

Tow Truck and Other Legislation Amendment Bill 2018

**Report No. 1, 56th Parliament
Transport and Public Works
Committee
March 2018**

Transport and Public Works Committee

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Acknowledgements

The committee acknowledges the assistance provided by the Department of Transport and Main Roads and Queensland Treasury.

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Abbreviations

the Bill	Tow Trucks and Other Legislation Amendment Bill 2018
committee	Transport and Public Works Committee (56 th Parliament)
department/DTMR	Department of Transport and Main Roads
FLP	fundamental legislative principle
former committee	former Public Works and Utilities Committee (55 th Parliament)
LSA	<i>Legislative Standards Act 1992</i>
Minister	Minister for Transport and Main Roads
PIN	penalty infringement notice
SPER	State Penalties Enforcement Registry
2017 Bill	Tow Trucks and Other Legislation Amendment Bill 2017 (lapsed)

Chair's foreword

This report presents a summary of the Transport and Public Works Committee's examination of the Tow Truck and Other Legislation Amendment Bill 2018.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The Tow Truck and Other Legislation Amendment Bill 2017 was examined by the former Public Works and Utilities Committee (55th Parliament) who tabled its report on 4 October 2017.

The committee agreed to consider any changes between the 2017 Bill and the subject Bill and include the former committee's report as part of its report.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the former Bill. I also thank our Parliamentary Service staff and the Department of Transport and Main Roads and Queensland Treasury for their assistance with both Bills.

I commend this report to the House.

A handwritten signature in black ink that reads "Shane King". The signature is written in a cursive, slightly slanted style.

Shane King MP

Chair

Recommendations

Recommendation 1

2

The committee recommends the Tow Truck and Other Legislation Amendment Bill 2018 be passed.

1 Introduction

1.1 Role of the committee

The Transport and Public Works Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility are:

- Transport and Main Roads
- Housing, Public Works, Digital Technology and Sport

Section 93(1) of the *Parliament of Queensland Act 2001* provided that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

The Tow Truck and Other Legislation Amendment Bill 2018 (Bill) was introduced into the Legislative Assembly by the Hon Mark Bailey MP, Minister for Transport and Main Roads (Minister), and referred to the committee on 15 February 2018. The committee is to report to the Legislative Assembly by 2 March 2018.

1.2 Inquiry process

The Tow Truck and Other Legislation Amendment Bill 2017 (2017 Bill) was referred to the former Public Works and Utilities Committee (former committee) prior to the dissolution of Parliament for the 2017 election. The 2017 Bill lapsed when the 55th Parliament was dissolved. The former committee tabled its report on 4 October 2017. The former committee made two recommendations:

- That the Bill be passed; and
- That the Minister consider amending the Bill to require toll operators to issue one aggregated demand notice, with only one administration fee, for multiple deferred toll amounts accumulated over a number of days.

The committee utilised the evidence provided to the former committee during its consideration of the subject Bill.

The committee received a public briefing about the Bill from the Department of Transport and Main Roads (DTMR) and Queensland Treasury on Wednesday 21 February 2018. A transcript is published on the committee's web page. Appendix A includes a list of officials.

The committee agreed, given that the former committee had undertaken a full inquiry process, to consider any changes between the 2017 Bill and the subject Bill and include the former committee's report as part of its report. The former committee's report is included in Appendix B.

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

1.3 Policy objectives of the Bill

The objectives of the Bill are to:

- amend the *Tow Truck Act 1973* and the *Tow Truck Regulation 2009* to address issues regarding private property towing by, amongst other things, requiring that private property towing may only be performed in regulated areas by drivers and assistants who have the necessary certificates and are using licensed tow trucks; increasing penalties for operating an unlicensed tow truck and operating, or being employed in connection with, a tow truck without a driver or assistant certificate; setting maximum towing charges for private property towing; and requiring towing operators to have towing consent evidencing an arrangement with the occupier to remove vehicles from the property (for a full list of proposed amendments see pages 3 and 4 of the explanatory notes)
- amend the *State Penalties Enforcement Act 1999* and the *Youth Justice Act 1992* to ensure young drivers aged 17 years continue to be accountable for their driving behaviour by ensuring they are subject to mandatory disqualification periods for serious driving offences, liable to enforcement action by State Penalties Enforcement Registry (SPER) for unpaid penalty infringement notices for demerit point offences, and subject to the demerit point scheme, and
- amend the *Transport Infrastructure Act 1994* to provide toll road operators and local government tollway operators a clear statutory basis for aggregating unpaid tolls (and associated image processing fees) on demand notices, putting beyond doubt a toll road operator's ability to issue a single demand notice for multiple unpaid tolls with only one administration charge.

The Bill is substantially the same as the 2017 Bill; however, the Minister advised of the following differences:

- Commencement date has been amended
- Cross-references have been corrected
- A reference to a repealed Act has been updated
- A transitional provision has been updated
- There are minor changes about which tow truck offences need to go to court versus those dealt with by an infringement notice
- With regard to demand notice aggregation recommended by the former committee, the Bill has been amended to put beyond doubt the requirements for toll road operators issuing aggregated demand notices to limit administration charges to one per notice.

The committee noted that one of the amendments to the subject Bill, compared to the 2017 Bill, incorporated the recommendation made by the former committee regarding aggregated demand notices.

1.4 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

The committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Tow Truck and Other Legislation Amendment Bill 2018 be passed.

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

2.1 Private property towing

The amendments to the *Tow Truck Act 1973* and *Tow Truck Regulation 2009* apply only to towing vehicles from crash scenes and off-street regulated parking areas, and only in prescribed regulated areas in South East Queensland and along the east coast. These amendments resulted from recommendations made by former District Court Judge Mr Michael Forde, who conducted an independent investigation into private property towing.

The committee noted that Part 2 and divisions 2 and 3 of Part 6, which relate to the private property towing provisions, will commence on a date to be fixed proclamation. The department advised that the proposed commencement date of the provisions depend on the passage through the Parliament. However, they advised:

*We require a couple of weeks once passage has occurred to ensure that we get the communications out to the industry and to car park operators, as well as to make the minor system changes and get them in place to commence. What I would say is that we do not expect that to be a long period of time at all. We are very prepared for these amendments, but it would probably take somewhere around a three-week period. We expect that the proclamation date would not be too distant from the consideration in parliament.*²

The department advised the committee that the Bill requires tow truck drivers to take reasonable steps to locate the motorist before loading a vehicle onto their tow truck. The committee sought additional advice regarding the definition of 'reasonable steps'. The department advised:

*Reasonable steps is not defined in the bill. However, in considering an offence being applied an authorised officer or a police officer investigating the issue would be able to make a judgement call about whether reasonable steps were taken. For example, in the instance where a tow truck operator arrives at a scene and there are people around, it would be reasonable for them to ask the people around whether they are the registered owner of the vehicle.*³

The committee also sought additional advice regarding signage requirements for properties where vehicles may be subject to being towed. The department advised:

*The legislation does not mandate the requirement for signage. However, the Department of Transport and Main Roads will be providing a signage guideline. The point I make is that the legislation is about regulating the towing industry and not about regulating the parking industry. In those cases we would expect those private property owners and businesses to provide appropriate signage. We will be providing guidance as part of an overall communications package to make sure they are clear about what they are required to provide.*⁴

The department advised that the timetable for release of the guidance material is a decision for the Minister. However, they anticipated that it is likely to be released around the time of the Bill's passage in Parliament.⁵

The committee noted that the subject Bill differs from the 2017 Bill in that it includes some changes around which tow truck offences go to court and which are dealt with by penalty infringement notice (PIN).

² Public briefing transcript, 21 February 2018, p4

³ Public briefing transcript, 21 February 2018, p2

⁴ Public briefing transcript, 21 February 2018, p3

⁵ Public briefing transcript, 21 February 2018, p3

The department advised:

There are two offences in particular where, through further consultation, the PIN was removed. The main reason for that is that those offences are relatively subjective. In consultation with the Department of Justice and Attorney-General, it was determined that those offences should be referred to court for consideration given that they will have a far more complex and subjective element to them. Generally speaking, when we apply a PIN to an offence it is usually applied to ensure that it is straightforward and can be easily followed and there is good evidence that an offence has occurred. In these cases it may require further detail and a court to consider whether or not an offence has occurred.⁶

They provided the following example:

One of them, for example, is failing to meet additional conduct requirements at the scene of a crash. This is obviously to do with crash towing but it also applies to private property towing. In the instance where it might be deemed by the owner of the vehicle that the tow truck operator has behaved inappropriately, it would be difficult to issue a PIN on the spot for that offence without having gained more information and more data, and an enforcement officer will be seeking to obtain both sides of the story in that instance.⁷

2.2 Youth driving offences

The Bill includes amendments to the *Youth Justice Act 1992* and the *State Penalties Enforcement Act 1999* to include 17 year old drivers. Differences between the 2017 Bill and the subject Bill largely relate to the commencement of the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* on 12 February 2018.

2.3 Tolling demand notices

The explanatory notes identify that the tolling compliance process framework operates so that when a toll is unpaid, the toll road operator issues a toll invoice to the registered operator of the vehicle. The toll invoice includes unpaid tolls incurred over a set number of days, an image processing fee per unpaid toll and a casual user invoice fee for issuing the invoice. If the toll invoice remains unpaid the toll road operator issues an individual demand notice for each unpaid toll, attracting an administration charge. This can lead to an escalation in the amount payable to the toll road operator if multiple tolls remain unpaid after the issue of the toll invoice and multiple demand notices are issued, each attracting an administration charge.

The amendments proposed in the 2017 Bill provided toll road operators with the flexibility to issue a single demand notice for multiple unpaid tolls, streamlining the operator's processes and minimising administration fees for motorists while maintaining the integrity of the enforcement procedures.

The former committee considered this issue and recommended that the Minister consider amending the Bill to require toll road operators to issue one aggregated demand notice, with only one administration fee, for multiple deferred toll amounts accumulated over a number of days.

The changes to the Bill have incorporated this recommendation with Clause 39, proposed 105ZH(5) requiring that:

The notice must not require the registered operator to pay more than 1 administration charge, even if the notice is given for 2 or more deferred toll amounts.⁸

The department advised that these amendments will provide a clear statutory basis for aggregating unpaid tolls and put beyond doubt a toll road operator's ability to issue a single demand notice for multiple unpaid tolls with only one administration charge.⁹

⁶ Public briefing transcript, 21 February 2018, p3

⁷ Public briefing transcript, 21 February 2018, p3

⁸ Tow Truck and Other Legislation Amendment Bill 2018, Clause 39

⁹ Public briefing transcript, 21 February 2018, p 2

The committee sought additional advice regarding the consultation with the toll road operators on the proposed amendments. The department advised:

...Transurban is the main toll road operator in South-East Queensland. This has been something that we have been working very closely with them on. The Department of Transport and Main Roads have been working with the toll road providers. It is something that they have put on the agenda and can see as being a positive benefit to their consumers. From our perspective, it is much more streamlined with respect to the administrative charges that have been issued individually for individual penalties in the past. It provides a benefit to those toll road users who may have an inability to pay or who have overlooked their toll road charges and are given an infringement notice. At the end of the day there is actually a benefit for the consumers which the toll road provider is supportive of given that at the end of the day it is in their interests that they are able to maintain a good relationship with their consumers, with their client base. There is also a greater likelihood that those individuals who are issued with a demand notice will be able to pay it if they are not accumulating duplicative administrative charges.¹⁰

The department confirmed that, whilst multiple demand notices may be issued over an extended period, only a single administration fee will be charged per notice issued.¹¹

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly - discussion about the FLPs are included in the former committee’s report.

3.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

¹⁰ Public briefing transcript, 21 February 2018, p3-4

¹¹ Public briefing transcript, 21 February 2018, p4

Appendices

Appendix A – Officials at public departmental briefing

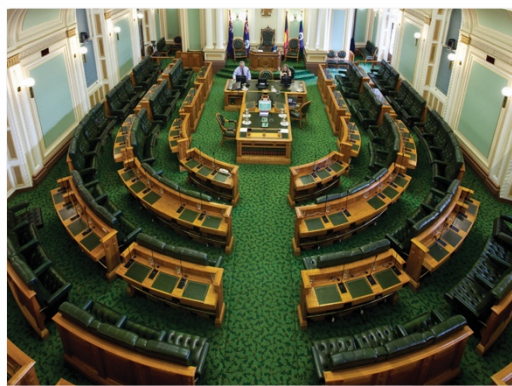
Department of Transport and Main Roads

- Ms Sally Noonan, Deputy Director-General, Policy, Planning and Investment
- Mr Andrew Mahon, General Manager, Transport Regulation Branch
- Mr Brad Tubb, Director, Transport System Governance

Queensland Treasury

- Mr Richard Jolly, Deputy Registrar, State Penalties Enforcement Registry

**Appendix B – Former Public Works and Utilities Committee Report No. 49,
55th Parliament – Tow Truck and Other Legislation Amendment Bill 2017**



Tow Truck and Other Legislation Amendment Bill 2017

**Report No. 49, 55th Parliament
Public Works and Utilities
Committee
October 2017**

Public Works and Utilities Committee

Chair	Mr Shane King MP, Member for Kallangur
Deputy Chair	Mr Rob Molhoek MP, Member for Southport
Members	Mr Jason Costigan MP, Member for Whitsunday
	Mr Matt McEachan MP, Member for Redlands
	Ms Joan Pease MP, Member for Lytton
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The committee acknowledges the assistance provided by the Department of Transport and Main Roads.

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Abbreviations

committee	Public Works and Utilities Committee
department/DTMR	Department of Transport and Main Roads
FLP	fundamental legislative principle
Independent Investigation into the Towing Industry Report	Independent Investigation into the Towing Industry: Removal of Vehicles from Private Property Report, August 2017
LSA	<i>Legislative Standards Act 1992</i>
Minister	Minister for Main Roads, Road Safety and Ports
OQPC	Office of the Queensland Parliamentary Counsel
OQPC Notebook	Office of the Queensland Parliamentary Counsel Notebook
RACQ	Royal Automobile Club of Queensland
QLS	Queensland Law Society
QTA	Queensland Trucking Association
SCCA	The Shopping Centre Council of Australia
SPE Act	<i>State Penalties Enforcement Act 1999</i>
SPE Regulation	State Penalties Enforcement Regulation 2014
SPER	State Penalties Enforcement Registry
the bill	Tow Truck and Other Legislation Amendment Bill 2017
TI Act	<i>Transport Infrastructure Act 1994</i>
TT Act	<i>Tow Truck Act 1973</i>
TT Regulation	Tow Truck Regulation 2009
YJ Act	<i>Youth Justice Act 1992</i>

Chair's foreword

This report presents a summary of the Public Works and Utilities Committee's examination of the Tow Truck and Other Legislation Amendment Bill 2017.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank those organisations which lodged written submissions on the bill. I also thank the committee's secretariat, and the Department of Transport and Main Roads.

I commend this report to the House.



Shane King MP

Chair

Appendix B

Recommendations

Recommendation 1

2

The committee recommends the Tow Truck and Other Legislation Amendment Bill 2017 be passed.

Recommendation 2

15

The committee recommends that the Minister consider amending Clause 31 of the Tow Truck and Other Legislation Amendment Bill 2017 to require toll road operators to issue one aggregated demand notice, with only one administration fee, for multiple deferred toll amounts accumulated over a number of days.

Appendix B

1 Introduction

1.1 Role of the committee

The Public Works and Utilities Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility are:

- Main Roads, Road Safety, Ports, Energy and Water Supply
- Housing, Public Works and Sport.

Section 93(1) of the *Parliament of Queensland Act 2001* provided that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles (FLPs), and
- for subordinate legislation – its lawfulness.

1.2 Inquiry referral and committee process

The Tow Truck and Other Legislation Amendment Bill 2017 (the bill) was introduced into the Legislative Assembly on 22 August 2017 by the Minister for Main Roads, Road Safety and Ports (the Minister). The bill was referred to the committee in accordance with the Standing Order 131, and the committee was required to report to the Legislative Assembly by 5 October 2017.

During its examination of the bill, the committee:

- invited submissions from stakeholders and subscribers on 23 August 2017
- received a public briefing on the bill from the Department of Transport and Main Roads (the department/DTMR) on 6 September 2017 (see Appendix A for a list of witnesses), and
- received written advice on the bill from DTMR in response to matters raised in submissions.

A list of the five submissions accepted by the committee is at Appendix B. After consideration of submissions the committee decided not to hold a public hearing on the bill. Copies of the material in relation to the committee's inquiry is published on the committee's [website](#).

1.3 Objectives of the bill

The bill proposes to amend the *Tow Truck Act 1973* (TT Act), *State Penalties Enforcement Act 1999* (SPE Act), *Transport Infrastructure Act 1994* (TI Act) and *Youth Justice Act 1992* (YJ Act) as well as amend the Tow Truck Regulation 2009 (TT Regulation) and State Penalties Enforcement Regulation 2014 (SPE Regulation) to:

- *introduce reforms to the towing industry, particularly regarding private property towing*
- *ensure young drivers aged 17-years continue to be accountable for their driving behaviour*
- *provide transitional arrangements to ensure any debts registered with the State Penalties Enforcement Registry can be enforced when 17-year-olds are transferred out of the adult justice system, and*
- *provide toll road operators and local government tollway operators with the flexibility to issue a single demand notice for multiple unpaid tolls and associated image processing fees, with one administration charge applied to the notice.*²

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

² DTMR, correspondence dated 15 September 2017, p 1.

1.4 Consultation on the bill

1.4.1 Private property towing

The explanatory notes stated that consultation was undertaken as part of the Independent Investigation into the Towing Industry with a range of stakeholders such as local governments, towing operators, private property owners and occupiers, motorists and community and industry representative organisations through holding meetings with a range of stakeholders and receiving 368 records of complaints/feedback to the tow truck hotline and 41 written submissions.³

1.4.2 Tolling demand notices

In relation the proposed amendments to tolling demand notices, consultation was undertaken with Transurban Queensland, the Brisbane City Council, the Tolling Customer Ombudsman and the Royal Automobile Club of Queensland (RACQ) with all parties supporting the proposal amendments for tolling demand notices.⁴

1.4.3 Youth driving offences (including existing SPER matters)

The department advised that community consultation was not undertaken on the proposed amendments to youth driving offences or existing SPER matters as they are consequential amendments resulting from the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* and the amendments simply retain the current legislative position or provide for transitional arrangements to support the effective implementation of that Act.⁵

1.5 Should the bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend the bill be passed. After examination of the bill, including the policy objectives which it will achieve and consideration of the information provided by the department and from submitters, the committee recommends that the bill be passed.

Recommendation 1

The committee recommends the Tow Truck and Other Legislation Amendment Bill 2017 be passed.

³ Explanatory notes, p 8.

⁴ Correspondence dated 15 September 2017, p 7.

⁵ Correspondence dated 15 September 2017, p 7.

2 Examination of the bill

2.1 Private property towing

‘Private property towing’ refers to the removal of vehicles parked on private property where the vehicles may be trespassing or parked in contravention of the conditions for parking.⁶

As at 31 May 2017, the tow truck industry comprised of ‘116 tow truck licensees, 533 licensed tow trucks, 780 accredited tow truck drivers and 43 accredited tow truck assistants in Queensland’.⁷ In relation to location, 56 percent of tow truck licensees are in the greater Brisbane, Gold Coast and Sunshine Coast areas, and some 69 percent of businesses advertise towing services in these areas.⁸

Currently, the towing industry is regulated by the TT Act and TT Regulation. The industry provides a range of towing services, including crash towing, controlled area towing, compliance towing, private property towing, breakdown towing, and trade towing. The existing regulatory framework only applies to the operation of tow trucks in prescribed regulated areas in South East Queensland and along the east coast and when removing vehicles from the scene of a crash or seized by police from a regulated area controlled by a local government or DTMR. Not covered under this regulatory framework is breakdown towing, trade towing, compliance towing, and removing vehicles from private property.⁹

In May 2017, the Queensland Government appointed former District Court Judge Mr Michael Forde to conduct an independent investigation in response to escalating complaints received about private property towing. The investigation team was tasked to consider the operation of the tow truck and vehicle removal industry not currently covered by the regulatory framework and examine ‘the practice of removing vehicles from private property, considering community expectations, consumer protections, private property owners’ rights and the professional operation of the towing industry’.¹⁰ The investigation team gathered information via the ‘DTMR tow truck hotline, written submissions and interviews’, and was assisted by a range of stakeholders including ‘towing operators, private property occupiers, motorists, and government and non-government bodies and organisations’.¹¹

In August 2017, Mr Forde released his findings in a report titled [Independent Investigation into the Towing Industry: Removal of Vehicles from Private Property Report](#) (Independent Investigation into the Towing Industry Report). The [Government response to the Independent Investigation into the Towing Industry Report](#) advised it would accept the 22 recommendations and eight matters for consideration. The department advised that the bill ‘proposes to give effect to the 16 recommendations requiring legislative amendment and to progress some of the matters for further consideration’.¹²

The Minister stated in the explanatory speech that ‘the report sets out the framework to reform the towing industry and this bill begins the process of delivering that reform’:

*...the bill requires the licensing of tow trucks performing private property towing in regulated areas and the accreditation of the tow truck driver and any assistant. Bringing private property towing into the tow truck licensing and accreditation scheme will introduce suitability and conduct requirements for tow truck operators, drivers and assistants. It will also require minimum standards for tow trucks to ensure they are safe and well maintained and requirements for the business premises and holding yards to ensure they are safe and secure.*¹³

⁶ Independent Investigation into the Towing Industry Report, August 2017, p 6.

⁷ Independent Investigation into the Towing Industry Report, August 2017, p 7.

⁸ Independent Investigation into the Towing Industry Report, August 2017, p 7.

⁹ Explanatory notes, p 1, and DTMR webpage: [About the investigation](#) <accessed 4 September 2017>

¹⁰ DTMR webpage: [About the investigation](#) <accessed 4 September 2017>

¹¹ Independent Investigation into the Towing Industry Report, August 2017, p i.

¹² DTMR, correspondence dated 15 September 2017, p 2.

¹³ Queensland Parliament, Record of Proceedings, 22 August 2017, pp 2291 – 2292.

As set out in the explanatory notes, the bill proposes to amend the TT Act and TT Regulation to address issues regarding private property towing by achieving the following policy objectives:

- *requiring that private property towing may only be performed in regulated areas by drivers and assistants who have the necessary certificates and are using licensed tow trucks*
- *increasing the penalties for operating an unlicensed tow truck and operating, or being employed in connection with, a tow truck without a driver or assistant certificate*
- *requiring towing operators to have towing consent evidencing an arrangement with the occupier to remove vehicles from the property*
- *requiring towing operators to notify the police commissioner as soon as practicable after removing a vehicle from private property*
- *imposing conduct requirements on tow truck licensees, drivers and assistants including prohibiting intimidating, abusive or insulting behaviour, and requiring reasonable steps be taken to locate the motorist before loading a vehicle onto the tow truck*
- *providing that vehicles removed from private property may only be taken by the most direct route to the licence holder's nearest holding yard*
- *setting maximum towing charges for a standard private property tow (\$250), the on-site release of a vehicle (\$150) and storing a vehicle (\$25)*
- *prohibiting the charging of call-out fees and charges for separate activities incidental to the towing service such as administration fees*
- *safeguarding motorists' privacy by restricting the disclosure of information about the removal of a vehicle from private property and expressly protecting personal information about a vehicle's owner, driver or other party connected to a regulated towing service*
- *allowing tow truck licences to be issued for a period of one to five years with scaled fees for both licences and driver and assistant certificates depending on the length of the term*
- *removing the legislative requirement for when an application for a licence or certificate renewal must be made*
- *increasing the maximum penalty that may be imposed under the TT Regulation from 20 penalty units to 80 penalty units, and*
- *clarifying that a person's entire criminal history, including any charge for an offence that has not been dealt with by a court or withdrawn or otherwise discontinued, may be considered when determining whether to grant a licence or certificate and whether a person is an appropriate person to continue to hold a licence or certificate.*¹⁴

These amendments will not apply:

- where the vehicle owner has expressly directed or requested the vehicle be towed, and
- where other legislation authorises the removal of the vehicle from private property.¹⁵

Clause 2 of the bill provides that parts 2 (amendment of TT Act) and 6 (amendment of SPE Regulation and TT Regulation) will commence on 1 December 2017. In the explanatory speech, the Minister said the legislation to reform the towing industry is proposed to commence on 1 December 2017, subject to the consideration of the House, to 'ensure the changes are introduced quickly while allowing government and industry sufficient time to prepare'.¹⁶

¹⁴ Explanatory notes, pp 2-3.

¹⁵ Explanatory notes, p 4.

¹⁶ Queensland Parliament, Record of Proceedings, 22 August 2017, p 2292.

2.1.1 Signage

2.1.1.1 Proposed guidelines

The bill does not propose to regulate signage. This is consistent with the Independent Investigation into the Towing Industry Report which did not consider it appropriate to regulate signs on private property given that parking on private property is not a regulated matter.¹⁷ Recommendation 17 of the Independent Investigation into the Towing Industry Report recommended:

*...guidelines be developed to promote visible, clear, comprehensive and consistent signs. Guidelines would also support the education of motorists, occupiers and towing operators about private property towing, and may alleviate the potential for conflict.*¹⁸

The Independent Investigation into the Towing Industry Report noted that there are codes of practice for occupiers controlling parking on private land also prescribe signage requirements regarding the positioning, content and construction of signs and provided the example of the Parking Australia's [Code of Practice for Enforcement on Private Land](#) which specifies that signs:

- be placed at all entrances in a manner obvious to the driver, with additional signs within the site to ensure drivers are aware of the conditions of parking
- be positioned at least 120mm and not more than 1900mm from ground level
- be professionally made to convey the importance of the information and constructed of sturdy material
- use colours with sufficient contrast between the background and the writing to make the text clearly legible, and
- be readable during the hours of application; if applicable at night the sign must be illuminated or made of reflective material.¹⁹

The department advised the committee that it proposes to develop guidelines in line with the Independent Investigation into the Towing Industry Report's recommendation 17:²⁰

*...we are proposing to put forward guidelines in relation to what form signs might take, how you might position the sign, the size, design, colours and fonts of signs and their contents in terms of parking conditions, consequences and noncompliance, towing operator details and towing costs. We are going to put some guidelines in place.*²¹

Following a question from the committee at the departmental briefing, DTMR provided further information on this issue:

...the bill covers the removal of vehicles from private property, the towing of vehicles. It does not address the issue of parking on private property. That issue is a complex area of common law in many ways.

*There are many possible scenarios where people park on private property. If you were to regulate the actual parking on private property, the reach would be quite significant.*²²

¹⁷ Footnote 196 - Independent Investigation into the Towing Industry Report, August 2017, p 85, stated that 'while parking on private property is regulated for controlled areas this is differentiated for the purpose of this report from the regulation of private property parking'.

¹⁸ Independent Investigation into the Towing Industry Report, August 2017, p 45.

¹⁹ Independent Investigation into the Towing Industry Report, August 2017, p 44.

²⁰ Correspondence dated 15 September 2017, p 6.

²¹ Public briefing transcript, 6 September 2017, p 3.

²² Public briefing transcript, 6 September 2017, p 3.

The department also provided the following example:

*Say I drove into John's driveway, parked my car, got out and walked away. At the moment there is no doubt that John has a right, without any permission, to have my vehicle towed. If you regulate the signage, all of a sudden you create a question as to whether or not John should have had signage on his property to tell me not to park in his driveway. Generally speaking, that could end up in the court with a finding that the vehicle was illegally towed. We have taken this path to avoid that conflict and the question at law as to whether or not it was legal for John to have my vehicle towed from his property. That is an example I will give you and there will be numerous other examples that you could find. That is the reason we have taken this particular path.*²³

2.1.1.2 Stakeholder views and department response

Stakeholders held various views on the issue of regulating parking on private property by requiring signage to be present before a car may be towed.

The Shopping Centre Council of Australia (SCCA) did not support regulating 'minimum signage requirements', as:

*...any such regulation could serve to impose additional and unnecessary costs on shopping centre owners, and potentially, limit their ability to actively manage their car park operations for the benefit of their customers and retailers.*²⁴

The Queensland Law Society (QLS), on the other hand, would like there to be 'an obligation placed on tow truck drivers not to tow a car from a "relevant car park" unless the required signage is present at the time the car is towed'.²⁵ In response, the department reiterated:

The independent investigation recognised the importance of clear, highly visible signage but noting the complex common law basis for private property parking and towing as well as the large variety of scenarios that apply to parking arrangements including conditions such as which shops may be attended and hours of parking, the investigation did not recommend the regulation of signage.

And

*...the Bill proposes to regulate private property towing, not parking on private property. Regulating signage by requiring certain signs to be present before a vehicle may be towed would affect the common law basis for removing vehicles, potentially altering the legal position of private property owners and occupiers. Requiring particular signage may also have unintended consequences, preventing private property owners and occupiers from exercising their common law right to use and control their carpark. For example a business that does not install signs because they usually do not have an issue with parking would be prevented from removing an unauthorised vehicle that subsequently causes a genuine problem.*²⁶

2.1.2 Towing consents

2.1.2.1 Amendments proposed in the bill

Clause 4 of the bill proposes to insert new section 4D providing for the meaning of a towing consent for towing vehicles from an occupier's private property:

(1) A towing consent is a document, in the approved form, between an occupier of private property and the holder of a licence that states there is an arrangement between the

²³ Public briefing transcript, 6 September 2017, p 3.

²⁴ Submission 4, p 2.

²⁵ Submission 5, p 2.

²⁶ Correspondence dated 15 September 2017, pp 9-10.

occupier and the holder under which the holder may, until the arrangement is revoked by the occupier, tow a private property motor vehicle from the property.

- (2) *To remove any doubt, it is declared that a towing consent does not constitute legal authority for the towing of a motor vehicle from private property.*

2.1.2.2 Stakeholder views and department response

The SCCA noted that while its members have substantial associated car parking operations, the 'towing of a vehicle occurs on an infrequent, as needed basis'. However, to ensure there are no additional procedures in arranging the towing of a vehicle, the SCCA sought further clarification on the definition of towing consents and the nature of the 'approved form' for the consent, explaining:

It is unclear whether the purpose of this clause is to establish a requirement for car park operators (the 'occupier') to have an ongoing agreement (or 'arrangement') with a tow truck operator to perform any necessary vehicle removals from a car park as a mechanism of demonstrating 'towing consent', or if this clause envisages 'towing consent' being able to be granted each time a vehicle is removed (for example, via exchange of emails or provision of a booking receipt).²⁷

The department responded:

The intention of a towing consent is to ensure the tow truck licensee is operating at the request, and with the approval, of the private property owner or occupier. The towing consent may apply to the removal of a specific individual vehicle on a one off basis or to the removal of multiple vehicles on an ongoing basis under an arrangement between the owner or occupier and the licensee.

The requirement for a towing consent to be in an 'approved form', which is effect in a prescribed template that must be completed, ensures consistency in the information that is collected. In practice a towing consent may be completed for the removal of a specific vehicle when the private property owner or occupier requests its removal, or when the owner or occupier and the licensee enter into a service arrangement.²⁸

The QLS also raised a concern around the legal status of the towing consent and suggested the purpose and effect of the towing consent be clarified as 'the bill states that a towing consent does not constitute legal authority for the towing of a motor vehicle from private property' (which seems to leave the towing consent with no work to do).²⁹

The department responded by reiterating its response to the SCCA about the intention of a towing consent and advising that the bill does not propose to regulate parking on private property. The towing consent is not intended to alter the common law position regarding the legal basis on which vehicles may lawfully be removed from private property and does not replace the common law as the legal authority for the removal of a vehicle:

Rather the towing consent provides evidence that there is an arrangement in place and the tow truck licensee is not monitoring and enforcing parking conditions on their own initiative, and will increase accountability and transparency in the arrangements for the removal of vehicles from private property. The requirement to hold, carry and produce a towing consent will increase the rigour in private property towing arrangements. In particular the requirement to produce the towing consent to the motorist on request will assist motorists to identify parties involved in the towing of the vehicle if they wish to take further action.³⁰

²⁷ Submission 4, p 2.

²⁸ Correspondence dated 15 September 2017, p 9.

²⁹ Submission 5, p 1.

³⁰ Correspondence dated 15 September 2017, pp 9-10.

2.1.3 Reasonable steps to locate the vehicle's owner

2.1.3.1 Amendments proposed in the bill

Clause 10 of the bill proposes to introduce additional conditions on a tow truck licence including in proposed section 12(2)(v) of the TT Act that a person must, before towing the vehicle, take reasonable steps to locate the vehicle's owner.

2.1.3.2 Stakeholder views and department response

The QLS submitted that the proposed requirement to take reasonable steps and proposed section 29A of the TT Regulation is vague and suggested guidance be given to assist in compliance.³¹

The department responded that the introduction of the requirements for private property towing will be supported by education material for private property owners and occupiers, motorists and the towing industry:

*This material will include guidelines, published on DTMR's website, about what may be reasonable steps. What amounts to reasonable steps will depend on the particular circumstances but could include looking around the immediate area to see if the driver is nearby or approaching the carpark, asking any person in the vicinity if the vehicle is theirs or they know the driver. The reasonable steps requirement is not intended to trick tow truck drivers, but it is intended to ensure motorists are, where it is practicable, able to remove vehicles without being towed and it is expected some effort and common sense will be applied.*³²

2.1.4 Restrictions on travelling in a tow truck

2.1.4.1 Amendments proposed in the bill

Clause 11 of the bill proposes to amend section 13 of the TT Act to provide that driver's and/or assistant's certificates or permits are required for activities involved in the towing of private property motor vehicles in regulated areas.

2.1.4.2 Stakeholder views and department response

The QLS suggested that proposed section 13(2) of the TT Act, restricting who may travel in a tow truck, is not reasonable and should be removed from the bill as:

*It is not reasonable to prescribe where someone can travel providing it is not in an area otherwise restricted by law and that they do not take any actions which are contrary to law whilst they are travelling.*³³

The department responded that a person is currently prohibited from travelling in a tow truck in a regulated area to the scene of a crash or seizure of a vehicle unless they hold a driver of assistant certificate or permit, or is the vehicle owner, the owner's agent, or was the driver or passenger in the vehicle (section 13(c) TT Act) and advised:

The proposed amendment is the necessary extension of existing section to apply it to private property towing.

*The restriction is appropriately limited, applying only while the tow truck is undertaking regulated towing activities to which the licensing and accreditation scheme applies, to ensure that only appropriate persons relevant to the towing of a vehicle travel to or from the scene of a tow in the truck.*³⁴

³¹ Submission 5, p 2.

³² Correspondence dated 15 September 2017, p 12.

³³ Submission 5, p 2.

³⁴ Correspondence dated 15 September 2017, p 11.

2.1.5 Production of documents

2.1.5.1 Amendments proposed in the bill

Clause 16 of the bill proposes to amend section 35 to require a licence holder, driver or assistant performing private property towing to produce documents such as licences or certificates or the towing consents if asked by an authorised officer.

2.1.5.2 Stakeholder views and department response

The QLS raised a concern that clause 16 does not allow a person reasonable time to produce the document and does not include an excuse provision.³⁵

The department advised that the phrasing of the proposed new section 35 of the TT Act, is consistent with the existing requirements in section 35 requiring the holder of a licence, certificate or permit to produce the licence, certificate or permit to an authorised officer:

The proposed amendment is the necessary extension of existing section to also require the production of the towing consent if the tow truck is being, or has been, used for private property towing.

It is also noted that section 17 of the TT Regulation requires certificate and permit holders to carry their certificate of permit while performing regulated towing activities, and the proposed new 17A of the TT Regulation will require the tow truck driver to carry the towing consent while undertaking private property towing.³⁶

2.1.6 Heavy vehicle towing

2.1.6.1 Stakeholder views and department response

The Queensland Trucking Association (QTA) raised a concern that the bill does not distinguish between heavy and light vehicle towing which may inadvertently have a negative impact on the heavy vehicle towing industry particularly in relation to maximum towing charges and travel routes. QTA cited as an example:

There is no exclusion in the Bill identifying that Class 4 Tow Trucks are also under other legislative requirements such as the Heavy Vehicle National Law regarding Mass, Loading, Dimension and Chain of Responsibility obligations.³⁷

The department provided the following response to the QTA concerns:

Heavy vehicle towing –

The Bill extends the regulation of the towing industry to private property towing where a vehicle is removed from private property, such as a carpark, other than at the request or direction of the vehicle's owner. This situation is unlikely to apply to towing heavy vehicles. However, if a heavy vehicle was parked without authorisation on private property and the private property owner or occupier wanted the heavy vehicle to be removed the reforms proposed by the Bill would apply, requiring among other things that the tow truck be licensed and the driver appropriately accredited.

Maximum towing charges –

The maximum towing charge proposed by the Bill applies to standard private property tows. In the event that a heavy vehicle was the subject of a private property tow, which as noted above is unlikely, the maximum charge would apply if the heavy vehicle is removed from the property

³⁵ Submission 5, p 2.

³⁶ Correspondence dated 15 September 2017, p 11.

³⁷ Submission 1, pp 1-2.

with less than 60 minutes working time. However, consistent with the existing maximum charge for towing crash damaged vehicles, if the removal of the heavy vehicle takes longer than one hour, the licence holder can charge an amount that is higher than the maximum charge providing it is reasonable in the circumstances.

Most direct route –

The requirement that vehicles removed from private property must be moved by the most direct route to the nearest holding yard, emulates the existing requirement that vehicles towed from the scene of crash must be moved by the most direct route to the address stated in the towing authority. The intent of the provisions is to require the vehicle to be moved by the most direct route legally and safely able to be taken by the tow truck driver. The existing provision as it applies to heavy vehicle crash towing currently operates effectively; DTMR is not aware of any instances where the provision has been interpreted to require a heavy vehicle tow truck driver to contravene a permit condition for approved routes, or to penalise a driver for not taking the most direct route by complying with their permit conditions.³⁸

2.1.7 Distance vehicles may be towed

2.1.7.1 Amendment proposed in the bill

Clause 10 of the bill introduces additional conditions on a tow truck licence including in proposed section 12(2)(vii) of the TT Act that a person may only tow the vehicle to the nearest holding yard that is owned or leased by the holder of the licence.

2.1.7.2 Committee consideration

At the departmental briefing, the committee raised a concern that it does not appear that the bill provides a maximum distance that a vehicle could be towed.³⁹

The department advised that while the bill proposes to limit where vehicles may be towed by requiring that a vehicle removed from private property may only be taken to the nearest holding yard of the tow truck licensee, by the most direct route, it does not propose to impose a maximum distance that vehicles may be towed:

The independent investigation found that towing vehicles excessive distances from private property is not a significant issue, with the majority of towed vehicles moved less than 10 kilometres. The investigation noted that should a vehicle be moved an excessive distance this would cause a substantial inconvenience to motorists, but considered that this need to be balanced against the rights of the private property owner or occupier to use and control their carpark. The investigation raised a concern that the regulation of maximum towing distances may have unintended consequences in that it could prevent a private property owner or occupier with a genuine parking problem from removing unauthorised vehicles from their property if there were no holding yards within the minimum distance.

Additionally, the investigation expressed a view that by capping the towing fee there would be little incentive for vehicles to be moved long distances as it would limit the work that could be undertaken by the tow truck.⁴⁰

2.1.8 Spotting and touting

Spotting is where individuals are paid to monitor parking areas and alert occupiers or towing operators to remove unauthorised vehicles, is not prohibited for private property towing.⁴¹

³⁸ Correspondence dated 15 September 2017, p 8.

³⁹ Public briefing transcript, 6 September 2017, p 6.

⁴⁰ Correspondence dated 15 September 2017, p 6.

⁴¹ Independent Investigation into the Towing Industry Report, August 2017, p 46.

At the public briefing, the committee asked how the proposed legislation would address this practice and the department advised that there were rules about touting and using spotters.⁴² The department provided further information to the committee that spotting and touting practices were considered by the independent investigation which reported that:

...private property owners and occupiers, and towing operators acting on their behalf, should not be prevented from engaging someone to monitor and enforce the conditions of their car park. This could include a business owner assigning an employee to monitor the carpark, or the towing operator employing someone.

The investigation noted that motorists may feel aggrieved by the active monitoring of carparks, but considered that this needed to be balanced against the rights of the private property owner or occupier to use and control their carpark. If the carpark is appropriately signed, they should not be prevented from actively enforcing the conditions for parking. Additionally, the investigation expressed a view that the 'predatory nature of some spotting practices would be removed by regulating private property towing and capping towing fees, as the opportunity for substantial financial gain would be limited'.⁴³

2.1.9 Conduct requirements

2.1.9.1 Amendments proposed in the bill

Clause 54 proposes to replace sections 20 and 21 of the TT Regulation with new sections 20, 21 and 21A. New section 20 proposes to extend some of the conduct requirements that apply at the scene of an incident to private property towing, and new section 21 moves the remaining conduct requirements that apply at the scene of an incident to a new section. New 21A proposes to replace the existing provision regarding the disclosure of information to extend the protection of information to private property towing, and to enhance the protections by clarifying that they apply to personal information.⁴⁴

2.1.9.2 Stakeholder views and department response

The QLS strongly agrees that unscrupulous behaviour should be prohibited, however it raised the following issues in relation to proposed new sections 20 and 21 of the Regulation, which seek to prevent unscrupulous behaviour:

- creation of new offences that may be covered by other statutes, for example the Criminal Code
- the use of the wording in the proposed new sections 20 and 21, for example the word "insult" is vague, and
- the severity of the penalty for an offence under the sections.⁴⁵

The QLS suggested that once 'the appropriate balance is struck' the prohibitions should not be limited to private property as 'this behaviour occurs throughout the sector'.⁴⁶

The department responded by advising that the TT Regulation currently prohibits tow truck licence holders, drivers and assistants operating at a crash scene from intimidating, harassing, abusing, insulting or causing or threatening wilful injury to a person, or from causing or threatening wilful damage to property (section 20); and they are also prohibited from prejudicing the delivery of first aid or medical treatment or obtaining or attempt to obtain the signature of an owner of a vehicle involved in the crash if the owner appears unable to make an informed decision:

⁴² Public briefing transcript, 6 September 2017, pp 3-4.

⁴³ Correspondence dated 15 September 2017, p 6.

⁴⁴ Explanatory notes, p 15.

⁴⁵ Submission 5, pp 2-3.

⁴⁶ Submission 5, p 3.

The proposed amendment to create the new section 20 and 21 is the necessary extension of existing section to apply the relevant provisions to private property towing as well as crash towing, while limiting relevant elements such as prejudicing the delivery of first aid to crash scenes. The wording and prohibited behaviours in the new sections are consistent with the existing provision. The prohibited behaviours are also broadly consistent with behaviours prohibited under the TT Act in relation to authorised officers; it is an offence to assault, resist, obstruct, or threaten an authorised officer or to use abusive or insulting language to an authorised officer (section 25 TT Act).

As the amendments would apply the prohibitions on behaviour to private property and crash scenes, DTMR does not consider an extension of the provisions to other situations necessary.⁴⁷

2.2 Tolling demand notices

Currently, under the TI Act the registered operator or driver of a vehicle is liable for payment of tolls, and when a toll is unpaid, the tollway operator issues a toll invoice to the registered operator of the vehicle. The toll invoice includes unpaid tolls incurred over a number of days, an image processing fee per unpaid toll, and a casual user invoice fee for issuing the invoice. If the toll invoice remains unpaid, the tollway operator will issue an individual demand notice for each unpaid toll with each notice attracting an administration charge of \$23.89.⁴⁸

The explanatory notes advised that the Government has been working with Transurban Queensland and Brisbane City Council⁴⁹ to improve the compliance and enforcement process for motorists with unpaid tolls and that Transurban Queensland has proposed to aggregate multiple unpaid tolls and related video-matching fees on a single demand notice, with only one administration charge.⁵⁰

At the departmental briefing, the committee asked DTMR a question related to an alleged loophole in the tolling legislation that may have allowed persons to not pay tolls.⁵¹ The department provided the following advice:

As expressed in the response to the question on notice, DTMR is confident there is no loophole in the TI Act that allows a person not to pay tolls. The TI Act is structured such that a toll is payable for passing a toll point. Under the TI Act, failure to pay a toll may lead to the issuance of a demand notice. Failure to comply with the requirements of the demand notice is an offence. A person is not guilty of this offence if they have a reasonable excuse for failing to comply with the demand notice.

In relation to recent media on tolling, DTMR is confident the collection of tolls on toll roads under the TI Act is lawful and does not offend the Constitution. Further, DTMR can confirm that no charges have ever been discontinued because of any concern about the legality of collecting the toll or the Australian Constitution. The State and local governments maintain free alternative routes for motorists who prefer not to pay to travel the tolled route.⁵²

⁴⁷ Correspondence dated 15 September 2017, p 11.

⁴⁸ Explanatory notes, p 3; Public briefing transcript, 6 September 2017, pp 4-5.

⁴⁹ All toll roads in Queensland are operated by Transurban Queensland. The Gateway and Logan Motorways and AirportlinkM7 are operated under franchise agreements with the State Government. The CLEM7, Go Between Bridge and Legacy Way are operated under individual franchise agreements with Brisbane City Council ([DTMR - Toll Roads](#) - <accessed 4 September 2017>)

⁵⁰ Explanatory notes, p 3.

⁵¹ Public briefing transcript, 6 September 2017, p 4.

⁵² Correspondence dated 15 September 2017, p 6.

2.2.1 Amendments proposed in the bill

Part 7 of the TI Act (sections 93 to 103) establish the requirements for toll roads and toll payments, including failure to pay a toll. Part 4 of the bill proposes to amend the Act to provide flexibility for toll road operators to issue a single demand notice for multiple unpaid tolls and associated image processing fees, with one administration charge applied to the notice.⁵³

The explanatory notes advised that the following amendments to the TI Act are proposed:

Clause 28 proposes to amend section 93 to clarify:

- an image processing fee is a user administration charge
- a reference to a video matching fee includes an image processing fee, and
- the application of the administration charge.

Clause 29 proposes to amend section 97 to alter the definition of 'deferred toll amount' to include the unpaid toll and image processing fee for the toll. It is proposed that the term 'administration charge' be removed from the definition to facilitate aggregation of deferred toll amounts on a single demand notice.

Clause 30 proposes to amend section 98 to establish that a toll road user who does not make an arrangement to pay in accordance with division 3 is liable for the unpaid toll and image processing fee for each unpaid toll and an administration charge.

Clause 31 proposes to replace section 99 so that it provides that a demand notice may be issued for multiple deferred toll amounts but a notice may only include one administration charge and inserts proposed new section 99AA to allow the toll road operator to combine deferred toll amounts for toll roads and local government tollways on to one aggregated demand notice, with only one administration charge.⁵⁴

The department advised at the public briefing that the amendments propose to simplify the current arrangement in relation to the accumulation of tolls and the associated administrative costs by combining unpaid tolls onto a single demand notice, with one administration charge:

Aggregating unpaid tolls incurred over a number of days onto a single demand notice will provide toll road users with a clearer record of outstanding debt and a simpler approach to paying outstanding tolls. Transurban Queensland estimates demand notice aggregation will result in up to 1.7 million fewer demand notices each year being issued and a reduction of up to \$36.5 million per year in fees being passed on to motorists.⁵⁵

2.2.2 Stakeholders views and department response

In its submission, Transurban Queensland stated its support for the proposed amendments to the TI Act and advised:

- users of toll roads in Queensland currently have three days to pay for their travel using either an account or pass product
- if a customer fails to pay, the toll road operator will issue a toll invoice
- a single toll invoice is issued to cover multiple trips over a number of days
- should the customer fail to pay the toll invoice by the due date then, under the current legislation, the toll road operator will issue a separate demand notice for each trip listed on the unpaid toll invoice and each of these demand notices has a separate fee, and

⁵³ Explanatory notes, p 3.

⁵⁴ Explanatory notes, pp 11-12.

⁵⁵ Public briefing transcript, 6 September 2017, p 2.

- 95 per cent of customers pay within three days of travel and a further 2 per cent pay on receipt of a toll invoice leaving 3 per cent of motorists who also receive demand notices.⁵⁶

Transurban Queensland submitted:

The proposed legislative change will benefit that remaining 3% of customers by enabling the toll road operator to include multiple trips on a single demand notice, which will include a single fee. As an example, for a customer who has three trips on an unpaid toll invoice and currently receives three separate demand notices, this legislative change will save them \$46.82 by issuing all three trips on a single demand notice.

Furthermore, these customers will benefit from a much simpler process by reducing the number of documents received by two thirds in the example above. There will be a one-to-one relationship between toll invoice and demand notice with the same trips being listed on both, making it easier for customers to understand their payment obligations.

*The proposed amendments also include relevant changes for the treatment of Image Processing Fees and statutory declarations to support the aggregation.*⁵⁷

Toll Redress provided correspondence to the committee which included recommendations to:

- make it a requirement by law that toll road operators must charge only one administration fee per month to toll road users who fail to pay for their toll road use
- make it a requirement by law that toll road operators must send demand notices by registered mail to ensure the customers receives it
- make it a requirement by law that toll road operators must send an unpaid toll invoice before sending a demand notice, and
- make it a requirement by law that toll road operators must charge only one image processing fee per unpaid toll invoice or demand notice.⁵⁸

QLS raised a concern about the penalty provisions included in the bill in relation to the TI Act.⁵⁹ The department responded that while the bill proposes replacing clauses 99, 101, 105ZH and 105ZK, the provisions within these clauses relating to penalties are unchanged from the existing legislation and DTMR is not seeking to introduce any new penalty provisions or change existing penalty provisions.⁶⁰

While RACQ advised it supported the proposed changes to the TI Act, it raised a general concern around the Tolling Customer Ombudsman's (TCO) record of *go via's* performance in comparison to tolling systems in Sydney and Victoria.⁶¹ The department advised that it had consulted the TCO about the proposed amendments prior to the departmental briefing:

*The TCO noted that accumulation of tolling related debt is a cause of complaints to his office and indicated support for the policy intent of the legislative amendments due to the anticipated benefits to toll road users.*⁶²

⁵⁶ Submission 3, pp 1-2.

⁵⁷ Submission 3, p 2.

⁵⁸ Correspondence dated 25 September 2017, pp 2-3.

⁵⁹ Submission 5, p 3.

⁶⁰ Correspondence dated 15 September 2017, p 13.

⁶¹ Submission 2, p 2.

⁶² Correspondence dated 15 September 2017, p 9.

2.2.3 Committee consideration

Committee comment

The committee noted Transurban Queensland's advice that customers will benefit from a much simpler process by reducing the number of documents received by two thirds and there will be a one-to-one relationship between toll invoice and demand notice with the same trips being listed on both, making it easier for customers to understand their payment obligations.

The committee also noted the advice from the department that it has been working with Transurban Queensland and Brisbane City Council to improve the compliance and enforcement process for motorists with unpaid tolls and that Transurban Queensland has proposed to aggregate multiple unpaid tolls and related video-matching fees on a single demand notice, with only one administration charge.

The committee considered the concern raised by Toll Redress that the proposed amendments allow, but do not require, a toll road operator to issue a single demand notice for multiple unpaid tolls with a single administration fee.

Clause 31 of the bill proposes to insert a new section 99(2) of the TI Act which provides:

The notice may be given for 1 or more deferred toll amounts but may only include 1 administration charge.

The committee understands that the proposed amendment will allow a toll road operator to issue an aggregated demand notice, and that Transurban Queensland has indicated it intends to do this. However, the use of the word 'may' in the provision appears to still leave it open for toll road operators to issue a separate demand notice for each unpaid toll rather than aggregating them over a number of days.

Recommendation 2

The committee recommends that the Minister consider amending Clause 31 of the Tow Truck and Other Legislation Amendment Bill 2017 to require toll road operators to issue one aggregated demand notice, with only one administration fee, for multiple deferred toll amounts accumulated over a number of days.

2.3 Youth driving offences (including existing State Penalties Enforcement Registry matters)

The commencement of the *Youth Justice and Other Legislation (Inclusion of 17-year-olds) Amendment Act 2016* on 12 November 2017 will raise the age of an adult within the criminal justice system to 18 years. This means 17 year old children would be excluded from mandatory disqualifications for serious offences and from the State Penalties Enforcement Registry (SPER) regime to recover unpaid fines and the demerit point system if they do not pay the fine for a demerit point offence.^{63, 64}

2.3.1 Amendment proposed in the bill

To ensure that 17-year-olds who are eligible for a P1 provisional licence continue to be held accountable for their driving behaviour, the bill proposes to retain the current legislative position for 17-year-old drivers by amending the SPE Act and the YJ Act so that:

- *17-year-old drivers will remain subject to mandatory disqualifications, liable to the SPER regime for unpaid infringement notices for demerit point offences, and subject to the demerit point scheme*
- *SPER is able to continue to enforce existing debts for 17-year-olds registered with SPER.*⁶⁵

Clause 2 of the bill provides that the amendment of parts 3 (amendment of SPE Act) and 5 (amendment of YJ Act) will commence on the day the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2106*, section 6 commences.⁶⁶

2.3.2 Stakeholder views and department response

The QLS submitted that children should not be treated as adults before the law. While the QLS acknowledged that a 17 year old could hold a driver's licence and accordingly be capable of breaching conditions, being fined or disqualified, it cautioned 'against this redress being achieved using the same procedures as are applied to adults'.⁶⁷

The department responded by advising that P1 provisional licence holders are six times more likely to be killed driving than learners and twice as likely to be killed as other drivers:

*In the interests of road safety, the changes to the SPE Act and YJ Act seek to ensure that 17 year olds can continue to be held accountable for their behaviour on the road. The issuance of infringements is a core element of the road safety enforcement framework. They are also an efficient mechanism for enforcement, without reliance on the judicial system. If unpaid infringement notices cannot be enforced by SPER, the police will need to issue notices to appear to ensure effective enforcement, which threatens to further burden the children's court system. Essentially, the amendments seek to maintain the status quo in regard to driving offences.*⁶⁸

⁶³ Explanatory notes, p 2.

⁶⁴ The SPE Act does not apply to children, other than to allow a child to pay a fine should they choose to. An unpaid infringement notice issued to a child cannot be referred to the SPER, and fine collection notices and enforcement orders cannot be issued to enforce the payment of the fine. This restriction prohibiting the referral and enforcement of unpaid infringement notices also effects the allocation of demerit points against young drivers' traffic histories. Demerit points are only accumulated when a person is found guilty by a court, pays the fine, or SPER makes an enforcement order (Explanatory notes, p 2).

⁶⁵ DTMR, correspondence dated 15 September 2017, pp 4-5.

⁶⁶ Tow Truck and Other Legislation Amendment Bill 2017, p 6.

⁶⁷ Submission 5, p 3.

⁶⁸ Correspondence dated, 15 September 2017, pp 12-13.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the FLPs to the bill and brings the following to the attention of the House.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 Increased penalties

Clauses 5 and 20 propose to increase existing penalties in the TT Act. A review of all offences in the TT Act and the TT Regulation was a matter considered by the Independent Investigation into the Towing Industry Report which concluded that a review of penalties should be given further consideration.⁶⁹

Clause 5 proposes to amend section 5 of the TT Act and will increase the maximum penalty for undertaking towing activities without a licence from 40 penalty units to 160 penalty units.

Currently, section 43(2)(u) of the TT Act allows for penalties of no more than 20 penalty units for each offence in a regulation. This is consistent with the view held in the Office of the Queensland Parliamentary Counsel Notebook (OQPC Notebook) which states that the maximum penalty contained in subordinate legislation should generally be limited to 20 penalty units.⁷⁰ 1 penalty unit currently equates to \$126.15.

Clause 20 amends section 43(2)(u) of the TT Act to allow for an increase in the penalty unit amount prescribed by regulation from 20 penalty units to 80 penalty units.

Potential FLP issues

The increase provided by clause 5, and the capacity to increase the unit amount prescribed by regulation pursuant to clause 20, may have a detrimental effect on an operator’s business if they are found guilty of an offence. The amendment to section 43(2)(u) that will allow for a penalty to be increased from 20 to 80 penalty units is a significant increase, and inconsistent with the amount recommended in the OQPC Notebook. The increase in penalties raises the fundamental legislative principle pursuant to section 4(2)(a) of the LSA which provides that legislation should have sufficient regard to rights and liberties of individuals.

A penalty should be proportionate to the offence. The OQPC Notebook states, ‘Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other’.⁷¹ The consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. The OQPC Notebook states ‘the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy’.⁷²

⁶⁹ Independent Investigation into the Towing Industry Report, p VI.

⁷⁰ OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 150.

⁷¹ OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 120.

⁷² OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 120.

The explanatory notes acknowledged the potential FLP issue and provided the following justification:

The proposal to introduce new offences in relation to private property towing is designed to ensure vehicles and persons are appropriate for the task, the conduct of persons involved and administration around the towing is efficient, professional and sufficient to protect motorists' property and personal information.

The amendment to section 43(2)(u) to allow the maximum penalty in the TT Regulation to be 80 penalty units is proportionate to the other amendments to the new penalty regime. It is noted that this Bill does not impose 80 penalty unit penalties for any regulation offence, but the capacity to do so in the future is necessary to ensure government can respond appropriately and in a timely manner to protect consumers.

Ultimately, the proposed penalties are considered proportionate to the seriousness of the offences and are considered necessary to encourage compliance, maintain the integrity of the scheme and protect consumers.⁷³

Committee consideration

The committee noted the justification provided in that the new penalties are designed to ensure that persons within the towing industry conduct themselves appropriately and that a review of penalties was an issue that the Independent Investigation into the Towing Industry Report believed should be given further consideration.

The committee also noted the amendment to section 43(2)(u) provides the capacity to impose an up to 80 penalty unit penalty in relation to a future event, should the government deem it necessary to protect consumers from undesirable practices in the towing industry.

3.1.1.2 Clause 22 - definition of criminal history

Clause 22 proposes to amend the definition of criminal history at Schedule 2 of the TT Act. The chief executive may currently consider any charges for offences under the *Criminal Code*, the *Drugs Misuse Act 1986*, section 790 of the *Police Powers and Responsibilities Act 2000* and the *Weapons Act 1990*. The amendment will extend this to any charges under the *Summary Offences Act 2005* and the *Transport Operations (Road Use Management) Act 1995*. The Independent Investigation into the Towing Industry Report recommended reviewing criminal history checks to ensure the requirements meet its intended objectives.⁷⁴

The new definition is broadly consistent with the definition of criminal history that applies in the Transport Operations (Passenger Transport) Act 1994 and is applied when assessing applicants for passenger transport operator accreditation and driver authorisations. As mentioned above, towing services may occur in the context of people who are injured or distressed. The approach taken in the Bill is justified because it is important for the chief executive to be fully informed of matters that may impact on the appropriateness of a person providing services to protect consumers.⁷⁵

Potential FLP Issue

The extension of the definition of criminal history potentially breaches an individual's right to privacy pursuant to section 4(2)(a) of the LSA.

⁷³ Explanatory notes, p 5.

⁷⁴ Independent Investigation into the Towing Industry Report, p vi.

⁷⁵ Explanatory notes, p 6.

Committee consideration

The committee noted the justification provided in that the amended definition is largely consistent with other transport legislation and further, the broadening of the definition also seeks to address the issue raised by the Independent Investigation into the Towing Industry Report.

3.1.2 Onus of proof

Section 4(3)(d) of the LSA requires the bill not to reverse the onus of proof in criminal proceedings without adequate justification.

Section 37 - evidentiary certificates

Clause 17 proposes to insert new section 37 into the TT Act.

Sections 37(a)-(d) allow for the issuing of certificates for certain evidential matters allowing the courts to presume elements of an offence unless the defendant proves otherwise. This includes a certificate or document signed by the chief executive in relation to records that the chief executive must keep pursuant to section 21H of the TT Act. The presumption also applies to a certificate signed by the police commissioner stating the commissioner received, or did not receive, notice in the approved form about the towing of a private property motor vehicle.

Section 37(e) provides that an allegation in a complaint is evidence of the matter or matters alleged, and in the absence of evidence to the contrary is conclusive evidence. The allegations can include:

- that a person is or is not at a certain time or date the owner of a vehicle or the holder of a licence, certificate or permit relating to a tow truck;
- that anything is or was a vehicle of a particular class or description;
- that any place is or was a road or private property;
- that a person was an occupier of private property or another place.

Potential FLP issue

In allowing the use of evidentiary certificates, section 37(a)-(d) effectively reverses the onus of proof by placing the onus on the defendant to rebut the presumption. Section 37(e) also reverses the onus of proof by allowing allegations in a complaint to be evidence of a matter, in the absence of evidence to the contrary.

Clause 17 is a potential breach of section 4(3)(d) of the LSA which provides that legislation should not reverse the onus of proof in criminal matters without adequate justification. It should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence. For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and where the defendant would be particularly well positioned to disprove guilt.⁷⁶

The QLS expressed concern with respect to the reversal of the onus of proof in relation to an allegation made under section 37(e):

The purpose of the reverse onus seems to be to make it easier for the public to make complaints against licence holders. Most elements seem procedural and place the onus on licence holders to ensure they keep sufficient records of these elements when towing a vehicle in order to refute an allegation should the need arise. However, it does open the possibility that spurious or baseless allegations against licence holders may be more expensive to defend, and thereby requiring licence holders to spend time and money to refute these allegations.⁷⁷

⁷⁶ OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 36.

⁷⁷ Submission 5, p 2.

The explanatory notes acknowledged the potential FLP in relation to evidentiary certificates and provide the following justification:

Allowing certificates to be issued for particular matters contained in departmental records is a common approach to ensuring efficient court processes as it removes the need to require witnesses to attend on matters of departmental record that are unlikely to be contested.

The presumptions of particular matters including that property was “private property” and a person was an “occupier” are also necessary to ensure efficient court process. Underpinning the private property towing amendments is recognition of the right of an occupier to remove a vehicle from their private property and this is reflected in the terminology in the Bill. However, these elements are matters the occupier or their agent (the tow truck operator) are in a better position to provide evidence of. As a result, consistent with the reasoning in previous parliamentary committees, the approach in the Bill is justified because the defendant is in the best position to establish these matters.⁷⁸

Committee consideration

The committee noted that provisions that provide for the use of evidentiary certificates in legislation are reasonably common and these evidentiary aids enable an administering authority to put evidence before courts about a range of non-contentious matters without the need to call witnesses. For example, section 21H of the Act requires the chief executive to retain certain records and these records will be subject to an evidentiary certificate. As contended in the explanatory notes, the defendant may be in the best position to confirm the matters the subject of the certificate.

In relation to section 37(e), the committee noted the concerns raised by the QLS in that there is a possibility that reversing the onus of proof in relation to an allegation contained in a complaint will lead to greater unsubstantiated and vexatious claims. However, the committee also noted that a person who was the subject of these claims would still be able to submit evidence to the contrary in order to refute an allegation.

3.1.3 Power to enter premises

Section 4(3)(e) of the LSA requires the bill to confer power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

Clause 14 – entry to places

Clause 14 proposes to insert a new part 4A (Powers of authorised officers relating to prescribed motor vehicles) into the TT Act.

New section 21I(1), Entry to places, provides that an authorised officer may enter a place if:

- (a) its occupier consents to the entry; or
- (b) it is a place of business stated on a licence, or is a holding yard owned or leased by the holder of the licence, and the entry is made when the place is:
 - (i) open for the conduct of business or otherwise open for entry; or
 - (ii) required under the licence to be open for inspection; or
- (c) the officer reasonably suspects a prescribed motor vehicle has been towed to the place.

Pursuant to section 21I(2)(a)-(c), an authorised officer may, without the occupier’s consent, enter a public place when the place is open to the public; or enter the land around premises to ask the occupier for consent to enter the premises.

⁷⁸ Explanatory notes, p 7.

Section 21(4) provides that an occupier of a place includes a person who reasonably appears to be the occupier, or in charge, of the place.

Section 21J(a)-(c) provides that an authorised officer may search any part of a place (an entered place) the officer has entered under section 21I; inspect, copy, or take an extract from, a document at an entered place and require a person to produce for inspection a document required to be kept by the person under the Act.

Potential FLP issue

New section 21(1)(c) would allow an authorised officer the discretion to enter a place if the officer 'reasonably suspects' a prescribed motor vehicle has been towed to the place. Further, pursuant to section 21(2), an authorised officer may enter a public place when the place is open to the public or enter the land around premises to ask its occupier for consent to enter the premises, without the occupier's consent. Upon entering a premises, section 21J provides an authorised officer with the wide power to seize and copy documents.

In providing a discretionary power to an authorised officer to enter premises without a warrant and to seize and copy documents, section 21 potentially breaches section 4(3)(e) of the LSA which provides that legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

The OQPC handbook provides that this principle supports a long established rule of common law that protects the property of citizens. Power to enter premises should generally be permitted only with the occupier's consent or under a warrant issued by a judge or magistrate. Strict adherence to the principle may not be required if the premises are business premises operating under a licence or premises of a public authority. The OQPC Notebook states, '*FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals*'.⁷⁹

The explanatory notes acknowledge the potential FLP breach and provide the following justification:

*The powers outlined in the Bill are necessary to ensure investigation of offences can be conducted efficiently without the need for a warrant. The powers are limited to either entry by consent, or entry to the business premises or holding yard of tow truck licence holders, and entry to premises where the officer reasonably believes a prescribed motor vehicle is located. Authorised officers under the Tow Truck Act 1973 are also authorised officers under the Transport Operations (Road Use Management) Act 1995 and the proposed powers are consistent with the powers officers have under that Act.*⁸⁰

As identified by the explanatory notes, section 26 of the *Transport Operations (Road Use Management) Act 1995* provides similar powers to authorised officers to enter places.

Committee consideration

The committee noted the powers provided to an authorised person pursuant to section 21 to enter a place and seize and/or copy documents and that the explanatory notes advised that these entry powers are limited to either entry with the consent of the occupier of the premises or entry to the business premises or holding yard of tow truck licence holders.

Section 21(1)(c) allows an authorised person the discretion to enter a property if the person reasonably suspects a prescribed motor vehicle has been towed to the place. It is presumed that an authorised person would have the necessary experience to determine whether a motor vehicle is at the property in question. In this regard the committee noted that the new section is consistent with

⁷⁹ OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 45.

⁸⁰ Explanatory notes, p 6.

the *Transport Operations (Road Use Management) Act 1995*, and that authorised officers under this Act are also authorised officers under the TT Act.

3.1.4 Delegation of legislative power

Section 4(4)(a) LSA requires the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons.

Clause 17

Clause 17 proposes to insert new section 37A(2)(b) providing that the provisions relating to the towing of private property motor vehicles do not apply to a person involved in towing a private property motor vehicle in circumstances prescribed by regulation.

Potential FLP issue

In deferring a matter to a regulation, clause 17 potentially breaches section 4(4)(a) of the LSA which provides that a bill should allow the delegation of legislative power only in appropriate cases. As noted in the OQPC Notebook, this matter is concerned with the level at which delegated legislative power is used. Further, section 4(5)(c) of the LSA provides that subordinate legislation should contain only matters appropriate to that level of legislation.

The explanatory notes provided the following justification for allowing the use of a regulation:

The proposed provisions are necessary to ensure the legislative scheme is implemented in a flexible and practical way to avoid imposing a burden on those who were not intended to be captured by the scheme. If a regulation were to be made under the proposed section, through the usual regulation making processes, it would still be subject to scrutiny and possible disallowance by Parliament.⁸¹

Committee consideration

The committee noted that this is an FLP issue it routinely considers and as noted in the justification provided in the explanatory notes, the regulation will come before the committee for its consideration and will be subject to possible disallowance by the Legislative Assembly.

⁸¹ Explanatory notes, p 6.

3.2 Proposed offence provisions

Clause	Offence	Proposed maximum penalty
5	Amendment of section 5 (Requirement as to licence for tow truck) (2) Section 5— <i>insert—</i> Maximum penalty—160 penalty units.	160 penalty units
11	Amendment of section 13 (Required certificates etc.) (3) Section 13(b)— <i>omit, insert—</i> (b) be employed on or in connection with the use of a tow truck at or near a towing location unless the person is the holder of— (i) a driver's certificate; or (ii) an assistant's certificate; or (iii) a permit under section 19.	60 penalty units
11	(4) Section 13— <i>insert—</i> (2) Also, a person must not, in a regulated area, travel in a tow truck to or from a towing location unless the person— (a) is the holder of— (i) a driver's certificate; or (ii) an assistant's certificate; or (iii) a permit under section 19; or (b) is the owner of a motor vehicle at the towing location, or the owner's agent; or (c) was the driver of, or a passenger in, a vehicle at the towing location.	40 penalty units
15	Insertion of new section 27A Obtaining, or attempting to obtain, towing consent A person must not obtain, or attempt to obtain, a towing consent unless the person is the holder of a licence.	50 penalty units
15	Insertion of new section 27B Storing private property motor vehicle at unlicensed place (1) An occupier of an unlicensed place must not store at the place a private property motor vehicle that has been towed by a tow truck to the place. (2) This section does not apply in relation to a private property motor vehicle that is owned by the occupier.	60 penalty units
16	Replacement of section 35 (Production of document evidencing licence, certificate or permit to authorised officer) (1) The holder of a licence, driver's certificate, assistant's certificate or permit must, if asked by an authorised officer, produce to the officer the document evidencing the licence, certificate or permit.	40 penalty units
16	(2) If a tow truck is, or has been used, to tow a private property motor vehicle from private property, the holder of the licence for the tow truck must, if asked by an authorised officer, produce to the officer a copy of a towing consent held by the holder.	40 penalty units

16	<p>(3) The driver of a tow truck that is being, or has been, used to tow a private property motor vehicle must, if asked by an authorised officer, produce to the officer a copy of a towing consent being carried in the tow truck.</p> <p>(4) In this section— copy, of a towing consent, includes the original towing consent.</p>	40 penalty units
17	<p>Amendment of section 40 Offences generally and penalty</p> <p>(2) If the holder of a licence contravenes a condition of the licence mentioned in section 12(2)(a) to (d), the holder commits an offence against this Act.</p>	50 penalty units
17	<p>(2A) If a person contravenes a condition of the licence mentioned in section 12(2)(e) to (t), the person and, if the person is not the holder of the licence, the holder, commits an offence against this Act.</p>	50 penalty units
31	<p>Replacement of section 99 Notice to vehicle's registered operator</p> <p>(1) The toll road operator may give the registered operator of the vehicle a written notice in the approved form under this section if the toll road operator has not received the deferred toll amount.</p> <p>(2) The notice may be given for 1 or more deferred toll amounts but may only include 1 administration charge.</p> <p>(3) The notice must require the registered operator to do either of the following, within the prescribed time, for each deferred toll amount listed in the notice—</p> <ul style="list-style-type: none"> (a) pay the deferred toll amount to the toll road operator; (b) give the toll road operator the registered operator's statutory declaration in the approved form containing information that— <ul style="list-style-type: none"> (i) if the registered operator is an individual—establishes, to the extent it is reasonably practicable for the registered operator to do so, that the registered operator was not the driver when liability for the toll included in the deferred toll amount was incurred; and (ii) gives the toll road operator all the help the registered operator can reasonably give for establishing the driver's name and address when liability for the toll included in the deferred toll amount was incurred. <p>(4) The notice may also require the registered operator to pay an administration charge stated in the notice if there are any deferred toll amounts listed in the notice for which the registered operator does not give a statutory declaration under subsection (3)(b).</p> <p>(5) The registered operator must comply with the notice unless the registered operator has a reasonable excuse.</p>	15 penalty units
39	<p>Replacement of section 105ZH Notice to vehicle's registered operator</p> <p>(1) The local government tollway operator may give the registered operator of the vehicle a written notice in the approved form</p>	15 penalty units

	<p>under this section if the local government tollway operator has not received the deferred toll amount.</p> <p>(2) The notice may be given for 1 or more deferred toll amounts but may only include 1 administration charge.</p> <p>(3) The notice must require the registered operator to do either of the following, within the prescribed time, for each deferred toll amount listed in the notice—</p> <p>(a) pay the deferred toll amount to the local government tollway operator;</p> <p>(b) give the local government tollway operator the registered operator's statutory declaration in the approved form containing information that—</p> <p>(i) if the registered operator is an individual—establishes, to the extent it is reasonably practicable for the registered operator to do so, that the registered operator was not the driver when liability for the toll included in the deferred toll amount was incurred; and</p> <p>(ii) gives the local government tollway operator all the help the registered operator can reasonably give for establishing the driver's name and address when liability for the toll included in the deferred toll amount was incurred.</p> <p>(4) The notice may also require the registered operator to pay an administration charge stated in the notice if there are any deferred toll amounts listed in the notice for which the registered operator does not give a statutory declaration under subsection (3)(b).</p> <p>(5) The registered operator must comply with the notice unless the registered operator has a reasonable excuse.</p>	
41	<p>Replacement of section 105ZK Notice to person identified as driver</p> <p>(1) The local government tollway operator may give a notice in the approved form to a person under this section if the local government tollway operator—</p> <p>(a) has not received the deferred toll amount; and</p> <p>(b) considers, on reasonable grounds, it has correctly identified the person as the driver.</p> <p>(2) The notice may be given for 1 or more deferred toll amounts but may only include 1 administration charge.</p> <p>(3) The notice must require the person to do either of the following, within the prescribed time, for each deferred toll amount listed in the notice—</p> <p>(a) pay the deferred toll amount to the local government tollway operator;</p> <p>(b) give the local government tollway operator the person's statutory declaration in the approved form containing information that—</p> <p>(i) establishes, to the extent it is reasonably practicable for the person to do so, that the person was not the driver when liability for the toll included in the deferred toll amount was incurred; and</p> <p>(ii) gives the local government tollway operator all the help the person can reasonably give for establishing</p>	15 penalty units

	<p>the driver's name and address when liability for the toll included in the deferred toll amount was incurred.</p> <p>(4) The notice may also require the person to pay an administration charge stated in the notice if there are any deferred toll amounts listed in the notice for which the person does not give a statutory declaration under subsection (3)(b).</p> <p>(5) The person must comply with the notice unless the person has a reasonable excuse.</p>	
53	<p>Amendment of Tow Truck Regulation 2009</p> <p>Insertion of new section 17A Copy of towing consent must be carried</p> <p>A person who is driving a tow truck must carry a copy of a valid towing consent while conducting an activity to which the consent relates.</p>	30 penalty units
53	<p>Insertion of new section 17B Police commissioner must be notified about towing of private property motor vehicle</p> <p>(1) This section applies if a tow truck is used to tow a private property motor vehicle from private property.</p> <p>(2) The holder of the licence for the tow truck must give the police commissioner a notice, as required by subsection (3), about the tow.</p> <p>(3) The notice must be—</p> <ol style="list-style-type: none"> in the approved form; and given to the police commissioner— <ol style="list-style-type: none"> as soon as reasonably practicable after the tow; and but no later than 1 hour after the private property motor vehicle is stored in a holding yard. 	30 penalty units
53	<p>Insertion of new section 17C Copy of towing consent must be given</p> <p>(1) This section applies if—</p> <ol style="list-style-type: none"> a private property motor vehicle is— <ol style="list-style-type: none"> towed from private property by a tow truck; or released by the driver of a tow truck to its owner under section 29B; and the owner of the vehicle asks either of the following persons for a copy of the towing consent relating to the towing or release— <ol style="list-style-type: none"> the driver of the tow truck; or the holder of the licence for the tow truck. <p>(2) The holder of the licence must, as soon as reasonably practicable, but in any event within 2 business days after the owner of the private property motor vehicle makes the request, give the owner a copy of the towing consent.</p>	30 penalty units
54	<p>Replacement of section 20 Wilful injury etc. at scene of incident or on private property</p> <p>(1) This section applies to the holder of an approval acting under the authority of the approval—</p> <ol style="list-style-type: none"> at the scene of an incident; or on private property to tow a private property motor vehicle from the property. <p>(2) The holder of the approval must not, either directly or indirectly—</p> <ol style="list-style-type: none"> cause or threaten wilful injury to a person at the scene or on the private property; or 	50 penalty units

	<p>(b) cause or threaten wilful damage to a person's property at the scene or on the private property; or</p> <p>(c) intimidate or harass a person at the scene or on the private property; or</p> <p>(d) abuse or insult a person at the scene or on the private property.</p>	
54	<p>Replacement of section 21 Conduct at scene of incident</p> <p>The holder of an approval must not, when acting under the authority of the approval at the scene of an incident, either directly or indirectly—</p> <p>(a) prevent or hinder the delivery of first aid or medical treatment to a person at the scene; or</p> <p>(b) obtain, or attempt to obtain, the signature of an owner of a motor vehicle involved in the incident, or the owner's agent, on a towing authority, if the owner or agent appears unable to make an informed decision about whether or not to sign the towing authority.</p> <p><i>Examples of an owner or agent who appears unable to make an informed decision under paragraph (b)—</i></p> <ul style="list-style-type: none"> • an owner or agent who has been injured in the incident • an owner or agent who is distressed as a result of another person being killed or injured in the incident 	50 penalty units
54	<p>Insertion of section 21A No disclosure of information</p> <p>(1) This section applies to a relevant person, in the course of carrying out the person's business or occupation, obtains—</p> <p>(a) information about any of the following (each a vehicle event)—</p> <ol style="list-style-type: none"> an incident or the seizure of a motor vehicle; the towing of a private property motor vehicle from private property; the release of a private property motor vehicle under section 29B; or <p>(b) personal information about the owner or driver of a motor vehicle or a private property motor vehicle, or another person, involved in connection with a vehicle event.</p> <p>(2) The relevant person must not disclose the information to another person other than—</p> <ol style="list-style-type: none"> the owner of the motor vehicle or private property motor vehicle involved in the vehicle event, or the owner's agent; or another relevant person carrying out that person's business or occupation in connection with the vehicle; or an authorised officer. <p>(3) In this section—</p> <p>personal information, about a person, means information about the person from which the person's identity is apparent or can reasonably be ascertained.</p> <p>relevant person means—</p> <ol style="list-style-type: none"> the holder of a licence, certificate or permit; or another person employed, engaged or acting in connection with the towing, storage or release of a prescribed motor vehicle. <p><i>Examples—</i></p>	50 penalty units

	<ul style="list-style-type: none"> • an employee of the holder of a licence who carries out administrative duties for the holder • a security guard employed or engaged at a holding yard used to store prescribed motor vehicles 	
55	<p>Replacement of section 25 Records to be kept</p> <p>(1) This section applies if, under a licence or towing permit—</p> <ol style="list-style-type: none"> a motor vehicle is towed from the scene of an incident or is seized; or a private property motor vehicle is towed from private property; or a private property motor vehicle is released under section 29B. <p>(2) The holder of the licence or towing permit must—</p> <ol style="list-style-type: none"> record the prescribed particulars for the motor vehicle or private property motor vehicle within 24 hours after the particulars are supplied to, or become known to, the holder; and keep the record at the place of business stated in the licence or permit. <p>(3) In this section—</p> <p>prescribed particulars means—</p> <ol style="list-style-type: none"> for a damaged or seized motor vehicle towed from the scene of an incident or that is seized— <ol style="list-style-type: none"> the name and address of the person who gave the holder of the licence or towing permit information about the incident or seizure; and the place, date and approximate time of the incident or seizure; and the make, and registration or other identification number, of the vehicles in the incident or seizure; and the registration or other identification number of each tow truck attending the incident or seizure; or for a private property motor vehicle towed from private property— <ol style="list-style-type: none"> the name and address of the occupier of the property; and the make, and registration or other identification number, of the vehicle; and the registration or other identification number of each tow truck attending the property; and how the holder of the licence or towing permit under which the vehicle was towed became aware of the vehicle's presence on the property; and if a person told the holder about the vehicle's presence on the property—the name and address of the person; and the date and approximate time the vehicle was towed from the property; and the date and time the vehicle arrived at a holding yard; or for a private property motor vehicle released under section 29B— 	20 penalty units

	<ul style="list-style-type: none"> (i) each prescribed particular mentioned in paragraph (b)(i) to (v); and (ii) the date and approximate time the vehicle was released. 	
56	<p>Amendment of section 26 Custody of records</p> <p><i>insert—</i></p> <p>(2) The holder of a licence who obtains a towing consent must keep the consent—</p> <ul style="list-style-type: none"> (a) in safe custody at the place of business stated in the licence; and (b) for 1 year after the consent stops being in force. 	20 penalty units
57	<p>Insertion of new section 29A Dealing with private property motor vehicles</p> <p>(1) The driver of a tow truck may tow a private property motor vehicle that is on private property from the property only if—</p> <ul style="list-style-type: none"> (a) the driver can not, after taking reasonable steps, find the owner of the vehicle; or (b) if the driver finds the owner of the vehicle— <ul style="list-style-type: none"> (i) the owner refuses to move the vehicle; or (ii) the driver reasonably believes the owner can not, or will not, move the vehicle from the property within a reasonable time. 	50 penalty units
57	<p>(2) Subsection (3) applies if—</p> <ul style="list-style-type: none"> (a) the driver of a tow truck has started but not finished doing either of the following in preparation for the towing of a private property motor vehicle from private property— <ul style="list-style-type: none"> (i) lifting the vehicle with, and securing the vehicle to, the tow truck; (ii) otherwise moving the vehicle onto, and securing the vehicle to, the tow truck; and (b) the owner of the vehicle agrees to move the vehicle from the private property within a reasonable time. <p>(3) The driver must immediately release the private property motor vehicle to the owner without charge.</p> <p>(4) In this section—</p> <p>tow includes attach to a tow truck.</p> <p>tow truck includes a lifting or loading device with which a tow truck is equipped.</p>	50 penalty units
57	<p>Insertion of new section 29B On-site release of private property motor vehicle</p> <p>(1) This section applies if—</p> <ul style="list-style-type: none"> (a) a private property motor vehicle on private property— <ul style="list-style-type: none"> (i) has been loaded onto a tow truck by the driver of a tow truck; and (ii) has not been moved from the property; and (b) the owner of the vehicle is present. <p>(2) The driver of the tow truck must tell the owner, before moving the private property motor vehicle from the property, that if the owner pays the on-site release charge imposed by the holder of the licence that relates to the tow truck, the vehicle will be immediately released.</p>	30 penalty units

57	(3) If the owner of the private property motor vehicle pays the driver the on-site release charge before the vehicle is moved from the property, the driver must immediately release the vehicle to the owner.	50 penalty units
57	(4) The on-site release charge must not be more than the amount stated in schedule 3, part 2.	50 penalty units
58	Amendment of section 30 Most direct route to be used <i>insert—</i> (2) The driver of a tow truck who tows a private property motor vehicle from private property must, as soon as practicable, tow the vehicle by the most direct route to the nearest holding yard owned or leased by the holder of the licence for the tow truck.	20 penalty units
59	Replacement of section 32 Particular charges prohibited The holder of an approval must not, in addition to a charge imposed under another provision of this regulation, impose a charge for any of the following in relation to the towing, release or storage of a prescribed vehicle— (a) responding to a request to tow the vehicle or attend a place at which the vehicle is located; (b) travelling to the place at which the vehicle is located; (c) taking steps to find the owner of the vehicle; (d) using a lifting or loading device with which a tow truck is equipped; (e) using fuel; (f) administrative work; (g) taking or producing photographs; (h) preparing or sending documents or information; <i>Example of a document—</i> inventory of personal property (i) storing personal property; (j) if the vehicle is being stored in a holding yard— (i) allowing the owner of the vehicle, or the owner's agent, to view, have access to or take personal property from, the vehicle during business hours; or (ii) moving the vehicle within the yard.	50 penalty units
59	Replacement of section 33 Towing charges (1) The holder of an approval must not charge more than the amount stated in schedule 3, part 1, item 1 for a standard tow of a damaged motor vehicle from the scene of an incident.	50 penalty units
59	(2) The holder of an approval must not charge more than the amount stated in schedule 3, part 1, item 2 for a standard tow of a private property motor vehicle from private property.	50 penalty units
59	(3) The holder of an approval must not charge more than is reasonable in all the circumstances for towing— (a) a damaged motor vehicle from the scene of an incident, other than by a standard tow; or (b) a seized motor vehicle from the scene of a seizure; or (c) a private property motor vehicle from a private property, other than by a standard tow.	50 penalty units

59	Replacement of section 34 Storage charges The holder of an approval must not impose a charge for storing a motor vehicle in a holding yard unless— (a) for a damaged or seized motor vehicle—the holder gives the owner, or the owner’s agent, a written notice stating— (i) that the charge is to be imposed no sooner than 2 days after the notice is given; and (ii) the amount of the charge; or (b) for a private property motor vehicle—the amount of the charge is not more than the amount stated in schedule 3, part 3.	50 penalty units
59	Insertion of section 34A Notice of charge for viewing outside business hours A person must not charge the owner of a motor vehicle being stored in a holding yard, or the owner’s agent, to view the motor vehicle outside business hours unless, before the owner or agent views the vehicle, the person gives the owner or agent a written notice about the amount to be charged.	50 penalty units
62	Replacement of section 37 Found property must be kept in safe custody (1) This section applies in relation to found property for a prescribed motor vehicle that has been towed. (2) The holder of the licence or towing permit under which the prescribed motor vehicle was towed must keep the found property in safe custody until the property is returned to its owner or the owner’s agent.	20 penalty units

3.3 Explanatory notes

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Committee consideration

The committee noted that explanatory notes were tabled with the introduction of the bill and that the notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the bill’s aims and origins.

Appendix A – List of witnesses at public departmental briefing

Department of Transport and Main Roads

- Mr Mike Stapleton, Deputy Director-General, Customer Services, Safety and Regulation
- Mr John Wroblewski, General Manager, Transport Regulation
- Ms Sally Noonan, Deputy Director-General, Policy, Planning and Investment Division

Appendix B

Appendix B – List of submissions

Sub #	Submitter
001	Queensland Trucking Association
002	RACQ Operations Pty Ltd
003	Transurban Limited
004	Shopping Centre Council of Australia
005	Queensland Law Society

Appendix B



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3 October 2017

Tow Truck and Other Legislation Amendment Bill 2017 Statement of Reservation

The Liberal National Party non-government members of the Public Works and Utilities Committee wish to raise a number of reservations about the Tow Truck and Other Legislation Amendment Bill 2017.

It is disappointing that the government decided not to consider the *Tow Truck (Towing from Private Property) Amendment Bill 2017*, a private members' bill introduced by the Member for Glass House on 8 August 2017, at the same time as the government's bill during the committee's inquiry. The bills seek to achieve similar outcomes through different policies and legislative changes. The LNP non-government members consider the decision for the house not to consider both bills in a cognate debate to be a matter of petty politics rather than in the interests of public policy.

It is clear that after months of doing nothing other than instigating a review, the Palaszczuk Labor Government has tried to save face by silencing discussion on the opposition's proposal, a bill introduced two weeks before the government bill.

The Palaszczuk Labor Government's bill also does not act on a number of significant concerns raised by the community, namely car park signage and maximum towing distances.

The government's proposal does not seek to limit the distance a car can be towed from private property, meaning a car towed from a Fortitude Valley car park could end up in Logan or North Lakes.

Getting things done...



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While the government has introduced provisions for vehicles to be taken by the most direct route to the nearest holding yard, this will still disadvantage motorists who have been towed by companies based many dozens of kilometres away.

The government also has refused to act on signage standards to set a minimum threshold to ensure the person in control of a car park and the tow truck licence holder are accountable to these standards.

This is a significant problem which the community has been calling for action on while the Palaszczuk Labor Government response has been lacklustre and half-hearted. By listening, planning and acting, Queenslanders know that a Tim Nicholls-led Liberal National Government will build a better Queensland.



Rob Molhoek MP

Deputy Chair – Public Works & Utilities Committee
Member for Southport

Appendix B