parties. Under the 2009 Regulation, an operator cannot charge for releasing a vehicle outside of business hours at all. This means either the operator must provide this service free of charge, or the owner must wait until business hours to collect their vehicle. This can be an issue where, for example, a vehicle is towed from private property on a Friday afternoon and the owner must wait until Monday to get it back.

TMR has received feedback indicating that operators are willing to release the vehicle over the weekend, provided they can recoup business expenses involved in opening the holding yard outside hours. Some vehicle owners have indicated a willingness to pay for outside business hours access to get their vehicle back sooner. It is reasonable to allow operators and owners to make an agreement between themselves, subject to the same consumer protections that apply for viewing charges (section 74). This new offence establishes these consumer protections while permitting release charges to be imposed.

(f) Keeping records supporting towing charges (sections 80 and 81)

The Regulation introduces a requirement for accredited operators to capture evidence for charges incurred outside of a standard tow. Section 80 of the Regulation requires an operator to record the reasons why the charge was considered ‘reasonable and justifiable’ in the circumstances and describe any materials relied on when setting the charge. For example, a photograph of the vehicle’s crash location or an invoice for a crane to remove the vehicle from a gully. The operator must also keep these materials with the record (section 81(2)) and produce them to the customer if asked (section 81(5)).

These new requirements aim to enable the towing industry to recover costs legitimately incurred more easily while also improving consumer protections. They are not considered onerous to industry. It can easily be met by, for example, using smartphones to take photographs of the crash scene and any machinery in use.

(g) Extending prohibition on offering incentives (sections 86 and 87)

The Regulation continues the existing prohibition on offering an incentive to report the location of a crash or to obtain repair work. This provision was introduced to discourage ‘spotters’ from reporting crash locations and aims to reduce the likelihood of the towing and vehicle repair industries from colluding and establishing uncompetitive practices.

In the 2019 survey, TMR sought industry views on offering incentives to motorists, such as a courtesy vehicle, in exchange for authority to tow the vehicle. The majority of respondents (76%) did not support towing incentives as the practice may lead to coercion in what is already a stressful situation for motorists. Other submissions raised concerns that offering incentives undermines the purpose of the scheme in regulating towing fees and orderly conduct at a crash site.

Section 86(1) of the Regulation introduces a new offence for an accreditation holder who gives consideration to the authorising person for a vehicle for the purpose of obtaining authority to tow the vehicle (maximum penalty of 40 penalty units). This includes an accredited operator who offers incentives to enable the accredited driver to obtain a towing authority. Offering incentives may potentially result in other undesirable business practices, such as the facilitation of credit hire car schemes for not-at-fault drivers and other solicitation strategies.

Section 87 of the Regulation replicates the offence for giving or receiving consideration for the purpose of getting work repairing a motor vehicle (formerly section 23 of the 1973 Act) and extends it to include work related to insurance, legal services and vehicle hire, purchase or loan.

The additional industries have been chosen based on complaints to TMR and issues raised in submissions to the Committee on the Tow Truck Bill. The expansion to these industries seeks to address potential unethical behavior within the crash towing industry.

Motorists involved in crashes may be vulnerable and at risk of being subjected to incorrect information on vehicle crash liability issues or coerced into making decisions that could later cause them significant financial and emotional distress. This offence is an important consumer protection measure that aims to remove the risk of motorists being locked into using a vehicle repairer or hire car scheme which may charge inflated fees for repairs, car hire or other associated legal services.

These new offences will ensure a fair and equitable market for all operators, both large and small, and ensure motorists aren't pressured into signing up for services before they have fully considered options and made an informed choice.

(h) Failing to comply with an audit notice (section 107)

Part 13 of the Regulation establishes a new framework for auditing the holder of an operator accreditation. The framework formalised the auditing process and establishes procedural rights for the person being audited.

As part of this auditing process, the chief executive may give an audit notice requiring an operator to: allow the audit to be carried out; and cooperate with any reasonable requirement made by the chief executive (section 106). Section 107 of the Regulation makes it an offence to fail to comply with the audit notice, unless the person has reasonable excuse (maximum penalty of 40 penalty units).

There is a clear expectation that a person who holds an industry accreditation must allow TMR to verify their compliance with all regulatory requirements so the department can identify and correct any non-compliance and ensure a high standard of conduct across the industry. This offence supports TMR in carrying out audits and ensures that attempts to obstruct or interfere with an audit can be appropriately penalised.

Maximum penalties

After a review of all the penalties in the Regulation, a number of penalties have been changed to reflect the severity of the offence and to provide greater consistency between offences of similar seriousness. Some of these offences will have their maximum penalties increased to reflect that they are fundamental requirements of the tow truck scheme and are important consumer protection measures.

(a) Record-keeping requirements for accredited operators (sections 24, 66 and 85)

The majority of offences for record-keeping obligations have been kept at a maximum penalty of 20 penalty units. The maximum penalty has been increased to 30 penalty units for:

- Failure to keep a towing authority or private property towing consent (section 24(1)(g) – (h)).
- Failure to keep an inventory of found property (section 66(3)).
- Damaging or altering a towing authority or private property towing consent (section 85(c)).

These penalties have been increased to recognize the importance of these documents for consumer protection and compliance activities. Unlike other documents, such as an accreditation document issued by TMR, the holder of an operator accreditation is the only person who holds these records.

Towing authorities, towing consents, and records of found property are all essential records for demonstrating an accreditation holder has complied with the requirements for regulated towing. These requirements exist to protect vulnerable motorists from exploitation, wrongful removal of their property, and loss or damage to personal property. Failure to take and keep these records is a serious matter that impacts on a vehicle owner's ability to protect their interests by, for example, asking to see a copy of a private property towing consent to verify the operator was permitted to carry out towing on a particular private property. It also affects the ability of TMR to ensure compliance with requirements for regulated towing and investigate complaints about conduct.

(b) Towing authority to be fully and properly completed (section 48)

Section 48(2)(a) of the Regulation provides that a driver must fully and properly complete a towing authority before getting the authorising person's signature. The maximum penalty for failing to do so has been increased from 20 to 40 penalty units.

The increased penalty reflects that this requirement is an important consumer protection. It is a record of agreement between the motorist and the operator. The information on a completed towing authority includes the premises where the vehicle is being towed. This order of events is an important protection for consumers so that they are not giving a blank authority for their vehicle to be towed anywhere.

(c) Authorising person to be given the signed or approved towing authority (section 49)

A towing authority comes as a book of carbon copy receipts that is completed by the driver. The original is given to the authorising person for the vehicle. This is usually the vehicle's owner but may also be the owner's agent or an authorised officer. The carbon copy is kept by the relevant operator.

Section 49 of the Regulation states that a driver must not tow a damaged or seized vehicle until they have given the original signed or approved towing authority to the authorising person. The maximum penalty for this offence has been increased from 20 to 30 penalty units.

This penalty has been increased in recognition of the importance of towing authorities for consumer protection and compliance activities. Towing authorities are an essential record to ensure transparency, accountability and compliance with regulations for a regulated tow of a damaged vehicle. It also protects motorists from exploitation by allowing motorists to give informed consent of who tows their vehicle, to where, and at what estimated cost.

Failure to provide this record is a serious matter that impacts on a vehicle owner's ability to protect their interests, particularly when they are in a traumatic situation where they may not be thinking rationally such as a traffic crash. It also affects the ability of TMR to ensure compliance with requirements for regulated towing and investigate complaints about conduct.

(d) Towing a vehicle to a prohibited location (sections 52 and 61)

Sections 52 and 61 of the Regulation set out the requirements for towing damaged and seized vehicles, and vehicles towed from private property, including where the vehicle may be towed. A damaged or seized vehicle must not be towed anywhere except the premises stated on the towing authority. A private property vehicle must not be towed anywhere except the nearest authorised holding yard for the operator that has capacity to store the motor vehicle. The maximum penalty for these offences has been increased from 20 to 50 penalty units.

This penalty has been significantly increased as towing a person's vehicle to a prohibited location undermines the security and integrity of the vehicle and its contents, potentially leading to additional damage, theft or loss. Further, towing to a prohibited location can impede the owner's ability to retrieve their vehicle or property inside the vehicle promptly, causing inconvenience and distress.

Imposing a higher penalty serves as a sufficient deterrent, discouraging tow truck drivers from engaging in unauthorised towing practices and safeguarding the rights and property of the vehicle owner.

(e) Requirements for keeping found property (section 66)

Section 66(2)(b) requires the holder of an operator accreditation to keep found property in a way that prevents it from being damaged, lost or stolen, until the property is returned to the owner. The maximum for this offence has been increased from 20 to 40 penalty units.

Found property refers to personal items in a towed vehicle when it arrives at the holding yard. It may include items with significant monetary value (e.g., a laptop or phone) or sensitive identifying information (e.g., a wallet). It is reasonable to expect a towing operator will take every reasonable precaution to keep these possessions safe. This is particularly important for regulated towing.

Where a vehicle has been towed from a crash site, the motorist may have been too confused or distressed to remove their valuables from the car before it was towed. For a private property tow where the vehicle may have been towed without the owner's knowledge or consent, there is no opportunity to retrieve items before it arrives at the holding yard. Requiring the operator to keep these items safe is a vital consumer protection, which is reflected in the increased penalty.

Presumed liability for shared holding yards

Legislation should not ordinarily make a person responsible for actions or omissions over which the person may have no control and should not unilaterally impose responsibility on a person without sufficient justification.

The Regulation includes offences that impose sole responsibility on one accredited operator for acts or omissions that may have been done by another. These are:

- section 64, in relation to the failure to keep gates and doors securely closed and locked; and
- section 65, in relation to the failure to repair damage to a fence, barrier, gate, or door.

These offences specify that, if the authorised holding yard is shared between multiple accredited operators, the operator who does not own or lease the holding yard does not commit the offence. This has the effect that the operator who does own or lease the holding yard (the 'primary operator') is liable regardless of who committed the offence. For example, the primary operator is

responsible for ensuring all staff keep gates closed and locked, even those that are employed by a different operator. The primary operator is also responsible for repairing damage to the holding yard fence even if it was caused by another operator.

Generally, presumed liability for offences is considered appropriate where it is a practical necessity and appropriate safeguards are provided.

Placing responsibility on the primary operator is practically necessary to ensure the obligations relating to authorised holding yards can be effectively enforced. If the Regulation did not clarify that the primary operator is liable for shared holding yards, it would be extremely difficult to determine responsibility for the act or omission, particularly if the operators disagreed on the facts. This undermines the ability of TMR to enforce compliance with the scheme. The requirements for authorised holding yards are an essential part of the consumer protections in the tow truck scheme and exist to ensure vehicles and personal property are kept securely and returned to their owner.

Suitable safeguards include only imposing liability where the person is in a position to influence conduct but failed to do so. This applies in relation to sections 64 and 65. The primary operator, as the owner or lessee of the premises, is best placed to manage conduct on the premises and ensure compliance. For example, they are the most appropriate party to organise repairs to the premises, or to establish training procedures and monitoring systems to check staff are always closing and locking gates.

Administratively, TMR will always verify the primary operator has consented to another operator using the premises before approving the secondary operator's application. TMR will advise the primary operator of the implications and their responsibility for ensuring compliance. These are appropriate safeguards to ensure presumed liability is imposed reasonably and fairly.

Legislation should have sufficient regard to the institution of Parliament (*Legislative Standards Act 1992, section 4(2)(b)*)

LSA section 4(5)(e) – sub-delegation of legislative power

Some clauses in the Regulation may sub-delegate powers to the chief executive and other persons in relation to administrative and technical matters. In conjunction with section 22(1)(b) of the *Statutory Instruments Act 1992*, these delegated powers also provide an implicit authority for any sub-delegation of the powers described in further detail below.

References to manufacturer's specifications

The Regulation sub-delegates power by defining certain terms by reference to manufacturer specifications. These are:

- ***safe working load***, of a crane or hoist, means the safe working load specified by the manufacturer (schedule 1, section 3)
- ***load capacity***, of a tow dolly trailer, means the load capacity specified by the manufacturer (schedule 1, section 5).

This sub-delegation of power is appropriate as these are both highly technical matters and the vehicle's manufacturer is well-placed to know the equipment's capacity and safe working conditions.

Fitness to Drive Standards

Section 4 of the Regulation sets out matters the chief executive must consider when deciding whether a person is an appropriate person to hold, or continue to hold, a driver accreditation. If the person holds an 'M condition' driver licence, the chief executive must consider whether the person complies with the medical standards for licensing, commercial standards, stated in the document called 'Assessing fitness to drive for commercial and private vehicle drivers' published by Austroads Ltd ACN 136 812 390 (the *Fitness to Drive Standards*).

This may be considered to be a sub-delegation of power by incorporating an external document. Austroads is a collective of Australian and New Zealand transport agencies, representing all levels of government, and is advised by technical experts. Austroads is well-placed to set guidelines around suitability to operate commercial vehicles. The fitness to drive standards are only updated following consultation with relevant industries and community groups.

The *Fitness to Drive Standards* are the uniform set of requirements across Australian jurisdictions and similar provisions exist in other transport legislation. For example:

- Section 192 of the *Transport Operations (Road Use Management–Dangerous Goods) Regulation 2018* requires an assessment against the commercial standards when applying for the grant or renewal of a dangerous goods driver licence.
- Section 59 of the *Transport Operations (Passenger Transport) Regulation 2018* provides the chief executive may require an assessment against the commercial standards if they suspect the person is no longer medically fit to drive passenger transport vehicles.

The potential sub-delegation of power to external documents in this context is considered appropriate.

Notice about applications

Section 6 of the Regulation provides that the chief executive may, by publishing a notice on TMR's website, approve a way in which an application under the Regulation may be made or require stated information to be included in, or to accompany, an application.

As this allows the chief executive, rather than the Regulation itself, to specify an application process, it may raise issues of sub-delegation of power.

Any infringement of the fundamental legislative principles is, however, justified by the increased flexibility it provides to not only the chief executive but also, very importantly, to customers of TMR. For example, it allows the chief executive to approve applications being made orally by telephone or over the counter at a Customer Service Centre (CSC) or being made by electronic communication such as by email.

This process allows, for example, a person to contact TMR and make an application via email or phone for approval of a temporary holding yard in the event of a natural disaster such as a flood. Rather than an applicant attending the CSC in person and completing a paper form to make an application, this process allows for a convenient and flexible option for customers and ensures motorists' vehicles are relocated promptly and safely to an alternate location in an emergency situation.

The majority of interactions a person would have with the Queensland Government would be through TMR. TMR places a great emphasis on its customers' experience and the flexibility provided by this provision is essential in ensuring that TMR can be responsive to customers' needs and can utilise modern technology in its interactions with customers.

Any infringement of the fundamental legislative principles is justified by the benefits to the Queensland public from these provisions.

Consultation

Since 2019, TMR has been in regular contact with a range of stakeholders including tow truck operators, tow truck drivers, tow truck assistants and other interested parties to seek their views on how the industry should be regulated.

The Queensland towing industry and the broader community was provided the opportunity to share their views through the release of the public discussion paper "Your say on Queensland's Tow Truck Scheme" and online survey published on the government's 'Get Involved' website from 28 October 2019 to 1 December 2019. The discussion paper and online survey sought industry and community views on the follow topics:

- impact and effectiveness of the private property towing reforms;
- regulated areas;
- unaccredited tow truck drivers and tow truck assistants;
- removing the maximum standard fee for heavy vehicle operators;
- use of towing incentives;
- towing authorities;
- maximum storage fees;
- prohibited fees; and
- towing authorities.

TMR also considered stakeholder views gathered through two industry forums in late 2019 for light and heavy vehicle tow truck licence holders and targeted stakeholder meetings with the Queensland Police Service (QPS), the RACQ and the Queensland Trucking Association.

TMR examined the discussion paper online survey results from 215 responses from a range of industry stakeholders and members of the public. This was considered alongside complaints and feedback sent directly to TMR throughout the consultation process, together with consideration of audit and infringement data. This revealed industry concerns about some of the previously proposed policies and amendments, such as the introduction of a maximum storage fee for all forms of regulated towing and changes to the boundaries of regulated areas. This has enabled TMR to focus on areas for possible reform and areas that required further analysis.

TMR subsequently refined the proposed policy reforms. Tow truck industry representatives were contacted to obtain data and insights throughout this policy development process.

The proposals for change that have been incorporated into the Regulation were formally presented to the tow truck industry in July 2022. All tow truck operators were contacted about the proposals and given the opportunity to provide feedback. TMR also met with a large operator who requested a meeting to better understand the changes. No negative feedback was received. In fact, the limited feedback received was positive, acknowledging the further work done to policies after initial industry feedback.

TMR again met with industry representatives in October 2023 to notify industry of the proposed regulatory changes.

Industry requested that TMR allow a fee to be charged for the release of a vehicle from an authorised holding yard outside of business hours and clarify the rules for cancellation fees. Both changes have been made in the Regulation (sections 75 and 70(03) respectively).

Some industry members asked to be able to charge a fee if the owner of a crashed vehicle signs a towing authority and then changes their mind about which tow operator they are going with. TMR confirmed there would be no changes to existing arrangements where a consumer may choose to rescind a towing authority at any point up until the vehicle is driven away from the scene. However, section 48 of the Regulation prohibits a tow truck driver from remaining on the scene if another person has already obtained a towing authority. This addresses concerns about other drivers coming to the scene and trying to change a consumer's decision after a towing authority has been signed.

Industry has expressed concerns that the current maximum towing charges and private property storage fees have not adjusted in line with rising business operating expenses. TMR has acknowledged these concerns but believe that the balance between what the towing industry charges and what the consumer pays is reasonable.

In accordance with the *Queensland Government Better Regulation Policy*, a summary Impact Analysis Statement was undertaken which assessed the proposal as having some impacts of a minor nature. It assessed the benefits of the amendment as outweighing these impacts.