

# Tow Truck Industry Act 1998 No 111

[1998-111]



New South Wales

## Status Information

### Currency of version

Historical version for 27 November 2003 to 29 September 2005 (accessed 22 December 2024 at 1:15)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Does not include amendments by**

- [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced — to commence on 1.12.2005)

- [Road Transport \(General\) Act 2005 No 11](#) (not commenced)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Tow Truck Industry Act 1998 No 111



New South Wales

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# Tow Truck Industry Act 1998 No 111



New South Wales

An Act to provide for a licensing and certification scheme for tow truck operators and drivers, and to regulate other matters relating to the tow truck industry; to constitute the Tow Truck Authority and the Tow Truck Industry Advisory Council; to repeal the *Tow Truck Act 1989*; to amend certain other Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Tow Truck Industry Act 1998*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**Advisory Council** means the Tow Truck Industry Advisory Council established by this Act.

**appointed member**, in relation to the Board, means a member other than the Director-General or the Director-General's nominee.

**approved** means approved by the TTA from time to time.

**authorised officer** means:

(a) an officer of the TTA, or

(b) an officer of the RTA, or

(c) an officer of the Department of Transport,

who is authorised in writing by the TTA for the purposes of this Act.

**Board** means the Board of the TTA established by this Act.

**certified driver** means the holder of a drivers certificate.

**close associate**—see section 5.

**Director-General** means the Director-General of the Department of Transport.

**drivers certificate** means a tow truck drivers certificate in force under this Act.

**driver licence** means a driver licence (within the meaning of the [Road Transport \(Driver Licensing\) Act 1998](#)), or a driver's licence (within the meaning of the [Traffic Act 1909](#)).

**emergency services officer** means an officer or employee of an emergency services organisation within the meaning of the [State Emergency and Rescue Management Act 1989](#).

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**General Manager** means the General Manager of the TTA.

**holding yard** means a place used for the purposes of the safekeeping of towed motor vehicles.

**licence** means a tow truck operators licence in force under this Act.

**licensed tow truck** means a tow truck that is used or operated under the authority of a licence.

**licensee** means the holder of a licence.

**motor vehicle** means a motor vehicle (other than a light rail vehicle) or trailer within the meaning of the [Road Transport \(General\) Act 1999](#).

**motor vehicle accident** means an accident involving one or more motor vehicles.

**operate** a tow truck includes tow a motor vehicle by means of the tow truck.

**road** means a road within the meaning of the [Road Transport \(General\) Act 1999](#) (other than a road that is the subject of a declaration made under section 9 (1) (b) of that Act relating to all of the provisions of that Act).

**road related area** means a road related area within the meaning of the [Road Transport \(General\) Act 1999](#) (other than a road related area that is the subject of a declaration made under section 9 (1) (b) of that Act relating to all of the provisions of that Act).

**RTA** means the Roads and Traffic Authority.



**tow** includes:

- (a) lift and tow, or lift and carry, and
  - (b) lift for the purpose of towing or carrying, and
  - (c) carry on a trailer, and
  - (d) place onto a trailer for the purpose of carrying, and
  - (e) any other action prescribed by the regulations for the purposes of this definition,
- but does not include any activity declared by the regulations not to be towing for the purposes of this Act.

**tow truck**—see section 4.

**tow truck operator** means a person who conducts a business involving the operation of any tow truck for the purposes of towing motor vehicles.

**towing authorisation** means an authorisation required under Part 4.

**TTA** means the Tow Truck Authority of New South Wales constituted by this Act.

- (2) A reference in this Act to an **application** for a licence or drivers certificate includes a reference to an application for the renewal of a licence or drivers certificate.
- (3) Notes included in this Act do not form part of this Act.

#### 4 Meaning of “tow truck”

- (1) In this Act, a **tow truck** means any of the following motor vehicles that are used or operated for the purposes of towing motor vehicles:
  - (a) a motor vehicle that is equipped with a lifting device,
  - (b) a motor vehicle that is equipped with a trailer, towing attachment or other similar device,
  - (c) a motor vehicle that is fitted with a tilt table-top, or with a tilt table-top and winch,
  - (d) a motor vehicle that is fitted with a self-loading table-top that is capable of being detached from the motor vehicle for the purpose of loading or unloading another vehicle,
  - (e) any other motor vehicle prescribed by the regulations for the purposes of this definition.
- (2) A **tow truck** does not include:
  - (a) a motor vehicle that is declared by the regulations not to be a tow truck for the

purposes of this Act (any such motor vehicle may be described by reference to a particular class of motor vehicle), or

- (b) a motor vehicle referred to in subsection (1) if it is used or operated in such circumstances, or for such purposes, as may be prescribed by the regulations for the purposes of this subsection.

## 5 Meaning of “close associate”

(1) For the purposes of this Act, a person is a **close associate** of an applicant for a licence, or of a licensee (whether or not that applicant or licensee is a corporation), if the person:

- (a) holds or will hold any relevant financial interest, or exercises any relevant power (whether in his or her own right, or through an agent or on behalf of any other person), in the business of the applicant or licensee, and by virtue of that interest or power is or will be able (in the opinion of the TTA) to exercise a significant influence over or with respect to the conduct of that business, or
- (b) holds or will hold any relevant position, whether in his or her own right, or through an agent or on behalf of any other person, in the business of the applicant or licensee.

(2) In this section:

**relevant financial interest** in relation to a business means:

- (a) any share in the capital of the business, or
- (b) any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.

**relevant position** means the position of director, manager, and any other executive position and secretary, however those positions are designated, and such other positions as may be prescribed by the regulations for the purposes of this definition.

**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) to participate in the day to day management of the business concerned, or
- (b) to participate in any directorial, managerial or executive decision, or
- (c) to elect or appoint any person to any relevant position.

## 6 Application of Act

(1) Except to the extent provided by subsection (2), this Act does not apply to or in respect of a tow truck operated by the Crown or a statutory body representing the

Crown.

- (2) This Act applies to persons (other than employees of the Crown or of a statutory body representing the Crown) who carry out tow truck operations under a contract or arrangement made or entered into with the Crown or a statutory body representing the Crown.
- (3) The regulations may exempt any person or class of persons from the operation of any provision or requirement of this Act in such circumstances, and subject to such conditions, as may be specified in the regulations. Any such regulation may create offences in relation to a failure to comply with a condition prescribed in relation to an exemption.

## **Part 2 Administration**

### **Division 1 Tow Truck Authority**

#### **7 Constitution of Tow Truck Authority**

- (1) There is constituted by this Act a body corporate with the corporate name of the Tow Truck Authority of New South Wales (the **TTA**).
- (2) The TTA is a statutory body representing the Crown.

#### **8 Functions of TTA**

- (1) The TTA has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) In particular, the TTA has the following functions:
  - (a) to regulate the tow truck industry in accordance with this Act and the regulations,
  - (b) to make reports and recommendations to the Minister with respect to the licensing of tow truck operators and drivers, and the design, construction and equipment of tow trucks,
  - (c) to inform the public about the tow truck industry,
  - (d) to promote and undertake research into the tow truck industry,
  - (e) whenever it considers it necessary to do so, or is requested by the Minister to do so, to make reports or recommendations with respect to the operation of this Act or the tow truck industry.
- (3) The TTA is, in the exercise of its functions other than making a report or recommendation to the Minister, subject to the control and direction of the Minister.

## **Division 2 Management and staff of TTA**

### **9 Board of TTA**

- (1) There is to be a Board of the TTA.
- (2) The Board is to consist of the following members:
  - (a) the Director-General or a nominee of the Director-General (being an officer of the Department of Transport),
  - (b) 4 members appointed by the Minister.
- (3) The members of the Board who are appointed by the Minister are to be appointed as part-time members.
- (4) Of the members appointed by the Minister, one is to be appointed by the Minister (in the instrument appointing the person as a member or by a subsequent instrument) as the chairperson of the Board and another member as the deputy chairperson of the Board.
- (5) Schedule 1 has effect with respect to the members and procedure of the Board.

### **10 Functions of Board**

The Board has the following functions:

- (a) to determine the policies of the TTA,
- (b) to provide strategic planning in relation to the TTA,
- (c) to give directions relating to the functions of the TTA,
- (d) such other functions as may be conferred or imposed on it by or under this or any other Act or law.

### **11 Staff of TTA**

- (1) The staff of the TTA (including the General Manager) is to be employed under Part 2 of the [Public Sector Management Act 1988](#).
- (2) The TTA may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government department, public authority or local authority. Any such person of whose services the TTA makes use is, for the purposes of this Act, an officer of the TTA.
- (3) The TTA may engage consultants.

## **12 Role of General Manager**

- (1) The General Manager is responsible for the day-to-day management of the TTA subject to, and in accordance with, the policies and general directions of the Board.
- (2) Any act, matter or thing done in the name of, or on behalf of, the TTA by the General Manager is taken to have been done by the TTA.

## **Division 3 Tow Truck Industry Advisory Council**

### **13 Establishment of Advisory Council**

- (1) There is established by this Act a Tow Truck Industry Advisory Council.
- (2) The Advisory Council consists of:
  - (a) the General Manager (who is the chairperson of the Advisory Council), and
  - (b) such persons as are appointed by the Minister.
- (3) The members appointed by the Minister are to include the following:
  - (a) 2 persons chosen by the Minister from a panel of 5 persons nominated by the Council of the Motor Traders' Association of New South Wales to represent the interests of tow truck operators,
  - (b) 2 persons chosen by the Minister from a panel of 5 persons nominated by the Auto Recovery Association to represent the interests of tow truck operators and drivers,
  - (c) one person chosen by the Minister from a panel of 5 persons nominated by the Council of NRMA Limited to represent consumer interests,
  - (d) one person chosen by the Minister from a panel of 5 persons nominated by the Insurance Council of Australia Limited to represent the interests of motor vehicle insurers,
  - (e) one person chosen by the Minister from a panel of 5 persons nominated by an approved association to represent the interests of tow truck operators and drivers who operate outside metropolitan areas,
  - (f) one person who is an officer of the RTA,
  - (g) one person who is a representative of the Police Service,
  - (h) one person who is an officer of the Department of Fair Trading,
  - (i) one person who is an officer of the Department of Transport,
  - (j) such other persons as may be appointed by the Minister.

- (4) Schedule 1 has effect with respect to the members and procedure of the Advisory Council.

#### **14 Functions of Advisory Council**

- (1) The primary function of the Advisory Council is to advise the TTA on the following matters:
  - (a) the effect of this Act on the tow truck industry generally,
  - (b) developments in the tow truck industry,
  - (c) proposed regulatory improvements,
  - (d) the impact that any proposed regulatory changes will have on the tow truck industry,
  - (e) the manner in which the tow truck industry should be managed and regulated, in particular with respect to industry standards and integrity,
  - (f) such other matters as may be identified, or referred to the Advisory Council, by the TTA.
- (2) In referring a matter to the Advisory Council for its advice, the TTA may specify the terms of the reference and the time within which the advice of the Advisory Council is to be provided.
- (3) Any advice by the Advisory Council may be given at the request of the TTA, or without any such request.

### **Part 3 Tow truck operators licences and drivers certificates**

#### **Division 1 Tow truck operators licences**

##### **15 Requirement for tow truck operators to be licensed**

A person must not carry on business as a tow truck operator unless the person holds a tow truck operators licence that authorises the kind of towing work carried on by the person in the course of that business.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

##### **16 Classes of licences**

- (1) The TTA may determine different classes of licences that relate to different kinds of towing work.
- (2) The class of a licence, and the kind of towing work authorised by the licence, is to be endorsed on the licence.

## 17 Application for licence

- (1) A person may apply to the TTA for a licence.
- (2) An application for a licence must:
  - (a) be in the approved form, and
  - (b) specify the place at which the applicant intends to keep the records and documents required to be made under this Act in connection with the applicant's business as a tow truck operator (referred to in this Act as the **place of business**), and
  - (c) specify any place intended to be used as a holding yard in carrying on that business, and
  - (d) specify the number of tow trucks to be operated by the applicant in carrying on that business, and
  - (e) provide proof that the applicant is the responsible person (within the meaning of the *Road Transport (General) Act 1999*) for each of those tow trucks, and
  - (f) specify the names of each close associate of the applicant, and
  - (g) contain such other particulars as may be prescribed by the regulations or as are required by the approved form,
  - (h) be accompanied by the fee determined by the TTA by order published in the Gazette.

## 18 Restrictions on granting licence

- (1) The TTA:
  - (a) must refuse to grant an application for a licence on mandatory grounds, and
  - (b) may refuse to grant an application for a licence on discretionary grounds.
- (2) The mandatory grounds for refusing to grant an application for a licence are as follows:
  - (a) that the applicant is under the age of 18 years,
  - (b) that the applicant has, within the period of 10 years before the application for the licence was made:
    - (i) been convicted, or
    - (ii) been found guilty (but with no conviction being recorded),by a court in New South Wales or elsewhere of an offence prescribed by the

regulations, whether or not the offence is an offence under New South Wales law and whether or not committed before the commencement of this section,

(c) that the applicant is disqualified from holding a licence.

(3) The discretionary grounds for refusing to grant an application for a licence are as follows:

- (a) that the applicant is not, in the opinion of the TTA, a fit and proper person to hold a licence or is otherwise not competent to carry on the kind of towing work to which the proposed licence relates,
- (b) that the applicant has not specified a place of business,
- (c) that the applicant's place of business is not, in the opinion of the TTA, suitable for keeping the records and documents required to be made or kept under this Act,
- (d) that any place specified by the applicant as a holding yard intended to be used in the course of the applicant's business is not, in the opinion of the TTA, suitable to be used as a holding yard,
- (e) that the applicant is not the registered owner, or registered operator, of each tow truck specified in the application as a tow truck intended to be operated in carrying on the applicant's business,
- (f) that each such specified tow truck does not, in the opinion of the TTA, comply with the relevant requirements of this Act and the regulations or with any other relevant law relating to tow trucks,
- (g) that the applicant does not hold the qualifications and experience prescribed by the regulations in respect of the class of licence sought by the applicant,
- (h) that the applicant has not satisfactorily completed such training courses as may be approved for the purposes of this section,
- (i) that any close associate of the applicant has, within the period of 10 years before the application for the licence was made:
  - (i) been convicted, or
  - (ii) been found guilty (but with no conviction being recorded),by a court in New South Wales or elsewhere of an offence prescribed by the regulations, whether or not the offence is an offence under New South Wales law,
- (j) that the granting of the licence would, in the opinion of the TTA, be contrary to the public interest.

(4) The regulations may provide additional mandatory or discretionary grounds for



refusing to grant an application for a licence.

- (5) A reference in subsection (3) (a), (g) or (h) to an applicant includes a reference to each close associate of the applicant.

## **19 Grant of licence**

- (1) The TTA may determine an application for a licence by granting a licence to the applicant.
- (2) A licence is to be in the approved form, and must specify the name of the licensee and the licence number.
- (3) A licence authorises the licensee to carry on the kind of towing work that is specified in the licence.
- (4) A licence confers no right of property and is incapable of being transferred, assigned or mortgaged, charged or otherwise encumbered.

## **20 Licence conditions**

- (1) A licence may be granted subject to such conditions as may be specified in the licence.
- (2) In addition to the conditions specified in a licence, a licence is subject to the following conditions:
- (a) the licensee must take all reasonable precautions to prevent loss of or from, or damage to, any motor vehicle that:
- (i) is towed by a tow truck operated under the licence, or
  - (ii) is being held in the licensee's holding yard, or
  - (iii) is otherwise under the control of the licensee,
- (b) the licensee must keep the records and documents required to be made by the licensee under this Act or the regulations at the licensee's place of business,
- (c) the licensee must permit an authorised officer or police officer to enter that place of business at any reasonable time for the purpose of exercising any function under Part 5,
- (d) the licensee must not, in the course of carrying on business, use a holding yard other than a holding yard specified in the licence,
- (e) the licensee must ensure that any licensed tow truck displays the distinctive number-plate issued for the tow truck by the RTA under this Act,
- (f) the licensee must ensure that any licensed tow truck, and its equipment, comply

with the requirements of this Act or the regulations (or any other law) with respect to the design, construction and serviceability of the tow truck or its equipment,

- (g) the licensee must ensure that the requirements of any law with respect to the limitation of hours of driving a tow truck are complied with,
- (h) the licensee must notify the TTA of any change in the particulars relating to the close associates of the licensee,
- (i) the licensee must not charge a fee for the towing, salvage or storage of motor vehicles that exceeds any applicable maximum fees determined by the TTA,
- (j) the licensee must keep the licence at the licensee's place of business,
- (k) the licensee must ensure that a copy of the licence is kept in each licensed tow truck,
- (l) such other conditions as may be prescribed by the regulations.

## **21 Licence fees**

- (1) The TTA may, by order published in the Gazette, determine fees for the granting of licences.
- (2) Without limiting the generality of subsection (1), the TTA may determine:
  - (a) different fees for different classes of licences, and
  - (b) different fees for granting a licence to a person for the first time and for any subsequent licence.

### **Editorial note—**

For orders published under this section see the Historical notes at the end of the Act.

## **22 Term of licence and renewal**

- (1) A licence continues in force for a period of one year from the date on which it was granted or such shorter period as may be specified in the licence, unless it is sooner revoked or suspended or otherwise ceases to be in force.
- (2) A licence may be renewed from time to time by making an application for a subsequent licence in accordance with this Act.

## **Division 2 Tow truck drivers certificates**

### **23 Requirement for tow truck drivers to hold drivers certificates**

- (1) A person must not:
  - (a) drive or stand a licensed tow truck on a road or road related area at any time, or

- (b) use or operate, or assist in the use or operation of, a licensed tow truck on a road or road related area at any time, or
- (c) drive or stand a tow truck (other than a licensed tow truck) on a road or road related area at any time for the purposes of towing a motor vehicle for fee or reward,

unless the person holds a drivers certificate.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

- (2) A certified driver must not carry on any kind of towing work other than the kind of towing work that is authorised by the drivers certificate.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

#### **24 Classes of drivers certificates**

- (1) The TTA may determine different classes of drivers certificates that relate to different kinds of towing work.
- (2) The class of a drivers certificate, and the kind of towing work authorised by the drivers certificate, is to be endorsed on the drivers certificate.

#### **25 Application for drivers certificate**

- (1) A natural person may apply to the TTA for a drivers certificate.
- (2) An application for a drivers certificate must:
  - (a) be in the approved form, and
  - (b) contain such particulars as may be prescribed by the regulations or as are required by the approved form, and
  - (c) be accompanied by the fee determined by the TTA by order published in the Gazette.

#### **26 Restrictions on granting drivers certificate**

- (1) The TTA:
  - (a) must refuse to grant an application for a drivers certificate on mandatory grounds, and
  - (b) may refuse to grant an application for a drivers certificate on discretionary grounds.
- (2) The mandatory grounds for refusing to grant an application for a drivers certificate are as follows:

- (a) that the applicant is under the age of 18 years,
  - (b) that the applicant has, within the period of 10 years before the application for the drivers certificate was made:
    - (i) been convicted, or
    - (ii) been found guilty (but with no conviction being recorded),by a court in New South Wales or elsewhere of an offence prescribed by the regulations, whether or not the offence is an offence under New South Wales law and whether or not committed before the commencement of this section,
  - (c) that the applicant does not hold a full driver licence or does not, if the applicant resides in another State or Territory, hold a licence issued under the law in force in that State or Territory which, in the opinion of the TTA, is the equivalent of a full driver licence,
  - (d) that the applicant is disqualified from holding a drivers certificate.
- (3) The discretionary grounds for refusing to grant an application for a drivers certificate are as follows:
- (a) that the applicant is not, in the opinion of the TTA, a fit and proper person to hold a drivers certificate or is otherwise not competent to carry on the kind of towing work to which the proposed drivers certificate relates,
  - (b) that the applicant does not hold the qualifications and experience prescribed by the regulations in respect of the class of drivers certificate sought by the applicant,
  - (c) that the applicant has not satisfactorily completed such training courses as may be approved for the purposes of this section,
  - (d) that the granting of the drivers certificate would, in the opinion of the TTA, be contrary to the public interest.
- (4) The regulations may provide additional mandatory or discretionary grounds for refusing the granting of an application for a drivers certificate.
- (5) A reference in subsection (2) (c) to a **full driver licence** is a reference to a driver licence other than a provisional licence, restricted licence or learner licence as referred to in the [Road Transport \(Driver Licensing\) Act 1998](#).

## 27 Grant of drivers certificate

- (1) The TTA may determine an application for a drivers certificate by granting a drivers certificate to the applicant.

- (2) A drivers certificate authorises the certified driver to carry on the kind of towing work that is specified in the certificate.
- (3) A drivers certificate cannot be transferred to another person.

## **28 Form of drivers certificate**

- (1) A drivers certificate is to be in the approved form.
- (2) A drivers certificate must:
  - (a) contain a recent photograph of the certified driver (such photograph being obtained in accordance with arrangements determined by the TTA), and
  - (b) specify the name of the certified driver and the number of the drivers certificate, and
  - (c) specify the class of the drivers certificate and the kind of towing work authorised by the certificate, and
  - (d) contain such other particulars as may be prescribed by the regulations.

## **29 Conditions of drivers certificate**

- (1) A drivers certificate may be granted subject to such conditions as may be specified in the drivers certificate.
- (2) In addition to the conditions specified in a drivers certificate, a drivers certificate is subject to the following conditions:
  - (a) the certified driver must take all reasonable precautions to prevent loss of or from, or damage to, any motor vehicle that is towed by a tow truck used or operated by the driver,
  - (b) the certified driver must not charge a fee for the towing, salvage or storage of motor vehicles that exceeds any applicable maximum fees determined by the TTA,
  - (c) such other conditions as may be prescribed by the regulations.

## **30 Drivers certificate fees**

- (1) The TTA may, by order published in the Gazette, determine fees for the granting of drivers certificates.
- (2) Without limiting the generality of subsection (1), the TTA may determine:
  - (a) different fees for different classes of drivers certificates, and
  - (b) different fees for granting a drivers certificate to a person for the first time and for any subsequent drivers certificate.

**Editorial note—**

For orders published under this section see the Historical notes at the end of the Act.

**31 Term of drivers certificate and renewal**

- (1) A drivers certificate continues in force for a period of one year from the date on which it was granted or such shorter period as may be specified in the drivers certificate, unless it is sooner revoked or suspended or otherwise ceases to be in force.
- (2) A drivers certificate may be renewed from time to time by making an application for a subsequent drivers certificate in accordance with this Act.

**32 Automatic revocation of drivers certificate if driver licence no longer in force**

If the driver licence of a certified driver is cancelled, suspended or otherwise ceases to be in force under any Act or other law, his or her drivers certificate is, without any further action, taken to be revoked.

**Division 3 General provisions relating to licences and drivers certificates**

**33 Investigation of application for licence or drivers certificate**

- (1) The TTA may carry out such investigations and inquiries as the TTA thinks necessary to enable it to properly consider an application for a licence or drivers certificate.
- (2) In particular, the TTA may:
  - (a) require any person who is an applicant for a licence or drivers certificate, or who is a close associate of the applicant, to consent to having his or her photograph taken in accordance with the arrangements determined by the TTA, and
  - (b) refer to the Commissioner of Police details of any person the TTA is investigating, copies of any photographs taken and any supporting information that the TTA considers appropriate for referral to the Commissioner.
- (3) The Commissioner of Police may inquire into and report to the TTA on such matters concerning the application as the TTA may request.
- (4) The TTA may refuse to consider an application for a licence or drivers certificate while any person from whom the TTA requires a photograph under this section refuses to allow his or her photograph to be taken in accordance with this section.
- (5) For the purposes of this section and section 34, a person who is the holder of a licence or drivers certificate (**the current licence or drivers certificate**) is taken to have applied for a subsequent licence or drivers certificate if:
  - (a) the TTA has, before the current licence or drivers certificate is due to expire, given

that person notice that the current licence or drivers certificate is due to expire,  
and

- (b) the person does not, within the time specified in the notice, notify the TTA that the person does not intend to apply for a subsequent licence or drivers certificate.

#### **34 TTA may require further information in relation to application**

- (1) The TTA may, by notice in writing, require a person who has applied for a licence or drivers certificate or who, in the opinion of the TTA, has some association or connection with the applicant that is relevant to the application, to do any of the following things:
- (a) to provide, in accordance with directions in the notice, such information (including financial and other confidential information), verified by statutory declaration, as is relevant to the investigation of the application and is specified in the notice,
  - (b) to produce, in accordance with directions in the notice, such records (including any financial records) relevant to the investigation of the application as are specified in the notice and to permit inspection of the records, the taking of extracts from them and the making of copies of them,
  - (c) to authorise a person described in the notice to comply with a specified requirement of the kind referred to in paragraph (a) or (b),
  - (d) to furnish to the TTA such authorisations and consents as the TTA directs for the purpose of enabling the TTA to obtain information (including financial and other confidential information) from other persons concerning the person and his or her associates or relations.
- (2) If a requirement made under this section is not complied with, the TTA may refuse to consider the application concerned.
- (3) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.
- (4) The reasonable costs incurred by the TTA in investigating and inquiring into an application for a licence or drivers certificate are payable to the TTA by the applicant, unless the TTA determines otherwise in a particular case.
- (5) The TTA may require part or full payment in advance of the amount the TTA estimates will be payable by the applicant and may refuse to deal with the application until the required payment is made.
- (6) Investigation and inquiry costs may include reasonable travelling expenses within or outside the State.
- (7) It is a condition of any licence or drivers certificate granted to the applicant that any

amount payable under this section is paid.

### **35 Variation of conditions**

- (1) The TTA may amend a licence or drivers certificate:
  - (a) by varying any conditions specified in the licence or certificate, or
  - (b) by adding specified conditions to the licence or certificate, or
  - (c) by omitting specified conditions from the licence or certificate.
- (2) The TTA may do so on application by the licensee or certified driver concerned, or as the TTA otherwise thinks fit.
- (3) If the TTA decides to amend the licence or drivers certificate, the TTA must notify the licensee or certified driver concerned in writing of the amendment.
- (4) Any such amendment takes effect on and from a date specified in the notice, being a date not earlier than 7 days after the notice is served on the licensee or certified driver concerned.
- (5) The TTA may not vary or omit a condition referred to in section 20 (2) or 29 (2).

### **36 False or misleading statements**

A person must not, in respect of:

- (a) an application for a licence or drivers certificate, or
- (b) an application for an amendment of a licence or drivers certificate, or
- (c) a notice of any proposed change in the particulars specified in a licence or drivers certificate,

make any statement which the person knows to be false or misleading in a material particular.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

### **37 Requirement to notify TTA of proposed changes in particulars**

- (1) A licensee or certified driver must notify the TTA in writing of any proposed change in the particulars specified in the licence or drivers certificate at least 7 days before the proposed change occurs.

Maximum penalty: 25 penalty units.
- (2) The TTA may approve the proposed change of particulars by amending the licence or drivers certificate. The TTA may grant a replacement licence or certificate on payment of such fee as may be determined by the TTA.



### **38 Duplicate licence or drivers certificate**

If the TTA is satisfied that a licence or drivers certificate has been lost or destroyed, it may, on payment of any fee determined by the TTA, issue a duplicate licence or drivers certificate.

### **39 Register of licences and drivers certificates**

- (1) The TTA is to keep a register, in such form as it determines, of licences and drivers certificates.
- (2) The register is to contain the following information in respect of each licence or drivers certificate:
  - (a) the matters that by or under this Act are required to be specified in the licence or drivers certificate,
  - (b) particulars of any amendment of the licence or drivers certificate,
  - (c) particulars of any suspension or revocation, or voluntary surrender, of the licence or drivers certificate,
  - (d) such other particulars as may be determined by the TTA.
- (3) The information is to be recorded in the register in such manner as the TTA thinks fit.
- (4) The TTA may cause to be made such alterations in the register as are necessary to ensure that the information recorded in the register is accurate.
- (5) The register or any part of the register may, at all reasonable hours, be inspected, and copies of any entry in the register or that part may be taken, with the consent of the TTA, by a police officer or any officer of the TTA, or by any other person authorised by the TTA on payment of such fee as may be determined by the TTA.

### **40 Voluntary surrender of licence or drivers certificate**

A licensee or certified driver may voluntarily surrender the licence or drivers certificate held by the licensee or certified driver by delivering it to the TTA (by post or in person) with a notification in writing that the licence or certificate is surrendered.

## **Division 4 Disciplinary action by TTA**

### **41 Disciplinary action**

- (1) This Division enables the TTA, in its administrative capacity, to take disciplinary action against a licensee or certified driver.
- (2) In accordance with this Division, the TTA may do any of the following:
  - (a) suspend a licence or drivers certificate for a specified period,

- (b) permanently revoke a licence or drivers certificate,
  - (c) disqualify a licensee or certified driver from holding a licence or drivers certificate for a specified period,
  - (d) impose a fine not exceeding \$500 on a licensee or certified driver,
  - (e) give a direction under section 84 to a licensee or certified driver,
  - (f) caution or reprimand a licensee or certified driver.
- (3) In deciding whether to take disciplinary action under this Division, the TTA may:
- (a) conduct an inquiry under section 80, or
  - (b) invite the licensee or certified driver concerned to show cause, by way of a written submission, as to why the TTA should not take any such action.
- (4) However, the TTA is not required to conduct any such inquiry, or to invite the licensee or certified driver concerned to show cause, if the TTA is of the opinion that it is in the public interest that the TTA take immediate disciplinary action under this Division.
- (5) If any written submissions are made by a licensee or certified driver in accordance with subsection (3) (b), the TTA must, before taking disciplinary action under this Division, take those submissions into consideration.
- (6) The TTA is not prevented from taking disciplinary action under this Division merely because the licensee or certified driver concerned is subject to criminal or civil proceedings that relate to the same matters or incident to which the disciplinary action relates.
- (7) A reference in this Division to a licensee or certified driver includes a reference to a former licensee, or former certified driver, respectively.

#### **42 Grounds for taking disciplinary action**

The TTA may take disciplinary action under this Division against a licensee or certified driver for any of the following reasons:

- (a) any reason for which the licensee or certified driver would not have been granted a licence or drivers certificate initially,
- (b) the licensee or certified driver has been charged with an indictable offence,
- (c) the licensee or certified driver supplied information that was (to the licensee's or driver's knowledge) false or misleading in a material particular in, or in connection with, the application for the licence or drivers certificate,
- (d) the licensee or certified driver has contravened any provision of this Act or the

regulations, whether or not the licensee or driver has been convicted of an offence for the contravention,

- (e) the licensee or certified driver has contravened any condition to which the licence or drivers certificate is subject,
- (f) the TTA is of the opinion that the licensee or certified driver is no longer a fit and proper person to hold a licence or drivers certificate, respectively,
- (g) the licensee failed to specify the name of each close associate of the licensee in the application for the licence,
- (h) the licensee has, in the opinion of the TTA, been engaged in any fraudulent or dishonest conduct or activity in connection with the licensee's business as a tow truck operator,
- (i) the licensee has, in the case of a natural person, become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit,
- (j) the licensee is, in the case of a corporation, in the course of being wound up, or is under official management, or is a corporation for which a receiver or manager has been appointed, or has entered into a compromise or scheme of arrangement with its creditors,
- (k) the licensee has, for a continuous period of one month or more, ceased to carry on business as a tow truck operator,
- (l) any other reason prescribed by the regulations.

#### **43 Procedure for implementing disciplinary action**

(1) If the TTA decides:

- (a) to suspend or revoke a licence or a drivers certificate, or
- (b) to disqualify a licensee or certified driver from holding a licence or drivers certificate for a specified period, or
- (c) to impose a fine on a licensee or certified driver,

the TTA is required to serve on the licensee or certified driver a notice informing the person of its decision.

(2) The notice must include the reasons for the TTA's decision.

(3) The suspension or revocation of a licence or drivers certificate, or any period of disqualification, takes effect when the notice is served or on a later date specified in the notice.

- (4) A notice that suspends a licence or drivers certificate must specify the period of suspension.
- (5) A notice that disqualifies a licensee or certified driver from holding a licence or drivers certificate must specify the period of disqualification.
- (6) The TTA may, by serving a further notice on a licensee or certified driver, cancel a notice under this section before the notice takes effect.

#### **44 Effect of suspension**

- (1) A suspended licence does not authorise the licensee to carry on the business of a tow truck operator during the period specified in the notice suspending the licence.
- (2) A suspended drivers certificate does not authorise the certified driver to do anything during the period specified in the notice suspending the certificate that would require the person to otherwise hold a drivers certificate.

### **Division 5 Review by Administrative Decisions Tribunal**

#### **45 Application to Administrative Decisions Tribunal for review**

- (1) A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:
  - (a) the refusal or failure by the TTA to grant a licence or drivers certificate to the person,
  - (b) a condition imposed by the TTA in relation to a licence or drivers certificate granted to the person,
  - (c) the suspension or revocation of a licence or drivers certificate granted to the person,
  - (d) the disqualification of the person from holding a licence or drivers certificate,
  - (e) the imposition of a fine on the person,
  - (f) the giving of a direction under section 84 to the person.
- (2) For the purposes of this section, an application for the grant of a licence or drivers certificate is taken to have been refused if the licence or drivers certificate is not granted within 90 days after the application is made in accordance with this Act.

## **Part 4 Regulation of tow truck industry and towing operations**

### **Division 1 Job allocation scheme**

#### **46 Establishment, administration and operation of job allocation scheme**

- (1) The regulations may make provision for or with respect to the establishment, administration and operation of a scheme for the allocation of towing work.
- (2) In particular, the regulations may, in relation to any such scheme:
  - (a) identify activities that are taken to be towing work for the purposes of this Part, and
  - (b) specify the kinds of towing work to which the scheme applies, and
  - (c) confer powers on the TTA or any other person or body with respect to the administration and operation of the scheme, and
  - (d) provide for the establishment and operation of a job allocation centre for the purposes of the administration of the scheme, and
  - (e) provide for the operation of the scheme in any specified area, and
  - (f) provide that the scheme applies differently to different specified areas, and
  - (g) prescribe fees and charges that are payable to the TTA (including fees that are payable in connection with participation in the scheme, and providing for the time at which such fees are to be paid), and
  - (h) make provision for or with respect to any other matter relating to the administration and operation of the scheme.
- (3) If towing work is allocated in accordance with a job allocation scheme, the participant concerned does not, in any capacity, act as agent for the TTA or for any other person or body that allocates the work under the scheme. For the purposes of this Part, a **participant** is a licensee who is approved for the time being in accordance with the regulations to participate in a job allocation scheme established under this Part.
- (4) A job allocation scheme applies despite any contract or other arrangement under which any pre-arranged towing work is to be carried out by a tow truck operator to whom the contract or arrangement relates.
- (5) For the purposes of subsection (4), **pre-arranged towing work** means any towing work that is arranged before the need for the actual towing work arises, and whether before or after the commencement of this Division, by any person or body (including any organisation representing the interests of the owners of motor vehicles, or a roads authority).
- (6) The TTA, or any person or body acting on behalf of the TTA, or the Crown, is not liable to compensate any person for any loss suffered by the person as a result of the establishment, administration or operation of a job allocation scheme under this

Division.

**47 Contravention of job allocation scheme—towing by non-participant**

A licensee, or a certified driver or other person employed or engaged by a licensee, must not carry out, or attempt to carry out, any towing work to which a job allocation scheme applies unless the licensee is a participant for the time being in the scheme.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

**48 Contravention of job allocation scheme—unallocated towing work**

A participant, or a certified driver or other person who is employed or engaged by a participant to carry out any towing work, must not carry out, or attempt to carry out, any towing work to which a job allocation scheme applies unless the towing work has been allocated to the participant in accordance with the job allocation scheme.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

**49 Requirement to obtain towing authorisation**

(1) A participant, or a certified driver who is employed or engaged by a participant, must not carry out, or attempt to carry out, any towing work to which the job allocation scheme applies unless a towing authorisation has been obtained for the towing work.

Maximum penalty: 50 penalty units.

(2) However, a person is not required to comply with subsection (1) if the person is carrying out, or is attempting to carry out, the towing work:

(a) in accordance with any direction of a police officer or an authorised officer (including a direction that is given by telephone or other electronic transmission) to move a motor vehicle that, in the opinion of the officer, is causing an unreasonable obstruction to traffic, to the nearest place where it no longer causes an obstruction to traffic, or

(b) in such circumstances as may be prescribed by the regulations.

(3) A police officer or authorised officer may only give a direction described in subsection (2) (a) if, in the opinion of the officer, the motor vehicle cannot reasonably, in the circumstances, be driven away.

(4) The regulations may provide that a towing authorisation is required in such other circumstances as may be prescribed (whether or not those circumstances are associated with a job allocation scheme).

**50 Restrictions on obtaining towing authorisations**

(1) A person must not obtain, or attempt to obtain, a towing authorisation for the carrying

out of towing work unless:

- (a) the person holds a drivers certificate, and
- (b) the person is the driver of a licensed tow truck, and
- (c) the tow truck is standing at or in the vicinity of the motor vehicle that is required to be towed, and
- (d) the licensee who operates the tow truck is a participant in a job allocation scheme to which the towing work applies, and
- (e) the towing work has been allocated in accordance with the job allocation scheme to that licensee, and
- (f) the towing work is to be carried out by the tow truck referred to in paragraph (c).

Maximum penalty: 50 penalty units.

- (2) A towing authorisation is to be in the approved form.

#### **51 Towing in accordance with towing authorisation**

- (1) A towing authorisation authorises the towing only of the motor vehicle that is specified in the authorisation.
- (2) If a person has obtained a towing authorisation for the towing of a motor vehicle, the person must tow the motor vehicle in accordance with the particulars specified in the authorisation.

Maximum penalty: 50 penalty units.

- (3) Without limiting subsection (2), the person must tow the motor vehicle concerned:
  - (a) to the destination specified in the authorisation, or
  - (b) if the specified destination is not accessible at the time of the towing:
    - (i) to the nearest holding yard specified in the licence under the authority of which the tow truck is operated, and
    - (ii) to the specified destination as soon as is reasonably practicable after the specified destination becomes accessible, or
  - (c) if a destination is not specified in the towing authorisation:
    - (i) to the nearest holding yard specified in the licence under the authority of which the tow truck is operated, or
    - (ii) in accordance with the regulations.

Maximum penalty: 50 penalty units.

- (4) A person who is required to obtain a towing authorisation must ensure that the towing authorisation is completed and dealt with in accordance with the regulations.

Maximum penalty: 50 penalty units.

## **52 Regulations relating to towing authorisations**

The regulations may:

- (a) specify the persons who may give a towing authorisation, and
- (b) specify the particulars that must be specified in a towing authorisation (including the destination to which a motor vehicle is to be towed in accordance with the authorisation), and
- (c) prescribe fees and charges payable to the TTA in relation to towing authorisations, and
- (d) prescribe the procedures for dealing with towing authorisations, and
- (e) make provision for the keeping of records in relation to towing authorisations, and
- (f) prohibit a person from inducing another person to sign a towing authorisation by knowingly making a false or misleading statement, and
- (g) make provision for or with respect to any other matter relating to towing authorisations.

## **53 Alteration of completed towing authorisation prohibited**

A person must not, without reasonable excuse, alter a towing authorisation after it has been signed in accordance with the regulations.

Maximum penalty: 50 penalty units.

## **Division 2**

**(Repealed)**

## **Division 3 Miscellaneous provisions relating to tow trucks and towing operations**

### **54 Towing and other charges**

- (1) The TTA may from time to time determine the maximum charges that may be charged by tow truck operators and drivers for the towing, salvage or storage of motor vehicles (including the charges for different classes of such towing, salvage or storage).
- (2) The regulations may prescribe procedures for or with respect to charging for any such



towing, salvage or storage.

#### **55 Construction of tow trucks**

- (1) The regulations may make provision for or with respect to the design, construction and equipment of tow trucks.
- (2) A regulation made for the purposes of this section that is inconsistent with the provisions of any other regulation made under another Act prevails, to the extent of the inconsistency, over that other regulation.

#### **56 Certain tow trucks prohibited**

- (1) A person must not use or operate a prohibited tow truck for the purposes of any towing work.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

- (2) In this section, **prohibited tow truck** means a tow truck that is of a class prescribed by the regulations for the purposes of this section.

#### **57 Tow truck number-plates**

- (1) The RTA may issue distinctive number-plates for tow trucks that are, according to the advice of the TTA, to be operated under the authority of a licence.
- (2) A licensee must not sell, or otherwise transfer, any number-plates issued under this section to another person.

Maximum penalty: 25 penalty units.

### **Division 4 Miscellaneous offences**

#### **58 Contravention of conditions**

- (1) A licensee must not contravene any condition of the licence.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

- (2) A certified driver must not contravene any condition of the drivers certificate.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

#### **59 Tow truck operator may only employ qualified persons to carry on towing work**

A tow truck operator must not employ, engage or otherwise use the services of a person to do anything for which a drivers certificate is required under this Act or the regulations unless the person is a certified driver.

Maximum penalty: 50 penalty units.

## **60 Licensee required to keep certain records**

- (1) This section applies in relation to any licensee who holds a licence that authorises the towing of motor vehicles involved in accidents.
- (2) A licensee to whom this section applies must make a record of:
  - (a) the full name, residential address and drivers certificate number of each tow truck driver who is employed or engaged by the licensee or whose services are otherwise used by the licensee, and
  - (b) in relation to each occasion on which a licensed tow truck is used or operated by such a tow truck driver:
    - (i) the date on which the tow truck was used or operated, and
    - (ii) the name of any person who travelled as a passenger in the tow truck, and
    - (iii) the location of any motor vehicle accident attended by the tow truck, and
    - (iv) the number of any towing authorisation obtained by the driver, and
    - (v) the address to which any motor vehicle was towed in accordance with the towing authorisation, and
    - (vi) the registration number of any such motor vehicle.

Maximum penalty: 50 penalty units.

- (3) Any such record must:
  - (a) be in the approved form, and
  - (b) include particulars of the name and business address of the licensee, and
  - (c) be completed as soon as practicable after each occasion on which the licensed tow truck is used or operated.

Maximum penalty: 50 penalty units.

- (4) The licensee must keep the record at the licensee's place of business for at least 5 years after the information is recorded.

Maximum penalty: 50 penalty units.

- (5) If the licence is revoked or suspended or otherwise ceases to be in force, the licensee must provide to the TTA any records kept in accordance with this section.

Maximum penalty: 50 penalty units.

- (6) The licensee must, on demand by an authorised officer or a police officer, provide the

officer with the name and address of any tow truck driver whose services have been or are being used by the licensee.

Maximum penalty: 50 penalty units.

### **61 Prohibition of “spotter’s fees”, “drop fees” and towing inducements**

(1) A person must not, for the purpose of obtaining towing work, or for the purpose of enabling any other person to obtain towing work, give or receive, or offer to give or receive, any valuable thing in consideration of the furnishing of information or advice:

- (a) as to the occurrence of a motor vehicle accident, or
- (b) as to the presence on a road or road related area of a motor vehicle that has been involved in an accident or that otherwise requires towing.

Maximum penalty: 25 penalty units.

(2) A person must not:

- (a) give, or offer to give, any valuable thing in consideration of the obtaining, personally or for any other person, of the work of repairing a motor vehicle that has been involved in an accident or that otherwise requires towing, or
- (b) demand, receive, or offer to receive, any valuable thing in consideration of the obtaining, for any other person, of the work of repairing a motor vehicle that has been involved in an accident or that otherwise requires towing.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

(3) A person must not give, or offer to give, any inducement of a kind prescribed by the regulations for the purposes of this subsection in consideration of the obtaining, personally or for any other person, of the towing of a motor vehicle that has been involved in an accident or that otherwise requires towing.

Maximum penalty: 50 penalty units.

(4) In this section:

**valuable thing** includes:

- (a) any money, loan, employment, article, benefit or advantage and any commission or rebate, payment in excess of actual value of goods or services, deduction or percentage, bonus or discount, and
- (b) not demanding any money or money’s worth or valuable thing,

but does not include any reasonable charges in respect of the towing, salvage or storage of a motor vehicle (so long as those charges do not exceed any charges determined by the TTA).

## 62 Prohibition on obtaining authority to repair

- (1) A person must not obtain or attempt to obtain from another person the other person's authority for the repair by a particular repairer of a motor vehicle that has been involved in an accident before it is delivered to the place specified in the towing authorisation relating to the motor vehicle as the place to which it is to be towed.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

- (2) If:

- (a) an authority for the repair of a motor vehicle is obtained in contravention of subsection (1), and
- (b) within 48 hours after obtaining the authority the person who gave the authority to repair (or the person's agent) revokes the authority by written notice given to the repairer in respect of whom the authority was given or to an employee of that repairer,

the person revoking the authority is not liable for any costs or damages arising as a result of giving the authority or revoking the authority, or for the cost of any work performed on the vehicle after it was towed to the place specified in the towing authorisation.

- (3) In this section, **repairer** means a person who carries on the business of repairing motor vehicles.

## 63 Touting or soliciting for towing or repair work at scene of accident

- (1) A person must not, at or within 500 metres of the scene of a motor vehicle accident, tout or solicit:

- (a) for any towing work, or
  - (b) for any work involving the repair of a motor vehicle,
- regardless of on whose behalf the touting or soliciting is done.

Maximum penalty: 50 penalty units.

- (2) For the purposes of subsection (1) (a), **tout or solicit** for any towing work does not include lawfully attempting to obtain, or lawfully dealing with, a towing authorisation in accordance with this Act and the regulations.

## 64 Threats and related conduct

- (1) A person must not, by threats, intimidation or coercion, do anything to any person for the purpose of any of the following:
  - (a) obtaining towing work,

- (b) enabling any other person to obtain towing work,
  - (c) preventing any other person from obtaining towing work,
  - (d) obtaining the work of repairing a motor vehicle that has been involved in an accident or that otherwise requires towing,
  - (e) enabling any other person to obtain the work of repairing a motor vehicle that has been involved in an accident or that otherwise requires towing,
  - (f) preventing any other person from obtaining the work of repairing a motor vehicle that has been involved in an accident or that otherwise requires towing.
- (2) A person must not, by threats, intimidation or coercion, prevent (or attempt to prevent) a person from complying with any provision of this Act or the regulations.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

#### **65 Cleaning up at scene of accident**

The driver of a tow truck that tows a motor vehicle from the scene of a motor vehicle accident must, before leaving the scene, remove any debris caused by, or relating to, the motor vehicle unless otherwise directed by a police officer.

Maximum penalty: 10 penalty units.

#### **66 Compliance with directions at scene of accident**

- (1) If the driver of a tow truck is at the scene of a motor vehicle accident, the driver must comply with any reasonable direction given to the driver by an authorised officer, police officer or emergency services officer who is present at the scene and who is exercising his or her official duties as such an officer.

Maximum penalty: 50 penalty units.

#### **Note—**

It is an offence under section 75 (3A) of the *Road Transport (Safety and Traffic Management) Act 1999* to fail to comply with any direction given by an authorised officer or police officer in the exercise of the officer's functions of removing an obstruction to traffic on a road or road related area.

- (2) Without limiting subsection (1), an authorised officer or police officer may, if the officer is of the opinion that a person is acting in contravention of this Act or the regulations, direct the person:
- (a) to leave the scene of the accident, and
  - (b) to stay at least 500 metres away from the scene (or such other distance as the officer may direct) and for such time as the officer may direct.

### **67 Passengers in tow trucks**

A person must not travel as a passenger in any tow truck that is proceeding to or from the scene of a motor vehicle accident unless the person:

- (a) was the driver of, or was a passenger in, a motor vehicle involved in the accident, or
- (b) is a certified driver who is travelling for the purpose of assisting the driver of the tow truck in carrying out towing work.

Maximum penalty: 50 penalty units.

### **68 Restrictions on standing tow truck at accident scene**

The driver of a tow truck must not stand the tow truck at or within 500 metres of the scene of a motor vehicle accident:

- (a) for a period longer than the time that is reasonably necessary:
  - (i) to obtain a towing authorisation in respect of any motor vehicle involved in the accident (being a motor vehicle for which no such authorisation has been obtained by another tow truck driver), and
  - (ii) to secure the motor vehicle to or on to the tow truck, and
  - (iii) to comply with section 65, or
- (b) if a towing authorisation has already been obtained in respect of each of the motor vehicles involved in the accident that require towing—without a reasonable excuse.

Maximum penalty: 50 penalty units.

### **69 Drivers certificate to be worn by certified driver**

A certified driver must:

- (a) while at, or in the vicinity of, the scene of a motor vehicle accident, or
- (b) while driving or standing a tow truck on a road or road related area, or
- (c) while carrying out, or attempting to obtain, any towing work, or
- (d) while travelling in a tow truck as a passenger, or
- (e) while otherwise using or operating the tow truck,

wear his or her drivers certificate in a manner that enables the face of the certificate to be clearly visible.

Maximum penalty: 25 penalty units.

## **70 Production of licence and drivers certificate**

- (1) A licensee must, at the licensee's place of business, produce the licence to an authorised officer or police officer on demand.

Maximum penalty: 25 penalty units.

- (2) A certified driver must, whenever the driver is:

- (a) at, or in the vicinity of, the scene of a motor vehicle accident, or
- (b) driving or standing a licensed tow truck on a road or road related area, or
- (c) carrying out, or attempting to obtain, any towing work, or
- (d) travelling in a licensed tow truck as a passenger, or
- (e) otherwise using or operating a licensed tow truck,

produce to an authorised officer or police officer, on demand, a copy of the licence under which the tow truck is authorised.

Maximum penalty: 25 penalty units.

- (3) In addition to any other requirement in relation to the wearing of a drivers certificate, a certified driver must, on demand made by an authorised officer or police officer at any time:

- (a) if the driver has the certificate in his or her immediate possession—produce the certificate for inspection by the officer, or
- (b) if the driver does not have the certificate in his or her immediate possession—produce it, as soon as practicable after the demand is made, to the officer who made the demand or to another person nominated by the officer.

Maximum penalty: 25 penalty units.

- (4) A person is guilty of an offence under this section only if the authorised officer or police officer, when making the demand, explains to the person that failure to comply with the demand is an offence under this Act.

## **71 Advertising**

- (1) A person must not cause to be published any advertisement that advertises the business of a tow truck operator unless the person to whom the advertisement relates is a person who holds a licence that authorises the person to carry on that business.

Maximum penalty: 50 penalty units.

- (2) A licensee must ensure that any advertisement relating to the licensee's business as

a tow truck operator contains the number of the licence.

Maximum penalty: 50 penalty units.

- (3) A reference in this section to an advertisement includes a reference to any form of notice or statement in the nature of an advertisement.

## **72 Holding out**

- (1) A person must not make any representation, or cause or allow any representation to be made, to the effect that the person is a licensee if the person does not hold a licence.

Maximum penalty: 75 penalty units or imprisonment for 6 months, or both.

- (2) A person must not make any representation, or cause or allow any representation to be made, to the effect that the person is a certified driver if the person does not hold a drivers certificate.

Maximum penalty: 25 penalty units.

## **73 Requirement to return licence, drivers certificate or number-plates**

- (1) If a licence or drivers certificate is revoked or suspended or otherwise ceases to be in force, the person to whom it was granted must immediately return the licence or drivers certificate to the TTA.

Maximum penalty: 25 penalty units.

- (2) If a licence is revoked, or is suspended for a period of more than 28 days, or otherwise ceases to be in force, the person to whom it was granted must, unless otherwise directed by the TTA in writing, return any number-plates issued under section 57 to the RTA or the Commissioner of Police within 7 days of the revocation, suspension or discontinuation taking effect.

Maximum penalty: 25 penalty units.

## **74 Abuse of authority conferred by licence or drivers certificate**

A person who is a licensee or certified driver must not in any way:

- (a) suggest or imply that the person may, because of the licence or drivers certificate, exercise any function apart from a function authorised by the licence or certificate, or
- (b) use or attempt to use the licence or drivers certificate to exercise any function apart from a function authorised by the licence or certificate.

Maximum penalty: 50 penalty units.



### **75 Impersonation of authorised officer**

A person must not impersonate an authorised officer.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

## **Part 5 Enforcement and procedural provisions**

### **Division 1 Powers relating to investigations, inquiries and directions**

#### **76 Purposes for which powers under Division may be exercised**

Powers may be exercised under this Division for the following purposes:

- (a) for determining whether there has been compliance with, or a contravention of, this Act or the regulations,
- (b) for obtaining information or records (whether in writing, in electronic form or otherwise) for purposes connected with the administration of this Act,
- (c) generally for administering this Act.

#### **77 Nominated person**

The TTA may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purposes of this Division. Any information or answers given by any such nominated person bind the corporation.

#### **78 Requirement to provide information and records**

- (1) The TTA, an authorised officer or a police officer may, by notice in writing given to a person, require the person to furnish to the TTA or the officer such information or records (or both) as the TTA or the officer requires by the notice in connection with any matter arising under or in connection with this Act.
- (2) Any such notice must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.
- (3) This section does not affect the operation of section 34.

#### **79 Power to require answers and to demand name and address**

- (1) An authorised officer, or a police officer, may require a person whom the officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of this Act to answer any question in relation to those matters.
- (2) An authorised officer, or a police officer, may require a person whom the officer

suspects on reasonable grounds to have contravened, or to be contravening, this Act or the regulations to state his or her full name and residential address.

## **80 Inquiries by TTA**

- (1) The TTA may conduct an inquiry into any matter that is connected with the tow truck industry.
- (2) Without limiting the reasons for conducting an inquiry, the TTA may (but is not required to) conduct an inquiry into any matter concerning any licensee or certified driver for the purposes of deciding whether to take disciplinary action under Division 4 of Part 3 against the licensee or driver.
- (3) If the TTA decides to conduct an inquiry under this section, it may, by notice in writing served on any person, require the person:
  - (a) within such reasonable time as may be specified in the notice, to provide the TTA with such information, and to produce such documents in the person's possession or under the person's control, as may be required for the purpose of the inquiry and as may be specified in the notice, or
  - (b) to attend at a time and place specified in the notice before the TTA, and at such other times as may be required by the TTA, to give evidence concerning any matter the subject of the inquiry, and to produce such documents in the person's possession or under the person's control as may be required for the purpose of the inquiry and as may be specified in the notice.
- (4) In conducting an inquiry under this section, the TTA may:
  - (a) examine any person on oath, and for that purpose the person presiding at the inquiry may administer an oath, and
  - (b) arrange for the services of a lawyer to assist the TTA.

## **81 Powers of entry and inspection**

- (1) An authorised officer or a police officer may:
  - (a) enter any tow truck, or
  - (b) stop and detain any tow truck, or
  - (c) enter any premises at which a person carries on business as a tow truck operator (whether or not those premises are the place of business specified in a licence), or
  - (d) enter any other premises (including a holding yard) that are used in connection with the carrying on of towing operations,and exercise in relation to the tow truck, or in those premises, the functions specified

in subsection (2).

- (2) The functions that may be exercised by an authorised officer or a police officer are as follows:
- (a) the officer may conduct such investigations, and make such inquiries, searches, examinations and inspections, as the officer considers necessary,
  - (b) the officer may require the occupier of the premises, or the driver of the tow truck or any other person in charge of the tow truck, to produce to the officer any records or documents relating to the activities carried on at the premises or relating to the operation of the tow truck,
  - (c) the officer may make copies of, or take extracts from, any such records or documents,
  - (d) the officer may require the occupier of the premises, or the driver of the tow truck or any other person in charge of the tow truck, to provide such reasonable assistance and facilities as may be requested by the officer,
  - (e) the officer may seize anything that the officer has reasonable grounds for believing is connected with an offence under this Act or the regulations,
  - (f) the officer may do any other thing the officer is authorised to do under this Division.
- (3) Entry under this section may be effected with the use of reasonable force.

## **82 Inspection of tow trucks**

The regulations may make provision for or with respect to any of the following:

- (a) requiring a tow truck to be taken to a place for the purpose of an inspection or to be made available for inspection,
- (b) authorising inspections to be carried out by specified persons,
- (c) authorising notices to be given requiring the repair or modification of tow trucks,
- (d) prohibiting the operation of a tow truck until work specified in a notice has been carried out,
- (e) any other matter relating to the inspection of tow trucks.

## **83 Search warrants**

- (1) An authorised officer or a police officer may apply to an authorised justice for the issue of a search warrant if the officer believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened on any premises.

- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any authorised officer or police officer:
  - (a) to enter the premises, and
  - (b) to exercise any function of an authorised officer under section 81.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) In this section:

**authorised justice** has the same meaning as in the *Search Warrants Act 1985*.

**premises** includes a vehicle.

#### **84 Power to give directions**

- (1) The TTA may, for the purposes of ensuring compliance with this Act or the regulations or in taking disciplinary action under Division 4 of Part 3, give directions with respect to any of the following matters:
  - (a) the use or operation of any tow truck,
  - (b) the business of a tow truck operator,
  - (c) any matter connected with towing work.
- (2) Any such direction must be in writing.
- (3) A direction may require a person to do any specified thing, or to refrain from doing any specified thing.

#### **85 Offences**

- (1) A person who, without lawful excuse, neglects or fails to comply with any requirement made of the person under this Division is guilty of an offence.

Maximum penalty: 75 penalty units, or imprisonment for 6 months, or both.
- (2) A person who furnishes any information or records or does any other thing in purported compliance with a requirement made of the person under this Division, knowing that it is false or misleading in a material respect, is guilty of an offence.

Maximum penalty: 75 penalty units, or imprisonment for 6 months, or both.
- (3) A person who:
  - (a) wilfully delays, obstructs or hinders an authorised officer or a police officer in the exercise of the officer's functions under this Division, or

- (b) conceals (or attempts to conceal) any person or thing from an authorised officer or a police officer under this Division, or
  - (c) prevents (or attempts to prevent) any person or thing from being examined by an authorised officer or police officer under this Division,
- is guilty of an offence.

Maximum penalty: 75 penalty units, or imprisonment for 6 months, or both.

#### **86 Provisions relating to requirements under Division**

- (1) A person is not guilty of an offence of failing to comply with a requirement under this Division to furnish information or records or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) A person is not excused from a requirement under this Division to furnish information or records or to answer a question on the ground that the information, record or answer might incriminate the person or make the person liable to a penalty.
- (3) However, any information furnished or answer given by a natural person in compliance with a requirement under this Division is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Division) if:
  - (a) the person objected at the time of giving it to doing so on the ground that it might tend to incriminate the person, or
  - (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
- (4) Any record furnished by a person in compliance with a requirement under this Division is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) Further information obtained as a result of information or a record furnished, or of an answer given, in compliance with a requirement under this Division is not inadmissible on the ground:
  - (a) that the information or record had to be furnished or the answer had to be given, or
  - (b) that the information or record furnished or answer given might incriminate the person.
- (6) This section does not apply to or in respect of a requirement under this Division to state a person's name and address.

## **Division 2 Procedural provisions**

### **87 Proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) Proceedings for an offence under this Act or the regulations may be commenced at any time within 2 years after the earliest date on which the offence is alleged to have been committed.

### **88 Offences by corporations**

- (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision in accordance with subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

### **89 Penalty notices for certain offences**

- (1) An authorised officer or a police officer may serve a penalty notice on a person if:
  - (a) it appears to the officer that the person has committed an offence under this Act or the regulations, and
  - (b) the regulations prescribe that offence as an offence for which a penalty notice may be issued.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further criminal proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of, the same occurrence.

- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the provision creating the offence, and
  - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
  - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences or any other matter under this Act.

## **90 Power of court to order licence or drivers certificate to be surrendered**

- (1) If:
  - (a) in any proceedings before a court in which a licensee or certified driver is convicted of an indictable offence, or
  - (b) in any proceedings before a court in which a licensee or certified driver gives evidence or is convicted of an offence under this Act or the regulations,the court is of the opinion on the evidence before it, whether that evidence is given by the licensee, certified driver or any other person, that the licence or drivers certificate should be suspended or revoked, the court may order that the licence or drivers certificate be suspended for a period not exceeding 28 days and that the licence or certificate be delivered up to the court.
- (2) If a licence or drivers certificate is delivered up to a court in accordance with an order under subsection (1), the clerk or other relevant officer of the court must immediately send the licence or certificate, and a copy of the order, to the TTA.
- (3) The TTA, on receiving the licence or drivers certificate under subsection (2), may:
  - (a) cause the licence or drivers certificate to be returned to the licensee or certified driver concerned, or
  - (b) take disciplinary action under Division 4 of Part 3 against the licensee or certified driver.

## **Part 6 Miscellaneous provisions**

### **91 Tow Truck Industry Fund**

- (1) There is to be established in the Special Deposits Account a Tow Truck Industry Fund

(the **Fund**) into which is to be paid:

- (a) all money received by or on account of the TTA, and
  - (a1) all penalties for offences under this Act and the regulations that are recovered in prosecutions brought by, or penalty notices issued by, officers of the TTA, and
  - (b) all money borrowed by or advanced to the TTA or appropriated by Parliament for the purposes of the TTA, and
  - (c) the proceeds of the investment of money in the Fund, and
  - (d) all other money required by or under this or any other Act to be paid into the Fund.
- (2) The Fund is a continuation of the Tow Truck Industry Fund operating under the *Tow Truck Act 1989* immediately before the repeal of that Act by this Act.
- (3) There is to be paid from the Fund:
  - (a) all amounts required to meet expenditure incurred in the administration or execution of this Act and the regulations, and
  - (b) all payments made on account of the TTA or otherwise required to meet expenditure incurred in relation to the functions of the TTA, and
  - (c) any allowances paid to the members of the Board and the Advisory Council, and
  - (d) all other payments required by or under this or any other Act to be paid from the Fund.

## **92 Investment of money in Fund**

The TTA may invest money in the Tow Truck Industry Fund:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the TTA to invest the money, in any other manner approved by the Minister with the concurrence of the Treasurer.

## **93 Financial year**

- (1) The financial year of the TTA is the year commencing on 1 July.
- (2) A different financial year may be determined by the Treasurer under section 4 (1A) of the *Public Finance and Audit Act 1983*.

## **94 Recovery of money**

Any charge, fee, fine or money due or payable to the TTA may be recovered by the TTA as



a debt in a court of competent jurisdiction.

#### **95 Arrangements for supply of Police and RTA records**

- (1) The TTA may, for the purposes of the administration of this Act, enter into arrangements with the Commissioner of Police and the RTA for the supply to the TTA of information contained in the records of the Police Service or the RTA.
- (2) Those arrangements are sufficient authority for the supply of that information.

#### **96 Disclosure of spent convictions**

- (1) Section 12 of the *Criminal Records Act 1991* does not apply in relation to an application for a licence or a drivers certificate.
- (2) The TTA is to be considered to be a law enforcement agency for the purposes of section 13 of the *Criminal Records Act 1991*.

#### **97 Delegation**

- (1) The TTA may delegate any of its functions (other than this power of delegation) to any of the following persons:
  - (a) an officer of the TTA,
  - (b) an officer of the RTA,
  - (c) an officer of the Department of Transport,
  - (d) any other person (or class of persons) prescribed by the regulations.
- (2) A delegate may sub-delegate to any person any function delegated by the TTA if the delegate is authorised in writing to do so by the TTA.

#### **98 Identification of authorised officer**

- (1) An authorised officer cannot exercise the functions of an authorised officer under this Act or the regulations unless the officer is in possession of an identification card issued to the officer by the TTA.
- (2) In the course of exercising the functions of an authorised officer under this Act or the regulations, the officer must, if requested to do so by any person, produce the officer's identification card to the person.

#### **99 Disclosure of information**

- (1) A person must not disclose any relevant information obtained in connection with the administration or execution of this Act or the regulations (or any other Act conferring or imposing functions on the TTA) unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act or the regulations or any other Act, or
- (c) for the purposes of any legal proceedings arising out of this Act or the regulations or any other Act, or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

(2) In this section, **relevant information** means:

- (a) information concerning the business and financial affairs of the person from whom the information is obtained, or
- (b) information acquired in the connection with an application for a licence or drivers certificate.

#### **100 Refund of fees**

- (1) If a licence or drivers certificate is suspended or revoked or voluntarily surrendered, the TTA may refund part of any fees paid in respect of the granting of the licence or drivers certificate.
- (2) In determining whether part of a fee is to be refunded, the TTA may have regard to any costs incurred by the TTA with respect to the granting of the licence or drivers certificate.

#### **101 Evidence**

- (1) If, in any proceedings, it is proved that on a certain day or during any period a person was a licensee or a certified driver, it is to be presumed, in the absence of proof to the contrary, that the person was carrying on the business of a tow truck operator, or was employed (or otherwise engaged) as a tow truck driver, on that day or during that period.
- (2) A certificate signed by the General Manager, or by an officer authorised by the TTA for the purposes of this section, certifying any of the following:
  - (a) that a person was or was not, on a specified date, a licensee or certified driver,
  - (b) that particulars or conditions specified in the licence or drivers certificate were, on a specified date, the particulars or conditions specified in the licence or drivers certificate,

- (c) that a licence or drivers certificate specified in the certificate was, during any specified period, suspended,
- (d) that a licence or drivers certificate specified in the certificate was, on a specified date, suspended or revoked or otherwise ceased to be in force,
- (e) that any particulars specified in the certificate, being particulars of any thing contained in the register kept by the TTA under section 39, were, on a specified date, the particulars so specified,

is admissible in evidence in any proceedings and is evidence of the matters stated in the certificate.

## **102 Service of documents**

- (1) Any notice or other instrument issued, made or given for the purposes of this Act or the regulations may be served:
  - (a) by delivering it personally to the person to whom it is addressed, or
  - (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there with some person apparently of or above the age of 16 years for the person to whom it is addressed, or
  - (c) by post.
- (2) Any such notice or instrument addressed to a licensee or certified driver at the place last entered in the records of the TTA as the licensee's or driver's place of residence or business is to be taken to be properly addressed for the purposes of section 76 of the [Interpretation Act 1987](#).
- (3) A document may be served on the TTA by leaving it at, or by sending it by post to:
  - (a) the office of the TTA, or
  - (b) if the TTA has more than one office—any one of its offices.
- (4) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on any person or the TTA in any other manner.

## **103 Contracting out void**

- (1) The provisions of this Act and the regulations have effect despite any stipulation to the contrary.
- (2) No contract or agreement made or entered into before or after the commencement of this section operates to annul, vary or exclude any of the provisions of this Act or the regulations.

#### **104 Protection from personal liability**

Any thing done or omitted to be done by:

- (a) the TTA, or
- (b) the Board, or
- (c) any member of the Board, or
- (d) the General Manager, or
- (e) any authorised officer, or
- (f) any other person acting under the direction of the TTA,

does not, if the thing was done or omitted to be done in good faith for the purposes of executing this or any other Act, subject the member, General Manager, authorised officer or person so acting personally to any action, liability, claim or demand.

#### **105 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following matters:
  - (a) any matter connected with licences and drivers certificates, including qualifications for licences and drivers certificates,
  - (b) the use and operation of tow trucks,
  - (c) the advertising of the business of any tow truck operator,
  - (d) holding yards,
  - (e) the making and keeping of records by tow truck operators and drivers,
  - (f) the display of signs by tow truck operators and drivers,
  - (g) the particulars to be displayed on tow trucks,
  - (h) the furnishing by licensees or certified drivers of any information (including, in the case of licensees, particulars of any of their employees),
  - (i) the charging and payment of a fee for any inspection made or information supplied by the TTA,
  - (j) the conduct and duties of persons using, operating or driving tow trucks, and of

persons employed on or about them or otherwise employed in the business of a tow truck operator,

(k) the conduct of persons in relation to the use or operation of tow trucks,

(l) the functions of tow truck operators,

(m) prescribing the conditions under which tow trucks may be used or operated,

(n) the disposal of unclaimed motor vehicles in the care or custody of tow truck operators,

(o) fees with respect to the operation of the job allocation scheme under Division 1 of Part 4,

(p) fees payable under this Act or the regulations.

(3) The regulations may create an offence punishable by a penalty not exceeding 50 penalty units.

(4) The regulations may adopt any document as in force from time to time.

#### **106 Savings and transitional provisions**

Schedule 2 has effect.

#### **107 Repeals**

(1) The *Tow Truck Act 1989* is repealed.

(2) The *Tow Truck Regulation 1990* is repealed.

#### **108 Amendment of other Acts**

The Acts set out in Schedule 3 are amended as set out in that Schedule.

#### **109 Review of Act**

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Members and procedure of Board and Advisory Council**

(Sections 9 (5) and 13 (4))

### **Part 1 General**

#### **1 Definitions**

In this Schedule:

**member** means a member of the Board or the Advisory Council.

### **Part 2 Provisions relating to members**

#### **2 Terms of office of appointed members**

Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **3 Remuneration of appointed members**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### **4 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person:
  - (a) has all the functions of the member and is taken to be a member, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (4) This clause does not operate to confer on a deputy of a member who is the chairperson of the Board, or who is the chairperson of the Advisory Council, the member's functions as chairperson.

#### **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or

- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause, or
- (e) is absent from 4 consecutive meetings of the Board, or of the Advisory Council, of which reasonable notice has been given to the member personally or by post, except on leave granted by the relevant chairperson or unless the member is excused by the relevant chairperson for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted (or is found guilty but with no conviction recorded) in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more, or is convicted (or found guilty but with no conviction recorded) elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

- (2) The Minister may at any time remove an appointed member from office for such reason as the Minister thinks fit.

## **6 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Chairperson and deputy chairperson of Board**

- (1) In the absence of the chairperson of the Board, the deputy chairperson of the Board may, if available, act in the place of the chairperson.
- (2) While acting in the place of the chairperson, the deputy chairperson has all the functions of the chairperson and is taken to be the chairperson.

## **8 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board or the Advisory Council, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board or the Advisory Council.

- (2) A disclosure by a member at a meeting of the Board or the Advisory Council that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Board or the Advisory Council in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board or the Advisory Council.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Board or the Advisory Council otherwise determines:
  - (a) be present during any deliberation of the Board or the Advisory Council with respect to the matter, or
  - (b) take part in any decision of the Board or the Advisory Council with respect to the matter.
- (5) For the purposes of the making of a determination by the Board or the Advisory Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Board or the Advisory Council for the purpose of making the determination, or
  - (b) take part in the making by the Board or the Advisory Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board or the Advisory Council.

## **9 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.



(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **Part 3 Procedure**

### **10 General procedure**

The procedure for the calling of meetings of the Board or the Advisory Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

### **11 Quorum**

- (1) The quorum for a meeting of the Board is a majority of its members, of whom one must be the chairperson or deputy chairperson.
- (2) The quorum for a meeting of the Advisory Council is a majority of its members.

### **12 Presiding member**

- (1) The chairperson of the Board (or, in the absence of the chairperson, the deputy chairperson of the Board) is to preside at a meeting of the Board.
- (2) The chairperson of the Advisory Council (or, in the absence of the chairperson, another member of the Advisory Council elected by the members present at the meeting) is to preside at a meeting of the Advisory Council.
- (3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **13 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board or the Advisory Council at which a quorum is present is the decision of the Board or the Advisory Council.

### **14 Transaction of business outside meetings or by telephone**

- (1) The Board or the Advisory Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board or the Advisory Council,

and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board or the Advisory Council.

- (2) The Board or the Advisory Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the chairperson of the Board or of the Advisory Council and each member have the same voting rights as they have at an ordinary meeting of the Board or the Advisory Council.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board or the Advisory Council.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **15 First meeting**

The Minister may call the first meeting of the Board or the Advisory Council in such manner as the Minister thinks fit.

## **Schedule 2 Savings and transitional provisions**

(Section 106)

### **Part 1 Preliminary**

#### **1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Tow Truck Industry Amendment Act 1999*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Definitions**

In this Part:

**former Act** means the *Tow Truck Act 1989* as in force immediately before its repeal by this Act.

**former corporation** means the Tow Truck Industry Council of New South Wales constituted by the former Act.

### **3 Continuation of corporate entity**

The TTA is a continuation of, and the same legal entity as, the former corporation.

### **4 Members of former corporation**

- (1) A person who, immediately before the commencement of Part 2 of this Act, held office as a member of the former corporation, ceases to hold that office on that commencement.
- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

### **5 Saving of existing licences and drivers certificates**

- (1) In this clause:

**existing drivers certificate** means a drivers certificate:

- (a) that was granted under the former Act, and
- (b) that was in force immediately before the repeal of the former Act by this Act.

**existing licence** means a licence:

- (a) that was granted under the former Act, and
- (b) that was in force immediately before the repeal of the former Act by this Act.

- (2) Subject to the regulations, an existing licence:

- (a) is taken to be a licence granted under this Act, and
  - (b) continues in force for the unexpired portion of its term (unless it is sooner suspended or revoked or otherwise ceases to be in force under this Act), and
  - (c) cannot be renewed.
- (3) Subject to the regulations, an existing drivers certificate:
- (a) is taken to be a drivers certificate granted under this Act, and
  - (b) continues in force for the unexpired portion of its term (unless it is sooner suspended or revoked or otherwise ceases to be in force under this Act), and
  - (c) cannot be renewed.
- (4) The conditions to which an existing licence or existing drivers certificate is subject are, subject to the regulations, taken to be conditions imposed by the TTA under this Act, and any such condition may be amended in accordance with this Act.

## **6 Pending applications**

An application for a licence or drivers certificate made under the former Act that was not finally determined before the repeal of the former Act by this Act is void and does not have any operation with respect to this Act.

## **7 Pending review and appeals**

Any disciplinary proceedings under Part 4 of the former Act, or any proceedings arising out of a decision under that Act, that were instituted before the repeal of the former Act but not determined before that repeal, are to be determined as if this Act had not been enacted.

## **8 References to [Tow Truck Act 1989](#)**

Except as provided by the regulations, a reference in any instrument (other than this Act or the regulations) to any provision of the [Tow Truck Act 1989](#), or the [Tow Truck Regulation 1990](#), is to be read as a reference to the corresponding provision of this Act, or the regulations made under this Act, respectively.

## **Part 3 Miscellaneous**

### **9 Continuity of office of appointed members of Board**

A person holding office as an appointed member of the Board immediately before the repeal and re-enactment of section 9 (2) by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2001](#) is taken to have been appointed under that subsection (as re-enacted) for the balance of the member's term of office.

## Schedule 3 Amendment of other Acts

(Section 108)

### 3.1 Administrative Decisions Tribunal Act 1997 No 76

#### Schedule 2 Composition and functions of Division

Insert after clause 8 of Part 4:

#### 9 Tow Truck Industry Act 1998 (Reviewable decisions)

- (1) For the purposes of an application made under section 45 of the *Tow Truck Industry Act 1998*, the Tribunal is to be constituted by a Tow Truck Industry Disciplinary Panel.
- (2) A Tow Truck Industry Disciplinary Panel is to consist of the following members of the General Division of the Tribunal:
  - (a) one Division member who is a judicial member,
  - (b) one Division member who is a non-judicial member,
  - (c) one Division member who was assigned to the Division on the recommendation of the Minister administering the *Tow Truck Industry Act 1998* for the purposes of providing expertise in relation to matters concerning the tow truck industry.

### 3.2-3.6

(Repealed)