

# Impact Analysis Statement

A Summary Impact Analysis Statement (IAS) must be completed for all regulatory proposals. A Full IAS (see Box 1) must also be completed and attached for proposals that have significant impacts. Once completed, the IAS must be published.

## Summary IAS

### Details

<b>Lead department</b>	Department of Transport and Main Roads
<b>Name of the proposal</b>	Tow Truck Regulation 2024
<b>Submission type</b> ( <i>Summary IAS / Consultation IAS / Decision IAS</i> )	Summary IAS
<b>Title of related legislative or regulatory instrument</b>	Tow Truck Act 2023
<b>Date of issue</b>	July 2024

### What is the nature, size and scope of the problem? What are the objectives of government action?

On 26 October 2023, Queensland Parliament passed the *Tow Truck Act 2023* (the Act) to:

- Provide a balanced framework for regulating the operation of tow trucks to carry out regulated towing.
- Protect the public by ensuring tow trucks carrying out regulated towing are operated in a safe, competent and professional way and at a reasonable cost to consumers.
- Protect public safety and the safety of the road network in certain regulated areas by ensuring the safe and efficient removal of motor vehicles damaged in an incident, seized motor vehicles, and motor vehicles parked on private property.

The industry subject to this legislative framework currently consists of 105 tow truck operators, 1,176 tow truck drivers (TTDs), 73 tow truck assistants (TTAs) and 680 tow trucks (as at 1 October 2023).

It is estimated that there are 39,000 crash tows per year in the regulated areas of Queensland.<sup>1</sup>

The Act will commence on a date to be fixed by proclamation in 2024.

To provide for operational details, and to ensure the legislation remains flexible and contemporary, the Act contains various regulation-making powers. The more significant of these include the power to make regulations for:

- the making of applications for accreditation;
- the giving, renewal, amendment and replacement of accreditation documents;
- the obligations, duties and standards of conduct of persons who hold an accreditation;

<sup>1</sup> Population of regulated areas (4,556,473), multiplied by 0.0086 [ratio of tows per person per year in other jurisdictions as evidenced in *Towing industry consultation report: Outcomes of consultation about options for reforming Western Australia's towing industry February 2022* (<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/towing-report.pdf>)]

- the auditing by the chief executive of accreditation holders for compliance with this Act;
- obtaining and dealing with towing authorities;
- obtaining or attempting to obtain a person's authority to repair a motor vehicle damaged in an incident in a regulated area;
- requirements in relation to the storage and release of motor vehicles, including requirements in relation to holding yards;
- certain maximum and minimum amounts able to be charged; and
- the specifications and requirements for tow trucks.

Currently, the *Tow Truck Act 1973* (the 1973 Act) and *Tow Truck Regulation 2009* (the 2009 Regulation) collectively provide for the towing of motor vehicles involved in crashes, police seizures from off-street regulated parking areas, and towing of vehicles from private property, in regulated areas of Queensland. Both the 1973 Act and the 2009 Regulation will be revoked upon commencement of the *Tow Truck Act 2023*. Consideration therefore needs to be given to whether a new regulation is to be put in place to support the Act.

### What options were considered?

Three options were considered:

- Option 1: Allow the Act to commence without a regulation
- Option 2: Make a regulation that replicates the 2009 Regulation
- Option 3: Make a new regulation – preferred option.

#### Option 1 – Allow the Act to commence without a regulation

This option is not viable.

If a regulation is not made to support the Act, the purposes of the Act will not be achieved. The Act, on its own, does not:

- Provide supporting administrative provisions relating to accreditation of industry members including grounds to refuse, amend, suspend or cancel accreditation.
- Provide flexibility to update the specific geographic areas (regulated areas) as needed to accommodate changes in the demand for towing services (noting no changes to the regulated areas are proposed upon initial making of the regulation).
- Include all necessary offence provisions to adequately protect consumers and ensure fair practices across all industry members.
- Implement policy improvements that have been identified through industry and community consultation.

The absence of a regulation to accompany the Act would result in:

- Inability to amend geographic areas, as required, potentially placing unnecessary burden and cost on industry and the community in areas that would otherwise not be subject to the regulation.
- The loss of consumer protections that are intended to ensure industry integrity and standards and protect motorists. This would ultimately jeopardise the public confidence of Queensland's tow truck scheme.
  - Without a regulation, operators may capitalise on vulnerable motorists by charging unrealistic prices for the removal, towing and storage of towed vehicles, placing additional and unnecessary financial pressure on the vehicle owner. It has been estimated that without regulation of prices, fees for towing services would be two to three times more expensive than

in jurisdictions with regulated fees.<sup>2</sup> These costs are likely passed on to insurance companies and consumers.

- Community feedback and complaints received by the Department of Transport and Main Roads (TMR) demonstrate that tow operators, TTDs and TTAs could return to intimidatory and unsafe practices in the absence of a regulation. In addition to significantly increased charges, vehicle owners may also be subject to poor conduct by the tow truck drivers. This may include instances of unscrupulous behaviour such as attempts of bribery or inducement that would not serve in the best interests of vehicle owners. In addition, vehicle owners may have a greater risk of damage to their vehicle while being towed, and theft of items from within the vehicle.
- A lack of policy improvements that benefit industry and the wider Queensland community.

### **Option 2 – Make a regulation that replicates the 2009 Regulation**

This option is also not viable.

Replicating the 2009 Regulation will result in fragmentation between the Act and the proposed regulation. Inconsistent provisions between the Act and the proposed regulation would impact on government's ability to administer the legislation—effectively eroding the protection of motorists.

For example, the Act introduces new objectives that focus on public safety and accountability. It also adopts new terminology for tow truck accreditations, and provides heads of power to allow regulation to prescribe:

- How to apply for, renew or refuse to grant or renew an accreditation
- The process for amending, suspending, cancelling or surrendering an accreditation
- Accreditation holder obligations, conditions and responsibilities
- Auditing powers
- Obtaining and dealing with towing authorities
- Requirements for storage and release of vehicles
- Charges that can be imposed
- Chief executive powers to address emerging issues.

If the 2009 Regulation is replicated, these heads of power will not be implemented, and the intent of Government will not be fulfilled. Furthermore, the resulting gaps will restrict TMR from taking appropriate action in response to breaches by regulated parties.

This option will also maintain outdated and unnecessary provisions that place undue regulatory burden on industry.

The 2009 Regulation no longer represents modern drafting practices that enable the proposed policy objectives to be achieved in the most efficient manner and align with other Queensland transport legislation. This option would also not keep pace and align with ongoing industry and community expectations.

### **Option 3 – Make a new Regulation – preferred option**

As part of the 2009 Regulation review process, TMR consulted with industry stakeholders on the proposed policies. The outcomes of this consultation guided the drafting of the proposed regulation, leading to policies such as maximum storage fees and changes to the boundaries of regulated areas, not advancing.

<sup>2</sup> Towing industry consultation report: Outcomes of consultation about options for reforming Western Australia's towing industry February 2022 (<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/towing-report.pdf>).

Making the new regulation will achieve the agreed government decision of drafting a new tow truck legislative framework and give effect to policy changes based on industry and community consultation. This will create a robust, modern and fit-for-purpose tow truck regulatory framework, whilst reducing regulatory burden on industry where possible.

As part of the proposed regulation, a number of new offences are proposed, along with proposed changes to existing penalties to achieve improved parity with other Queensland transport legislation.

The proposed regulation will give the greatest net benefit to the community with the continuation of capped fees and protection. Industry will also benefit through the removal of the tow truck practical test and three-year driver licence requirement, the removal of tow truck specific medical requirements, and allowing temporary holding yards.

The proposed regulation will continue to appropriately govern the towing of vehicles in specified circumstances to ensure the timely, efficient and safe removal of vehicles from Queensland roads, support road safety outcomes and protect vulnerable motorists.

### **What are the impacts?**

As detailed above, options 1 and 2 are not viable, and, as such, consideration of impacts has focused on option 3.

The proposed regulation will provide for the administrative and machinery matters intended by the Act, giving effect to the various heads of power that have been established. Compared to the current legislative framework of the 1973 Act and the 2009 Regulation, the proposed regulation provides the opportunity to implement policy improvements that have been identified through consultation to reduce regulatory burden and provide sufficient protections for motorists and industry.

#### **Compliance cost of the proposed regulation**

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

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

The financial cost to the tow truck industry of the proposed regulation, as detailed in the attached Compliance Cost Calculator, is \$2,601,252 for the first year and \$18,474,427 over ten years. The largest portion of this amount is the direct cost to both individuals and businesses of accreditation (vehicles and individuals) and security costs associated with holding yards.

Other costs to industry relate to record keeping and paperwork requirements but these are relatively minor. The additional specific record keeping requirements proposed in the proposed regulation are estimated to take less than 15 minutes per crash tow.

Tow truck licence holders are audited at least once every two years by TMR. This audit focuses on record-keeping, registers and holding yard inspections. Tow truck vehicles are checked by TMR compliance officers to ensure there is a valid certificate of inspection and a sample of tow truck vehicles are checked to ensure vehicle markings are correct. The preparation for an audit has been assumed to involve up to eight hours of administrative time per licence holder.

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

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

TTD and TTA fees range from \$121.30 per year to \$295.70 for a five-year accreditation. Fees apply to approximately 1,176 TTD's and 73 TTA's. The total fees for obtaining and maintaining accreditations for all TTDs and TTAs is estimated to be \$87,430 per year. This fee covers TMRs administration costs of providing the scheme. Included in this fee is a national police check undertaken on all new TTD and TTA applicants as well as upon renewal of accreditation to ensure that accreditation holders remain suitable to hold an accreditation.

Tow truck licence fees range from \$468.10 per vehicle for a one-year licence to \$1,838.55 per vehicle for a five-year licence. There are currently 105 tow truck operators who utilise approximately 680 tow trucks.

The total cost to licence holders for tow truck vehicle licence fees is estimated to be \$265,903 per year. This is broken down as follows:

- Small operators (1-5 vehicles) 182 vehicles, 77 licence holders - \$71,167.46
- Medium operators (6-15 vehicles) 154 vehicles, 18 licence holders - \$60,218.62
- Large operators (16 plus vehicles) 343 vehicles, 8 licence holders - \$134,123.29.

There are not expected to be any direct costs to government as a result of the proposed regulation. The Act puts in place requirements for government to operate an accreditation scheme, and all costs to government of administering this scheme would already be required in the absence of the proposed regulation. The proposed regulation will however enable practical implementation of the accreditation scheme.

### Consumer benefits

Within the regulated areas, the regulation will cap the cost of towing for motor vehicles involved in a crash. Western Australian research established that fees for crash tows in unregulated jurisdictions are two to three times more expensive than jurisdictions with regulated fees.<sup>3</sup> This means that in Queensland where the maximum charge for a standard tow is \$419.05, without regulation consumers could expect to be charged an additional \$628.55 per tow (based on crash tows being 2.5 times more expensive). Based on the estimated 39,000 crash tows each year<sup>4</sup> in the regulated areas, and recognising that this represents an opportunity cost for industry, consumers can be expected to save almost \$24 million every year.

The proposed regulation will also benefit consumers through clauses that promote timely and efficient removal of crashed vehicles from the roadside, thereby reducing the impact on traffic flow and the time a vehicle owner is required to spend at the scene of the crash.

The proposed regulation will also contain offence provisions to protect consumers. Compared to the 1973 Act and the 2009 Regulation, a review of penalties was undertaken. This review considered the seriousness of the offence, the impact and risk to safety or the public, the deterrent effect and parity with other transport legislation.

As part of this commitment to increase consumer protection, a number of new penalties are proposed. These include:

- Failing to comply with holding yard requirements – insufficient fence/barrier/gates (Max penalty 50PU)
- Failing to secure holding yard (Max penalty 50PU)
- Failing to repair/replace damaged fence/barrier/gates (Max penalty 50PU)
- Failing to make records relating to charges within 24 hours of charge (Max penalty 20PU)
- Failing to keep records relating to charges (2 year retention) (Max penalty 20PU)
- Failing to keep materials relating to non-standard tow charges (2 year retention)(Max penalty 20PU)

<sup>3</sup> <https://www.commerce.wa.gov.au/sites/default/files/atoms/files/towing-report.pdf>

<sup>4</sup> Population of regulated areas (4,556,473), multiplied by 0.0086 (ratio of tows per person per year in other jurisdictions as evidenced in *Towing industry consultation report: Outcomes of consultation about options for reforming Western Australia's towing industry February 2022* (<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/towing-report.pdf>))

- Failing to provide materials relating to non-standard tow charges on customer request (Max penalty 20PU)
- Failing to keep record of inventory (Max penalty 30PU)
- Failing to give notice of release charge (outside business hours) (Max penalty 50PU)
- Failing to immediately release a vehicle where the vehicle is not yet fully secured to the tow truck (Max penalty 50PU)
- Failing to comply with audit notice (Max penalty 40PU)

### Industry benefits

Whilst the tow truck industry will be impacted through compliance costs associated with the proposed regulation, there are also a number of benefits to industry.

Extending existing provisions that prohibit inducements/bribery being used to obtain towing work will ensure a fair and equitable market for all operators, without limiting the ability of both small and large business to compete fairly and provides net benefit to the community.

TMR sought industry views through the 2019 online survey. The majority of respondents (76%) were not supportive of towing incentives or inducement. Motorists are likely to be traumatised immediately following a vehicle crash, without the added pressure of being offered an inducement under duress, in order for the tow operator to secure towing work at a crash scene.

Offering incentives or inducements to secure a towing authority may result in increased conflict between operators at crash scenes, as they strive to compete for towing business. This conduct would not be in the best interests of Queensland motorists as it may result in delays to clearing crashes. Police may also be required to attend to resolve roadside disputes.

TMR regulates a maximum towing fee and therefore already provides a transparent mechanism to promote competition through an operator's ability to charge less than the maximum towing fee. Offering further inducement under duress to secure towing work at a crash scene is not in the best interests of the community.

The proposed regulation will also reduce red tape and modernise compliance requirements when compared with the 1973 Act and the 2009 Regulation, as set out below.

#### *Removal of the Tow Truck Practical Test and three-year driver licence requirement for TTDs*

Currently, a TTD applicant must be at least 18 years of age and must demonstrate their ability to drive a tow truck. Applicants can do this by holding the relevant driver licence class for the tow truck to be driven for a continuous period of three years immediately prior to application. Alternatively, they can undertake a practical tow truck driving test with TMR. These requirements are designed to protect inexperienced drivers from confronting and traumatic scenes at incidents, while ensuring competency in driving skill.

No other jurisdiction requires a practical test to be undertaken for a tow truck driver licence. Furthermore, the current test does not align with industry expectations and is not applicable to real-life situations of retrieving crash vehicles and the use of various towing equipment. Based on this, these requirements can be better achieved by simplifying the current eligibility requirements for accreditation as a TTD.

The proposed regulation will replace the requirement to undertake a practical driving test with the need to hold a valid open or probationary type licence. This will effectively replace the requirement under the 2009 Regulation to be 18 years of age and have a minimum of three years' experience behind the wheel.

Under the *Transport Operations (Road Use Management – Driver Licensing) Regulation 2021* (the driver licence regulation) a driver must be a minimum of 20 years of age to hold an open C class driver licence, having taken three years to progress from a provisional licence. It then takes another two years to move through the graduated licensing system to hold the highest tow truck class (HC).

Replacing the current TTD eligibility requirements will remove excessive regulatory burden and simplify requirements, without impacting safety. Tow truck operators are in the best position to identify their driver's needs, allowing them to respond quickly to new equipment, vehicles and the changing needs of industry.

#### *Removal of tow truck specific medical requirements*

Currently, TMR must consider if applicants are medically fit to perform the role of an accredited person. This applies to TTD, TTA and licence holders.

In the case of TTDs, the requirement to declare any medical condition duplicates other legislative requirements in the driver licence regulation which requires all drivers to report a medical condition that may affect their ability to drive safely. All drivers who have a permanent or long-term medical condition that may impact their ability to drive safely must provide TMR with a medical certificate. The certificate is assessed against the national *Assessing fitness to drive* (AFTD) publication. Drivers of vehicles that require a Medium Rigid (MR) or above class of driver licence are assessed against the commercial driver standards in the AFTD.

It is proposed to remove the medical requirements for tow truck licence holders and TTAs given these are non-driving roles. This represents a simplification of requirements and a reduced burden on industry.

It is also proposed to remove the need for TTDs to meet tow truck specific medical fitness to drive requirements, given drivers are already subject to medical fitness to drive provisions under the driver licence regulation. It is however proposed that TTD applicants who declare a medical condition be assessed against commercial medical standards provided in the AFTD. As TTDs spend more time on the road than the average motorist and carry passengers, it is appropriate they should be assessed against the more stringent commercial standard.

As mentioned above, most TTDs are already subject to commercial standards, by virtue of driving MR or above classes of vehicles. However, Class C (Car) and LR (Light Rigid) TTDs are currently assessed against the private standard, despite their commercial duties. As at September 2023, there are only two TTDs who hold Class C or LR licences to drive a tow truck who would require the additional commercial assessment as they identified as having a medical condition. However, transitional arrangements will be provided to ensure existing scheme entrants are not adversely affected and have sufficient time to obtain their commercial medical assessment.

#### *Approval of temporary holding yards*

Processes to support temporary holding yards to accommodate emerging and unforeseen events such as flooding—with natural disasters and other major weather events seemingly a permanent feature of our environment, the proposed regulation will introduce new processes that will make it simpler and quicker to apply and receive approval to use holding yards on a temporary basis during an emergency.

#### *Removal of superfluous and outdated provisions*

The proposed regulation will:

- Modernise tow truck vehicle specifications including updates to terminology and minor changes to equipment requirements.
- Remove the requirement to notify TMR of the name and address of a person acquiring a tow truck, along with improved clarity that unused towing authorities must be returned to TMR upon disposal of a tow truck.
- Improve flexibility of recordkeeping provisions with hard copy recordkeeping requirements extended to electronic records.

#### **Who was consulted?**

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

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

- impact and effectiveness of the private property towing reforms

- regulated areas
- unaccredited TTDs and TTAs
- removing the maximum standard fee for heavy vehicle operators
- use of towing incentives
- towing authorities
- maximum storage fees
- prohibited fees
- towing authority.

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

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

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

The proposals for change, as outlined under Option 3, were formally presented to the tow truck industry in July 2022. All tow truck operators were contacted about the proposals and given the opportunity to provide feedback. TMR also met with a large operator who requested a meeting to better understand the changes. No negative feedback was received. In fact, the limited feedback received was positive, acknowledging the further work done to policies after initial industry feedback.

Further consultation with industry has occurred throughout the proposed regulation drafting process, including an industry forum in October 2023.

In addition, other government agencies have been consulted during the drafting process.

#### **What is the recommended option and why?**

It is recommended that Option 3 of making a proposed regulation be progressed. This will create a modern legislative framework that is simple, precise, accessible, and appropriately targeted to achieve policy objectives. Option 3 provides the best balance for the community and the towing industry. This option provides the best protection for the consumer and motorists and provides more clarity in the framework and structure for industry, whilst removing unnecessary regulatory burden.

Option 3 is recommended as it provides greatest benefit to the broader Queensland community when compared to the minimal impact it imposes on industry costs and regulatory burden. Other options are not considered viable at this time.



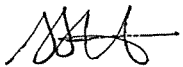
## Impact assessment

### All proposals – complete:

	First full year	First 10 years**
Direct costs – <i>Compliance costs*</i>	\$2,601,252	\$18,474,427
Direct costs – <i>Government costs</i>	\$0	\$0

\* The *direct costs calculator tool* (available at [www.treasury.qld.gov.au/betterregulation](http://www.treasury.qld.gov.au/betterregulation)) should be used to calculate direct costs of regulatory burden. If the proposal has no costs, report as zero. \*\*Agency to note where a longer or different timeframe may be more appropriate.

## Signed



Sally Stannard  
Director-General  
Department of Transport and Main Roads

17/7/2024



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

22/7/2024