

Tow Truck Regulation 2024

Human Rights Certificate

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

In accordance with section 41 of the *Human Rights Act 2019* (the HRA), I, Bart Mellish MP, Minister for Transport and Main Roads and Minister for Digital Services provide this human rights certificate with respect to the *Tow Truck Regulation 2024* made under the *Photo Identification Card Act 2008*, the *Police Powers and Responsibilities Act 2000*, the *State Penalties Enforcement Act 1999*, the *Tow Truck Act 2023*, the *Transport Operations (Marine Safety) Act 1994*, the *Transport Operations (Passenger Transport) Act 1994*, the *Transport Operations (Road Use Management) Act 1995*, and the *Transport Planning and Coordination Act 1994*.

In my opinion, the *Tow Truck Regulation 2024* (the Regulation), as tabled in the Legislative Assembly, is compatible with the human rights protected by the HRA. I base my opinion on the reasons outlined in this statement.

Yvette D'Ath, Attorney-General and Minister for Justice, and Minister for the Prevention of Domestic and Family Violence has granted authority for the preparation of this human rights certificate to the extent the Regulation is made under the *State Penalties Enforcement Act 1999* (the SPE Act) for the purpose of prescribing offences as infringement notice offences.

Overview of the Subordinate Legislation

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 The Act repealed and remade the *Tow Truck Act 1973* (the 1973 Act) with improvements to modernise the regulation of the tow truck industry in Queensland.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 and motor vehicles 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 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 professionals.

To support the Act, the Regulation will repeal the 2009 Regulation and introduce an improved and streamlined framework for operational matters such as accreditation applications, record keeping, charges for regulated towing services and penalties.

The Regulation will provide operational details for the scheme including, for example, provisions relating to the administration of accreditations for operators, drivers and assistants; provisions about the form of, replacement of, and requirement to keep and carry, 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.

Part 17, division 3 of the Regulation amends the *State Penalties Enforcement Regulation 2014* (the SPE Regulation) to make certain offences under the Act and the Regulation offences for which a penalty infringement notice may be issued under the SPE Act.

Human Rights Issues

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

The Regulation engages the following human rights under the Human Rights Act:

- Recognition and equality before the law (section 15)
- Freedom of expression (section 21)
- Property rights (section 24)
- Right to liberty and security of person (section 29)
- Fair hearing (section 31)
- Rights in criminal proceedings (section 32)

In addition to the matters set out in this Human Rights Certificate, the Regulation deals with procedural and administrative requirements for matters substantively dealt with in the Act.

Some of these may impact on human rights. For example, the provisions relating to private property towing in Part 7 of the Regulation may impact on property rights. A full discussion of the human rights implications of these matters can be found in the Statement of Compatibility with Human Rights that accompanied the Tow Truck Bill 2023.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Restrictions on advertising

(a) the nature of the right

Section 21 (Freedom of expression) of the HRA provides that every person has the right to seek, receive and impart information and ideas through a broad range of mediums, including speech, writing, art, and conduct. Section 21 includes the right to seek and receive information. This right may be limited by provisions that regulate the content of displays or promotions.

The Regulation engages this right by:

- prohibiting certain advertising materials being displayed on authorised tow trucks (section 27); and
- prohibiting relevant persons from promoting or advertising other businesses (section 36).

The services and businesses that are prohibited under these sections are:

- towing services, other than information about the relevant towing operator;
- vehicle repair;
- vehicle insurance, including assistance with making claims for vehicle insurance;
- vehicle hire, purchase, or loan; and
- legal services.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of these offence provisions is to support the following objectives of the Act:

- to facilitate best practice in the tow truck industry;
- to protect the public by ensuring towing is performed in a safe, competent and professional way and at a reasonable cost to consumers; and
- to ensure the safe and efficient removal of motor vehicles.

Sections 27 and 36 of the Regulation aim to achieve this purpose by restricting the display of more than one towing business, so a motorist can clearly identify who is responsible for their vehicle. They also seek to achieve this purpose by restricting advertising and promotion of other businesses and services, so towing is performed efficiently, and a motorist is not taken advantage of while potentially vulnerable.

This purpose is consistent with a free and democratic society based on human dignity, equality, and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

There is a direct relationship between the limitations and their purpose.

A motorist who has been in a crash may struggle with making rational, informed decisions or be easily led into thinking that they are required to engage additional services.

Prohibiting the display of other tow truck businesses means a towing operator cannot display the details of all related businesses on their tow trucks (if, for example, one body corporate trades under a number of different business names). Drivers and assistants cannot wear uniforms displaying the details of related businesses while carrying out regulated towing. This ensures motorists can clearly identify who is responsible for towing their vehicle and avoids confusing, overwhelming, or potentially conflicting information.

Prohibiting advertising of other businesses ensures motorists aren't given the impression that these services are necessary following a crash, are not pressured into signing up for services without time to fully consider their decision, and that towing is not delayed by a driver trying to promote other services instead of immediately towing the vehicle.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive and reasonable available ways to achieve the purpose.

The Review found 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. Consistent with the finding of the Review, the Regulation provides additional consumer protections to ensure a motorist is only given clear, accurate and relevant information.

If there were no restriction on advertising for other businesses, motorists may be pushed into making decisions that are not in their best interests. They may be given incorrect information about car crash liability issues or pressured into signing up to a service with inflated fees that could be obtained much cheaper from another provider. This is not in consumers' best interest.

The other alternative would be to prohibit all displays or markings except those that are directly relevant to the towing service. For example, an authorised tow truck may be restricted to only displaying the details of the tow truck business. This broader prohibition would make it an offence to display any other information or promote any other idea. For example, it would be prohibited for the tow truck to display a bumper sticker expressing a political opinion or for a tow truck driver to wear a T-shirt displaying the logo for a political party or a band. This would be an unjustifiable restriction on the freedom of expression and would not enhance the consumer protections in the Regulation.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The Regulation strikes an appropriate balance between consumer protection and the right to freedom of expression. The advertising offences in sections 27 and 36 of the Regulation apply

only to a limited range of industries and services. These have been chosen based on the potential harm to consumers and were informed by complaints to TMR and issues raised in public submissions during the Transport and Resources Parliamentary Committee consideration of the Tow Truck Bill. The Regulation prohibits services that are related to towing services and may be needed by the motorist, and which therefore have the highest potential for exploitation. This is appropriately limited and does not unnecessarily interfere with a person's right to freedom of expression.

Infringement notice offences

(a) the nature of the right

Section 15 (Right to recognition and equality before the law) of the HRA 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. Enforcement action may disproportionately impact persons of a lower socio-economic status who may have more difficulty paying a financial penalty.

Section 24 (Property rights) of the HRA protects the right of all persons to own property and provides that people have a right not to be arbitrarily deprived of their property. The Regulation may limit property rights to the extent that it contains offence provisions. 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 SPE Act.

Section 29 (Right to liberty and security of person) of the HRA provides a person with certain protections relating to liberty and security, ensuring a person is not subject to arbitrary arrest or detention and not deprived of their liberty other than on grounds and in accordance with procedures established by law.

The Regulation 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 State Penalties Enforcement Registry (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.

Section 31 (Fair Hearing) of the HRA provides that a person has the right 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. Section 32 (Rights in criminal proceedings) of the HRA provides the right to be presumed innocent until proven guilty according to law, as well as rights to certain minimum guarantees, including the right of accused persons to be informed of the nature and reason for a charge and to defend themselves personally or through legal assistance.

The Regulation may limit the right to a fair hearing and rights in criminal proceedings to the extent that it prescribes infringement notice offences. This may arise because a person does not have to attend court in relation to an infringement notice offence.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purposes of the offence provisions are to ensure:

- the safety and security of members of the public who have a damaged motor vehicle at the scene of an incident, a seized motor vehicle or who have a vehicle parked on private property;
- the safe and efficient towing of damaged and seized motor vehicles and vehicles parked on private property;
- the secure storage of towed motor vehicles and property in the vehicle;
- the appropriate charging of fees in relation to matters regulated under the Regulation; and
- the integrity of the accreditation scheme under which those involved in the towing of vehicles under the Regulation are authorised.

Collectively the overall purpose of the offence provisions may be summarised as ensuring the safe, efficient and equitable operation of the towing of motor vehicles from the scene of an incident and from private property.

The offences that may be enforced through the issuing of an infringement notice under the SPE Act are outlined below.

1 penalty unit infringement notice offences

- The holder of an accreditation failing to apply for a replacement accreditation document within 14 days after becoming aware that the document has been damaged, lost or stolen (section 42(2)).
- The holder of an accreditation failing to notify of a change in name or address within 14 days of the change (section 43(2)).
- The holder of an accreditation failing to attach a change of address label to a smartcard accreditation within 14 days of receiving it (section 43(5)).
- The holder of an accreditation failing to notify within 14 days of becoming aware that a change of address label has been damaged, lost or stolen (section 44(2)).
- The holder of an accreditation failing to attach a replacement change of address label to a smartcard accreditation within 14 days of receiving it (section 44(5)).

2 penalty unit infringement notice offences

- The holder of a driver accreditation driving a tow truck to or from the scene of an incident or place of seizure with a passenger, other than an accepted person, in the tow truck (section 66(2) of the Act).
- The holder of a driver accreditation driving a tow truck to or from a private property with a passenger, other than an accepted person, in the tow truck (section 67(2) of the Act).
- A person holding more than one driver accreditation, or more than one assistant accreditation, at the same time (section 77 of the Act).

- The holder of an operator accreditation failing to keep documents such as an accreditation document or notice given under the Act (section 24(1)(a)–(f)).
- The holder of an operator accreditation failing to keep documents securely to prevent unauthorised access or damage (section 24(2)).
- The holder of an operator accreditation failing to keep records about towing and release of motor vehicles (section 25(2)) or failing to keep them securely (section 25(4)).
- The holder of a driver accreditation or an assistant accreditation failing to produce a smartcard accreditation to an authorised officer (section 26(3)).
- The holder of an operator accreditation failing to ensure an authorised tow truck does not display certain prohibited advertising (section 27(1)).
- The holder of an operator accreditation failing to remove markings from a tow truck when ceasing to use the vehicle as an authorised tow truck (section 30(2)).
- The holder of an operator accreditation failing to make an amendment application to remove an authorised tow truck from the accreditation after ceasing to use the vehicle for regulated towing (section 31(2)).
- The holder of an operator accreditation failing to return unused towing authorities after ceasing to use the vehicle for regulated towing (section 32(2)).
- The holder of an operator accreditation failing to surrender their accreditation if they have no authorised tow trucks for more than 90 days (section 33(2)).
- The holder of an accreditation or other specified person promoting certain prohibited businesses or services (section 36(1)).
- The holder of an accreditation obtaining authority for services other than towing services (section 37(2) and 37(4)).
- The holder of an accreditation or other specified person remaining at a crash site unnecessarily (section 41(2)).
- The holder of a driver accreditation failing to produce smartcard for inspection when offering to tow a vehicle (section 47(2)).
- The holder of a driver accreditation getting a second towing authority before towing the first vehicle (section 53(2)).
- The holder of an operator accreditation failing to keep records relating to charges and failing to keep records for at least 2 years (section 80(2) and 80(4)).
- The holder of an operator accreditation failing to keep record of towing charge for non-standard tow and failing to comply with the request to provide record when asked (section 81(2) and 81(5)).

3 penalty unit infringement notice offences

- The holder of the operator accreditation failing to give the police commissioner notice of the tow (section 61(2) of the Act).
- The holder of an operator accreditation failing to keep private property towing consents and towing authorities (section 24(1)(g)–(h)).

- The holder of a driver accreditation failing to give the authorising person signed or approved towing authority (section 49(2)).
- The holder of a driver accreditation failing to produce a private property towing consent to an authorised officer (section 55(2)).
- The holder of an operator accreditation failing to give the owner of a motor vehicle a copy of a private property towing consent when requested (section 62(2))
- The holder of an operator accreditation failing to keep inventory for at least 2 years (section 66(3)).

4 penalty unit infringement notice offences

- The holder of a driver accreditation obtaining a towing authority without properly and fully completing the form (section 48(2)).
- The holder of a driver accreditation failing to ensure that a tow truck does not obstruct a road at the scene of an incident or place of seizure (section 50(2)).
- The holder of a driver accreditation failing to ensure that the tow truck does not remain at the scene of an incident or place of seizure longer than is reasonably necessary (section 51(2)).
- The holder of a driver accreditation failing to ensure that a tow truck does not cause an unreasonable obstruction on the private property or a road (section 60(2)).

5 penalty unit infringement notice offences

- The holder of an operator accreditation failing to provide 24/7 towing services (section 54 of the Act).
- A person carrying out a regulated tow under an operator accreditation, using a tow truck that is not an authorised tow truck for that accreditation (section 55 of the Act).
- Specified persons unlocking a motor vehicle without the owner's consent (section 58(1) of the Act).
- Specified persons moving a motor vehicle after it has been towed to an authorised holding yard (section 59(2) of the Act).
- The holder of an operator accreditation failing to release a vehicle from an authorised holding yard to the vehicle's owner (section 60(2) of the Act).
- The holder of a driver accreditation failing to tow to a location other than the premises stated in the towing authority (section 52(2)).
- The holder of a driver accreditation failing to immediately release a motor vehicle after the owner of the vehicle pays the on-site release charge (section 58(4)).
- The holder of an operator accreditation using an authorised holding yard that does not have the specified security features to store towed motor vehicles (section 63).
- The holder of an operator accreditation failing to secure authorised holding yard (section 64(2)).

- The holder of an operator accreditation charging a prohibited amount for the towing, storage, viewing, accessing or releasing a motor vehicle from an authorised holding yard or at a private property (section 70(1) and 70(2)).
- The holder of an operator accreditation failing to give notice of a storage charge before imposing the charge (section 72(3)).
- The holder of an operator accreditation failing to give notice of the amount of the viewing charge before the owner of the motor vehicle is allowed to view or have access to the vehicle (section 74(3)).
- The holder of an operator accreditation failing to give notice of the amount of the release charge before the motor vehicle is released to the owner (section 75(3)).
- a person charges more than the on-site release charge before vehicle is towed from private property (section 78).

6 penalty unit infringement notice offences

- The holder of a driver accreditation towing a motor vehicle without first obtaining a towing authority (section 64(2) of the Act).
- The holder of a driver accreditation towing a motor vehicle from a private property without a private property towing consent in place (section 65(2) of the Act).
- The holder of a driver accreditation towing a vehicle while there is a person in the vehicle (section 68(2) of the Act).
- a person obtaining a towing authority without holding a driver accreditation (section 78 of the Act).
- a person obtaining a private property towing consent without holding an operator accreditation (section 79 of the Act).

8 penalty unit infringement notice offences

- Towing a vehicle without holding a driver accreditation (section 53(2) of the Act).
- Operating, or assisting with the operation of, a tow truck without holding a driver accreditation or assistant accreditation (section 53(3) of the Act).
- The holder of an operator accreditation using a premises to store towed vehicles that is not the premises stated in the towing authority or otherwise an authorised holding yard for the accreditation (section 56(1) of the Act).

The purpose of prescribing infringement notice offences in the Regulation is to:

- ensure an efficient means of enforcing these offences.
- avoid the costs and inconvenience to both the individual and the State associated with consideration before a court in relation to offences that are objective in nature.
- encourage individuals to comply with the requirements in the Regulation.

Enhancing safety and efficiency in the towing of motor vehicles from the scene or an incident and from private property by enabling financial penalties to be imposed (either through a court-

imposed fine or infringement notice fine) for non-compliance is a proportionate response consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

There is a direct relationship between the offence provisions and their financial penalties, and the purpose of enhancing the safety and efficiency of towing motor vehicles from the scene or an incident and from private property. The fines send a strong deterrent message to encourage compliance with the requirements in the Regulation.

In addition, there is a direct relationship between the prescription of an infringement notice fine for offences under the Regulation and the purpose of providing an efficient means of enforcing these offences and avoiding court costs. This is because the infringement notice fine system allows enforcement through the issue of a fine by an authorised officer which the alleged offender has the option to either pay or challenge through a court hearing. This system also encourages individuals to comply with the Regulation which will assist in achieving the desired safety and efficiency outcomes relating to regulated towing.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

It is considered that there is no less restrictive and reasonably available way to achieve the purpose of enhancing the safety and efficiency of towing motor vehicles from the scene or an incident and from private property other than to create the offence provisions outlined above.

In addition, it is considered that there is no less restrictive and reasonably available way to achieve the purpose of enhancing the safety and efficiency of towing motor vehicles from the scene or an incident and from private property, other than by prescribing many of the offences as infringement notice offences under the SPE Regulation.

If these offences were not infringement notice offences, they would need to proceed to court where additional costs may be payable. Infringement notice offences provide several benefits to alleged offenders who decide not to contest the infringement notice fine. These benefits include not having to attend court with or without legal representation, as well as giving them certainty about their legal position.

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 an infringement notice fine would only occur infrequently. In terms of seizure and sale, 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.

Other protections include that:

- A person who considers a fine should not have been issued may elect to have the matter heard by a court instead of paying the fine.

- If a fine is not paid within the specified timeframe and the infringement notice fine is registered with SPER for enforcement action, the person may apply to pay their debt by instalments.
- Individuals who are experiencing hardship can apply to resolve their debt under a work and development order (which can include undertaking relevant courses, attending counselling and treatment programs or completing work with an approved hardship partner).

All persons, including those of low socio-economic status who may have lesser financial capacity to pay an infringement notice fine, can avoid the impact of any infringement notice fine by complying with the requirements in the Regulation. These requirements are in place for the safety and benefit of vulnerable individuals who need towing services and the public generally.

Where a person is found guilty of an offence by a court, the court can take into account multiple factors when handing down the penalty, including the person's socio-economic status.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

In order to enhance the safety and efficiency of towing motor vehicles from the scene of an incident and from private property, it is important that people are held accountable when non-compliance occurs.

Issuing of infringement notices for offences provides several benefits to alleged offenders who decide not to contest the infringement notice fine. These benefits include not having to attend court with or without legal representation, as well as giving them certainty about their legal position. Without that option, all persons charged with these offences would be forced to expend the time, effort and stress involved in court proceedings. If found guilty, they would also be required to pay the costs associated with the offender levy and the issuing of the complaint and summons, whether they wanted their matter heard before a court or not.

In addition, allowing infringement notice fines to be issued for non-compliance with the Regulation provides an efficient enforcement option. If this enforcement option was not available, there may be reduced deterrence. This is because a decision to prosecute is made on public interest grounds, including the consideration of the cost of prosecution. If there was a reduction in prosecutions due to cost, some offenders may consider that the State is unlikely to issue a complaint and summons to anyone other than recidivist offenders, thereby reducing the deterrent effect of the offences. This would directly affect the State's ability to ensure safety and efficiency in the road network.

The Regulation does not affect the ability for individuals to elect to have their matter heard by a court. Section 15 of the SPE Act requires that all infringement notice fines must indicate that the alleged offender may elect to have the matter decided by a court. This promotes awareness that persons have this option at the time they are issued with an infringement notice fine. This gives the person the choice between electing to have the matter dealt with under the SPE Regulation or electing to have the matter heard by a court. This enables individuals to choose the option that best suits their circumstances.

In respect of the right to recognition and equality before the law, while the imposition of financial penalties 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. As outlined above, there are also certain fine payment options available under the SPE Act.

The importance of enhancing the safety and efficiency of towing motor vehicles from the scene or an incident and from private property and ensuring an effective enforcement system also outweighs any potential limitation on the human rights discussed in this certificate.

Conclusion

I consider that the *Tow Truck Regulation 2024* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Honourable Bart Mellish MP
Minister for Transport and Main Roads
Minister for Digital Services