



Tow Truck Act 2023

Current as at 27 August 2026

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Queensland

Tow Truck Act 2023

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Tow Truck Act 2023

An Act to regulate the operation of tow trucks to remove motor vehicles from private property and damaged and seized motor vehicles

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Tow Truck Act 2023*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Main purposes of Act

- (1) The main purposes of this Act are—
- (a) to facilitate best practice in the tow truck industry by providing a balanced framework for regulating the operation of tow trucks to carry out regulated towing; and
 - (b) to protect the public by ensuring tow trucks carrying out regulated towing are operated in a safe, competent and professional way and at a reasonable cost to consumers; and

- (c) to protect public safety and the safety of the road network through ensuring the following in regulated areas—
 - (i) the safe and efficient removal of motor vehicles damaged in an incident from the scene of the incident and seized motor vehicles from the place of seizure;
 - (ii) the safe removal of motor vehicles parked on private property.
- (2) The main purposes are achieved by—
 - (a) requiring persons who conduct tow truck businesses, and persons involved in operating tow trucks to carry out regulated towing, to hold an accreditation; and
 - (b) requiring persons who hold an accreditation to comply with duties, obligations, standards of conduct and other requirements directed at ensuring—
 - (i) the safety of the public, including other persons involved in the carrying out of regulated towing; and
 - (ii) the protection of consumers; and
 - (iii) the secure storage of towed motor vehicles and movable property in towed motor vehicles; and
 - (iv) public confidence in the towing industry; and
 - (c) regulating the charges that may be imposed in relation to regulated towing.

4 Application of Act

- (1) This Act applies in relation to the operation of a tow truck to carry out regulated towing.
- (2) However, this Act does not apply in relation to the operation of a tow truck to carry out private property towing under the following laws, including a direction or request made under the law—

- (a) another Act;
- (b) an Act of the Commonwealth or another State;
- (c) a local law.

Division 2 Interpretation

5 Definitions

The dictionary in schedule 3 defines particular words used in this Act.

6 Meaning of *tow truck*

- (1) A *tow truck* is a motor vehicle—
 - (a) that is—
 - (i) equipped with a lifting or loading device; and
Examples of a lifting or loading device—
a crane, hoist or winch
 - (ii) capable of being used for the towing of a motor vehicle; or
 - (b) to which is attached, temporarily or otherwise, a trailer that is—
 - (i) equipped with a lifting or loading device; and
 - (ii) capable of being used for the towing of a motor vehicle.
- (2) In this Act, a reference to a tow truck includes the following things—
 - (a) a lifting or loading device on the tow truck;
 - (b) a trailer attached to the tow truck and any lifting or loading device on the trailer.
- (3) In this section—

trailer see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

7 References to towing

In this Act—

- (a) a reference to the towing of a motor vehicle includes carrying the vehicle; and
- (b) a reference to the towing of a motor vehicle from a location includes the following—
 - (i) lifting or loading the vehicle for the purpose of towing or carrying the vehicle from the location;
 - (ii) moving the vehicle to enable the towing or carrying of the vehicle from the location or the lifting or loading of the vehicle as mentioned in subparagraph (i);
 - (iii) attaching a device to the vehicle for the purpose of towing or carrying the vehicle from the location or doing a thing mentioned in subparagraph (i) or (ii).

8 Meaning of *regulated towing*

Regulated towing is—

- (a) the towing of a motor vehicle that is damaged in an incident in a regulated area from the scene of the incident; or
- (b) the towing of a motor vehicle that is seized in a regulated area from the place of seizure; or
- (c) private property towing.

Note—

See also section 4.

9 Meaning of *private property towing*

Private property towing is the towing of a motor vehicle parked on private property in a regulated area from the property if the owner of the vehicle has not expressly requested or directed the towing of the vehicle from the property.

10 Meaning of *tow truck business*

A *tow truck business* is a business or trade that involves the operation of 1 or more tow trucks to carry out regulated towing.

11 Towing authorities

- (1) A *towing authority* is a document that—
 - (a) is in the approved form; and
 - (b) states that a particular person who is the holder of a driver accreditation is authorised to—
 - (i) tow a motor vehicle damaged in an incident in a regulated area from the scene of the incident; or
 - (ii) tow a motor vehicle seized in a regulated area from the place of seizure; and
 - (c) is given by—
 - (i) the owner of the motor vehicle or the owner's agent; or
 - (ii) an authorised officer.
- (2) An authorised officer may give a towing authority for a motor vehicle only if, when the authority is given, the owner of the vehicle, or the owner's agent, is absent from the vehicle or is incapacitated.

12 Private property towing consents

- (1) A *private property towing consent* is a document that—
 - (a) is in the approved form; and
 - (b) states that there is an arrangement, between the holder of an operator accreditation and the occupier of private property in a regulated area, under which the holder may, until the arrangement ends, carry out private property towing in relation to the property.
- (2) A private property towing consent stops having effect if the arrangement mentioned in the consent ends.

Division 3 General provisions

13 Matters to be considered in deciding whether persons are appropriate persons to hold or continue to hold accreditations

- (1) In deciding whether a person is an appropriate person to hold or continue to hold an accreditation, the chief executive must have regard to the following matters—
 - (a) the person's criminal history;
 - (b) whether an accreditation held by the person has been cancelled or suspended and, if so, why the accreditation was cancelled or suspended;
 - (c) the person's conduct while carrying out activities under an accreditation;
 - (d) whether the person has engaged in aggressive, threatening or otherwise inappropriate behaviour towards—
 - (i) an authorised officer; or
 - (ii) a public service employee performing functions under or relating to the administration of this Act;

- (e) whether the person is, or has been, the subject of a control order or a registered corresponding control order;
 - (f) if the person is a corporation—
 - (i) the criminal history of each executive officer of the corporation; and
 - (ii) whether an accreditation held by an executive officer of the corporation has been cancelled or suspended and, if so, why the accreditation was cancelled or suspended; and
 - (iii) whether an executive officer of the corporation is, or has been, an executive officer of another corporation whose accreditation has been cancelled or suspended and, if so, why the accreditation was cancelled or suspended; and
 - (iv) the conduct of each executive officer of the corporation while carrying out activities under an accreditation; and
 - (v) whether an executive officer of the corporation has engaged in aggressive, threatening or otherwise inappropriate behaviour towards a person mentioned in paragraph (d)(i) or (ii); and
 - (vi) whether an executive officer of the corporation is, or has been, the subject of a control order or a registered corresponding control order;
 - (g) if the accreditation is a driver accreditation—the person's traffic history under the *Transport Operations (Road Use Management) Act 1995*;
 - (h) any other matter prescribed by regulation.
- (2) Subject to section 15, the chief executive may also have regard to any other matter the chief executive considers relevant.

- (3) In subsection (1)(b), (c) and (f), a reference to an accreditation includes an assistant's certificate, driver's certificate and licence under the repealed Act.

14 Matters to be considered in deciding whether it is in public interest for persons to hold or continue to hold accreditations

- (1) In deciding whether it is in the public interest for a person to hold or continue to hold an accreditation, the chief executive must have regard to the following matters—
- (a) the legitimate expectation of members of the public, particularly vulnerable members of the public, that they will not be subject to assault or aggressive, coercive or otherwise inappropriate behaviour from persons involved in the tow truck industry;
 - (b) any other matter prescribed by regulation.
- (2) Subject to section 15, the chief executive may also have regard to any other matter the chief executive considers relevant.

15 Restriction on considering criminal intelligence

- (1) This section applies if the chief executive is deciding an application under part 2, or deciding whether to amend, suspend or cancel an accreditation under part 3, including deciding whether—
- (a) a person is an appropriate person to hold or continue to hold an accreditation; or
 - (b) it is in the public interest for a person to hold or continue to hold an accreditation.
- (2) The chief executive must not have regard to criminal intelligence given by the police commissioner to the chief executive under section 145.

Part 2 Accreditations

Division 1 Preliminary

16 Types of accreditation

- (1) This Act provides for 3 types of accreditation—
 - (a) an operator accreditation;
 - (b) a driver accreditation;
 - (c) an assistant accreditation.
- (2) An *operator accreditation* authorises the holder of the accreditation to conduct a tow truck business.
- (3) A *driver accreditation* authorises the holder of the accreditation to operate, or assist with the operation of, a tow truck to carry out regulated towing.
- (4) An *assistant accreditation*—
 - (a) authorises the holder of the accreditation to operate, or assist with the operation of, a tow truck to carry out regulated towing; but
 - (b) does not authorise the holder of the accreditation to drive a tow truck for the purpose of carrying out regulated towing.

Division 2 Applications for accreditations

17 Making applications

- (1) A person may apply to the chief executive for an accreditation.
- (2) The application must—
 - (a) be made in the way prescribed by regulation; and

- (b) be accompanied by the fee prescribed by regulation; and
- (c) include or be accompanied by the information prescribed by regulation.

18 Deciding applications

- (1) The chief executive must consider the application and decide to—
 - (a) approve the application; or
 - (b) refuse the application.
- (2) In deciding the application, the chief executive—
 - (a) must consider the matters prescribed by regulation; and
 - (b) may, subject to section 15, consider any other matter the chief executive considers relevant.
- (3) Without limiting subsection (1)(b), the chief executive may refuse the application—
 - (a) if satisfied—
 - (i) the applicant is not an appropriate person to hold the accreditation; or

Note—
For an application made by a partnership, see also section 136.

 - (ii) it would not be in the public interest for the applicant to hold the accreditation; or
 - (b) on another ground prescribed by regulation.

19 Giving accreditation documents and information notices

- (1) If the decision is to approve the application, the chief executive must give the applicant an accreditation document that states the following—
 - (a) the type of accreditation that is being given;

- (b) the day the accreditation document is given;
 - (c) the name of the holder of the accreditation;
 - (d) the day the accreditation stops having effect (the *expiry day*);
 - (e) the conditions imposed on the accreditation under section 20;
 - (f) for an operator accreditation—
 - (i) the name and business address of the tow truck business the holder is authorised to conduct under the accreditation (the *authorised tow truck business*); and
 - (ii) any premises that may be used as a holding yard under the accreditation (each an *authorised holding yard*); and
 - (iii) each motor vehicle that may be used as a tow truck under the accreditation (each an *authorised tow truck*) and a unique identification number for each vehicle;
 - (g) for a driver accreditation or an assistant accreditation—a unique identifying number for the accreditation;
 - (h) any other matter prescribed by regulation.
- (2) For subsection (1)(d), the expiry day must not be more than 5 years after the day the accreditation document is given.
- (3) If the decision is to refuse the application, or approve the application subject to conditions, the chief executive must give the applicant an information notice for the decision.

20 Conditions of accreditations

- (1) An accreditation is subject to the conditions, imposed by the chief executive, stated in the accreditation document for the accreditation.

- (2) The chief executive may impose a condition on an accreditation only if—
 - (a) the chief executive considers the condition is necessary or desirable for achieving the main purposes of this Act stated in section 3(1)(b) or (c); or
 - (b) the condition relates to an administrative matter.

21 Period of accreditations

An accreditation—

- (a) takes effect on the day the accreditation document for the accreditation is given; and
- (b) stops having effect on the expiry day for the accreditation.

Notes—

- 1 For the surrender of an accreditation, see division 5.
- 2 For the suspension or cancellation of an accreditation, see part 3.

22 Accreditations not transferable

An accreditation can not be transferred to another person.

Division 3 Renewal applications

23 Renewal notices

- (1) The chief executive may, before the expiry day for an accreditation, give the holder of the accreditation a notice about renewing the accreditation.
- (2) The notice must state—
 - (a) the expiry day for the accreditation; and
 - (b) that if the accreditation is not renewed before the expiry day, the accreditation stops having effect.

- (3) Failure to give a notice under this section does not affect the expiry of the accreditation.

24 Applications to renew accreditations

- (1) The holder of an accreditation may apply to the chief executive to renew the accreditation for a stated period of not more than 5 years (a *renewal application*).
- (2) The renewal application must—
- (a) be made in the way prescribed by regulation; and
 - (b) be accompanied by the fee prescribed by regulation; and
 - (c) include or be accompanied by the information prescribed by regulation.

25 Deciding renewal applications

- (1) The chief executive must consider the renewal application and decide to—
- (a) approve the application; or
 - (b) refuse the application.
- (2) In deciding the renewal application, the chief executive—
- (a) must consider the matters prescribed by regulation; and
 - (b) may, subject to section 15, consider any other matter the chief executive considers relevant.
- (3) Without limiting subsection (1)(b), the chief executive may refuse the renewal application—
- (a) if satisfied—
 - (i) the applicant is not an appropriate person to continue to hold the accreditation; or

Note—

For a renewal application made by a partnership, see also section 136.

- (ii) it would not be in the public interest for the applicant to continue to hold the accreditation; or
- (b) on another ground prescribed by regulation.
- (4) To remove any doubt, it is declared that the chief executive may decide the renewal application after the expiry day for the accreditation.

26 Giving new accreditation documents and information notices

- (1) If the decision is to approve the renewal application, the chief executive must give the applicant a new accreditation document that states the following—
 - (a) the type of accreditation that is being renewed;
 - (b) the day the new accreditation document is given;
 - (c) the name of the holder of the accreditation;
 - (d) the day the renewed accreditation takes effect, and the day it stops having effect (the *expiry day*), under section 28;
 - (e) the conditions imposed on the renewed accreditation under section 27;
 - (f) for an operator accreditation—the matters mentioned in section 19(1)(f);
 - (g) for a driver accreditation or an assistant accreditation—a unique identifying number for the accreditation;
 - (h) any other matter prescribed by regulation.
- (2) If the decision is to refuse the renewal application, or approve the renewal application subject to conditions, the chief executive must give the applicant an information notice for the decision.

27 Conditions of renewed accreditations

- (1) A renewed accreditation is subject to the conditions, imposed by the chief executive, stated in the new accreditation document for the accreditation.
- (2) The chief executive may impose a condition on a renewed accreditation only if—
 - (a) the chief executive considers the condition is necessary or desirable for achieving the main purposes of this Act stated in section 3(1)(b) or (c); or
 - (b) the condition relates to an administrative matter.

28 Period of renewed accreditations

- (1) If the chief executive approves a renewal application for an accreditation—
 - (a) the accreditation is renewed for the period stated in the application; and
 - (b) the renewal period starts the day after the accreditation would otherwise stop having effect.
- (2) However, if the renewal application is approved after the accreditation stops having effect—
 - (a) the renewed accreditation does not take effect until the day the new accreditation document for the accreditation is given; and
 - (b) the renewal period starts on the day mentioned in paragraph (a).

29 When renewal applications taken to be withdrawn

A renewal application is taken to be withdrawn if the accreditation to which the application relates is surrendered under division 5 or cancelled under part 3.

Division 4 Amendment applications

30 Applications to amend accreditations

- (1) The holder of an accreditation may apply to the chief executive to amend the accreditation (an ***amendment application***).
- (2) The amendment application must—
 - (a) be made in the way prescribed by regulation; and
 - (b) provide details of the proposed amendment; and
 - (c) be accompanied by the fee prescribed by regulation; and
 - (d) include or be accompanied by the information prescribed by regulation.

31 Deciding amendment applications

- (1) The chief executive must consider the amendment application and decide to—
 - (a) approve the application; or
 - (b) refuse the application.
- (2) In deciding the amendment application, the chief executive—
 - (a) must consider the matters prescribed by regulation; and
 - (b) may, subject to section 15, consider any other matter the chief executive considers relevant.
- (3) Without limiting subsection (1)(b), the chief executive may refuse the amendment application on a ground prescribed by regulation.

32 Giving replacement accreditation documents and information notices

- (1) If the decision is to approve the amendment application, the chief executive must give the applicant a replacement

accreditation document for the accreditation showing the amendment.

- (2) However, if the accreditation document for the accreditation consists of more than 1 part, a replacement document need only be given for the part that is affected by the amendment.

Example—

An accreditation document for a driver accreditation is partly in the form of a card and partly in the form of a document stating the conditions imposed on the accreditation. If the amendment affects only information stated in or stored on the card, the chief executive need only give a replacement card. Alternatively, if the amendment affects only the document stating the conditions, the chief executive need only give a replacement document for the document stating the conditions.

- (3) If the decision is to refuse the amendment application, the chief executive must give the applicant an information notice for the decision.

33 When amendments take effect

The amendment of the accreditation takes effect on the day the replacement accreditation document for the accreditation is given.

34 When amendment applications taken to be withdrawn

An amendment application is taken to be withdrawn if the accreditation to which the application relates stops having effect.

Division 5 Surrendering accreditations

35 Surrender of accreditations

- (1) The holder of an accreditation may surrender the accreditation by giving the chief executive notice of the surrender.

- (2) The accreditation stops having effect on the day the notice of surrender is given or a later day stated in the notice.

Part 3 Amending, suspending and cancelling accreditations

Division 1 Minor amendments

36 Minor amendments to accreditations

- (1) The chief executive may, by notice given to the holder of an accreditation, make a minor amendment to the accreditation.
- (2) An amendment of an accreditation is a *minor amendment* if—
 - (a) the amendment is for a formal or clerical reason; or
 - (b) the amendment omits a condition of the accreditation; or
 - (c) the amendment does not adversely affect the interests of the holder of the accreditation; or
 - (d) the holder of the accreditation has agreed to the amendment.
- (3) The amendment takes effect on the day the notice is given or a later day stated in the notice.

Division 2 Amending, suspending and cancelling accreditations generally

37 Application of division

This division does not apply in relation to a minor amendment of an accreditation.

38 **Grounds for amending, suspending or cancelling accreditations**

Each of the following is a ground for amending, suspending or cancelling an accreditation—

- (a) the accreditation was given in error;
- (b) the accreditation was obtained because of materially incorrect or misleading information or documents;
- (c) the holder of the accreditation is not an appropriate person to continue to hold the accreditation;

Note—

For the holder of an accreditation that is a partnership, see also section 136.

- (d) it is not in the public interest for the holder of the accreditation to continue to hold the accreditation;
- (e) public safety has been endangered, or is likely to be endangered, because of the conduct of the following persons while carrying out activities under the accreditation—
 - (i) the holder of the accreditation;
 - (ii) if the holder of the accreditation is a corporation—
an executive officer of the corporation;
 - (iii) if the holder of the accreditation is a partnership—
a partner in the partnership;
- (f) the holder of the accreditation has given false or misleading information to—
 - (i) an authorised officer; or
 - (ii) an authorised officer under the Heavy Vehicle National Law (Queensland);
- (g) another ground prescribed by regulation.

Note—

See also section 15.

39 Show cause notices

- (1) If the chief executive considers a ground exists to amend, suspend or cancel an accreditation (the *proposed action*), the chief executive may give the holder of the accreditation a notice (a *show cause notice*).
- (2) The show cause notice must state the following—
 - (a) the proposed action;
 - (b) the ground for the proposed action;
 - (c) an outline of the facts and circumstances forming the basis for the ground;
 - (d) if the proposed action is to amend the accreditation—the proposed amendment;
 - (e) if the proposed action is to suspend the accreditation—the proposed suspension period;
 - (f) that the holder of the accreditation may, within a stated period, make representations to the chief executive to show why the proposed action should not be taken.
- (3) For subsection (2)(f), the stated period must end at least 28 days after the day the show cause notice is given to the holder of the accreditation.
- (4) The chief executive may, by notice given to the holder of the accreditation, extend the period under subsection (2)(f) before or after the end of the period.

40 Representations about show cause notices

- (1) The holder of the accreditation may make representations about the show cause notice to the chief executive within the show cause period.
- (2) The chief executive must consider any representations made to the chief executive within the show cause period.

41 Ending show cause process without further action

If, after considering any representations made to the chief executive within the show cause period, the chief executive no longer considers a ground exists to take the proposed action, the chief executive must—

- (a) take no further action about the show cause notice; and
- (b) give the holder of the accreditation notice that no further action is to be taken about the show cause notice.

42 Amending, suspending or cancelling accreditations

(1) If, after considering any representations made to the chief executive within the show cause period, the chief executive still considers a ground exists to take the proposed action, the chief executive may—

- (a) if the proposed action is to amend the accreditation—
 - (i) amend the accreditation in the way stated in the show cause notice; or
 - (ii) amend the accreditation in another way the chief executive considers appropriate having regard to the representations; or
- (b) if the proposed action is to suspend the accreditation for a stated period—
 - (i) suspend the accreditation for no longer than the stated period; or
 - (ii) amend the accreditation in a way the chief executive considers appropriate having regard to the representations; or
- (c) if the proposed action is to cancel the accreditation—
 - (i) cancel the accreditation; or
 - (ii) suspend the accreditation for a period; or

- (iii) amend the accreditation in a way the chief executive considers appropriate having regard to the representations.
- (2) If the chief executive decides to act under subsection (1), the chief executive must give the holder of the accreditation an information notice for the decision.
- (3) The decision takes effect on the day the information notice is given or a later day stated in the notice.

43 Proposed actions relating to matters the subject of court proceedings

If the proposed action relates to a matter that is the subject of a court proceeding, the chief executive—

- (a) may defer making a decision in relation to the show cause notice until the proceeding is finally decided or otherwise ends; but
- (b) must make the decision as soon as practicable after the proceeding is finally decided or otherwise ends.

Division 3 Immediate suspensions

44 Immediate suspension of accreditations

- (1) The chief executive may, by notice given to the holder of an accreditation (an *immediate suspension notice*), immediately suspend the accreditation on the following grounds—
 - (a) the chief executive reasonably believes—
 - (i) the holder is not an appropriate person to continue to hold the accreditation and the accreditation should be immediately suspended; or

Note—

For the holder of an accreditation that is a partnership, see also section 136.

- (ii) it is not in the public interest for the holder to continue to hold the accreditation and the accreditation should be immediately suspended;
 - (b) public safety has been endangered, or is likely to be endangered, because of the holder's conduct while carrying out activities under the accreditation and the accreditation should be immediately suspended.
- (2) Without limiting the chief executive's powers under subsection (1), it is enough to immediately suspend an accreditation if—
- (a) a person complains in writing to a police officer about the conduct of the holder of the accreditation and, having regard to the nature of the complaint, the chief executive reasonably believes the conduct complained of justifies taking action under subsection (1); or
 - (b) having regard to statements or other information about the conduct of the holder of the accreditation given to the chief executive, the chief executive reasonably believes the statements or other information justify taking action under subsection (1).
- (3) The immediate suspension notice must—
- (a) state the effect of section 45; and
 - (b) be accompanied by an information notice for the decision.
- (4) The chief executive must, within 7 days after the day the immediate suspension notice is given to the holder of the accreditation, give the holder a show cause notice under section 39.
- (5) In this section, a reference to the conduct of the holder of an accreditation includes—
- (a) if the holder is a corporation—the conduct of an executive officer of the corporation; and
 - (b) if the holder is a partnership—the conduct of a partner in the partnership.

45 Period of immediate suspension

- (1) The immediate suspension of the accreditation—
 - (a) takes effect immediately on the giving of the immediate suspension notice to the holder of the accreditation; and
 - (b) continues in effect until the earlier of the following—
 - (i) the show cause notice given to the holder under section 44(4) is finally dealt with;
 - (ii) the end of the immediate suspension period.
- (2) For subsection (1)(b)(i), the show cause notice is finally dealt with on the happening of either of the following events—
 - (a) the chief executive gives the holder of the accreditation a notice under section 41 in relation to the show cause notice;
 - (b) the chief executive's decision under section 42 in relation to the show cause notice takes effect or any review of the decision is finally decided or otherwise ends.
- (3) The chief executive may, by notice given to the holder of the accreditation, extend the immediate suspension period for a period of not more than 56 days if the chief executive considers it is appropriate to do so in all the circumstances.
- (4) In this section—

immediate suspension period means the period ending on the day that is 56 days after the day the immediate suspension notice is given and any extension of that period under subsection (3).

Division 4 Automatic suspensions and cancellations

46 Definitions for division

In this division—

class, of a Queensland driver licence, means the class of the licence under the *Transport Operations (Road Use Management) Act 1995*.

relevant driver licence means—

- (a) a Queensland driver licence of a class prescribed by regulation; or
- (b) a non-Queensland driver licence that corresponds to a Queensland driver licence mentioned in paragraph (a).

47 Automatic cancellation of accreditations held by individuals if individual dies or becomes insolvent

An accreditation held by an individual is automatically cancelled on the happening of the following events—

- (a) the individual dies;
- (b) if the accreditation is an operator accreditation—the individual becomes an insolvent under administration under the Corporations Act, section 9.

48 Automatic cancellation of operator accreditations held by corporations or partnerships

- (1) An operator accreditation held by a corporation is automatically cancelled on the corporation being wound up or deregistered under the Corporations Act.
- (2) An operator accreditation held by a partnership is automatically cancelled on the partnership being wound up, dissolved or otherwise ending under the *Partnership Act 1891*.

49 Automatic suspension of driver accreditations if relevant driver licence suspended

- (1) This section applies if a relevant driver licence held by the holder of a driver accreditation is suspended.
- (2) The driver accreditation is automatically suspended from the day the relevant driver licence is suspended until the suspension of the licence ends.

50 Automatic suspension of driver accreditations if relevant driver licence stops having effect

- (1) This section applies if a relevant driver licence held by the holder of a driver accreditation stops having effect.
- (2) The driver accreditation is automatically suspended from the day the relevant driver licence stops having effect until the day a new relevant driver licence obtained by the holder of the driver accreditation takes effect.
- (3) This section does not apply if the relevant driver licence stops having effect because—
 - (a) the relevant driver licence is suspended; or
 - (b) if the relevant driver licence is a non-Queensland driver licence—the holder of the driver accreditation obtains a Queensland driver licence of a class prescribed by regulation.

Division 5 Replacement accreditation documents

51 Giving replacement accreditation documents if accreditations amended

- (1) This section applies if an accreditation is amended under this part.

- (2) The chief executive must, as soon as practicable, give the holder of the accreditation a replacement accreditation document for the accreditation showing the amendment.
- (3) However, if the accreditation document for the accreditation consists of more than 1 part, a replacement document need only be given for the part that is affected by the amendment.

Example—

An accreditation document for a driver accreditation is partly in the form of a card and partly in the form of a document stating the conditions imposed on the accreditation. If the amendment affects only information stated in or stored on the card, the chief executive need only give a replacement card. Alternatively, if the amendment affects only the document stating the conditions, the chief executive need only give a replacement document for the document stating the conditions.

Part 4 Offences and notifying particular matters

Division 1 Offences relating to conducting tow truck businesses and operating tow trucks

52 Conducting tow truck business without operator accreditation

- (1) A person must not conduct a tow truck business unless the person is the holder of an operator accreditation for the business.
Maximum penalty—160 penalty units.
- (2) For this section, a person conducts a tow truck business—
 - (a) if the person has effective control and management of the business; and
 - (b) whether the person conducts the business—
 - (i) alone or with another person; or

- (ii) personally or through an agent or employee.
- (3) However, a person does not conduct a tow truck business to the extent the person is engaged solely as a worker in, or an officer of, the business.

53 Operating or assisting with operation of tow trucks without driver accreditation or assistant accreditation

- (1) This section applies if—
 - (a) a motor vehicle—
 - (i) is damaged in an incident in a regulated area; or
 - (ii) is seized in a regulated area; or
 - (b) a motor vehicle is parked on private property in a regulated area and the owner of the vehicle has not expressly requested or directed the towing of the vehicle from the property.
- (2) A person must not drive, or offer to drive, a tow truck for the purpose of towing the motor vehicle from the scene of the incident, place of seizure or private property unless the person is the holder of a driver accreditation.

Maximum penalty—80 penalty units.

- (3) A person who is at the scene of the incident, place of seizure or private property must not otherwise operate, or assist with the operation of, a tow truck to tow the motor vehicle from the scene, place or property unless the person is the holder of—
 - (a) a driver accreditation; or
 - (b) an assistant accreditation.

Maximum penalty—80 penalty units.

- (4) For subsection (3), a person is not assisting with the operation of a tow truck to the extent the person is carrying out repairs to the tow truck.

Division 2 Offences relating to holders of operator accreditations and employees

54 Provision of towing services

The holder of an operator accreditation must ensure that the authorised tow truck business for the accreditation provides a towing service that operates 24 hours a day, 7 days a week, unless the holder has a reasonable excuse.

Maximum penalty—50 penalty units.

55 Only authorised tow trucks may be used

The holder of an operator accreditation commits an offence if a person operates a tow truck, other than an authorised tow truck for the accreditation, to carry out regulated towing under the accreditation.

Maximum penalty—50 penalty units.

56 Storing towed motor vehicles and movable property

- (1) The holder of an operator accreditation must not use premises to store a motor vehicle towed under the accreditation, or movable property inside the vehicle, unless the premises are—
- (a) if there is a towing authority for the vehicle—the premises nominated by the authorising person for the vehicle, and stated in the towing authority, as the premises to which the vehicle is to be towed; or
 - (b) otherwise—an authorised holding yard for the accreditation.

Maximum penalty—80 penalty units.

Note—

See also section 154 in relation to temporary holding yards.

- (2) However, subsection (1)(b) does not apply in relation to an operator accreditation if an exemption decision is in effect for the accreditation.

57 Preventing damage to towed motor vehicles

- (1) This section applies in relation to a motor vehicle that has been towed under an operator accreditation.
- (2) The holder of the operator accreditation must ensure all reasonable precautions are taken to prevent damage to the motor vehicle while the vehicle is under the holder's control.

Maximum penalty—50 penalty units.

- (3) In this section, a reference to damage to a motor vehicle includes damage to or the loss of movable property in the vehicle.

58 Unlocking particular motor vehicles

- (1) The holder of an operator accreditation, or an employee of the authorised tow truck business for an operator accreditation, must not unlock—
- (a) a motor vehicle damaged in an incident, or seized, in a regulated area if the vehicle is at the scene of the incident or place of seizure; or
- (b) a motor vehicle parked on private property in a regulated area if—
- (i) the owner of the motor vehicle has not expressly requested or directed the towing of the vehicle from the property; and
- (ii) a private property towing consent, that relates to an arrangement between the holder of the accreditation and the occupier of the property, is in effect for the property; or
- (c) a motor vehicle in relation to which regulated towing is being carried out under the accreditation; or

- (d) a motor vehicle in relation to which regulated towing has been carried out if the vehicle is at the location to which it has been towed.

Maximum penalty—50 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
 - (a) the person is the owner of the motor vehicle or the owner's agent; or
 - (b) the owner of the motor vehicle or the owner's agent has consented to the person unlocking the vehicle.

59 Moving motor vehicles after towing

- (1) This section applies if—
 - (a) regulated towing is carried out in relation to a motor vehicle; and
 - (b) the motor vehicle is towed to an authorised holding yard for an operator accreditation.
- (2) The holder of the operator accreditation, or an employee of the authorised tow truck business for the accreditation, must not move the motor vehicle from the authorised holding yard unless the holder or employee is moving the vehicle—
 - (a) to release the vehicle to its owner or the owner's agent under section 60; or
 - (b) to another location approved by the owner of the vehicle, or the owner's agent, by notice given to the holder after the vehicle arrives at the authorised holding yard; or
 - (c) to prevent possible damage to the vehicle as a result of fire or a natural event such as a storm or flood.

Maximum penalty—50 penalty units.

60 Releasing motor vehicles stored in authorised holding yards

- (1) This section applies if—
 - (a) a motor vehicle is towed under an operator accreditation to an authorised holding yard for the accreditation; and
 - (b) the owner of the vehicle, or the owner's agent, asks the holder of the accreditation to release the vehicle to the owner or agent.
- (2) The holder of the operator accreditation must comply with the request within the period, and in the way, prescribed by regulation.

Maximum penalty—50 penalty units.

- (3) However, subsection (2) does not apply if—
 - (a) the holder of the operator accreditation has imposed a charge under this Act on the owner of the motor vehicle in relation to—
 - (i) the towing, storage, viewing or accessing of the vehicle; or
 - (ii) the taking of property from the vehicle; and
 - (b) the charge has not been paid.

61 Notice to police commissioner about private property towing

- (1) This section applies if—
 - (a) private property towing is carried out in relation to a motor vehicle under an operator accreditation; and
 - (b) the motor vehicle is towed to an authorised holding yard for the operator accreditation.
- (2) The holder of the operator accreditation must give the police commissioner notice of the tow as soon as practicable, but no later than 1 hour, after the motor vehicle arrives at the authorised holding yard for the operator accreditation.

Maximum penalty—30 penalty units.

- (3) The notice must be given—
 - (a) in the approved form; or
 - (b) in another way prescribed by regulation.

62 Directing persons to do particular things

The holder of an operator accreditation must not direct a person to do an act in contravention of the following provisions—

- (a) section 53;
- (b) sections 64 to 67.

Maximum penalty—160 penalty units.

63 Disclosing sensitive information

- (1) This section applies if—
 - (a) a person who is the holder of an operator accreditation obtains sensitive information in the course of conducting the authorised tow truck business for the accreditation; or
 - (b) a person who is an employee of the authorised tow truck business for an operator accreditation obtains sensitive information in the course of carrying out their employment.
- (2) The person must not disclose the sensitive information to anyone else other than under this section.

Maximum penalty—100 penalty units.

- (3) The person may disclose the sensitive information—
 - (a) to an authorised officer or another person prescribed by regulation; or

- (b) to the following persons to the extent the disclosure is necessary for conducting the authorised tow truck business for the operator accreditation—
 - (i) an employee of the authorised tow truck business;
 - (ii) for a person mentioned in subsection (1)(b)—the holder of the operator accreditation; or
 - (c) to the extent the disclosure is required under this Act or another law; or
 - (d) in compliance with a lawful process requiring production of documents to, or giving evidence before, a court or tribunal.
- (4) The person may also disclose the sensitive information to—
- (a) if the information is personal information about an individual—the individual; or
 - (b) if the information is about the location to which a motor vehicle has been towed under an operator accreditation—the owner of the vehicle or the owner’s agent.
- (5) In this section—
- disclose*** includes give access to.
- sensitive information*** means—
- (a) personal information about an individual who is the owner or driver of a motor vehicle, or another individual, involved in any of the following events—
 - (i) an incident, or the seizure of a motor vehicle, in a regulated area;
 - (ii) the carrying out of private property towing in relation to a motor vehicle;
 - (iii) the release of a motor vehicle that has been secured to a tow truck in preparation for moving the vehicle from private property in a regulated area, if the owner of the vehicle has not expressly

requested or directed the towing of the vehicle from the property; or

- (b) information about the location to which a motor vehicle has been towed under an operator accreditation, unless the location is an authorised holding yard for the accreditation.

Division 3 Offences relating to holders of driver accreditations

64 Requirement to obtain towing authority

- (1) This section applies if—
 - (a) a motor vehicle—
 - (i) is damaged in an incident in a regulated area; or
 - (ii) is seized in a regulated area; and
 - (b) the holder of a driver accreditation attends the scene of the incident or place of seizure.
- (2) The holder of the driver accreditation must not operate a tow truck to tow the motor vehicle from the scene of the incident or place of seizure unless the authorising person for the vehicle has signed or has, by notice given to the holder, approved a towing authority authorising the holder to tow the vehicle from the scene or place.

Maximum penalty—60 penalty units.

- (3) However, subsection (2) does not apply in relation to the towing of a motor vehicle from a prescribed road as part of a tow to safety service.
- (4) In this section—

operate does not include offer to operate.

65 Carrying out private property towing without private property towing consent

- (1) This section applies if—
 - (a) a motor vehicle is parked on private property in a regulated area; and
 - (b) the owner of the motor vehicle has not expressly requested or directed the towing of the vehicle from the property; and
 - (c) the holder of a driver accreditation attends the property.
- (2) The holder of the driver accreditation must not operate a tow truck to tow the motor vehicle from the private property unless—
 - (a) a private property towing consent is in effect for the property; and
 - (b) the private property towing consent relates to an arrangement between—
 - (i) the occupier of the property; and
 - (ii) the holder of the operator accreditation under which the holder of the driver accreditation is acting.

Maximum penalty—60 penalty units.

66 Driving to or from scene of incident or place of seizure with passengers

- (1) This section applies if a motor vehicle—
 - (a) is damaged in an incident in a regulated area; or
 - (b) is seized in a regulated area.
- (2) The holder of a driver accreditation must not drive a tow truck to or from the scene of the incident or place of seizure if a person, other than an accepted person, is in the tow truck.

Maximum penalty—40 penalty units.

(3) In this section—

accepted person means—

- (a) the owner of the motor vehicle or the owner's agent; or
- (b) a person who was the driver of or a passenger in the motor vehicle; or
- (c) for a motor vehicle mentioned in subsection (1)(a)—a person who is supporting a child who was the driver of or a passenger in the vehicle while the child is a passenger in the tow truck; or
- (d) the holder of an accreditation; or
- (e) an executive officer of a corporation that is the holder of an operator accreditation; or
- (f) a partner in a partnership that is the holder of an operator accreditation.

67 Driving to or from private property with passengers

(1) This section applies if—

- (a) a motor vehicle is parked on private property in a regulated area; and
- (b) the owner of the motor vehicle has not expressly requested or directed the towing of the vehicle from the property; and
- (c) the holder of a driver accreditation attends the private property with a tow truck for the purpose of towing the motor vehicle from the property.

(2) The holder of the driver accreditation must not drive the tow truck to or from the private property if a person, other than an accepted person, is in the tow truck.

Maximum penalty—40 penalty units.

(3) In this section—

accepted person means—

- (a) the owner of the motor vehicle or the owner's agent; or
- (b) a person who was the driver of or a passenger in the motor vehicle; or
- (c) the holder of an accreditation; or
- (d) an executive officer of a corporation that is the holder of an operator accreditation; or
- (e) a partner in a partnership that is the holder of an operator accreditation.

68 Riding in towed motor vehicles

- (1) This section applies if—
 - (a) a motor vehicle—
 - (i) is damaged in an incident in a regulated area; or
 - (ii) is seized in a regulated area; or
 - (b) a motor vehicle is parked on private property in a regulated area and the owner of the vehicle has not expressly requested or directed the towing of the vehicle from the property.
- (2) The holder of a driver accreditation must not operate a tow truck to tow the motor vehicle from the scene of the incident, place of seizure or private property if a person is in the vehicle while the vehicle is being towed.

Maximum penalty—60 penalty units.

- (3) In this section—
operate does not include offer to operate.

69 Preventing damage to towed motor vehicles

- (1) This section applies if the holder of a driver accreditation operates, or assists with the operation of, a tow truck to carry out regulated towing in relation to a motor vehicle.

- (2) The holder of the driver accreditation must ensure all reasonable precautions are taken to prevent damage to the motor vehicle while the regulated towing is being carried out.

Maximum penalty—50 penalty units.

- (3) In this section, a reference to damage to a motor vehicle includes damage to or the loss of movable property in the vehicle.

Division 4 Offence relating to holders of assistant accreditations

70 Preventing damage to towed motor vehicles

- (1) This section applies if the holder of an assistant accreditation operates, or assists with the operation of, a tow truck to carry out regulated towing in relation to a motor vehicle.

- (2) The holder of the assistant accreditation must ensure all reasonable precautions are taken to prevent damage to the motor vehicle while the regulated towing is being carried out.

Maximum penalty—50 penalty units.

- (3) In this section, a reference to damage to a motor vehicle includes damage to or the loss of movable property in the vehicle.

Division 5 Notification of particular matters

71 Definitions for division

In this division—

dealt with, in relation to an infringement notice, means—

- (a) dealt with in a way mentioned in the *State Penalties Enforcement Act 1999*, section 22; or

(b) withdrawn or cancelled under that Act.

notifiable offence, for an accreditation, means an offence against any of the following—

- (a) this Act or the repealed Act;
- (b) the *Drugs Misuse Act 1986*;
- (c) the Heavy Vehicle National Law (Queensland);
- (d) the *Police Powers and Responsibilities Act 2000*, section 754;
- (e) the *Weapons Act 1990*;
- (f) a provision of the Criminal Code stated in schedule 1, part 1;
- (g) for an operator accreditation—a provision of the Criminal Code stated in schedule 1, part 2;
- (h) a law of another jurisdiction, including a jurisdiction outside Australia, that substantially corresponds to a law or provision mentioned in—
 - (i) paragraphs (a) to (f); or
 - (ii) for an operator accreditation—paragraph (g).

72 Requirement to notify of new executive officers or partners—holders of operator accreditations

- (1) The holder of an operator accreditation must give the chief executive notice of the following events within 14 days after the day the event happens—
 - (a) if the holder is a corporation—a new executive officer of the corporation is appointed;
 - (b) if the holder is a partnership—a new partner joins the partnership.

Maximum penalty—20 penalty units.

- (2) The notice must be—

- (a) in the approved form; and
- (b) accompanied by the fee prescribed by regulation.

73 Requirement to notify chief executive of particular matters—applicants for accreditations

- (1) This section applies if—
 - (a) a person applies for an accreditation under part 2, division 2; and
 - (b) before the application is decided, any of the following persons (each a *relevant person*) is charged with, or served with an infringement notice for, a notifiable offence for the accreditation—
 - (i) the applicant;
 - (ii) if the applicant is a corporation—an executive officer of the corporation;
 - (iii) if the applicant is a partnership—a partner in the partnership.

- (2) The applicant must, as soon as practicable but no later than 14 days after the day the relevant person is charged or served with the infringement notice, give the chief executive notice of the charge or infringement notice.

Maximum penalty—20 penalty units.

- (3) Also, the applicant must, as soon as practicable but no later than 14 days after the day the charge or infringement notice is dealt with, give the chief executive notice of the following matters—
 - (a) for a charge—the outcome of the charge;
 - (b) for an infringement notice—how the infringement notice has been dealt with.

Maximum penalty—20 penalty units.

- (4) The applicant does not commit an offence against subsection (2) or (3) if the applicant has a reasonable excuse.

- (5) Also, the applicant does not commit an offence against subsection (2) or (3) if, before the end of the period mentioned in the subsection—
- (a) the application is withdrawn; or
 - (b) if subsection (1)(b)(ii) or (iii) applies—
 - (i) the relevant person stops being an executive officer of the corporation or a partner in the partnership; and
 - (ii) the applicant gives the chief executive notice of the day the relevant person stopped being an executive officer of the corporation or a partner in the partnership.

74 Requirement to notify chief executive of particular matters—holders of accreditations

- (1) This section applies to the holder of an accreditation if any of the following persons (each a *relevant person*) is charged with, or served with an infringement notice for, a notifiable offence for the accreditation—
- (a) the holder;
 - (b) if the holder is a corporation—an executive officer of the corporation;
 - (c) if the holder is a partnership—a partner in the partnership.
- (2) The holder of the accreditation must, as soon as practicable but no later than 14 days after the day the relevant person is charged or served with the infringement notice, give the chief executive notice of the charge or infringement notice.

Maximum penalty—20 penalty units.

- (3) Also, the holder of the accreditation must, as soon as practicable but no later than 14 days after the day the charge or infringement notice is dealt with, give the chief executive notice of the following matters—

- (a) for a charge—the outcome of the charge;
- (b) for an infringement notice—how the infringement notice has been dealt with.

Maximum penalty—20 penalty units.

- (4) The holder of the accreditation does not commit an offence against subsection (2) or (3) if the holder has a reasonable excuse.
- (5) Also, the holder of the accreditation does not commit an offence against subsection (2) or (3) if, before the end of the period mentioned in the subsection—
 - (a) the accreditation is surrendered or otherwise stops having effect; or
 - (b) if subsection (1)(b) or (c) applies—
 - (i) the relevant person stops being an executive officer of the corporation or a partner in the partnership; and
 - (ii) the holder gives the chief executive notice of the day the relevant person stopped being an executive officer of the corporation or a partner in the partnership.

75 Requirement to notify executive officers of particular matters

- (1) This section applies if—
 - (a) a corporation applies for an operator accreditation under part 2, division 2; and
 - (b) before the application is decided, a person who is an executive officer of the corporation is charged with, or served with an infringement notice for, a notifiable offence for the accreditation.
- (2) This section also applies if a person, who is an executive officer of a corporation that is the holder of an operator

accreditation, is charged with, or served with an infringement notice for, a notifiable offence for the accreditation.

- (3) The person must, as soon as practicable but no later than 14 days after the day the person is charged or served with the infringement notice, give each of the other executive officers of the corporation notice of the charge or infringement notice.

Maximum penalty—20 penalty units.

- (4) Also, the person must, as soon as practicable but no later than 14 days after the day the charge or infringement notice is dealt with, give each of the other executive officers of the corporation notice of the following matters—

- (a) for a charge—the outcome of the charge;
- (b) for an infringement notice—how the infringement notice has been dealt with.

Maximum penalty—20 penalty units.

- (5) A person does not commit an offence against subsection (3) or (4) if—

- (a) the person has a reasonable excuse; or
- (b) before the end of the period mentioned in the subsection, the person—
 - (i) stops being an executive officer of the corporation; and
 - (ii) gives the chief executive notice of the day the person stopped being an executive officer of the corporation.

76 Requirement to notify partners in partnerships of particular matters

- (1) This section applies if—
- (a) a partnership applies for an operator accreditation under part 2, division 2; and

- (b) before the application is decided, a person who is a partner in the partnership is charged with, or served with an infringement notice for, a notifiable offence for the accreditation.
- (2) This section also applies if a person, who is a partner in a partnership that is the holder of an operator accreditation, is charged with, or served with an infringement notice for, a notifiable offence for the accreditation.
- (3) The person must, as soon as practicable but no later than 14 days after the day the person is charged or served with the infringement notice, give each of the other partners in the partnership notice of the charge or infringement notice.

Maximum penalty—20 penalty units.

- (4) Also, the person must, as soon as practicable but no later than 14 days after the day the charge or infringement notice is dealt with, give each of the other partners in the partnership notice of the following matters—
 - (a) for a charge—the outcome of the charge;
 - (b) for an infringement notice—how the infringement notice has been dealt with.

Maximum penalty—20 penalty units.

- (5) The person does not commit an offence against subsection (3) or (4) if—
 - (a) the person has a reasonable excuse; or
 - (b) before the end of the period mentioned in the subsection, the person—
 - (i) stops being a partner in the partnership; and
 - (ii) gives the chief executive notice of the day the person stopped being a partner in the partnership.

Division 6 Other offences

77 Holding more than 1 driver accreditation or assistant accreditation

- (1) A person must not hold more than 1 driver accreditation at the same time.

Maximum penalty—40 penalty units.

- (2) A person must not hold more than 1 assistant accreditation at the same time.

Maximum penalty—40 penalty units.

78 Obtaining or attempting to obtain towing authorities

A person must not obtain, or attempt to obtain, a towing authority unless the person is the holder of a driver accreditation.

Maximum penalty—60 penalty units.

79 Obtaining or attempting to obtain private property towing consents

A person must not obtain, or attempt to obtain, a private property towing consent unless the person is the holder of an operator accreditation.

Maximum penalty—60 penalty units.

80 False or misleading information

- (1) A person must not, in relation to the administration of this Act, give an official information the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.

- (2) However, subsection (1) does not apply to a person who gives information in a document if, when giving the information, the person—
 - (a) tells the official, to the best of the person’s ability, how the document is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.
- (3) In this section—
official means the chief executive or an authorised officer.

81 Offences of dishonesty and coercion

A person must not—

- (a) forge any of the following documents with intent to defraud—
 - (i) an accreditation document or part of an accreditation document;
 - (ii) a private property towing consent;
 - (iii) a towing authority; or
- (b) knowingly use an accreditation fraudulently or knowingly direct someone else to use an accreditation fraudulently; or
- (c) do any of the following things with intent to defraud—
 - (i) falsely represent or advertise that the person is the holder of an accreditation;
 - (ii) allow someone else to falsely represent or advertise that the person is the holder of an accreditation;
 - (iii) falsely represent to someone else that a vehicle is an authorised tow truck for an operator accreditation; or

- (d) use force or undue influence to obtain or attempt to obtain a towing authority.

Maximum penalty—60 penalty units.

Part 5 Investigation and enforcement

Note—

See also the *Transport Operations (Road Use Management) Act 1995*, chapter 3, part 3.

Division 1 Preliminary

82 Definitions for part

In this part—

occupier, of a place, includes the following persons—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

of, a place, includes at or on the place.

owner, of a thing that has been seized under this part, includes a person who would be entitled to possession of the thing had it not been seized.

place—

- (a) includes the following—
 - (i) premises;
 - (ii) vacant land;

- (iii) a place in Queensland waters;
 - (iv) a place held under more than 1 title or by more than 1 owner;
 - (v) the land or water on or in which a building or other structure, or a group of buildings or other structures, is situated; but
- (b) does not include a vehicle under the *Transport Operations (Road Use Management) Act 1995*.

premises includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a caravan; and
- (d) a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (e) a vessel under the *Transport Operations (Road Use Management) Act 1995*; and
- (f) a cave or tent; and
- (g) premises held under more than 1 title or by more than 1 owner.

public place means a place, or part of a place—

- (a) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

Examples of places that may be a public place under paragraph (a)—

a beach, park or road

- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

Examples of places that may be a public place under paragraph (b)—

a saleyard or showground

83 References to exercise of powers

A reference in this part to the exercise of a power by an authorised officer, other than a reference to the exercise of a specific power, is a reference to the exercise of all or any of an authorised officer's powers under this part or a warrant, to the extent the powers are relevant.

84 References to document includes reproductions from electronic document

A reference in this part to a document includes an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of anything else.

Division 2 Entry of places by authorised officers

Subdivision 1 Power to enter

85 General power to enter places

- (1) An authorised officer may enter a place if—
 - (a) an occupier at the place consents under subdivision 2 to the entry and section 88 has been complied with for the occupier; or
 - (b) the place is a public place and the entry is made when the place is open to the public; or
 - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 95 has been complied with for the occupier; or

- (d) the place is a place of business stated in an operator accreditation, or an authorised holding yard for an operator accreditation, and the entry is made when the place is open for carrying on business or otherwise open for entry.
- (2) However, an authorised officer may not, under subsection (1)(d), enter a part of a place mentioned in the subsection at which a person resides.
- (3) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (4) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

Subdivision 2 Entry by consent

86 Application of subdivision

This subdivision applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 85(1)(a).

87 Incidental entry to ask for access

For the purpose of asking the occupier for the consent, an authorised officer may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter a part of the place the authorised officer considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

88 Matters authorised officer must tell occupier

Before asking the occupier for the consent, the authorised officer must—

- (a) explain to the occupier the purpose of the entry, including the powers intended to be exercised; and
- (b) tell the occupier that—
 - (i) the occupier is not required to consent; and
 - (ii) the consent may be given subject to conditions and may be withdrawn at any time.

89 Consent acknowledgement

- (1) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
 - (a) the purpose of the entry, including the powers intended to be exercised; and
 - (b) that the occupier has been given an explanation about the purpose of the entry, including the powers intended to be exercised; and
 - (c) that the occupier has been told the matters mentioned in section 88(b); and
 - (d) that the occupier gives the authorised officer or another authorised officer consent to enter the place and exercise the powers; and
 - (e) the day and time the consent was given; and
 - (f) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.
- (4) If—
 - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and

- (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence; the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Subdivision 3 Entry under warrant

90 Applications for warrants

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

91 Issue of warrants

- (1) The magistrate may issue the warrant for the place only if satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.
- (2) The warrant must state—
 - (a) the place to which the warrant applies; and
 - (b) that a stated authorised officer or any authorised officer may with necessary and reasonable help and force—

- (i) enter the place and any other place necessary for entry to the place; and
- (ii) exercise the authorised officer's powers; and
- (c) particulars of the offence that the magistrate considers appropriate; and
- (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
- (e) the evidence that may be seized under the warrant; and
- (f) the hours of the day or night when the place may be entered; and
- (g) the magistrate's name; and
- (h) the day and time of the warrant's issue; and
- (i) the day, within 7 days after the warrant's issue, the warrant ends.

92 Electronic applications

- (1) An application under section 90 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised officer considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the officer's remote location.
- (2) The application—
 - (a) may not be made before the authorised officer prepares the written application under section 90(2); but
 - (b) may be made before the written application is sworn.

93 Additional procedure if electronic application

- (1) For an application made under section 92, the magistrate may issue the warrant (the *original warrant*) only if satisfied—
 - (a) it was necessary to make the application under section 92; and
 - (b) the way the application was made under section 92 was appropriate.
- (2) After the magistrate issues the original warrant—
 - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the officer; or
 - (b) otherwise—
 - (i) the magistrate must tell the authorised officer the information required to be stated in the warrant under section 91(2); and
 - (ii) the authorised officer must complete a form of warrant, including by writing on it the information mentioned in subparagraph (i).
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
 - (a) the written application complying with section 90(2) and (3); and
 - (b) if the authorised officer completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) Subsection (6) applies if—

- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
- (b) the original warrant is not produced in evidence.
- (6) Despite subsection (3), the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (7) This section does not limit section 90.

94 Defects in relation to warrants

- (1) A warrant is not invalidated by a defect in the warrant or compliance with this subdivision, unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
warrant includes a duplicate warrant mentioned in section 93(3).

95 Entry procedure

- (1) This section applies if an authorised officer is intending to enter a place under a warrant issued under this subdivision.
- (2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—
 - (a) identify themselves to a person who is an occupier of the place and is present, including, for an authorised officer other than a police officer, producing to the person the officer's identity card or another document evidencing the officer's appointment;
 - (b) give the person a copy of the warrant;
 - (c) tell the person the officer is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the officer immediate entry to the place without using force.

- (3) However, the authorised officer need not comply with subsection (2) if the officer reasonably believes that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.

- (4) In this section—

identity card means an identity card issued under the *Transport Operations (Road Use Management) Act 1995*, section 24.

warrant includes a duplicate warrant mentioned in section 93(3).

Division 3 General powers of authorised officers after entering places

96 Application of division

- (1) The powers under this division may be exercised if an authorised officer enters a place under section 85(1)(a), (c) or (d).
- (2) However, if the authorised officer enters a place under section 85(1)(a) or (c), the powers under this division are subject to any conditions of the consent or terms of the warrant.

97 General powers

- (1) The authorised officer may do any of the following—
- (a) search any part of the place;
 - (b) inspect, examine or film any part of the place or anything at the place;
 - (c) take for examination a thing, or a sample of or from a thing, at the place;

- (d) take an extract from, or copy, a document at the place, or take the document to another place to copy;
 - (e) produce an image or writing from an electronic document at the place or, to the extent that is not practicable, take either or both of the following to another place to produce an image or writing from an electronic document—
 - (i) a thing containing an electronic document;
 - (ii) a thing that can be used to produce an image or writing from an electronic document;
 - (f) take to, into or onto the place and use any person, equipment and materials the authorised officer requires for exercising the officer's powers under this part;
 - (g) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The authorised officer may do anything necessary to exercise a power under subsection (1).
- (3) If the authorised officer takes a document from the place to copy it, the authorised officer must copy the document and return it to the place as soon as practicable.
- (4) If the authorised officer takes a thing from the place to produce an image or writing from an electronic document, the authorised officer must produce the image or writing from the document and return the thing to the place as soon as practicable.
- (5) In this section—
- examine*** includes analyse, test, account for, measure, weigh, grade, gauge and identify.
- film*** includes photograph, videotape and record an image in another way.
- inspect***, a thing, includes open the thing and examine its contents.

98 Power to require reasonable help

- (1) The authorised officer may require an occupier of the place or a person at the place to give the officer reasonable help to exercise a power under section 97, including, for example, to produce a document or to give information.
- (2) When making a requirement under subsection (1), the authorised officer must give the person an offence warning for the requirement.

99 Offence to contravene help requirement

- (1) A person of whom a requirement is made under section 98(1) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a requirement under section 98(1) if complying might tend to incriminate the individual or expose the individual to a penalty.

Division 4 Seizure by authorised officers and forfeiture

Subdivision 1 Power to seize

100 Seizing evidence at places that may be entered without consent or warrant

An authorised officer who enters a place the officer may enter under this part without the consent of an occupier of the place and without a warrant may seize a thing at the place if the officer reasonably believes—

- (a) the thing is evidence of an offence against this Act; and

- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to commit the offence.

101 Seizing evidence at places that may be entered only with consent or warrant

- (1) This section applies if—
 - (a) an authorised officer is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
 - (b) the authorised officer enters the place after obtaining the consent or under a warrant.
- (2) If the authorised officer enters the place with the occupier's consent, the officer may seize a thing at the place only if—
 - (a) the officer reasonably believes the thing is evidence of an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the authorised officer enters the place under a warrant, the officer may seize the evidence for which the warrant was issued.
- (4) The authorised officer may also seize anything else at the place if the officer reasonably believes—
 - (a) the thing is evidence of an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to commit the offence.

102 Seizure of property subject to security

- (1) An authorised officer may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person (the *claimant*).

- (2) However, the seizure does not affect the claimant's claim to the lien or other security against a person other than—
 - (a) the authorised officer; or
 - (b) a person acting under the direction or authority of the authorised officer.

Subdivision 2 Powers to support seizure

103 Power to secure seized things

- (1) Having seized a thing under this division, an authorised officer may—
 - (a) leave the thing at the place where it was seized and take reasonable action to restrict access to it; or
 - (b) move the thing from the place where it was seized.
- (2) For subsection (1)(a), the authorised officer may, for example—
 - (a) seal the thing, or the entrance to the place where the thing was seized, and mark the thing or place to show access to the thing or place is restricted; or
 - (b) for equipment—make it inoperable; or
Example—
make the equipment inoperable by dismantling it or removing a component without which the equipment can not be used
 - (c) require a person the authorised officer reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an authorised officer could do under subsection (1)(a).

104 Offence to contravene seizure requirement

A person must comply with a requirement made of the person under section 103(2)(c) unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

105 Offence to interfere

- (1) If access to a seized thing is restricted under section 103, a person must not tamper with the thing, or with anything used to restrict access to the thing, without—
 - (a) an authorised officer's approval; or
 - (b) a reasonable excuse.

Maximum penalty—60 penalty units.

- (2) If access to a place is restricted under section 103, a person must not enter the place in contravention of the restriction, or tamper with anything used to restrict access to the place, without—
 - (a) an authorised officer's approval; or
 - (b) a reasonable excuse.

Maximum penalty—60 penalty units.

Subdivision 3 Safeguards for seized things

106 Receipt for seized things

- (1) This section applies if an authorised officer seizes anything under this division unless—
 - (a) the authorised officer reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned; or

- (b) because of the condition, nature and value of the thing, it would be unreasonable to require the authorised officer to comply with this section.
- (2) The authorised officer must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized a receipt for the thing that generally describes the thing and its condition.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt may be given by leaving the receipt in a conspicuous position and in a reasonably secure way at the place where the thing is seized.
- (4) The receipt may relate to more than 1 seized thing.
- (5) The authorised officer may delay giving the receipt if the officer reasonably suspects giving the receipt may frustrate or otherwise hinder an investigation by the officer under this part.
- (6) However, the delay may be only for so long as—
 - (a) the authorised officer continues to have the reasonable suspicion; and
 - (b) the authorised officer, or a person acting under the direction of the authorised officer, remains in the vicinity of the place where the thing was seized to keep the thing or place under observation.

107 Access to seized things

- (1) Until a seized thing is forfeited or returned, the chief executive must allow an owner of the thing—
 - (a) to inspect it at any reasonable time and from time to time; and
 - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

108 Return of seized things

- (1) This section applies if a seized thing is not forfeited under subdivision 4.
- (2) The chief executive must return the thing to its owner—
 - (a) no later than 6 months after the day the thing is seized; or
 - (b) if a proceeding for an offence against this Act involving the thing is started within 6 months after the day the thing is seized—as soon as practicable after the proceeding, or any appeal from the proceeding, ends.
- (3) Despite subsection (2), the chief executive must return the thing to its owner as soon as the chief executive stops being satisfied it is necessary to retain the thing as evidence of an offence against this Act.
- (4) Nothing in this section affects a lien or other security over the seized thing.

Subdivision 4 Forfeiture

109 Forfeiture by chief executive decision

- (1) The chief executive may decide a seized thing is forfeited to the State if the chief executive—
 - (a) after making reasonable inquiries, can not find an owner; or
 - (b) after making reasonable efforts, can not return the thing to an owner; or
 - (c) reasonably believes it is necessary to keep the thing to prevent the thing being used to commit the offence for which it was seized.
- (2) For subsections (1)(a) and (b), regard must be had to the thing's condition, nature and value in deciding what inquiries

or efforts, including the period over which they are made, are reasonable.

110 Information notice about forfeiture decision

- (1) If the chief executive decides under section 109 that a thing is forfeited, the chief executive must, as soon as practicable, give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) If the decision was made under section 109(1)(a) or (b), the information notice may be given by leaving the notice at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply for a stay of the decision if the former owner applies for a review of the decision.
- (4) However, this section does not apply if—
 - (a) the decision was made under section 109(1)(a) or (b); and
 - (b) the place where the thing was seized is—
 - (i) a public place; or
 - (ii) a place where the notice is unlikely to be read by the former owner.

Subdivision 5 Dealing with property forfeited to State

111 When things become property of the State

A thing becomes the property of the State if the thing is forfeited to the State under section 109(1).

112 How property may be dealt with

- (1) This section applies if, under section 111, a thing becomes the property of the State.
- (2) The chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying the thing or giving it away.
- (3) The chief executive must not deal with the thing in a way that could prejudice the outcome of a review of, or an appeal against, the forfeiture under this part.
- (4) If the chief executive sells the thing, the chief executive must, after deducting the costs of the sale, make reasonable efforts to return the proceeds of the sale to the former owner of the thing.

Division 5 Other information-obtaining powers of authorised officers

113 Power to require personal details

- (1) This section applies if an authorised officer—
 - (a) finds a person committing an offence against this Act; or
 - (b) finds a person in circumstances that lead the authorised officer to reasonably suspect the person has just committed an offence against this Act; or
 - (c) has information that leads the authorised officer to reasonably suspect a person has just committed an offence against this Act.
- (2) The authorised officer may require the person to state the person's name and residential address.
- (3) The authorised officer may also require the person to give evidence of the correctness of the stated name or address if the officer reasonably suspects the stated name or address is false.

- (4) When making a requirement under this section, the authorised officer must give the person an offence warning for the requirement.

114 Offence to contravene personal details requirement

- (1) A person of whom a requirement is made under section 113 must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (2) A person may not be convicted of an offence against subsection (1) unless the person is convicted of the offence in relation to which the requirement under section 113 was made.

115 Power to require production of documents or certification of copies

- (1) An authorised officer may require a person to make available for inspection by an authorised officer, or to produce to the authorised officer for inspection, at a reasonable time and place nominated by the authorised officer—
- (a) a document given to the person under this Act; or
 - (b) a document required to be kept by the person under this Act; or
 - (c) if a document mentioned in paragraph (a) or (b), or information required to be kept by the person under this Act, is kept, stored or recorded electronically—a document that is a clear written reproduction of the document or information that is kept, stored or recorded electronically.
- (2) The authorised officer may copy the document or an entry in the document.
- (3) If the authorised officer copies the document, or an entry in the document, the authorised officer may require the person

responsible for keeping the document to certify the copy as a true copy of the document or entry.

- (4) The authorised officer must not keep the document after copying the document or an entry in the document.
- (5) However, if a requirement is made of a person under subsection (3), the authorised officer may keep the document until the person complies with the requirement.

116 Offence to contravene production requirement

- (1) A person of whom a production requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a production requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) When making a production requirement, the authorised officer must give the person an offence warning for the requirement.
- (4) If a person fails to comply with a production requirement when the authorised officer has failed to give the person an offence warning for the requirement under subsection (3), the person may not be convicted of the offence against subsection (1).
- (5) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the production requirement.
- (6) In this section—

production requirement means a requirement under section 115(1).

117 Offence to contravene certification requirement

- (1) A person of whom a certification requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a certification requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) When making a certification requirement, the authorised officer must give the person an offence warning for the requirement.
- (4) If a person fails to comply with a certification requirement when the authorised officer has failed to give the person an offence warning under subsection (3), the person may not be convicted of the offence against subsection (1).
- (5) In this section—

certification requirement means a requirement under section 115(3).

Division 6 Damage

118 Duty to avoid inconvenience and minimise damage

In exercising a power, an authorised officer must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

Note—

See also section 120.

119 Notice of damage

- (1) This section applies if—

- (a) an authorised officer damages something when exercising, or purporting to exercise, a power; or
 - (b) a person (the *assistant*) acting under the direction or authority of an authorised officer damages something.
- (2) However, this section does not apply to damage the authorised officer considers is trivial or if the authorised officer reasonably believes—
 - (a) there is no-one apparently in possession of the thing; or
 - (b) the thing has been abandoned.
- (3) The authorised officer must, as soon as possible, give notice of the damage to a person who appears to the authorised officer to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the authorised officer must—
 - (a) leave the notice at the place where the damage happened; and
 - (b) ensure the notice is left in a conspicuous position and in a reasonably secure way.
- (5) The authorised officer may delay complying with subsection (3) or (4) if the officer reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the authorised officer's functions.
- (6) The delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place where the thing was damaged to keep the thing or place under observation.
- (7) If the authorised officer believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised officer or the assistant, the authorised officer may state the belief in the notice.
- (8) The notice must state—
 - (a) particulars of the damage; and

- (b) that the person who suffered the damage may claim compensation under section 120.

Division 7 Compensation

120 Compensation

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised officer, including a loss arising from compliance with a requirement made of the person under division 4 or 5.
- (2) The compensation may be claimed and ordered in a proceeding—
 - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
 - (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.
- (3) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) Section 118 does not provide for a statutory right of compensation other than as provided by this section.
- (5) In this section—
loss includes costs and damage.

Division 8 Other offences relating to authorised officers

121 Obstructing authorised officers

- (1) A person must not obstruct an authorised officer exercising a power, or someone helping an authorised officer exercising a power, unless the person has a reasonable excuse.

Maximum penalty—80 penalty units.

- (2) In this section—

obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

122 Threatening authorised officers

A person must not threaten an authorised officer exercising a power or someone helping an authorised officer exercising a power.

Maximum penalty—80 penalty units.

Part 6 Review of decisions and legal proceedings

Division 1 Review of decisions

123 Definitions for division

In this division—

internal review, of an original decision, see section 124(1).

original decision means—

- (a) a decision mentioned in schedule 2; or
- (b) another decision prescribed by regulation.

124 Applying for internal review

- (1) An affected person for an original decision may apply to the chief executive for a review of the decision (an *internal review*).
- (2) If the affected person has not been given an information notice for the original decision, the affected person may ask the chief executive for an information notice for the decision.
- (3) A failure by the chief executive to give the affected person an information notice for the original decision does not limit or otherwise affect the person's right to apply for an internal review of the decision.
- (4) The application for internal review must be made to the chief executive within—
 - (a) for a person who has been given an information notice for the original decision—28 days after the day the person is given the notice; or
 - (b) for a person who has not been given an information notice for the original decision—28 days after the day the person becomes aware of the decision.
- (5) The chief executive may, at any time, extend the period within which the application may be made.
- (6) The application does not affect the operation of the original decision or prevent the decision being implemented.

Note—

The *Transport Planning and Coordination Act 1994*, section 32, as applied under subsection (7), provides for a stay of the original decision.

- (7) The *Transport Planning and Coordination Act 1994*, part 5, division 2, other than section 31(1) to (3) of that Act, applies in relation to the internal review.
- (8) In this section—

affected person, in relation to an original decision, means a person who must be given an information notice for the decision.

125 Applying for external review

- (1) This section applies if—
 - (a) a person applies for an internal review of an original decision; and
 - (b) the decision on the application made, or taken to have been made, under the *Transport Planning and Coordination Act 1994*, section 34 as applied under section 124 (the *internal review decision*) is not the decision sought by the person.
- (2) The person may apply to QCAT, as provided under the QCAT Act, for a review of the internal review decision.

Note—

The QCAT Act, section 22(3) enables QCAT to stay the operation of the internal review decision, either on application by a person or on its own initiative.

Division 2 Evidence

126 Application of division

This division applies in relation to a proceeding under this Act.

Note—

See also the *Transport Operations (Road Use Management) Act 1995*, chapter 5, part 8.

127 Evidentiary certificates

- (1) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—
 - (a) a stated document is 1 of the following things made, given, issued or kept under this Act—
 - (i) an approval or decision;

- (ii) a notice, direction or requirement;
 - (iii) an accreditation document or part of an accreditation document;
 - (iv) a record;
- (b) a stated document is another document kept under this Act;
- (c) a stated document is a document given to the chief executive under this Act;
- (d) a stated document is a copy of, extract from or part of a thing mentioned in paragraph (a), (b) or (c);
- (e) on a stated day or for a stated period an accreditation—
 - (i) was or was not in force; or
 - (ii) was or was not subject to a stated condition.
- (2) A certificate purporting to be signed by the chief executive stating that on a stated day, or for a stated period, a record kept by the chief executive under section 137 did or did not include stated particulars about a matter mentioned in the section is evidence of the stated matter and, in the absence of evidence to the contrary, is conclusive evidence of the stated matter.
- (3) A certificate purporting to be signed by the police commissioner stating that the commissioner received, or did not receive, a notice under section 61 about the carrying out of private property towing is evidence of the matter.

128 Other evidentiary provisions

- (1) In a complaint starting the proceeding, an allegation of the following matters is evidence of the matter and, in the absence of evidence to the contrary, is conclusive evidence of the matter—
 - (a) a person is or is not, or was or was not at a time or on a day stated in the complaint, the owner of a motor vehicle;

- (b) a thing is or was a motor vehicle of a particular class or description;
 - (c) a place is or was—
 - (i) a road or part of a road; or
 - (ii) a relevant off-street regulated parking area or part of a relevant off-street regulated parking area; or
 - (iii) a private property or part of a private property;
 - (d) a person was an occupier of private property or another place.
- (2) If the proceeding is a review of or appeal against a decision made by the chief executive, a document purporting to be a report given to the chief executive for this Act, in relation to a relevant person, that is relevant to the proceeding is admissible as evidence of the matters in the document.
- (3) In this section—
- relevant person*** means—
- (a) a person who applies for an accreditation under part 2, division 2; or
 - (b) a person who is the holder of an accreditation; or
 - (c) an executive officer of a corporation that applies for an accreditation under part 2, division 2 or is the holder of an accreditation; or
 - (d) a partner in a partnership that applies for an accreditation under part 2, division 2 or is the holder of an accreditation.

Division 3 Proceedings

129 Proceedings for offences

- (1) A proceeding for an offence against this Act is to be heard and decided summarily.

- (2) The proceeding must start within the later of—
 - (a) 1 year after the offence is committed; or
 - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.
- (3) A statement in a complaint for an offence against this Act that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

Part 7 Miscellaneous

Division 1 Exemption decisions

130 Making exemption decisions

- (1) The chief executive may, on application by a person who has applied for or is the holder of an operator accreditation, decide that section 56(1)(b) does not apply in relation to the accreditation.
- (2) A decision mentioned in subsection (1) is an *exemption decision*.

131 Applications for exemption decisions

- (1) An exemption application must—
 - (a) be made in the way prescribed by regulation; and
 - (b) state the reasons the proposed exemption decision is being sought; and
 - (c) include or be accompanied by the information prescribed by regulation.
- (2) Subsection (3) applies if—

- (a) the exemption application is made by a person who has applied for an operator accreditation; and
 - (b) the chief executive decides to refuse the application for the operator accreditation.
- (3) The exemption application is taken to be withdrawn.

132 Matters to be considered in deciding exemption applications

In deciding the exemption application, the chief executive—

- (a) must consider whether compliance with section 56(1)(b) is unnecessary or impracticable in the particular circumstances; and
- (b) may consider any other matter the chief executive considers relevant.

133 Notices of decision

- (1) If the chief executive makes the exemption decision, the chief executive must give the applicant notice of the decision.
- (2) The notice—
 - (a) must state the period the exemption decision has effect; and
 - (b) may state that the holder of the operator accreditation must comply with an alternative requirement stated in the notice while the decision is in effect (an ***alternative requirement***).
- (3) If the notice under subsection (1) states an alternative requirement, the notice must be an information notice for the decision.
- (4) If the chief executive decides to refuse the exemption application, the chief executive must give the applicant an information notice for the decision.

134 Period of exemption decisions

An exemption decision—

- (a) takes effect on the day notice of the decision is given or a later day stated in the notice; and
- (b) has effect for the period stated in the notice of the decision.

135 Compliance with alternative requirements

- (1) This section applies if notice of an exemption decision given under section 133 for an operator accreditation states an alternative requirement.
- (2) The holder of the operator accreditation must comply with the alternative requirement while the exemption decision is in effect.

Maximum penalty—80 penalty units.

Division 2 Partnerships

136 How Act applies to partnerships

- (1) Subject to this section, this Act applies in relation to a partnership as if the partnership were a person.
- (2) For sections 18(3), 25(3), 38 and 44(1), a partnership is not an appropriate person to hold or continue to hold an accreditation if a partner in the partnership is not an appropriate person to hold or continue to hold the accreditation.
- (3) An obligation or liability that, but for this subsection, would be imposed under this Act on a partnership is imposed on each partner in the partnership, but may be discharged by any of the partners.
- (4) An offence against a provision of this Act that, but for this subsection, would be committed by a partnership is taken to

have been committed by each of the partners in the partnership.

Maximum penalty—the penalty for a contravention of the provision by an individual.

- (5) However, it is a defence for a partner to prove—
 - (a) if the partner was in a position to influence the conduct of the partnership in relation to the offence—the partner took reasonable steps to ensure the partnership complied with the provision; or
 - (b) the partner was not in a position to influence the conduct of the partnership in relation to the offence.
- (6) This section does not affect the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is a partner in a partnership, for an offence against this Act.

Division 3 Records about accreditations

137 Chief executive must keep records

The chief executive must keep the records the chief executive considers appropriate about the following in the way the chief executive considers appropriate—

- (a) applications made under part 2, including decisions on the applications;
- (b) the surrender of accreditations under part 2, division 5;
- (c) the amendment, suspension and cancellation of accreditations under part 3;
- (d) exemption applications and exemption decisions made under division 1.

Division 4 Criminal history

138 Chief executive may obtain particular information from police commissioner

- (1) The chief executive may ask the police commissioner for a written report about a person's criminal history, and whether the person is, or has been, the subject of a control order or registered corresponding control order, to help in deciding whether—
 - (a) the person is an appropriate person to hold or continue to hold an accreditation; or
 - (b) a corporation of which the person is an executive officer is an appropriate person to hold or continue to hold an accreditation.
- (2) The chief executive's request may include the following information—
 - (a) the person's name and any other name the chief executive believes the person may use or may have used;
 - (b) the person's date and place of birth;
 - (c) any other information prescribed by regulation.
- (3) The police commissioner must comply with the request.
- (4) However, the report is required to contain only criminal history in the police commissioner's possession or to which the police commissioner has access.
- (5) If the person is, or has been, the subject of a control order or registered corresponding control order, the report must—
 - (a) state the details of the order; or
 - (b) be accompanied by a copy of the order.

139 Notice of change in criminal history

- (1) This section applies if—
 - (a) the police commissioner reasonably suspects a person is—
 - (i) the holder of an accreditation; or
 - (ii) an executive officer of a corporation that is the holder of an operator accreditation; or
 - (iii) a partner in a partnership that is the holder of an operator accreditation; and
 - (b) the person's criminal history changes.
- (2) The police commissioner may notify the chief executive that the person's criminal history has changed.
- (3) The notification must state the following—
 - (a) the person's name and any other name the police commissioner believes the person may use or may have used;
 - (b) the person's date and place of birth;
 - (c) whether the change is—
 - (i) a charge made against the person for an offence; or
 - (ii) a conviction of the person;
 - (d) a brief description of the nature of the offence giving rise to the charge or conviction;
 - (e) any other information prescribed by regulation.
- (4) If the person is, or has been, the subject of a control order or registered corresponding control order, the notification must also—
 - (a) state the details of the order; or
 - (b) be accompanied by a copy of the order.
- (5) The chief executive may confirm the police commissioner's suspicions under subsection (1)(a).

- (6) For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.
- (7) In this section—
offence includes alleged offence.

Division 5 Disclosure of information about accreditations

140 Oral disclosure of information about accreditations

- (1) The chief executive may orally disclose information kept by the chief executive under this Act about an accreditation to the following persons—
 - (a) the holder of the accreditation;
 - (b) if the holder of the accreditation is a corporation—an executive officer of the corporation;
 - (c) if the holder of the accreditation is a partnership—a partner in the partnership.
- (2) However, the chief executive may disclose the information to the person only if satisfied of the person's identity.

Example—

The chief executive may be satisfied of a person's identity if the person correctly answers a series of questions, or produces a document, for identifying the person.

- (3) Also, if the information is confidential information about an individual, the chief executive must not disclose the information to a person other than the individual without the individual's written consent.

141 Written disclosure of information about accreditations to police commissioner

The chief executive may disclose to the police commissioner in writing information kept by the chief executive under this Act about an accreditation if the disclosure is for the purpose of a function of the commissioner or the Queensland Police Service.

142 Written disclosure of information about accreditations to other persons

- (1) The chief executive may, on application by a person, disclose to the person in writing information kept by the chief executive under this Act about an accreditation.
- (2) The application—
 - (a) must be in the approved form; and
 - (b) must be accompanied by the written consent of the holder of the accreditation; and
 - (c) may be made by electronic communication.
- (3) Subsection (2)(b) does not apply if the applicant is—
 - (a) the holder of the accreditation; or
 - (b) for an accreditation held by a corporation—an executive officer of the corporation; or
 - (c) for an accreditation held by a partnership—a partner in the partnership.
- (4) However, if the information is confidential information about an individual, the chief executive must not disclose the information to a person other than the individual without the individual's written consent.

143 Confirming validity of driver accreditations and assistant accreditations

- (1) This section applies if a person gives the chief executive, by electronic communication, the unique identification number stated on a driver accreditation or an assistant accreditation.
- (2) The chief executive may, by electronic communication, advise the person whether the driver accreditation or assistant accreditation is valid.
- (3) For this section, a driver accreditation or an assistant accreditation is valid if the accreditation is in effect and has not been suspended.

Division 6 Confidentiality and information sharing

144 Confidentiality

- (1) This section applies to a person who—
 - (a) is, or has been, any of the following persons performing functions under or relating to the administration of this Act—
 - (i) an authorised officer;
 - (ii) a public service employee;
 - (iii) a contractor of the department;
 - (iv) a person employed or otherwise engaged by a contractor of the department;
 - (v) another person prescribed by regulation; and
 - (b) in that capacity, has acquired or has access to confidential information about another person.
- (2) The person must not disclose the confidential information to anyone else, or use the information, other than under this section.

Maximum penalty—200 penalty units.

- (3) The person may disclose or use the confidential information—
 - (a) to the extent the disclosure or use is—
 - (i) necessary to perform the person’s functions under or relating to this Act; or
 - (ii) otherwise required or permitted under this Act or another law; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) in compliance with a lawful process requiring production of documents to, or giving evidence before, a court or tribunal.
- (4) However, subsection (3)(b) does not apply if the confidential information is criminal intelligence.
- (5) In this section—
disclose includes give access to.

145 Exchange of information

- (1) The chief executive may enter into an arrangement (an *information-sharing arrangement*) with the police commissioner for the purposes of sharing or exchanging information—
 - (a) held by the chief executive or the police commissioner; or
 - (b) to which the chief executive or the police commissioner has access.
- (2) An information-sharing arrangement may relate only to information that assists—
 - (a) the chief executive to perform the chief executive’s functions under this Act; or

- (b) the police commissioner to perform the police commissioner's functions.
- (3) Under an information-sharing arrangement, the chief executive and the police commissioner are, despite another Act or law, authorised to—
 - (a) ask for and receive information held by the other party to the arrangement or to which the other party has access; and
 - (b) disclose information to the other party.
- (4) The chief executive may use criminal intelligence given to the chief executive by the police commissioner under an information-sharing arrangement only for monitoring compliance with this Act.
- (5) In this section—

information does not include information given to the chief executive or police commissioner, or to which the chief executive or police commissioner has access, under the *Crime and Corruption Act 2001*.

Division 7 Giving of documents

146 Application of division

This division applies if a person is required or permitted under this Act to give a document (the *relevant document*) to another person (the *receiver*).

147 Giving of documents

- (1) The person may give the relevant document to the receiver by giving the receiver another document (a *communication*) stating that—
 - (a) the relevant document can be viewed on a stated website or other electronic medium; and

- (b) the receiver may ask the person for a copy of the relevant document.
- (2) Also, if the receiver has given the person a notice stating an electronic address for service, the person may give the relevant document to the receiver by sending to the electronic address—
 - (a) the relevant document; or
 - (b) a notice (also a **communication**) stating the relevant document can be viewed by opening a stated hyperlink.

Examples of an electronic address—

an email address, internet protocol address or digital mailbox address

- (3) For subsections (1) and (2)(b), the receiver is taken to have been given the relevant document only if, by accessing the website or other electronic medium, or opening the hyperlink, the receiver would have been able to view the relevant document—
 - (a) at the time the communication was given or sent (the **sending time**); and
 - (b) for a period after the sending time that, in the circumstances and having regard to the receiver's functions for the document, was reasonable to allow the receiver to—
 - (i) access the website or other electronic medium, or open the hyperlink; and
 - (ii) read or copy the relevant document.
- (4) Subsection (3) applies whether or not the receiver viewed the website or other electronic medium, or opened the hyperlink.
- (5) Subsection (6) applies if the receiver is given a communication under subsection (1) and asks the person for a copy of the relevant document in hard copy or electronic form.

- (6) The person must, as soon as practicable after the request is made, give the receiver a copy of the relevant document in the requested form.
- (7) This section does not limit the *Acts Interpretation Act 1954*, section 39 or the *Electronic Transactions (Queensland) Act 2001*.

148 Certificate of service

- (1) In a civil or criminal proceeding, a certificate of service in relation to a communication that states the following matters is evidence of those matters—
 - (a) the sending time for the communication;
 - (b) that, by accessing the website or other electronic medium, or opening the hyperlink, stated in the communication, the receiver would have been able to view the relevant document—
 - (i) at the sending time; and
 - (ii) for a stated period after that time.
- (2) In this section—

certificate of service, in relation to a communication, means a certificate that—

 - (a) is signed by the person who gave or sent the communication; and
 - (b) attaches a copy of the communication.

Division 8 Other provisions

149 Smartcard accreditations are property of the State

- (1) A smartcard accreditation is and remains the property of the State.

- (2) Subsection (1) applies even though an entity other than the State—
 - (a) has the right to use information that is on the smartcard accreditation or stored electronically on the smartcard accreditation; or
 - (b) has the right to have information stored on the smartcard accreditation.
- (3) The State is not legally liable for an act or omission relating to the keeping or use of a smartcard accreditation.

150 Approved forms

The chief executive may approve forms for use under this Act.

151 General regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may make provision about the following—
 - (a) the making of an application under part 2, including when the application is taken to have been withdrawn;
 - (b) the giving, renewal and amendment of accreditations, including—
 - (i) the form of an accreditation document; and
 - (ii) the information, codes and expressions that may be included in an accreditation document; and
 - (iii) the identification of the holder of an accreditation in an accreditation document;
 - (c) the replacement of accreditation documents;
 - (d) the obligations, duties and standards of conduct of persons who hold an accreditation;

- (e) the auditing by the chief executive of accreditation holders for compliance with this Act, including compliance with the conditions of an accreditation;
- (f) requirements in relation to the carrying out of regulated towing, including regulated towing that involves providing a tow to safety service;
- (g) obtaining and dealing with towing authorities;
- (h) requirements in relation to the storage and release of motor vehicles towed under an operator accreditation and movable property inside the vehicles, including requirements in relation to holding yards;
- (i) the making of an exemption application, including when an exemption application is taken to be withdrawn, and the revocation of exemption decisions;
- (j) the notification of a change of personal particulars, including notification of a change to the executive officers of a corporation or a change to a partnership;
- (k) the carrying, keeping, production, return and destruction of documents under this Act;
- (l) the damaging of documents under this Act;
- (m) the things for which a person may or must not impose a charge, and the maximum and minimum amounts for a charge;
- (n) the classification of tow trucks, and specifications and requirements for tow trucks, including requirements in relation to the disposal of an authorised tow truck for an operator accreditation;
- (o) the possession by a person of—
 - (i) someone else's accreditation document or a part of the accreditation document; or
 - (ii) a document purporting to be an accreditation document or part of an accreditation document;

- (p) obtaining or attempting to obtain a person's authority to repair a motor vehicle damaged in an incident in a regulated area while the vehicle is at the scene of the incident or being towed by a tow truck;
 - (q) the giving or receiving of consideration—
 - (i) for the purpose of enabling a person to obtain a towing authority for a motor vehicle; or
 - (ii) in exchange for information or advice for the purpose of enabling a person to obtain the work of carrying out private property towing;
 - (r) the giving of consideration to the holder of an accreditation, or the receipt of consideration by the holder of an accreditation, for the purpose of obtaining work or business for a person other than the holder.
- (3) Also, a regulation may—
- (a) prescribe fees payable under this Act and provide for the fees to be refunded or waived; and
 - (b) provide for a maximum penalty of 80 penalty units for a contravention of a regulation.
- (4) In this section—
- give*, in relation to consideration, includes agree or offer to give.
- receive*, in relation to consideration, includes agree or offer to receive.

152 Regulation about particular applications

- (1) Without limiting section 17(2), 24(2), 30(2), 131(1) or 151, a regulation may—
- (a) prescribe that an application made under this Act must be made in the way, and include or be accompanied by the information, stated in a notice made by the chief executive and published on the department's website; or

- (b) provide that the chief executive may ask for further information the chief executive reasonably needs to decide an application under this Act.
- (2) If the chief executive asks for further information in relation to an application under subsection (1)(b), the chief executive is not required to decide the application until the further information is received.
- (3) This section does not apply in relation to an application made under part 5 or 6 or section 142.
- (4) In this section—
department's website means a website, or part of a website—
 - (a) administered by the department; and
 - (b) with a URL that contains qld.gov.au.

153 Regulation about accreditation documents

- (1) Without limiting section 151, a regulation may provide for the following—
 - (a) an accreditation document for a driver accreditation or an assistant accreditation to be in the form, or partly in the form, of a card, or something similar, approved by the chief executive and on which information may be stored electronically;
 - (b) a PIN to be used by the holder of a driver accreditation or an assistant accreditation as a security measure to protect information stored electronically on a smartcard accreditation.
- (2) Also, without limiting subsection (1) or section 151, a regulation may provide that—
 - (a) a person's accreditation document for a driver accreditation or an assistant accreditation may include information about another transport authority held by the person under a prescribed transport Act, if allowed under that Act; or

- (b) information about a driver accreditation or an assistant accreditation may be included on another transport authority.

Note—

See also the *Transport Planning and Coordination Act 1994*, section 36G for smartcard transport authorities.

- (3) In this section—

prescribed transport Act means—

- (a) this Act; or
- (b) the *Transport Operations (Passenger Transport) Act 1994*; or
- (c) the *Transport Operations (Road Use Management) Act 1995*.

transport authority means—

- (a) a driver accreditation or an assistant accreditation; or
- (b) driver authorisation under the *Transport Operations (Passenger Transport) Act 1994*; or
- (c) a prescribed authority, other than a Queensland driver licence, under the *Transport Operations (Road Use Management) Act 1995*.

154 Regulation about temporary holding yards

- (1) A regulation may provide for the chief executive to approve premises as a temporary holding yard for an operator accreditation if an authorised holding yard for the accreditation can not be used, or safely used, due to the effects of an event.
- (2) The regulation must state the period an approval under subsection (1) has effect.
- (3) For the period an approval under subsection (1) is in effect for an operator accreditation, the following provisions apply in

relation to the accreditation as if the temporary holding yard were an authorised holding yard for the accreditation—

- (a) section 56;
 - (b) sections 59 to 61;
 - (c) section 63;
 - (d) section 85.
- (4) In this section—
event see the *Disaster Management Act 2003*, section 16.

Part 8 Repeal and transitional provisions

Division 1 Repeal

155 Repeal

The Tow Truck Act 1973, No. 39 is repealed.

Division 2 Transitional provisions

Subdivision 1 Preliminary

156 Definitions for division

In this division—

assistant's certificate means an assistant's certificate under the repealed Act.

authority means an assistant's certificate, driver's certificate or licence.

corresponding accreditation, for an authority, means—

- (a) if the authority is an assistant's certificate—an assistant accreditation; or
- (b) if the authority is a driver's certificate—a driver accreditation; or
- (c) if the authority is a licence—an operator accreditation.

driver's certificate means a driver's certificate under the repealed Act.

licence means a licence under the repealed Act.

repealed regulation means the repealed *Tow Truck Regulation 2009*.

Subdivision 2 Regulated areas

157 Existing regulated areas

- (1) From the commencement, an existing regulated area is taken to be a regulated area under this Act.

Editor's note—

The boundary of each existing regulated area may be inspected through the Queensland Government's interactive online tool called the Queensland Globe.

- (2) This section applies only until a regulation under this Act first prescribes an area to be a regulated area.
- (3) In this section—

existing regulated area means an area that, immediately before the commencement, was a regulated area under the repealed Act.

Subdivision 3 Provisions for authorities

158 Existing licences taken to be operator accreditations

- (1) This section applies to—

- (a) a licence in effect immediately before the commencement; or
 - (b) a licence that has been suspended under the repealed Act if the period of the suspension had not ended before the commencement.
- (2) From the commencement—
- (a) the licence is taken to be an operator accreditation; and
 - (b) a document given under the repealed Act evidencing the licence is taken to be the accreditation document for the operator accreditation.
- (3) The operator accreditation—
- (a) has effect for the remaining term of the licence; and
 - (b) is subject to any condition, imposed on the licence under the repealed Act, section 10, that applied to the licence immediately before the commencement, even if the condition could not be imposed under this Act.
- (4) If the licence has been suspended under the repealed Act, the operator accreditation is taken to be suspended until the end of the period of the suspension of the licence.

159 Authorised holding yards for transitioned licences

- (1) This section applies in relation to a licence that is taken to be an operator accreditation under section 158.
- (2) The following premises are taken to be an authorised holding yard for the operator accreditation—
 - (a) if the chief executive gives the holder of the operator accreditation a notice stating that particular premises are an authorised holding yard for the accreditation—the stated premises;
 - (b) otherwise—premises that, immediately before the commencement, were used by the holder of the operator accreditation as a holding yard to store motor vehicles towed under the licence.

- (3) If the chief executive gives the holder of the operator accreditation a notice mentioned in subsection (2)(a), the notice is taken to form part of the accreditation document for the accreditation.
- (4) Subsections (2) and (3) stop applying in relation to the operator accreditation on the earlier of the following events—
 - (a) the accreditation is renewed under part 2, division 3;
 - (b) the holder is given a replacement accreditation document for the accreditation under this Act.
- (5) This section does not apply if an exemption decision is in effect in relation to the operator accreditation.

160 Existing driver's certificates taken to be driver accreditations

- (1) This section applies to—
 - (a) a driver's certificate in effect immediately before the commencement; or
 - (b) a driver's certificate that has been suspended under the repealed Act if the period of the suspension had not ended before the commencement.
- (2) From the commencement—
 - (a) the driver's certificate is taken to be a driver accreditation; and
 - (b) a document given under the repealed Act evidencing the driver's certificate is taken to be the accreditation document for the driver accreditation.
- (3) The driver accreditation—
 - (a) has effect for the remaining term of the driver's certificate; and
 - (b) is subject to any condition, imposed on the driver's certificate under the repealed Act, section 14A(1)(b), that applied to the driver's certificate immediately

before the commencement, even if the condition could not be imposed under this Act.

- (4) Subsection (3)(b) applies subject to section 174.
- (5) If the driver's certificate has been suspended under the repealed Act, the driver accreditation is taken to be suspended until the end of the period of the suspension of the driver's certificate.

161 Existing assistant's certificates taken to be assistant accreditations

- (1) This section applies to—
 - (a) an assistant's certificate in effect immediately before the commencement; or
 - (b) an assistant's certificate that has been suspended under the repealed Act if the period of the suspension had not ended before the commencement.
- (2) From the commencement—
 - (a) the assistant's certificate is taken to be an assistant accreditation; and
 - (b) a document given under the repealed Act evidencing the assistant's certificate is taken to be the accreditation document for the assistant accreditation.
- (3) The assistant accreditation—
 - (a) has effect for the remaining term of the assistant's certificate; and
 - (b) is subject to any condition, imposed on the assistant's certificate under the repealed Act, section 14A(1)(b), that applied to the assistant's certificate immediately before the commencement, even if the condition could not be imposed under this Act.
- (4) If the assistant's certificate has been suspended under the repealed Act, the assistant accreditation is taken to be

suspended until the end of the period of the suspension of the assistant's certificate.

162 Existing applications for authorities

- (1) This section applies if—
 - (a) before the commencement, a person made any of the following applications—
 - (i) an application for a licence under the repealed Act, section 6;
 - (ii) an application to renew a licence under the repealed Act, section 9;
 - (iii) an application for a driver's certificate or an assistant's certificate under the repealed Act, section 14;
 - (iv) an application to renew a driver's certificate or an assistant's certificate under the repealed Act, section 17A; and
 - (b) immediately before the commencement, the application had not been decided.
- (2) The application—
 - (a) is taken to be a corresponding application; and
 - (b) must be decided under this Act.
- (3) Anything done in relation to the application under the repealed Act is taken to have been done in relation to the corresponding application under this Act.
- (4) The chief executive may decide an application mentioned in subsection (1)(a)(ii) or (iv) even if the authority to which the application relates stopped having effect before the commencement.
- (5) In this section—

corresponding application means—

- (a) for an application for a licence made under the repealed Act, section 6—an application for an operator accreditation made under section 17; or
- (b) for an application to renew a licence made under the repealed Act, section 9—a renewal application to renew an operator accreditation made under section 24; or
- (c) for an application for a driver's certificate made under the repealed Act, section 14—an application for a driver accreditation made under section 17; or
- (d) for an application for an assistant's certificate made under the repealed Act, section 14—an application for an assistant accreditation made under section 17; or
- (e) for an application to renew a driver's certificate made under the repealed Act, section 17A—a renewal application to renew a driver accreditation made under section 24; or
- (f) for an application to renew an assistant's certificate made under the repealed Act, section 17A—a renewal application to renew an assistant accreditation made under section 24.

Subdivision 4 Provisions for exemptions for licences

163 Existing exemptions for licences

- (1) This section applies to a decision made by the chief executive under the repealed regulation, section 14 that a licence is exempt from a condition mentioned in the repealed regulation, section 14(1)(e) if—
 - (a) the licence relates to a tow to safety service; and
 - (b) the decision is in effect immediately before the commencement.

- (2) From the commencement, the decision is taken to be an exemption decision made under section 130(1).
- (3) The exemption decision has effect for the remaining period of the decision.

164 Existing applications for exemptions for licences

- (1) This section applies if—
 - (a) before the commencement, a person applied under the repealed regulation, section 14(2) for an exemption of a licence from a condition mentioned in the repealed regulation, section 14(1)(e); and
 - (b) the licence relates to a tow to safety service; and
 - (c) immediately before the commencement, the application had not been decided.
- (2) From the commencement, the application is taken to be an exemption application for an exemption decision under section 130(1).
- (3) Anything done in relation to the application under the repealed Act is taken to have been done in relation to the application under this Act.

Subdivision 5 Provisions for offences

165 Proceedings for offences against repealed Act

- (1) This section applies in relation to an offence against the repealed Act committed by a person before the commencement.
- (2) Without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for the offence may be continued or started, and the person may be convicted of and punished for the offence, as if the repealed Act had not been repealed.
- (3) Subsection (2) applies despite the Criminal Code, section 11.

166 Releasing motor vehicles after commencement

- (1) Section 60 applies in relation to the release, after the commencement, of a motor vehicle towed under a licence before the commencement if—
 - (a) the licence is taken to be an operator accreditation under section 158; and
 - (b) the vehicle has been towed to premises that are an authorised holding yard for the operator accreditation.
- (2) Section 60(2) does not apply in relation to the release of a motor vehicle, towed before or after the commencement, if a relevant charge for the vehicle, imposed on the owner under the repealed Act before or after the commencement, has not been paid.
- (3) In this section—

relevant charge means a charge in relation to the towing, storage, viewing or accessing of a motor vehicle, or the taking of property from a motor vehicle.

167 Application of s 63

Section 63 applies in relation to the disclosure, after the commencement, of information that is sensitive information under the section, whether the information was obtained, or the event to which the information relates happened, before or after the commencement.

168 Application of repealed regulation, s 15A

- (1) The repealed regulation, section 15A continues to apply in relation to the holder of an authority if—
 - (a) an event mentioned in the section happened before the commencement; and
 - (b) immediately before the commencement, the period for giving notice of the event to the chief executive had not ended.

- (2) Without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for an offence against the repealed regulation, section 15A may be started, and the holder of the authority may be convicted of and punished for the offence, as if the repealed Act had not been repealed.
- (3) Subsection (2) applies despite the Criminal Code, section 11.

169 Notification about partners who joined partnerships before commencement

- (1) This section applies in relation to a licence held by a partnership that is taken to be an operator accreditation under section 158 if—
 - (a) before the commencement, a new partner joined the partnership; and
 - (b) immediately before the commencement, the new partner continues to be a partner in the partnership.
- (2) Section 72 applies in relation to the joining of the new partner as if a reference in the section to the day the event happens were a reference to the day this section commences.

170 Application of ss 73–76

Sections 73 to 76 apply in relation to a charge or an infringement notice only if the charge was made, or the infringement notice was served, after the commencement.

Subdivision 6 Provisions for enforcement and reviews

171 Existing notices under repealed Act, s 21D

- (1) This section applies if—

- (a) before the commencement, the chief executive gave a person a notice under the repealed Act, section 21D(3) in relation to an authority held by the person; and
 - (b) immediately before the commencement, the chief executive had not decided whether to take an action mentioned in the repealed Act, section 21D(4).
- (2) From the commencement, the notice is taken to be a show cause notice given under section 39 in relation to the corresponding accreditation for the authority.

172 Immediate suspensions

- (1) This section applies if—
 - (a) before the commencement, the chief executive gave a person a notice under the repealed Act, section 21B(1) immediately suspending an authority held by the person; and
 - (b) immediately before the commencement, the period of the suspension had not ended.
- (2) From the commencement, the notice is taken to be an immediate suspension notice given under section 44(1) in relation to the corresponding accreditation for the authority.
- (3) Subsection (4) applies if—
 - (a) the notice mentioned in subsection (1)(a) states the matters mentioned in the repealed Act, section 21C(2); and
 - (b) immediately before the commencement, the chief executive had not decided whether to take an action mentioned in the repealed Act, section 21D(4).
- (4) From the commencement, the part of the notice that states the matters mentioned in the repealed Act, section 21C(2) is taken to be a show cause notice given under section 44(4) in relation to the corresponding accreditation for the authority.

- (5) For applying section 45 in relation to the immediate suspension, any extension of the period of the suspension under the repealed Act, section 21B(5) is taken to be an extension of the period of the suspension under section 45(3).

173 Internal reviews and reviews by QCAT

- (1) Subsections (2) and (3) apply to a review of a decision in relation to an authority started under the repealed Act, part 6 before the commencement that had not been decided before the commencement.
- (2) The repealed Act continues to apply in relation to the review as if this Act had not been enacted.
- (3) However, the decision on the review is taken to be a decision made under this Act in relation to the corresponding accreditation for the authority.
- (4) If, immediately before the commencement, a person could have applied for a review of a decision in relation to an authority under the repealed Act, part 6—
 - (a) the person may, within the period for applying for the review under the repealed Act, apply for a review of the decision under part 6 of this Act; and
 - (b) for the purposes of the review, the decision is taken to be a decision made under this Act in relation to the corresponding accreditation for the authority.

Subdivision 7 Other matters

174 Particular conditions and other matters for driver accreditations of no effect

- (1) This section applies in relation to a driver accreditation, including a driver's certificate that is taken to be a driver accreditation under section 160, if—

- (a) a condition of the accreditation relates to the class of motor vehicle the holder of the accreditation is authorised to drive under the accreditation; or
 - (b) a statement, code or other information included in the accreditation document for the accreditation states or indicates the class of motor vehicle the holder of the accreditation is authorised to drive under the accreditation.
- (2) The condition, statement, code or other information is of no effect.
- (3) In this section—
class, of a motor vehicle, means the class of the vehicle under the *Transport Operations (Road Use Management) Act 1995*.

175 Existing towing consents

- (1) This section applies to a towing consent under the repealed Act that is in effect immediately before the commencement.
- (2) From the commencement, the towing consent is taken to be a private property towing consent under this Act.

176 Existing applications for release of information

- (1) This section applies to the following applications made, but not decided, before the commencement—
 - (a) an application mentioned in the repealed Act, section 19H(1)(a);
 - (b) an application mentioned in the repealed Act, section 19H(2)(b).
- (2) The repealed Act, section 19H continues to apply in relation to the application as if—
 - (a) a reference in the section to information kept under the repealed Act includes information kept under this Act; and

- (b) a reference in the section to a person's driver's certificate or assistant's certificate includes a person's driver accreditation or assistant accreditation.

177 Records

A record required to be kept under the repealed Act, section 21H must be kept under section 137.

178 Existing requests for criminal history reports

- (1) This section applies if—
 - (a) before the commencement, the chief executive asked the police commissioner for a written report under the repealed Act, section 36; and
 - (b) immediately before the commencement, the police commissioner had not given the report to the chief executive.
- (2) The request is taken to have been made under section 138.

179 Existing information-sharing arrangements

- (1) This section applies to an information-sharing arrangement entered into under the repealed Act, section 36B that is in effect immediately before the commencement.
- (2) From the commencement, the information-sharing arrangement is taken to be an information-sharing arrangement under section 145.

180 References to repealed Act

- (1) In an instrument—
 - (a) a reference to the repealed Act is, if the context permits, taken to be a reference to this Act; and

- (b) a reference to a provision of the repealed Act is, if the context permits, taken to be a reference to the equivalent provision of this Act.
- (2) In this section—
equivalent provision, for a provision of the repealed Act, means the provision of this Act dealing with the same subject matter as the provision of the repealed Act.

Schedule 1 Notifiable offences under Criminal Code

section 71, definition *notifiable offence*

Part 1 All accreditation types

- 1 section 51 (Unlawful drilling)
- 2 chapter 8 (Offences against the executive and legislative power)
- 3 chapter 9 (Breaches of the peace)
- 4 chapter 9A (Consorting)
- 5 chapter 10 (Offences against political liberty)
- 6 section 86 (Obtaining of or disclosure of secret information about the identity of informant)
- 7 chapter 16 (Offences relating to the administration of justice)
- 8 chapter 17 (Escapes—obstructing officers of courts)
- 9 chapter 20 (Miscellaneous offences against public authority)
- 10 chapter 22 (Offences against morality)
- 11 chapter 28 (Homicide—suicide—concealment of birth)
- 12 chapter 28A (Unlawful striking causing death)
- 13 chapter 29 (Offences endangering life or health)
- 14 chapter 30 (Assaults)
- 15 chapter 32 (Rape and sexual assaults)
- 16 chapter 33A (Unlawful stalking, intimidation, harassment or abuse)
- 17 section 363 (Child-stealing)
- 18 section 363A (Abduction of child under 16)
- 19 section 364 (Cruelty to children under 16)

- 20 chapter 36 (Stealing)
- 21 chapter 37 (Offences analogous to stealing)
- 22 chapter 38 (Stealing with violence—extortion by threats)
- 23 chapter 39 (Burglary—housebreaking—and like offences)
- 24 chapter 41 (Receiving property stolen or fraudulently obtained and like offences)
- 25 section 461 (Arson)
- 26 section 462 (Endangering particular property by fire)
- 27 section 467 (Endangering the safe use of vehicles and related transport infrastructure)
- 28 section 469 (Wilful damage)
- 29 section 469A (Sabotage and threatening sabotage)
- 30 section 470 (Attempts to destroy property by explosives)
- 31 section 470A (Unlawful dealing with explosives or noxious substances)
- 32 section 478 (Sending letters threatening to burn or destroy)
- 33 chapter 49 (Punishment of forgery and like offences)
- 34 chapter 51 (Preparation for forgery)
- 35 chapter 52 (Personation)
- 36 section 540 (Preparation to commit crimes with dangerous things)
- 37 chapter 56 (Conspiracy)

Part 2 Operator accreditations

- 1 section 88 (Extortion by public officers)
- 2 section 91 (False claims by officials)
- 3 section 92 (Abuse of office)
- 4 section 92A (Misconduct in relation to public office)

Schedule 1

- 5 section 97 (Personating public officers)
- 6 section 430 (Fraudulent falsification of records)
- 7 section 431 (False accounting by public officer)

Schedule 2 Original decisions

section 123, definition *original decision*

Section	Description of decision
18(1)(b)	refusing an application for an accreditation
20	imposing a condition on an accreditation
25(1)(b)	refusing a renewal application
27	imposing a condition on the renewal of an accreditation
31(1)(b)	refusing an amendment application
42	amending, suspending or cancelling an accreditation
44	immediately suspending an accreditation
109	forfeiting a seized thing
133(2)(b)	imposing an alternative requirement
133(4)	refusing an exemption application

Schedule 3 Dictionary

section 5

accreditation means—

- (a) an assistant accreditation; or
- (b) a driver accreditation; or
- (c) an operator accreditation.

accreditation document means an accreditation document given by the chief executive under this Act.

alternative requirement see section 133(2)(b).

amendment application see section 30(1).

approved form means a form approved under section 150.

assistant accreditation see section 16(4).

authorised holding yard see section 19(1)(f)(ii).

authorised officer means an authorised officer under the *Transport Operations (Road Use Management) Act 1995*.

authorised tow truck see section 19(1)(f)(iii).

authorised tow truck business see section 19(1)(f)(i).

authorising person, for a motor vehicle, means—

- (a) the owner of the motor vehicle or the owner's agent; or
- (b) an authorised officer.

charge, for an offence, means a charge in any form, including, for example, the following—

- (a) a charge on arrest;
- (b) a notice to appear served under the *Police Powers and Responsibilities Act 2000*, section 382;
- (c) a complaint under the *Justices Act 1886*;

(d) a charge by a court under the *Justices Act 1886*, section 42(1A) or another provision of an Act;

(e) an indictment.

class, of a Queensland driver licence, for part 3, division 4, see section 46.

communication, for part 7, division 7, see section 147(1) and (2)(b).

confidential information—

(a) means—

(i) personal information; or

(ii) information or a document about a person's affairs; and

(b) includes a digital photo of a person and a digitised signature of a person.

control order see the *Penalties and Sentences Act 1992*, section 161N.

convicted means found guilty, or having a plea of guilty accepted, by a court whether or not a conviction is recorded.

criminal history, of a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986* and includes—

(a) despite section 6 of that Act—a conviction of the person to which the section applies; and

(b) despite section 5 of that Act—a charge made against the person that has not been dealt with by a court, or withdrawn or otherwise discontinued.

criminal intelligence see the Criminal Code, section 86(3).

dealt with, in relation to an infringement notice, for part 4, division 5, see section 71.

digital photo, of a person, see the *Transport Planning and Coordination Act 1994*, schedule 1.

digitised signature, of a person, see the *Transport Planning and Coordination Act 1994*, schedule 1.

driver accreditation see section 16(3).

electronic communication see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.

employee, of the authorised tow truck business for an operator accreditation, includes—

- (a) a person who is employed, engaged or acting in connection with the conduct of the tow truck business, including a person who works under a contract for services; and

Examples—

- a person who is employed to carry out administrative duties for the authorised tow truck business
- a security guard employed or engaged at an authorised holding yard for the operator accreditation

- (b) if the operator accreditation is held by a corporation—an executive officer of the corporation; and

- (c) if the operator accreditation is held by a partnership—a partner in the partnership.

executive officer, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

exemption application means an application for an exemption decision made under part 7, division 1.

exemption decision see section 130(2).

expiry day see sections 19(1)(d) and 26(1)(d).

former owner, for part 5, see section 110(1).

holder, of an accreditation, means the person to whom the accreditation is given.

holding yard means premises used to store motor vehicles towed under an operator accreditation and movable property inside the vehicles.

immediate suspension notice see section 44(1).

incident means a collision or impact, however caused, that results in damage to a motor vehicle and happens—

- (a) on a road; or
- (b) at a place other than on a road if, immediately before the collision or impact, the vehicle was travelling on a road.

information notice, for a decision, means a notice that states—

- (a) the decision; and
- (b) the reasons for the decision; and

Note—

See the *Acts Interpretation Act 1954*, section 27B for matters that must be included with the reasons.

- (c) that the person to whom the notice is given may ask for a review of the decision under this Act; and
- (d) how, and the period within which, a review under this Act for the decision may be started; and
- (e) how a stay of the operation of the decision may be applied for under this Act.

infringement notice means an infringement notice under the *State Penalties Enforcement Act 1999*.

internal review, of an original decision, for part 6, division 1, see section 124(1).

minor amendment see section 36(2).

motor vehicle see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

movable property, in relation to a motor vehicle, means property that is not fixed or attached to the vehicle.

Examples of movable property—

a laptop, a mobile phone, a handbag, jewellery or clothing

non-Queensland driver licence see the *Transport Operations (Road Use Management) Act 1994*, schedule 4.

notice means written notice.

notifiable offence, for an accreditation, see section 71.

occupier—

- (a) of a place, for part 5—see section 82; or
- (b) of private property—means a person who may lawfully exclude other persons from the property.

of, a place, for part 5, see section 82.

offence warning, for a direction or requirement by an authorised officer, for part 5, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction is given, or of whom the requirement is made, not to comply with the direction or requirement.

operate, in relation to a tow truck—

- (a) means to drive or otherwise operate the tow truck for consideration or in the course of a business or trade; and
- (b) includes offering to do a thing mentioned in paragraph (a).

operator accreditation see section 16(2).

original decision see section 123.

owner—

- (a) of a thing that has been seized under part 5, for part 5—see section 82; or
- (b) of a motor vehicle, includes—
 - (i) a joint or part owner of the motor vehicle; and
 - (ii) for a motor vehicle registered under the *Transport Operations (Road Use Management) Act 1995* or under a law of the Commonwealth or another State that provides for the registration of motor vehicles—each person in whose name the vehicle is registered; and
 - (iii) for a motor vehicle the subject of a hiring agreement, hire-purchase agreement or leasing agreement—the person who has the use of the vehicle as hirer or lessee under the agreement; and

- (iv) a person who has, and is authorised to have, control, charge or management of the motor vehicle.

partnership means a partnership under the *Partnership Act 1891*.

personal information means information or an opinion about an individual—

- (a) from which the individual's identity is apparent or can reasonably be ascertained; and
- (b) whether or not the information or opinion is true or is recorded in a material form.

person in control, of a thing, for part 5, includes any person who reasonably appears to be, claims to be, or acts as if the person is, the person in possession or control of the thing.

place, for part 5, see section 82.

premises, for part 5, see section 82.

prescribed road means a road in a regulated area that is prescribed by regulation to be a prescribed road.

private property—

- (a) means land, or a road over land, from which the occupier of the land may lawfully exclude other persons; but
- (b) does not include land or a road controlled by—
 - (i) the Commonwealth; or
 - (ii) the State; or
 - (iii) a local government.

private property towing see section 9.

private property towing consent see section 12(1).

proposed action see section 39(1).

public place, for part 5, see section 82.

Queensland driver licence see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

reasonably believes means believes on grounds that are reasonable in the circumstances.

reasonably suspects means suspects on grounds that are reasonable in the circumstances.

receiver, for part 7, division 7, see section 146.

registered corresponding control order see the *Penalties and Sentences Act 1992*, section 161N.

regulated area means an area prescribed by regulation to be a regulated area.

Note—

See also section 157.

regulated towing see section 8.

relevant document, for part 7, division 7, see section 146.

relevant driver licence, for part 3, division 4, see section 46.

relevant off-street regulated parking area means an off-street regulated parking area under the *Transport Operations (Road Use Management) Act 1995* for which there is an arrangement mentioned in section 104(2) of that Act.

renewal application see section 24(1).

repealed Act means the repealed *Tow Truck Act 1973*.

representations means written representations.

road see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

scene, of an incident, includes—

- (a) the area within a radius of 500m from the approximate point of the collision or impact constituting the incident; and
- (b) in relation to a motor vehicle damaged in an incident on a prescribed road that is towed from the road to another location as part of a tow to safety service—
 - (i) the other location; and

- (ii) the area within a radius of 500m from the other location.

seized, in relation to a motor vehicle, other than for part 5, means seized by a police officer under the *Police Powers and Responsibilities Act 2000*, section 124 because of section 125(1)(d) or (2) of that Act from a road that is a relevant off-street regulated parking area.

sending time, for part 7, division 7, see section 147(3)(a).

show cause notice see section 39(1).

show cause period, in relation to a show cause notice, means—

- (a) the period stated in the show cause notice for making representations; or
- (b) if the period for making representations is extended under section 39(4)—the period as extended.

smartcard accreditation means a smartcard driver accreditation or a smartcard assistant accreditation.

smartcard assistant accreditation means an accreditation document, or a part of an accreditation document, for an assistant accreditation that is in the form of a card or something similar provided for under section 153(1)(a).

smartcard driver accreditation means an accreditation document, or a part of an accreditation document, for a driver accreditation that is in the form of a card or something similar provided for under section 153(1)(a).

towing authority see section 11(1).

tow to safety service means a towing service that—

- (a) is provided—
 - (i) by the State; or
 - (ii) under a contractual arrangement with the State, or another entity that is responsible for operating a prescribed road; and

- (b) involves moving a motor vehicle damaged in an incident on a prescribed road from the road to another location free of charge to the owner of the vehicle.

tow truck see section 6(1).

tow truck business see section 10.