

# Guidance Paper

Section 23—*Removal of Vehicles*



## Introduction

The purpose of this paper is to ensure that all councils are aware of the legislative requirements and better practices for the removal of vehicles left on roads, highlighted in a recent Ombudsman's Report, so that such matters are dealt with lawfully and in a fair, consistent and transparent fashion.

## Applicable legislation

The *Local Government Act 1999* (the **LG Act**) contains the legislative provisions applicable to abandoned vehicles (section 236) and the removal of vehicles (section 237). The LG Act also requires Councils to have internal control policies (section 125) and appropriate related administrative standards (section 132A).

If a vehicle is in fact an obstruction, or in some other way poses a danger to public safety, there are clear powers to deal with that situation under section 40N and following of the *Road Traffic Act 1961*.

The *Unclaimed Goods Act* (the UG Act) provides the legislative provisions applicable to dealing with any contents in the vehicle.

## Elements of Better Practice

The suggested elements of better practice are designed to give an appropriate level of confidence that the legislative requirements have been complied with and due process followed properly and with transparency.

These better practice recommendations are based on an Ombudsman's Report, entitled "Investigation of the actions of the [Council] and its officers in removing and unlawfully disposing of a vehicle and its contents, and in later unreasonable dealings with the owner".

### Left or Abandoned Vehicles

The first question an authorised officer needs to turn their mind to is whether the vehicle appears to have been "left" or "abandoned", rather than "parked". For example, if a motor vehicle check suggests the vehicle is owned by a person residing in an adjacent property, it is reasonable to conclude that the vehicle has not been "left" or "abandoned".

### Towing Notice

Although it is not mandated by section 237 of the LG Act, a council's authorised officer should place a towing notice on a vehicle prior to removing the vehicle.

A towing notice should—

- Record the date and time.
- Identify the vehicle.
- Identify the vehicle's location as precisely as circumstances permit.
- State that there is reason to believe that the vehicle has been left there.
- Warn that if the vehicle is not moved within 24 hours of the date and time of the towing notice, it may be removed to an appropriate place under section 237 of the LG Act.
- Warn that release of a removed vehicle would need to be sought, and costs would have to be paid. Warn that, if this is not done, section 237 of the LG Act permits a sale.
- Include a statement that it is an offence under the *Motor Vehicles Act 1959* to cause an unregistered motor vehicle to be standing on a road as defined in that Act, and an offence against section 236 of the LG Act to abandon a vehicle in a public place.

- Identify the authorised officer who issues the towing notice, and provide a telephone contact.

### **Removal of the Vehicle and Requisite Notice**

If not less than 24 hours has passed since the towing notice was placed on the vehicle, and the owner has failed to move the vehicle, pursuant to section 237(1) of the LG Act an authorised person may have the vehicle removed to an appropriate place.

As soon as practicable after the removal of the vehicle, the council must give to the owner of the vehicle written notice of the removal and the place to which the vehicle was removed (section 237(2) of the LG Act).

It is recommended that the notice contain the information prescribed in section 237(4) of the LG Act, namely that if the owner of the vehicle does not, within 14 days after the service or advertisement of the notice, pay all expenses in connection with the removal, custody and maintenance of the vehicle, and or serving or advertising the notice, and take possession of the vehicle, the council must sell the vehicle.

The notice must, where practicable, be served on the owner personally but if the owner is unknown or cannot be found, the notice may be given by advertisement in a newspaper circulating generally in the State (section 237(3) of the LG Act).

It is recommended that a council has a standard operating procedure that includes a checklist of reasonable measures to be taken to try to give an owner personal notice that the vehicle has been removed and of the impending sale of the vehicle. Such measures should include enquiries of homes in the immediate vicinity of the vehicle, to determine if the owner/s of the vehicle reside/s there or are known to the resident/s.

A written record (note) of each attempt to serve personal notice should be made, and include the date, time, details and action taken, and by whom (name of the authorised officer).

Personal Service means person-to-person. If after a reasonable number of attempts to serve to the actual person fail, Person-to-Person Registered Post (PPRP) may be an option. PPRP is delivered only to the person named and must be signed for by that person<sup>1</sup>.

If PPRP is used then council should also use delivery confirmation facility. By using this facility, council will be sent by post the Delivery Confirmation Card confirming that the person to whom the mail is addressed has received and signed for it. Council should not assume that personal notice has been successful until delivery confirmation has been received.

Note: From an evidentiary point of view, personal service by a council officer is easier to prove in a court than registered person-to-person post.

### **Standard Operating Procedure (SOP)**

Councils should establish workable guidelines for the proper administration of section 237 of the LG Act.

The SOP needs to be very clear about the difference between what is mandatory and what is advisory.

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<sup>1</sup> Person-to-person mail may be delivered to a parent or guardian of a minor addressee, or to a duly authorised agent of an adult addressee.

The SOP should emphasize the requirement for personal service of the removal notice where practicable and the expected measures to be taken.

In the matter that the Ombudsman investigated, officers did not enquire of homes in the immediate vicinity of the vehicle to determine if the owner/s of the vehicle resided there. This was considered to be an appropriate and reasonable course of action before taking any steps to remove the vehicle.

The SOP needs to be very clear about how to count statutory time-intervals.

The SOP needs to be reduced to terms that are sufficiently brief to be of use as a working checklist that officers can refer to while going about their duties.

The SOP should have an effective date of operation and review date.

The SOP should require that the officer who places the towing notice should normally be responsible for any later decision on towing (dependent on their delegation). Otherwise, the officer making the towing decision should do so in consultation with the officer who placed the towing notice.

### **Records of Contact with Members of the Public**

Councils should have a system to record reliably and accurately all contacts with members of the public concerning the exercise or purported exercise of powers under section 237 of the LG Act to deal with vehicles.

In the matter that the Ombudsman investigated, the fact that the owner of the vehicle called the Council on more than one occasion to enquire about the circumstances of the removed vehicle was not relayed to the relevant officer/s responsible for the towing, removing and ultimate sale of the vehicle.

### **Sale of Vehicle**

In the matter that the Ombudsman investigated, the Council sold the vehicle privately for \$200, despite the fact that the vehicle was obviously of much greater value.

Councils should not sell vehicles privately. Vehicles should be sold either by tender or auction—

#### **Tenders**

Procedures for sales of the vehicles by tender should specify a minimum period between the public notice and the close of tenders, sufficient to ensure that the process is actually, and not just formally, open.

It would be proper to include in standard written procedures a requirement that the sale process not be begun until at least 21 days after the 14-day public notice has been given.

The standard procedure for sale should include some guidelines about the level of effort that should be applied to establishing potential value of a vehicle, on the basis that the greater the apparent possible value, the more stringent the processes for council satisfying itself that it is acting properly and lawfully. At the bottom of the scale, for some vehicles, very little is required.

It is recommended that the final acceptance of a tender include a review of all processes up to that point by an officer who has not had direct participation in the processes, leading to and including impoundment, and be approved by a Manager.

· Auction

The advertisement should be placed in the local paper, or a paper circulating generally throughout the State, that the vehicle will be auctioned.

Before placement of the advertisement, there should be a review of all processes up to that point by an officer who has not had direct participation in the processes, leading to and including impoundment, and be approved by a Manager.

### **Contents of Removed Vehicle**

When a council removes a vehicle, the council becomes a bailee of any goods contained on or within that vehicle under the *Unclaimed Goods Act 1987* (the UG Act).

The UG Act sets out the process before any goods can be disposed of. The applicable process is dependent on the value of the goods and can include authorisation by the relevant court, or sale at public auction. The UG Act also provides specific notice requirements.

Under the UG Act, notice to the owner may be given by post or, if the identity or whereabouts of the owner is unknown, the necessary notice may be given by advertisement in a newspaper circulating generally throughout the State.

It is recommended that councils provide their officers with a checklist of actions appropriate for common circumstances surrounding an initial vehicle report. There should be a standing requirement to take an inventory and secure the goods or, if the vehicle is locked, to ensure that anyone who becomes able to open the vehicle only does so in circumstances that an inventory can be taken and the goods secured.

### **Authorised Officers**

Councils should ensure that their authorised officers are fully informed of the scope of their delegations and ensure that their actions come within those delegations. Authorised officers should be provided with a separate instrument of delegation detailing his or her delegated powers.

Authorised officers should receive a tailored induction and on-going training as appropriate to ensure that they understand the rationale for having delegations and sub-delegations and are clear about the scope of the powers under which they are authorised to act. The training should include guidance on the roles and responsibilities of general inspectors, including their legislative responsibilities, authorisations, customer service and interpersonal communication.

The induction should include—

- a copy of the officer's instrument of appointment as an authorised officer, including details of delegated authority pursuant to relevant sections of relevant legislation, and any conditions or limitations applicable;
- specific written instructions detailing the officer's authorised responsibility pursuant to the legislation and what their level of responsibility entails; and where to access procedures and processes that have been adopted by the council relevant to the general inspectorial role;
- a copy of the relevant legislation under which the officer is authorised to act;
- a cover sheet for sign off by each officer, indicating they have received the package, understood it, know their level of operational authorised responsibility and where they can go in order to seek clarification or approval outside of their area of authorisation.

## Reporting and Accountability

It is recommended that the general inspectorial section be required to report to the Council's Audit Committee or the Council on a quarterly basis, with reports detailing the number of complaints received and resolved, the number of infringement notices issued, the number of matters proceeding to court etc.

In relation to the removal of vehicles, councils should have proper controls and supervision of the regulatory activities of the authorised officers. The application of, and compliance with, the controls should be a mandated audit requirement, and should include a regular compliance report to be presented to the Council's Audit Committee or the Council.

## Proposals for legislative improvement

The Local Government Accountability Proposals Paper entitled "Reforms to improve the accountability framework for Local Government in South Australia" (**the Paper**) was released late in 2008 for comment.

The Paper included a recommendation of the Ombudsman in relation to the provisions for removal of vehicles, namely that there be a review of section 237 of the LG Act and that regulations under the LG Act should prescribe the form and content of the towing notice placed on vehicles before action is taken under that section.

The Paper suggested obtaining information from councils about their use of section 237, and assessing the availability of other powers for councils to deal with apparently abandoned vehicles on public roads, public places or local government land.

If it appeared necessary to retain section 237, the Paper proposed the option of rewriting the section to require a warning notice in the prescribed form to be placed on the vehicle before it is removed and that it conform to the general principles of statutory forced sales that exist in other Acts.

Submissions received on the Paper support the retention of section 237 and the clarification of procedures, and request that the review of the section take account of practical issues faced by some councils dealing with abandoned vehicles in remote rural areas.

While this work continues, councils should ensure that they have procedures in place for acting lawfully and properly under the current provisions, and take a prudent approach to dealing with vehicles and goods of apparent value.

#### **FURTHER INFORMATION**

For more information about this and other information and guidance papers, please contact—

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