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Disposal Of Uncollected Goods Act

Many TACC members will have had the experience of a customer failing to collect a vehicle after a repair or quote and you having to find the space to store it and chase the customer to pay and collect it.

In the cases of a customer abandoning the vehicle, the Disposal of Uncollected Goods Act determines the process you need to take to dispose of or sell the vehicle. This act requires a process of advice to the Commissioner of Police and a notice in the Government Gazette and takes many months, time and money you can't afford. This act was created in 1968 and hasn't been updated to account for modern business practice and our throwaway society.

After many years of TACC lobbying, the government has been commenced a review with the release of the attached Discussion Paper which seeks industry and user input to five questions.

TACC has worked with the Tasmanian Red Tape Coordinator to develop a draft act and this has been adopted in the Discussion Paper as Option 3. Options 3 or 4 will provide TACC members the same outcome.

Before TACC responds to the Discussion Paper we would appreciate your input. Please email or call me to give use your thoughts or to answer any questions you may have. TACC will be lodging our response on 23rd February 2019, so your input is required before that date.

This is a great outcome to get some out of date legislation fixed and your input will help us get the best outcome for our industry.

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Disposal of Uncollected Goods

Discussion Paper





Date: February 2019

Version: 1.0

Produced by: Consumer Building and Occupational
Services (CBOS), Department of Justice, Tasmanian
Government

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INTRODUCTION

The *Disposal of Uncollected Goods Act 1968* ("the Act") provides for a process for the disposal of goods that are not collected.

There is currently an issue where small businesses such as motor mechanics, jewellers, and repairers of all descriptions are burdened with the goods when clients refuse to pay for the services rendered, or fail to collect goods after service or repairs have been carried out. The cost of the original repair or service, storage and insurance are then incurred by the business.

Key stakeholders, including the Tasmanian Automobile Chamber of Commerce (TACC), Tasmanian Chamber of Commerce and Industry (TCCI) and the Small Business Council, contend the process prescribed by the Act is overly cumbersome and has not kept pace with contemporary community trends, such as the emerging "throwaway society".

This analysis was endorsed by the Red Tape Reduction Coordinator in the Tasmanian Red Tape Audit Report 2017-18, which identified the processes in the *Disposal of Uncollected Good Act 1968* as being costly and cumbersome.

The report recommended that the Victorian Model be adopted which has different disposal methods relative to the value of the goods.

This discussion paper sets out options for reforming the *Disposal of Uncollected Goods Act 1968*.

The Department of Justice is seeking feedback on the proposed options and invites stakeholders to add any other relevant information.

The closing date for responses is **Friday 1 February 2019**.

Responses should be made in writing and submitted by one of the following methods:

By email:

cbos.info@justice.tas.gov.au

Marked "Disposal of Uncollected Goods Act Review"

By post:

ATTN: Assistant Director Policy and Projects
PO Box 56
Rosny TAS 7018

Further information is available by contact Consumer, Building and Occupational Services (CBOS) on 1300 65 44 99 or cbos.info@justice.tas.gov.au.

PURPOSE

A *Disposal of Uncollected Goods Act 1968* is important to maintaining the function of business and ensuring the rights of the consumer are upheld.

It sets out a legislative framework for the disposal of goods that have not been collected by the owner within a given timeframe, that are then taken to have been abandoned.

Functions of the legislation

Each state and territory has legislation in place to provide a legal process for businesses to deal with uncollected goods. Whilst variations occur in the legislation, the various Acts perform similar functions across all jurisdictions.

The purpose of the legislation is to

- ensure that businesses act in a lawful and proper manner when disposing of uncollected goods; and
- provide a legislative framework in which consumers and businesses are protected

Stakeholders

The Tasmanian Disposal of Uncollected Goods Act affects multiple consumer and business groups, including:

- Customers – referred to as the bailor in the Act
- Businesses and service providers – referred to as the bailee in the Act
- The Tasmanian Automobile Chamber of Commerce (TACC)
- The Royal Automobile Club of Tasmania (RACT)
- The Red Tape Reduction Coordinator
- The Tasmanian Chamber of Commerce and Industry (TCCI)
- The Small Business Council
- The Commissioner of Police, and
- Public Auction Houses – currently the required marketplace for the sale of uncollected goods in Tasmania.

Any business that provides repair services or is required to hold a customer's property after or before payment, is covered by the Uncollected Goods legislation. This can include businesses that offer repairs of vehicles, electronics, watches, or clothes, dry cleaners and other businesses that hold goods for collection following a service.

Perishable goods such as cakes are only covered in some jurisdictions. Perishable goods differ to standard uncollected goods because they have a time sensitive expiry and need to be collected, sold or disposed of in a short time frame.

Perishable goods are not currently covered by Tasmanian legislation.

Importance of the legislation

Several key industry stakeholders met with the Department of Justice in 2016 to discuss the Act.

It was agreed that the Act is vital to providing a process to dispose of uncollected goods, and without it, businesses would have no way of disposing of goods legally.

However the following issues were identified with the current Act:

- does not take into account the value of the goods to be disposed of
- must obtain permission from the Commissioner of Police
- may only sell through a public auction house

The stakeholders present at the meeting included The Regulation Reduction Coordinator, Tasmanian Automobile Chamber of Commerce (TACC), Tasmanian Chamber of Commerce and Industry (TCCI) and the Small Business Council.

LEGISLATION

Each State and Territory currently has legislation relating to the disposal of uncollected goods. A comparative overview of each jurisdiction's legislation is included in Appendix 1.

Legislation varies in its:

- classification of value (of goods)
- process of disposal for each category
- notice of intention to dispose
- retention periods
- the inclusion of perishable goods and motor vehicles

As some Acts have become dated and elements have become redundant, regulations have been added to address particular issues in the operation of the schemes.

However, this is not the case in Tasmania where there have been no updates made to the Act since its initial implementation in 1968. The TACC and the Department of State Growth Red Tape Reduction group raised concerns in November 2016 that Tasmania's legislation is out of step and dated.

This resulted in a commitment from the Premier to review the Act to assess whether changes were needed.

Recent amendments to legislation in other States and Territories

New South Wales – Uncollected Goods Regulation 2017

- Outlines goods not covered by their Act (because a different legislative scheme applies to those goods)
- Minor change to the making of an application to the Local Court for an order for the disposal of uncollected goods

Victoria

- Repealed the *Disposal of Uncollected Goods Act 1961* and created a subsection for uncollected goods in the Australian Consumer Law and Fair Trading Act

South Australia – Unclaimed Goods Regulations 2013

- Scale 1 and Scale 2 values of \$100 increased to \$500, Scale 2 and Scale 3 values of \$500 increased to \$2 000
- Set forms provided to give notice under circumstances which require newspaper, Commissioner of Police or bailor notice

Northern Territory – Uncollected Goods Act 2016

- New Act was drafted following recommendations from a report in 2001. The new Act introduces four value categories for goods less than \$200, between \$200 and \$1,000, between \$1,000 and \$7,000, and over \$7,000
- Created a Fact Sheet to aid understanding of the Act

Australian Capital Territory – Uncollected Goods Act 1967

- Changed wording to be inclusive of goods held rather than only those received

Available data

Currently no research has been conducted on the amount of, or total monetary value of uncollected goods in Tasmania or Australia as a whole. Anecdotal evidence suggests businesses are disposing of goods without complying with the Act. In some cases mechanics are crushing vehicles or moving them onto council roads or land where they become a council issue.

The Tasmanian Government Gazette has only published three uncollected goods notices since 2008, indicating there is a level of non-compliance with the requirement of the current legislation to publish a notice before a business may dispose of a vehicle.

ANALYSIS

A table comparing the legislation from each jurisdiction is included in Appendix 1.

The main points of difference between jurisdictions include:

- classification of value of goods
- notice Requirements
- retention periods
- method of disposal
- process for dealing with perishable goods and motor vehicles

Value Categorisation

Uncollected goods cover a large range of values. The Act is in place to assist businesses dispose of goods ranging from \$20 watches uncollected after a battery replacement, to cars valued over \$5,000 abandoned because the repairs cost more than the value of the car.

The following is taken from the comparison table (Appendix 1) and shows the value categories used in each jurisdiction:

Question	NSW	Vic	SA	WA
1. Classification of Value of Goods	<ul style="list-style-type: none"> - Less than \$100 - Between \$100 and \$500 - Between \$500 and \$5,000 - Over \$5,000 	<ul style="list-style-type: none"> - Less than \$200 - Between \$200 and \$5,000 - Over \$5,000 	<ul style="list-style-type: none"> - Less than \$500 - Between \$500 and \$2,000 - Over \$2,000 	<ul style="list-style-type: none"> - Prescribed goods - Less than \$3,500 (not prescribed) • \$3,500 or more (not prescribed)
	ACT	Qld	Tas	NT
	<ul style="list-style-type: none"> - Less than \$20 - Between \$20 and \$500 - Over \$500 	<ul style="list-style-type: none"> - All values receive the same classification 	<ul style="list-style-type: none"> - All values receive the same classification 	<ul style="list-style-type: none"> - Less than \$200 - Between \$200 and \$1,000 - Between \$1,000 and \$7,000 - Over \$7,000

Queensland and Tasmania are the only remaining jurisdictions without a categorisation by values.

In 2013 South Australia reviewed and remade their regulations. The changes they made included a redefinition of their classification of values. It was recognised that between 1987 (when the Unclaimed Goods Act was first introduced) and 2013, the cost of goods had changed and an increased throwaway society had developed.

Notice Requirements

Making the customer (bailor) aware that their goods are ready for collection and subsequently will be disposed of unless they are collected, is a way of removing liability from the business wishing to dispose.

However there are significant differences in notice requirements across each jurisdiction (refer to Appendix 1).

The first stage in each jurisdiction is a notice of intention to dispose, also called a notice of goods ready for redelivery or collection, dependent on the specified circumstances. Further notices or contact requirements may also apply and differ across each of the States and Territories.

Notices serve to inform or warn bailors that their goods are ready for collection, and that they will be disposed of, if the owner fails to collect.

One issue identified is that before the first notice, bailors may not be aware their goods are ready to be collected. A change of address or phone number can make notices difficult to administer, which is why some jurisdictions require more than one notice, dependent on the goods' value.

For example, the approach taken in New South Wales is that there are four value categories (Appendix 1), and each requires a different process of notice:

- category 1: verbal or written notice to the bailor is needed
- category 2: written notice to any persons claiming interest in goods is needed
- category 3: written notice to any persons claiming interest in goods, and a copy of notice published in daily newspaper throughout NSW must be completed
- category 4: court order must be obtained

In contrast, Tasmania currently requires that when goods are ready for collection, a notice of goods must be sent to the bailor (and anyone else claiming interest in the goods) and the Commissioner of Police. A notice of intention to sell must then be sent to the bailor (and anyone else claiming interest in the goods). For motor vehicles, a notice must also be published in the Tasmanian Government Gazette.

Retention Period

A retention period is the minimum time a good must be held by the bailee before disposal is allowed. A retention period gives the bailor ample opportunity to make reasonable effort to collect their goods. Refer to Appendix 1 for an overview of each jurisdiction's legislation.

South Australia, Queensland and Tasmania are the only jurisdictions with the same retention periods for all goods despite value or size.

Whilst Victoria requires 28 days after notice for all values, the period extends dependent on value if contact with the bailor cannot be made. If contact cannot be established then a retention period of 60, 90 and 180 days applies to the value categories (in order of increasing value).

Tasmania's Act requires a retention period total of 7 months regardless of the value of the goods. After a notice of goods being ready for collection the bailee must hold the goods for 6 months, then a notice of intention to dispose can be sent (and published in the Gazette if a motor vehicle) and a holding period of a further one month applies before disposal.

Method of Disposal

The method of disposal is the way in which a bailee is permitted to get rid of uncollected goods. As with forms of notice and retention period, methods of disposal vary based on the value category in most jurisdictions.

In all jurisdictions except Queensland and Tasmania, low, or no value goods can be disposed of in any manner after notice has been served and the retention period has passed. Goods in the higher value categories are often required to be sold at public auction and goods in the highest categories by court order.

In Tasmania, the only method of disposal regardless of value, is by public auction.

Perishable Goods

Perishable goods have a limited handling and storage time until expiration. Currently the Northern Territory, the Australian Capital Territory, Victoria and New South Wales have provisions for perishable goods in their legislation. It is important that business owners and service providers are aware of their rights when dealing with perishable goods.

Motor Vehicles

The disposal of motor vehicles in each jurisdiction varies. For example, Victoria and Western Australia have two value categories, each treated differently in order to dispose of uncollected motor vehicles.

Motor vehicles are larger and often more expensive than other uncollected goods. Storage costs are significant for businesses that may not have the available space. Whilst the business may recoup these costs upon selling the vehicle, a vehicle in a deteriorated state may not cover the total cost of storage, sale and work done on the car.

In Tasmania, a bailee must wait 7 months after sending out a notice of intention to dispose before being able to dispose of the vehicle. The notice must also be published in the Tasmanian Government Gazette.

Pickles Auctions, a public auction house based in Hobart, is the primary auction platform for the disposal of motor vehicles in Tasmania.

Most cars which are left uncollected at the mechanic's result from the cost of repair being greater than the value of the vehicle. When considering the cost of an uncollected vehicle it is important to consider:

- The labour and parts cost of the initial repair
- The cost of storage and insurance
- The cost of transport to an auction house in addition to the fees sought by the auction house
- Cost of publication in the Tasmanian Government Gazette
- Time taken to follow the process

INSIGHTS

It is considered that the current Act in Tasmania does not adequately provide for the disposal of uncollected goods in Tasmania for either consumers or businesses. The state of the current Act is preventing bailees from disposing of uncollected goods, without entering into a lengthy and possibly expensive process.

The TACC, TCCI and Small Business Council contend the process prescribed by the Act is overly cumbersome and has not kept pace with the emerging throwaway society.

There is currently no differentiation between very low or no value goods, and high value goods. It is inappropriate for a watch repairer to wait seven months to dispose of a \$20 watch, in comparison to higher value items. However, seven months may no longer be appropriate for a mechanic to store vehicles, especially if the workshop is located in a dense area with no spare storage space. For cars considered to be low value (below \$1,000) the process and the costs incurred in disposing of the goods, such as publication in the Gazette and the cost of the entry to the public auction, is often higher than the amount returned on the sale. Furthermore, if the bailor cannot be contacted, then the excess expenditure will likely never be recouped.

The requirement to notify the Commissioner of Police of goods being ready for disposal is also a burden on businesses. If businesses are to be encouraged to dispose of all goods properly, it must be an efficient and low cost process. In most other states and territories, notification to the Commissioner of Police is restricted to higher valued items only, or has been removed completely.

Submitting goods to public auction is both costly and time consuming. It should not be a requirement that goods of low to no value be sold at public auction, as this places a large financial burden on the business. Anecdotal evidence suggests that businesses do not follow the process and are putting themselves at legal risk by disposing of goods however they see fit, instead of meeting the legislative requirements.

Whilst perishable goods account for a small proportion of uncollected goods, inclusion of them in legislation is important to protect the rights of the consumer and the business. The time of required retention for uncollected goods is typically too long for perishable goods and therefore a separate process for dealing with those goods should be introduced. Consumers must also be given fair notice that their goods are ready for collection.

Motor vehicles should be treated differently to other uncollected goods as they often involve higher costs and pose a bigger expense to the business. A retention period of seven months is considered too long for businesses that do not have storage space. For low value vehicles, disposal costs are high and often not able to be recouped.

In addition, the use of a fact sheet on the legislation governing disposal of uncollected goods in the Australian Capital Territory and the Northern Territory aids both businesses

and consumers in understanding their rights and responsibilities. Because of the complexity and the variation between jurisdictions, a fact sheet could significantly aid in education and result in less confusion surrounding uncollected goods. Graphics and charts could be used to improve readability for people with low literacy levels and ensure a wide reading audience is reached.

STRATEGY

The issues presented are complex and a variety of policy responses are offered below.

- Option 1 – Maintain status quo
- Option 2 – Create value categories
- Option 3 – Create value categories with additional categories for motor vehicles
- Option 4 – Create value categories with additional categories for motor vehicles and perishable goods

Option 1: Status quo

If the status quo is maintained, the current law would continue to operate. Bailees would have to follow the process of notices, and retain goods for a minimum of seven months for items of any value.

Impact Analysis

Benefits	Costs
Certainty for bailees and bailors as the law maintains the status quo	Amount of red tape discourages compliance with the law
Bailees do not need to adjust compliance mechanisms	Consumers will not receive proper notice of their goods being available as businesses will be discouraged from following the law
	Office of the Commissioner of Police will continue to be inundated with notices of goods being ready for collection

Option 2: Create value categories

The Act currently has the same regulatory requirement for the sale of uncollected goods, whether it be a \$50 watch not collected from a jeweller, or a \$5,000 car not collected from a mechanic. A value category system, which has been adopted in

other jurisdictions such as NSW, would create a different set of rules to follow, depending on the value of the goods.

Impact Analysis

Benefits	Costs
Disposal methods and notice requirements more suited to the value of the goods	Education of consumers and businesses needed
Bailees more likely to comply with fairer requirements	Public auction houses may not receive as much business
Bailees have a higher chance of recouping costs, especially on low value items	

Option 3: Create value categories with additional categories for motor vehicles

Value categories (as above), but with additional categories for dealing with high value goods such as motor vehicles.

Impact Analysis

Benefits	Costs
Better suited methods dependent on the value of the vehicle	Education of consumers and businesses needed
Business more likely to recover losses	Public auction houses may not receive as much business
Reduced red tape	

Option 4 – Create value categories with additional categories for motor vehicles and perishable goods

A comprehensive reform of the Act, which would include value categories, plus additional procedures for motor vehicles and perishable goods.

The following approach is proposed:

- Develop a new Act and repeal the existing Act
- The Act should outline:
 - Value categories
 - Separate categories for motor vehicles
 - Separate process for dealing with perishable goods
 - Reduced retention periods
- Remove the use of The Commissioner of Police
- Allow some goods to be disposed of by any method
- Insert the need to provide notice to anyone who has registered an interest in the goods on the Personal Properties Securities Register

Impact Analysis

Benefits	Costs
Encompasses the best of each jurisdiction's legislation	Education of consumers and businesses needed
Simple, clear process for dealing with all uncollected goods	Public auction houses may not receive as much business
An Act that is fair to the consumer and the business	

Proposed Categories

Type of Good	Value Categories	Notice Requirement	Disposal Method	Retention Period
General Uncollected goods	Low – less than \$200	Written notice of intention to sell to bailor (inc. text, email or other)	Any method, can be destroyed or kept by business owner	28 days after notice (60 if unable to establish contact with bailor)
	Medium – Goods greater than \$200 but less than \$5,000	Written notice of intention to sell to bailor and anyone with a publicly registered interest in the goods; and any other person having or claiming an interest in the goods of which the bailee is aware (inc. text, email or other)	Private sale or public auction	28 days after notice (90 if unable to establish contact with bailor)
	High – Goods worth more than \$5,000	Written notice of intention to sell to bailor and anyone with a publicly registered interest in the goods; and any other person having or claiming an interest in the goods of which the bailee is aware (inc. text, email or other)	Private sale or public auction	28 days after notice (180 if unable to establish contact with bailor)
Motor Vehicles (including watercraft and aircraft)	Low – less than \$1,000 Medium – greater than \$1,000, less than \$5,000 High – Greater than \$5,000	As above (low-medium-high indicate notice requirement), additionally bailor must obtain written search result under section 170(2)(b) of the Personal Property Securities Act 2009 of the Commonwealth (online or contact centre search)	As above (low-medium-high indicate disposal method)	As above (low-medium-high indicate retention period)
Perishable Goods	All values. Must be perishable.	Oral or written notice (inc. text, email or other)	Any method including destruction and sale.	Reasonable time to collect (dependant on urgency)

Appendix 1

Question	NSW	Vic	SA	WA	ACT	Qld	Tas	NT
2. Agency Responsible	NSW Fair Trading within the Department of Finance, Services and innovation	Consumer Affairs Victoria	Attorney-General's Department	Consumer Protection within the Department of Mines, Industry Regulation and Safety	Office of Regulatory Services within the Department of Justice and Community Safety	Department of Justice and Attorney-General	Consumer, Building and Occupational Services within the Department of Justice	Consumer Affairs
3. Relevant Legislation	<i>Uncollected Goods Act 1995 and regulation 2017</i>	<i>Australian Consumer Law and Fair Trading Act 2012 - Previously Disposal of Uncollected Goods Act 1961</i>	<i>Unclaimed Goods Act 1987 And Regulations 2013</i>	<i>Disposal of Uncollected Goods Act 1970</i>	<i>Uncollected Goods Act 1996</i>	<i>Disposal of uncollected Goods Act 1967</i>	<i>Disposal of Uncollected Goods Act 1968</i>	<i>Uncollected Goods Act 2016</i>
4. Relevant or Upcoming Work or Reviews	Regulations recently reviewed and remade in 2017	Nil	Regulations reviewed and remade in 2013 (major changes; to redefine classification of values, and provide standard notice forms for bailees)	Regulations recently reviewed and remade in 2017	Amendments made to act in 2017	Nil	Due for review in 2018	New act created in 2016
5. Classification of Value of Goods	<ul style="list-style-type: none"> - Less than \$100 - Between \$100 and \$500 - Between \$500 and \$5,000 - Over \$5,000 	<ul style="list-style-type: none"> - Less than \$200 - Between \$200 and \$5,000 - Over \$5,000 	<ul style="list-style-type: none"> - Less than \$500 - Between \$500 and \$2,000 - Over \$2,000 	<ul style="list-style-type: none"> - Less than \$3,500 (not prescribed) - \$3,500 or more (not prescribed) - Prescribed goods (see list) 	<ul style="list-style-type: none"> - Less than \$20 - Between \$20 and \$500 - Over \$500 	<ul style="list-style-type: none"> - All values receive the same classification 	<ul style="list-style-type: none"> - All values receive the same classification 	<ul style="list-style-type: none"> - Less than \$200 - Between \$200 and \$1,000 - Between \$1,000 and \$7,000 - Over \$7,000
6. Notice of Intention to Dispose (by classification of value as above, notice of intention to dispose forms available from state/territory webpages)	<ul style="list-style-type: none"> - Verbal or written notice to the bailor - Written notice to any persons claiming interest in goods - Written notice to any persons claiming interest in goods, and a copy of notice 	<ul style="list-style-type: none"> - Written notice to the bailor - Written notice to the bailor or registered owner of goods (if different) - Written notice to the bailor, anyone who has registered an interest in 	<ul style="list-style-type: none"> - Sold or disposed of in any manner - Sold at public auction and notice given to commissioner of police and owner of uncollected goods - By court order 	<ul style="list-style-type: none"> - Reminder notice to the bailor sent, after 6 months, 'notice of intention to sell or otherwise dispose of goods' sent to bailor, anyone who has an interest in the goods and the 	<ul style="list-style-type: none"> - No notice - Written notice given to bailor or other owner, to collect within 7 days, notice published in Canberra Times (applies to remaining classification of value) 	<ul style="list-style-type: none"> - Notice published in state-wide and local newspaper (court order may be required, advised to seek legal advice) • Signage must be placed at each business stating 	<ul style="list-style-type: none"> - Notice of goods being ready and notice of intention to sell goods is sent to owner of goods and to commissioner of police 	<ul style="list-style-type: none"> - Written notice to bailor - Written notice to bailor and any owner/person claiming interest in the goods - Written notice to bailor and any owner/person claiming interest in the goods,

Question	NSW	Vic	SA	WA	ACT	Qld	Tas	NT
Notice of intention to Dispose (by classification of value as above) c	<p>published in daily newspaper throughout NSW</p> <ul style="list-style-type: none"> - Court order 	<p>the goods on the Personal Properties Securities Register, anyone the seller is aware of who has (or claims to have) a proprietary or security interest in the goods, and the owner or registered owner of the goods (if not the bailor)</p>		<p>Commissioner of Police, notice also published in Government Gazette, if no contact after 1 month, goods may be sold</p> <ul style="list-style-type: none"> - Written notice to the bailor, after 6 months, 'notice of intention to apply for an order or sell or otherwise dispose of goods in excess of \$3,500' sent to bailor, anyone who has an interest in the goods and the Commissioner of Police, notice published in Government Gazette, if after a further month no response application filed to Magistrates Court for an order to sell or dispose of goods (this must also be sent to bailor and anyone with interest in goods), if cert. of service given; Affidavit completed and court notice given (must be passed on to owner of goods or anyone with interest in goods), hearing attended with 		<p>that uncollected goods may be sold after 6 months from the collection date</p>		<p>Commissioner of Police informed and newspaper advertisement</p> <ul style="list-style-type: none"> - Court order needed to dispose of goods

Question	NSW	Vic	SA	WA	ACT	Qld	Tas	NT
				witnesses, court given order to dispose - Process for goods less than \$3,500 taken				
7. Retention Period (by classification of value as above)	<ul style="list-style-type: none"> - 28 days after notice of intention to dispose - 3 months after notice - 6 months after notice; and 28 days after publication - Dependant on court order 	<ul style="list-style-type: none"> - 28 days after notice (60 days if unable to establish contact) - 28 days after notice (90 days if unable to establish contact) - 28 days after notice (180 days if unable to establish contact) 	<ul style="list-style-type: none"> - 3 months after collection date if contact was made, otherwise 42 days after public notice (same for all value categories) 	<ul style="list-style-type: none"> - 6 months after initial notice, and then a further 1 month after 'notice of intention to sell or otherwise dispose of goods' - 6 months after initial notice, then a further 1 month after 'notice of intention to sell or otherwise dispose of goods', than appointed by court - 6 months after initial notice, and then a further 1 month after 'notice of intention to sell or otherwise dispose of goods' 	<ul style="list-style-type: none"> - 7 days - 1 month after notice - 3 months after notice 	<ul style="list-style-type: none"> - Notice sent 6 months after collection date, sale after 28 days of notice (or in credence with court order) 	<ul style="list-style-type: none"> - 6 months after notice of goods being ready for collection and then a further 1 month after notice of intention to sell the goods 	<ul style="list-style-type: none"> - 28 days after notice - 2 months after notice - 3 months' notice, advertisement at least 28 days before disposal - According to court order

Question	NSW	Vic	SA	WA	ACT	Qld	Tas	NT
<p>8. Method of Disposal (by classification of value as above)</p> <p>Method of Disposal (by classification of value as above) cont.</p>	<ul style="list-style-type: none"> - Any manner - Public auction or private sale - Public auction - According to court order 	<ul style="list-style-type: none"> - Any manner - Public auction or private sale - Public auction with advertisement 7 days in advance (or online auction lasting 7 days), or private sale 	<ul style="list-style-type: none"> - Any manner - Public auction after notification to Commissioner of Police and owner of goods (at least one month before auction), or if address not given, advertisement in public notices in The Advertiser (or apply to court for exemption) - On advice from Magistrate's Court (for values under \$100,000) or the district/supreme court (for values over \$100,000) for permission to sell the goods (Commissioner of Police, owner and anyone else the court directs notified) 	<ul style="list-style-type: none"> - Any manner after being passed at public auction on two occasions, at least 14 days apart - Appointed by court - Public auction OR private sale is accepted (after due process) 	<ul style="list-style-type: none"> - Any manner - Any manner - Public Auction, advertised 7 days in advance, if passed at auction, any manner 	<ul style="list-style-type: none"> - Public auction, must be advertised 	<ul style="list-style-type: none"> - Public auction 	<ul style="list-style-type: none"> - Any manner - Public auction or private sale - Public auction or private sale - According to court order

Question	NSW	Vic	SA	WA	ACT	Qld	Tas	NT
9. Perishable Goods	- Oral or written notice must be given, along with reasonable opportunity to collect, goods can be disposed of in any manner	- If goods have perished, a business can dispose of them, oral or written notice must be given that the goods have been disposed of - If the goods have not perished a business must tell bailor oral or in writing that they intend to dispose of the goods, and give the person reasonable time to collect	- No mention	- No mention	- Immediate disposal	- No mention	- No mention	- Dispose by sale, appropriation or destruction, give notice, and allow reasonable time for collection

Question	NSW	Vic	SA	WA	ACT	Qld	Tas	NT
10. Motor Vehicles	- Must have permission from Commissioner of Police that the vehicle is not recorded as stolen, at least 28 days before sale of vehicle	- For vehicles worth less than \$1,000, any manner is acceptable, however without a court order a receipt must be given to the buyer containing a set of information as provided on the consumer Vic website, no less than one month prior to sale written notice must be given to the Chief Commissioner of Police - For vehicles over \$1,000, after the correct notices are followed it must be disposed of in either a public auction or a private sale, as above, without a court order a receipt must be drafted and signed	- Mentioned in Road Traffic Act 1961, can be sold at public auction (if not sold at auction or proceeds will not cover the costs incurred in selling the vehicle, disposal by any method) after 1 month of publication of a notice to dispose of in a state newspaper	- Following procedures according to classification of values, any vehicle less than \$3,500 does not need a court order to be disposed for vehicles worth over \$3,500 a court application for permission to get rid of it must be obtained	- Not specific, if on public land, vehicle is impounded	- As above, a sign must be displayed at the premises that says after 6 months the vehicle will be sold, notice must be given that the vehicle is ready for collection, a notice of intention to sell must be given and the notice must be published in a local, and state-wide newspaper and in the Queensland Government gazette, an application must also be made to court and the Commissioner of Police	- After 6 months from the notice of intention to sell or otherwise dispose of the vehicle, a notice must be published in the Gazette	- Follows the procedures according to the classification of value
Motor Vehicles cont.								

Have your say

Question 1 – How does the Disposal of Uncollected Goods Act impact you currently?

Question 2 – Is there a need to change the current policy?

Question 3 – If yes, which of the options for reform do you support, and why?

Question 4 – If monetary thresholds are set for categories of goods, what do you think they should be, and why?

Question 5 – Do you support the proposed option (Option 4) to reform the Act, and if not, what other option would you support?

Comments – Please add any other comments or suggestions relating to the proposed reform of the Act.

Please include your contact details:

Name: -----

Organisation: -----

Email: -----

Phone number: -----



Tasmanian
Government

Consumer, Building and Occupational Services

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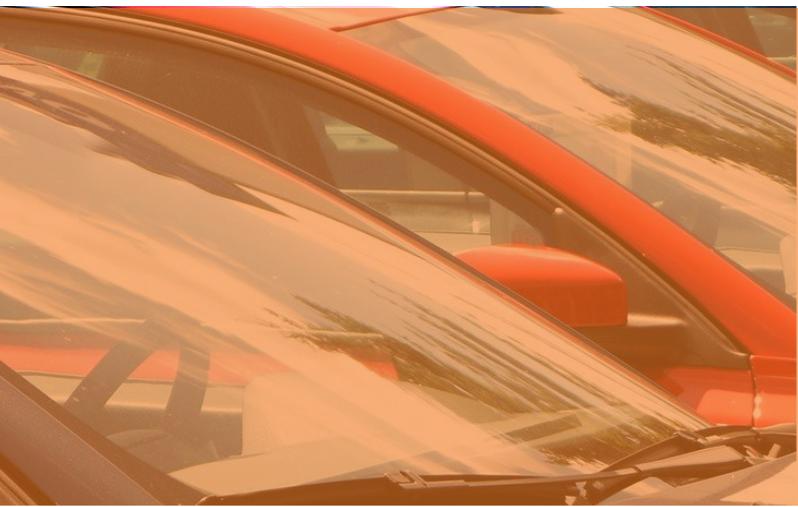
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Disposal of Uncollected Goods

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 bailors 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.