

TOW-TRUCK ACT.

New South Wales



ANNO SEXTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 46, 1967.

An Act to provide for the control and regulation of tow-trucks and the operation thereof; to amend the Transport Act, 1930, as amended by subsequent Acts; and for purposes connected therewith. [Assented to, 5th October, 1967.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

- Short title.** 1. This Act may be cited as the "Tow-truck Act, 1967".
- Commence-
ment.** 2. This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

3.

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3. This Act shall be administered in the Department of Motor Transport by the Commissioner. No. 46, 1967

Adminis-
tration
of Act.

4. (1) In this Act, unless the context or subject matter otherwise indicates or requires— Interpre-
tation.

“Appointed day” means the day appointed pursuant to section two of this Act.

“Commissioner” means the Commissioner for Motor Transport constituted under the Transport (Division of Functions) Further Amendment Act, 1952, as amended by the State Transport (Co-ordination) Amendment Act, 1954.

“Damaged” means damaged in an accident.

“Driver’s certificate” means a valid and unexpired driver’s certificate issued under this Act and any valid and unexpired renewal of such a certificate.

“License” means a valid and unexpired license issued under this Act and any valid and unexpired renewal of such a license, and “licensed” has a corresponding meaning.

“Motor vehicle” has the meaning ascribed to that expression in the Motor Traffic Act, 1909, as amended by subsequent Acts.

“Operate” in relation to a tow-truck means tow or offer to tow a motor vehicle by means of a tow-truck, for hire or for any consideration or in the course of any trade or business.

“Prescribed” means prescribed by this Act or by the regulations.

“Public street” has the meaning ascribed to that expression in the Motor Traffic Act, 1909, as amended by subsequent Acts.

“Regulations”

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“Regulations” means regulations made under this Act.

“Tow” in relation to a motor vehicle includes—

- (a) lift and tow;
- (b) lift and carry; and
- (c) lift for the purpose of towing.

“Towing authority” means an authority given, on the form prescribed for the purpose, for the towing of a motor vehicle.

“Tow-truck” means a motor vehicle equipped with a lifting device capable of being used for the towing of a motor vehicle.

(2) For the purposes of this Act, where a firm or partnership is the holder of a license, every member of that firm or partnership shall be deemed to be a holder of that license.

**License
required
before
towing
motor
vehicle.**

5. (1) Subject to this Act, after the expiration of three months from the appointed day no person shall himself, or by his servant or agent, operate a tow-truck unless it is licensed and he is the holder of the license.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence against this Act.

Licenses.

6. (1) A license shall—
- (a) be in or to the effect of the form prescribed;
 - (b) authorise the operation of the tow-truck to which it relates; and
 - (c) state the place from which the business of operating the tow-truck to which it relates may be carried on.

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(2) A license shall not be issued unless the tow-truck ^{No. 46, 1967} to which it relates is registered under the Motor Traffic Act, 1909, as amended by subsequent Acts, and shall expire or sooner determine on the day on which that registration expires or sooner determines.

(3) The Commissioner may, in accordance with the regulations, issue a permit to tow motor vehicles by means of the tow-truck specified in the permit and any such permit shall, subject to the regulations and until it expires or is sooner revoked, have the force and effect of a license issued in respect of the tow-truck so specified.

7. (1) Every license shall be subject to the performance and observance by the holder of the license of the provisions of this Act and the regulations that may relate to the license or to the tow-truck to which it relates and of the provisions contained in or attached to the license and all such provisions shall be conditions of the license. ^{Conditions of license.}

(2) Without limiting the generality of the foregoing provisions of this section, it shall be a condition of every license—

- (a) that the tow-truck to which the license relates, and its equipment, comply with the provisions of any Act or regulation relating to the design, construction and serviceability of the tow-truck or, as the case may be, of its equipment;
- (b) that the provisions of any Act, regulation or ordinance relating to limits of weight or speed which are applicable to the tow-truck to which the license relates are complied with;
- (c) that the provisions of any Act or regulation relating to the limitation of hours of driving the tow-truck to which the license relates are observed;

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- (d) that no person shall, on a public street, tow a motor vehicle (not being a motor vehicle that is owned by the holder of the license) by means of the tow-truck to which the license relates, unless a duly signed towing authority relating to the motor vehicle has first been obtained, and dealt with, in accordance with the regulations;
- (e) that no person shall obtain a duly signed towing authority unless there has first been entered on the form of towing authority the full address of the place to which the motor vehicle to which the towing authority relates will be towed and, where any business is carried on at that place, the name of the business;
- (f) that all reasonable precautions shall be taken by the holder of the license and the driver of the tow-truck and any person employed thereon to prevent loss from, or damage to, a damaged motor vehicle while being towed by the tow-truck to which the license relates and that such precautions shall be taken by the holder of the license while the motor vehicle is otherwise under his control;
- (g) that no person shall tow a damaged motor vehicle from the scene of an accident by means of the tow-truck to which the license relates to a place other than the place referred to in paragraph (e) of this subsection;
- (h) that, where a motor vehicle has been towed to the place referred to in paragraph (e) of this subsection, no person shall, except to return the motor vehicle to the registered owner thereof or his agent authorised in writing, remove the motor vehicle to another place without the written authority of that owner, or his agent so authorised, given after the vehicle has been towed to the place from which it is to be removed;

(i)

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- (i) that, where a damaged motor vehicle has been towed to a place where it is under the control of the holder of the license, he shall not refuse to deliver the motor vehicle to the registered owner thereof, or his agent authorised in writing, on request by such owner or agent after reasonable charges for the towing and storing of the motor vehicle and, where repair work has been authorised, for that repair work, have been paid or tendered;
- (j) that no person other than the holder of a driver's certificate shall accompany the driver of the tow-truck to which the license relates while the tow-truck is proceeding to the scene of an accident or towing a damaged motor vehicle from the scene of an accident unless, in the case of a damaged motor vehicle being towed from the scene of an accident, he was the driver of, or a passenger in, that motor vehicle;
- (k) that no person other than the driver of the tow-truck to which the license relates shall, with the authority, express or implied, of the holder of the license, his servants or agents, obtain or attempt to obtain, at the scene of an accident, authority for the towing of a damaged motor vehicle by means of the tow-truck to which the license relates and that the holder of the license shall not, unless he is the holder of a driver's certificate, obtain or attempt to obtain any such authority;
- (l) that the driver of the tow-truck to which the license relates shall not (except to the extent necessary to connect the towing equipment of the tow-truck to a damaged motor vehicle in respect of which he has obtained a towing authority) permit the tow-truck to stand upon a public street so as to cause an obstruction or to stand at the scene of an

accident

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accident for a period longer than that which would reasonably be required to obtain a towing authority in respect of a damaged motor vehicle for which no such authority has been given;

- (m) that the tow-truck shall not be used to tow a damaged motor vehicle while any person is travelling as a passenger in the damaged motor vehicle;
- (n) that the holder of the license and any person employed by him on or about the tow-truck to which it relates shall comply with the provisions of the Wireless Telegraphy Act 1905 of the Parliament of the Commonwealth of Australia, as amended by subsequent Acts of that Parliament, and shall not permit or suffer any other person to contravene the provisions of that Act, as so amended; and
- (o) that the holder of the license shall not charge a sum other than a reasonable sum for the towing, salvage or storage of a motor vehicle.

Breach of certain conditions and excess of authority to be offences.

8. (1) Where, in relation to a condition of a license referred to in paragraph (d), (e), (f), (g), (h), (j), (k) or (m) of subsection two of section seven of this Act, any person—

- (a) does that which by the condition he is forbidden to do; or
- (b) does not do that which by the condition he is required or directed to do,

he and, where he is not the holder of the license, the holder of the license, shall be guilty of an offence against this Act.

(2) Any person who operates a tow-truck otherwise than in conformity with the authority conferred by a license relating to that tow-truck shall be guilty of an offence against this Act.

*Tow-truck.***9. Any person who—**

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- (a) at the scene of an accident obtains, or attempts to obtain, authority from another person for the repair of a damaged motor vehicle; or
- (b) where a damaged motor vehicle is towed by a tow-truck, obtains, or attempts to obtain, from another person authority for the repair of the motor vehicle before it is delivered to the address entered on the towing authority relating to the motor vehicle,

Authority to repair.

shall be guilty of an offence against this Act.

10. (1) Subject to this section, any person who—

Giving or receiving consideration for obtaining certain information or work.

- (a) for the purpose of obtaining a towing authority, or for the purpose of enabling any other person to obtain a towing authority, gives or receives or agrees or offers to give or receive any valuable thing in consideration of the furnishing of information or advice as to the occurrence of an accident on a public street or the presence of a damaged motor vehicle thereon;
- (b) gives, or agrees or offers to give, any valuable thing in consideration of the obtaining, for himself or any other person, of the work of repairing a damaged motor vehicle; or
- (c) receives, or agrees or offers to receive, any valuable thing in consideration of the obtaining, for any other person, of the work of repairing a damaged motor vehicle,

shall be guilty of an offence against this Act.

(2) In this section "valuable thing" does not include any reasonable charges in respect of the towing, salvage or storage of a damaged motor vehicle, but otherwise includes any money, loan, office, place, employment, benefit or advantage and any commission or rebate,

payment

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No. 46, 1967 payment in excess of actual value of goods or service, deduction or percentage, bonus or discount, or any forbearance to demand any money or money's worth or valuable thing.

Drivers' certificates.

11. (1) Subject to this Act, after the expiration of three months from the appointed day no person shall—

- (a) drive a tow-truck;
- (b) travel in a tow-truck while the tow-truck is proceeding to the scene of an accident or towing a damaged motor vehicle from the scene of an accident; or
- (c) be employed on or about a tow-truck at or near the scene of an accident,

unless, in addition to any other license or authority which by law he is required to hold or possess, he is in possession of a driver's certificate issued to him or, in the case of a damaged motor vehicle being towed from the scene of an accident, he was the driver of, or a passenger in, that motor vehicle.

(2) The Commissioner may, in accordance with the regulations, issue a permit to drive, travel in or be employed on or about a tow-truck and any such permit shall, subject to the regulations and until it expires or is sooner revoked, have force and effect as a driver's certificate.

(3) Any person who contravenes the provisions of subsection one of this section shall be guilty of an offence against this Act.

**Applica-
tion for
license or
driver's cer-
tificate.**

12. (1) An application for a license or a driver's certificate shall be in or to the effect of the prescribed form and shall be lodged with the Commissioner together with the prescribed fee.

(2) The Commissioner shall, upon the receipt of an application for the grant of a license or driver's certificate, and may, upon receipt of an application for the grant of an additional

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additional license or for the grant of a transfer of a license No. 46, 1967 or for the renewal of a license or driver's certificate, notify the Commissioner of Police who shall cause enquiries to be made as to the character of the applicant and shall furnish a report thereon to the Commissioner.

(3) The Commissioner shall consider such report and such other matters as he considers to be relevant and if he is satisfied that the applicant is a person of good character and a fit and proper person to hold a license or, as the case may be, a driver's certificate and, in the case of an application for a license, that the vehicle in respect of which the application is made, and its equipment, are suitable, he may grant the application.

13. (1) The Commissioner may cancel or suspend a license or driver's certificate if—

- (a) the license or certificate was issued erroneously or granted in consequence of any false or fraudulent document, statement or representation;
- (b) the holder thereof is convicted of an offence against this Act or the regulations;
- (c) in the case of a license, the holder fails to comply with or observe any condition thereof;
- (d) the holder thereof ceases, in the case of a license, to operate a tow-truck or, in the case of a driver's certificate, to drive a tow-truck or be employed on or about a tow-truck; or
- (e) the Commissioner is of opinion that by reason of the manner in which the holder thereof, in the case of a license, operates the tow-truck to which the license relates or, in the case of a driver's certificate, conducts himself while driving a tow-truck or in the course of his employment on or about a tow-truck, or by reason of any other fact or circumstance, such holder is not a fit and proper person to hold a license or, as the case may be, a driver's certificate.

Cancellation or suspension of licenses or drivers' certificates.

(2)

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(2) Where any license or driver's certificate has been cancelled or suspended, the person to whom the license or driver's certificate was issued shall deliver up the license or driver's certificate to the Commissioner within such time as may be specified in a notice given by the Commissioner to that person for the purpose.

Appeal
against
decision of
Commis-
sioner.

14. (1) (a) Where the Commissioner refuses an application under section twelve of this Act or cancels or suspends a license or driver's certificate under section thirteen of this Act he shall notify the applicant or the holder of the license or driver's certificate, as the case may be, of his decision and of the grounds therefor.

(b) Such applicant or holder, as the case may be, may in the prescribed manner appeal against any such refusal, cancellation or suspension to a court of petty sessions.

(c) Notice of any such appeal, specifying the grounds thereof, shall be lodged with the clerk of the court of petty sessions to which the appeal is being made, and with the Commissioner, within twenty-one days after the applicant or holder was notified of the decision of the Commissioner as directed by paragraph (a) of this subsection.

(2) Any report furnished to the Commissioner by the Commissioner of Police in relation to a person appealing under this section shall be admissible in evidence at the hearing of the appeal.

(3) The decision of the court given in any appeal under this section shall be final and shall be deemed to be the decision of the Commissioner and be carried into effect accordingly.

(4) Every appeal under this section shall be heard before a court of petty sessions holden before a stipendiary magistrate.

(5) Where a license or driver's certificate is suspended or cancelled and an appeal is made against such suspension or cancellation, the suspension or cancellation shall

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shall not take effect pending the hearing of the appeal and, No. 46, 1967 if the appeal is dismissed, shall, subject to any order to the contrary which the court may think fit to make, take effect on and from the date of such dismissal.

15. Any person who wilfully makes any false statement False in any application made under this Act or the regulations statements. shall be guilty of an offence against this Act.

16. (1) Any person guilty of an offence against this Act Penalties and convictions. shall be liable to a penalty not exceeding two hundred dollars.

(2) Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions.

(3) Any court before whom a person is convicted of an offence against this Act or the regulations shall cause particulars of such conviction to be forwarded to the Commissioner.

17. (1) The Commissioner shall keep records of licenses, Records and evidence. drivers' certificates and permits issued by him and matters pertaining thereto including, but without limiting the generality of the foregoing, particulars in relation to the grant, refusal, suspension, cancellation and revocation of licenses, drivers' certificates and permits.

(2) A certificate purporting to be signed by a prescribed officer certifying that on any date or during any period specified in the certificate the particulars set forth in the certificate as to any of the matters specified in subsection one of this section did or did not appear on or from such records shall, in all courts and upon all occasions whatsoever, without proof of the signature or of the official character of the person purporting to have signed the certificate and without the production of any record or document upon which the certificate is founded, be prima facie evidence of the particulars certified in and by the certificate.

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No. 46, 1967 **18.** Where, pursuant to the regulations, exemption or conditional exemption from compliance with all or any of the provisions of this Act or the regulations is granted, the provisions in respect of which the exemption or conditional exemption is granted shall, while the exemption or conditional exemption remains unrevoked, cease to apply to the extent provided by the regulations subject, in the case of a conditional exemption, to the conditions imposed.

Delegation
of power,
etc.

19. (1) The Commissioner may delegate to any officer nominated by him any of his powers, authorities, duties or functions under this Act, other than this power of delegation.

(2) A delegation may be made in respect of any matter or any class of matters or generally, or may be limited to any part of the State, and may be made subject to, or on such terms and conditions as the Commissioner thinks fit.

(3) Every delegation under this section shall be revocable at the will of the Commissioner, but no delegation shall prevent the exercise of any power, authority, duty or function by the Commissioner.

Amendment
of Act No.
18, 1930.
Sec. 202.
(Fund to be
established.)

20. (1) The Transport Act, 1930, as amended by subsequent Acts, is amended—

(a) by inserting at the end of subsection one of section two hundred and two the following new paragraph :—

(g) all fees charged under the Tow-truck Act, 1967.

(b) by inserting at the end of subsection two of the same section the following new paragraph :—

(j) all administrative and other expenses of the Commissioner for Motor Transport in respect of the Tow-truck Act, 1967.

(2)

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(2) The Transport Act, 1930, as amended by subse- No. 46, 1967
quent Acts and by this Act, may be cited as the Transport
Act, 1930-1967.

21. (1) The Governor may make regulations, not Regulations.
inconsistent with this Act, for or with respect to—

- (a) prescribing any forms to be used under this Act;
- (b) prescribing the fees to be paid under this Act;
- (c) the renewal and transfer of licenses and the return of expired licenses;
- (d) the issue and renewal of drivers' certificates, the form of those certificates, their duration, the inclusion therein of means of identifying the holder and the return of expired drivers' certificates;
- (e) the production to prescribed persons of licenses, drivers' certificates and other documents;
- (f) the design, construction and equipment of tow-trucks;
- (g) the qualifications and ages of drivers of tow-trucks;
- (h) the conduct and duties of persons operating or driving tow-trucks and of persons employed on or about them;
- (i) the conduct of persons in relation to the use or operation of tow-trucks;
- (j) prescribing the conditions under which tow-trucks may be operated;
- (k) premises or places to which tow-truck operators deliver, or cause to be delivered, motor vehicles towed by the tow-trucks they operate, the use of those premises or places by those operators and the towing of motor vehicles thereto;
- (l) regulating the amounts to be charged by operators of tow-trucks for the towing of motor vehicles and fixing maximum and minimum charges therefor;
- (m)

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- (m) the inspection of tow-trucks, by a member of the Police Force or an officer authorised in that behalf either generally or in a specific case in writing under the hand of the Commissioner, for the purposes of determining whether or not they comply with this Act or the regulations and, in connection with any such inspection, authorising the entry in or upon any tow-truck, building or place;
- (n) permits to operate, drive, travel in or be employed on or about tow-trucks pending determination of applications for licenses or drivers' certificates and for the revocation of such permits, the form of those permits, their duration and the inclusion therein of means of identifying the holder;
- (o) matters relating to notification of the sale, disposal or acquisition of licensed tow-trucks or tow-trucks in respect of which permits have been issued;
- (p) the granting of exemption or conditional exemption from compliance with all or any of the provisions of this Act or the regulations and the revocation of any such exemption or conditional exemption;
- (q) the granting of duplicate licenses, certificates or permits and matters connected with such licenses, certificates or permits;
- (r) prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act;
- (s) imposing any penalty, not exceeding two hundred dollars, for any breach of any regulation.

(2) A regulation may be of general or specially limited application according to time, place or circumstances, and may be general or restricted to any specified class of subject matter.

(3)

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(3) A regulation may authorise any matter or thing to be from time to time determined, applied or regulated by the Commissioner either generally or for any class of cases or in any particular case. No. 46, 1967

(4) Any regulation may confer on the Commissioner, or on any specified person, any power or authority required for the carrying into effect of all or any of the provisions of that or any other regulation.

(5) All regulations made under this Act shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

HEIGHT