

FIRST PRINT

TOW TRUCK (AMENDMENT) BILL 1994

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the Tow Truck Act 1989 so as:

- (a) to deregulate heavy vehicle towing, trade towing and breakdown towing, leaving the Act to apply only to the towing of cars and other light vehicles from the scenes of accidents;
- (b) to remove the prohibition on commissions in the towing industry, but require their disclosure instead;
- (c) to reconstitute the Tow Truck Industry Council;
- (d) to provide for complaints to be determined by a committee of the Tow Truck Industry Council instead of by the Council itself;
- (e) to make other miscellaneous changes.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be fixed by proclamation.

Clause 3 gives effect to the Schedule of amendments.

SCHEDULE 1—AMENDMENTS

Deregulation of heavy vehicle and breakdown towing

The Principal Act is to apply to the towing of cars and other vehicles under 3.5 tonnes (gross weight) from the scenes of accidents and the retrieval of those vehicles from holding yards and other places at the request of their owners. This removes breakdown towing, trade towing (e.g. towing between workshops) and heavy vehicle towing from the ambit of the Principal Act.

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Schedule 1 (1) inserts proposed definitions of "complaints committee", "light motor vehicle", "owner", "person in charge" and "towing to which this Act applies" in section 3 of the Principal Act and changes the definitions of "tow truck operator" and "towing authority" in that section.

Schedule 1 (2) inserts proposed section 3A (Application of Act).

Schedule 1 (3) consequentially substitutes section 5 (Tow truck operators must be licensed) and removes the present imprisonment penalty option. This leaves the maximum penalty for conducting unlicensed towing operations as a \$10,000 fine.

Schedule 1 (5), (8), (9), (16), (17), (21), (22), (33), (38) (a), (39) and (40) make consequential amendments.

Licence and other fees to be prescribed by regulation

Schedule 1 (6) substitutes section 11 (Licence fees) of the Principal Act and Schedule 1 (11) substitutes section 22 (Drivers certificate fees) of that Act so that fees may be prescribed by regulation after consultation with the Tow Truck Industry Council (instead of by determinations of the Council). The proposed section 11 also provides that the Minister may authorise licence fees to be paid in instalments (Schedule 1 (6)).

Schedule 1 (4), (7), (10) and (13) make consequential amendments.

Drivers certificates

Schedule 1 (12) amends section 23 of the Principal Act to make it possible for drivers certificates to be issued having up to 5 years duration instead of the present 1 year limit.

Schedule 1 (38) (b) adds to the list of officers (in section 74 (2) of the Principal Act) who may require the production of certificates an officer of the Department of Transport authorised by the Council.

Towing authorities

Schedule 1 (14) replaces Division 1 of Part 3 to set out in the Principal Act (instead of the Tow Truck Regulation 1990) the circumstances in which a towing authority is required, an outline of its contents and an offence of providing false information in a towing authority. The substitution is also consequential on the proposed deregulation of heavy and breakdown towing.

Section 35, which provides for regulations about towing authorities, is replaced. The proposed section 36A retains relevant material from the present section 35, but makes it possible for a regulation to require drivers or operators to obtain from a consumer a nomination of the repairer or other destination to which a vehicle is to be towed.

Changes to work practices

(a) allocation of towing work

Schedule 1 (14) omits existing section 36 of the Principal Act so that it will no longer be possible for a scheme for the allocation of towing work on a regional (or other) basis to be set up by the regulations under that Act. The present power to make such regulations has not in fact been used.

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(b) repairers' commissions or "drop fees"

Schedule 1 (15) repeals section 37 (Prohibition of drop fees). However, Schedule 1 (14) inserts proposed section 36C, which provides for the making of regulations to require a tow truck driver to notify a motorist of any commissions (or "drop fees") that the operator or driver of the tow truck may receive for taking a vehicle to certain repairers.

(c) "cooling off period": retrieval of towed vehicle

Schedule 1 (14) also inserts proposed section 36B which will provide for a "cooling off period" of 72 hours in which the owner of a vehicle can require the tow truck operator who towed the vehicle from an accident scene to retrieve it from one location (whether that is the operator's holding yard, a repairer's premises or any other place) and take it to some other location. Retrieval will be at the expense of the motorist. Retrieval will not be available in a number of specified circumstances where it would be unreasonable to require it, including where the owner has entered a contract with a repairer who already has possession of the vehicle (e.g. where the vehicle is on the premises of the repairer).

(d) passengers in tow trucks

Schedule 1 (18) replaces section 40 (Passengers in tow trucks) to enable regulations to widen the classes of persons that may travel as passengers in tow trucks.

Construction and inspection of tow trucks

Schedule 1 (20) repeals sections 42 (Construction of tow trucks) and 43 (Inspection of tow trucks) of the Principal Act, as the construction and inspection of tow trucks are covered under other (general) legislation (e.g. the Traffic Act 1909 and regulations under that Act) and an operator cannot be licensed unless the operator's tow trucks conform with the standards in that legislation and the Tow Truck Act 1989 itself.

Schedule (19) makes a consequential amendment.

Disciplinary proceedings

Schedule 1 (23)–(30) make amendments to the Principal Act to provide for disciplinary proceedings to be heard in all cases before a committee of at least 3 members of the Council, and to be determined by that committee. (At present, the Council must make the final determination after an optional referral of a complaint to a committee). Schedule 1 (36) makes a consequential amendment.

Constitution and functions of Council

Schedule 1 (31) amends section 56 (Constitution of the Council) of the Principal Act to increase the membership of the Council from 8 to 12, and to make that membership depend more on experience and the ability to represent various interest groups and experts than on the membership of particular organisations.

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Schedule 1 (32) substitutes section 58 (Functions of the Council relating to standards etc.), narrowing the functions of the Council (apart from its industry licensing and supervisory functions) to general advisory and educational functions. Schedule 1 (37) makes a consequential amendment.

Schedule 1 (34) repeals section 61 (Consultants) of the Principal Act to omit specific provision for the Council to engage consultants.

Schedule 1 (35) amends section 62 so that it will refer to the Tow Truck Industry Fund as being established in the Special Deposits Account. The existing reference to that Account's being "in the Treasury" is no longer current.

Schedule 1 (41) amends Schedule 1 (Constitution and members of the Council) of the Principal Act consequentially and to omit provision for deputy members.

Schedule 1 (42) amends Schedule 4 (Savings, transitional and other provisions) of the Principal Act to insert savings and transitional provisions as to Council members, complaints, inquiries, fees and maximum charges, applications and the duration of drivers certificates, as well as enabling savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

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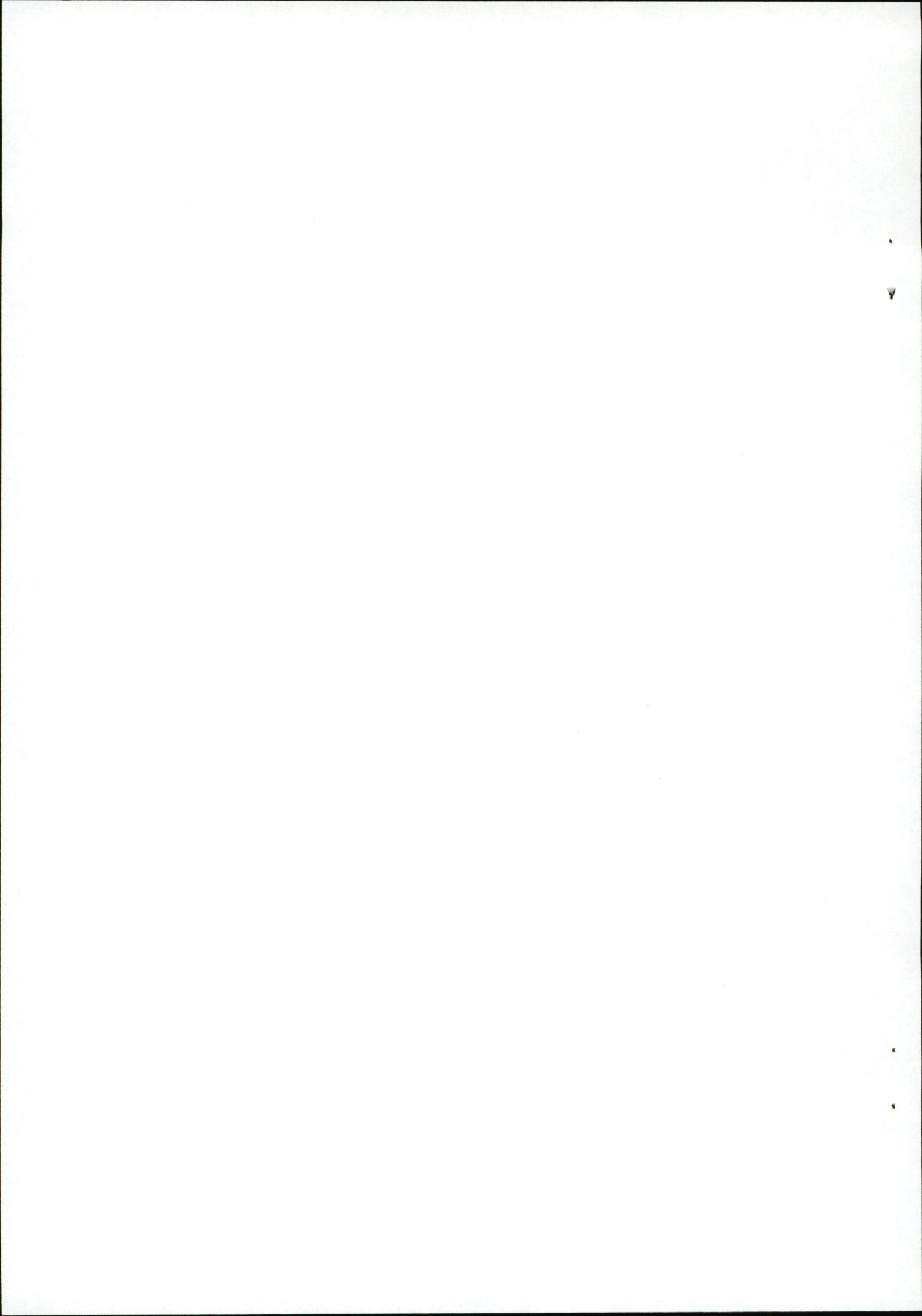
NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS



TOW TRUCK (AMENDMENT) BILL 1994

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to amend the Tow Truck Act 1989 to limit the application of that Act to the towing of light vehicles from scenes of accidents, to reconstitute the Tow Truck Industry Council; and for other purposes.

*Tow Truck (Amendment) 1994***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Tow Truck (Amendment) Act 1994.

Commencement

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

Amendment of Tow Truck Act 1989 No. 158

3. The Tow Truck Act 1989 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

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(1) Section 3 (**Definitions**):

- (a) In section 3 (1), insert in alphabetical order:

“**complaints committee**” means the committee appointed under section 48A;

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“**light motor vehicle**” means a motor vehicle that has a gross vehicle mass (that is, a maximum laden mass) of 3.5 tonnes or less;

“**owner**” of a motor vehicle includes a lessee of the vehicle;

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“**person in charge**” of a light motor vehicle damaged in a motor vehicle accident does not include a person who attends the scene of the accident to obtain, or to attempt to obtain, for himself or herself or for another person, the work of towing or repairing a motor vehicle damaged in the accident;

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“**towing to which this Act applies**” means towing as referred to in section 3A;

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- (b) From the definition of “tow truck operator” in section 3 (1), omit “motor vehicles”, insert instead “to which this Act applies”.

*Tow Truck (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (c) Omit the definition of “towing authority” in section 3 (1), insert instead:
“towing authority” means an authority required by section 34; 5
- (d) After section 3 (2), insert:
 (3) In the case of a motor vehicle that consists of one or more trailers drawn by a hauling vehicle, the motor vehicle is taken to be a light motor vehicle for the purposes of this Act if the hauling vehicle by itself is a light motor vehicle. 10
- (2) Section 3A:
 After section 3, insert:
Application of Act
 3A. From the commencement of this section, this Act applies only to and in respect of: 15
- (a) the towing of light motor vehicles damaged in motor vehicle accidents from the scenes of those accidents; and
- (b) the towing of light motor vehicles by way of retrieval under section 36B. 20
- (3) Section 5:
 Omit section 5, insert instead:
Tow truck operators must be licensed
 5. A person must not carry on the business of a tow truck operator, or advertise that the person carries on the business of a tow truck operator, unless the person is the holder of a tow truck operators licence (not being a licence that is suspended). 25
 Maximum penalty: 100 penalty units.
- (4) Section 6 (**Applications for licences**): 30
 Omit section 6 (3) (c)–(g), insert instead:
 (c) contain such other particulars as may be required by the regulations or the approved form; and

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SCHEDULE 1—AMENDMENTS—*continued*

(d) be accompanied by the fee prescribed for the licence under section 11 or the first instalment of that fee (if the fee may be paid by instalments); and

5 (5) Section 9 (**Conditions of licences**):

(a) Omit section 9 (2).

(b) Omit section 9 (3) (e), insert instead:

10 (e) that the holder of the licence must not make charges for the towing, retrieval or storage of light motor vehicles that exceed any applicable maximum charges determined by the Council under section 59.

(6) Section 11:

Omit the section, insert instead:

15 **Licence fees**

11. (1) The regulations may prescribe fees for licences (including duplicate licences) and for the amendment of licences.

20 (2) Without limiting the generality of subsection (1), the regulations may prescribe different fees for the first licence granted to a person and subsequent licences, and may prescribe fees and discounts from fees by reference to different factors.

25 (3) The Minister may authorise the payment of licence fees or specified classes of licence fees by instalments.

(4) The Minister is to seek the advice of the Council in relation to any proposal to prescribe a fee under this section or to authorise its payment by instalments.

30 (5) If an instalment of a licence fee is not paid by the date when the instalment is due, the entire balance of the licence fee then becomes due and payable. If that balance is not paid within 14 days after that date, the licence is cancelled.

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SCHEDULE 1—AMENDMENTS—*continued*

- (7) Section 13 (**Amendment of licences**):
 Omit section 13 (3), insert instead:
 (3) The Council may charge the fee prescribed under section 11 for the amendment of a licence. 5
- (8) Section 14 (**Definition**):
 Omit the section.
- (9) Section 15 (**Tow truck drivers must hold drivers certificates**):
 Omit section 15 (a) and (b), insert instead:
 (a) drive or stand a tow truck on a public street for the purpose of towing to which this Act applies; or 10
 (b) use or assist in the use of a tow truck on a public street for that purpose; or
- (10) Section 17 (**Applications for drivers certificates**):
 From section 17 (2) (d), omit “determined by the Council for the drivers certificate concerned”, insert instead “prescribed under section 22”. 15
- (11) Section 22:
 Omit the section, insert instead:
Drivers certificate fees 20
 22. (1) The regulations may prescribe fees for drivers certificates (including duplicate certificates).
 (2) The Minister is to seek the advice of the Council in relation to any proposal to prescribe a fee under this section. 25
- (12) Section 23 (**Duration of drivers certificates**):
 Omit “one year”, insert instead “5 years”.
- (13) Section 29 (**Duplicate licences or drivers certificates**):
 From section 29, omit “determined by the Council”, insert instead “prescribed by the regulations”. 30

*Tow Truck (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

(14) Part 3, Divisions 1 and 2:

Omit the Divisions, insert instead:

Division 1—Towing authorities

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Towing authority required

34. (1) A person must not tow a light motor vehicle on a public street from the scene of a motor vehicle accident by means of a tow truck unless the person has obtained a towing authority and:

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(a) the towing authority specifies the place to which the vehicle is to be towed and is otherwise completed in accordance with the regulations; and

(b) the towing authority has been signed by an appropriate person; and

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(c) any other requirements of the regulations relating to the obtaining of the authority have been complied with.

Maximum penalty: 20 penalty units.

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(2) For the purposes of this section, the **appropriate person** to sign a towing authority for a vehicle is:

(a) the owner, driver or person in charge of the vehicle; or

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(b) a police officer, if none of the persons referred to in paragraph (a) is present and capable of signing the authority; or

(c) a person prescribed by the regulations.

(3) A towing authority is not required:

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(a) if the vehicle is being towed because it is an unreasonable obstruction to traffic and so damaged that it can not be driven and it is being towed in accordance with the instructions of a police officer for the removal of the vehicle to the nearest place where it will not be such an obstruction; or

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(b) in any other circumstances prescribed by the regulations.

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SCHEDULE 1—AMENDMENTS—*continued*

Restrictions on who may obtain towing authority

35. (1) A person must not obtain, or attempt to obtain, a towing authority for the towing of a light motor vehicle damaged in a motor vehicle accident unless the person is the driver of a tow truck which is: 5

- (a) being operated under the authority of a tow truck operator's licence; and
- (b) standing at the scene of the accident.

(2) The driver of a tow truck which is being operated under the authority of a tow truck operator's licence must not obtain or attempt to obtain a towing authority for the towing by any tow truck of a light motor vehicle damaged in a motor vehicle accident except the tow truck of which he or she is the driver. 10
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Maximum penalty: 20 penalty units.

Offence: false information in towing authority

36. A person must not include in a towing authority any information which the person knows to be false or misleading in a material particular. 20

Maximum penalty: 20 penalty units.

Regulations about towing authorities

36A. The regulations may make provision for or with respect to towing authorities. In particular, the regulations may contain provisions for or with respect to the following: 25

- (a) the manner of obtaining towing authorities (including the manner in which they are to be dealt with both before and after being obtained);
- (b) the information to be given to a person who signs, or proposes to sign, a towing authority regarding the rights of the person in relation to the towing and repair of a vehicle; 30
- (c) the questions to be put to that person (including a request for the person's nomination of the place to which the vehicle is to be towed); 35

*Tow Truck (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

5 (d) the form of towing authorities (including the use of forms supplied by the Council and the payment of fees by tow truck operators for the supply of those forms);

(e) the records to be kept relating to towing authorities.

Division 2—Obligations of tow truck operators and drivers in relation to repair of vehicles

Retrieval of vehicle at request of owner

10 36B. (1) Within 72 hours after a light motor vehicle is towed from the scene of a motor vehicle accident by or on behalf of a tow truck operator, the owner of the vehicle may require the operator to retrieve the vehicle and tow it to a location specified by the owner.

15 (2) The tow truck operator must ensure that the requirement is complied with within the period of 2 working days (or such other period as is prescribed by the regulations) after the requirement is made.

Maximum penalty: 50 penalty units.

20 (3) It is a defence to a prosecution for an offence under subsection (2) if it is established that:

25 (a) before the owner made the requirement, the owner or the insurer of the vehicle had entered a contract with a repairer for the repair of the vehicle and the vehicle was in the possession of the repairer when the requirement was made; or

30 (b) neither the owner nor the insurer of the vehicle paid or agreed to pay the reasonable charges of the operator for storing the vehicle (if the vehicle was stored at the expense of the operator or on premises occupied by the operator) and for towing it to the new location; or

35 (c) the operator was, for reasons beyond the operator's control, incapable of complying with the requirement; or

(d) it would have been unlawful for the operator to comply with the requirement; or

(e) such other circumstances existed, or events occurred, as the regulations prescribe.

*Tow Truck (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued***Disclosure of drop fees and other interests**

36C. (1) The regulations may make provision for or with respect to:

- (a) the disclosure of any commission or other consideration which a tow truck operator or driver may receive in relation to a light motor vehicle damaged in a motor vehicle accident and towed or to be towed from the scene of the accident by the driver or by or on behalf of the operator; and 5
 - (b) the disclosure of any interest which the operator or driver may have in the repair of the vehicle by a repairer (if any) to which the vehicle is towed or to be towed; and 10
 - (c) the manner of the disclosure (for example, for the disclosure to be in writing or for it to be set out on a towing authority before the authority is signed by the owner, driver or person in charge of the vehicle). 15
- (2) A reference in subsection (1) to any commission or other consideration does not include: 20
- (a) a fee or other consideration paid to the operator by the owner, driver, person in charge, or insurer, of the vehicle for the towing or holding of the vehicle before its repair; or 25
 - (b) any remuneration or other consideration paid to the driver by the operator.

(15) Section 37 (**Prohibition of drop fees**):

Omit the section.

(16) Section 38 (**Threats**): 30

From section 38 (1) (c) and (d), omit “a motor vehicle damaged in a motor vehicle accident or otherwise requiring towing” wherever occurring, insert instead “a light motor vehicle damaged in a motor vehicle accident”.

(17) Section 39 (**Cleaning up of accident site**): 35

From section 39, omit “who tows a motor vehicle”, insert instead “who tows a light motor vehicle”.

*Tow Truck (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

(18) Section 40:

Omit the section, insert instead:

Passengers in tow trucks

5 40. (1) A person (other than the holder of a drivers certificate) must not travel as a passenger in a tow truck while the tow truck is:

10 (a) proceeding to the scene of a motor vehicle accident for the purpose of towing a light motor vehicle from the accident; or

(b) towing a light motor vehicle from the scene of a motor vehicle accident.

Maximum penalty: 5 penalty units.

15 (2) This section does not prevent a person who was, at the time of the accident, a passenger in, or the owner, driver or person in charge of, the light motor vehicle from travelling in a tow truck.

(3) The regulations may provide for exemptions from the operation of this section.

20 (19) Part 3, Division 4 (**Tow trucks**):

Omit the heading, insert instead:

Division 4—Miscellaneous25 (20) Sections 42 (**Construction of tow trucks**) and 43 (**Inspection of tow trucks**):

Omit the sections.

(21) Section 46 (**What are the grounds for action against the holder of a licence?**):

(a) Omit section 46 (1) (f), insert instead:

30 (f) that the holder of the licence has failed to take all reasonable precautions to prevent the loss of (or prevent loss from or damage to) a light motor vehicle towed by or on behalf of or otherwise under the control of the holder in the course of the holder's business as a tow truck operator; or

35 (b) In section 46 (1) (i), after "towed" insert "light".

*Tow Truck (Amendment) 1994***SCHEDULE 1—AMENDMENTS—*continued***

- (22) **Section 47 (What are the grounds for action against the holder of a drivers certificate?):**

Omit section 47 (c), insert instead:

- (c) that the holder of the drivers certificate has failed to take all reasonable precautions to prevent the loss of (or prevent loss from or damage to) a light motor vehicle towed by a tow truck driven by that holder in the course of the business of a tow truck operator; or

- (23) **Section 48 (Show cause notice and inquiry):**

Omit section 48 (3).

- (24) **Section 48A:**

After section 48, insert:

Inquiry by complaints committee

48A. (1) An inquiry is to be conducted by a complaints committee.

(2) The complaints committee is a committee of the Council consisting of not fewer than 3 members of the Council who are appointed by the Council for a term or terms fixed by the Council or for the hearing of a particular inquiry.

(3) The Council is to appoint one of the members of the complaints committee to preside at meetings of the committee.

(4) If a member of the complaints committee ceases to be such a member for any reason, the Council may appoint a member of the Council to fill the vacancy.

(5) If the vacancy occurs after an inquiry has commenced, the inquiry may continue to be held:

- (a) before the committee constituted by the remaining members of the committee (if 3 or more members remain); or

- (b) before a committee reconstituted under subsection (4).

*Tow Truck (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

(6) However, the inquiry may continue to be held before the committee as so constituted or reconstituted only:

- 5 (a) if the defendant consents; or
 (b) without the defendant's consent, if the committee (as so constituted or reconstituted) considers that it would not be against the interests of justice to do so.

10 (25) Section 49 (**Procedure for conduct of inquiries into complaints**):

- (a) From section 49 (1), omit "the Council or the committee before which the inquiry is to be held", insert instead "the complaints committee".
 15 (b) From section 49 (3), omit "Council or the" where firstly occurring.
 (c) From section 49 (4)–(6), omit "Council or the" wherever occurring.

(26) Section 50:

Omit the section, insert instead:

20 **Determination of complaints committee**

50. (1) If, after an inquiry conducted by the complaints committee, the committee is of the opinion that there exists any ground for dealing with the defendant under this Part, the committee may make any one of the following determinations:
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- (a) that no further action be taken against the defendant;
 (b) to caution or reprimand the defendant;
 30 (c) to require the defendant to pay to the Council, as a penalty, an amount not exceeding \$500;
 (d) to cancel or suspend the licence or drivers certificate held by the defendant.

(2) If a defendant is the holder of both a licence and a drivers certificate, the committee may not cancel or suspend both unless the defendant was called on to show cause in respect of both.
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*Tow Truck (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (3) Nothing in this section affects the liability of a defendant for an offence against this Act or the regulations or for any other offence.
- (27) Section 51 (**Penalties for disciplinary offences**): 5
From section 51 (1), omit "Council" where firstly occurring, insert instead "complaints committee".
- (28) Section 52 (**Cancellation or suspension**):
From section 52 (1) and (2), omit "Council" wherever occurring, insert instead "complaints committee". 10
- (29) Sections 53 (**Appeals against disciplinary action**) and 54 (**Effect of appeal**):
Omit "Council" wherever occurring, insert instead "complaints committee".
- (30) Section 55 (**Determination of appeal**): 15
(a) From section 55 (1) (a), omit "Council", insert instead "complaints committee".
(b) From section 55 (2), omit "Council" where firstly occurring, insert instead "complaints committee".
- (31) Section 56 (**Constitution of the Council**): 20
Omit section 56 (2), insert instead:
(2) The Council is to consist of 12 part-time members appointed by the Minister, of whom:
(a) 1 is (in and by the member's instrument of appointment) to be appointed as Chairperson of the Council; and 25
(b) 3 are to be persons who have knowledge of or experience in the business of tow truck operators; and
(c) 1 is to be a person who has knowledge of or experience in the work of tow truck drivers; and 30
(d) 1 is to be a person who has knowledge of or experience in dealing with consumer issues relating to towing light motor vehicles; and

*Tow Truck (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- 5 (e) 1 is to be a person having knowledge of or
experience in the business of insuring light motor
vehicles; and
- (f) 1 is to be a person having knowledge of or
experience in the business of repairing light motor
vehicles; and
- 10 (g) 1 is to be a person employed by the Roads and
Traffic Authority; and
- (h) 1 is to be a person employed in the Police Service;
and
- (i) 1 is to be a person employed in the Department of
Transport; and
- 15 (j) 1 is to be a person having such other qualifications,
knowledge or experience as the Minister thinks
appropriate.

(32) Section 58:

Omit the section, insert instead:

Information and report functions of the Council

- 20 58. The functions of the Council include:
- (a) informing the public about the part of the tow truck
industry which is concerned with towing to which
this Act applies; and
- 25 (b) whenever it considers it necessary to do so or is
requested by the Minister to do so, making reports
or recommendations on the operation of this Act or
that part of the tow truck industry.

(33) Section 59:

Omit the section, insert instead:

Maximum charges

- 30 59. The Council may from time to time determine the
maximum charges that may be charged by tow truck
operators for towing to which this Act applies or for any
storage of light motor vehicles after such towing (whether
35 or not the storage is carried out by the same tow truck
operator as the towing).

*Tow Truck (Amendment) 1994*SCHEDULE 1—AMENDMENTS—*continued*

- (34) Section 61 (**Consultants**):
Omit the section.
- (35) Section 62 (**Tow Truck Industry Fund**):
From section 62, omit “in the Treasury”. 5
- (36) Section 69 (**Delegation**):
From section 69 (1), omit “and the power to make a determination under section 50”.
- (37) Section 73 (**Council may require information**):
From section 73 (1), omit “by notice in writing,”, insert instead “for the purpose of exercising its functions, by notice in writing”. 10
- (38) Section 74 (**Production of licences and drivers certificates**):
- (a) From section 74 (2), omit “towing work” wherever occurring, insert instead “towing to which this Act applies”. 15
- (b) After section 74 (2) (c), insert:
(c1) an officer of the Department of Transport authorised by the Council in that respect; or
- (39) Section 78 (**Evidence**): 20
In section 78 (1), after “tow truck driver” insert “in towing to which this Act applies”.
- (40) Section 83 (**Regulations**):
- (a) In section 83 (2) (g) and (h), after “tow trucks” wherever occurring, insert “in towing to which this Act applies”. 25
- (b) In section 83 (2) (i), after “operated”, insert “in towing to which this Act applies”.
- (c) From section 83 (2) (k) and (l), omit “motor vehicles” wherever occurring, insert instead “light motor vehicles”.

*Tow Truck (Amendment) 1994***SCHEDULE 1—AMENDMENTS—*continued*****(41) Schedule 1 (Constitution and members of the Council):**

Omit clauses 1 and 2, insert instead:

Acting members

5 1. (1) The Minister may appoint a person to act in the office of a member of the Council if that office is vacant (whether or not that office has ever been filled) or if the member is absent from that office (whether because of illness or for any other reason).

10 (2) A person while acting in the office of a member of the Council:

(a) has all the functions of the member (other than any functions of the member on the complaints committee) and is taken to be a member; and

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

(42) Schedule 4 (Savings, transitional and other provisions):

20 (a) Omit clause 1 (1) and (2) of Schedule 4, insert instead:

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

this Act

25 Tow Truck (Amendment) Act 1994

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

(b) After Part 2 of Schedule 4, insert:

30 **PART 3—PROVISIONS CONSEQUENTIAL ON
ENACTMENT OF TOW TRUCK (AMENDMENT)
ACT 1994**

Definitions

7. In this Part:

35 “former committee” means the committee appointed under section 48 (3) as in force before the

*Tow Truck (Amendment) 1994***SCHEDULE 1—AMENDMENTS—*continued***

commencement of Schedule 1 (23) to the Tow Truck (Amendment) Act 1994;

“former Council” means the Council as constituted before the commencement of Schedule 1 (31) to the Tow Truck (Amendment) Act 1994.

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Members of Council

8. (1) A person who, immediately before the commencement of Schedule 1 (31) to the Tow Truck (Amendment) Act 1994, held office as a member of the former Council:

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(a) ceases to hold that office; and

(b) is eligible (if otherwise qualified) to be appointed as a member of the Council as reconstituted on that commencement.

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(2) A person who so ceases to hold office as a member of the former Council is not entitled to any remuneration or compensation because of the loss of that office.

Complaints not yet subject to inquiry

9. (1) A complaint made to the Council (but not the subject of an inquiry) before the commencement of Schedule 1 (21) to the Tow Truck (Amendment) Act 1994 which could have been made under this Act after that commencement may be dealt with as if it had been made after that commencement.

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(2) A complaint made to the Council before that commencement which could not have been made after that commencement cannot be dealt with after that commencement.

Part-heard inquiries and undetermined complaints

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10. (1) If an inquiry in relation to a complaint commenced before the former committee (or the former Council) before the commencement of Schedule 1 (24) to the Tow Truck (Amendment) Act 1994, but had not been completed as at that date (or had been completed but had not resulted in a determination), the complaints committee is to decide in accordance with this clause how the complaint is to be dealt with.

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(2) If the complaint could not have been made after the commencement of Schedule 1 (21) to the Tow Truck (Amendment) Act 1994, the complaint lapses.

5 (3) If the complaint could have been made after that commencement, the complaints committee may decide that:

10 (a) the inquiry (if incomplete) is to continue before the former committee (or former Council) as constituted immediately before the commencement of Schedule 1 (24) to the Tow Truck (Amendment) Act 1994 and be determined by it or by the former Council as so constituted; or

15 (b) the complaint (if the inquiry is complete) is to be determined by the former Council as so constituted.

(4) In either case, the former Council cannot determine the complaint under subclause (3) until it has considered the report of the former committee.

20 (5) However, the complaints committee may decide that it:

(a) will conduct a fresh inquiry into the complaint and determine the complaint; or

25 (b) will continue the inquiry into the complaint (instead of the former committee or the former Council) and determine the complaint (instead of the former Council); or

(c) will determine the complaint (if the inquiry is complete) instead of the former Council.

30 (6) The complaints committee may make a decision referred to in subclause (5) only if the complaints committee considers that it would not be against the interests of justice to do so, but may do so without the defendant's consent.

Member of continuing committee or Council

35 11. A member of the former committee or former Council is taken, for the purposes only of continuing an

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inquiry or determining a complaint under clause 10, to be a member of both the complaints committee and the Council as constituted after the commencement of Schedule 1 (24) to the Tow Truck (Amendment) Act 1994. 5

Appeals

12. A reference in sections 53–55 of this Act, as in force after their amendment by the Tow Truck (Amendment) Act 1994, to a determination of the complaints committee includes a determination of the former Council made before their amendment or made under clause 10. 10

Fees and maximum charges

13. (1) A fee determined by the former Council under section 11 (or 22) as in force before the replacement of the section by the Tow Truck (Amendment) Act 1994, and in force immediately before that replacement, continues in force as if prescribed by regulation under that section as so substituted, until a regulation is made under that section. 15

(2) A maximum charge determined by the former Council under section 59 as in force before its replacement by the Tow Truck (Amendment) Act 1994, and in force immediately before that replacement, continues in force as if determined under section 59 as so substituted until a fresh determination is made under that section. 20

Applications for licences, amendments of licences and drivers certificates 25

14. An application duly made to the former Council under a provision of this Act as in force immediately before its amendment by the Tow Truck (Amendment) Act 1994 is taken to have been duly made to the Council in accordance with that provision as in force immediately after that amendment. 30

Duration of drivers certificates

15. A drivers certificate in force immediately before the commencement of Schedule 1 (12) to the Tow Truck 35

Tow Truck (Amendment) 1994

SCHEDULE 1—AMENDMENTS—*continued*

(Amendment) Act 1994 continues in force for 5 years from the date when it was granted (or for such shorter period as is specified in the certificate itself) unless sooner cancelled.

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