



Western Australia

# **Towing Services Act 2024**



# Towing Services Act 2024

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Western Australia

## **Towing Services Act 2024**

**An Act to —**

- **provide for the regulation of the towing industry; and**
- **make consequential amendments to various other Acts, and for related purposes.**

## Part 1 — Preliminary

### 1. Short title

This is the *Towing Services Act 2024*.

### 2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 4 (but only section 68) — on the day after assent day;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

### 3. Objects of Act

The objects of this Act are —

- (a) to promote the safe, fair and efficient provision of services for regulated towing at a reasonable cost to consumers; and
- (b) to improve and maintain the reputation of the towing industry.

### 4. Terms used

In this Act —

***approved form*** means a form approved by the CEO and published on the Department's website;

***approved medical report*** means a report complying with the requirements of the regulations for a medical report;

***Australian driver licence*** means —

- (a) a driver's licence; or
- (b) a licence or other authorisation granted to a person under a law of another State or a Territory authorising

the person to drive a motor vehicle on a road other than solely for the purpose of learning to drive a motor vehicle;

**authorised officer** has the meaning given in section 85(1);

**authorised towing service provider** means the holder of a towing business authorisation;

**authorised towing worker** means the holder of a towing worker authorisation;

**authority to tow** has the meaning given in section 40(1);

**breakdown towing** has the meaning given in section 7;

**CEO** means the chief executive officer of the Department;

**close associate**, in relation to an applicant for a towing business authorisation or an authorised towing service provider, has the meaning given in section 12;

**Commissioner of Main Roads** means the Commissioner of Main Roads appointed under the *Main Roads Act 1930*;

**Commissioner of Police** means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

**conviction** includes a finding of guilt, or the acceptance of a guilty plea, whether or not a conviction is recorded;

**crash towing** has the meaning given in section 6(2) and (3);

**criminal record check** means a document issued by the Police Force of Western Australia, the Australian Federal Police or another body or agency approved by the CEO that sets out, or summarises in a manner acceptable to the CEO, the convictions of a person for offences under a law of this State, the Commonwealth, another State or a Territory;

**Department** means the department of the Public Service principally assisting the Minister in the administration of this Act;

**disqualification offence** has the meaning given in section 150(4);

**driver's licence** has the meaning given in the *Road Traffic (Authorisation to Drive) Act 2008* section 3(1);

**engage in towing work** means to do any of the following —

- (a) operate a tow truck;
- (b) load a vehicle onto a tow truck;
- (c) tow a vehicle using a tow truck;
- (d) assist or accompany any person in the execution of an act described in paragraph (a), (b) or (c);

**infringement notice** means a notice issued to a person under a written law —

- (a) alleging the commission of an offence; and
- (b) offering the person an opportunity, by paying an amount of money prescribed under the written law and specified in the notice, to have that matter dealt with out of court;

**interstate towing worker authorisation** means an authorisation issued under a law of another State or a Territory that —

- (a) authorises a person to operate, or assist in the operation of, a tow truck; and
- (b) meets any criteria prescribed by the regulations;

**medical practitioner** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

**motor vehicle** has the meaning given in the *Road Traffic (Administration) Act 2008* section 4;

**officer** —

- (a) in relation to a towing service provider that is a body corporate, has the same meaning as it has in relation to a corporation under the *Corporations Act 2001* (Commonwealth) section 9AD; or
- (b) in relation to any other towing service provider, means an individual who has the capacity to make decisions in relation to the operations of the towing service provider;

**operate**, in relation to a tow truck, includes to drive the tow truck and to operate any carrying, lifting or towing mechanism of the tow truck;

**prescribed disqualification period**, in relation to a disqualification offence, has the meaning given in section 151(3);

**public entity** means —

- (a) an agency or a non-SES organisation, as those terms are defined in the *Public Sector Management Act 1994* section 3(1); or
- (b) a body (whether incorporated or not), or the holder of an office, that is established or continued for a public purpose under a written law; or
- (c) a local government, regional local government or regional subsidiary; or
- (d) a person or body prescribed, or a person or body of a class prescribed, by the regulations;

**public place** means a place to which the public is permitted, whether on payment of a fee or otherwise, to have access;

**regulated towing** has the meaning given in section 8(1);

**regulated towing business** has the meaning given in section 8(2);

**relevant person**, for a vehicle, means —

- (a) a person who is entitled to the immediate possession of the vehicle; or
- (b) the driver of the vehicle;

**responsible officer**, in relation to an authorised towing service provider, means —

- (a) an individual nominated by the towing service provider in the application for the towing business authorisation under section 17(4)(c) and whose nomination has not ceased under the regulations; or

- (b) an individual who has been nominated to represent the authorised towing service provider in conducting the regulated towing business, and whose nomination has been accepted and has not ceased, under the regulations;

**road** has the meaning given in the *Road Traffic (Administration) Act 2008* section 4;

**safety standards** means standards prescribed by regulations under Part 8 Division 2;

**scene**, in relation to a vehicle crash, means a place referred to in section 6(2)(a), (b), (c) or (d);

**storage charge** means any charge imposed on a relevant person for a vehicle for or in relation to any of the following —

- (a) the storage, release or viewing of the vehicle after it has been towed;
- (b) access to the vehicle after it has been towed;
- (c) access to personal property that is or was in the vehicle after it has been towed;

**storage yard** —

- (a) means premises used, or intended to be used, to store vehicles that have been towed; but
- (b) does not include premises of a class prescribed by the regulations;

**Territory** means an internal Territory as defined in the *Acts Interpretation Act 1901* (Commonwealth) section 2B;

**tow**, in relation to a vehicle, has the meaning given in section 5;

**towing business** means a business of providing a service of towing vehicles within the State;

**towing business authorisation** means an authorisation under Part 2 to conduct a regulated towing business;

**towing charge** —

- (a) means any charge imposed on a relevant person for a vehicle for or in relation to towing the vehicle,

including, without limitation, a charge for any of the following —

- (i) loading the vehicle onto a tow truck;
- (ii) towing the vehicle;
- (iii) unloading the vehicle from a tow truck;

but

- (b) does not include a storage charge;

**towing industry authorisation** means —

- (a) a towing business authorisation; or
- (b) a towing worker authorisation;

**towing service provider** means a person who conducts a towing business;

**towing worker** means an individual who engages in towing work;

**towing worker authorisation** means an authorisation under Part 3 to engage in towing work for the purposes of a regulated towing business;

**towing worker authorisation document** means a document issued under section 48;

**tow truck** —

- (a) means a motor vehicle used, or intended to be used, to tow a vehicle; but
- (b) does not include a vehicle of a class prescribed by the regulations;

**traffic record check** means a document issued by the Police Force of Western Australia or another body or agency approved by the CEO that sets out, or summarises in a manner acceptable to the CEO, either or both of the following —

- (a) the convictions of an individual for driving-related offences under a law of this State, another State or a Territory;

- (b) each of the following —
  - (i) the infringement notices issued to an individual for alleged driving-related offences under a law of this State;
  - (ii) the notices of an equivalent kind to those described in subparagraph (i) issued to an individual for alleged driving-related offences under a law of another State or a Territory;

**vehicle** —

- (a) has the meaning given in the *Road Traffic (Administration) Act 2008* section 4; but
- (b) does not include any thing of a class prescribed by the regulations;

**vehicle crash** has the meaning given in section 6(1).

## **5. Towing of vehicles**

In this Act —

**tow**, in relation to a vehicle —

- (a) includes to do any of the following —
  - (i) carry the vehicle;
  - (ii) lift and tow the vehicle;
  - (iii) lift and carry the vehicle;
  - (iv) lift the vehicle for the purpose of towing it;but
- (b) does not include to do an act of a class prescribed by the regulations.

## **6. Vehicle crashes and crash towing**

- (1) A **vehicle crash** is a collision or impact that —
  - (a) results in damage to a vehicle; and



- (b) occurs —
  - (i) on a road or in a public place; or
  - (ii) in a place other than on a road or in a public place if, immediately before the collision or impact, a vehicle involved in the collision or impact was on a road or in a public place.
- (2) **Crash towing** is the towing of a vehicle that has been involved in a vehicle crash from —
  - (a) the place where the collision or impact occurred; or
  - (b) a place within a 2 km radius of the place where the collision or impact occurred; or
  - (c) a place to which the vehicle has been moved —
    - (i) by or with the authority of a public entity or a person employed in, or engaged for the purposes of, a public entity; and
    - (ii) for the purpose of preventing or minimising any harm, risk, hazard or obstruction caused by the vehicle;or
  - (d) a place within a 2 km radius of a place referred to in paragraph (c).
- (3) Despite subsection (2), **crash towing** does not include towing of a class prescribed by the regulations.

## 7. **Breakdown towing**

### **Breakdown towing** —

- (a) is the towing of a vehicle that is broken down, bogged or stranded on a road or in a public place; but
- (b) does not include towing of a class prescribed by the regulations.

**8. Regulated towing and regulated towing businesses**

- (1) **Regulated towing** —
- (a) means crash towing; and
  - (b) if the regulations so provide, includes breakdown towing; but
  - (c) does not include any towing to which the *Road Traffic Act 1974* Part 6A Division 3 applies under section 96 of that Act.
- (2) A towing business is a **regulated towing business** to the extent that it provides a service of regulated towing.
- (3) Subsection (2) applies to a service of regulated towing even if the service is provided to or on behalf of a public entity in relation to the performance of that entity's functions under a written law.

**9. Determination of whether persons are fit and proper**

- (1) This section applies to a determination for the purposes of this Act of whether a person is a fit and proper person to do any of the following —
- (a) conduct a regulated towing business;
  - (b) represent a towing service provider in the conduct of a regulated towing business;
  - (c) engage in towing work for the purposes of a regulated towing business.
- (2) Without limitation, a person is not a fit and proper person unless the person is of good repute, having regard to the person's character, honesty and integrity.
- (3) In the case of a determination of whether an applicant for a towing business authorisation, or an authorised towing service provider, is a fit and proper person to conduct a regulated towing business, the person is also not a fit and proper person if

any close associate of the person is not of good repute, having regard to the close associate's character, honesty and integrity.

- (4) In determining whether a person is a fit and proper person the CEO may have regard to —
  - (a) any matters the CEO considers relevant; and
  - (b) any matters prescribed by the regulations.
- (5) Without limiting subsection (4), in determining whether an applicant for a towing worker authorisation, or an authorised towing worker, is a fit and proper person to engage in towing work for the purposes of a regulated towing business, the matters to which the CEO may have regard include —
  - (a) the physical and mental fitness of the person; and
  - (b) any approved medical report on the person required by the regulations; and
  - (c) any other relevant matters.

**10. Determination of whether grant or continuation of towing industry authorisation contrary to public interest**

A determination for the purposes of this Act of whether the grant, or continuation in force, of a towing industry authorisation is contrary to the public interest must be made having regard to the need for the creation and maintenance of public confidence and trust in the credibility and integrity of the towing industry.

**11. Act binds Crown**

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

## **Part 2 — Towing businesses**

*[Division 1 has not come into operation.]*

### **Division 2 — Offences and related matters**

*[13, 14. Have not come into operation.]*

#### **15. Release from storage**

(1) In this section —

***applicable charges***, for a vehicle, means all towing charges or storage charges imposed on the relevant person for the vehicle in accordance with this Act;

***business day*** means a day that is not a Saturday, Sunday or public holiday throughout the State.

(2) This section applies if a vehicle that has been towed in the conduct of a regulated towing business is stored in a storage yard.

(3) If a relevant person for the vehicle pays the applicable charges (if any) for the vehicle, the towing service provider conducting the regulated towing business must ensure that the vehicle is released as soon as practicable but in any event no later than 4 hours after payment is made.

Penalty for this subsection:

- (a) for an individual, a fine of \$9 000;
- (b) for a body corporate, a fine of \$45 000.

(4) For the purposes of determining when the 4-hour period referred to in subsection (3) expires, only time between 9 am and 5 pm on a business day is to be counted.

(5) The regulations may prescribe the steps that must be taken to release the vehicle for the purposes of subsection (3).

**16. Moving vehicle from storage yard**

- (1) In this section —  
***natural disaster*** means a cyclone, earthquake, flood, storm, tsunami or other natural event.
- (2) This section applies if a vehicle that has been towed in the conduct of a regulated towing business is stored in a storage yard.
- (3) The towing service provider conducting the regulated towing business must ensure that the vehicle is not moved from the storage yard except for the purpose of —
- (a) releasing it to a relevant person for the vehicle; or
  - (b) moving it to another location approved in writing by a relevant person for the vehicle; or
  - (c) preventing possible damage to the vehicle by fire or natural disaster.

Penalty for this subsection:

- (a) for an individual, a fine of \$9 000;
- (b) for a body corporate, a fine of \$45 000.

*[Divisions 3 and 4 have not come into operation.]*

## **Part 3 — Towing workers**

### **Division 1 — Offences and related matters**

#### **40. Towing vehicle without authorisation and powers to authorise**

(1) In this section —

*authority to tow* means a written authorisation in the approved form for the towing of a vehicle.

(2) A towing worker must not tow, or attempt to tow, a vehicle for the purposes of a regulated towing business unless the towing is authorised —

- (a) under an authority to tow in accordance with the regulations given by a relevant person for the vehicle; or
- (b) under an authority to tow in accordance with the regulations given by a police officer under subsection (3); or
- (c) by the Commissioner of Main Roads under subsection (4); or
- (d) under the *Road Traffic (Administration) Act 2008* or any other written law.

Penalty for this subsection: a fine of \$12 000.

(3) A police officer may give an authority to tow a vehicle for the purposes of subsection (2)(b) if a relevant person for the vehicle is not present or is physically or mentally incapable of giving an authority to tow the vehicle.

(4) The Commissioner of Main Roads may authorise the towing of a vehicle to another place for the purposes of subsection (2)(c) if the Commissioner considers that the towing is necessary to prevent or minimise a hazard or obstruction.

(5) Authorisation under subsection (4) may be given orally.

*[41-45. Have not come into operation.]*

*[Divisions 2 and 3 have not come into operation.]*

## **Part 4 — Fees and charges in relation to towing**

### **68. Spotter fees prohibited**

(1) In this section —

***crash or breakdown information*** means information in relation to —

- (a) the occurrence of a vehicle crash or breakdown; or
- (b) the presence of a vehicle that —
  - (i) has been involved in a vehicle crash; or
  - (ii) has broken down or become bogged or stranded;

***towing procurement purpose*** means the purpose of —

- (a) obtaining work for a towing business; or
- (b) enabling another person to obtain work for a towing business;

***valuable thing*** —

- (a) includes the following —
  - (i) any money, bonus, commission, deduction, discount, rebate, remission or other valuable consideration;
  - (ii) any payment in excess of the actual value of any goods or service;
  - (iii) any forbearance to demand any money or money's worth;
  - (iv) employment, or an agreement to give employment, in any capacity;

but

- (b) does not include —
  - (i) charges imposed in accordance with this Act; or



- (ii) any remuneration given by a towing service provider to a towing worker in relation to the towing worker's duties for the purposes of a towing business.
- (2) A person must not, for a towing procurement purpose, give or receive, or offer to give or receive, any valuable thing in consideration of the provision of crash or breakdown information.
- Penalty for this subsection:
- (a) for an individual, a fine of \$9 000;
  - (b) for a body corporate, a fine of \$45 000.

**69. Regulations may prohibit or restrict towing and storage charges**

- (1) The regulations may make provision for or in relation to the imposition of towing charges and storage charges in relation to a regulated towing business, including by —
- (a) prohibiting the imposition of towing charges or storage charges of prescribed kinds or in prescribed circumstances; and
  - (b) providing for requirements that must be complied with before towing charges or storage charges of prescribed kinds may be imposed; and
  - (c) providing for maximum amounts, or a means of determining maximum amounts, of towing charges or storage charges that may be imposed.
- (2) Without limiting subsection (1), regulations under that subsection —
- (a) may be expressed to apply only in particular circumstances or in relation to a particular geographical area; and

- (b) may regulate towing charges or storage charges by reference to whether they are reasonable in the circumstances; and
  - (c) may make different provision in relation to towing charges or storage charges imposed in different circumstances, including (without limitation) by reference to the amount of work undertaken or the distance travelled.
- (3) A towing service provider in relation to a regulated towing business is not entitled to recover or retain any charges imposed in contravention of regulations made under this section.

## **Part 5 — Confidentiality and exchange of information**

### **Division 1 — Preliminary**

#### **70. Terms used**

In this Part —

**disclose** includes to provide, to release and to give access to;

**driver's licence information** means —

- (a) information about drivers' licences, including —
  - (i) details of the persons who have made applications for or in relation to those licences; and
  - (ii) details of the persons who hold or have held those licences; and
  - (iii) information contained in a driver's licence register kept under the *Road Traffic (Authorisation to Drive) Act 2008*;

or

- (b) information about authorisations (referred to in paragraph (b) of the definition of **Australian driver licence** in section 4) obtained by the road traffic CEO from an authority of another State or a Territory under a road law;

**infringement notice information** means information about infringement notices, including information about the following —

- (a) the giving of an infringement notice to a person;
- (b) the payment of an amount of money in accordance with an infringement notice;
- (c) the withdrawal of an infringement notice;
- (d) a matter in relation to which an infringement notice was issued coming before a court for determination;

- (e) the registration of an infringement notice under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* Part 3;
- (f) any withdrawal of proceedings under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* Part 3 in relation to an infringement notice;

***interstate towing authority*** means a person, agency or authority of another State or a Territory that administers or performs functions under an interstate towing law;

***interstate towing law*** means —

- (a) a law of another State or a Territory that provides for the authorisation of persons to operate, or assist in the operation of, tow trucks or to conduct a towing business; or
- (b) a law prescribed by the regulations;

***law enforcement official*** means a person prescribed, or a person of a class prescribed, by the regulations;

***learner's permit*** has the meaning given in the *Road Traffic (Authorisation to Drive) Act 2008* section 3(1);

***offence information*** means the following —

- (a) details of the following —
  - (i) any offence with which a person has been charged, or of which a person has been convicted, in the State;
  - (ii) any penalty, suspension, cancellation or disqualification resulting from a conviction referred to in subparagraph (i);
- (b) any details the Commissioner of Police has of the following —
  - (i) any offence with which a person has been charged, or of which a person has been convicted, elsewhere than in the State;

- (ii) any penalty, suspension, cancellation or disqualification resulting from a conviction referred to in subparagraph (i);

**relevant authority** means —

- (a) the Commissioner of Main Roads; or
- (b) a person or body prescribed, or a person or body of a class prescribed, by the regulations;

**road law** has the meaning given in the *Road Traffic (Administration) Act 2008* section 4;

**road traffic CEO** means the CEO as defined in the *Road Traffic (Administration) Act 2008* section 4;

**towing regulatory information** means any of the following —

- (a) information about towing industry authorisations, including the following —
  - (i) details of the persons who have made applications for or in relation to a towing industry authorisation;
  - (ii) details of the persons who hold or have held a towing industry authorisation;
  - (iii) details of any decision to refuse to grant a towing industry authorisation;
  - (iv) details of the suspension or cancellation of a towing industry authorisation;
  - (v) details of any disqualification from holding or obtaining a towing industry authorisation;
- (b) details of charges and convictions for offences under this Act;
- (c) infringement notice information relating to alleged offences under this Act;
- (d) information relating to whether any of the following is a fit and proper person to conduct a regulated towing business, represent a towing service provider in the

conduct of a regulated towing business or engage in towing work for the purposes of a regulated towing business (as the case requires) —

- (i) an applicant for a towing business authorisation;
- (ii) an individual nominated as a responsible officer by an applicant for a towing business authorisation or an authorised towing service provider;
- (iii) an authorised towing service provider;
- (iv) a responsible officer of an authorised towing service provider;
- (v) an applicant for a towing worker authorisation;
- (vi) an authorised towing worker;
- (e) information relating to whether a close associate of either of the following is of good repute —
  - (i) an applicant for a towing business authorisation;
  - (ii) an authorised towing service provider;

***traffic infringement notice information*** means details of the instances in which a person has paid a penalty under an infringement notice under a road law, obtained by the road traffic CEO from the Commissioner of Police under a road law;

***vehicle licence information*** has the meaning given in the *Road Traffic (Administration) Act 2008* section 4.

## **Division 2 — Confidentiality and disclosure of information**

### **71. Confidentiality**

- (1) In this section —

***de-identified data*** means data that, if disclosed, could not reasonably be expected to lead to the identification of —

- (a) any person to whom it relates; or
- (b) any business to which it relates.

- (2) A person who performs or has performed functions under this Act must not disclose any information obtained by the person in the performance of a function under this Act except —
- (a) in the performance of that function or another function under this Act or another written law; or
  - (b) as authorised or required under this Act or another written law; or
  - (c) with the consent of the person to whom the information relates; or
  - (d) in circumstances prescribed by the regulations.

Penalty for this subsection: imprisonment for 12 months or a fine of \$12 000.

- (3) The CEO may publish de-identified data from time to time to provide information to the public about the performance of the towing industry.
- (4) The CEO may, on request, provide unpublished de-identified data to any person on payment of any fee prescribed by the regulations.

*[72, 73. Have not come into operation.]*

**74. Use of and access to information disclosed or obtained under this Part**

For the purposes of the performance of the CEO's functions under this Act, but not for any other purpose, the CEO may have access to and make use of information disclosed to or obtained by the CEO under this Part.

*[75. Has not come into operation.]*

### **Division 3 — Exchange of information**

#### **76. Persons in relation to whom information may be exchanged**

- (1) Sections 77(3)(a) and 78(2)(b) and (c) apply in relation to a person who —
  - (a) is a towing service provider or a towing worker in relation to a regulated towing business; or
  - (b) is an employee or agent of a towing service provider in relation to a regulated towing business; or
  - (c) is an applicant for a towing industry authorisation; or
  - (d) holds or has held a towing industry authorisation; or
  - (e) is an individual nominated as a responsible officer by an applicant for a towing business authorisation or an authorised towing service provider; or
  - (f) is a responsible officer of an authorised towing service provider; or
  - (g) is a close associate of an applicant for, or the holder of, a towing business authorisation.

#### **77. Exchange of information between CEO and Commissioner of Police**

- (1) The CEO must disclose the following information to the Commissioner of Police —
  - (a) towing regulatory information;
  - (b) any other information prescribed by the regulations.
- (2) Information disclosed under subsection (1) —
  - (a) may be used in the performance of the Commissioner of Police's functions under a written law but not for any other purpose; and
  - (b) may be disclosed by the Commissioner of Police to a police officer for use in the performance of the functions



of that officer under this Act or any other written law but not for any other purpose.

- (3) The Commissioner of Police must disclose the following information to the CEO —
  - (a) offence information about a person mentioned in section 76;
  - (b) any other information prescribed by the regulations.

**78. Exchange of information between CEO and road traffic CEO**

- (1) The CEO must disclose the following information to the road traffic CEO —
  - (a) towing regulatory information;
  - (b) any other information prescribed by the regulations.
- (2) The road traffic CEO must disclose the following information to the CEO —
  - (a) vehicle licence information in relation to a tow truck used, or proposed to be used, for the purposes of a regulated towing business;
  - (b) driver's licence information about a person mentioned in section 76;
  - (c) traffic infringement notice information about a person mentioned in section 76;
  - (d) any other information prescribed by the regulations.

*[(3) has not come into operation.]*

**79. Exchange of information between CEO and relevant authority**

- (1) The CEO may disclose the following information to a relevant authority if the CEO considers that the information is required

by the authority for the purposes of the performance of the authority's functions —

- (a) towing regulatory information;
  - (b) any other information prescribed by the regulations.
- (2) The CEO may seek from a relevant authority any information that the CEO considers is required for the purposes of the performance of the CEO's functions under this Act.

**80. Disclosure of information to body or person with whom agreement is made**

The CEO may disclose the following information to a body or person with whom an agreement is made under section 157 if the CEO considers that the information is required for the performance of a function under the agreement —

- (a) towing regulatory information;
- (b) any information disclosed to the CEO under this Division or by an interstate towing authority;
- (c) any other information prescribed by the regulations.

**81. Disclosure of information to law enforcement official**

The CEO may disclose the following information to a law enforcement official if the CEO considers that the information is required by the official for the purposes of the performance of the official's functions —

- (a) towing regulatory information;
- (b) any other information prescribed by the regulations.

**82. Exchange of information between CEO and interstate towing authority**

- (1) The CEO may disclose towing regulatory information to an interstate towing authority if the CEO considers that the information is required by the authority for the purposes of the performance of its functions.

- (2) If information disclosed under subsection (1) includes information about an offence of which a person has been convicted, or an alleged offence for which a person has been given an infringement notice, the CEO must also disclose to the interstate towing authority —
- (a) any quashing or setting aside of the conviction; or
  - (b) any withdrawal of the infringement notice or the matter coming before a court for determination; or
  - (c) any withdrawal of proceedings under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* Part 3 in relation to the infringement notice; or
  - (d) anything else known to the CEO concerning the offence or alleged offence the disclosure of which is likely to be favourable to that person.
- (3) The CEO may seek from an interstate towing authority any information that the CEO considers is required for the purposes of the performance of the CEO's functions under this Act.

**83. Disclosures under this Part free of charge**

Subject to section 71(4), a disclosure of information under this Part must be free of charge.

## **Part 6 — Enforcement**

### **Division 1 — Preliminary**

#### **84. Terms used**

In this Part —

*premises* includes any structure, building, vessel or place (whether built on or not) and any part of any such structure, building, vessel or place;

*record* has the meaning given in the *Criminal Investigation Act 2006* section 3(1).

### **Division 2 — Authorised officers**

#### **Subdivision 1 — Designation**

#### **85. Authorised officers**

- (1) For the purposes of this Act, an *authorised officer* is —
  - (a) a police officer; or
  - (b) a person designated by the CEO under subsection (2).
- (2) The CEO may designate as an authorised officer a person employed in, or engaged for the purposes of, the Department.
- (3) The CEO must ensure that each authorised officer designated under subsection (2) is issued with an identity card in the approved form.
- (4) An authorised officer designated under subsection (2) must —
  - (a) carry the officer's identity card when performing functions under this Act; and
  - (b) if it is practicable to do so — produce the officer's identity card before exercising a power under this Act.

- (5) In any proceedings, the production of an identity card is evidence of the designation under subsection (2) of the authorised officer to whom the card relates.

### **Subdivision 2 — General powers**

#### **86. Purposes for which powers of authorised officers may be exercised**

An authorised officer may exercise the powers set out in this Subdivision for 1 or more of the following purposes —

- (a) to monitor compliance with this Act;
- (b) to investigate a suspected contravention of this Act;
- (c) to investigate whether there are grounds for suspending or cancelling an authorisation granted under this Act.

#### **87. Powers in relation to vehicles**

- (1) An authorised officer may do all or any of the following in relation to a vehicle mentioned in subsection (2) —
- (a) stop and detain the vehicle for as long as is reasonably necessary for the exercise of any power of the authorised officer under this Act;
  - (b) direct the driver of the vehicle, or a person engaging in towing work using the vehicle, to produce for inspection any of the following —
    - (i) the person's driver's licence;
    - (ii) the person's towing worker authorisation document;
    - (iii) any additional identification document issued to the person, or required to be held or displayed by the person, in accordance with the regulations;
  - (c) direct any person to alight from, or not to enter, the vehicle;

- (d) direct the driver of the vehicle, a person engaging in towing work using the vehicle, or any passenger, to —
    - (i) state the person’s name, residential address and date of birth; or
    - (ii) give any information that is required; or
    - (iii) answer a question put to the person; or
    - (iv) produce a record that is in the person’s possession or under the person’s control;
  - (e) inspect the vehicle and any equipment in or on the vehicle;
  - (f) make a still or moving image or recording of the vehicle and any thing in or on the vehicle;
  - (g) operate any thing in or on the vehicle;
  - (h) make a copy of or take an extract from any document or thing;
  - (i) seize a record and retain it for as long as is reasonably necessary;
  - (j) direct the driver of the vehicle, or a person in possession of the vehicle, to give the authorised officer any assistance that the officer reasonably requires for the purpose of exercising another power under this subsection.
- (2) The powers in subsection (1) may be exercised in relation to —
- (a) a tow truck; or
  - (b) a vehicle that the authorised officer reasonably suspects is being or has been used to travel to a place for the purposes of obtaining, or attempting to obtain, an authority to tow a vehicle for the purposes of a regulated towing business.

**88. Directions to persons and related matters**

- (1) An authorised officer may do all or any of the following —
  - (a) direct a person mentioned in subsection (2) to —
    - (i) state the person’s name, residential address and date of birth; or
    - (ii) give any information that is required; or
    - (iii) answer a question put to the person;
  - (b) direct a person mentioned in subsection (2) to produce a record that is in the person’s possession or under the person’s control;
  - (c) make a copy of, take an extract from, download or print out any record produced under paragraph (b);
  - (d) seize a record produced under paragraph (b) and retain it for as long as is reasonably necessary.
  
- (2) The powers in subsection (1)(a) and (b) may be exercised in relation to any of the following —
  - (a) a person who holds or has held a towing business authorisation or an agent of such a person;
  - (b) a person whom an authorised officer suspects on reasonable grounds is or was a towing service provider in relation to a regulated towing business or an agent of such a person;
  - (c) a person who is or was a responsible officer of an authorised towing service provider;
  - (d) a person who is or was an employee of an authorised towing service provider;
  - (e) a person who holds or has held a towing worker authorisation;
  - (f) a person whom an authorised officer suspects on reasonable grounds has engaged in towing work for the purposes of a regulated towing business.

**89. Entry of premises**

- (1) An authorised officer may, in accordance with this section, enter premises occupied by a person mentioned in subsection (7) and do all or any of the following at the premises —
- (a) search the premises;
  - (b) inspect a vehicle parked at the premises;
  - (c) direct any person in charge of a vehicle, or any person in a vehicle, parked on the premises to —
    - (i) give any information that is required; or
    - (ii) answer a question put to the person; or
    - (iii) state the person’s name, residential address and date of birth; or
    - (iv) produce a record that is in the person’s possession or under the person’s control;
  - (d) make a still or moving image or recording of the premises and any thing in or on the premises;
  - (e) operate a computer or other thing at the premises;
  - (f) make a copy of, take an extract from, download or print out any record found at the premises or produced under paragraph (c)(iv);
  - (g) seize a record found at the premises or produced under paragraph (c)(iv) and retain it for as long as is reasonably necessary;
  - (h) direct the occupier of the premises, or a person at the premises, to give the authorised officer any assistance that the officer reasonably requires for the purposes referred to in section 86.
- (2) The power to enter premises under subsection (1) may be exercised —
- (a) at any time under an entry warrant issued under Division 3; or



- (b) at any time with the consent of the occupier of the premises; or
  - (c) if a business is carried on at the premises — at any time during the usual business operating hours applicable at the premises (whether or not the premises are actually being used for that purpose), and without a warrant and without the consent of the occupier of the premises or any other person.
- (3) An authorised officer must not exercise the power to enter premises mentioned in subsection (2)(c) without a warrant or the consent of the occupier unless the authorised officer reasonably believes that the premises are attended.
- (4) An authorised officer must not exercise the power to enter premises mentioned in subsection (2)(c) without a warrant or the consent of the occupier if the premises are, or any part of premises is, used predominantly for residential purposes.
- (5) The power to search premises under this section does not include a power to search a person.
- (6) An authorised officer who is a police officer may use reasonable force in the exercise of powers under this section.
- (7) The powers in subsection (1) may be exercised in relation to premises occupied by any of the following —
- (a) a person who holds or has held a towing business authorisation or an agent of such a person;
  - (b) a person whom an authorised officer suspects on reasonable grounds is or was a towing service provider in relation to a regulated towing business or an agent of such a person;
  - (c) a person who is or was a responsible officer of an authorised towing service provider;
  - (d) a person who is or was an employee of an authorised towing service provider;

- (e) a person who holds or has held a towing worker authorisation;
- (f) a person whom an authorised officer suspects on reasonable grounds has engaged in towing work for the purposes of a regulated towing business.

**90. Requirement to comply with directions**

If a person is directed under section 87, 88 or 89 to give any information, answer any question or produce any record —

- (a) the person cannot refuse to comply with the direction on the ground that the information, answer or record may tend to incriminate the person or render the person liable to any penalty; but
- (b) if the person is an individual — the information or answer given, or record produced, by the person is not admissible in evidence against the person in any criminal proceedings other than proceedings for perjury or for providing false or misleading information under section 160.

**91. Assistance to exercise powers**

- (1) An authorised officer may authorise as many other persons to assist in the exercise of the authorised officer's powers under this Subdivision as are reasonably necessary in the circumstances.
- (2) A person authorised under subsection (1) may exercise the power or assist the authorised officer to exercise the power, as the case requires.
- (3) Whether requested to do so or not, a person may assist another person to exercise a power under this Subdivision if the person reasonably suspects that the other person —
  - (a) is lawfully entitled to exercise the power; and
  - (b) needs assistance for the purpose of doing so.

- (4) A person who under this section is authorised by another person to exercise a power, or is assisting another person to exercise a power, must comply with any lawful and reasonable directions of the other person when exercising or assisting to exercise the power.
- (5) If a person, acting under this section, exercises a power under this Subdivision having been authorised by another person to do so, or assists another person to exercise a power under this Subdivision, any enactment that protects the person or the State from liability for the person's acts or omissions is taken to operate as if those acts or omissions included the person's acts or omissions when acting under this section.

**92. Duty to identify driver or person in charge of vehicle**

- (1) In this section —
  - responsible person*, in relation to a vehicle —
    - (a) means a person who is a person responsible for the vehicle under the *Road Traffic (Administration) Act 2008* section 6; and
    - (b) includes a person to whom possession or control of the vehicle is entrusted at the time of the alleged offence referred to in subsection (2)(a) or (3)(a) (as the case requires);
  - relevant offence* means an offence under this Act involving —
    - (a) the operation of a tow truck; or
    - (b) obtaining, or attempting to obtain, an authority to tow a vehicle for the purposes of a regulated towing business.
- (2) A responsible person for a vehicle commits an offence if —
  - (a) a relevant offence is alleged to have been committed; and
  - (b) it is alleged that the vehicle was used by a person in connection with the commission of the alleged offence; and

- (c) an authorised officer requests the responsible person to give information that may lead to the identification of the driver or person in charge of the vehicle at the time of the alleged offence; and
- (d) the responsible person has, or could reasonably have ascertained, the information; and
- (e) the responsible person, without lawful excuse, fails to give the information.

Penalty for this subsection:

- (a) for an individual —
    - (i) for a first offence, a fine of \$5 000;
    - (ii) for a subsequent offence, a fine of \$10 000;
  - (b) for a body corporate, a fine of \$25 000.
- (3) A responsible person for a vehicle commits an offence if —
- (a) a relevant offence is alleged to have been committed; and
  - (b) it is alleged that the vehicle was used in connection with the commission of the alleged offence; and
  - (c) an authorised officer requests the responsible person to give information that may lead to the identification of the driver or person in charge of the vehicle at the time of the alleged offence; and
  - (d) the responsible person gives information that the person knows to be false or misleading in a material particular in response to the request.

Penalty for this subsection:

- (a) for an individual —
  - (i) for a first offence, a fine of \$5 000;
  - (ii) for a subsequent offence, a fine of \$10 000;
- (b) for a body corporate, a fine of \$25 000.

- (4) If a person is charged with an offence under subsection (2), the person may be convicted of an offence under section 93(2).

**93. Duty to take reasonable measures to be able to comply with identity request**

- (1) In this section —

*identity request* means a request made under this Subdivision for information as to the identity of the person who was driving or in charge of a vehicle at any particular time;

*responsible person*, for a vehicle, means a person who is a person responsible for the vehicle under the *Road Traffic (Administration) Act 2008* section 6.

- (2) A responsible person for a vehicle commits an offence if the responsible person fails to take reasonable measures, or make reasonable arrangements, to ensure that if an identity request is made in relation to the vehicle, the responsible person will be able to comply with it.

Penalty for this subsection:

- (a) for an individual —
- (i) for a first offence, a fine of \$5 000;
  - (ii) for a subsequent offence, a fine of \$10 000;
- (b) for a body corporate, a fine of \$25 000.

**94. Offences**

- (1) A person must comply with a direction of an authorised officer given under this Part.

Penalty for this subsection:

- (a) for an individual, a fine of \$5 000;
- (b) for a body corporate, a fine of \$25 000.

- (2) A person must not hinder or obstruct an authorised officer in the performance of a function under this Part.

Penalty for this subsection:

- (a) for an individual, a fine of \$9 000;  
(b) for a body corporate, a fine of \$45 000.

### **Division 3 — Entry warrants**

#### **95. Terms used**

- (1) In this Division —

*making an application* includes giving information in support of the application;

*official details* means —

- (a) in relation to a police officer — the officer’s surname, rank and registered number; or  
(b) in relation to a person designated by the CEO under section 85(2) — the person’s full name and official title;

*remote communication* means any way of communicating at a distance, including by telephone, fax, email, radio and other electronic means.

#### **96. Applications for entry warrant**

- (1) An authorised officer may apply to a magistrate for an entry warrant authorising the entry of premises for the purposes referred to in section 86.
- (2) The application must be made in accordance with this Division and must include information prescribed by the regulations (if any).

**97. Applications to be in person unless urgent**

- (1) An application must be made in person before a magistrate unless —
  - (a) the warrant is needed urgently; and
  - (b) the applicant reasonably suspects that a magistrate is not available within a reasonable distance of the applicant or is not available in person within a reasonable time.
- (2) If subsection (1)(a) and (b) apply —
  - (a) the application may be made to a magistrate by remote communication; and
  - (b) the magistrate must not grant the application unless satisfied about the matters in subsection (1)(a) and (b).

**98. Applications to be in writing unless made remotely**

- (1) An application must be made in writing unless —
  - (a) the application is made by remote communication; and
  - (b) it is not practicable to send the magistrate written material.
- (2) If subsection (1)(a) and (b) apply —
  - (a) the application may be made orally; and
  - (b) the magistrate must make a written record of the application and any information given in support of it.

**99. Applications to be on oath unless made remotely**

- (1) An application must be made on oath unless —
  - (a) the application is made by remote communication; and
  - (b) it is not practicable for the magistrate to administer an oath to the applicant.
- (2) If subsection (1)(a) and (b) apply —
  - (a) the application may be made in an unsworn form; and

- (b) if the magistrate issues an entry warrant, the applicant must as soon as practicable send the magistrate an affidavit verifying the application and any information given in support of it.

**100. Form of entry warrants made remotely**

- (1) If, on an application made by remote communication, a magistrate issues an entry warrant, the magistrate must, if practicable, send a copy of the original warrant to the applicant by remote communication, but otherwise —
  - (a) the magistrate must send to the applicant by remote communication any information that must be set out in the warrant; and
  - (b) the applicant must complete a form of warrant with the information received and give the magistrate a copy of the form as soon as practicable after doing so; and
  - (c) the magistrate must attach a copy of the form to the original warrant and any affidavit received from the applicant and make them available for collection by the applicant.
- (2) The copy of the original warrant sent, or the form of the warrant completed, as the case may be, under subsection (1) has the same force and effect as the original warrant.

**101. Evidence obtained inadmissible if failure to comply with section 99(2)(b) or 100(1)(b)**

If an applicant fails to comply with section 99(2)(b) or 100(1)(b), any evidence obtained under the entry warrant is not admissible in proceedings in a court or in the State Administrative Tribunal.

**102. Issue and content of entry warrants**

- (1) In relation to an application under section 96, a magistrate may issue an entry warrant if satisfied that it is necessary for the



authorised officer to enter premises for purposes referred to in section 86.

- (2) An entry warrant must contain the following information —
  - (a) the applicant’s official details;
  - (b) a reasonably particular description of the premises to which it relates;
  - (c) a reasonably particular description of the purposes for which entry is required;
  - (d) if a contravention of this Act is suspected — the provision concerned;
  - (e) the period during which it may be executed, which must not be longer than 30 days;
  - (f) the name of the magistrate who issued it;
  - (g) the date and time when it was issued.
- (3) An entry warrant must be in the form prescribed by the regulations.
- (4) If a magistrate refuses to issue an entry warrant, the magistrate must record on the application the fact of, the date and time of, and the reasons for, the refusal.

**103. Effect of entry warrants**

- (1) An entry warrant has effect according to its content and this section.
- (2) An entry warrant comes into force when it is issued by a magistrate.
- (3) An entry warrant may be executed by any authorised officer.

### **Division 4 — Obtaining business records**

#### **104. Terms used**

In this Division —

*business record* means a record prepared or used in the ordinary course of a business for the purpose of recording any matter related to the business;

*order to produce* means an order issued under section 107.

#### **105. Application of this Division**

- (1) An order to produce must not be issued under this Division to a person in relation to a business record that relates or may relate to an offence that the person is suspected of having committed.
- (2) This Division does not prevent an authorised officer from applying for an entry warrant in relation to a business record, whether before or after the issue of an order to produce.

#### **106. Application for orders to produce**

- (1) An authorised officer may apply for an order to produce a business record for the following purposes —
  - (a) to investigate a suspected contravention of this Act;
  - (b) to investigate suspected grounds for suspending or cancelling an authorisation granted under this Act.
- (2) An application for an order to produce must be made to a JP in accordance with Division 3, which applies for that purpose —
  - (a) as if a reference in that Division to a magistrate were a reference to a JP; and
  - (b) with any other necessary changes.
- (3) An application for an order to produce a business record must —
  - (a) state the applicant's official details; and

- (b) state the purpose for which the order is required; and
- (c) set out the information prescribed by the regulations (if any); and
- (d) state the name of the person to whom the order will apply; and
- (e) state that the person is not suspected of having committed an offence; and
- (f) describe with reasonable particularity the business record or class of business record that the applicant wants the person to produce; and
- (g) state the reason the applicant reasonably believes the business record or class of business record is relevant to the investigation; and
- (h) state whether the original or a copy of the business record or class of business record is required.

**107. Issue of orders to produce**

- (1) On an application made under section 106(1), a JP may issue an order to produce a business record if satisfied that, in relation to each of the matters in section 106(1) that the applicant suspects, there are reasonable grounds for the applicant to have that suspicion.
- (2) An order to produce must contain the following information —
  - (a) the applicant's official details;
  - (b) the name of the person to whom the order applies;
  - (c) a reasonably particular description of the business record or class of business record to be produced by the person;
  - (d) an order that the person produce the record or records;
  - (e) whether the original or a copy of the record or records is required;

- (f) whether a paper, electronic or other version of the record or records is required;
  - (g) the place where the record or records are to be produced;
  - (h) the date on or before which the order must be obeyed, which must allow a reasonable period for the person to obey the order;
  - (i) the name of the JP who issued the order;
  - (j) the date and time when the order was issued.
- (3) An order to produce must be in the form prescribed by the regulations.
- (4) If a JP refuses to issue an order to produce, the JP must record on the application the fact of, the date and time of, and the reasons for, the refusal.

**108. Service of orders to produce**

- (1) An order to produce must be served on the person to whom it applies as soon as practicable after it is issued.
- (2) An order to produce may be served by personal service or by post or, with the consent of the person to be served, by email or fax or in some other way agreed with the person.

**109. Effect of orders to produce**

- (1) An order to produce has effect according to its content.
- (2) A person who is served with an order to produce and who, without reasonable excuse, does not obey it commits an offence.  
Penalty for this subsection:
  - (a) for an individual, a fine of \$5 000;
  - (b) for a body corporate, a fine of \$25 000.

**110. Powers in relation to order to produce**

- (1) An authorised officer to whom a business record is produced under an order to produce may retain it for a reasonable time to determine its evidentiary value.
- (2) An authorised officer to whom a business record is produced may, if necessary to preserve the evidentiary value of the record or to subject it to forensic analysis —
  - (a) seize the record; and
  - (b) whether or not the record is seized, make a forensic analysis of it; and
  - (c) make and retain a copy of it.
- (3) A person who produces a business record in compliance with an order to produce is not liable to any action or remedy by any person at common law for producing that record.

**Division 5 — Seizing things and related matters**

**Subdivision 1 — Seizing of things**

**111. Application**

This Subdivision applies to and in relation to the seizing under this Part of a thing.

**112. Grounds for seizing things**

If this Part provides that an authorised officer may seize a thing, the authorised officer may do so only if the authorised officer reasonably suspects that it is necessary to seize the thing for 1 or more of the following purposes —

- (a) to prevent it from being concealed, disturbed or lost;
- (b) to preserve its evidentiary value;
- (c) to subject it to forensic analysis;

- (d) to prevent it from being used in the commission of an offence.

**113. Records relevant to offence**

- (1) If a record may be seized, the authorised officer authorised to seize it may, if practicable, reproduce the record, whether or not in the same form, and instead seize the reproduction.

Example for this subsection:

A record on a computer could be reproduced by printing it out on paper or copying it to a data storage device and the paper or data storage device could then be seized.

- (2) If a record is seized, the authorised officer authorised to seize it may copy or take extracts from the record.
- (3) Subsection (4) applies if a record is seized and a person who appears entitled to possession of the record, and who does not already have a copy of the record, requests a copy of it.
- (4) The authorised officer must —
  - (a) if it is reasonably practicable to do so, give a copy of the record to the person as soon as practicable after it is seized; or
  - (b) unless the authorised officer reasonably suspects that doing so will jeopardise the evidentiary value of the record, allow the person to inspect the record and to make and keep a copy of it.

**114. Seizing of devices and equipment**

If a record may be seized, an authorised officer may also, subject to section 112, seize any device or equipment in the possession of the person from whom the record may be seized that is reasonably suspected to be needed to gain access to, recover or reproduce the information in the record.

**115. Powers to facilitate seizing of records**

- (1) An authorised officer may exercise a power under this section for the purpose of seizing a record or exercising a power in section 113(1) or (2).
- (2) An authorised officer may operate any device or equipment, whether seized under section 114 or not, that is —
  - (a) needed to gain access to, recover or make a reproduction of the record; and
  - (b) possessed by the person from whom the record may be seized.
- (3) Subsection (4) applies if an authorised officer reasonably suspects that the person from whom the record may be seized, or an employee or agent of that person, knows how to gain access to or operate the device or equipment referred to in subsection (2).
- (4) The authorised officer may direct a person referred to in subsection (3) to provide any information or assistance that is reasonable and necessary to enable the authorised officer to seize the record or exercise the power.

**116. List of seized things to be supplied on request**

- (1) If an authorised officer seizes any thing, the following persons may ask the authorised officer for a list of what was seized —
  - (a) the person who had custody or control of the thing before it was seized;
  - (b) the occupier of the premises where it was seized.
- (2) The authorised officer must comply with the request within a reasonable time after it is made.
- (3) If it is not reasonably practicable to list all the things seized because they are too numerous, the list may give a general description of the things that contains as much detail as is reasonably practicable.

- (4) This section does not apply in relation to a record if under section 113 a copy of the record was seized or given to the person making the request.

**Subdivision 2 — Procedure on seizure of privileged material**

**117. Terms used**

In this Subdivision —

*court* means the Magistrates Court;

*privileged* means privileged because of 1 or both of the following —

- (a) legal professional privilege;
- (b) public interest privilege.

**118. Seizure or production of privileged material**

A record that is seized under this Part or that is produced under an order to produce a business record issued under section 107(1) must be dealt with in accordance with this Subdivision if —

- (a) a person entitled to possession of the record claims that all or some of the information in it is privileged; or
- (b) the authorised officer seizing the record or to whom it is produced reasonably suspects that all or some of the information in it is privileged.

**119. Records must be secured**

The record must be secured in a manner that —

- (a) prevents it from being concealed, disturbed or lost; and
- (b) preserves its evidentiary value; and
- (c) prevents access to the information in it by any person who would not be entitled to access to the information if it were privileged.



**120. Applications to court**

- (1) The authorised officer in charge of the investigation must apply to the court to decide whether the information is privileged and must deliver the record into the custody of the court.
- (2) The application must be made in accordance with rules of court and must be served on the person entitled to possession of the record or, if the identity or whereabouts of the person is unknown, on any person directed by the court to be served.
- (3) The application may, if the court thinks fit, be heard in private.
- (4) The applicant and any person entitled to possession of the record are entitled to be heard on the application.

**121. Decisions of court**

- (1) For the purpose of deciding the application the court may have access to all of the information in the record.
- (2) If the court decides that all of the information in the record is not privileged, the court must make the record available to be collected by the applicant.
- (3) If the court decides that all of the information in the record is privileged, the court must make the record available to be collected by the person from whom it was seized.
- (4) If the court decides that some of the information in the record is privileged, the court must make orders to enable the applicant to have access to the information in the record that is not privileged.

**122. Forensic examinations on records**

- (1) This section applies if —
  - (a) the court decides under section 121 that all or some of the information in a record is privileged; and

(b) the applicant has applied to the court to be permitted to do a forensic examination on the record.

(2) The court must make orders that enable the forensic examination to be done on the record and to ensure that any information in it that is privileged remains privileged.

**123. Ancillary orders**

After making a decision under section 121, the court may make any orders it thinks fit —

(a) as to costs; and

(b) as to securing the record or suspending the operation of any orders made under this section until an appeal against the determination is commenced and dealt with.

**124. Proceedings part of criminal jurisdiction**

Proceedings under this Subdivision are part of the court's criminal jurisdiction.

**125. Appeals**

Subject to the *Criminal Appeals Act 2004* Part 2, an appeal lies against a decision made by the court under this Subdivision.

**Subdivision 3 — Return or disposal of seized things**

**126. Return or disposal of seized things**

(1) The CEO may authorise the return of any thing seized under this Part to —

(a) the owner or other person entitled to possession of the thing; or

(b) the person from whom the thing was seized.

- (2) The CEO may dispose of any thing seized under this Part if —
- (a) the CEO has taken reasonable steps to return the thing to a person; and
  - (b) any of the following applies —
    - (i) the CEO has been unable to locate the person, despite making reasonable efforts;
    - (ii) the person has refused to take possession of the thing;
    - (iii) the CEO has contacted the person about the return of the thing and the person has not refused to take possession of the thing but has not taken possession of the thing within 1 month after the contact.
- (3) The CEO may dispose of the thing in any manner the CEO thinks appropriate.

### **Division 6 — Improvement notices**

#### **127. Issue of improvement notices**

- (1) This section applies if an authorised officer reasonably believes that a person —
- (a) is contravening a provision of this Act; or
  - (b) has contravened a provision of this Act in circumstances that make it likely that the contravention will be continued or repeated.
- (2) The authorised officer may, by written notice given to the person, issue an improvement notice requiring the person to —
- (a) remedy the contravention; or
  - (b) prevent a likely contravention from occurring; or
  - (c) remedy the things or operations causing the contravention or likely contravention.

**128. Contents of improvement notices**

- (1) An improvement notice must state —
  - (a) that the authorised officer believes that the person —
    - (i) is contravening a provision of this Act; or
    - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will be continued or repeated;and
  - (b) the provision of this Act that the authorised officer believes is being or has been contravened; and
  - (c) briefly, how the provision of this Act is being or has been contravened; and
  - (d) the period within which the person must comply with the requirements of the notice.
- (2) An improvement notice must state that the person has a right to a review under Part 7.
- (3) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention or the matters or activities causing the contravention or the likely contravention to which the notice relates.
- (4) An improvement notice may include directions prohibiting or restricting a person from engaging in towing work for the purposes of a regulated towing business, or causing or permitting another person to engage in such work, until the measures required to remedy the contravention or prevent the likely contravention have been taken.
- (5) The measures referred to in subsection (3) may include a requirement that the measures be taken to the satisfaction of an authorised officer.

- (6) The day stated for compliance with the improvement notice must be reasonable in all the circumstances.

**129. Compliance with improvement notice**

- (1) The person to whom an improvement notice is issued must comply with the notice within the period stated in the notice or that time as extended under section 130.

Penalty for this subsection:

- (a) for an individual, a fine of \$5 000;  
(b) for a body corporate, a fine of \$25 000.
- (2) A person must not engage in towing work for the purposes of a regulated towing business, or cause or permit another person to engage in such work, if doing so is prohibited under an improvement notice.

Penalty for this subsection:

- (a) for an individual, a fine of \$12 000;  
(b) for a body corporate, a fine of \$60 000.

**130. Extension of time for compliance, amendment and revocation**

- (1) In this section —  
*compliance period* —
- (a) means the period stated in an improvement notice within which a person must comply with the requirements of the notice; and
- (b) includes that period as extended by this section.
- (2) This section applies if a person has been issued with an improvement notice.

- (3) An authorised officer may, by written notice given to the person —
  - (a) extend the compliance period for the improvement notice; or
  - (b) otherwise amend the improvement notice; or
  - (c) revoke the improvement notice.
- (4) Despite subsection (3)(a), the authorised officer may extend the compliance period only if the period has not ended.

**131. Affixing sticker to tow truck**

- (1) This section applies if an improvement notice is issued in relation to a contravention of a safety standard involving a tow truck, including a notice that includes directions referred to in section 128(3).
- (2) An authorised officer may affix, in a conspicuous place on the tow truck, a sticker in the approved form indicating that an improvement notice has been issued in relation to a contravention of a safety standard involving the tow truck.
- (3) A person must not remove, or cause to be removed, a sticker affixed on a tow truck under subsection (2) unless an authorised officer has given the person a written notice stating that the authorised officer is satisfied the person has complied with the improvement notice.

Penalty for this subsection:

- (a) for an individual, a fine of \$5 000;
  - (b) for a body corporate, a fine of \$25 000.
- (4) Subsection (3) does not apply to a person who is repairing the tow truck if —
    - (a) it is reasonably necessary to remove the sticker to rectify a contravention specified in the improvement notice; and

- (b) the person re-affixes the undamaged sticker to the tow truck when the contravention has been rectified; and
- (c) the tow truck is not used to engage in towing work for the purposes of a regulated towing business until the undamaged sticker has been re-affixed.

### **Division 7 — Offences**

#### **132. Liability of officers for offence by body corporate**

*The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

**Table**

s. 13	s. 14
s. 42(1)	s. 44
s. 92(2) and (3)	s. 93(2)
s. 109(2)	s. 129(1) and (2)
s. 160	

#### **133. When prosecution can be commenced**

- (1) A prosecution of a person for an offence under this Act, other than an offence prescribed by the regulations as an offence to which subsection (2) applies, must be commenced within 2 years after the date on which the offence was allegedly committed.
- (2) A prosecution of a person for an offence prescribed by the regulations for the purposes of this subsection must be commenced within 12 months after the date on which the offence was allegedly committed.

### **Division 8 — Evidentiary provisions**

#### **134. Evidentiary certificates: records and authorisation**

- (1) A certificate may be issued under this section for any of the following purposes —
  - (a) a prosecution for an offence under any written law;
  - (b) any legal proceedings under this Act;
  - (c) verification of the accuracy of information provided to an interstate towing authority under Part 5.
- (2) The CEO may issue a certificate stating that a fact specified in the certificate appears in or is derived from a record kept by the CEO under this Act.
- (3) The CEO may issue a certificate stating any of the following —
  - (a) that on a specified date or during a specified period a person was or was not —
    - (i) an authorised towing service provider; or
    - (ii) an authorised towing worker;
  - (b) that on a specified date a specified towing industry authorisation was or was not granted, renewed, varied, suspended or cancelled.
- (4) A certificate purporting to be issued under this section is evidence and, in the absence of evidence to the contrary, proof of any fact stated in the certificate.

#### **135. Evidentiary certificates: specific matters**

- (1) A certificate may be issued under this section for the following purposes —
  - (a) any legal proceedings under this Act;
  - (b) verification of the accuracy of information provided to an interstate towing authority under Part 5.



- (2) The CEO or a person authorised by the CEO may issue a certificate stating —
- (a) that on a specified date or during a specified period, a specified towing industry authorisation was subject to specified conditions; or
  - (b) that on a specified date a person was disqualified from holding or obtaining a towing industry authorisation for a specified period; or
  - (c) that a specified exemption granted under this Act did or did not apply to a specified person at a specified time; or
  - (d) that a specified person had or had not notified the CEO of a change of address; or
  - (e) that a specified document was or was not given to the CEO, or a specified fee was or was not paid, by a specified person.
- (3) A certificate purporting to be issued under this section is evidence and, in the absence of evidence to the contrary, proof of any fact stated in the certificate.

**136. Proof of certain matters not required in legal proceedings**

In the absence of evidence to the contrary, proof is not required, in any proceedings for an offence under this Act, that the person by whom the prosecution was commenced was authorised to commence the prosecution.

**137. Proof of appointments and signatures unnecessary**

- (1) In this section —  
*office holder* means —
- (a) the CEO; or
  - (b) an authorised officer.
- (2) For the purposes of this Act, it is not necessary to prove the appointment or authorisation of an office holder.

- (3) For the purposes of this Act, a signature purporting to be the signature of an office holder is evidence of the signature it purports to be.

**Division 9 — Infringement notices and *Criminal Procedure Act 2004***

**138. Infringement notices and *Criminal Procedure Act 2004***

- (1) In this section —  
*authorised infringement notice officer* means an authorised officer as defined in the *Criminal Procedure Act 2004* section 4.
- (2) If this Act is a prescribed Act for the purposes of the *Criminal Procedure Act 2004* Part 2, this section applies in relation to the service of an infringement notice under that Part by an authorised infringement notice officer in relation to an alleged offence under this Act.
- (3) The infringement notice must be served within —
- (a) 21 days after the day on which the authorised infringement notice officer forms the opinion that there is sufficient evidence to support the allegation of the offence; and
  - (b) 6 months after the day on which the alleged offence is believed to have been committed.
- (4) The *Criminal Procedure Act 2004* sections 11 to 13 do not apply to an alleged offence under this Act.
- (5) The payment of the whole or part of a modified penalty under an infringement notice for an alleged offence under this Act may be taken into account by the CEO as if it were a conviction of the offence in determining whether a person is a fit and proper person —
- (a) to conduct a regulated towing business; or

- (b) to represent a towing service provider in the conduct of a regulated towing business; or
  - (c) to engage in towing work for the purposes of a regulated towing business.
- (6) The *Criminal Procedure Act 2004* Part 2 is modified to the extent necessary to give effect to this section.

## **Part 7 — Review of decisions**

### **139. Term used: reviewable decision**

In this Part —

***reviewable decision*** means a decision —

- (a) to refuse to grant a towing business authorisation under section 19(1)(b) (otherwise than because the applicant has not paid a fee referred to in section 19(2)(f) or (g) or on the ground set out in section 19(5)); or
- (b) to refuse to grant a towing worker authorisation under section 47(1)(b) (otherwise than because the applicant has not paid a fee referred to in section 47(2)(e) or (f));  
or
- (c) to impose conditions on an authorisation under section 22(a) or 49(1)(a); or
- (d) to refuse to grant an application under section 23 or 50 for the variation of conditions of an authorisation; or
- (e) to vary the conditions of an authorisation under section 24 or 51 on the CEO's own initiative; or
- (f) to make a suspension order under —
  - (i) section 29(1)(a), (b), (c), (d), (e) or (f); or
  - (ii) section 34(4); or
  - (iii) section 55(1)(a), (b), (c), (d) or (e); or
  - (iv) section 56(b); or
  - (v) section 58(4);or
- (g) to make a cancellation order under —
  - (i) section 29(1)(a), (b), (c), (d), (e) or (f); or
  - (ii) section 55(1)(a), (b), (c), (d) or (e);or

- (h) to issue an improvement notice under section 127; or
- (i) that is prescribed by the regulations.

**140. Reconsideration of reviewable decisions**

- (1) A person aggrieved by a reviewable decision may request the decision-maker in writing to reconsider the decision.
- (2) A request under subsection (1) must be made within —
  - (a) 28 days after the day on which the decision-maker gives the person notice under this Act of the reviewable decision; or
  - (b) a longer period that is allowed by the decision-maker.
- (3) A request under subsection (1) must state the decision that the aggrieved person wants the decision-maker to make after reconsideration of the reviewable decision and outline why the decision-maker should make that decision.
- (4) Within 28 days after the request is given, the decision-maker must reconsider the reviewable decision and —
  - (a) confirm the decision; or
  - (b) amend the decision; or
  - (c) set aside the decision and make a new decision.
- (5) Within 14 days after the day on which the reviewable decision is reconsidered, the decision-maker must, in writing, inform the person who made the request —
  - (a) of the result of the reconsideration; and
  - (b) if the decision-maker does not make the decision sought by the person —
    - (i) of the reasons for the decision made on reconsidering the reviewable decision; and
    - (ii) that the person may apply to the State Administrative Tribunal for a review of the decision.

**s. 141**

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**141.      Application to State Administrative Tribunal for review**

A person aggrieved by a reviewable decision, or the decision made by the decision-maker under section 140(4) on reconsidering a reviewable decision, may apply to the State Administrative Tribunal for a review of the decision by which the person is aggrieved.



**143. Regulations may refer to published documents**

- (1) In this section —
- code* means a code, standard, rule, specification or other document, published in or outside Australia, that does not by itself have legislative effect in this State;
- subsidiary legislation* includes rules, regulations, instructions, local laws and by-laws.
- (2) Regulations may adopt, either wholly or in part or with modifications —
- (a) any code; or
  - (b) any subsidiary legislation made, determined or issued under any other Act or under any Act of the Commonwealth, another State or a Territory.
- (3) The adoption may be by —
- (a) incorporating the code or subsidiary legislation in the regulations; or
  - (b) incorporating the code or subsidiary legislation by reference.
- (4) If the regulations adopt by reference a code or subsidiary legislation, other than any subsidiary legislation to which the *Interpretation Act 1984* section 41 applies —
- (a) the code or subsidiary legislation is adopted as existing or in force when the regulations are made; and
  - (b) any amendments made to the code or subsidiary legislation after the regulations are made have no legal effect as part of the regulations unless they are specifically adopted by later regulations or a later amendment to the regulations.
- (5) If regulations adopt by reference any subsidiary legislation to which the *Interpretation Act 1984* section 41 applies, the



subsidiary legislation is adopted as existing or in force from time to time.

- (6) Subsections (4) and (5) do not apply if regulations state that a particular text is adopted.
- (7) The CEO must ensure that particulars of any code or subsidiary legislation adopted by reference, other than subsidiary legislation to which the *Interpretation Act 1984* section 41 applies, are published on or accessible through the Department's website.

## **Division 2 — Safety standards**

### **144. Safety standards for towing service providers**

- (1) The regulations may provide for safety standards for a towing service provider in relation to a regulated towing business.
- (2) Safety standards prescribed under subsection (1) may include standards in relation to any of the following —
  - (a) towing workers in relation to a towing service provider's regulated towing business, including the following —
    - (i) requirements to hold Australian driver licences;
    - (ii) competence and qualifications;
    - (iii) driving records and criminal records;
    - (iv) identification;
    - (v) fitness and medical requirements;
    - (vi) reporting of changes in health and other matters relating to health;
  - (b) vehicles used or to be used in conducting the provider's regulated towing business, including the following —
    - (i) safety of vehicles;
    - (ii) maintenance and security and other requirements;

- (c) reporting of safety incidents and accidents;
  - (d) records relating to towing workers;
  - (e) safety management systems.
- (3) Subsection (2) does not limit the matters in relation to which safety standards may be prescribed.

**145. Safety standards for towing workers**

- (1) The regulations may provide for safety standards for towing workers in relation to a regulated towing business.
- (2) Safety standards prescribed under subsection (1) in relation to towing workers may include standards in relation to any of the following —
- (a) requirements to hold Australian driver licences;
  - (b) competence and qualifications;
  - (c) driving records and criminal records;
  - (d) identification;
  - (e) fitness and medical requirements;
  - (f) reporting of changes in health and other matters relating to health;
  - (g) reporting of safety incidents and accidents;
  - (h) compliance with safety requirements established by towing service providers;
  - (i) provision of information to towing service providers.
- (3) Subsection (2) does not limit the matters in relation to which safety standards may be prescribed.

**146. Safety standard offences**

- (1) The regulations may make it an offence for a towing service provider or towing worker in relation to a regulated towing business to contravene a safety standard prescribed by the regulations.

- (2) The regulations may make it an offence for a towing service provider or towing worker in relation to a regulated towing business to fail to ensure that a safety standard specified in the regulations (whether or not it is specified for that person) is complied with.
- (3) The same safety standard may be specified for more than 1 class of person.

**147. Reasonable steps defence**

- (1) It is a defence to an offence prescribed by regulations made under section 146(2) to prove that —
  - (a) the person did not know, and could not reasonably be expected to have known, that an offence was committed; and
  - (b) either —
    - (i) the person took all reasonable steps to prevent the contravention of the safety standard or the failure to ensure the safety standard was complied with, as the case may be; or
    - (ii) there were no steps the person could reasonably have taken to prevent the contravention of the safety standard or the failure to ensure the safety standard was complied with.
- (2) Without limiting subsection (1), in determining whether things done or omitted to be done by a person constitute reasonable steps, a court may have regard to the following —
  - (a) the circumstances of the alleged offence;
  - (b) the measures available and the measures taken to eliminate or minimise the risk of harm to any person;
  - (c) the personal expertise or experience that the person or an employee or agent of the person had or ought to have had.

### **Division 3 — Safety management systems**

#### **148. Safety management systems for towing service providers**

The regulations may —

- (a) require a towing service provider in relation to a regulated towing business to establish and maintain a system of management (a *safety management system*) to secure —
  - (i) the health and safety of persons engaged in towing work in relation to that business; or
  - (ii) the health and safety of any other person;and
- (b) make provision for or in relation to safety management systems, including by specifying requirements with which safety management systems must comply.

### **Division 4 — Towing industry authorisations**

#### **149. Towing industry authorisations**

- (1) In this section —

*document* includes —

- (a) a criminal record check; and
- (b) a traffic record check; and
- (c) in the case of a towing worker, an approved medical report;

*fit and proper person* means a person who is a fit and proper person to conduct a regulated towing business, represent a towing service provider in the conduct of a regulated towing business, or engage in towing work for the purposes of a regulated towing business, as the case requires.

- (2) The regulations may make provision for the following in relation to towing industry authorisations —
- (a) the requirements to be met by applicants for towing industry authorisations, including the following —
    - (i) the information to be provided in and with an application;
    - (ii) requiring an applicant to provide any document or information that is relevant to whether the applicant is a fit and proper person;
    - (iii) in the case of an application for a towing business authorisation, the requirements for individuals nominated as responsible officers;
    - (iv) requiring an applicant for a towing business authorisation to provide any document or information that is relevant to whether an individual nominated as a responsible officer of the applicant is a fit and proper person or a close associate of the applicant is of good repute;
    - (v) requiring an applicant for a towing worker authorisation to provide any approved medical reports to the CEO;
    - (vi) in the case of an application for a towing business authorisation, requirements for licensing, insurance and roadworthiness of tow trucks;
  - (b) conferring power on the CEO to conduct any check (including obtaining a criminal record check or a traffic record check) into the character and background of a person to determine any of the following for the purposes of this Act —
    - (i) whether the person is a fit and proper person;

- (ii) whether the person has previously held a towing industry authorisation, or an equivalent authorisation in another State or a Territory, that has been cancelled;
  - (iii) whether the person has been charged with or convicted of a disqualification offence;
  - (iv) if the person is a close associate of an applicant for a towing business authorisation or an authorised towing service provider — whether the person is of good repute;
- (c) grant of towing industry authorisations;
  - (d) conditions of towing industry authorisations;
  - (e) duration of towing industry authorisations;
  - (f) renewal of towing industry authorisations, including the following —
    - (i) requirements to be met by applicants for renewal;
    - (ii) applications for renewal;
    - (iii) the information to be provided in and with an application;
    - (iv) requiring an applicant for renewal to provide any document or information that is relevant to whether the applicant is a fit and proper person;
    - (v) requiring an applicant for renewal of a towing business authorisation to provide any document or information that is relevant to whether a responsible officer of the applicant is a fit and proper person or a close associate of the applicant is of good repute;
    - (vi) grants of renewal;

- (g) variation of conditions of authorisations, including requiring an applicant for a variation to provide any document or information relevant to whether the variation is appropriate in the circumstances;
- (h) changes to any information provided in connection with an application for authorisation;
- (i) replacement, addition and cessation of nomination of responsible officers of authorised towing service providers, including —
  - (i) notification to the CEO of persons ceasing to be nominated as responsible officers or ceasing to meet the criteria in section 18; and
  - (ii) nomination and criteria for acceptance of replacement or additional responsible officers;
- (j) storage yards used by authorised towing service providers, including requirements applicable to storage yards and notification to the CEO of information relating to storage yards;
- (k) requiring the holder of a towing industry authorisation to provide from time to time any document or information that is relevant to any of the CEO's functions in relation to the authorisation;
- (l) the issue or replacement of authorisation documents or additional documents identifying the holders of towing industry authorisations or the specification of criteria for identification documents to be held or displayed in vehicles;
- (m) the surrender of towing industry authorisations;
- (n) requiring a person to surrender any document issued to the person in relation to a towing industry authorisation;
- (o) requiring the information to be provided in or in relation to an application or a towing industry authorisation to be verified by statutory declaration.

**150. Disqualification offences**

- (1) The regulations may prescribe offences that are disqualification offences in relation to any or all of the following —
  - (a) towing service providers;
  - (b) close associates of towing service providers;
  - (c) responsible officers of authorised towing service providers;
  - (d) towing workers.
- (2) Any of the following may be prescribed as a disqualification offence by regulations under subsection (1) —
  - (a) an offence under this Act or another written law;
  - (b) an offence under a law of the Commonwealth;
  - (c) an offence under a law of another State or a Territory.
- (3) Regulations under subsection (1) may prescribe —
  - (a) different disqualification offences in relation to the different classes of person referred to in subsection (1); and
  - (b) different disqualification offences applying in relation to different classes of regulated towing business; and
  - (c) circumstances in which an offence is or is not a disqualification offence.
- (4) A reference in this Act to a person being charged with or convicted of a **disqualification offence** is a reference to the person being charged with or convicted of (as the case requires) —
  - (a) if the person is an applicant for a towing business authorisation, an authorised towing service provider or a person referred to in section 31(1)(a) — an offence prescribed under subsection (1) as a disqualification offence in relation to towing service providers; or



- (b) if the person is a close associate of an applicant for a towing business authorisation or of an authorised towing service provider — an offence prescribed under subsection (1) as a disqualification offence in relation to close associates of towing service providers; or
- (c) if the person is a responsible officer of an authorised towing service provider or an individual nominated as a responsible officer by an applicant for a towing business authorisation or an authorised towing service provider — an offence prescribed under subsection (1) as a disqualification offence in relation to responsible officers of towing service providers; or
- (d) if the person is an applicant for a towing worker authorisation, an authorised towing worker or an individual referred to in section 64(1) — an offence prescribed under subsection (1) as a disqualification offence in relation to towing workers.

**151. Prescribed disqualification periods and reinstatement**

- (1) The regulations must prescribe a period of disqualification (which disqualification may be permanent) in relation to each disqualification offence that is prescribed by regulations made under section 150(1).
- (2) Without limiting subsection (1), different periods of disqualification may be prescribed in relation to a disqualification offence depending on any of the following —
  - (a) whether the offence is a first or subsequent offence;
  - (b) the circumstances in which the offence is committed;
  - (c) the length of time that a person has continuously held a towing industry authorisation that is in force when the offence is committed;
  - (d) whether or not a person has previously been disqualified under section 31(1) or 64(1)(b).

- (3) A reference in this Act to the *prescribed disqualification period* in relation to a disqualification offence is a reference to the period prescribed in relation to that disqualification offence by regulations made under subsection (1).
- (4) The regulations may provide for the reinstatement of authorisations, or make any other provision necessary or convenient to be made, to deal with the consequences of a conviction for a disqualification offence being quashed or set aside in a case in which an authorisation has been cancelled under section 30(2), (3) or (4) or 64(1)(a) because of the conviction.

**Division 5 — Towing businesses, towing workers and authorisations to tow vehicles**

**152. Towing businesses**

The regulations may make provision in relation to the conduct of a regulated towing business, including in relation to the following —

- (a) prohibiting or regulating ways in which work may be obtained for a regulated towing business;
- (b) customer complaint handling processes and the requirements of those processes;
- (c) the provision of information to the CEO by the towing service provider on matters prescribed by the regulations, including —
  - (i) safety incidents involving tow trucks; and
  - (ii) conduct of towing workers; and
  - (iii) towing workers employed or engaged, or ceased to be employed or engaged, by the towing service provider; and
  - (iv) towing vehicles used, or withdrawn from use, by the towing service provider;

- (d) the form of payment of towing charges and storage charges;
- (e) the collection and keeping by the towing service provider of information (including camera footage and audio material) prescribed by the regulations and requiring the information to be made available to the CEO or an authorised officer;
- (f) insurance requirements for towing service providers;
- (g) advertising by towing service providers;
- (h) regulating the provision of information to customers or the public in connection with the conduct of a regulated towing business.

**153. Towing workers**

The regulations may make provision in relation to towing workers in relation to a regulated towing business, including in relation to the following —

- (a) requirements for the display of identification and authorisation information in relation to a towing worker;
- (b) requirements for a towing worker to produce the worker's towing worker authorisation document or driver's licence to an authorised officer on request;
- (c) requirements for a towing worker to report incidents involving tow trucks;
- (d) regulating the conduct and behaviour of a towing worker in relation to engaging in towing work for the purposes of a regulated towing business, including —
  - (i) the conduct and behaviour of a towing worker towards a relevant person for a vehicle; and
  - (ii) the conduct of a towing worker at the scene of a vehicle crash or breakdown; and

- (iii) the destination to which a vehicle is towed and the route that a driver must drive to reach the destination.

**154. Authorisations to tow vehicles**

The regulations may make provision for or in relation to authorities to tow (whether given by the relevant person for a vehicle or by a police officer) and authorisations under section 40(4), including in relation to the following —

- (a) the form and content of an authority to tow;
- (b) classes of person who may, or must not, obtain or attempt to obtain an authority to tow;
- (c) circumstances in which a person may, or must not, obtain or attempt to obtain an authority to tow;
- (d) the conduct and behaviour of a person obtaining, or attempting to obtain, an authority to tow, including —
  - (i) the conduct and behaviour of such a person towards a relevant person for a vehicle; and
  - (ii) the conduct of such a person at the scene of a vehicle crash or breakdown;
- (e) requirements for documentation to be prepared or notifications to be given if a vehicle is towed after an authority to tow is given by a police officer under section 40(3) or authorisation is given by the Commissioner of Main Roads under section 40(4);
- (f) protection from liability and responsibility for towing charges and storage charges if an authority to tow is given under section 40(3) or authorisation is given under section 40(4).

## Part 9 — Miscellaneous

### 155. Giving documents

- (1) In this section —  
*electronic means* includes —
  - (a) an electronic database or document system; and
  - (b) any other means by which a document can be accessed electronically.
- (2) The regulations may make provision for or in relation to the following —
  - (a) the giving of a document required or permitted to be given under this Act (including the giving of the document by electronic means);
  - (b) the time at which the document is taken to have been given;
  - (c) the means of satisfying a requirement under this Act in relation to a document in writing (for example, a requirement that the original of a document be given or that a document be signed) if the document is given by electronic means.
- (3) Regulations under subsection (2) cannot provide for a document to which section 108 applies to be served by a means that is inconsistent with that section.
- (4) A document required to be given by the CEO to an authorised towing service provider is taken to have been given to the provider if it is given to a responsible officer of the provider in accordance with regulations made under subsection (2).
- (5) This section applies to a requirement or permission to give a document whether the term “give”, “issue”, “send” or “serve”, or any other similar term, is used.

**156.      Delegation by CEO or Commissioner of Main Roads**

- (1) The CEO may delegate any power or duty of the CEO under another provision of this Act to —
  - (a) a person employed in, or engaged for the purposes of, the Department; or
  - (b) a person of a class of person approved by the Minister.
- (2) The Commissioner of Main Roads may delegate any power or duty of the Commissioner under another provision of this Act to —
  - (a) a person appointed under the *Main Roads Act 1930* section 10(1); or
  - (b) a police officer.
- (3) A delegation under this section must be in writing signed by the person making the delegation.
- (4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (5) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) Nothing in this section limits the ability of the CEO or Commissioner of Main Roads to perform a function through an officer or agent.

**157.      CEO may enter into agreements for performance of functions**

- (1) The CEO may enter into an agreement providing for the CEO's functions under this Act that are described in the agreement to be performed on behalf of the CEO.

- (2) The agreement may be with the Commissioner of Police, a local government, or any other person or body, whether or not the person or body has itself functions of a public nature.
- (3) A function described in the agreement may be performed —
  - (a) in accordance with the agreement; and
  - (b) on and subject to the terms of the agreement.
- (4) If the performance of a function is dependent on the opinion, belief or state of mind of the CEO it may be performed under the agreement on the opinion, belief or state of mind of the person or body with whom the agreement is made or another person provided for in the agreement.
- (5) For the purposes of this Act or any other written law, an act or thing done by, to, by reference to, or in relation to a person or body in connection with the performance by that person or body under the agreement of a function of the CEO is as effectual as if it had been done by, to, by reference to, or in relation to, the CEO.

**158. Protection from personal liability**

- (1) An action in tort does not lie against a person for any thing that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The Minister and the State are also relieved of any liability that either of them might otherwise have had for another person having done any thing as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.
- (5) To avoid doubt, subsection (1) applies to a function performed pursuant to an agreement referred to in section 157.

**159. Protection of people testing or examining or giving certain information**

- (1) The protection given by this section is in addition to any protection given by section 158.
- (2) Proceedings for an offence are not to be brought against a person for giving or reporting to the CEO, in good faith, an opinion formed as a result of having examined a person or administered a test for the purposes of this Act.
- (3) An action in tort does not lie against a person, and proceedings for an offence are not to be brought against a person, for giving or reporting to the CEO, in good faith, information that discloses or suggests that —
  - (a) another person may not be a fit and proper person to hold a towing worker authorisation; or
  - (b) it may be dangerous to —
    - (i) grant a towing worker authorisation to another person; or
    - (ii) allow another person to hold a towing worker authorisation; or
    - (iii) vary, or not to vary, the conditions of a towing worker authorisation.

**160. False or misleading information**

A person commits an offence if the person provides information that the person knows to be false or misleading in a material particular to the CEO under this Act or to any other person performing a function under this Act.

Penalty:

- (a) for an individual —
  - (i) for a first offence, a fine of \$5 000;
  - (ii) for a subsequent offence, a fine of \$10 000;
- (b) for a body corporate, a fine of \$25 000.



**161. Exemption from requirements of this Act**

- (1) The CEO may exempt a person from the requirements of any provision of this Act, on a case-by-case basis, if the CEO is satisfied that —
  - (a) there are exceptional circumstances to justify the exemption; or
  - (b) there is sufficient public interest to justify the exemption.
- (2) An exemption given under subsection (1) must —
  - (a) be granted by written notice given to the person to whom it applies; and
  - (b) specify the person to whom, and circumstances in which, it applies.
- (3) The CEO may amend or revoke an exemption under subsection (1) by written notice given to the person to whom the exemption applies.
- (4) The regulations may —
  - (a) exempt a class of person from the requirements of any provision of this Act; and
  - (b) specify circumstances in which, and conditions subject to which, such an exemption applies.
- (5) Regulations under subsection (4) can be made only on the recommendation of the Minister.
- (6) The Minister must not recommend the making of regulations exempting a class of person from any provision of this Act under subsection (4) unless the Minister is satisfied that —
  - (a) there are exceptional circumstances to justify the exemption; or
  - (b) there is sufficient public interest to justify the exemption.

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- (7) Nothing in this section limits the *Interpretation Act 1984* section 43(8)(d) or 50(2)(b).

[162. *Has not come into operation.*]

## Part 10 — Transitional provisions

### 163. Convictions of disqualification offences before commencement day

- (1) A reference in a provision of this Act to a conviction for a disqualification offence includes a reference to such a conviction that occurred before the day on which that provision came into operation.
- (2) The commencement and end of the period for which a person is disqualified from holding or obtaining a towing business authorisation under section 31(1) is to be determined as if sections 31 and 32 had been in operation when the conviction that resulted in the disqualification, and any previous conviction of the disqualified person for a disqualification offence, occurred.
- (3) The commencement and end of the period for which a person is disqualified from holding or obtaining a towing worker authorisation under section 64(1)(b) is to be determined as if sections 64 and 65 had been in operation when the conviction that resulted in the disqualification, and any previous conviction of the disqualified person for a disqualification offence, occurred.

Examples for this section:

1. The following is an example of how the period for which a person is disqualified from holding or obtaining a towing business authorisation is determined if the person is convicted of a disqualification offence before the day (**commencement day**) on which section 31 comes into operation.
  - (a) Two years before commencement day, the person is convicted of a disqualification offence for which the prescribed disqualification period is 3 years.
  - (b) Under subsection (2), section 31 applies for the purposes of determining the commencement and end of the period for which the person is disqualified as a result of the conviction as if that section had been in force when the conviction occurred.

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- (c) Applying section 31 in this way, the period for which the person is disqualified ends on the last day of the period of 3 years beginning on the day of conviction.
  - (d) Accordingly, on commencement day, the person remains disqualified for 1 year.
- 2. The following is an example of how the period for which an individual is disqualified from holding or obtaining a towing worker authorisation is determined if the individual has been convicted of 2 disqualification offences before the day (**commencement day**) on which section 64 comes into operation.
  - (a) Three years before commencement day, the individual is convicted of a disqualification offence (**offence A**) for which the prescribed disqualification period is 2 years.
  - (b) Two years before commencement day, the individual is convicted of a further disqualification offence (**offence B**) for which the prescribed disqualification period is also 2 years.
  - (c) Under subsection (3), sections 64 and 65 apply for the purposes of determining the commencement and end of the periods for which the individual is disqualified as a result of the convictions as if those sections had been in force when the convictions occurred.
  - (d) Applying sections 64 and 65 in that way, the period of disqualification resulting from offence A ends on the last day of the period of 2 years commencing on the day of conviction. The period of disqualification resulting from offence B commences on the next day after the end of the period of disqualification resulting from offence A and ends on the last day of the period of 2 years commencing on that day.
  - (e) Accordingly, on commencement day the individual remains disqualified for 1 year.

**164. Transitional regulations**

- (1) In this section —

*specified* means specified or described in regulations;

*transitional matter* —

- (a) means a matter or issue of a transitional nature that arises as a result of the enactment of this Act or the coming into operation of any provisions of this Act or regulations made under it; and
- (b) includes a savings or application matter or issue.

- (2) The regulations may prescribe anything required, necessary or convenient to be prescribed in relation to a transitional matter.
- (3) Without limiting subsection (2), regulations made for the purposes of that subsection may provide that specified provisions of this Act —
  - (a) do not apply to, or in relation to, a specified matter or thing; or
  - (b) apply with specified modifications to, or in relation to, a specified matter or thing.
- (4) If regulations made for the purposes of subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in accordance with the *Interpretation Act 1984* section 41(1)(a) but not earlier than the day on which this section comes into operation, the regulations have effect according to their terms.
- (5) If regulations made for the purposes of subsection (2) contain a provision of a kind described in subsection (4), the provision does not operate so as —
  - (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

## **Part 11 — Other Acts amended**

### **Division 1 — *Criminal Organisations Control Act 2012* amended**

**165. Act amended**

This Division amends the *Criminal Organisations Control Act 2012*.

**166. Section 80 amended**

In section 80(1) in the definition of *prescribed activity* delete paragraph (i) and insert:

- (i) conducting a towing business, or engaging in towing work for the purposes of a towing business (as those terms are defined in the *Towing Services Act 2024* section 4);

### **Division 2 — *Road Traffic Act 1974* amended**

**167. Act amended**

This Division amends the *Road Traffic Act 1974*.

**168. Section 91 amended**

- (1) In section 91 insert in alphabetical order:

*vehicle crash* means a collision or impact resulting in damage to a vehicle.

- (2) In section 91 in the definition of *tow truck driver* delete “vehicles.” and insert:

vehicles;

**169. Section 96 amended**

Delete section 96(2)(a)(i) and insert:

- (i) away from a place on a road where the vehicle has been involved in a vehicle crash or has broken down or become bogged or stranded; or

**Division 3 — Road Traffic (Administration) Act 2008 amended**

**170. Act amended**

This Division amends the *Road Traffic (Administration) Act 2008*.

**171. Section 12 amended**

In section 12(5) delete “the *Transport (Road Passenger Services) Act 2018 Part 7*” and insert:

the *Towing Services Act 2024*, the *Transport (Road Passenger Services) Act 2018*

***Towing Services Act 2024***

**Part 11** Other Acts amended

**Division 5** State Administrative Tribunal Act 2004 amended

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**172. Section 110 amended**

In section 110(1A) in the definition of *road law* after “includes” insert:

the *Towing Services Act 2024* and

*[Division 4 has not come into operation.]*

**Division 5 — *State Administrative Tribunal Act 2004* amended**

**176. Act amended**

This Division amends the *State Administrative Tribunal Act 2004*.

**177. Schedule 1 amended**

In Schedule 1 insert in alphabetical order:

*Towing Services Act 2024*

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## Notes

This is a compilation of the *Towing Services Act 2024*. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Towing Services Act 2024</i> Pt. 1, Pt. 2 Div. 2 (but only s. 15 and 16), Pt. 3 Div. 1 (but only s. 40), Pt. 4, Pt. 5 Div. 1, Div. 2 (but only s. 71 and 74) and Div. 3 (other than 78(3)), Pt. 6-8, Pt. 9 (but only s. 155-161), Pt. 10 and Pt. 11 (other than Div. 4)	37 of 2024	29 Oct 2024	Pt. 1: 29 Oct 2024 (see s. 2(a)); Pt. 4 (but only s. 68): 30 Oct 2024 (see s. 2(b)); Pt. 2 Div. 2 (but only s. 15 and 16), Pt. 3 Div. 1 (but only s. 40), s. 69, Pt. 5 Div. 1, Div. 2 (but only s. 71 and 74) and Div. 3 (other than 78(3)), Pt. 6-8, Pt. 9 (but only s. 155-161), Pt. 10 and Pt. 11 (other than Div. 4): 10 Jan 2025 (see s. 2(c) and SL 2025/3 cl. 2)

### Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Towing Services Act 2024</i> Pt. 2 Div. 1, s. 13 and 14, Pt. 2 Div. 3 and 4, s. 41-45, Pt. 3 Div. 2 and 3, s. 72, 73, 75, 78(3) and 162, and Pt. 11 Div. 4	37 of 2024	29 Oct 2024	To be proclaimed (see s. 2(c))

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

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