

COLLECTION OF UNSAFE VEHICLES BY CUSTOMERS

In this article, Industry Legal sets out steps businesses can take in relation to the collection of unsafe vehicles

If a customer instructs your business not to undertake recommended repairs, with the result the customer would be collecting an unsafe vehicle, the following steps are advised.

Advise the customer the vehicle is unsafe

It is important that the customer is advised that the vehicle is unsafe to drive, and that the vehicle should either be repaired or towed to its next destination. The information provided to the customer regarding an unsafe vehicle should encompass the following:

- that the vehicle is unsafe to drive;
- the reason the business considers the vehicle is unsafe to drive;
- the potential mechanical consequence of driving the vehicle and potential safety issue(s) (if known);
- if the business considers that the vehicle is unsafe to drive and may be a danger to the driver and to others, advise the customer that the business considers that driving the vehicle is unsafe and poses a potential danger to the driver and to others; and
- the recommendation of the business to either repair the vehicle before it is driven or to have the vehicle towed to its next destination (and not be driven from the premises).

How should the unsafe vehicle information be provided to the customer?

It is important when providing the information to the customer that the information is put in writing. It is also helpful for the customer if the customer is told about the vehicle being unsafe and the recommendations of the business to have the vehicle repaired or towed.

If the customer is collecting and driving the vehicle, the key step for the business is to set out the information and recommendations on the

invoice, ask the customer to read the information and then ask them to sign and date the invoice next to the information. This way the business has a signed acknowledgement from the customer that they have received the information.

If possible, the information should be provided to the customer before the customer returns to the workshop: if the business has the customer's email address, then the business can write the information to the customer; the business may also telephone the customer to provide the information.

The following steps are **key steps** to be taken when the customer is at the business premises and the customer, having received the unsafe vehicle and recommendation information, is seeking to collect and drive the vehicle:

- ensure the information regarding the unsafe vehicle and the business' advice to have the vehicle either repaired or towed to the next destination is written on the customer's invoice (refer to the earlier part of this article expanding on the information to be provided to the customer);
- ask the customer to read the information regarding the unsafe vehicle and the business' advice, then ask the customer to sign and date next to the information;
- provide the customer with a photocopy of the signed and dated invoice, however, if the customer would like to keep an original, ask the customer to sign and date another copy of the same invoice and take a photocopy of that invoice for the business' records.

On a practical note, if the business in good faith considers that potential mechanical damage and resulting costs may be incurred by driving the vehicle, then the customer should also be advised of this. This may also encourage the customer to have the vehicle repaired or towed.

Records

The business should keep a record of the communications made to the customer regarding the unsafe vehicle and the business' recommendation; in particular, the signed and dated invoice (but also including making a note of the date any verbal information was given to the customer and a summary of the verbal information provided). These documents may assist the business in the event a dispute arises.

Duty of care

The business may have a duty of care in relation to the unsafe vehicle, at a minimum to the



customer. Whether a duty of care is discharged by the actions of the business will depend on the circumstances. It may be that providing the unsafe vehicle information and recommendations to the customer is sufficient or further steps may be needed. For further information please contact us.

If it is considered that the vehicle should be reported to the appropriate authority, then if the business is an Australian Privacy Principals entity under the Privacy Act 1998 (Cth), the business should obtain the consent of the customer to disclose their personal information for this purpose.

Takeaways

The key takeaways are:

- provide the customer with information about the unsafe vehicle and the recommendation to repair or tow the vehicle;
- record the unsafe vehicle information and recommendations in writing on the invoice, ask the customer to read, sign and date the invoice (keep the original and provide a photocopy to the customer); and
- keep records of communications to the customer regarding the unsafe vehicle.

This article is intended for information purposes only and should not be regarded as legal advice. Please contact Industry Legal Group for specific advice.

AAAA Member Benefits

Industry Legal Group provides legal advice to AAAA members. If you have any questions relating to the above article, please contact Industry Legal Group on 1300 369 703 or aaaa@industrylegalgroup.com.au

