

# Tow Truck Industry Act 1998 No 111

[1998-111]



New South Wales

## Status Information

### Currency of version

Historical version for 22 January 2021 to 31 October 2021 (accessed 5 November 2024 at 9:03)

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

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**

[Statute Law \(Miscellaneous Provisions\) Bill 2021](#)

[Better Regulation Legislation Amendment \(Miscellaneous\) Bill 2021](#)

### Authorisation

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File last modified 12 May 2021

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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 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—

**accident** means any collision, impact or other event (however caused) resulting in damage to a motor vehicle.

**accident towing work** means the towing or carrying away by a tow truck of a motor vehicle involved in an accident, either from the scene of the accident or from the place to which the motor vehicle has been moved following the accident.

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

**authorised officer** means a person employed in the Public Service or the Transport Service who is authorised in writing by the Secretary as an authorised officer for the purposes of this Act.

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

**close associate**—see section 5.

**criminal intelligence** means information classified by the Commissioner of Police as criminal intelligence within the meaning of the [Crimes \(Criminal Organisations Control\) Act 2012](#), or declared by the Supreme Court under that Act to be criminal intelligence.

**Department** means the Department of Finance, Services and Innovation.

**driver licence** means a driver licence within the meaning of the [Road Transport Act 2013](#).

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

**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.

**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 Act 2013](#).

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

**road** means a road within the meaning of section 4(1) of the [Road Transport Act 2013](#) (other than a road that is the subject of a declaration made under section 18(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 section 4(1) of the [Road Transport Act 2013](#) (other than a road related area that is the subject of a declaration made under section 18(1)(b) of that Act relating to all of the provisions of that Act).

**scene of an accident** means an area proximate to the point where a motor vehicle involved in an accident has, as an immediate result of the accident, come or been brought to a stationary position.

**Secretary** means the Secretary of the Department.

**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.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of 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 Secretary) 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 a 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.

#### **6A Act does not apply to towing, salvage or storage of certain motor vehicles**

This Act does not apply to the towing, salvage or storage of—

- (a) a forklift truck, or
- (b) a golf buggy, or
- (c) a ride-on mower, or
- (d) an excavator, or
- (e) a cherry picker, or
- (f) any other motor vehicle or class of motor vehicle prescribed by the regulations for the purposes of this section.

## **Part 2**

### **8-14 (Repealed)**

## **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 Secretary 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 Secretary for a licence.
- (2) An application for a licence must—
  - (a) be in the approved form, and
    - (a1) (Repealed)
    - (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 each 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 Act 2013*) 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, and
    - (h) be accompanied by the fee (if any) prescribed by the regulations.

## 18 Restrictions on granting licence

- (1) The Secretary—
  - (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,
- (d) that the applicant is a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*,

**Note—**

Controlled members are prohibited from applying for licences—see section 27 of the *Crimes (Criminal Organisations Control) Act 2012*.

- (e) that the Secretary has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the applicant that the applicant—
  - (i) is a member of, or
  - (ii) is a close associate of, or
  - (iii) regularly associates with, one or more members of,a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*, and the nature and circumstances of the applicant's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the applicant is granted 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 Secretary, 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 Secretary, suitable for keeping the records and documents required to be made or kept under this Act,
  - (c1) that the applicant has not specified a place that is to be used as a holding yard in the course of the applicant's business or the place so specified is more than 10 kilometres from the licensee's place of business (unless the Secretary approves of it being a greater distance from that place),
- (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 Secretary, 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 Secretary, 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 Secretary, be contrary to the public interest.
- (4) The regulations may provide additional mandatory or discretionary grounds for refusing to grant an application for, or renewal or restoration of, 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.
- (6) The Secretary is not, under this or any other Act or law, required to give any reasons for refusing to grant an application for a licence because of subsection (2)(e) to the extent that the giving of those reasons would disclose any criminal intelligence.

## **19 Grant of licence**

- (1) The Secretary 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,
  - (c1) the licensee must maintain at least one holding yard which must be no more than 10 kilometres from the licensee's place of business (unless the Secretary approves of it being a greater distance from that place),
  - (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,
  - (d1) the licensee must allow the owner of any motor vehicle stored at any holding yard used by the licensee in the course of the licensee's business to have reasonable access to the motor vehicle, during business hours and at no charge to the owner, to collect items from the motor vehicle,
  - (e) the licensee must ensure that any licensed tow truck displays the distinctive number-plate issued for the tow truck by the Secretary 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 not charge a fee for the towing, salvage or storage of a motor

vehicle, or for any service that is related to or ancillary to the towing, salvage or storage of a motor vehicle, if the charging of the fee would be in contravention of the regulations, and must not demand, receive or accept such a fee,

- (i) the licensee must not charge a fee for work that was not actually done by the licensee or by an employee or subcontractor of the licensee,
- (i1) in the case of a licence granted for a term of 3 or 5 years—the licensee must, within 28 days of receiving a notice from the Secretary relating to such of the licensee’s licence particulars, insurance particulars and particulars of close associates as are specified in the notice—
  - (i) confirm that the particulars specified in the notice are still accurate, or
  - (ii) provide details of any change in any of those particulars, and provide any documents relating to those particulars, that may be specified in the notice,
- (i2) the licensee must notify the Secretary, as soon as practicable, of any change in the licensee’s licence particulars, insurance particulars and particulars of close associates that are prescribed by the regulations, and must provide the Secretary with any documents relating to those particulars that are prescribed by the regulations,
- (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 (Repealed)**

## **22 Term of licence**

- (1) An application for a licence or renewal of a licence is to nominate one of the following terms of duration for the licence (the ***nominated term***)—
  - (a) 1 year,
  - (b) 3 years,
  - (c) 5 years.
- (2) A licence may only be granted for a term of 3 or 5 years if—
  - (a) the applicant has requested that the licence be granted for a term of either 3 years or 5 years, and
  - (b) the applicant has held a licence for a continuous period of at least 3 years



immediately before the date on which the subsequent licence will come into force (that is, during that period of 3 years, the applicant's licence was not suspended or revoked and did not lapse), and

(c) neither the applicant nor any of the applicant's close associates is, at the time the application is made, under investigation by the Secretary in relation to any breach of a condition of a licence or any other contravention of this Act or the regulations, and

(d) neither the applicant nor any of the applicant's close associates has, in the 5 years immediately before the date of the application—

(i) been subject to any prescribed disciplinary action under this Act, or

(ii) engaged in any prescribed conduct, and

(e) the Secretary is satisfied that a 3-year or a 5-year licence should be granted.

(3) Subject to subsection (2), the Secretary may grant or renew a licence for the nominated term or a shorter term than the nominated term if satisfied that it is in the public interest to do so.

(4) If an application for renewal of a licence has been made but the application is not finally determined by the Secretary before the expiry of the licence, the licence (if not suspended or sooner cancelled) continues in force until the application is finally determined.

(5) If a licence is granted or renewed for a shorter term than the nominated term, the Secretary is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.

(6) The suspension of a licence does not affect the term of the licence.

(7) This section does not affect the term of any licence granted under this Act and in force immediately before the substitution of this section by the [Fair Trading Legislation Amendment \(Reform\) Act 2018](#).

(8) In this section—

**prescribed conduct** means any conduct that—

(a) if the applicant or close associate applied for a licence or drivers certificate immediately after engaging in the conduct, would, in the opinion of the Secretary, be sufficient to justify the application being refused, or

(b) if the applicant or close associate held a licence or drivers certificate at the time of engaging in the conduct, would, in the opinion of the Secretary, be sufficient to justify—

- (i) the suspension of a licence or drivers certificate held by the applicant or close associate, or
- (ii) the permanent revocation of a licence or drivers certificate held by the applicant or close associate, or
- (iii) the disqualification of the applicant or close associate from holding a licence or drivers certificate.

***prescribed disciplinary action*** means—

- (a) the suspension of a licence or drivers certificate held by the applicant or close associate, or
- (b) the permanent revocation of a licence or drivers certificate held by the applicant or close associate, or
- (c) the disqualification of the applicant or close associate from holding a licence or drivers certificate.

## **22A Renewal of licence**

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 Secretary 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 Secretary for a drivers certificate.
- (2) An application for a drivers certificate must—
  - (a) be in the approved form, and
    - (a1) (Repealed)
    - (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 (if any) prescribed by the regulations.

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

- (1) The Secretary—
  - (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 Secretary, is the equivalent of a full driver licence,

- (d) that the applicant is disqualified from holding a drivers certificate,
- (e) that the applicant is a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*,

**Note—**

Controlled members are prohibited from applying for drivers certificates—see section 27 of the *Crimes (Criminal Organisations Control) Act 2012*.

- (f) that the Secretary has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the applicant that the applicant—
  - (i) is a member of, or
  - (ii) is a close associate of, or
  - (iii) regularly associates with, one or more members of,

a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*, and the nature and circumstances of the applicant's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the applicant is granted 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 Secretary, 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 Secretary, be contrary to the public interest.

- (3A) The Secretary is not, under this or any other Act or law, required to give any reasons for refusing to grant an application for a drivers certificate because of subsection (2)(f) to the extent that the giving of those reasons would disclose any criminal intelligence.

- (4) The regulations may provide additional mandatory or discretionary grounds for refusing the granting of an application for, or renewal or restoration of, 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 Act 2013](#).

## **27 Grant of drivers certificate**

- (1) The Secretary 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 Secretary), 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 or salvage of a motor vehicle, or for any service that is related to or ancillary to the towing or salvage of

a motor vehicle, if the charging of the fee would be in contravention of the regulations, and must not demand, receive or accept such a fee,

- (b1) the certified driver must not charge a fee for work that was not actually done by the certified driver, and must not demand, receive or accept such a fee,
- (b2) in the case of a drivers certificate granted for a term of 3 or 5 years—the certified driver must, within 28 days of receiving a notice from the Secretary relating to such of the certified driver’s drivers certificate particulars and insurance particulars as are specified in the notice—
  - (i) confirm that the particulars specified in the notice are still accurate, or
  - (ii) provide details of any change in any of those particulars, and provide any documents relating to those particulars, that may be specified in the notice,
- (b3) the certified driver must notify the Secretary, as soon as practicable, of any change in the certified driver’s drivers certificate particulars that are prescribed by the regulations, and must provide the Secretary with any documents relating to those particulars that are prescribed by the regulations,
- (c) such other conditions as may be prescribed by the regulations.

### **30 (Repealed)**

### **31 Term of drivers certificate**

- (1) An application for a drivers certificate or renewal of a drivers certificate is to nominate one of the following terms of duration for the drivers certificate (the ***nominated term***)—
  - (a) 1 year,
  - (b) 3 years,
  - (c) 5 years.
- (2) A drivers certificate may only be granted for a term of 3 or 5 years if—
  - (a) the applicant has requested that the drivers certificate be granted for a term of either 3 years or 5 years, and
  - (b) the applicant has held a drivers certificate for a continuous period of at least 3 years immediately before the date on which the subsequent drivers certificate will come into force (that is, during that period of 3 years, the applicant’s drivers certificate was not suspended or revoked and did not lapse), and
  - (c) the applicant and the applicant’s close associates are not, at the time the application is made, under investigation by the Secretary in relation to any breach

of a condition of a drivers certificate or any other contravention of this Act or the regulations, and

(d) the applicant and the applicant's close associates have not, in the 5 years immediately before the date of the application—

(i) been subject to any prescribed disciplinary action under this Act, or

(ii) engaged in any prescribed conduct, and

(e) the Secretary is satisfied that a 3-year or a 5-year drivers certificate should be granted.

(3) Subject to subsection (2), the Secretary may grant or renew a drivers certificate for the nominated term or a shorter term than the nominated term if satisfied that it is in the public interest to do so.

(4) If an application for renewal of a drivers certificate has been made but the application is not finally determined by the Secretary before the expiry of the drivers certificate, the drivers certificate (if not suspended or sooner cancelled) continues in force until the application is finally determined.

(5) If a drivers certificate is granted or renewed for a shorter term than the nominated term, the Secretary is to refund to the applicant the difference between the fee for the nominated term and the fee for the term that was granted.

(6) The suspension of a drivers certificate does not affect the term of the drivers certificate.

(7) This section does not affect the term of any drivers certificate issued under this Act and in force immediately before the substitution of this section by the [Fair Trading Legislation Amendment \(Reform\) Act 2018](#).

(8) In this section—

**prescribed conduct** means any conduct that—

(a) if the applicant or close associate applied for a licence or drivers certificate immediately after engaging in the conduct, would, in the opinion of the Secretary, be sufficient to justify the application being refused, or

(b) if the applicant or close associate held a licence or drivers certificate at the time of engaging in the conduct, would, in the opinion of the Secretary, be sufficient to justify—

(i) the suspension of a licence or drivers certificate held by the applicant or close associate, or

(ii) the permanent revocation of a licence or drivers certificate held by the

applicant or close associate, or

- (iii) the disqualification of the applicant or close associate from holding a licence or drivers certificate.

***prescribed disciplinary action*** means—

- (a) the suspension of a licence or drivers certificate held by the applicant or close associate, or
- (b) the permanent revocation of a licence or drivers certificate held by the applicant or close associate, or
- (c) the disqualification of the applicant or close associate from holding a licence or drivers certificate.

### **31A Renewal of drivers certificate**

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 Secretary may carry out such investigations and inquiries as the Secretary thinks necessary to enable the Secretary to properly consider an application for a licence or drivers certificate.
- (2) In particular, the Secretary 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 Secretary, and
  - (b) refer to the Commissioner of Police details of any person the Secretary is investigating, copies of any photographs taken and any supporting information that the Secretary considers appropriate for referral to the Commissioner.
- (3) The Commissioner of Police may inquire into and report to the Secretary on such matters concerning the application as the Secretary may request.



- (4) The Secretary may refuse to consider an application for a licence or drivers certificate while any person from whom the Secretary 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 Secretary 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 Secretary that the person does not intend to apply for a subsequent licence or drivers certificate.

### **33A Application for exemption from requirement to hold licence or drivers certificate**

- (1) A person may apply to the Secretary for an exemption from the requirement to hold a licence or a drivers certificate.
- (2) An application for an exemption must—
  - (a) be in the approved form, and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) contain such other particulars as may be prescribed by the regulations or as are required by the approved form.
- (3) An exemption may, by notice in writing to the applicant, be granted—
  - (a) in the circumstances prescribed by the regulations, and
  - (b) subject to such conditions as may be determined by the Secretary and specified in the notice.
- (4) In addition to the conditions specified in the notice, an exemption is subject to the condition that evidence of the exemption must be—
  - (a) carried at all times in each tow truck used in the business of the person who holds the exemption, and
  - (b) produced to an authorised officer or police officer on demand whenever any such tow truck is being used.
- (5) The Secretary may, by notice in writing to the holder of an exemption, vary or revoke any of the conditions of the exemption if the Secretary is of the opinion that there are reasonable grounds for the variation or revocation.

- (6) The Secretary may, by notice in writing to the holder of an exemption, revoke the exemption if the Secretary—
- (a) is satisfied that the exemption is contrary to the public interest, or
  - (b) is of the opinion that there are reasonable grounds for revoking the exemption.
- (7) A person who holds an exemption is guilty of an offence if a condition of the exemption is contravened.
- Maximum penalty—25 penalty units.

### **34 The Secretary may require further information in relation to application**

- (1) The Secretary may, by notice in writing, require a person who has applied for a licence or drivers certificate or who, in the opinion of the Secretary, 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 Secretary such authorisations and consents as the Secretary directs for the purpose of enabling the Secretary 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 Secretary 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 Secretary in investigating and inquiring into an application for a licence or drivers certificate are payable to the Secretary by the applicant, unless the Secretary determines otherwise in a particular case.
- (5) The Secretary may require part or full payment in advance of the amount the Secretary 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 Secretary 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 Secretary may do so on application by the licensee or certified driver concerned, or as the Secretary otherwise thinks fit.
- (3) If the Secretary decides to amend the licence or drivers certificate, the Secretary 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 Secretary 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 the Secretary of proposed changes in particulars**

- (1) A licensee or certified driver must notify the Secretary 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 Secretary may approve the proposed change of particulars by amending the licence or drivers certificate. The Secretary may grant a replacement licence or certificate on payment of such fee as may be determined by the Secretary.

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

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

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

- (1) The Secretary is to keep a register, in such form as the Secretary determines, of licences, drivers certificates and exemptions.
- (2) The register is to contain the following information in respect of each licence, drivers certificate or exemption—
  - (a) the matters that by or under this Act are required to be specified in the licence, drivers certificate or exemption,
  - (b) particulars of any amendment of the licence, drivers certificate or exemption,
  - (c) particulars of any suspension or revocation, or voluntary surrender, of the licence, drivers certificate or exemption,
  - (d) such other particulars as may be determined by the Secretary.
- (3) The information is to be recorded in the register in such manner as the Secretary thinks fit.
- (4) The Secretary 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 Secretary, by a police officer or any officer of the Secretary, or by any other person authorised by the Secretary on payment of such fee as may be determined by the Secretary.

### **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 Secretary (by post or in person) with a notification in writing that the licence or certificate is surrendered.

#### **40A Restoration of licence or drivers certificate**

- (1) An application for the restoration of a licence or drivers certificate must be made—
  - (a) within 3 months of the expiry of the licence or drivers certificate, or
  - (b) within the further period determined by the Secretary on the application of the person seeking the restoration of the licence or drivers certificate.
- (2) Without limiting subsection (1) (b), the Secretary may extend the period within which an application for the restoration of a licence or drivers certificate may be made if the Secretary is satisfied that—
  - (a) in a case where the applicant failed to apply for renewal before the licence or drivers certificate expired—the failure to apply for renewal of the licence or drivers certificate before it expired was due to inadvertence, or
  - (b) it is just and equitable to restore the licence or drivers certificate.
- (3) A licence or drivers certificate that has been surrendered or cancelled must not be restored.
- (4) An application for the restoration of a licence or drivers certificate must—
  - (a) be made in the approved form (if any), and
  - (b) be accompanied by the fee prescribed by the regulations, and
  - (c) nominate a term of duration for the licence or drivers certificate.
- (5) A licence or drivers certificate restored at any time is taken to have been restored from the day on which the licence or drivers certificate expired.
- (6) Subject to this section, this Act applies to an application for the restoration of a licence or drivers certificate in the same way as it applies to an application for a licence or drivers certificate.

### **Division 4 Disciplinary action by Secretary**

#### **41 Disciplinary action**

- (1) This Division enables the Secretary to take disciplinary action against a licensee or certified driver.
- (2) In accordance with this Division, the Secretary may do any of the following—
  - (a) in the case of a licence or drivers certificate granted for a term of 1 year or less—suspend the licence or drivers certificate for a specified period,
    - (a1) in the case of a licence or drivers certificate granted for a term of 3 or 5

years—suspend the licence or drivers certificate for a specified period and, when the suspension ends, reduce the period for which the licence or drivers certificate is in force so that it will cease to be in force on the next anniversary of its issue (and refund fees accordingly),

- (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.

(2A) Despite subsection (2), the Secretary must cancel a licence or drivers certificate if disciplinary action is taken on the grounds referred to in section 42(2).

(3) In deciding whether to take disciplinary action under this Division, the Secretary 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 Secretary should not take any such action.

(4) However, the Secretary is not required to conduct any such inquiry, or to invite the licensee or certified driver concerned to show cause, if the Secretary is of the opinion that it is in the public interest that the Secretary 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 Secretary must, before taking disciplinary action under this Division, take those submissions into consideration.

(6) The Secretary 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**

(1) The Secretary 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 Secretary 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 Secretary, 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.
- (2) The Secretary must take disciplinary action under this Division against a licensee or certified driver if the Secretary has reasonable grounds to believe from information held in relation to the licensee or certified driver—
- (a) that the licensee or certified driver is a member of, a close associate of, or regularly associates with one or more members of, a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*, and

- (b) that the nature and circumstances of the licensee's or certified driver's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that furthers the criminal activities of the declared organisation is occurring or is likely to occur if the licensee or certified driver continues to hold the licence or drivers certificate, respectively.

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

- (1) If the Secretary 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 Secretary 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 Secretary's decision.

- (2A) The Secretary is not, under this or any other Act or law, required to give any reasons for cancelling a licence or drivers certificate under section 41(2A) to the extent that the giving of those reasons would disclose any criminal intelligence.

- (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 Secretary 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 Administrative review by Civil and Administrative Tribunal**



#### **45 Application to Civil and Administrative Tribunal for administrative review**

- (1) A person may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of any of the following decisions—
- (a) the refusal or failure by the Secretary to grant a licence or drivers certificate to the person,
  - (a1) the granting of a licence or drivers certificate to the person that is of a shorter duration than that for which the person applied,
  - (b) a condition imposed by the Secretary 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.
- (1A) In determining an application for an administrative review of a decision to refuse to grant an application for a licence or a drivers certificate on the grounds referred to in section 18(2)(e) or 26(2)(f), respectively, or to cancel a licence or drivers certificate under section 41(2A), the Civil and Administrative Tribunal (and any Appeal Panel of the Tribunal in determining any internal appeal against such a review under the *Civil and Administrative Tribunal Act 2013*)—
- (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose any criminal intelligence, and
  - (b) in order to prevent the disclosure of any criminal intelligence, is to receive evidence and hear argument in the absence of the public, the applicant for the administrative review and the applicant's representative and of any other interested party,
- unless the Commissioner of Police approves otherwise.
- (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 Towing authorisations**

## **46-48 (Repealed)**

### **49 Requirement to obtain towing authorisation**

- (1) A certified driver must not carry out, or attempt to carry out, any accident towing work 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.
- (5) A towing authorisation required by or under this section is to be in the approved form.

### **49A Restrictions on obtaining towing authorisations after authority already granted**

- (1) A person must not obtain, or attempt to obtain, a towing authorisation in respect of any motor vehicle if another person has obtained a towing authorisation for the motor vehicle.

Maximum penalty—20 penalty units.

- (2) However, subsection (1) does not apply if the towing work authorised by the towing authorisation concerned has been completed.

### **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), (e) (Repealed)

(f) the towing work is to be carried out by the tow truck referred to in paragraph (c).

Maximum penalty—50 penalty units.

(2) (Repealed)

### **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 Secretary 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 Charges and fees for towing, salvage, storage and related services**

- (1) The regulations may make provision for or with respect to regulating the fees that can be charged by a licensee or certified driver for the towing, salvage or storage of a motor vehicle or for any service that is related to or ancillary to the towing, salvage or storage of a motor vehicle.
- (2) Without limiting subsection (1), the regulations under this section can include provision that—
  - (a) fixes maximum fees or otherwise limits the fees that may be charged, or
  - (b) prohibits the charging of a fee for any specified service that is related or ancillary to the towing, salvage or storage of a motor vehicle, or
  - (c) specifies procedures to be followed by licensees and certified drivers in connection with the charging of fees.

- (3) A licensee or certified driver is not entitled to recover or retain any fee charged in contravention of regulations under this section.

#### **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) Transport for NSW may issue distinctive number-plates for tow trucks that are, according to the advice of the Secretary, 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 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 Secretary 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 an 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 are permitted to be charged under this Act and do not exceed any maximum charges fixed by the regulations).

## **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 work at scene of accident**

- (1) A person must not, at or within 500 metres of the scene of an accident, tout or solicit for any towing work in connection with the accident regardless of on whose behalf the touting or soliciting is done.

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not prohibit a person from attempting to obtain a towing authorisation in accordance with this Act and the regulations in relation to a motor vehicle at any time before—
- (a) a towing authorisation is obtained by any person in accordance with this Act and the regulations for the towing of the relevant motor vehicle, or
- (b) a police officer has informed the person that the police officer has organised for the towing of the relevant motor vehicle.
- (3) Subsection (1) does not prohibit a person from dealing with a towing authorisation in



accordance with this Act and the regulations.

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

A person must not, at or within 500 metres of the scene of an accident, tout or solicit for any work involving the repair of a motor vehicle involved in the accident regardless of on whose behalf the touting or soliciting is done.

Maximum penalty—50 penalty units.

### **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 an 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 a certified driver is at the scene of an 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 142(4) of the *Road Transport Act 2013* to fail to comply with any direction given by a police officer or other appropriate 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**

- (1) A person must not travel as a passenger in any tow truck that is proceeding to or from the scene of an 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.

- (2) The driver of a tow truck must not allow a person to travel as a passenger in the tow truck when it is proceeding to or from the scene of an 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 as a passenger 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 an 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 an 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 an 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 Secretary.

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 Secretary in writing, return any number-plates issued under section 57 to the Secretary 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 Secretary 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 Secretary, an authorised officer or a police officer may, by notice in writing given to a person, require the person to furnish to the Secretary or the officer such information or records (or both) as the Secretary 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**

- (1) The Secretary 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 Secretary 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 Secretary decides to conduct an inquiry under this section, the Secretary 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 Secretary 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 Secretary, and at such other times as may be required by the Secretary, 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 Secretary 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 an Australian legal practitioner to assist the Secretary.

### **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 under this Act or a police officer may apply to an authorised officer within the meaning of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) 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 officer within the meaning of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) 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 under this Act or police officer—
  - (a) to enter the premises, and
  - (b) to exercise any function of an authorised officer under this Act under section 81.
- (3) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.
- (4) In this section—

**premises** includes a vehicle.

## **84 Power to give directions**

- (1) The Secretary 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 the Local Court.
- (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**

- (1) An authorised officer or a police officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

### **Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

## **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 Secretary.
- (3) The Secretary, 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 Secretary under this Act, and
  - (a1) all penalties for offences under this Act and the regulations that are recovered in prosecutions brought by, or penalty notices issued by, the Secretary or authorised officers, and
  - (b) all money borrowed by or advanced to the Secretary for the purposes of this Act or appropriated by Parliament for the purposes of the Secretary under this Act.
  - (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 Secretary under this Act or otherwise required to meet expenditure incurred in relation to the functions of the Secretary under this Act, and
  - (c) (Repealed)
  - (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 Secretary may invest money in the Tow Truck Industry Fund—

- (a) if the Department is a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way that the Department is permitted to invest

money under that Part, or

- (b) if the Department is not a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way approved by the Minister with the concurrence of the Treasurer.

### **93 Delegation by Secretary**

- (1) The Secretary may delegate to an authorised delegate any of the Secretary's functions under this Act or the regulations, other than this power of delegation.
- (2) A delegate may sub-delegate to another authorised delegate any of the functions delegated by the Secretary if the delegate is authorised in writing to do so by the Secretary.
- (3) In this section—

***authorised delegate*** means—

- (a) any person employed in the Department, or
- (b) any person, or any person belonging to a class of persons, prescribed by the regulations.

### **94 (Repealed)**

### **95 Supply of information between Secretary and Commissioner of Police**

- (1) The Secretary may, for the purposes of the administration of this Act, enter into arrangements with the Commissioner of Police—
  - (a) for the supply to the Secretary of information contained in the records of the NSW Police Force, and
  - (b) for the supply to the Commissioner of Police of information contained in the register kept under section 39 of this Act.
- (1A) A disclosure of information made in good faith under the arrangements does not constitute a contravention of any provision as to confidentiality in this Act and does not constitute a contravention of the *Privacy and Personal Information Protection Act 1998*.
- (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 Secretary is to be considered to be a law enforcement agency for the purposes of

section 13 of the *Criminal Records Act 1991*.

**97 (Repealed)**

**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 Secretary.
- (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 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 Secretary 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 Secretary may have regard to any costs incurred by the Secretary 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 Secretary, or by an employee of the Department authorised by the Secretary 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 Secretary 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) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods—
  - (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
  - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over

the age of 16 years,

(e) by email to an email address specified by the person for the service of documents of that kind,

(f) by any other method authorised by the regulations for the service of documents of that kind.

(2) 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 a person by any other method.

(3) In this section, **serve** includes give or send.

### **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 (Repealed)**

### **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 required or information supplied by the Secretary,
  - (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) (Repealed)
  - (p) fees payable under this Act or the regulations,
  - (q) the waiver, reduction, postponement or refund by the Secretary of fees payable or paid 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, 108 (Repealed)**

#### **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 (Repealed)**

## 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*

*Tow Truck Industry Amendment Act 2007*

*Tow Truck Industry Amendment Act 2008*

- (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.

## Part 4 Provisions consequent on enactment of [Tow Truck Industry Amendment Act 2007](#)

### 10 Definitions

In this Part—

**amending Act** means the [Tow Truck Industry Amendment Act 2007](#).

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money, securities and choses in action).

**document** means any Act (other than this Act) or statutory instrument, or any other instrument, or any other contract or agreement.

**liabilities** means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

**relevant commencement date** means the day on which section 7 as substituted by the amending Act commences.

**rights** means any rights, powers, privileges or immunities (whether present or future and

whether vested or contingent).

### **11 Abolition of Tow Truck Authority**

The Tow Truck Authority is abolished on the relevant commencement date.

### **12 Transfer of assets**

The assets, rights and liabilities of the Tow Truck Authority as at the relevant commencement date become the assets, rights and liabilities of the Roads and Traffic Authority.

### **13 Action taken by Tow Truck Authority**

Anything done by the Tow Truck Authority and having effect immediately before the relevant commencement date is taken to have been done by the RTA.

### **14 References to Tow Truck Authority**

In any document, a reference to the Tow Truck Authority is to be read as or as including a reference to the RTA.

### **15 Annual report of the Tow Truck Authority for the 2006–2007 financial year**

The annual report of the Tow Truck Authority for the 2006–2007 financial year is taken to include the period commencing 1 July 2007 and ending on the relevant commencement date. Accordingly, for the purposes of the *Annual Reports (Statutory Bodies) Act 1984*, the 2006–2007 financial year of the Tow Truck Authority is taken to end on the relevant commencement date.

## **Part 5 Provisions consequent on enactment of [Tow Truck Industry Amendment Act 2008](#)**

### **16 Definition**

In this Part—

**amending Act** means the [Tow Truck Industry Amendment Act 2008](#).

### **17 Pending applications**

(1) An applicant for a licence whose application was pending immediately before the commencement of section 17(2)(a1) (as inserted by the amending Act) is to be given a reasonable opportunity to amend the application so as to specify a term for which the licence is sought. Any such pending application that is not amended by the applicant before it is finally dealt with by the RTA is to be treated as an application for a licence for a term of 1 year.

(2) An applicant for a drivers certificate whose application was pending immediately

before the commencement of section 25(2)(a1) (as inserted by the amending Act) is to be given a reasonable opportunity to amend the application so as to specify a term for which the drivers certificate is sought. Any such pending application that is not amended by the applicant before it is finally dealt with by the RTA is to be treated as an application for a drivers certificate for a term of 1 year.

#### **18 Previous conduct may be taken into account in considering application for 3-year licence or drivers certificate**

- (1) Section 22(2), as substituted by the amending Act, extends to conduct that occurred before the substitution of the subsection.
- (2) Section 31(2), as substituted by the amending Act, extends to conduct that occurred before the substitution of the subsection.

#### **19 Charging for work done in the past**

- (1) Section 20(2)(h), as substituted by the amending Act, does not apply to fees and charges for the towing, salvage or storage of a motor vehicle carried out before the paragraph was substituted, or for work performed or a service rendered in connection with the towing, salvage or storage of a motor vehicle before the paragraph was substituted.
- (2) Section 29(2)(b), as substituted by the amending Act, does not apply to fees and charges for the towing or salvage of a motor vehicle carried out before the paragraph was substituted, or for work performed or a service rendered in connection with the towing or salvage of a motor vehicle before the paragraph was substituted.

#### **20 Further requirement to notify changes in particulars**

- (1) Section 20(2)(i2), as inserted by the amending Act, extends to licences in force when the paragraph was inserted.
- (2) Section 29(2)(b3), as inserted by the amending Act, extends to drivers certificates in force when the paragraph was inserted.

### **Part 6 Provisions consequent on enactment of [Criminal Organisations Legislation Amendment Act 2009](#)**

#### **21 Grant and cancellation of licences and drivers certificates**

- (1) In this clause—  
**amending Act** means the [Criminal Organisations Legislation Amendment Act 2009](#).
- (2) An application for a licence or drivers certificate made, but not determined, before the commencement of this clause is to be dealt with under this Act as amended by the amending Act.

- (3) Sections 41 and 42, as amended by the amending Act, extend to a licence or drivers certificate in force immediately before the commencement of this clause.

## **Part 7 Provision consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act 2017](#)**

### **22 Existing authorised officers**

- (1) A person who was, immediately before the commencement of this clause, authorised by Roads and Maritime Services as an authorised officer, is taken to have been authorised by the Secretary as an authorised officer.
- (2) An identification card issued to the person by Roads and Maritime Services under section 98 is taken to be an identification card issued by the Secretary.

## **Part 8 Provisions consequent on enactment of [Better Regulation and Customer Service Legislation Amendment \(Bushfire Relief\) Act 2020](#)**

### **23 Definitions**

In this Part—

**amendment Act** means the [Better Regulation and Customer Service Legislation Amendment \(Bushfire Relief\) Act 2020](#).

**relevant period** means the period—

- (a) starting on 18 July 2019, and
- (b) ending immediately before the commencement of the amendment Act.

### **24 Waiver, reduction, postponement or refund of fees before commencement**

- (1) This clause applies if, during the relevant period, the Secretary waived, reduced, postponed or refunded, in whole or part, a fee payable or paid by a person under this Act or the regulations on the ground the Secretary was satisfied it was appropriate because—
- (a) the person was suffering financial hardship, or
- (b) special circumstances existed.
- (2) The waiver, reduction, postponement or refund is taken to have been as valid as if it had happened after the commencement of the amendment Act.

### **25 Power to waive, reduce, postpone or refund fees applies to events before commencement**

To remove any doubt, the power of the Secretary to waive, reduce, postpone or refund, in

whole or part, a fee payable or paid under this Act or the regulations applies in relation to—

- (a) a person who was suffering financial hardship—
  - (i) during the relevant period, or
  - (ii) because of events that happened during the relevant period, or
- (b) special circumstances—
  - (i) that existed during the relevant period, or
  - (ii) that exist because of events that happened during the relevant period.

### **Schedule 3 (Repealed)**