

# Disposal of Uncollected Goods

## Discussion Paper

23 February 2019



## About TACC

The **Tasmanian Automobile Chamber of Commerce (TACC)** is the peak industry body serving the retail automotive industry in Tasmania. TACC represents over 450 members in over 20 retail automotive sectors that employ over 9,000 Tasmanians.

TACC member businesses range from new and used vehicle dealers (passenger, truck, commercial, motorcycle, recreational and farm machinery), repairs (mechanical, electrical, body and repair specialists, i.e. radiators and engines), vehicle servicing (service stations, vehicle washing, rental, windscreens), parts and component wholesale/retail and distribution and aftermarket manufacturing (i.e. specialist vehicle, parts and component modification and/or manufacturing), and automotive dismantlers and recyclers.

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## Background

The Disposal of Uncollected Goods Act 1968 has been an issue for the automotive industry for many years and has become more significant in recent years with the diminished value in older vehicles and increasing cost of repairs resulting in the abandonment of vehicles with member businesses. Apart from money owed to those businesses, parking and storage space for abandoned vehicles now comes at a considerable cost, further complicated by the disposal process prescribed under the current Act.

The Act is out of date and does not suit modern business and government practice, particularly in regard to notice provisions to the Commissioner of Police, publishing in the Gazette, the means of communication and the required retention period. Presently the Act does not distinguish between goods worth \$0 and \$,000's of dollars.

This matter regularly impacts TACC member groups including car and motorcycle dealers, independent repairers, service stations, body repairers, engine reconditioners, farm machinery dealers, towing operators, marine and outdoor machinery dealers, basically the entire automotive industry. We also recognise this impacts other industries, but in most cases to a lesser monetary value. Other industries that suffer with abandoned goods include dry cleaners, electrical and white goods repairers and jewellers.

Recognising this, TACC made a Red Tape Reduction submission in 2016 which was supported by the Regulation Reduction Co-Ordinator, TCCI and the Tasmanian Small Business Council. Unfortunately, this matter stalled in government on a number of occasions requiring TACC intervention to get it back on the agenda.

We thank the Government and Consumer, Building and Occupational Services, Department of Justice for their work on this matter and the issue of the Discussion Paper.

## Response to questions

### Q1 - How does the Disposal of Uncollected Goods Act impact you currently?

The automotive industry is probably impacted by the Act more than other industries because of the value of unpaid repairs, the value of the vehicle and the holding cost of abandoned vehicles. The scenarios we see include:

- A vehicle is delivered to a repairer to either be quoted for a repair or is repaired and is abandoned after repair cost is more than anticipated or is abandoned when they realise the quoted cost of repairs is greater than the value of the vehicle or more than they can afford.
- A vehicle engine or parts are delivered for reconditioning and abandoned when the cost of repair is realised
- A tow truck is allocated to a vehicle accident by Tasmania Police and removed to a secure holding yard. The owner abandons the vehicle because it is uninsured and not economic to repair.

In each case the repairer makes multiple attempts to have the vehicle removed by the owner and recover funds owing. Usually the owner, if known, ignores any contact leaving the repairer with only the Disposal of Uncollected Goods Act to dispose of the vehicle and civil action to recover money owing. Both these methods are ineffective and generally not worth pursuing. The Disposal of Uncollected Goods Act is cumbersome and rarely are total funds owing recovered and civil action is not worth pursuing because the time and cost exceed the benefit.

TACC regularly advises members on the proper process for disposal of an asset under the Disposal of Uncollected Goods Act but, as the discussion paper mentions, it is an unfortunate fact that often repairers move vehicles to the street so it becomes a council issue, or do not comply with the Act because of its complexity.

TACC is not aware of any occasion where a repairer has been questioned or any action taken by a vehicle owner or authority for non-compliance with the Act.

#### Q2 - Is there a need to change the current policy?

Yes.

The Act is out of date and does not work with accepted current business norms of communication, new methods of disposal and the rapid devaluation of assets and our throwaway society.

#### Q3 - If yes, which of the options for reform do you support, and why?

TACC supports option 4.

While we do not see the potential for having to deal with perishable goods we appreciate there are other businesses that could see this as important.

What we support is the common elements of options 3 & 4 applying value categories with an additional category for motor vehicles.

Both option 3 & 4 take into consideration the greater value of a motor vehicle over other assets that may be abandoned. Depending on the price of metal and demand of used parts, the scrap value of a vehicle can be in the hundreds of dollars.

#### Q4 – If monetary thresholds are set for categories of goods, what do you think they should be, and why?

TACC and the Regulation Reduction Coordinator considered this and thought that the Victorian Act, which was more current, had a realistic approach in classifying three levels of value (low, medium and high). We simplified the Victorian approach by applying a general asset value, a motor vehicle value and a disposal process to each level.

We note that the discussion paper has adopted the proposal TACC and the Regulation Reduction Coordinator recommended

#### Q5 – Do you support the proposed option (Option 4) to reform the Act, and if not, what other option would you support?

TACC supports option 4. We do not see the perishable component being an issue TACC members need to contemplate, but no doubt there are situations this may be helpful for both the bailor and bailee in some instances.

#### Q6 - Comments

TACC supports the option 4 in the discussion paper without amendment. However we do offer the following points to contribute to the discussion on the drafting of the new Act and its administration.

- How is the value to be determined?

We appreciate that in most cases the value will be obvious to traders in those goods, but how does a bailee defend themselves against a bailor's claim that the wrong valuation was attributed and then the wrong notice and sale process was adopted?

The cost of obtaining a formal valuation at any category would be unrealistic. Would it be a defence that the proceeds of sale would amount to the valuation?

- Does an amount need to be owed to the bailee for the Act to apply?

What if nothing is owing, does the bailee still have the right to dispose of the asset? In the case of TACC members they could reasonably attribute a storage fee, but other businesses may not.

- How should the bailee evidence they have provided notice?

Should notice take a particular form? TACC does not recommend regulated forms.

Should the Act acknowledge modern forms of communication? Email, text and other forms of electronic communication. In most cases the business only has a telephone number of the bailor.

- How do you evidence notice and the commencement of the disposal process if you have no capacity to contact the bailor? How does the clock start if the bailor can't be contacted?

- Is there any value in the Act identifying costs that can be collected by the bailee?

The amount for services, storage, communication, transport for disposal, sale costs, legal etc.

- What evidence needs to be provided by the bailee to justify to a purchaser, auctioneer or registration authorities their authority to sell the asset, particularly a motor vehicle?

- If the asset is sold and there are excess funds after costs are recovered what are the Bailee's responsibility with the excess? And what if the bailor cannot be located?

## Recommendation

TACC recommends the revision of the Disposal of Uncollected Goods Act as presented in the discussion paper at Option 4.

Thank you for the opportunity to contribute to the discussion paper. TACC would like to further contribute to the drafting of the revised Act.