

TOW TRUCK INDUSTRY BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Motor Vehicle Repairs (Tow Truck Industry) Amendment Bill 1987 is cognate with this Bill.

The object of this Bill is to introduce a new scheme for the regulation of the tow truck industry, including—

- (a) the constitution of a Tow Truck Industry Corporation of New South Wales and Tow Truck Industry Committee of New South Wales;
- (b) the conferring on the Corporation (instead of the Commissioner for Motor Transport) of functions relating to the licensing of tow truck operators and the granting of permits to tow truck drivers and tow truck drivers' assistants and disciplinary and other functions relating to the tow truck industry;
- (c) the establishment by regulation of regional roster systems for the attendance of tow trucks at motor vehicle accidents; and
- (d) the establishment by regulation of regional systems for the use of "holding yards" to which motor vehicles must be towed after accidents (unless the owner or driver or a member of the police force otherwise directs) and at which the vehicles are to be held for a specified minimum period.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be appointed by proclamation.

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Clause 3 defines expressions used in the proposed Act. In particular, "holding yard" is defined as a place to which motor vehicles are towed after an accident, "tow truck operator" means a person who operates tow trucks for certain purposes and a "towing authority" is an authority required by the proposed Act to be given for the towing of a motor vehicle on a public street. "Operate" is defined, in relation to a tow truck, as meaning to tow or offer to tow a motor vehicle by means of the tow truck. "Tow" and "Tow truck" are defined in wide terms. (However the relevant provisions of the Act generally only regulate tow trucks when being used to tow vehicles from the scenes of motor vehicle accidents and breakdowns.)

Clause 4 exempts from the operation of the proposed Act tow trucks operated by the Crown. It also enables the regulations to exempt other persons from the operation of the proposed Act.

PART 2—ADMINISTRATION

Division 1—Tow Truck Industry Corporation

Clause 5 provides for the constitution of the Tow Truck Industry Corporation. The Corporation's functions may be exercised by the Secretary of the Department of Industrial Relations and Employment or by the General Manager of the Corporation in accordance with the Secretary's directions. The General Manager of the Corporation will be the person who is for the time being Chairman of the Motor Vehicle Repair Industry Council.

Clause 6 states the functions of the Corporation.

Clause 7 enables staff of the Corporation to be employed under the Public Service Act 1979 and provides that the Corporation may arrange for the use of the services of any staff or facilities of any government department or administrative office.

Division 2—Tow Truck Industry Committee

Clause 8 constitutes the Tow Truck Industry Committee which will be chaired by the General Manager of the Corporation and will have not more than 6 other members.

Clause 9 sets out the Committee's functions, including to keep under review the operation of the proposed Act, to report or make recommendations to the Minister and to promote improvement in the standard of services provided by the tow truck industry.

PART 3—LICENCES AND PERMITS

Division 1—Tow truck operators' licences

Clause 10 makes it an offence to carry on or advertise the carrying on of the business of a tow truck operator without a tow truck operator's licence. The maximum penalty is \$10,000 or 6 months' imprisonment, or both.

Clause 11 provides for the making of applications to the Corporation for licences. A joint licence may be applied for by 2 or more persons. An application must specify the tow trucks to be operated and any holding yard to be used by the applicant and, in the case of a corporation, the corporation's directors. The applicant must also deposit an operating deposit which is to be used as a security in the event of a penalty being imposed on the applicant in disciplinary proceedings.

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Clause 12 provides for the grant or refusal by the Corporation of an application for a licence. The Corporation may not grant a licence unless the applicant satisfies certain conditions, including being a fit and proper person to hold a licence, nominating a holding yard (if applicable) and being over the age of 18 years. Where an applicant is a corporation, its directors must be fit and proper persons to hold a licence.

Clause 13 provides that the Commissioner for Motor Transport is to issue distinctive number-plates for tow trucks which, according to the advice of the Corporation, are to be specified in licences.

Clause 14. Subclause (1) sets out the conditions applicable to every licence. These include a stipulation that tow trucks display the distinctive number-plates, that any tow trucks operated by the holder comply with the relevant laws, and that the holder or any employee complies with the Radiocommunications Act 1983 of the Commonwealth. Subclauses (2)–(5) provide that a licence may be subject to any other conditions imposed by the Corporation and that the Corporation may vary, add and delete conditions to which a licence is subject.

Clause 15 provides that a licence is to remain in force for one year from the date that it is granted unless it is sooner cancelled or surrendered.

Clause 16 provides that an application for the amendment of a licence may be made where certain circumstances change, including commencing to carry on business in partnership, changes of tow trucks being operated and a change in the holding yard being used.

Division 2—Drivers' permits and assistants' permits

Clause 17 defines "tow truck" for the purposes of the proposed Division.

Clause 18 makes it an offence to drive or stand a tow truck or to obtain or attempt to obtain a towing authority without a driver's permit. The maximum penalty is \$2,000.

Clause 19 makes it an offence to assist in the operation of a tow truck on a public street without an assistant's permit. The maximum penalty is \$2,000.

Clause 20 makes it an offence for a tow truck operator to employ or engage a person to do anything for which a permit is required under the proposed Act unless the person is the holder of such a permit. The maximum penalty is \$2,000.

Clause 21 provides for the making of applications to the Corporation for drivers' permits and assistants' permits.

Clause 22 provides for the grant or refusal by the Corporation of an application for a driver's permit or an assistant's permit. The Corporation may not grant a permit unless the applicant is a fit and proper person to hold a permit and is over the age of 18 years.

Clause 23 provides that a permit may be subject to conditions imposed by the Corporation and that the Corporation may vary, add and delete conditions to which a permit is subject.

Clause 24 provides that a permit is to remain in force for one year from the date that it is granted unless it is sooner cancelled or surrendered.

Division 3—Licences and permits generally

Clause 25 provides that the Corporation shall give an applicant for a licence or permit or for the amendment of a licence notice of refusal of the application.

Clause 26 enables the holder of a licence or permit to surrender it to the Corporation.

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Clause 27 enables the Corporation to request the Commissioner of Police to make inquiries as to the character of a person where the Corporation is deciding whether the person is a fit and proper person to hold a licence or permit.

Clause 28 provides for the refund of operating deposits to licence holders and former licence holders when an application for a licence is refused or a licence expires or is surrendered or cancelled. It also authorises the refund of fees in accordance with the regulations.

Clause 29 enables the Corporation to issue duplicate licences or permits to replace lost or destroyed licences or permits.

Clause 30 provides for the maintenance by the Corporation of a register of licences and permits and for its inspection.

Clause 31 makes it an offence for a person, in connection with an application for a licence or permit or for the amendment of a licence, to make a statement which is false or misleading in a material particular. The maximum penalty is \$2,000 or 3 months' imprisonment, or both.

PART 4—REGULATION OF TOW TRUCK INDUSTRY

Division 1—Roster system

Clause 32 enables regulations to be made with respect to the establishment, administration and operation of a roster system for the attendance of tow trucks at motor vehicle accidents.

Clause 33 makes it an offence for a tow truck driver or operator to attend a motor vehicle accident otherwise than in accordance with a roster system where such a system has been established. The maximum penalty is \$10,000 or 6 months' imprisonment, or both. By clause 33 (2) the owner or driver of a vehicle damaged in an accident is required to use the tow truck provided under the roster system and members of the police force are not entitled to operate a separate roster system for damaged vehicles taken under their care.

Division 2—Towing authorities

Clause 34 enables regulations to be made with respect to towing authorities, including procedures for dealing with those authorities.

Clause 35 makes it an offence to tow a motor vehicle on a public street without first having obtained a properly completed and signed towing authority. The maximum penalty is \$2,000.

Division 3—Holding yards

Clause 36 enables regulations to be made in respect of the establishment, use and operation of holding yards.

Clause 37 makes it an offence for a person to tow a motor vehicle from the scene of a motor vehicle accident to a place other than the relevant holding yard or a place directed by the owner or driver unless a member of the police force authorises or requires the motor vehicle to be towed to some other place (other than the premises of a motor vehicle repairer). It will also be an offence for a person to remove a motor vehicle from a holding yard before the expiration of 24 hours after its arrival (or such lesser period as is prescribed) unless directed to do so by a member of the police force, an inspector under the proposed Act or the owner. The maximum penalty is \$2,000.

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Division 4—Other regulatory provisions

Clause 38 makes it an offence for a person to give or receive “spotter’s fees” for information about a motor vehicle accident or “drop fees” for obtaining for another person repair work on a motor vehicle damaged in a motor vehicle accident. The maximum penalty is \$10,000 or 6 months’ imprisonment, or both.

Clause 39 makes it an offence for a person to threaten any person so as to obtain a towing authority for or repair work on a motor vehicle damaged in a motor vehicle accident. The maximum penalty is \$10,000 or 6 months’ imprisonment, or both.

Clause 40 makes it an offence for a person to obtain or to attempt to obtain authority to repair a motor vehicle before the motor vehicle is delivered to the holding yard or other duly authorised place to which it is towed from the scene of a motor vehicle accident. The maximum penalty is \$10,000 or 6 months’ imprisonment, or both.

Clause 41 makes it an offence for the driver of a tow truck to obstruct a public street or to stand at the scene of a motor vehicle accident for any longer than is necessary for towing purposes. The maximum penalty is \$1,000.

Clause 42 makes it an offence for a holder of a licence or permit who is acting in contravention of the proposed Act or regulations to neglect or fail to comply with a direction by an inspector under the proposed Act or a member of the police force to leave the scene of a motor vehicle accident. The maximum penalty is \$10,000 or 6 months’ imprisonment, or both.

Clause 43 makes it an offence for a person (other than the driver of a tow truck, a driver’s assistant or the owner of or passenger in a motor vehicle being towed) to travel as a passenger in a tow truck. The maximum penalty is \$2,000.

Clause 44 enables regulations to be made to fix charges for the towing, salvage or storage of a motor vehicle.

PART 5—DISCIPLINARY PROCEEDINGS

Clause 45 defines certain expressions used in the proposed Part.

Clause 46 sets out the grounds on which action may be taken against the holder of a tow truck operator’s licence. The grounds include contravention of a licence condition or provision of the proposed Act or regulations, conviction of certain offences, fraudulent or dishonest conduct in relation to the carrying on of the business of a tow truck operator, insolvency, ceasing to carry on the business of a tow truck operator and being, for any other reason, not a fit and proper person to hold a licence.

Clause 47 sets out the grounds on which action may be taken against the holder of a driver’s permit or an assistant’s permit. The grounds include contravention of a permit condition or provision of the proposed Act or regulations and being, for any other reason, not a fit and proper person to hold a permit.

Clause 48 states that complaints are to be lodged with the Corporation and, when made by members of the public, are to be accompanied by the prescribed fee.

Clause 49 provides for the issue of a notice to a person about whom a complaint is made to show cause why the person should not be dealt with under the proposed Part. If, after considering the representations of the person, the Corporation is satisfied that further action is warranted, the Corporation may hold an inquiry into the matter or appoint a delegate to do so.

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Clause 50 deals with the procedures for the holding of an inquiry. The clause enables inquiries to be held in the absence of a defendant and the parties at an inquiry to be represented, with the approval of the Corporation, by a barrister or solicitor or by an agent.

Clause 51 sets out the determinations which may be made by the Corporation after an inquiry on finding that a ground exists for dealing with a defendant. The Corporation may take no further action, give a reprimand, impose a penalty not exceeding \$1,000 or cancel or suspend the licence or permit. The power to impose any such penalty may not be delegated.

Clause 52 provides for payment and recovery of penalties imposed by the Corporation and enables the Corporation to deduct the amount of such a penalty from the operating deposit of any licence holder concerned.

Clause 53 requires the Corporation, before cancelling or suspending a licence or permit, to notify the holder of the licence or permit.

PART 6—APPEALS

Clause 54 gives an applicant for a licence or permit or the amendment of a licence, or a person whose licence or permit has been amended by the Corporation, or a person against whom the Corporation has taken disciplinary proceedings, a right to appeal to the Industrial Commission.

Clause 55 confers the relevant jurisdiction on a judicial member of the Industrial Commission.

Clause 56 sets out the procedures for the hearing of an appeal by the Industrial Commission.

Clause 57 enables the parties to an appeal to be represented by a barrister or solicitor or by an agent.

Clause 58 sets out the determinations which may be made by the Industrial Commission in an appeal.

Clause 59 prevents any appeal from a determination of the Industrial Commission in an appeal.

PART 7—GENERAL

Clause 60 establishes the Tow Truck Industry Corporation Account as a Special Deposits Account in the Treasury.

Clause 61 provides that the financial year of the Corporation shall commence on 1 January.

Clause 62 makes it an offence to disclose information obtained in connection with the administration or execution of the proposed Act. The maximum penalty is \$1,000.

Clause 63 provides for the delegation of functions by the Corporation.

Clause 64 prohibits any person from making an agreement which would annul, vary or exclude any of the provisions of the proposed Act.

Clause 65 empowers the Corporation to obtain information relating to any towing or the business of a tow truck operator.

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Clause 66 provides that the holder of a licence or permit shall produce the licence or permit on demand by an inspector under the proposed Act or a member of the police force. It also provides that the holder of a driver's permit shall produce a duplicate licence on demand.

Clause 67 sets out the powers of entry and examination of inspectors under the proposed Act.

Clause 68 makes it an offence for a person to obstruct, refuse to obey a request or requirement of, or conceal any person from, an inspector under the proposed Act. The maximum penalty is \$2,000.

Clause 69 makes provision for evidentiary matters.

Clause 70 provides for service of documents required to be served on a person under the proposed Act or on the Corporation.

Clause 71 states that fees etc. due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

Clause 72 provides for directors to be liable, in certain circumstances, for offences committed by corporations under the proposed Act.

Clause 73 provides that proceedings for offences under the proposed Act or the regulations may be taken before a Local Court constituted by a Magistrate sitting alone.

Clause 74 confers immunity from liability on persons acting under the direction of the Corporation or the Committee and on members of the Committee.

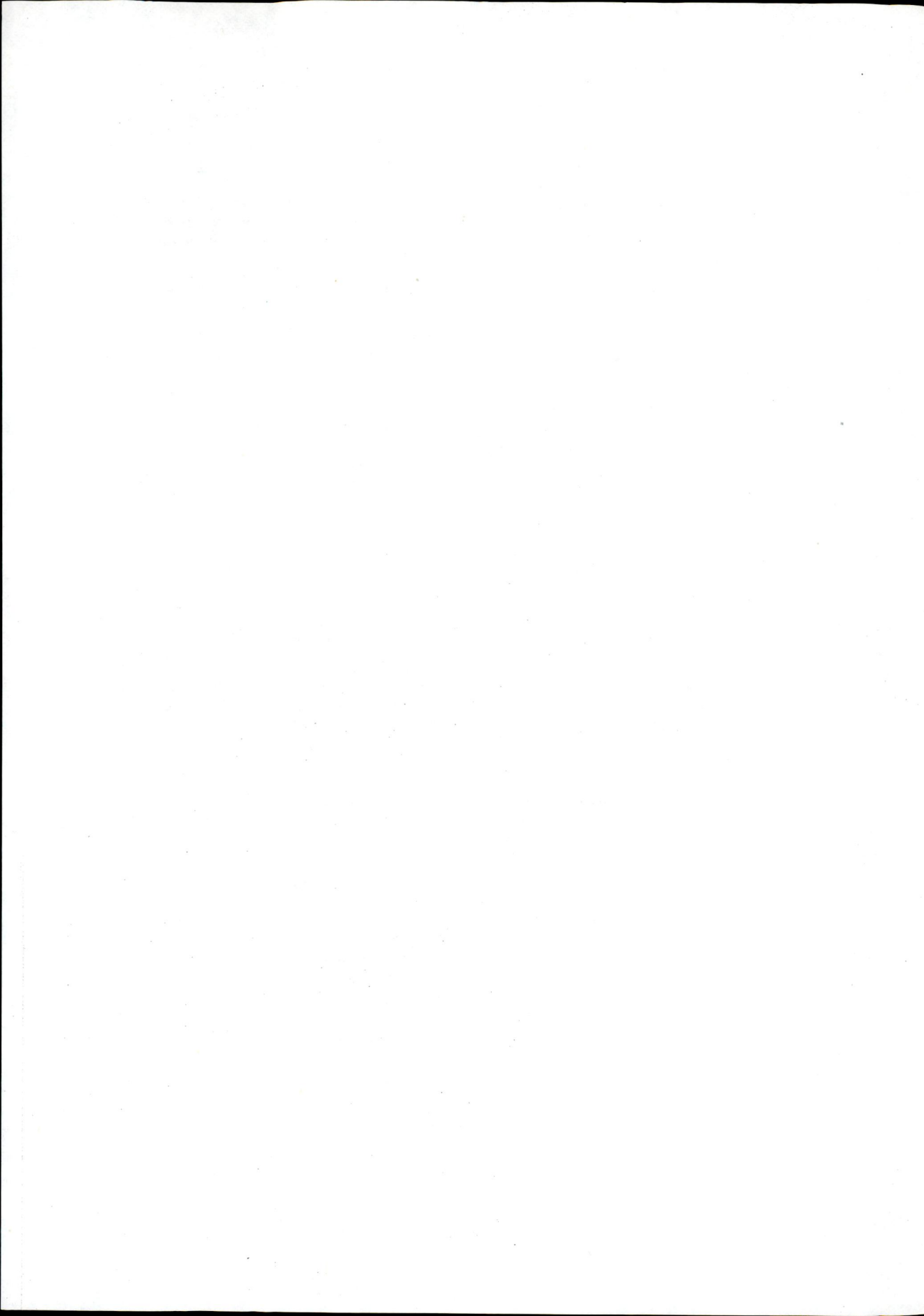
Clause 75 sets out regulation making powers. Regulations may be made with respect to licences and permits, advertising by tow truck operators, records of tow truck operators, the furnishing of information, the payment of operating deposits and other specified matters relating to tow truck operators and tow trucks.

Clause 76 repeals the Tow-truck Act 1967.

Clause 77 and Schedule 2 contain savings, transitional and other provisions. Schedule 2 provides for the records of the Commissioner for Motor Transport in relation to the Tow-truck Act 1967 to be delivered to the Corporation. The Schedule also contains a power to make regulations of a savings or transitional nature necessary as a result of the proposed Act.

Clause 78 amends Schedule 2 to the Public Finance and Audit Act 1983.

Schedule 1 contains provisions relating to the members and procedure of the Committee.



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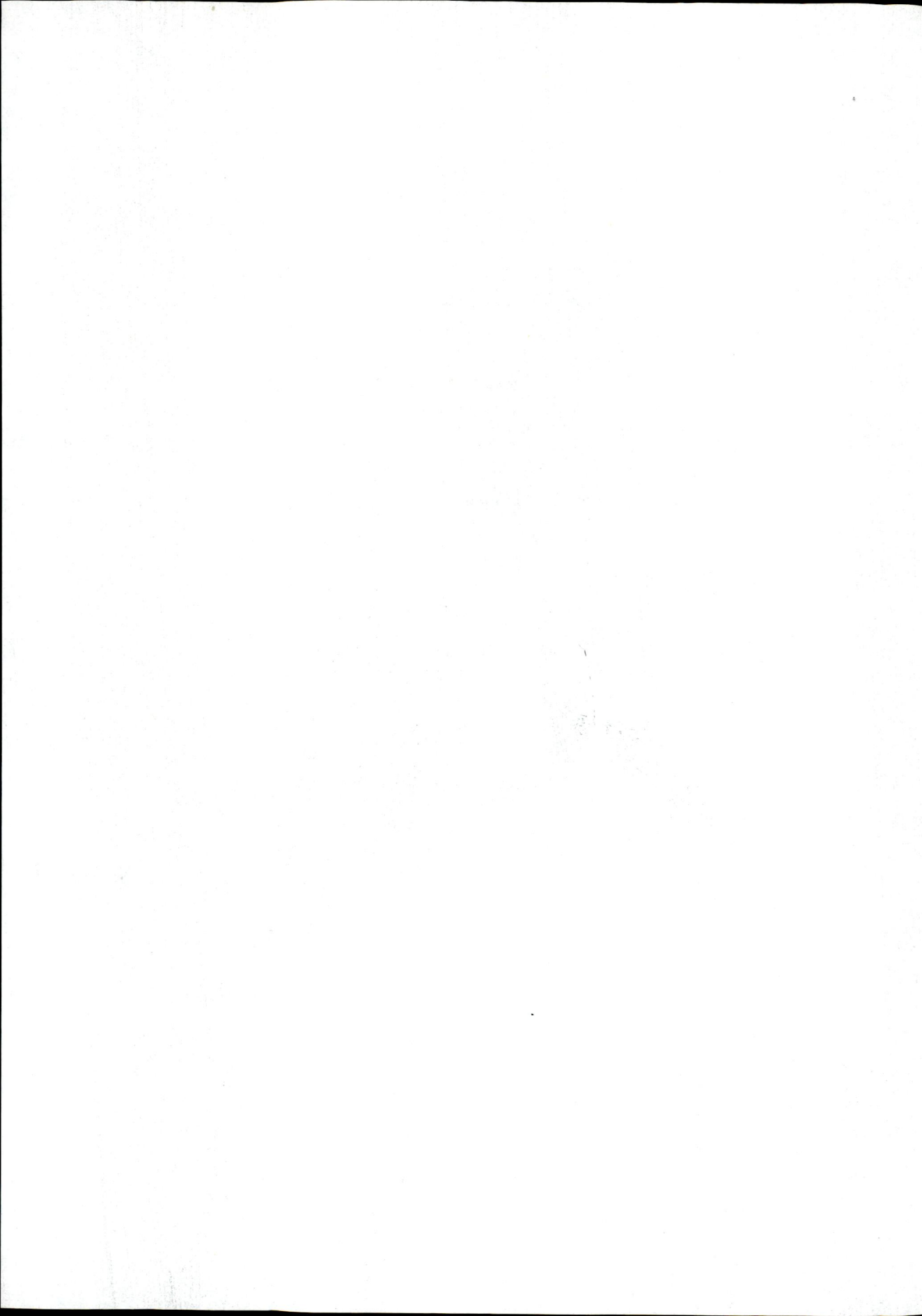
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TOW TRUCK INDUSTRY BILL 1987

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No. , 1987

A BILL FOR

An Act to regulate the tow truck industry; to repeal the Tow-truck Act 1967;
and for other purposes.

See also Motor Vehicle Repairs (Tow Truck Industry) Amendment Bill 1987.

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Tow Truck Industry Act 1987.

5 Commencement

2. This Act shall commence on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act—

- 10 “approved” means approved by the Minister;
 “assistant’s permit” means an assistant’s permit granted under this Act;
 “Committee” means the Tow Truck Industry Committee of New South
 Wales constituted by this Act;
 15 “Corporation” means the Tow Truck Industry Corporation of New South
 Wales constituted by this Act;
 “director” has the same meaning as in the Companies (New South Wales)
 Code;
 “driver’s permit” means a driver’s permit granted under this Act;
 “holder” means—
 20 (a) in relation to a joint licence—each person to whom the licence is
 granted; and
 (b) in relation to any other licence or to a permit—the person to
 whom the licence or permit is granted;
 25 “holding yard” means a place to which a motor vehicle is towed from
 the scene of a motor vehicle accident and at which it is held
 temporarily;
 “inspector” means an officer of the Corporation appointed as an inspector
 of the Corporation;
 30 “licence” means a tow truck operator’s licence (including a joint licence)
 granted under this Act;
 “motor vehicle” means any motor car, motor carriage, motor cycle or
 other vehicle propelled on any public street wholly or partly by any
 volatile spirit, steam, gas, oil or electricity, or by any means other than
 human or animal power, and includes a trailer, but does not include
 35 any vehicle used on a railway or tramway;
 “operate”, in relation to a tow truck, means tow or offer to tow a motor
 vehicle by means of the tow truck;
 “permit” means a driver’s permit or an assistant’s permit;

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“public street” means any street, road, lane, thoroughfare, footpath or place open to or used by the public, and includes any place at the time open to or used by the public, whether on the payment of money or otherwise;

5 “tow” includes—

- (a) lift and tow or lift and carry;
- (b) lift for the purpose of towing or carrying;
- (c) carry on a trailer;
- (d) place onto a trailer for the purpose of carrying; and
- 10 (e) any other action or operation prescribed for the purposes of this definition;

“tow truck” means—

- (a) a motor vehicle equipped with a lifting device;
- 15 (b) a motor vehicle equipped with a trailer, towing attachment or other device; or
- (c) any other motor vehicle prescribed for the purposes of this definition,

that is capable of being used to tow a motor vehicle;

20 “tow truck operator” means a person who carries on the business of operating one or more tow trucks (either personally, as a member of a partnership or by the person’s employees or agents)—

- (a) for the purpose of towing motor vehicles from the scenes of motor vehicle accidents;
- 25 (b) for the purpose of towing motor vehicles which have broken down; or
- (c) for any other purpose prescribed by the regulations;

“towing authority” means an authority required by this Act to be given for the towing of a motor vehicle on a public street.

(2) In this Act—

- 30 (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Exemptions

35 4. (1) This Act does not apply to or in respect of a tow truck operated by the Crown.

(2) The regulations may exempt from the operation of all or any of the provisions of this Act or the regulations any person or class of persons.

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(3) An exemption may be given unconditionally or subject to such conditions as may be prescribed by the regulations.

(4) If an exemption is given subject to conditions, the exemption does not have effect during any period when the conditions are not complied with.

PART 2—ADMINISTRATION**Division 1—Tow Truck Industry Corporation****The Corporation**

5. (1) There is constituted by this Act a corporation with the corporate name of the Tow Truck Industry Corporation of New South Wales.

(2) The Corporation is subject to the control and direction of the Minister.

(3) A function of the Corporation may be exercised—

- (a) by the Secretary of the Department of Industrial Relations and Employment;
- (b) by the General Manager of the Corporation in accordance with such directions (if any) as are given from time to time by the Secretary of that Department; or
- (c) in accordance with a delegation by the Corporation under section 63.

(4) The Chairman of the Motor Vehicle Repair Industry Council is the General Manager of the Corporation.

Functions of the Corporation

6. The Corporation has the functions conferred or imposed on it by or under this or any other Act and such other functions as are necessary or convenient for the purposes of the administration or execution of this Act.

Staff of the Corporation

7. (1) Such staff as may be necessary to enable the Corporation to exercise its functions shall be employed under the Public Service Act 1979.

(2) The Corporation may—

- (a) with the approval of the Minister; and
- (b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

(3) The Corporation may—

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- (a) for any purpose approved by the Minister; and
- (b) on such terms and conditions as may be approved by the Public Service Board,

employ such casual staff as the Corporation requires to exercise its functions.

5 (4) The Public Service Act 1979 does not apply to the employment of casual staff under subsection (3) and a person is not, as a member of that casual staff, subject to that Act.

(5) For the purposes of this Act, a person who is employed under subsection (1) or (3) or whose services are made use of under subsection (2)
10 is an officer of the Corporation.

Division 2—Tow Truck Industry Committee

The Committee

8. (1) There is constituted by this Act the Tow Truck Industry Committee of New South Wales.

15 (2) The Committee shall consist of not more than 7 members, of whom—

- (a) one shall be the General Manager of the Corporation who shall be the Chairperson of the Committee; and
- (b) the remainder shall be persons appointed by the Minister after consultation with such persons or organisations associated with the
20 tow truck industry as the Minister considers appropriate.

(3) Schedule 1 has effect with respect to the members and procedure of the Committee.

Functions of the Committee

9. (1) The functions of the Committee are—

- 25 (a) to keep under review the operation of this Act;
- (b) whenever it considers it necessary to do so or it is requested by the Minister to do so, to make reports or recommendations to the Minister with respect to the operation of this Act or the tow truck industry;
- 30 (c) to promote improvement in the standard of services provided by persons in the tow truck industry;
- (d) to inform the public about the tow truck industry; and
- (e) to promote research into the tow truck industry.

(2) The Committee has such other functions as are conferred or imposed
35 on it by or under this or any other Act.

PART 3—LICENCES AND PERMITS**Division 1—Tow truck operators' licences****Tow truck operators to be licensed**

10. A person shall not carry on, or advertise that the person carries on,
5 the business of a tow truck operator unless—

- (a) the person is the holder of a tow truck operator's licence; and
- (b) any tow truck operated by the person in the course of carrying on that business is specified in the licence.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

10 Applications for licences

11. (1) A person may apply to the Corporation for a licence.

(2) Two or more persons intending to carry on in partnership the business of a tow truck operator may, but are not required to, apply for a joint licence.

15 (3) An application shall—

- (a) be in the approved form;
- (b) specify the tow trucks intended to be operated by the applicant or applicants;
- (c) specify the holding yard (if applicable) intended to be used by the applicant or applicants;
- 20 (d) be accompanied by an amount of \$2,000 or, where some other amount is prescribed by the regulations, that other amount, as an operating deposit unless the full amount of that operating deposit is already held by the Corporation;
- 25 (e) in the case of an application made by a corporation—specify the names of the directors of the corporation;
- (f) contain such other particulars as may be prescribed by the regulations or required by the approved form; and
- 30 (g) be accompanied by a fee of \$500 for each tow truck specified in the application or, where some other amount is prescribed by the regulations, that other amount.

Determination of applications for licences

12. (1) The Corporation shall determine an application for a licence—

(a) by granting—

- 35 (i) in the case of a single applicant—a licence to the applicant; or
- (ii) in the case of 2 or more applicants—a licence in the joint names of the applicants; or

(b) by refusing to grant a licence to the applicant or applicants.

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(2) The Corporation shall not grant a licence to an applicant or applicants—

- (a) unless the Corporation is of the opinion that the applicant or each applicant is a fit and proper person to hold a licence;
- 5 (b) unless, in the case of an application by a corporation, the Corporation is of the opinion that each director of the corporation is a fit and proper person to hold a licence;
- (c) unless the Commissioner for Motor Transport has issued a distinctive number-plate pursuant to section 13 for each tow truck to be specified in the licence or has advised that such a number-plate will be issued;
- 10 (d) if required by the regulations, unless the applicant or applicants has or have nominated a holding yard that, in the opinion of the Corporation, complies with the regulations and is appropriate for its purpose; and
- 15 (e) unless the applicant or each applicant (not being a corporation) is over the age of 18 years.

(3) A licence shall specify—

- 20 (a) the name of the person or, in the case of a joint licence, the names of the persons to whom the licence is granted;
- (b) the tow trucks to be operated by the holder of the licence;
- (c) the holding yard (if applicable) to be used by the holder of the licence; and
- (d) such other matters as the Corporation thinks fit.

25 **Number-plates for tow trucks**

13. The Commissioner for Motor Transport shall, when issuing number-plates under the Motor Traffic Act 1909, issue distinctive number-plates for tow trucks which are, according to the advice of the Corporation, to be specified in licences under this Act.

30 **Conditions of licences**

14. (1) It is a condition of every licence—

- (a) that any tow truck operated by the holder of the licence display the distinctive number-plate (if any) issued for the tow truck pursuant to section 13;
- 35 (b) that any tow truck so operated, and its equipment, comply with the provisions of any Act or regulation relating to the design, construction and serviceability of the tow truck or of its equipment;
- (c) that the provisions of any Act, regulation or ordinance relating to limits of weight or speed which are applicable to a tow truck so
- 40 operated are complied with;

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- (d) that the provisions of any Act or regulation relating to the limitation of hours of driving a tow truck so operated are complied with;
- (e) that the holder of the licence or employee or agent of the holder of the licence employed on or about any tow truck complies with the Radiocommunications Act 1983 of the Commonwealth and does not permit any other person to contravene that Act; and
- (f) where the holder of the licence is a corporation—that the holder notify the Corporation of the particulars of changes of directors of the corporation.
- 10 (2) A licence may be granted subject to such other conditions as may be specified in the licence.
- (3) The Corporation may, by notice in writing served on the holder of a licence, amend the licence by varying any conditions specified in the licence or by adding to the licence or deleting from the licence any conditions.
- 15 (4) Any such variation, addition or deletion 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 holder of the licence.
- (5) On any such variation, addition or deletion taking effect, the condition as so varied or added shall be deemed to be a condition specified in the licence or the condition deleted shall be deemed not to be a condition so specified.

Duration of licences

15. A licence remains in force for a period of one year from the date on which it was granted unless it is sooner cancelled or surrendered.

25 Amendment of licences

16. (1) Where a person proposes to carry on the business of a tow truck operator in partnership with the holder of a licence, the person may apply to the Corporation for the amendment of the licence by specifying in the licence the name of the person.
- 30 (2) The holder of a licence may apply to the Corporation for the amendment of the licence by omitting a specified tow truck or by adding a specified tow truck or by omitting a specified tow truck and by inserting instead another specified tow truck.
- (3) The holder of a licence may apply to the Corporation for the amendment of the licence by specifying a holding yard or by omitting a holding yard and by specifying instead another holding yard.
- 35 (4) Where the holder of a licence makes an application under this section and pays the prescribed fee, the Corporation may—
- (a) grant the application and amend the licence accordingly; or

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(b) refuse the application.

(5) If the application provides for an additional tow truck to be specified in the licence, the prescribed fee for the application includes a fee of \$500 for each additional tow truck or, where some other amount is prescribed by the regulations, that other amount.

(6) The Corporation shall not grant an application for the amendment of a licence if it would not have granted a licence as so amended had an application been made for such a licence under this Act.

(7) Where an application referred to in subsection (1) is granted and the licence is amended by specifying in the licence the name of the person concerned, that person shall be deemed to be a person to whom the licence is granted.

Division 2—Drivers' permits and assistants' permits

Definition

15 17. In this Division—

“tow truck” means a tow truck operated—

- (a) for the purpose of towing motor vehicles from the scenes of motor vehicle accidents;
- 20 (b) for the purpose of towing motor vehicles which have broken down; or
- (c) for any other purpose prescribed by the regulations.

Drivers' permits

18. A person shall not—

- (a) drive or stand a tow truck on a public street; or
- 25 (b) obtain or attempt to obtain a towing authority for the purposes of using a tow truck,

unless the person is the holder of a driver's permit.

Penalty: 20 penalty units.

Assistants' permits

30 19. A person (other than the holder of a driver's permit) shall not assist in the operation of a tow truck on a public street unless the person is the holder of an assistant's permit.

Penalty: 20 penalty units.

Tow truck operators to employ permit holders

20. A tow truck operator shall not employ or otherwise engage a person to do anything for which a permit is required under this Act unless the person so employed or engaged is the holder of the required permit.

5 Penalty: 20 penalty units.

Applications for permits

21. (1) A person may apply to the Corporation for a driver's permit or an assistant's permit.

(2) An application shall—

- 10 (a) be in the approved form;
- (b) contain such particulars as may be prescribed by the regulations or required by the approved form; and
- (c) be accompanied by a fee of \$50 or, where some other amount is prescribed by the regulations, that other amount.

15 Determination of applications for permits

22. (1) The Corporation shall determine an application for a driver's permit or an assistant's permit—

- (a) by granting the permit to the applicant; or
- (b) by refusing to grant the permit to the applicant.

20 (2) The Corporation shall not grant a driver's permit or an assistant's permit to an applicant—

- (a) unless the Corporation is of the opinion that the applicant is a fit and proper person to hold such a permit; and
- (b) unless the applicant is over the age of 18 years.

25 (3) A permit shall specify—

- (a) the name of the person to whom the permit is granted; and
- (b) such other matters as the Corporation thinks fit.

Conditions of permits

30 23. (1) A permit may be granted subject to such conditions as may be specified in the permit.

(2) The Corporation may, by notice in writing served on the holder of a permit, amend the permit by varying any conditions specified in the permit or by adding to the permit or deleting from the permit any conditions.

35 (3) Any such variation, addition or deletion 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 holder of the permit.

(4) On any such variation, addition or deletion taking effect, the condition as so varied or added shall be deemed to be a condition specified in the permit or the condition deleted shall be deemed not to be a condition so specified.

5 Duration of permits

24. A permit remains in force for a period of one year from the date on which it was granted unless it is sooner cancelled or surrendered.

Division 3—Licences and permits generally

Notice of refusal

10 25. (1) If the Corporation refuses to grant an application for a licence or permit or for the amendment of a licence, the Corporation shall cause notice of the refusal, and of the grounds for the refusal, to be served on the applicant.

15 (2) A notice of refusal shall state the particulars of the grounds for the refusal.

(3) In the case of a joint application, it is a sufficient compliance with subsection (1) if the notice of refusal is served on any one of the applicants.

20 (4) If, at the expiration of 90 days after an application for a licence or permit or for the amendment of a licence has been made, the Corporation has failed to determine the application under this Part, the Corporation shall be deemed, for the purposes of an appeal under Part 6, to have refused the application concerned.

Surrender of licence or permit

25 26. A holder of a licence or permit may surrender it by delivering it to the Corporation with a notification in writing that the licence or permit is surrendered.

Police reports

30 27. For the purpose of deciding whether a person (including a director of a corporation) is a fit and proper person to hold a licence or permit, the Corporation may—

- (a) request the Commissioner of Police to make inquiries as to the character of the person and to furnish a report; and
- (b) consider any such report furnished by the Commissioner of Police or any other matter the Corporation considers to be relevant.

Refund of operating deposits and fees

28. (1) If an application for a licence is refused, a licence is surrendered or cancelled or a licence expires and a further licence is not granted, the Corporation shall, on the application of the former holder of the licence,
5 refund to that former holder the whole or any part of the operating deposit lodged in respect of the licence that is not liable to be forfeited under section 52.

(2) The regulations may provide for the refund of fees paid under this Act.

10 Duplicate licences or permits

29. If the Corporation is satisfied that a licence or permit has been lost or destroyed, it may, on payment of the prescribed fee, issue a duplicate licence or permit.

Register of licences and permits

15 30. (1) The Corporation shall cause to be kept a register, in such form as it determines, of licences and permits and shall cause to be recorded in the register in respect of each licence or permit—

- (a) the matters which by or under this Act are required to be specified in the licence or permit;
- 20 (b) in the case of a licence—particulars of any amendment of the licence;
- (c) particulars of any cancellation, suspension or surrender of the licence or permit; or
- (d) such other matters as the Corporation thinks fit.

25 (2) The Corporation may cause to be made such alterations in the register as are necessary to ensure that the matters recorded in the register are accurate.

(3) The register may, at all reasonable hours, be inspected, and copies of all or any part of any entry in the register taken—

- 30 (a) without payment, by any member of the police force, officer of the Corporation or other person authorised by the Corporation; or
- (b) on payment of the prescribed fee, by any other person.

False or misleading statements

31. A person shall not, in or in connection with an application—

- 35 (a) for a licence or permit; or
- (b) for the amendment of a licence,

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

Penalty: 20 penalty units or 3 months' imprisonment, or both.

PART 4—REGULATION OF TOW TRUCK INDUSTRY

5

Division 1—Roster system

Establishment etc. of roster system

32. (1) Regulations may be made for or with respect to the establishment, administration and operation of a system to roster the attendance of tow trucks at the scenes of motor vehicle accidents.

10 (2) In particular, any such regulation—

(a) may specify the persons who may, for the purpose of obtaining towing work, attend at the scenes of motor vehicle accidents;

(b) may specify the motor vehicle accidents to which the roster system applies or does not apply;

15 (c) may confer powers on officers of the Corporation or members of the police force with respect to the administration and operation of the roster system;

(d) may apply to the whole or to one or more regions of the State;

(e) may apply differently to different regions or parts of regions; and

20 (f) may exclude temporarily a person from attending at the scenes of motor vehicle accidents as a penalty for a breach of the roster system.

Breach of roster system

25 33. (1) A person shall not, personally or by the person's employee or agent, attend at the scene of a motor vehicle accident (being an accident which occurs at a place in which a roster system has been established under this Division) for the purpose of obtaining towing work unless the person or the employee or agent is attending in accordance with the roster system.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

30 (2) This section applies whether the person is attending at the scene of a motor vehicle accident at the request of the owner of the motor vehicle, a member of the police force or otherwise.

Division 2—Towing authorities

Requirements for towing authorities

35 34. (1) Regulations may be made for or with respect to towing authorities for the towing of motor vehicles on public streets.

(2) In particular, any such regulation—

- (a) may specify the circumstances in which towing authorities are required;
- (b) may specify the persons who may sign towing authorities;
- 5 (c) may require the use of forms of towing authorities supplied by the Corporation and prescribe the charges for the supply of those forms;
- (d) may prescribe procedures for dealing with towing authorities; and
- (e) may make provision for the keeping of records relating to towing authorities.

10 **Offence—towing authorities**

35. Where the regulations so require, a person shall not tow a motor vehicle on a public street by means of a tow truck unless a towing authority relating to the motor vehicle has first been obtained, and has been completed and signed, in accordance with the regulations.

15 Penalty: 20 penalty units.

Division 3—Holding yards

Establishment etc. of holding yards

36. (1) Regulations may be made for or with respect to the establishment, use and operation of holding yards.

20 (2) In particular, any such regulation—

- (a) may specify premises suitable for use as holding yards;
- (b) may regulate the release or disposal of motor vehicles (including unclaimed motor vehicles) held at holding yards;
- 25 (c) may specify persons or classes of persons authorised to operate or prohibited from operating holding yards;
- (d) may apply to the whole or to one or more regions of the State; and
- (e) may apply differently to different regions or parts of regions.

Offence—holding yards

30 37. (1) A person shall not tow or cause to be towed a motor vehicle from the scene of a motor vehicle accident (being an accident which occurs at a place in which a holding yard system has been established under this Division) to a place other than—

- (a) the holding yard specified in the licence of the person who operates the tow truck; or
- 35 (b) a place authorised in writing by the owner or driver of the motor vehicle.

Penalty: 20 penalty units.

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(2) Subsection (1) does not apply if a member of the police force directs in writing that the motor vehicle is to be towed to some other place (other than the premises of a motor vehicle repairer).

(3) A person shall not remove a motor vehicle, or cause or allow a motor vehicle to be removed, from a holding yard to which it has been towed from the scene of a motor vehicle accident unless the motor vehicle has been held at the holding yard for at least—

(a) except as provided by paragraph (b)—24 hours; or

(b) such shorter period as may be prescribed by the regulations.

10 Penalty: 20 penalty units.

(4) Subsection (3) does not apply to the removal of a motor vehicle from a holding yard at the direction in writing of a member of the police force or an inspector or with the authority in writing of the owner.

(5) The power of a member of the police force to give a direction under 15 this section is subject to such limitations as are imposed by the regulations.

Division 4—Other regulatory provisions

Prohibition of spotters' fees and drop fees

38. (1) A person shall not—

20 (a) for the purpose of obtaining a towing authority, or for the purpose of enabling any other person to obtain a towing authority, give or offer to give; or

(b) for the purpose of enabling any other person to obtain a towing authority, receive or offer to receive,

25 any valuable thing in consideration for the furnishing of information as to the occurrence of a motor vehicle accident on a public street.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

(2) A person shall not give, or offer to give, any valuable thing in consideration of the obtaining, personally or on behalf of any other person, of the work of repairing a motor vehicle damaged in an accident or 30 otherwise requiring towing, except if the valuable thing is given or offered to be given to the owner of the motor vehicle by a motor vehicle repairer.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

(3) A person shall not receive, or offer to receive, any valuable thing in consideration of the obtaining, for any other person, of the work of repairing 35 a motor vehicle damaged in an accident or otherwise requiring towing, except if the valuable thing is received or offered to be received by the owner of the motor vehicle from a motor vehicle repairer.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

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(4) In this section, "valuable thing" does not include any reasonable charges (not exceeding any maximum charges fixed by the regulations) in respect of the towing, salvage or storage of a motor vehicle, but otherwise includes—

- 5 (a) any money, loan, office, place, employment, 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.

Threats

10 39. A person shall not threaten any person—

- (a) for the purpose of obtaining a towing authority or for the purpose of enabling any other person to obtain a towing authority; or
(b) for the purpose of obtaining the work of repairing a motor vehicle damaged in a motor vehicle accident or otherwise requiring towing
15 or for the purpose of enabling any other person to obtain that work.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

Authority to repair

40. A person shall not, personally or by the person's employee or agent, obtain or attempt to obtain authority from another person for the repair of
20 a motor vehicle damaged in a motor vehicle accident before it is delivered to the holding yard or other duly authorised place to which it is towed from the scene of the accident.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

Obstruction by tow trucks

25 41. The driver of a tow truck shall not—

- (a) cause the tow truck to stand on a public street so as to cause an obstruction except to the extent necessary to connect towing equipment to a motor vehicle or to otherwise enable the motor vehicle to be towed; or
30 (b) cause the tow truck to stand at the scene of a motor vehicle accident for a period longer than that which would be reasonably required to obtain a towing authority for a motor vehicle and to connect towing equipment to that motor vehicle or to otherwise enable the motor vehicle to be towed.

35 Penalty: 10 penalty units.

Failure to leave scene of accident

42. (1) If an inspector or a member of the police force has reason to believe that a holder of a licence or permit is acting in contravention of this Act or the regulations at the scene of a motor vehicle accident, the
5 inspector or member of the police force may direct that holder to leave the scene of the accident.

(2) The holder of a licence or permit shall comply with any such direction.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

10 Passengers in tow trucks

43. A person (other than the holder of a driver's permit or an assistant's permit) shall not travel as a passenger in a tow truck while the tow truck—

- (a) is proceeding to the scene of a motor vehicle accident; or
- (b) is towing a motor vehicle from the scene of a motor vehicle accident,

15 unless the person was the driver of or a passenger in the motor vehicle.

Penalty: 20 penalty units.

Charges for tow truck services

44. (1) Regulations may be made for or with respect to the amount that may be charged—

- 20 (a) by tow truck operators for the towing or salvage of motor vehicles; and
- (b) by any person for the storage of motor vehicles at any place (including a holding yard) to which they have been towed.

25 (2) In particular, any such regulation may fix maximum charges in respect of any such towing, salvage or storage.

PART 5—DISCIPLINARY PROCEEDINGS**Definitions**

45. In this Part—

“complaint” means a complaint duly made under section 48;

30 “defendant” means any person against whom a complaint is made under section 48.

Grounds for action against holder of licence

46. (1) The grounds on which the holder of a licence may be dealt with under this Part are—

- 35 (a) that the holder of the licence has contravened—
 - (i) a condition to which the licence is subject;

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-
- (ii) a provision of this Act or the regulations; or
 - (iii) a provision of the Motor Vehicle Repairs Act 1980 or a regulation made under that Act;
- 5 (b) that the holder of the licence has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment or penal servitude for 3 months or more;
- (c) that the holder of the licence has been guilty of fraudulent conduct or dishonesty in connection with the holder's business as a tow truck operator;
- 10 (d) that the holder of the licence has failed to take all reasonable precautions to prevent loss from, or damage to, motor vehicles towed by tow trucks operated by that holder or motor vehicles otherwise under the control of that holder;
- 15 (e) that the holder of the licence, not being a corporation, has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with creditors or made an assignment of remuneration for their benefit;
- (f) that the holder of the licence, being a corporation—
- (i) is in the course of being wound up;
- 20 (ii) is under official management;
- (iii) is a corporation for which a receiver or manager has been appointed; or
 - (iv) has entered into a compromise or scheme of arrangement with its creditors;
- 25 (g) that the holder of the licence has, for a continuous period of one month or more, ceased to carry on the business of a tow truck operator;
- (h) that the holder of the licence is for any other reason not a fit and proper person to hold a licence; or
- 30 (i) in the case of the holder of a licence, being a corporation—that any director of the corporation—
- (i) has contravened a condition or provision referred to in paragraph (a);
- 35 (ii) has been convicted of an offence referred to in paragraph (b); or
- (iii) is for any other reason not a fit and proper person to hold a licence.
- (2) The grounds referred to in subsection (1) (except paragraph (g)) are deemed to exist—
- 40 (a) in the case of a joint licence—if those grounds apply to any holder of that licence; or

- (b) in the case of 2 or more licences held by persons carrying on the business of a tow truck operator in partnership—if those grounds apply to any holder of any of those licences.

Grounds for action against holder of permit

- 5 47. The grounds on which the holder of a permit may be dealt with under this Part are—
- (a) that the holder of the permit has contravened—
 - (i) a condition to which the permit is subject; or
 - (ii) a provision of this Act or the regulations;
 - 10 (b) that the holder of the permit has failed to take all reasonable precautions to prevent loss from, or damage to, a motor vehicle towed by a tow truck driven by that holder; or
 - (c) that the holder of the permit is for any other reason not a fit and proper person to hold a permit.

15 **Making of complaint**

48. (1) A complaint may be made that the holder of a licence or a permit should be dealt with under this Part on one or more of the grounds specified in section 46 or 47.

20 (2) A complaint (other than a complaint made by an officer of the Corporation) shall be lodged with the Corporation.

(3) A complaint shall be accompanied by the prescribed fee, except where it is made by—

- (a) an officer of the Corporation; or
- (b) a member of the police force.

25 **Defendant to show cause etc.**

49. (1) The Corporation shall serve on the person to whom a complaint relates a notice calling on the person to show cause (on the grounds specified in the notice) why the person should not be dealt with under this Part where—

- 30 (a) the complaint is made by an officer of the Corporation; or
- (b) a complaint is made by any other person and the Corporation is of the opinion that the complaint warrants the taking of further action under this Part.

35 (2) The Corporation shall, after considering any representation made by the defendant within the time stipulated by the notice under subsection (1)—

- (a) determine that the complaint does not warrant the taking of any further action; or

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(b) cause an inquiry to be held into the grounds on which the defendant has been called on to show cause.

(3) Without affecting the generality of section 63, the inquiry may be conducted by the Corporation or by its delegate.

5 (4) As soon as practicable after the receipt of a complaint (other than a complaint made by an officer of the Corporation), the Corporation shall cause notice of any action taken under this section with respect to the complaint to be served on the complainant.

Procedure on inquiry into complaints

10 50. (1) An inquiry shall be held at the time and place fixed by the Corporation or its delegate, being a time not less than 7 days after the defendant is notified of the time and place so fixed.

(2) The Corporation or its delegate may—

15 (a) conduct the inquiry in such manner as it sees fit and is not bound to observe rules of law governing the admission of evidence but may inform itself of any matter in such manner as it sees fit; and

20 (b) allow a member of the police force, barrister, solicitor, public servant or officer of the Corporation to appear before it for the purpose of adducing evidence tending to establish the grounds on which the defendant has been called on to show cause.

(3) An inquiry may be held in the absence of the defendant if the Corporation or its delegate is satisfied that the defendant was served with reasonable notice of the time and place fixed for the holding of the inquiry.

25 (4) A person appearing at an inquiry may, with the approval of the Corporation or its delegate, be represented by a barrister or solicitor or by an agent.

Determination of Corporation after inquiry

30 51. (1) If after an inquiry conducted by the Corporation or after consideration of the report of an inquiry conducted by its delegate, the Corporation is of the opinion that there exists any ground for dealing with the defendant under this Part, the Corporation may make any one of the following determinations:

(a) the Corporation may determine that no further action be taken against the defendant;

35 (b) the Corporation may caution or reprimand the defendant;

(c) the Corporation may make a determination requiring the defendant to pay to the Corporation, as a penalty, an amount not exceeding \$1,000;

40 (d) the Corporation may cancel or suspend the licence or permit held by the defendant.

(2) The power of the Corporation to make a determination under this section may not be delegated to any person or body.

(3) Where a defendant is the holder of both a licence and a permit, the Corporation shall not cancel or suspend both unless the defendant was called
5 on to show cause under section 49 in respect of both.

(4) Nothing in this section affects the liability of a defendant for an offence against this Act or the regulations or for any other offence.

Provisions relating to penalties

52. (1) If the Corporation makes a determination under section 51 (1)
10 (c), the penalty required to be paid by the defendant shall be paid to the Corporation within 21 days after the date on which notice of the determination is served on the defendant or within such further time as the Corporation may allow.

(2) If a penalty imposed under section 51 (1) (c) in relation to a defendant
15 who is the holder of a licence is not paid by the due date—

(a) an amount equal to the amount of that penalty shall be forfeited to the Corporation from the operating deposit lodged in respect of the licence; and

20 (b) the licence and any permit held by the defendant shall (if not otherwise cancelled or suspended) be deemed to be suspended until such time as the amount required to make up the full amount of the operating deposit is lodged with the Corporation, or, if that amount is not lodged, until such time as the licence or permit would otherwise expire.

25 (3) If a penalty imposed under section 51 (1) (c) in relation to a defendant who is the holder of a permit but not the holder of a licence is not paid by the due date—

30 (a) the permit held by the defendant shall (if not otherwise cancelled or suspended) be deemed to be suspended until such time as the amount of that penalty is paid to the Corporation or, if that amount is not paid, until such time as the permit would otherwise expire; and

(b) that amount may be recovered by the Corporation as a debt in a court of competent jurisdiction.

35 Provisions relating to cancellation or suspension

53. (1) If the Corporation cancels or suspends a licence or permit, it shall cause a notice of the cancellation or suspension to be served on the holder of the licence or permit.

40 (2) Any such notice shall state the particulars of the grounds on which the Corporation has cancelled or suspended the licence or permit.

(3) Any cancellation or suspension of a licence or permit has effect on the date specified in the notice (being a date which is on or after the date that the notice is served on the holder of the licence or permit).

(4) When the cancellation or suspension of a licence or permit has effect, 5 the former holder or the holder of the licence or permit shall, as soon as practicable, deliver it to the Corporation.

Penalty (subsection (4)): 5 penalty units.

PART 6—APPEALS

Appeals to Industrial Commission

10 **54. (1)** An applicant for—

- (a) a licence or permit; or
- (b) an amendment of a licence,

may appeal to the Industrial Commission against the refusal of the Corporation to grant the application.

15 **(2)** The holder of a licence or permit which is amended by the Corporation (other than on the person's application) may appeal to the Industrial Commission against the amendment.

(3) A defendant aggrieved by a determination of the Corporation under section 51 (1) (b), (c) or (d) may appeal to the Industrial Commission against 20 the determination.

(4) An appeal must be made not later than 21 days after the appellant is notified by the Corporation of the refusal, amendment or determination, or within such further time as the Industrial Commission may allow.

Jurisdiction of Industrial Commission

25 **55.** The jurisdiction of the Industrial Commission conferred by this Part shall be exercised in accordance with this Part by a judicial member of the Commission.

Procedures of Industrial Commission

30 **56. (1)** An appeal under this Part shall be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision was made by the Corporation, may be given on the appeal.

35 **(2)** In addition to any other functions and discretions that the Industrial Commission has apart from this subsection, the Industrial Commission has, for the purpose of hearing or disposing of an appeal, all the functions and discretions that the Corporation had in respect of the matter the subject of the appeal.

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(3) For the purposes of an appeal, the Industrial Commission may conduct the appeal in such manner as it sees fit and is not bound to observe rules of law governing the admission of evidence but may inform itself of any matter in such manner as it sees fit.

- 5 (4) The Industrial Commission, in hearing an appeal, has the powers conferred on it by section 38 of the Industrial Arbitration Act 1940 and that section applies to a witness in an appeal in the same way as it applies to a witness summoned by or appearing before the Industrial Commission.

Rights of representation

- 10 57. A party to an appeal may be represented by a barrister or solicitor or by an agent.

Determination of appeal

58. (1) The Industrial Commission, in deciding an appeal, may—
 (a) confirm the decision made by the Corporation; or
 15 (b) disallow that decision and make such order as the Industrial Commission considers appropriate.

(2) The determination of the Industrial Commission in an appeal shall be deemed to be the final decision of the Corporation and shall be given effect to by the Corporation.

20 **Finality of determination**

59. (1) The determination of the Industrial Commission in an appeal shall be final and no proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of any such determination or any
 25 decision, proceeding, step or other matter involved in the making of any such determination.

(2) A determination shall not be vitiated only because of any informality or want of form or be liable to be challenged, appealed against, reviewed, quashed or called in question by any court of judicature on any account
 30 whatever.

(3) Section 14 of the Industrial Arbitration Act 1940 does not confer any right of appeal from a determination made by a judicial member of the Industrial Commission under this Part.

PART 7—GENERAL35 **Tow Truck Industry Corporation Account**

60. There shall be established in the Special Deposits Account in the Treasury a Tow Truck Industry Corporation Account—

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- (a) into which shall be deposited all money received by the Corporation or provided by Parliament for the purposes of this Act; and
- (b) from which shall be paid all amounts required to meet expenditure incurred in the administration or execution of this Act.

5 Financial year of Corporation

61. (1) The financial year of the Corporation is the year commencing on 1 January.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

10 Disclosure of information

62. A person shall not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made—

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

Penalty: 10 penalty units.

Delegation

63. The Corporation may delegate to a person or body any of the Corporation's functions, other than—

- (a) this power of delegation; and
- (b) the power to make a determination under section 51.

Contracting out void

64. The provisions of this Act and the regulations have effect despite any stipulation to the contrary and 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.

Corporation may require information

65. (1) The Corporation may, by notice in writing, require any person to furnish to the Corporation, within such period as may be specified in the notice, such information in connection with any towing or the business of any tow truck operator as may be so specified and as is within the person's knowledge or in the person's custody or under the person's control.

(2) A person shall comply with any such requirement.

Penalty: 20 penalty units.

(3) Any information furnished pursuant to any such requirement shall not, if the person furnishing the information objected, at the time of
5 furnishing it, to doing so on the ground that it may tend to incriminate the person or might be used in any proceedings against the person under Part 5, be admissible in evidence in any prosecution against that person for any offence, not being an offence under subsection (2), or be admissible in any such proceedings.

10 **Production of licences and permits**

66. (1) The holder of a licence shall on demand, while carrying on the business of a tow truck operator, produce the licence to an inspector or a member of the police force.

(2) The holder of a driver's permit shall on demand, at the scene of a
15 motor vehicle accident or while otherwise engaged in towing work, produce the permit and a copy of the licence specifying the tow truck to an inspector or a member of the police force.

(3) The holder of an assistant's permit shall on demand, at the scene of a motor vehicle accident or while otherwise assisting in the operation of a
20 tow truck, produce the permit to an inspector or a member of the police force.

Penalty: 5 penalty units.

Power of entry and examination

67. (1) An inspector may, for the purpose of ascertaining whether a
25 person is contravening or has contravened this Act or the regulations, enter, at any reasonable time, any place which the inspector has reasonable grounds for believing is a place at which the person carries on business (including any holding yard used or operated by the person).

(2) Subsection (1) does not authorise any person to enter that part of any
30 premises being used for residential purposes without the consent of the occupier of that part of the premises.

(3) An inspector may—

(a) require any person employed or engaged at any place entered
35 pursuant to subsection (1) to produce to the inspector such records, or other documents, as are required to be kept under this Act or the regulations and are in the custody or under the control of the person so employed or engaged;

(b) examine with respect to matters under this Act or the regulations any person employed or engaged at any place so entered; and

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(c) make at any place so entered such examination and inquiries as the inspector thinks necessary to ascertain whether the requirements of this Act or the regulations are being or have been contravened.

(4) An inspector may, for the purpose of ascertaining whether a person is contravening this Act or the regulations, enter and examine any tow truck.

(5) An inspector when exercising any power under this section may be accompanied by a person so authorised by the inspector.

Offence to obstruct inspector etc.

68. A person shall not—

- 10 (a) refuse or intentionally delay the admission to any place or a tow truck of an inspector in the exercise by the inspector of any power under this Act or the regulations;
- (b) intentionally obstruct an inspector in the exercise by the inspector of any such power;
- 15 (c) neglect or fail to comply with a request or requirement of an inspector made under this Act or the regulations for the production of any record or other document; or
- (d) conceal any person from an inspector or prevent any person from appearing before or being examined by an inspector or attempt so to conceal or prevent any person.
- 20

Penalty: 20 penalty units.

Evidence

69. (1) Where in any legal proceedings it is proved that on a certain day or during any period a person was the holder of a licence, a driver's permit or an assistant's permit, it shall be presumed, in the absence of proof to the contrary, that the person was carrying on the business of a tow truck operator, was employed as a tow truck driver or was employed in assisting in the operation of a tow truck on that day or during that period.

25

(2) A certificate purporting to be signed by the General Manager of the Corporation or a prescribed officer certifying—

30

- (a) that a person was or was not on a specified date a holder of a licence, a driver's permit or an assistant's permit;
- (b) that particulars specified in the certificate were on a specified date the particulars specified in the licence or permit;
- 35 (c) that a licence or permit specified in the certificate was during any specified period suspended; or
- (d) that a licence or permit specified in the certificate was on a specified date cancelled or surrendered,

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

Service of documents

70. (1) Any notice or other instrument issued, made or given for the purposes of this Act or the regulations may be served—

- (a) by delivering it personally to the person to whom it is addressed;
- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there with some person apparently of or above the age of 16 years for the person to whom it is addressed; or
- (c) by post.

(2) Any such notice or instrument addressed to the holder of a licence or permit at the place last entered in the records of the Corporation as the holder's place of residence or business shall be deemed to be properly addressed for the purposes of section 76 of the Interpretation Act 1987.

(3) A document may be served on the Corporation by leaving it at, or by sending it by post to—

- (a) the office of the Corporation; or
 - (b) if the Corporation has more than one office—any one of its offices.
- (4) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on any person or the Corporation in any other manner.

Recovery of charges etc. by Corporation

71. Any charge, fee or money due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

Offences by corporations

72. (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 shall be deemed 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 pursuant to subsection (1) whether or not the corporation has been proceeded against or been 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.

*Tow Truck Industry 1987***Proceedings for offences**

73. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

5 Liability of Corporation etc.

74. No matter or thing done by the Corporation or the Committee, any member of the Committee or any person acting under the direction of the Corporation or the Committee shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member
10 or a person so acting personally to any action, liability, claim or demand.

Regulations

75. (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
15 prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to—

- (a) the use and custody of the seal of the Corporation;
- (b) any matter connected with licences and permits;
- 20 (c) advertising by tow truck operators;
- (d) the records to be kept by tow truck operators;
- (e) the display of signs by tow truck operators;
- 25 (f) the furnishing by the holders of licences or permits of any information (including, in the case of holders of licences, particulars of any of their employees);
- (g) the charging and payment of a fee for any inspection made or information supplied by the Corporation;
- (h) the design, construction and equipment of tow trucks;
- 30 (i) the conduct and duties of persons operating or driving tow trucks and of persons employed on or about them or otherwise employed in the business of a tow truck operator;
- (j) the conduct of persons in relation to the use or operation of tow trucks;
- (k) prescribing the conditions under which tow trucks may be operated;
- 35 (l) the manner and form of payment of operating deposits;
- (m) inquiries under Part 5; and
- (n) the disposal of unclaimed motor vehicles in the care or custody of tow truck operators.

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(3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

Repeal of Tow-truck Act 1967 (No. 46)

76. The Tow-truck Act 1967 is repealed.

5 Savings, transitional and other provisions

77. Schedule 2 has effect.

Amendment of Public Finance and Audit Act 1983 (No. 152), Sch. 2 (Statutory Bodies)

10 78. The Public Finance and Audit Act 1983 is amended by inserting in Schedule 2 in alphabetical order the words "Tow Truck Industry Corporation of New South Wales".

SCHEDULE 1—PROVISIONS RELATING TO THE COMMITTEE

(Sec. 8 (3))

Age of members

15 1. A person of or above the age of 70 years is not eligible to be appointed as a member of the Committee.

Terms of office

20 2. An appointed member of the Committee shall, subject to this Schedule, hold office for such period, not exceeding 3 years, as may be specified in the member's instrument of appointment but is eligible (if otherwise qualified) for re-appointment.

Remuneration

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

25 Vacancy in office of member

4. (1) The office of an appointed member of the Committee becomes vacant if the member—

- (a) dies;
- (b) completes a term of office and is not re-appointed;
- 30 (c) resigns the office by instrument in writing addressed to the Minister;
- (d) is removed from office by the Minister under this clause;
- (e) reaches the age of 70 years;
- (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the
- 35 Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or

*Tow Truck Industry 1987*SCHEDULE 1—PROVISIONS RELATING TO THE COMMITTEE—*continued*

(g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

5 (2) The Minister may remove an appointed member of the Committee from office at any time.

Filling of vacancy

5. If the office of an appointed member of the Committee becomes vacant a person shall, subject to this Act, be appointed to fill the vacancy.

10 Effect of certain other Acts

6. (1) The Public Service Act 1979 does not apply to the appointment of a member of the Committee and a member is not, as such a member, subject to that Act.

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

15 (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

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

Deputies for members

7. (1) The Minister may, from time to time, appoint a person to be the deputy of a member of the Committee.

25 (2) A deputy of a member may, in the absence of the member or during a vacancy in the office of the member, act in the office of the member and, while so acting, shall have all the functions of the member and shall be deemed to be a member.

General procedure

30 8. The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Committee.

Quorum

9. The quorum for a meeting of the Committee is a majority of the members of the Committee for the time being.

Presiding member

35 10. (1) The Chairperson of the Committee or, in the absence of the Chairperson, another member of the Committee elected to chair the meeting by the members present shall preside at a meeting of the Committee.

(2) The person presiding at any meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

*Tow Truck Industry 1987*SCHEDULE 1—PROVISIONS RELATING TO THE COMMITTEE—*continued***Voting**

11. A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present shall be the decision of the Committee.

Minutes

- 5 12. The Committee must cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee.

 SCHEDULE 2—SAVINGS, TRANSITIONAL AND
OTHER PROVISIONS

(Sec. 77)

Commissioner's records

- 10 1. The Commissioner for Motor Transport shall at and in accordance with the Corporation's request deliver to the Corporation any records kept by the Commissioner under section 17 of the Tow-truck Act 1967.

Regulations

- 15 2. (1) The regulations may make provision of a savings or transitional nature consequent on the enactment of this Act and the Motor Vehicle Repairs (Tow Truck Industry) Amendment Act 1987.

(2) A provision made under subclause (1) may take effect from the date of assent to this Act or a later day.

- 20 (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- 25 (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.



TOW TRUCK INDUSTRY ACT 1987 No. 167

NEW SOUTH WALES



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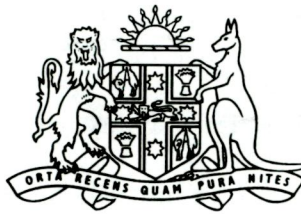
SCHEDULE 1—PROVISIONS RELATING TO THE COMMITTEE

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TOW TRUCK INDUSTRY ACT 1987 No. 167

NEW SOUTH WALES



Act No. 167, 1987

An Act to regulate the tow truck industry; to repeal the Tow-truck Act 1967; and for other purposes. [Assented to 26 November 1987]

See also Motor Vehicle Repairs (Tow Truck Industry) Amendment Act 1987.

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The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Tow Truck Industry Act 1987.

Commencement

2. This Act shall commence on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act—

“approved” means approved by the Minister;

“assistant’s permit” means an assistant’s permit granted under this Act;

“Committee” means the Tow Truck Industry Committee of New South Wales constituted by this Act;

“Corporation” means the Tow Truck Industry Corporation of New South Wales constituted by this Act;

“director” has the same meaning as in the Companies (New South Wales) Code;

“driver’s permit” means a driver’s permit granted under this Act;

“holder” means—

(a) in relation to a joint licence—each person to whom the licence is granted; and

(b) in relation to any other licence or to a permit—the person to whom the licence or permit is granted;

“holding yard” means a place to which a motor vehicle is towed from the scene of a motor vehicle accident and at which it is held temporarily;

“inspector” means an officer of the Corporation appointed as an inspector of the Corporation;

“licence” means a tow truck operator’s licence (including a joint licence) granted under this Act;

“motor vehicle” means any motor car, motor carriage, motor cycle or other vehicle propelled on any public street wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include any vehicle used on a railway or tramway;

“operate”, in relation to a tow truck, means tow or offer to tow a motor vehicle by means of the tow truck;

“permit” means a driver’s permit or an assistant’s permit;

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“public street” means any street, road, lane, thoroughfare, footpath or place open to or used by the public, and includes any place at the time open to or used by the public, whether on the payment of money or otherwise;

“tow” includes—

- (a) lift and tow or lift and carry;
- (b) lift for the purpose of towing or carrying;
- (c) carry on a trailer;
- (d) place onto a trailer for the purpose of carrying; and
- (e) any other action or operation prescribed for the purposes of this definition;

“tow truck” means—

- (a) a motor vehicle equipped with a lifting device;
- (b) a motor vehicle equipped with a trailer, towing attachment or other device; or
- (c) any other motor vehicle prescribed for the purposes of this definition,

that is capable of being used to tow a motor vehicle;

“tow truck operator” means a person who carries on the business of operating one or more tow trucks (either personally, as a member of a partnership or by the person’s employees or agents)—

- (a) for the purpose of towing motor vehicles from the scenes of motor vehicle accidents;
- (b) for the purpose of towing motor vehicles which have broken down; or
- (c) for any other purpose prescribed by the regulations;

“towing authority” means an authority required by this Act to be given for the towing of a motor vehicle on a public street.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Exemptions

4. (1) This Act does not apply to or in respect of a tow truck operated by the Crown.

(2) The regulations may exempt from the operation of all or any of the provisions of this Act or the regulations any person or class of persons.

(3) An exemption may be given unconditionally or subject to such conditions as may be prescribed by the regulations.

(4) If an exemption is given subject to conditions, the exemption does not have effect during any period when the conditions are not complied with.

PART 2—ADMINISTRATION

Division 1—Tow Truck Industry Corporation

The Corporation

5. (1) There is constituted by this Act a corporation with the corporate name of the Tow Truck Industry Corporation of New South Wales.

(2) The Corporation is subject to the control and direction of the Minister.

(3) A function of the Corporation may be exercised—

(a) by the Secretary of the Department of Industrial Relations and Employment;

(b) by the General Manager of the Corporation in accordance with such directions (if any) as are given from time to time by the Secretary of that Department; or

(c) in accordance with a delegation by the Corporation under section 63.

(4) The Chairman of the Motor Vehicle Repair Industry Council is the General Manager of the Corporation.

Functions of the Corporation

6. The Corporation has the functions conferred or imposed on it by or under this or any other Act and such other functions as are necessary or convenient for the purposes of the administration or execution of this Act.

Staff of the Corporation

7. (1) Such staff as may be necessary to enable the Corporation to exercise its functions shall be employed under the Public Service Act 1979.

(2) The Corporation may—

(a) with the approval of the Minister; and

(b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

(3) The Corporation may—

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- (a) for any purpose approved by the Minister; and
- (b) on such terms and conditions as may be approved by the Public Service Board,

employ such casual staff as the Corporation requires to exercise its functions.

(4) The Public Service Act 1979 does not apply to the employment of casual staff under subsection (3) and a person is not, as a member of that casual staff, subject to that Act.

(5) For the purposes of this Act, a person who is employed under subsection (1) or (3) or whose services are made use of under subsection (2) is an officer of the Corporation.

Division 2—Tow Truck Industry Committee

The Committee

8. (1) There is constituted by this Act the Tow Truck Industry Committee of New South Wales.

- (2) The Committee shall consist of not more than 7 members, of whom—
 - (a) one shall be the General Manager of the Corporation who shall be the Chairperson of the Committee; and
 - (b) the remainder shall be persons appointed by the Minister after consultation with such persons or organisations associated with the tow truck industry as the Minister considers appropriate.

(3) Schedule 1 has effect with respect to the members and procedure of the Committee.

Functions of the Committee

9. (1) The functions of the Committee are—

- (a) to keep under review the operation of this Act;
- (b) whenever it considers it necessary to do so or it is requested by the Minister to do so, to make reports or recommendations to the Minister with respect to the operation of this Act or the tow truck industry;
- (c) to promote improvement in the standard of services provided by persons in the tow truck industry;
- (d) to inform the public about the tow truck industry; and
- (e) to promote research into the tow truck industry.

(2) The Committee has such other functions as are conferred or imposed on it by or under this or any other Act.

PART 3—LICENCES AND PERMITS**Division 1—Tow truck operators' licences****Tow truck operators to be licensed**

10. A person shall not carry on, or advertise that the person carries on, the business of a tow truck operator unless—

- (a) the person is the holder of a tow truck operator's licence; and
- (b) any tow truck operated by the person in the course of carrying on that business is specified in the licence.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

Applications for licences

11. (1) A person may apply to the Corporation for a licence.

(2) Two or more persons intending to carry on in partnership the business of a tow truck operator may, but are not required to, apply for a joint licence.

(3) An application shall—

- (a) be in the approved form;
- (b) specify the tow trucks intended to be operated by the applicant or applicants;
- (c) specify the holding yard (if applicable) intended to be used by the applicant or applicants;
- (d) be accompanied by an amount of \$2,000 or, where some other amount is prescribed by the regulations, that other amount, as an operating deposit unless the full amount of that operating deposit is already held by the Corporation;
- (e) in the case of an application made by a corporation—specify the names of the directors of the corporation;
- (f) contain such other particulars as may be prescribed by the regulations or required by the approved form; and
- (g) be accompanied by a fee of \$500 for each tow truck specified in the application or, where some other amount is prescribed by the regulations, that other amount.

Determination of applications for licences

12. (1) The Corporation shall determine an application for a licence—

(a) by granting—

- (i) in the case of a single applicant—a licence to the applicant; or
- (ii) in the case of 2 or more applicants—a licence in the joint names of the applicants; or

(b) by refusing to grant a licence to the applicant or applicants.

(2) The Corporation shall not grant a licence to an applicant or applicants—

- (a) unless the Corporation is of the opinion that the applicant or each applicant is a fit and proper person to hold a licence;
- (b) unless, in the case of an application by a corporation, the Corporation is of the opinion that each director of the corporation is a fit and proper person to hold a licence;
- (c) unless the Commissioner for Motor Transport has issued a distinctive number-plate pursuant to section 13 for each tow truck to be specified in the licence or has advised that such a number-plate will be issued;
- (d) if required by the regulations, unless the applicant or applicants has or have nominated a holding yard that, in the opinion of the Corporation, complies with the regulations and is appropriate for its purpose; and
- (e) unless the applicant or each applicant (not being a corporation) is over the age of 18 years.

(3) A licence shall specify—

- (a) the name of the person or, in the case of a joint licence, the names of the persons to whom the licence is granted;
- (b) the tow trucks to be operated by the holder of the licence;
- (c) the holding yard (if applicable) to be used by the holder of the licence; and
- (d) such other matters as the Corporation thinks fit.

Number-plates for tow trucks

13. The Commissioner for Motor Transport shall, when issuing number-plates under the Motor Traffic Act 1909, issue distinctive number-plates for tow trucks which are, according to the advice of the Corporation, to be specified in licences under this Act.

Conditions of licences

14. (1) It is a condition of every licence—

- (a) that any tow truck operated by the holder of the licence display the distinctive number-plate (if any) issued for the tow truck pursuant to section 13;
- (b) that any tow truck so operated, and its equipment, comply with the provisions of any Act or regulation relating to the design, construction and serviceability of the tow truck or of its equipment;
- (c) that the provisions of any Act, regulation or ordinance relating to limits of weight or speed which are applicable to a tow truck so operated are complied with;

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- (d) that the provisions of any Act or regulation relating to the limitation of hours of driving a tow truck so operated are complied with;
- (e) that the holder of the licence or employee or agent of the holder of the licence employed on or about any tow truck complies with the Radiocommunications Act 1983 of the Commonwealth and does not permit any other person to contravene that Act; and
- (f) where the holder of the licence is a corporation—that the holder notify the Corporation of the particulars of changes of directors of the corporation.

(2) A licence may be granted subject to such other conditions as may be specified in the licence.

(3) The Corporation may, by notice in writing served on the holder of a licence, amend the licence by varying any conditions specified in the licence or by adding to the licence or deleting from the licence any conditions.

(4) Any such variation, addition or deletion 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 holder of the licence.

(5) On any such variation, addition or deletion taking effect, the condition as so varied or added shall be deemed to be a condition specified in the licence or the condition deleted shall be deemed not to be a condition so specified.

Duration of licences

15. A licence remains in force for a period of one year from the date on which it was granted unless it is sooner cancelled or surrendered.

Amendment of licences

16. (1) Where a person proposes to carry on the business of a tow truck operator in partnership with the holder of a licence, the person may apply to the Corporation for the amendment of the licence by specifying in the licence the name of the person.

(2) The holder of a licence may apply to the Corporation for the amendment of the licence by omitting a specified tow truck or by adding a specified tow truck or by omitting a specified tow truck and by inserting instead another specified tow truck.

(3) The holder of a licence may apply to the Corporation for the amendment of the licence by specifying a holding yard or by omitting a holding yard and by specifying instead another holding yard.

(4) Where the holder of a licence makes an application under this section and pays the prescribed fee, the Corporation may—

- (a) grant the application and amend the licence accordingly; or

(b) refuse the application.

(5) If the application provides for an additional tow truck to be specified in the licence, the prescribed fee for the application includes a fee of \$500 for each additional tow truck or, where some other amount is prescribed by the regulations, that other amount.

(6) The Corporation shall not grant an application for the amendment of a licence if it would not have granted a licence as so amended had an application been made for such a licence under this Act.

(7) Where an application referred to in subsection (1) is granted and the licence is amended by specifying in the licence the name of the person concerned, that person shall be deemed to be a person to whom the licence is granted.

Division 2—Drivers' permits and assistants' permits

Definition

17. In this Division—

“tow truck” means a tow truck operated—

- (a) for the purpose of towing motor vehicles from the scenes of motor vehicle accidents;
- (b) for the purpose of towing motor vehicles which have broken down; or
- (c) for any other purpose prescribed by the regulations.

Drivers' permits

18. A person shall not—

- (a) drive or stand a tow truck on a public street; or
- (b) obtain or attempt to obtain a towing authority for the purposes of using a tow truck,

unless the person is the holder of a driver's permit.

Penalty: 20 penalty units.

Assistants' permits

19. A person (other than the holder of a driver's permit) shall not assist in the operation of a tow truck on a public street unless the person is the holder of an assistant's permit.

Penalty: 20 penalty units.

Tow truck operators to employ permit holders

20. A tow truck operator shall not employ or otherwise engage a person to do anything for which a permit is required under this Act unless the person so employed or engaged is the holder of the required permit.

Penalty: 20 penalty units.

Applications for permits

21. (1) A person may apply to the Corporation for a driver's permit or an assistant's permit.

(2) An application shall—

- (a) be in the approved form;
- (b) contain such particulars as may be prescribed by the regulations or required by the approved form; and
- (c) be accompanied by a fee of \$50 or, where some other amount is prescribed by the regulations, that other amount.

Determination of applications for permits

22. (1) The Corporation shall determine an application for a driver's permit or an assistant's permit—

- (a) by granting the permit to the applicant; or
- (b) by refusing to grant the permit to the applicant.

(2) The Corporation shall not grant a driver's permit or an assistant's permit to an applicant—

- (a) unless the Corporation is of the opinion that the applicant is a fit and proper person to hold such a permit; and
- (b) unless the applicant is over the age of 18 years.

(3) A permit shall specify—

- (a) the name of the person to whom the permit is granted; and
- (b) such other matters as the Corporation thinks fit.

Conditions of permits

23. (1) A permit may be granted subject to such conditions as may be specified in the permit.

(2) The Corporation may, by notice in writing served on the holder of a permit, amend the permit by varying any conditions specified in the permit or by adding to the permit or deleting from the permit any conditions.

(3) Any such variation, addition or deletion 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 holder of the permit.

(4) On any such variation, addition or deletion taking effect, the condition as so varied or added shall be deemed to be a condition specified in the permit or the condition deleted shall be deemed not to be a condition so specified.

Duration of permits

24. A permit remains in force for a period of one year from the date on which it was granted unless it is sooner cancelled or surrendered.

Division 3—Licences and permits generally

Notice of refusal

25. (1) If the Corporation refuses to grant an application for a licence or permit or for the amendment of a licence, the Corporation shall cause notice of the refusal, and of the grounds for the refusal, to be served on the applicant.

(2) A notice of refusal shall state the particulars of the grounds for the refusal.

(3) In the case of a joint application, it is a sufficient compliance with subsection (1) if the notice of refusal is served on any one of the applicants.

(4) If, at the expiration of 90 days after an application for a licence or permit or for the amendment of a licence has been made, the Corporation has failed to determine the application under this Part, the Corporation shall be deemed, for the purposes of an appeal under Part 6, to have refused the application concerned.

Surrender of licence or permit

26. A holder of a licence or permit may surrender it by delivering it to the Corporation with a notification in writing that the licence or permit is surrendered.

Police reports

27. For the purpose of deciding whether a person (including a director of a corporation) is a fit and proper person to hold a licence or permit, the Corporation may—

- (a) request the Commissioner of Police to make inquiries as to the character of the person and to furnish a report; and
- (b) consider any such report furnished by the Commissioner of Police or any other matter the Corporation considers to be relevant.

Refund of operating deposits and fees

28. (1) If an application for a licence is refused, a licence is surrendered or cancelled or a licence expires and a further licence is not granted, the Corporation shall, on the application of the former holder of the licence, refund to that former holder the whole or any part of the operating deposit lodged in respect of the licence that is not liable to be forfeited under section 52.

(2) The regulations may provide for the refund of fees paid under this Act.

Duplicate licences or permits

29. If the Corporation is satisfied that a licence or permit has been lost or destroyed, it may, on payment of the prescribed fee, issue a duplicate licence or permit.

Register of licences and permits

30. (1) The Corporation shall cause to be kept a register, in such form as it determines, of licences and permits and shall cause to be recorded in the register in respect of each licence or permit—

- (a) the matters which by or under this Act are required to be specified in the licence or permit;
- (b) in the case of a licence—particulars of any amendment of the licence;
- (c) particulars of any cancellation, suspension or surrender of the licence or permit; or
- (d) such other matters as the Corporation thinks fit.

(2) The Corporation may cause to be made such alterations in the register as are necessary to ensure that the matters recorded in the register are accurate.

(3) The register may, at all reasonable hours, be inspected, and copies of all or any part of any entry in the register taken—

- (a) without payment, by any member of the police force, officer of the Corporation or other person authorised by the Corporation; or
- (b) on payment of the prescribed fee, by any other person.

False or misleading statements

31. A person shall not, in or in connection with an application—

- (a) for a licence or permit; or
- (b) for the amendment of a licence,

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

Penalty: 20 penalty units or 3 months' imprisonment, or both.

PART 4—REGULATION OF TOW TRUCK INDUSTRY

Division 1—Roster system

Establishment etc. of roster system

32. (1) Regulations may be made for or with respect to the establishment, administration and operation of a system to roster the attendance of tow trucks at the scenes of motor vehicle accidents.

(2) In particular, any such regulation—

- (a) may specify the persons who may, for the purpose of obtaining towing work, attend at the scenes of motor vehicle accidents;
- (b) may specify the motor vehicle accidents to which the roster system applies or does not apply;
- (c) may confer powers on officers of the Corporation or members of the police force with respect to the administration and operation of the roster system;
- (d) may apply to the whole or to one or more regions of the State;
- (e) may apply differently to different regions or parts of regions; and
- (f) may exclude temporarily a person from attending at the scenes of motor vehicle accidents as a penalty for a breach of the roster system.

Breach of roster system

33. (1) A person shall not, personally or by the person's employee or agent, attend at the scene of a motor vehicle accident (being an accident which occurs at a place in which a roster system has been established under this Division) for the purpose of obtaining towing work unless the person or the employee or agent is attending in accordance with the roster system.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

(2) This section applies whether the person is attending at the scene of a motor vehicle accident at the request of the owner of the motor vehicle, a member of the police force or otherwise.

Division 2—Towing authorities

Requirements for towing authorities

34. (1) Regulations may be made for or with respect to towing authorities for the towing of motor vehicles on public streets.

(2) In particular, any such regulation—

- (a) may specify the circumstances in which towing authorities are required;
- (b) may specify the persons who may sign towing authorities;
- (c) may require the use of forms of towing authorities supplied by the Corporation and prescribe the charges for the supply of those forms;
- (d) may prescribe procedures for dealing with towing authorities; and
- (e) may make provision for the keeping of records relating to towing authorities.

Offence—towing authorities

35. Where the regulations so require, a person shall not tow a motor vehicle on a public street by means of a tow truck unless a towing authority relating to the motor vehicle has first been obtained, and has been completed and signed, in accordance with the regulations.

Penalty: 20 penalty units.

Division 3—Holding yards

Establishment etc. of holding yards

36. (1) Regulations may be made for or with respect to the establishment, use and operation of holding yards.

(2) In particular, any such regulation—

- (a) may specify premises suitable for use as holding yards;
- (b) may regulate the release or disposal of motor vehicles (including unclaimed motor vehicles) held at holding yards;
- (c) may specify persons or classes of persons authorised to operate or prohibited from operating holding yards;
- (d) may apply to the whole or to one or more regions of the State; and
- (e) may apply differently to different regions or parts of regions.

Offence—holding yards

37. (1) A person shall not tow or cause to be towed a motor vehicle from the scene of a motor vehicle accident (being an accident which occurs at a place in which a holding yard system has been established under this Division) to a place other than—

- (a) the holding yard specified in the licence of the person who operates the tow truck; or
- (b) a place authorised in writing by the owner or driver of the motor vehicle.

Penalty: 20 penalty units.

(2) Subsection (1) does not apply if a member of the police force directs in writing that the motor vehicle is to be towed to some other place (other than the premises of a motor vehicle repairer).

(3) A person shall not remove a motor vehicle, or cause or allow a motor vehicle to be removed, from a holding yard to which it has been towed from the scene of a motor vehicle accident unless the motor vehicle has been held at the holding yard for at least—

- (a) except as provided by paragraph (b)—24 hours; or
- (b) such shorter period as may be prescribed by the regulations.

Penalty: 20 penalty units.

(4) Subsection (3) does not apply to the removal of a motor vehicle from a holding yard at the direction in writing of a member of the police force or an inspector or with the authority in writing of the owner.

(5) The power of a member of the police force to give a direction under this section is subject to such limitations as are imposed by the regulations.

Division 4—Other regulatory provisions

Prohibition of spotters' fees and drop fees

38. (1) A person shall not—

- (a) for the purpose of obtaining a towing authority, or for the purpose of enabling any other person to obtain a towing authority, give or offer to give; or
- (b) for the purpose of enabling any other person to obtain a towing authority, receive or offer to receive,

any valuable thing in consideration for the furnishing of information as to the occurrence of a motor vehicle accident on a public street.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

(2) A person shall not give, or offer to give, any valuable thing in consideration of the obtaining, personally or on behalf of any other person, of the work of repairing a motor vehicle damaged in an accident or otherwise requiring towing, except if the valuable thing is given or offered to be given to the owner of the motor vehicle by a motor vehicle repairer.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

(3) A person shall not 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 damaged in an accident or otherwise requiring towing, except if the valuable thing is received or offered to be received by the owner of the motor vehicle from a motor vehicle repairer.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

(4) In this section, "valuable thing" does not include any reasonable charges (not exceeding any maximum charges fixed by the regulations) in respect of the towing, salvage or storage of a motor vehicle, but otherwise includes—

- (a) any money, loan, office, place, employment, 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.

Threats

39. A person shall not threaten any person—

- (a) for the purpose of obtaining a towing authority or for the purpose of enabling any other person to obtain a towing authority; or
- (b) for the purpose of obtaining the work of repairing a motor vehicle damaged in a motor vehicle accident or otherwise requiring towing or for the purpose of enabling any other person to obtain that work.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

Authority to repair

40. A person shall not, personally or by the person's employee or agent, obtain or attempt to obtain authority from another person for the repair of a motor vehicle damaged in a motor vehicle accident before it is delivered to the holding yard or other duly authorised place to which it is towed from the scene of the accident.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

Obstruction by tow trucks

41. The driver of a tow truck shall not—

- (a) cause the tow truck to stand on a public street so as to cause an obstruction except to the extent necessary to connect towing equipment to a motor vehicle or to otherwise enable the motor vehicle to be towed; or
- (b) cause the tow truck to stand at the scene of a motor vehicle accident for a period longer than that which would be reasonably required to obtain a towing authority for a motor vehicle and to connect towing equipment to that motor vehicle or to otherwise enable the motor vehicle to be towed.

Penalty: 10 penalty units.

Failure to leave scene of accident

42. (1) If an inspector or a member of the police force has reason to believe that a holder of a licence or permit is acting in contravention of this Act or the regulations at the scene of a motor vehicle accident, the inspector or member of the police force may direct that holder to leave the scene of the accident.

(2) The holder of a licence or permit shall comply with any such direction.

Penalty: 100 penalty units or 6 months' imprisonment, or both.

Passengers in tow trucks

43. A person (other than the holder of a driver's permit or an assistant's permit) shall not travel as a passenger in a tow truck while the tow truck—

- (a) is proceeding to the scene of a motor vehicle accident; or
- (b) is towing a motor vehicle from the scene of a motor vehicle accident,

unless the person was the driver of or a passenger in the motor vehicle.

Penalty: 20 penalty units.

Charges for tow truck services

44. (1) Regulations may be made for or with respect to the amount that may be charged—

- (a) by tow truck operators for the towing or salvage of motor vehicles; and
- (b) by any person for the storage of motor vehicles at any place (including a holding yard) to which they have been towed.

(2) In particular, any such regulation may fix maximum charges in respect of any such towing, salvage or storage.

PART 5—DISCIPLINARY PROCEEDINGS**Definitions**

45. In this Part—

“complaint” means a complaint duly made under section 48;

“defendant” means any person against whom a complaint is made under section 48.

Grounds for action against holder of licence

46. (1) The grounds on which the holder of a licence may be dealt with under this Part are—

- (a) that the holder of the licence has contravened—
 - (i) a condition to which the licence is subject;

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- (ii) a provision of this Act or the regulations; or
 - (iii) a provision of the Motor Vehicle Repairs Act 1980 or a regulation made under that Act;
 - (b) that the holder of the licence has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment or penal servitude for 3 months or more;
 - (c) that the holder of the licence has been guilty of fraudulent conduct or dishonesty in connection with the holder's business as a tow truck operator;
 - (d) that the holder of the licence has failed to take all reasonable precautions to prevent loss from, or damage to, motor vehicles towed by tow trucks operated by that holder or motor vehicles otherwise under the control of that holder;
 - (e) that the holder of the licence, not being a corporation, has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with creditors or made an assignment of remuneration for their benefit;
 - (f) that the holder of the licence, being a corporation—
 - (i) is in the course of being wound up;
 - (ii) is under official management;
 - (iii) is a corporation for which a receiver or manager has been appointed; or
 - (iv) has entered into a compromise or scheme of arrangement with its creditors;
 - (g) that the holder of the licence has, for a continuous period of one month or more, ceased to carry on the business of a tow truck operator;
 - (h) that the holder of the licence is for any other reason not a fit and proper person to hold a licence; or
 - (i) in the case of the holder of a licence, being a corporation—that any director of the corporation—
 - (i) has contravened a condition or provision referred to in paragraph (a);
 - (ii) has been convicted of an offence referred to in paragraph (b); or
 - (iii) is for any other reason not a fit and proper person to hold a licence.
- (2) The grounds referred to in subsection (1) (except paragraph (g)) are deemed to exist—
- (a) in the case of a joint licence—if those grounds apply to any holder of that licence; or

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- (b) in the case of 2 or more licences held by persons carrying on the business of a tow truck operator in partnership—if those grounds apply to any holder of any of those licences.

Grounds for action against holder of permit

47. The grounds on which the holder of a permit may be dealt with under this Part are—

- (a) that the holder of the permit has contravened—
 - (i) a condition to which the permit is subject; or
 - (ii) a provision of this Act or the regulations;
- (b) that the holder of the permit has failed to take all reasonable precautions to prevent loss from, or damage to, a motor vehicle towed by a tow truck driven by that holder; or
- (c) that the holder of the permit is for any other reason not a fit and proper person to hold a permit.

Making of complaint

48. (1) A complaint may be made that the holder of a licence or a permit should be dealt with under this Part on one or more of the grounds specified in section 46 or 47.

(2) A complaint (other than a complaint made by an officer of the Corporation) shall be lodged with the Corporation.

(3) A complaint shall be accompanied by the prescribed fee, except where it is made by—

- (a) an officer of the Corporation; or
- (b) a member of the police force.

Defendant to show cause etc.

49. (1) The Corporation shall serve on the person to whom a complaint relates a notice calling on the person to show cause (on the grounds specified in the notice) why the person should not be dealt with under this Part where—

- (a) the complaint is made by an officer of the Corporation; or
- (b) a complaint is made by any other person and the Corporation is of the opinion that the complaint warrants the taking of further action under this Part.

(2) The Corporation shall, after considering any representation made by the defendant within the time stipulated by the notice under subsection (1)—

- (a) determine that the complaint does not warrant the taking of any further action; or

(b) cause an inquiry to be held into the grounds on which the defendant has been called on to show cause.

(3) Without affecting the generality of section 63, the inquiry may be conducted by the Corporation or by its delegate.

(4) As soon as practicable after the receipt of a complaint (other than a complaint made by an officer of the Corporation), the Corporation shall cause notice of any action taken under this section with respect to the complaint to be served on the complainant.

Procedure on inquiry into complaints

50. (1) An inquiry shall be held at the time and place fixed by the Corporation or its delegate, being a time not less than 7 days after the defendant is notified of the time and place so fixed.

(2) The Corporation or its delegate may—

- (a) conduct the inquiry in such manner as it sees fit and is not bound to observe rules of law governing the admission of evidence but may inform itself of any matter in such manner as it sees fit; and
- (b) allow a member of the police force, barrister, solicitor, public servant or officer of the Corporation to appear before it for the purpose of adducing evidence tending to establish the grounds on which the defendant has been called on to show cause.

(3) An inquiry may be held in the absence of the defendant if the Corporation or its delegate is satisfied that the defendant was served with reasonable notice of the time and place fixed for the holding of the inquiry.

(4) A person appearing at an inquiry may, with the approval of the Corporation or its delegate, be represented by a barrister or solicitor or by an agent.

Determination of Corporation after inquiry

51. (1) If after an inquiry conducted by the Corporation or after consideration of the report of an inquiry conducted by its delegate, the Corporation is of the opinion that there exists any ground for dealing with the defendant under this Part, the Corporation may make any one of the following determinations:

- (a) the Corporation may determine that no further action be taken against the defendant;
- (b) the Corporation may caution or reprimand the defendant;
- (c) the Corporation may make a determination requiring the defendant to pay to the Corporation, as a penalty, an amount not exceeding \$1,000;
- (d) the Corporation may cancel or suspend the licence or permit held by the defendant.

(2) The power of the Corporation to make a determination under this section may not be delegated to any person or body.

(3) Where a defendant is the holder of both a licence and a permit, the Corporation shall not cancel or suspend both unless the defendant was called on to show cause under section 49 in respect of both.

(4) Nothing in this section affects the liability of a defendant for an offence against this Act or the regulations or for any other offence.

Provisions relating to penalties

52. (1) If the Corporation makes a determination under section 51 (1) (c), the penalty required to be paid by the defendant shall be paid to the Corporation within 21 days after the date on which notice of the determination is served on the defendant or within such further time as the Corporation may allow.

(2) If a penalty imposed under section 51 (1) (c) in relation to a defendant who is the holder of a licence is not paid by the due date—

- (a) an amount equal to the amount of that penalty shall be forfeited to the Corporation from the operating deposit lodged in respect of the licence; and
- (b) the licence and any permit held by the defendant shall (if not otherwise cancelled or suspended) be deemed to be suspended until such time as the amount required to make up the full amount of the operating deposit is lodged with the Corporation, or, if that amount is not lodged, until such time as the licence or permit would otherwise expire.

(3) If a penalty imposed under section 51 (1) (c) in relation to a defendant who is the holder of a permit but not the holder of a licence is not paid by the due date—

- (a) the permit held by the defendant shall (if not otherwise cancelled or suspended) be deemed to be suspended until such time as the amount of that penalty is paid to the Corporation or, if that amount is not paid, until such time as the permit would otherwise expire; and
- (b) that amount may be recovered by the Corporation as a debt in a court of competent jurisdiction.

Provisions relating to cancellation or suspension

53. (1) If the Corporation cancels or suspends a licence or permit, it shall cause a notice of the cancellation or suspension to be served on the holder of the licence or permit.

(2) Any such notice shall state the particulars of the grounds on which the Corporation has cancelled or suspended the licence or permit.

(3) Any cancellation or suspension of a licence or permit has effect on the date specified in the notice (being a date which is on or after the date that the notice is served on the holder of the licence or permit).

(4) When the cancellation or suspension of a licence or permit has effect, the former holder or the holder of the licence or permit shall, as soon as practicable, deliver it to the Corporation.

Penalty (subsection (4)): 5 penalty units.

PART 6—APPEALS

Appeals to Industrial Commission

54. (1) An applicant for—

- (a) a licence or permit; or
- (b) an amendment of a licence,

may appeal to the Industrial Commission against the refusal of the Corporation to grant the application.

(2) The holder of a licence or permit which is amended by the Corporation (other than on the person's application) may appeal to the Industrial Commission against the amendment.

(3) A defendant aggrieved by a determination of the Corporation under section 51 (1) (b), (c) or (d) may appeal to the Industrial Commission against the determination.

(4) An appeal must be made not later than 21 days after the appellant is notified by the Corporation of the refusal, amendment or determination, or within such further time as the Industrial Commission may allow.

Jurisdiction of Industrial Commission

55. The jurisdiction of the Industrial Commission conferred by this Part shall be exercised in accordance with this Part by a judicial member of the Commission.

Procedures of Industrial Commission

56. (1) An appeal under this Part shall be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision was made by the Corporation, may be given on the appeal.

(2) In addition to any other functions and discretions that the Industrial Commission has apart from this subsection, the Industrial Commission has, for the purpose of hearing or disposing of an appeal, all the functions and discretions that the Corporation had in respect of the matter the subject of the appeal.

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(3) For the purposes of an appeal, the Industrial Commission may conduct the appeal in such manner as it sees fit and is not bound to observe rules of law governing the admission of evidence but may inform itself of any matter in such manner as it sees fit.

(4) The Industrial Commission, in hearing an appeal, has the powers conferred on it by section 38 of the Industrial Arbitration Act 1940 and that section applies to a witness in an appeal in the same way as it applies to a witness summoned by or appearing before the Industrial Commission.

Rights of representation

57. A party to an appeal may be represented by a barrister or solicitor or by an agent.

Determination of appeal

58. (1) The Industrial Commission, in deciding an appeal, may—

- (a) confirm the decision made by the Corporation; or
- (b) disallow that decision and make such order as the Industrial Commission considers appropriate.

(2) The determination of the Industrial Commission in an appeal shall be deemed to be the final decision of the Corporation and shall be given effect to by the Corporation.

Finality of determination

59. (1) The determination of the Industrial Commission in an appeal shall be final and no proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of any such determination or any decision, proceeding, step or other matter involved in the making of any such determination.

(2) A determination shall not be vitiated only because of any informality or want of form or be liable to be challenged, appealed against, reviewed, quashed or called in question by any court of judicature on any account whatever.

(3) Section 14 of the Industrial Arbitration Act 1940 does not confer any right of appeal from a determination made by a judicial member of the Industrial Commission under this Part.

PART 7—GENERAL**Tow Truck Industry Corporation Account**

60. There shall be established in the Special Deposits Account in the Treasury a Tow Truck Industry Corporation Account—

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- (a) into which shall be deposited all money received by the Corporation or provided by Parliament for the purposes of this Act; and
- (b) from which shall be paid all amounts required to meet expenditure incurred in the administration or execution of this Act.

Financial year of Corporation

61. (1) The financial year of the Corporation is the year commencing on 1 January.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

Disclosure of information

62. A person shall not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made—

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

Penalty: 10 penalty units.

Delegation

63. The Corporation may delegate to a person or body any of the Corporation's functions, other than—

- (a) this power of delegation; and
- (b) the power to make a determination under section 51.

Contracting out void

64. The provisions of this Act and the regulations have effect despite any stipulation to the contrary and 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.

Corporation may require information

65. (1) The Corporation may, by notice in writing, require any person to furnish to the Corporation, within such period as may be specified in the notice, such information in connection with any towing or the business of any tow truck operator as may be so specified and as is within the person's knowledge or in the person's custody or under the person's control.

(2) A person shall comply with any such requirement.

Penalty: 20 penalty units.

(3) Any information furnished pursuant to any such requirement shall not, if the person furnishing the information objected, at the time of furnishing it, to doing so on the ground that it may tend to incriminate the person or might be used in any proceedings against the person under Part 5, be admissible in evidence in any prosecution against that person for any offence, not being an offence under subsection (2), or be admissible in any such proceedings.

Production of licences and permits

66. (1) The holder of a licence shall on demand, while carrying on the business of a tow truck operator, produce the licence to an inspector or a member of the police force.

(2) The holder of a driver's permit shall on demand, at the scene of a motor vehicle accident or while otherwise engaged in towing work, produce the permit and a copy of the licence specifying the tow truck to an inspector or a member of the police force.

(3) The holder of an assistant's permit shall on demand, at the scene of a motor vehicle accident or while otherwise assisting in the operation of a tow truck, produce the permit to an inspector or a member of the police force.

Penalty: 5 penalty units.

Power of entry and examination

67. (1) An inspector may, for the purpose of ascertaining whether a person is contravening or has contravened this Act or the regulations, enter, at any reasonable time, any place which the inspector has reasonable grounds for believing is a place at which the person carries on business (including any holding yard used or operated by the person).

(2) Subsection (1) does not authorise any person to enter that part of any premises being used for residential purposes without the consent of the occupier of that part of the premises.

(3) An inspector may—

(a) require any person employed or engaged at any place entered pursuant to subsection (1) to produce to the inspector such records, or other documents, as are required to be kept under this Act or the regulations and are in the custody or under the control of the person so employed or engaged;

(b) examine with respect to matters under this Act or the regulations any person employed or engaged at any place so entered; and

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- (c) make at any place so entered such examination and inquiries as the inspector thinks necessary to ascertain whether the requirements of this Act or the regulations are being or have been contravened.
- (4) An inspector may, for the purpose of ascertaining whether a person is contravening this Act or the regulations, enter and examine any tow truck.
- (5) An inspector when exercising any power under this section may be accompanied by a person so authorised by the inspector.

Offence to obstruct inspector etc.

68. A person shall not—

- (a) refuse or intentionally delay the admission to any place or a tow truck of an inspector in the exercise by the inspector of any power under this Act or the regulations;
- (b) intentionally obstruct an inspector in the exercise by the inspector of any such power;
- (c) neglect or fail to comply with a request or requirement of an inspector made under this Act or the regulations for the production of any record or other document; or
- (d) conceal any person from an inspector or prevent any person from appearing before or being examined by an inspector or attempt so to conceal or prevent any person.

Penalty: 20 penalty units.

Evidence

69. (1) Where in any legal proceedings it is proved that on a certain day or during any period a person was the holder of a licence, a driver's permit or an assistant's permit, it shall be presumed, in the absence of proof to the contrary, that the person was carrying on the business of a tow truck operator, was employed as a tow truck driver or was employed in assisting in the operation of a tow truck on that day or during that period.

(2) A certificate purporting to be signed by the General Manager of the Corporation or a prescribed officer certifying—

- (a) that a person was or was not on a specified date a holder of a licence, a driver's permit or an assistant's permit;
- (b) that particulars specified in the certificate were on a specified date the particulars specified in the licence or permit;
- (c) that a licence or permit specified in the certificate was during any specified period suspended; or
- (d) that a licence or permit specified in the certificate was on a specified date cancelled or surrendered,

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

Service of documents

70. (1) Any notice or other instrument issued, made or given for the purposes of this Act or the regulations may be served—

- (a) by delivering it personally to the person to whom it is addressed;
- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there with some person apparently of or above the age of 16 years for the person to whom it is addressed; or
- (c) by post.

(2) Any such notice or instrument addressed to the holder of a licence or permit at the place last entered in the records of the Corporation as the holder's place of residence or business shall be deemed to be properly addressed for the purposes of section 76 of the Interpretation Act 1987.

(3) A document may be served on the Corporation by leaving it at, or by sending it by post to—

- (a) the office of the Corporation; or
- (b) if the Corporation has more than one office—any one of its offices.

(4) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on any person or the Corporation in any other manner.

Recovery of charges etc. by Corporation

71. Any charge, fee or money due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

Offences by corporations

72. (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 shall be deemed 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 pursuant to subsection (1) whether or not the corporation has been proceeded against or been 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.

Proceedings for offences

73. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Liability of Corporation etc.

74. No matter or thing done by the Corporation or the Committee, any member of the Committee or any person acting under the direction of the Corporation or the Committee shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

Regulations

75. (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—

- (a) the use and custody of the seal of the Corporation;
- (b) any matter connected with licences and permits;
- (c) advertising by tow truck operators;
- (d) the records to be kept by tow truck operators;
- (e) the display of signs by tow truck operators;
- (f) the furnishing by the holders of licences or permits of any information (including, in the case of holders of licences, particulars of any of their employees);
- (g) the charging and payment of a fee for any inspection made or information supplied by the Corporation;
- (h) the design, construction and equipment of tow trucks;
- (i) the conduct and duties of persons operating or driving tow trucks and of persons employed on or about them or otherwise employed in the business of a tow truck operator;
- (j) the conduct of persons in relation to the use or operation of tow trucks;
- (k) prescribing the conditions under which tow trucks may be operated;
- (l) the manner and form of payment of operating deposits;
- (m) inquiries under Part 5; and
- (n) the disposal of unclaimed motor vehicles in the care or custody of tow truck operators.

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(3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

Repeal of Tow-truck Act 1967 (No. 46)

76. The Tow-truck Act 1967 is repealed.

Savings, transitional and other provisions

77. Schedule 2 has effect.

Amendment of Public Finance and Audit Act 1983 (No. 152), Sch. 2 (Statutory Bodies)

78. The Public Finance and Audit Act 1983 is amended by inserting in Schedule 2 in alphabetical order the words "Tow Truck Industry Corporation of New South Wales".

SCHEDULE 1—PROVISIONS RELATING TO THE COMMITTEE

(Sec. 8 (3))

Age of members

1. A person of or above the age of 70 years is not eligible to be appointed as a member of the Committee.

Terms of office

2. An appointed member of the Committee shall, subject to this Schedule, hold office for such period, not exceeding 3 years, as may be specified in the member's instrument of appointment but is eligible (if otherwise qualified) for re-appointment.

Remuneration

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

Vacancy in office of member

4. (1) The office of an appointed member of the Committee becomes vacant if the member—

- (a) dies;
- (b) completes a term of office and is not re-appointed;
- (c) resigns the office by instrument in writing addressed to the Minister;
- (d) is removed from office by the Minister under this clause;
- (e) reaches the age of 70 years;
- (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or

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(g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member of the Committee from office at any time.

Filling of vacancy

5. If the office of an appointed member of the Committee becomes vacant a person shall, subject to this Act, be appointed to fill the vacancy.

Effect of certain other Acts

6. (1) The Public Service Act 1979 does not apply to the appointment of a member of the Committee and a member is not, as such a member, subject to that Act.

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

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

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

Deputies for members

7. (1) The Minister may, from time to time, appoint a person to be the deputy of a member of the Committee.

(2) A deputy of a member may, in the absence of the member or during a vacancy in the office of the member, act in the office of the member and, while so acting, shall have all the functions of the member and shall be deemed to be a member.

General procedure

8. The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Committee.

Quorum

9. The quorum for a meeting of the Committee is a majority of the members of the Committee for the time being.

Presiding member

10. (1) The Chairperson of the Committee or, in the absence of the Chairperson, another member of the Committee elected to chair the meeting by the members present shall preside at a meeting of the Committee.

(2) The person presiding at any meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

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SCHEDULE 1—PROVISIONS RELATING TO THE COMMITTEE—*continued***Voting**

11. A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present shall be the decision of the Committee.

Minutes

12. The Committee must cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee.

**SCHEDULE 2—SAVINGS, TRANSITIONAL AND
OTHER PROVISIONS**

(Sec. 77)

Commissioner's records

1. The Commissioner for Motor Transport shall at and in accordance with the Corporation's request deliver to the Corporation any records kept by the Commissioner under section 17 of the Tow-truck Act 1967.

Regulations

2. (1) The regulations may make provision of a savings or transitional nature consequent on the enactment of this Act and the Motor Vehicle Repairs (Tow Truck Industry) Amendment Act 1987.

(2) A provision made under subclause (1) may take effect from the date of assent to this Act or a later day.

(3) To the extent to which a provision referred to in subclause (1) 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.

