

# Tow Truck Bill 2023

## Explanatory Notes

### Short title

The short title of the Bill is the Tow Truck Bill 2023.

### Policy objectives and the reasons for them

The policy objectives of the Tow Truck Bill 2023 (the Bill) are to:

- maintain the framework previously provided by the *Tow Truck Act 1973* (the 1973 Act) for the towing, in regulated areas of Queensland, of motor vehicles damaged in incidents, seized by police from off-street regulated parking areas or towed from private property in certain circumstances;
- maintain the requirement for persons who conduct a tow truck business or are involved in operating tow trucks in regulated areas to hold an accreditation (currently known as a 'licence' or 'certificate');
- maintain the requirement for persons who hold an accreditation to comply with duties, obligations, standards of conduct and other requirements;
- modernise the existing legislation by introducing a new structure and terminology that improves consistency across accreditations administered by the Department of Transport and Main Roads (TMR);
- enhance the accreditation process, including accreditation eligibility requirements;
- ensure penalties and offences are targeted and appropriate; and
- modernise enforcement powers to ensure authorised officers have suitable compliance powers.

The 1973 Act currently provides a framework for the towing, in regulated areas of Queensland, of motor vehicles involved in crashes, seized by police from off-street regulated parking areas or towed from private property in certain circumstances. It also provides a framework for the subsequent handling and storage of those vehicles, the handling of confidential information, offence provisions, enforcement provisions, and administrative and review provisions.

All other forms of towing, including breakdown towing, trade towing, and compliance towing, are not covered by the legislative framework.

As at 1 April 2023, approximately 98 tow truck licence holders, 1173 tow truck drivers and 72 tow truck assistants are approved to operate within Queensland's regulated tow truck scheme.

The 1973 Act was revised in 1997 to incorporate police seizure towing and again in 2018 to include private property towing as a result of the *Independent Investigation into the Towing Industry: Removal of Vehicles from Private Property* (the Independent Investigation).

The Independent Investigation made 22 recommendations focussed on including private property towing in the regulatory framework. All 22 recommendations were endorsed by the Queensland Government. In 2018, legislative amendments to the 1973 Act and the *Tow Truck Regulation 2009* (the 2009 Regulation) were made to support implementation of these recommendations.

The Queensland Government also committed to reviewing the 1973 Act and 2009 Regulation:

- to ensure the broader regulatory framework is simple, precise and accessible;
- to ensure that, in relation to the towing services and geographic areas covered by the legislation, the regulatory framework is appropriately targeted; and
- to review all offence penalties to ensure they reflect the seriousness of the relevant offences.

In 2019, a comprehensive review of Queensland's tow truck scheme and the governing legislation (the Review) was conducted by TMR.

The Bill gives effect to the remaining recommendations made by the Independent Investigation and to the findings of the Review by delivering a more modern tow truck scheme in Queensland that is designed to improve road safety and deliver improved outcomes and protections for motorists, property owners and industry professionals.

## **Achievement of policy objectives**

For the objective of modernising the existing legislation by introducing a new structure and terminology, the Bill:

- clearly states the main purposes of the Act;
- clarifies what is considered *regulated towing*;
- clarifies the distinction between operating a tow truck and operating a tow truck business;
- unifies industry members under the new designation of *accreditation*, to replace the terms *licence* and *certificate*;
- provides appropriate regulation-making powers to ensure the legislation is flexible and remains contemporary; and
- removes superfluous provisions.

For the objective of enhancing the accreditation process, including accreditation eligibility requirements, the Bill clarifies matters relating to accreditations, including grounds for refusing to grant or renew an accreditation, and the process for amending, suspending, cancelling or surrendering an accreditation.

For the objective of ensuring penalties and offences are appropriate, the Bill:

- updates penalties for particular offences; and
- introduces a number of new offences to address identified issues.

For the objective of modernising enforcement powers, the Bill introduces a consolidated scheme of authorised officers' powers, while providing certain protections in relation to self-incrimination and safeguards for seized things.

### Clearly stated purposes of the Act

The Bill sets out the main purposes of the Act, which reflect the current intent of the 1973 Act.

Those purposes include:

- facilitating best practice in the tow truck industry by providing a balanced framework for regulating the operation of tow trucks to carry out regulated towing;
- protecting the public by ensuring tow trucks carrying out regulated towing are operated in a safe, competent and professional manner and at a reasonable cost to consumers; and
- protecting public safety and the safety of the road network including through ensuring the safe removal of motor vehicles from the scene of an incident, from a place of seizure or from private property.

### Clarifying what is considered "regulated towing"

The Bill restructures provisions from the 1973 Act to aid readability. Specifically, fundamental concepts used within the legislation are clearly explained and located together at the start of the Bill. These include explaining references to *towing* and defining the terms *tow truck*, *regulated towing*, *private property towing*, *tow truck business*, *towing authority* and *private property towing consent*.

The Bill clarifies that *regulated towing* is:

- the towing of a motor vehicle that is damaged in an incident in a regulated area from the scene of the incident; or
- the towing of a motor vehicle that is seized in a regulated area from the place of seizure; or
- private property towing, which is the towing of a motor vehicle parked on private property in a regulated area from the property if the owner of the vehicle has not expressly requested or directed the towing of the vehicle from the property.

The Bill maintains the same regulated areas as those prescribed by the 1973 Act (see clause 157).

Consistent with the 1973 Act, the Bill provides that it is an offence to conduct a tow truck business unless the person is the holder of an operator accreditation for the business (see clause 52). Further, it is an offence to operate a tow truck to carry out regulated towing, unless the person is the holder of a driver accreditation or to assist in the operation of a tow truck unless the person holds a driver or assistant accreditation (see clause 53).

### Clarifying the distinction between operating a tow truck and operating a tow truck business

Currently, the activities associated with a tow truck are referred to as *operating* a tow truck (for example, sections 5 and 13 of the 1973 Act). The context of the provisions then determines whether operation refers to operating a business involving the use of tow trucks or operating the tow truck itself, such as driving the tow truck or loading a vehicle onto the tow truck.

The Bill introduces the concept of a *tow truck business* (see clause 10) as a business or trade that involves the operation of one or more tow trucks to carry out regulated towing. The Bill also defines the term *operate*, in relation to a tow truck, to mean driving or otherwise operating the tow truck for consideration or in the course of a business or trade and also includes offering to do those things.

This will assist in distinguishing provisions dealing with the carrying on of a tow truck business from those dealing with the operation of a tow truck itself.

#### Unifying industry members under the new designation of accreditation

Currently under the 1973 Act, a tow truck is licensed, and the person is the holder of the licence (section 5 of the 1973 Act). This then results in a *licensed* tow truck. A person who wishes to operate a tow truck (including driving it) must have a *driver's certificate* and a person who wishes to be employed on or in connection with the use of a tow truck must have a *driver's certificate* or an *assistant's certificate*.

The Bill proposes to unify industry members under the new designation of accreditation which will include an *operator accreditation*, a *driver accreditation* and an *assistant accreditation*.

An *operator accreditation* authorises the holder to conduct a tow truck business (a business or trade that involves the operation of one or more tow trucks to carry out regulated towing). A *driver accreditation* authorises the holder to operate, or assist with the operation of, a tow truck to carry out regulated towing. An *assistant accreditation* authorises the holder to operate or assist with the operation of a tow truck to carry out regulated towing. The Bill clarifies, however, that an assistant accreditation does not authorise the holder to drive a tow truck.

#### Ensuring appropriate regulation-making powers

To provide for operational details, and to ensure the legislation remains flexible and contemporary, the Bill contains various regulation-making powers (see clause 151). The more significant of these include the power to make regulations for:

- the making of applications for accreditation;
- the giving, renewal, amendment and replacement of accreditation documents;
- the obligations, duties and standards of conduct of persons who hold an accreditation;
- the auditing by the chief executive of accreditation holders for compliance with this Act;
- obtaining and dealing with towing authorities;
- obtaining or attempting to obtain a person's authority to repair a motor vehicle damaged in an incident in a regulated area;
- requirements in relation to the storage and release of motor vehicles, including requirements in relation to holding yards;
- certain maximum and minimum amounts able to be charged; and
- the specifications and requirements for tow trucks.

#### Removing superfluous provisions

The Bill ensures that any unnecessary provisions previously contained in the 1973 Act are removed. For example, the maximum permissible driving hours are not included as these are already contained in the Heavy Vehicle National Law.

#### Updating penalties for particular offences

A framework of offences and penalties remains a necessary part of the regulated tow truck scheme to deter non-compliance. The Independent Investigation noted that penalties are vital in encouraging compliance with the requirements in the 1973 Act and 2009 Regulation.

A review of existing offences and penalties was undertaken to ensure penalties appropriately reflected the seriousness of the offences with reference to other offences within the tow truck legislation and in comparison to similar offences within transport legislation.

The maximum penalty for a number of offences will be increased. The offences for:

- an accredited driver who tows a vehicle from the scene of an incident or a place of seizure without obtaining the necessary towing authority will be increased from 20 to 60 penalty units (see clause 64);
- carrying out private property towing without a private property towing consent will be increased from 50 to 60 penalty units (see clause 65);
- a person obtaining or attempting to obtain private property towing consents when not the holder of operator accreditation will increase from 50 to 60 penalty units (see clause 79);
- an accredited driver towing a vehicle, if a person is inside the vehicle, will be increased from 50 to 60 penalty units (see clause 68);
- giving false or misleading information (see clause 80) and dishonesty and coercion (see clause 81) will be increased from 40 to 60 penalty units;
- obstructing (see clause 121) and threatening (see clause 122) authorised officers will increase from 40 to 80 penalty units;
- disclosing sensitive information (see clause 63) will be increased from 50 to 100 penalty units; and
- an operator failing to comply with alternative requirements while an exemption is in effect (see clause 135) will be increased from 20 to 80 penalty units.

#### *New offences*

##### a) Authorised tow trucks

Tow trucks must be inspected by a departmental officer to ensure safety and compliance with regulatory requirements. The Bill introduces an offence for the holder of an operator accreditation if a person operates an unauthorised tow truck to carry out regulated towing under the accreditation (clause 55). A maximum penalty of 50 penalty units will apply.

##### b) Storing vehicles at authorised holding yards

Holding yards must be inspected by a departmental officer and meet requirements before an application for operator accreditation can be approved. To ensure the safety and security of vehicles and their contents, the Bill includes a new offence which provides that towed vehicles can only be stored at premises nominated in a towing authority or at an authorised holding yard for the accreditation (see clause 56). Failure to comply with this requirement carries a maximum penalty of 80 penalty units.

##### c) Prohibiting the use of unaccredited drivers and assistants

While it is an offence under the 1973 Act (section 5) to operate a tow truck without a licence, there is no offence for tow truck operators using unaccredited tow truck drivers and assistants to conduct regulated towing. The use of unaccredited tow truck drivers would result in the motorist not being afforded the robust consumer protections at a time when they may be most vulnerable.

Clause 62 of the Bill introduces a new offence for the holder of an operator accreditation to direct a person to contravene the requirements of clauses 53 and 64 to 67. Clause 53 relates to the requirement for drivers and assistants to hold the appropriate accreditation under the Bill. Clauses 64 to 67 prescribe requirements for drivers about obtaining towing authorities and private property towing consents and driving with only acceptable passengers in their tow trucks.

To appropriately reflect the seriousness of the activity, this offence will have a maximum penalty of 160 penalty units.

d) Requirement to notify of a charge or conviction of notifiable offence

The 2009 Regulation (section 15A(a)) requires the holder of an approval (currently a licence or certificate) to notify the chief executive if the holder is convicted of a disqualifying offence; charged with a disqualifying offence and the charge has not been finally disposed of; or convicted of an offence against the 1973 Act.

These requirements are maintained in the Bill by requiring notification to be given if a relevant person is charged with, or given an infringement notice for, a *notifiable offence* and also requiring notification of the outcome of that charge or infringement notice (see clause 74).

Notifiable offences include, for example, offences against the Tow Truck Act 2023, the 1973 Act (for offences committed while that Act was still in force), the *Drugs Misuse Act 1986*, the *Heavy Vehicle National Law (Queensland)*, the *Weapons Act 1990*, certain specified provisions of the Criminal Code, and corresponding offences from another jurisdiction.

The provisions are further strengthened by requiring the notification to be given as soon as practicable after the person is charged but within 14 days. In addition, the Bill requires applicants for an accreditation to provide the same notifications (see clause 73).

The Bill also requires executive officers of corporations, and partners in a partnership, that hold or have applied for an accreditation to notify the other executive officers or partners if they are charged with a notifiable offence and the outcome of that charge (see clauses 75 and 76).

Failure to comply with any of these requirements is an offence with a maximum penalty of 20 penalty units.

e) Towing consents and unaccredited drivers

The Bill introduces a new offence for a person who does not hold a driver accreditation to obtain, or attempt to obtain, a towing authority (see clause 78). A person who contravenes this new offence is liable to a maximum penalty of 60 penalty units.

f) Dishonesty offences

The Bill introduces certain new offences relating to dishonest behaviours (see clauses 80 and 81). These include forging an accreditation document, private property towing consent or towing authority with intent to defraud; and knowingly using an accreditation fraudulently or knowingly directing another person to fraudulently use an accreditation. The maximum penalty for these offences will be 60 penalty units.

### Modernising enforcement powers

The Review identified that current enforcement powers for authorised officers under the 1973 Act are not reflective of a modern accreditation scheme and are currently fragmented within different parts of the legislation.

To rectify this, the Bill provides a contemporary framework of enforcement powers to ensure authorised officers have appropriate powers to enforce compliance. Those powers are now co-located in a discrete part of the Bill (see Part 5 of the Bill) and include the power to enter places in certain circumstances and, once entered, the power to search the place, inspect or film parts of the place, copy documents and require an occupier of the place or a person at the place to give the officer reasonable help to exercise other powers. Other powers relate to the seizure of evidence and the ability to require the provision of certain information and the production of documents. Importantly, this framework also provides certain protections against self-incrimination (see clauses 99, 116 and 117) and safeguards for seized things (see clauses 106 to 108).

Authorised officers will continue to rely on certain powers within the *Transport Operations (Road Use Management) Act 1995* (the TORUM Act) in relation to the stopping, moving, entering and searching of vehicles, including tow trucks. These well-established powers are efficient in terms of allowing authorised officers to check compliance with a number of Acts and regulations under the one power (see section 32 of the TORUM Act, from which a number of other powers flow).

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives.

## **Estimated cost for government implementation**

The costs of implementing the Bill are expected to be minimal and will be borne from existing budgetary allocations.

## **Consistency with fundamental legislative principles**

The fundamental legislative principles under the *Legislative Standards Act 1992* (LSA) that arise as a result of the Bill are discussed in detail below. A Statement of Compatibility under section 38 of the *Human Rights Act 2019* (HR Act) is also tabled with this Bill to address human rights limitations raised by this Bill.

### **Rights and liberties of individuals**

***LSA section 4(3)(a) – rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review***

#### Refusing applications

Clauses 18 and 25 of the Bill provide that the chief executive may refuse an application to grant or renew an accreditation on certain grounds. These include that the chief executive is satisfied that the applicant is not an appropriate person to hold, or continue to hold, the accreditation, or it

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would not be in the public interest for the applicant to hold, or continue to hold, the accreditation, or another ground prescribed by regulation. These considerations also apply if an application is made to amend an accreditation to add a new partner in a partnership (see clause 31).

This may raise the fundamental legislative principle of whether the legislation makes the rights and liberties dependant on administrative power that is sufficiently defined and subject to appropriate review.

The purpose of the accreditation framework is to ensure that only suitable persons are entitled to carry out regulated towing, and that these persons comply with legislative requirements aimed at ensuring public safety and consumer protection. The Bill sufficiently defines the exercise of administrative power by setting out criteria for the chief executive to consider when deciding whether to grant or refuse an application.

Clause 13 of the Bill provides that, when considering whether a person is an appropriate person to hold or continue to hold an accreditation, the chief executive must consider matters such as the person's criminal history, the person's conduct while carrying out activities under an accreditation, whether an accreditation held by the person had been previously suspended or cancelled and whether the person is or has been the subject to a control order under the *Penalties and Sentences Act 1992* or a registered corresponding control order. Where the applicant is a corporation, the chief executive must have regard to a number of factors including, for example, the criminal history of each of the executive officers of the corporation. For driver accreditations, the applicant's traffic history must also be considered.

Clause 14 of the Bill provides that, when considering whether it is in the public interest for a person to hold or continue to hold an accreditation, the chief executive must have regard to:

- the legitimate expectation of members of the public, particularly vulnerable members of the public, that they will not be subject to assault or aggressive, coercive or otherwise inappropriate behaviour from persons involved in the tow truck industry; and
- any other matter prescribed by regulation.

Clauses 13(2) and 14(2) allow the chief executive to have regard to any other matter considered relevant, subject to the restriction in section 15, and this is important to allow any extraordinary factors to be taken into account.

Importantly, the decision to refuse an application or amend an accreditation under clause 18, 25 or 31 is subject to appropriate review. A person is entitled to apply for internal review of the decision by the chief executive and, if dissatisfied with the outcome of that internal review, can apply to Queensland Civil and Administrative Tribunal (QCAT) for an external review of the internal review decision (see clauses 123 to 125 and Schedule 2).

To the extent that the Bill infringes on the fundamental legislative principles, it is considered justified to ensure the chief executive can take into account relevant considerations when determining whether to approve an application for accreditation. Once accredited, tow truck drivers and assistants will interact with members of the public, sometimes at a very vulnerable time, such as after a crash, so it is essential that only appropriate persons are accredited. The provision of internal and external review avenues for those whose applications are refused ensures that appropriate protections are also in place for applicants.

### Imposed conditions

Clauses 20 and 27 of the Bill allow the chief executive to impose conditions on an accreditation or renewed accreditation if the chief executive considers the condition is necessary or desirable for achieving the main purposes of the Act or the condition relates to an administrative matter.

This may raise the fundamental legislative principle of whether the legislation makes the rights and liberties dependant on administrative power that is sufficiently defined and subject to appropriate review.

The provision provides flexibility for the chief executive to take account of an extraordinary circumstance that might otherwise prohibit a person from being approved for an accreditation or present some risk when acting under the accreditation. By imposing a condition on the accreditation, and the activities undertaken under it, the chief executive can ensure the person can operate safely and effectively.

Importantly, the decision to impose a condition on an accreditation or renewed accreditation under clause 20 or clause 27 is subject to appropriate review. A person is entitled to apply for internal review of the decision by the chief executive and, if dissatisfied with the outcome of that internal review, can apply to QCAT for an external review of the internal review decision (see clauses 123 to 125 and Schedule 2).

### ***LSA section 4(3)(b) – inconsistent with the principles of natural justice***

#### Immediate suspensions

Clause 44 of the Bill provides the chief executive with the power to immediately suspend an accreditation by notice to the accreditation holder, without giving the holder an opportunity to first make representations about why the accreditation should not be suspended.

Immediate suspension may deprive the accreditation holder of natural justice. However, any inconsistency with the fundamental legislative principles is justified on the grounds that immediate suspension is limited to serious circumstances. For example, where allowing the person to continue to operate under the accreditation may cause harm to vulnerable motorists or compromise public safety.

Clause 44 provides that an accreditation may be immediately suspended where:

- the chief executive reasonably believes the holder is not an appropriate person to continue to hold the accreditation;
- the chief executive reasonably believes it is not in the public interest for the person to continue to hold the accreditation; or
- public safety has been, or is likely to be, endangered because of the holder's conduct while carrying out activities under the accreditation.

Without limiting these grounds, clause 44(2) provides the chief executive may immediately suspend an accreditation because of written information provided to a police officer or statements or other information given to the chief executive about the conduct of the accreditation holder, and the chief executive reasonably believes the conduct complained of or the information given justifies an immediate suspension.

These matters go to the heart of an accredited person's ability to perform activities authorised under the accreditation safely and appropriately. Immediate suspension of the accreditation prevents detriment, or further detriment, to consumers and the public.

Importantly, clause 44(3) requires that an *information notice* must be given to the holder at the same time as the immediate suspension notice. The information notice sets out, amongst other things:

- the reasons for the decision to impose the immediate suspension;
- that the holder may ask for a review of the decision; and
- how a stay of the operation of the decision may be applied for under the Act.

Further, to ensure the suspension is dealt with in a timely manner, clause 44(4) requires that within 7 days after the day the immediate suspension notice is given to the holder of the accreditation, the chief executive must give the holder a *show cause notice* under clause 39. The show cause notice commences the process for the chief executive to amend, suspend or cancel the accreditation if appropriate.

### Automatic cancellations

Clauses 46 to 48 of the Bill provide for the automatic cancellation of accreditations in certain circumstances, without a decision by the chief executive or a right of review for the accreditation holder. This may be seen to infringe on the procedural rights of the accreditation holder.

Any infringement on the fundamental legislative principles is justified, as automatic cancellation occurs only in circumstances where the holder is no longer capable of carrying out activities under the accreditation.

Under clause 47, an accreditation held by an individual is automatically cancelled where the individual dies or, if they hold an operator accreditation, they become insolvent under administration.

Under clause 48, an operator accreditation is also automatically cancelled where:

- a corporate holder is wound up or deregistered under the Corporations Act; or
- a partnership that holds an accreditation is wound up, dissolved or otherwise ended under the *Partnership Act 1891*.

This ensures an efficient procedure for cancelling an accreditation where the holder no longer needs it or is no longer in a position to carry on activities under the accreditation. It is important that these accreditations are cancelled immediately to ensure that no other person carries out activities under the accreditation without going through the application process and being assessed as an appropriate person to hold the accreditation.

### ***LSA section 4(3)(b) and (d) – inconsistent with principles of natural justice and reversal of onus of proof***

### Evidentiary provisions

In any prosecution for an offence, the prosecution bears the onus of proving each and every element of the offence beyond a reasonable doubt. To do this, the prosecution must adduce admissible evidence to the court. Generally, for evidence to be admissible, it must be provided

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through witness testimony unless there is a statutory provision that allows for the evidence to be provided in another way, such as through a certificate or document. Allowing for documentary evidence to be directly admissible alters the usual proceedings and may be viewed as being inconsistent with the principles of natural justice and reversing the onus of proof. This is because it allows the prosecution to provide evidence without the witness necessarily being available to be cross-examined.

Clause 127 allows the chief executive to issue evidentiary certificates in relation to certain documents and in relation to whether an accreditation was or was not in force and whether an accreditation was or was not subject to a stated condition. Clause 128 allows certain information to be introduced by way of an allegation in a complaint. This includes, for example, whether a person was the owner of a motor vehicle or was an occupier of certain private property. These provisions may be seen as reversing the onus of proof as they may require the defendant to introduce contrary evidence to the evidence provided by the certificate or allegation.

However, where the facts in question are non-contentious, the defendant may not wish to challenge the evidence, in which case, witness testimony can be inconvenient for the witness, inefficient for the court and more costly as witnesses may be entitled to expenses and these costs may be borne by a defendant who is found guilty. In these instances, if admissible evidence can be provided through a document, it benefits all the parties to a proceeding.

Allowing certificates to be issued for particular matters contained in departmental records is a common approach to ensuring efficient court processes as it removes the need to require witnesses to attend on matters of departmental record that are unlikely to be contested. The presumptions of particular matters including that a place was “private property” or that a person was an “occupier” are also necessary to facilitate efficient and cost-effective court process. Underpinning the private property towing amendments is recognition of the rights of an occupier to remove a vehicle from their private property and this is reflected in the terminology in the Bill. However, these elements are matters the occupier or their agent (the tow truck operator) are in a better position to provide evidence of. As a result, the approach in the Bill is justified because the defendant is in the best position to establish these matters.

### Reasonable excuse

The Bill contains a range of powers for authorised officers including, for example, the power to require a person to state their name and residential address in certain circumstances (see clauses 113 and 114) or to produce or certify certain documents (see clauses 115 to 117). A person must comply with these requirements unless they have a reasonable excuse. The Bill also contains an offence for a person to obstruct an authorised officer exercising a power, or someone helping an authorised officer exercising a power, unless the person has a reasonable excuse (see clause 121).

While these provisions impose an evidentiary onus on a person to establish that they have a reasonable excuse for failing to comply with requirements in the Bill, these provisions are considered appropriate. This is because they ensure the evidence can be produced by the party best able to satisfy the requirements of the statutory protection. The basis for establishing a reasonable excuse is particularly within the defendant's knowledge and would be more difficult for the State to exclude than it would be for the defendant to establish.

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***LSA Section 4(3)(e) – confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer***

*Powers of authorised officers*

Part 5 of the Bill sets out a framework for investigating and enforcing compliance with the regulatory scheme. This includes the powers of authorised officers to enforce offences under the tow truck scheme. These new powers may raise fundamental legislative issues because they confer powers of entry and search that may be exercised without warrant.

The powers outlined in the Bill are necessary to ensure investigation of offences can be conducted efficiently. The power for an authorised officer to enter a place is available only in limited circumstances. Specifically, under clause 85, the general power to enter a place only exists where:

- the occupier of the place consents to the entry;
- the place is a public place and the entry is made when the place is open to the public;
- the place is a place of business stated in an operator accreditation, or an authorised holding yard for an operator accreditation, and the entry is made when the place is open for carrying on business or otherwise open for entry or is required to be open for inspection under the accreditation.

Importantly, clause 85(2) provides that an authorised officer may not enter a part of a place of business at which a person resides. Further, if entry is by consent, the power is subject to any conditions of the consent and ceases if the consent is withdrawn (see clause 85(3)). Clause 88 sets out a range of additional protections relating to entry including, for example, that the authorised officer must explain the purpose of the entry and that the person is not required to provide consent and that consent may be withdrawn at any time.

This ensures appropriate protections are in place in relation to the exercise of these powers.

***LSA section 4(2) - rights and liberties of individuals***

*Criminal history*

Clause 138 provides that the chief executive may ask the police commissioner for a criminal history report to help decide if an applicant is an appropriate person to hold or continue to hold an accreditation or if a corporation of which the person is an executive officer is an appropriate person to hold or continue to hold an accreditation. Clause 139 provides that the police commissioner may notify the chief executive of changes in an accreditation holder's criminal history.

The term *criminal history* is defined in schedule 3 of the Bill and includes charges and spent convictions. The *Criminal Law (Rehabilitation of Offenders) Act 1986* allows for consideration of person's entire criminal history, when specifically allowed for under another Act.

This definition of *criminal history* allows the chief executive to consider a broad range of matters when assessing the appropriateness of a person to hold an accreditation. Any charges or convictions may be considered, including, for example, those under the *Summary Offences Act 2005* or the *Transport Operations (Road Use Management) Act 1995*. However, charges that have been withdrawn or otherwise discontinued are not considered part of the person's criminal history.

Clauses 73 and 74 of the Bill provide that an applicant for, or holder of, an accreditation must notify the chief executive if they are charged with a *notifiable offence*. A *notifiable offence* is defined in schedule 3 of the Bill as an offence against the Bill, the 1973 Act, the *Drugs Misuse Act 1986*, the Heavy Vehicle National Law (Queensland), the *Weapons Act 1990*, certain specified provisions of the Criminal Code and corresponding offences from another jurisdiction.

These provisions may impact on the privacy and confidentiality of the person who is the subject of a criminal history report or who is charged with a notifiable offence.

These provisions are justified, however, by the need to ensure that only suitable people hold accreditations. Given that tow truck accreditation holders provide services to vulnerable motorists and help keep roads safe for other users, investigation into the propriety of applicants and holders is necessary to ensure compliance with the regulatory scheme and the protection of consumers. Accreditations should not be granted to a person who poses a heightened risk to public safety. Certain offences, such as those involving violence or abuse, theft, or intimidation, would make a person unsuitable for a role involving vulnerable people and their property.

The definition of *criminal history* in the Bill is consistent with the approach taken in the 1973 Act and the *Transport Operations (Passenger Transport) Act 1994* that applies when assessing applicants for passenger transport operator accreditation and driver authorisations. As towing services may occur in the context of people who are injured or distressed, it is important that the chief executive is fully informed of all matters that may impact on the appropriateness of a person providing services to consumers and ensure they do not have charges or convictions for offences that would make them an unacceptable safety risk to the public or property.

Importantly, while the chief executive must consider a person's criminal history and any charges of notifiable offences, the chief executive is not required to refuse the application. This allows proper consideration of a person's individual circumstances. While some notifiable offences will result in refusal, full consideration needs to be given to factors such as any mitigating circumstances and the period of time that has elapsed since a conviction. The discretion will allow the chief executive to consider each case on its merits.

There are appropriate safeguards to ensure the appropriate treatment of this sensitive information.

Clause 144 of the Bill prohibits the use or disclosure of confidential information except in limited circumstances. Unauthorised use or disclosure is an offence attracting a maximum penalty of 200 penalty units. This high maximum penalty reflects the seriousness of the offence.

In addition to the protections in the Bill, TMR is obligated to manage its public records subject to the applicable provisions of the *Public Records Act 2002*. TMR officers are also bound by the Code of Conduct for the Queensland Public Service, the *Public Service Act 2008*, the *Information Privacy Act 2009* and the *Crime and Corruption Act 2010*. TMR has a strict Records Management Policy that applies to retention and disposal of records in a way that complies with all of the above legislation, while allowing TMR to appropriately keep records as evidence of decision-making. This includes the timeframe for which records are required to be kept and the protection against early destruction, as well as the appropriate archiving or destruction at the required time.

TMR will develop internal documents to guide decision makers when considering criminal histories as part of deciding an application for a tow truck accreditation.

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### Proceedings for offences under the 1973 Act

Clause 165 of the Bill provides that proceedings for offences committed prior to commencement of the Bill may be started or continued, and the person may be convicted of and punished for the offence, as if the 1973 Act had not been repealed. This may limit the rights and liberties of individuals by enabling a person to be convicted of, and punished for, an offence under repealed legislation.

This provision provides a level of certainty and continuity for both regulators and individuals by allowing the requirements under the current scheme to continue to apply until any proceedings are finally dealt with. Importantly, the provision only operates in circumstances where the act or omission was an offence at the time it was committed. It is therefore appropriate and consistent with the rights and liberties of individual to allow proceedings to be commenced or continued under the 1973 Act.

### New offences

The Bill introduces new offences with new penalties and increases a number of existing penalties. Tow truck operators, drivers and assistants provide services to the community, sometimes when the community member is quite vulnerable or distressed, such as when their vehicle has been involved in a crash. Additionally, the community concern raised during the Independent Investigation into private property towing illustrates the need for robust regulation regarding private property towing services.

The proposed penalty regime is designed to encourage compliance with the new and existing requirements of the tow truck scheme by ensuring appropriate penalties are in place reflecting the seriousness of each offence.

The Bill introduces the following offences that are not covered in the 1973 Act.

#### a) Authorised tow trucks

Tow trucks must be inspected by a departmental officer to ensure safety and regulatory requirements. When an operator accreditation is granted, the chief executive must give the operator an accreditation document that states, amongst other things, each motor vehicle that may be used as a tow truck under the accreditation (see clause 19(1)(f)(iii)). The Bill introduces an offence for the holder of an operator accreditation if a person operates an unauthorised tow truck to carry out regulated towing under the accreditation (see clause 55). A maximum penalty of 50 penalty units will apply.

#### b) Storing vehicles at authorised holding yards

Holding yards must be inspected by a departmental officer and meet certain requirements before an application for operator accreditation can be approved. To ensure the safety and security of vehicles and their contents, the Bill includes a new offence which provides that towed vehicles can only be stored at premises nominated in a towing authority or at an authorised holding yard for the accreditation (see clause 56). Failure to comply with this requirement carries a maximum penalty of 80 penalty units.

c) Directing persons to do particular things

Clause 62 of the Bill introduces a new offence for the holder of an operator accreditation to direct a person to contravene the requirements of clauses 53 and 64 to 67. Clause 53 relates to the requirement for drivers and assistants to hold the appropriate accreditation under the Bill. Clauses 64 to 67 prescribe requirements for drivers about obtaining towing authorities and private property towing consents and driving with only acceptable passengers in their tow trucks.

The use of unaccredited tow truck drivers circumvents the consumer protections contained in the Bill and results in motorists not receiving robust consumer protections at a time when they may be most vulnerable.

Given the significance of this offence, it carries a maximum penalty of 160 penalty units. To maintain the integrity of the scheme, there needs to be the strongest deterrent to operators failing to abide by their obligations under the legislation.

To assist operators to comply with this requirement, clause 143 of the Bill introduces a new provision allowing the chief executive to disclose non-identifying information about driver and assistant accreditations. It is anticipated that TMR will establish an online 'accreditation checker' which will operate in a similar way to other online transport approval checkers. This will provide a simple and no cost means for tow truck operators to validate that their employees and contractors have the appropriate accreditation.

d) Notification of *notifiable offences*

Section 15A of the 2009 Regulation provides that a tow truck approval holder must notify the chief executive within 14 days if charged or convicted of certain offences. Failure to comply with that requirement is an offence with a maximum penalty of 20 penalty units.

These requirements are maintained in the Bill (see clause 74) but are further strengthened by requiring the notification to be given as soon as practicable after the person is charged but within 14 days, and by extending the requirement to partners in a partnership. In addition, the Bill requires applicants for an accreditation to provide the same notifications (see clause 73).

The Bill also requires executive officers of corporations, and partners in a partnership, that hold or have applied for an accreditation to notify the other executive officers or partners if they are charged with a notifiable offence and the outcome of that charge (see clauses 75 and 76).

Failure to comply with any of these requirements is an offence with a maximum penalty of 20 penalty units.

These new offences are an important component in the chief executive ensuring that a person is appropriate to hold or continue to hold an accreditation under the Bill. As noted above, this is essential given the interactions accreditation holders will have with members of the public.

e) Towing consents and unaccredited drivers

The Bill introduces a new offence for a person who does not hold a driver accreditation to obtain, or attempt to obtain, a towing authority (see clause 78). This is an important consumer protection measure which ensures that only those drivers who have been assessed and accredited by the chief executive are involved in obtaining towing authorities. This offence is in line with

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the existing offence for a person who does not hold a driver accreditation to obtain, or attempt to obtain, a private property towing consent. A person who contravenes this new offence is liable to a maximum penalty of 60 penalty units.

f) Dishonesty offences

The 1973 Act contained offences relating to false statements and representations and coercion. The Bill continues to regulate those activities and, in addition, introduces certain new offences relating to dishonest behaviours (see clauses 80 and 81). These include forging an accreditation document, private property towing consent or towing authority with intent to defraud; and knowingly using an accreditation fraudulently or knowingly directing another person to fraudulently use an accreditation. The maximum penalty for these offences will be 60 penalty units.

These are important new protections that will promote professional conduct within the industry and safeguard vulnerable motorists.

### **Institution of Parliament**

***LSA section 4(4)(a) – whether the Bill allows delegation of legislative power only in appropriate cases and to appropriate persons***

#### **Penalties in regulations**

The Bill (in clause 151(3)(b)) allows a regulation to provide a maximum penalty of up to 80 penalty units for a contravention of the regulation. While this level is higher than is generally appropriate, it is noted that the Bill contains offences with maximum penalties of up to 160 penalty units.

These penalty levels reflect the fact that tow truck operators, drivers and assistants will be interacting with members of the public who, on occasion, will be in a state of distress due to the crash of their vehicle. Significant penalties are therefore required to ensure compliance with the requirements of the Bill and any regulation made under the Bill.

The proposed structure ensures the most serious offences with the highest penalties (up to 160 penalty units) are contained within the Bill while other offences, still serious but warranting a lower level of penalty (up to 80 penalty units), can be dealt with in the regulation.

***LSA section 4(4)(a) – whether the Bill allows delegation of legislative power only in appropriate cases and to appropriate persons***

#### **Regulation about particular applications**

Clause 152 of the Bill states that a regulation may prescribe that an application made under the Act must be made in the way, and include the information, stated in a notice made by the chief executive and published on the department's website. A regulation may also provide that the chief executive may ask for further information reasonably needed to decide an application. This may raise fundamental legislative principle issues relating to the delegation of legislative power.

In 2017, TMR began a process of allowing applications and notifications to be made to the chief executive in alternate ways to just an approved form. This was done to ensure new and emerging technologies and approaches, such as mobile apps, can be adopted quickly to enhance a customer's experience. As a result of that process, a person can now, for example, renew their driver licence or vehicle registration in a TMR Customer Service Centre (CSC) without the need to complete a form. This process has been well received by both customers and CSC staff without any diminution in security of those transactions.

Clause 152 will allow a regulation to provide for the way in which applications can be made under the Act to facilitate similar flexible alternatives that are already available under other transport regulations (see, for example, sections 381 to 383 of the Driver Licensing Regulation and sections 193 to 195 of the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021*).

The amendments will enhance customer experiences by not requiring a form to be completed where there is an appropriate and more convenient alternative that the department has made available. Any breach of the fundamental legislative principles is justified by the benefits that can flow to customers from this clause and any regulation made under it.

***LSA section 4(4)(c) – whether the Bill authorises the amendment of an Act only by another Act***

*Regulated areas*

The tow truck scheme applies to *regulated towing* which is defined as:

- the towing of a motor vehicle that is damaged in an incident in a regulated area from the scene of the incident; or
- the towing of a motor vehicle that is seized in a regulated area from the place of seizure; or
- private property towing which is the towing of a motor vehicle parked on private property in a regulated area from the property if the owner of the vehicle has not expressly requested or directed the towing of the vehicle from the property.

*Regulated area* is defined as an area prescribed by regulation. Regulated areas are currently set out in schedule 4 of the 2009 Regulation. Clause 157 of the Bill continues these existing prescribed regulated areas unless and until a regulation under the Act prescribes new areas.

This may raise fundamental legislative principle issues because it may be viewed as having insufficient regard to the institution of Parliament by allowing the areas in which the Act applies to be amended through a regulation.

As the demographics of the State change, however, it may be necessary to amend or prescribe new regulated areas to ensure the purposes of the Bill are met. Any changes to regulated areas will go through a rigorous assessment process before an appropriate regulation is made, as it would result in either deregulating existing regulated areas or expanding the scheme to areas that are not currently regulated. This would require an assessment of the regulatory impacts on the industry, consumers and the community before any changes are made.

To ensure clarity about the boundaries of the tow truck scheme, TMR will provide practical assistance to industry, consumers and enforcement officers by publishing the boundaries of existing regulated areas through the interactive online tool.

## Consultation

An extensive number of industry stakeholders, including tow truck operators, drivers, assistants and other interested parties were consulted as part of the review conducted by TMR. The Queensland towing industry was provided the opportunity to respond to the findings of TMR's legislative review through the release of the public discussion paper and online survey published on the Government's Get Involved website from 28 October 2019 to 1 December 2019.

TMR also considered stakeholder views gathered through two industry forums in late 2019 for light and heavy vehicle tow truck licence holders and targeted stakeholder meetings with the Queensland Police Service, the Royal Automobile Club of Queensland and the Queensland Trucking Association.

Following the release of the proposed policy positions in 2019, TMR has continued to receive direct feedback from the industry. TMR has continued to monitor feedback and has met with industry members who wished to discuss these concerns. The industry was provided with a new policy proposal paper in mid-2022 and provided the opportunity for feedback. To ensure accessibility, the industry was provided with a detailed proposal document and an 'easy read' summary version. In early 2023, industry was provided further opportunity to consider other discreet policy matters that arose during drafting and provide additional feedback. No further issues were raised by the industry.

## Consistency with legislation of other jurisdictions

The provisions of the Bill are specific to the State of Queensland and are not uniform with, or complementary to, legislation of the Commonwealth or another State. However, all other Australian jurisdictions have legislation regulating their tow truck industries to provide consumer protection.

## Notes on provisions

### Part 1 Preliminary

#### Division 1 Introduction

*Clause 1* states the Act may be cited as the *Tow Truck Act 2023*.

*Clause 2* states that the Act commences on a day to be fixed by proclamation. This will enable the Act to commence at the same time as the new regulation.

*Clause 3* sets out the main purposes of the Act and how these purposes are achieved in the Act. As mentioned above, those purposes are:

- to facilitate best practice in the tow truck industry by providing a balanced framework for regulating the operation of tow trucks to carry out regulated towing;
- to protect the public by ensuring tow trucks carrying out regulated towing are operated in a safe, competent and professional way and at a reasonable cost to consumers; and
- to protect public safety and the safety of the road network including through ensuring the safe and efficient removal of motor vehicles from the scene of an incident, from a place of seizure or from private property.

*Clause 4* provides that the Act applies in relation to the operation of a tow truck to carry out regulated towing. It also provides that the Act does not apply to particular private property towing. This clause aims to ensure that rights and powers to tow or remove a private property motor vehicle that exist under other Queensland or Commonwealth legislation, or a local law, are not altered by the Act. For example, the Act is not intended to interfere with the actions of a person with rights relating to security interests in a private property motor vehicle, or to alter the powers or actions of police officers to remove and detain vehicles under other legislation.

## **Division 2 Interpretation**

*Clause 5* states that the dictionary in schedule 3 defines particular words used in the Act.

*Clause 6* defines what constitutes a *tow truck* for the purposes of the Act.

*Clause 7* provides guidance on references within the Act to the towing of a motor vehicle. For example, that term includes the carrying of the vehicle.

*Clause 8* provides the meaning of *regulated towing*. This is a fundamental concept as it determines which towing activities are regulated under the Act. Specifically, it limits the scope of the Act to:

- the towing of a motor vehicle that is damaged in an incident in a regulated area from the scene of the incident;
- the towing of a motor vehicle that is seized in a regulated area from the place of seizure; or
- private property towing (as defined in clause 9).

Clause 157 of the Bill provides that the existing regulated areas prescribed under the 1973 Act continue to be the regulated areas for the Act. This applies unless and until a regulation is made under the Act to prescribe new regulated areas.

*Clause 9* provides that *private property towing* is the towing of a motor vehicle parked on private property in a regulated area from the property if the owner of the vehicle has not expressly requested or directed the towing of the vehicle from the property. The regulation of private property towing was introduced in 2018 following the recommendations of the Independent Investigation.

*Clause 10* provides the meaning of a *tow truck business* as a business that involves the operation of 1 or more tow trucks to carry out regulated towing. This is relevant to the accreditation framework for tow truck operators and the obligations of an accreditation holder. For example, an operator accreditation authorises the holder to conduct a tow truck business (see clause 16) and it is an offence to conduct a tow truck business without an operator accreditation (see clause 52).

*Clause 11* provides the meaning of a *towing authority*. This is a document that records an agreement to tow a motor vehicle that is damaged in an incident in a regulated area from the scene of the incident, or a motor vehicle that is seized in a regulated area from the place of seizure. A towing authority is given by the owner of the vehicle or their agent, or an authorised officer under the *Transport Operations (Road Use Management) Act 1995*. Clause 64 provides

that it is an offence for a tow truck driver to tow a motor vehicle from an incident or place of seizure from within a regulated area without a towing authority.

*Clause 12* provides the meaning of a *private property towing consent*. This is a document that is an agreement between the holder of an operator accreditation and the occupier of private property in a regulated area. It records an arrangement between the holder and the occupier under which the holder may, until the arrangement ends, carry out private property towing in relation to the property.

The purpose of a private property towing consent is to ensure the tow truck licence holder has the occupier's approval to remove the vehicle and is only acting at the request of the occupier. This concept allows the Act and Regulation to prescribe the circumstances where vehicles may be towed from a private property and how the towing must be carried out.

### **Division 3 General provisions**

*Clause 13* sets out the matters to be considered when the chief executive is deciding whether or not a person is an appropriate person to hold or to continue to hold an accreditation.

The types of matters that the chief executive must have regard to include the person's criminal history, whether an accreditation held by the person has been previously suspended or cancelled, the person's conduct while carrying out activities under an accreditation, and whether the person is or has been the subject to a control order under the *Penalties and Sentences Act 1992* or a registered corresponding control order. Where the applicant is a corporation, the chief executive must have regard to a number of factors including, for example, the criminal history of each of the executive officers of the corporation. For driver accreditations, the applicant's traffic history must also be considered.

*Clause 14* sets out the matters to be considered when the chief executive is deciding whether it is in the public interest for a person to hold or continue to hold an accreditation. Specifically, regard must be had to:

- the legitimate expectation of members of the public, particularly vulnerable members of the public, that they will not be subject to assault or aggressive, coercive or otherwise inappropriate behaviour from persons involved in the tow truck industry; and
- any other matter prescribed by regulation or, subject to clause 15, any other matter the chief executive considers relevant.

This section is relevant to the chief executive's power to make decisions about accreditation applications and take action against an accreditation holder. The chief executive may refuse an application to grant, renew or amend an accreditation if satisfied it would not be in the public interest to approve the application (see clauses 18, 25 and 31). The chief executive may also amend, suspend or cancel an accreditation if it is not in the public interest for a person to continue to hold an accreditation (see clause 38).

*Clause 15* provides that the chief executive must not have regard to criminal intelligence given by the police commissioner to the chief executive under an information sharing agreement for the purpose of deciding an application for accreditation or deciding whether to amend, suspend or cancel an accreditation.

*Criminal intelligence* is defined in section 86(3) of the Criminal Code and means information relating to actual or suspected criminal activity, where the disclosure could reasonably be expected to:

- prejudice a criminal investigation; or
- enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement; or
- endanger a person's life or physical safety.

The purpose of this clause is to prevent disclosure of criminal intelligence under the Act. If this information were considered as part of a decision to refuse an application or approve an application subject to conditions, it would need to be included in any information notice given to the applicant. This would result in the disclosure of highly sensitive information that may prejudice an investigation or cause serious harm to an individual.

## **Part 2 Accreditations**

### **Division 1 Preliminary**

*Clause 16* sets out the 3 types of accreditations issued under the Act. These are:

- *operator accreditations* that authorise the holder to conduct a tow truck business;
- *driver accreditations* that authorise the holder to operate, or assist with the operation of, a tow truck to carry out regulated towing; and
- *assistant accreditations* that authorise the holder to operate, or assist with the operation of, a tow truck to carry out regulated towing but not to drive the tow truck for that purpose.

### **Division 2 Applications for accreditations**

*Clause 17* provides that a person may apply to the chief executive for an accreditation. The detail on the way the application may be made and what it must be accompanied by is to be prescribed by regulation.

*Clause 18* requires the chief executive to approve or refuse applications for accreditation and, in doing so, must consider any matters prescribed by regulation and, other than criminal intelligence as mentioned in clause 15, any other matter the chief executive considers relevant. The clause provides that the chief executive may refuse the application if satisfied that the applicant is not an appropriate person to hold the accreditation, or it would not be in the public interest for the applicant to hold the accreditation.

*Clause 19* provides that if an application for accreditation is approved, the chief executive must give the applicant an accreditation document stating certain information about the accreditation, including the expiry day and any conditions imposed on the accreditation.

If the chief executive refuses the application, or approves the application subject to conditions, the applicant must be given an *information notice* that informs the applicant of the decision, the reasons for the decision and their right to have the decision reviewed under the Act.

*Clause 20* allows the chief executive to impose conditions on an accreditation if the chief executive considers the condition is necessary or desirable for achieving the main purposes of the Act or the condition relates to an administrative matter. This provides flexibility for the chief

executive to take account of some extraordinary circumstance that might otherwise prohibit a person from being approved for an accreditation or present some risk when acting under the accreditation. By imposing a condition on the accreditation, and the activities undertaken under it, the chief executive can ensure the person can operate safely and effectively.

*Clause 21* provides that an accreditation starts on the day the accreditation document is given and ends on the expiry day. Under clause 19(2) of the Bill, this period must be a maximum of 5 years.

*Clause 22* provides that an accreditation cannot be transferred to another person. It is essential that the chief executive has assessed and approved a person's application for accreditation.

### **Division 3 Renewal of accreditations**

*Clause 23* allows the chief executive to issue a notice advising an accreditation holder about the upcoming expiry of their accreditation.

*Clause 24* provides that a person may apply to the chief executive for a renewal of an accreditation for a period of not more than 5 years. The detail on the way the application must be made and what it must be accompanied by is prescribed by regulation.

*Clause 25* requires the chief executive to approve or refuse applications for renewal of accreditation and, in doing so, must consider matters prescribed by regulation and, other than criminal intelligence as mentioned in clause 15, any other matter the chief executive considers relevant. The clause provides that the chief executive may refuse the application if satisfied that the applicant is not an appropriate person to continue to hold the accreditation, or it would not be in the public interest for the applicant to continue to hold the accreditation.

Clause 25 also provides that the chief executive may decide a renewal application after the accreditation stops having effect. This deals with the situation where an accreditation expires between the holder making the renewal application and the chief executive deciding the application.

*Clause 26* provides that, if an application to renew an accreditation is approved, the chief executive must give the applicant a new accreditation document stating certain information about the accreditation, including the expiry day and any conditions imposed on the renewed accreditation. If the chief executive refuses the application, or approves the application subject to conditions, the applicant must be given an *information notice* that informs the applicant of the decision, the reasons for the decision and their right to have the decision reviewed under the Act.

*Clause 27* allows the chief executive to impose conditions on a renewed accreditation if the chief executive considers the condition is necessary or desirable for achieving the main purposes of the Act or the condition relates to an administrative matter.

*Clause 28* provides the period of a renewed accreditation starts the day after the accreditation would have expired and continues for the period stated in the application. If, however, the accreditation expires before the renewal application is decided, the period of the accreditation instead begins on the day the new accreditation document is given.

*Clause 29* provides that an application to renew an accreditation is taken to be withdrawn if the accreditation is surrendered or cancelled.

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## **Division 4 Amending accreditations by application**

*Clause 30* provides that the holder of an accreditation may apply to the chief executive to amend the accreditation. The detail on the way the application may be made and the relevant fee and the information to be provided with the application are to be prescribed by regulation.

*Clause 31* provides that the chief executive must decide whether to approve or refuse an amendment application. In doing so, the chief executive must consider matters prescribed by regulation and, other than criminal intelligence as mentioned in clause 15, any other matter the chief executive considers relevant.

*Clause 32* provides that, if an amendment to an accreditation is approved, the chief executive must give the applicant a replacement accreditation document showing the amendment. If the chief executive refuses the amendment application, the chief executive must give the applicant an *information notice* that informs the applicant of their right to have the decision reviewed under the Act.

*Clause 33* provides that the amendment of the accreditation takes effect on the day the replacement accreditation document is given.

*Clause 34* provides that an amendment application is taken to be withdrawn if the accreditation stops having effect.

## **Division 5 Surrendering accreditations**

*Clause 35* provides that the holder of an accreditation may surrender the accreditation by giving the chief executive written notice of the surrender and the accreditation stops having effect on the day of the notice or on a later day stated in the notice.

## **Part 3 Amending, suspending and cancelling accreditations**

### **Division 1 Minor amendments**

*Clause 36* provides that the chief executive may, by written notice given to the holder of an accreditation, make a *minor amendment* to the accreditation. The clause defines a *minor amendment* as an amendment that: is made for a formal or clerical reason; omits a condition of the accreditation; does not adversely affect the interests of the accreditation holder; or the accreditation holder has agreed to the amendment. The clause provides that the minor amendment takes effect on the day the notice is given, or on a later day stated in the notice.

### **Division 2 Amending, suspending and cancelling accreditations generally**

*Clause 37* provides that the division does not apply in relation to a minor amendment of an accreditation.

*Clause 38* sets out the grounds for amending, suspending or cancelling an accreditation. These grounds include, for example, that the holder of the accreditation is not an appropriate person to

continue to hold the accreditation; it is not in the public interest for the holder of the accreditation to continue to hold the accreditation; public safety has been or is likely to be endangered due to the conduct of an accreditation holder while carrying out activities under the accreditation; or because the holder of the accreditation has given false or misleading information to an authorised officer.

Under clause 13, the chief executive must have regard to a broad range of matters when deciding whether a person is an appropriate person to hold or to continue to hold an accreditation. Similarly, when deciding whether it is in the public interest for a person to hold or continue to hold an accreditation clause 14 requires the chief executive to have regard to the legitimate expectation of members of the public, particularly vulnerable members of the public, that they will not be subject to assault or aggressive, coercive or otherwise inappropriate behaviour from persons involved in the tow truck industry. As such, clause 38 provides sufficient scope for the chief executive to take action against an accreditation where that is justified.

*Clause 39* provides that if the chief executive considers that a ground exists to amend, suspend or cancel an accreditation the chief executive may give the holder of the accreditation a *show cause notice*. Information that must be contained in the notice includes the proposed action, the grounds for the proposed action, and the accreditation holder's right to make representations about why the proposed action should not be taken within a stated period. The stated period must be at least 28 days, and this period may be further extended by notice from the chief executive.

*Clause 40* provides that the holder of the accreditation may make written representations to the chief executive within the show cause period. *Show cause period* is defined in schedule 3 to be the period stated in the show cause notice, or as extended by the chief executive under section 39(4). Clause 40 also provides that the chief executive must consider any representations made within the show cause period.

*Clause 41* provides that if, after considering any representations made to the chief executive, the chief executive no longer considers a ground exists to take the proposed action, the chief executive must take no further action about the show cause notice. The chief executive must give the holder of the accreditation a notice that no further action is to be taken.

*Clause 42* provides that if after considering any representations made, the chief executive still considers a ground exists to take the proposed action, the chief executive may take the action proposed in the show cause notice. The chief executive may also take certain alternative actions that are considered appropriate having regard to the accreditation holder's representations. For example, if the proposed action was to cancel the accreditation, the chief executive may instead amend the accreditation or suspend it for a period. If the chief executive does amend, suspend or cancel the accreditation, the holder of the accreditation must be given an information notice for the decision which, amongst other things, states the way in which the holder can have the decision reviewed.

*Clause 43* provides that if the proposed action relates to a matter that is the subject of a court proceeding, the chief executive may defer making a decision until the proceeding is finally decided or otherwise ends but must make the decision as soon as is reasonably practicable after the proceeding is finally decided or otherwise ended. It is generally appropriate that any administrative action be put on hold pending the outcome of court proceedings as that outcome will be relevant to the administrative action.

### Division 3 Immediate suspensions

Clause 44 provides that the chief executive may, by written notice given to the holder, immediately suspend an accreditation on certain grounds where the chief executive reasonably believes:

- the holder is not an appropriate person to continue to hold the accreditation;
- it is not in the public interest for the holder to continue to hold the accreditation;
- public safety has been endangered, or is likely to be endangered, because of the holder's conduct while carrying out activities under the accreditation.

Without limiting these grounds, clause 44(2) provides the chief executive may immediately suspend an accreditation because of written information provided to a police officer or statements or other information given to the chief executive about the conduct of the accreditation holder and the chief executive reasonably believes the conduct complained of or the information given justifies an immediate suspension.

Importantly, clause 44(3) requires that an *information notice* must be given to the holder at the same time as the immediate suspension notice. An information notice sets out, amongst other things:

- the reasons for the decision to impose the immediate suspension;
- that the holder may ask for a review of the decision; and
- how a stay of the operation of the decision may be applied for under the Act.

Further, to ensure the suspension is dealt with in a timely manner, clause 44 requires that within 7 days after the day the immediate suspension notice is given to the holder of the accreditation, the chief executive must give the holder a *show cause notice* under clause 39. The show cause notice commences the process for the chief executive to amend, suspend or cancel the accreditation if appropriate.

Clause 45 provides that an immediate suspension commences on the giving of the immediate suspension notice and continues until the earlier of:

- the show cause process being finalised;
- the end of the *immediate suspension period* which, under clause 45(4), continues until 56 days after the giving of the notice and any extension of that period under clause 45(3).

Clause 45(3) allows the chief executive to extend the immediate suspension period for up to 56 further days if the chief executive considers it appropriate to do so in the circumstances.

### Division 4 Automatic suspensions and cancellations

Clause 46 provides a definition of *relevant driver licence* for division 4.

Clause 47 provides that an accreditation held by an individual is automatically cancelled if the holder dies or, for an operator accreditation, the holder becomes insolvent.

Clause 48 provides that an operator accreditation held by a corporation is automatically cancelled on the corporation being wound up or deregistered. The clause also provides that, if the accreditation is held by a partnership, then it is automatically cancelled on the partnership being wound up, dissolved or otherwise ended under the *Partnership Act 1891*.

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*Clause 49* provides that if a relevant driver licence held by the holder of a driver accreditation is suspended then the driver accreditation is automatically suspended for the driver licence suspension period.

*Clause 50* provides that a driver accreditation is automatically suspended if the holder's relevant driver licence stops having effect other than because of a licence suspension or the transfer of that licence to a Queensland driver licence.

## **Division 5 Replacement accreditation documents**

*Clause 51* provides that if an accreditation is amended under part 3 then the chief executive must, as soon as practicable, give the holder a replacement accreditation document showing the amendment. However, if the accreditation document consists of more than one part, a replacement document need only be given for the part that is affected by the amendment.

## **Part 4 Offences and notifying particular matters**

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

*Clause 52* establishes an offence for a person who conducts a tow truck business without the necessary operator accreditation. Given the seriousness of this offence, the maximum penalty for non-compliance is 160 penalty units.

*Clause 53* establishes an offence for a person to drive, or offer to drive, a tow truck to carry out regulated towing if they do not hold a driver accreditation. The clause also establishes an offence for a person to otherwise operate, or assist with the operation of, a tow truck to carry out regulated towing without the necessary driver accreditation or assistant accreditation. The maximum penalty for non-compliance with these provisions is 80 penalty units.

### **Division 2 Offences relating to holders of operator accreditations and employees**

*Clause 54* contains an offence with a maximum penalty of 50 penalty units that requires the holder of an operator accreditation to ensure that they provide a towing service that operates 24 hours a day, 7 days a week, unless they have a reasonable excuse.

*Clause 55* contains an offence with a maximum penalty of 50 penalty units that requires the holder of an operator accreditation to ensure that any tow truck used to carry out regulated towing under the accreditation is an authorised tow truck.

*Clause 56* contains an offence with a maximum penalty of 80 penalty units that requires the holder of an operator accreditation to, unless exempt, not use a premises to store a motor vehicle that has been towed under the accreditation, or moveable property inside the motor vehicle, unless the premises are either an authorised holding yard for the accreditation or another premises stated in a towing authority.

*Clause 57* contains an offence with a maximum penalty of 50 penalty units and requires an operator accreditation holder to ensure all reasonable precautions are taken to prevent damage to a motor vehicle that has been towed under the accreditation while the vehicle is under the

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holder's control.

*Clauses 58 and 59* contain offences, which carry maximum penalties of 50 penalty units, for the holder of an operator accreditation or their employees where:

- they unlock a motor vehicle in specified circumstances (see clause 58); or
- they move a motor vehicle that has been towed to an authorised holding yard unless permitted by the section (see clause 59).

*Clause 60* contains an offence which carries a maximum penalty of 50 penalty units that requires the holder of an operator accreditation to release, from an authorised holding yard, a motor vehicle that has been towed under an operator accreditation in specified circumstances.

*Clause 61* applies where a motor vehicle is towed under private property towing to an authorised holding yard for an operator accreditation. It requires that the holder of the accreditation must give the police commissioner notice of the tow as soon as practicable, but no later than 1 hour, after the motor vehicle arrives at the authorised holding yard for the operator accreditation. Failure to comply with this requirement carries a maximum penalty of 30 penalty units.

*Clause 62* creates an offence for the holder of an operator accreditation to direct a person to contravene sections 53 or 64 to 67 or any other provision of the Bill prescribed by regulation. This offence reflects that the holder of an operator accreditation has responsibility for how the business is carried out and is expected to ensure that the business, and people employed by the business, comply with the regulatory scheme. The use of unaccredited tow truck drivers, for example, circumvents the consumer protections contained in the Bill and results in motorists not receiving robust consumer protections at a time when they are most vulnerable. The maximum penalty for non-compliance with this provision is 160 penalty units.

*Clause 63* makes it an offence for the holder of an operator accreditation or an employee to disclose *sensitive information* they have obtained in the course of the business unless permitted by the section. Sensitive information is defined to include, for example, personal information about the owner or driver of a motor vehicle involved in an incident or seizure in a regulated area or in private property towing. Given the importance of protecting this information, the maximum penalty is 100 penalty units.

### **Division 3 Offences relating to holders of driver accreditations**

*Division 3* contains a range of offences for which the holders of driver accreditations may be liable. Those offences require the holders to:

- not operate a tow truck to tow a motor vehicle from the scene of an incident or place of seizure unless the authorising person for the vehicle has signed or has, by notice given to the holder, approved a towing authority (Maximum penalty: 60 penalty units) (see clause 64);
- not operate a tow truck to tow a motor vehicle from private property unless a private property towing consent is in effect for the property (Maximum penalty: 60 penalty units) (see clause 65);
- not drive a tow truck to or from the scene of the incident or place of seizure if a person, other than an *accepted person*, is in the tow truck where an accepted person is defined in clause 66(3) to include, for example, the owner or the driver of the motor vehicle or the holder of a driver accreditation or an assistant accreditation (Maximum penalty: 40 penalty units) (see clause 66);

- not drive a tow truck to or from private property if a person, other than an *accepted person* (defined in clause 67(3)) is in the tow truck (Maximum penalty: 40 penalty units) (see clause 67);
- not operate a tow truck to carry out regulated towing in relation to a motor vehicle if a person is in the towed vehicle (Maximum penalty: 60 penalty units) (see clause 68); and
- ensure all reasonable precautions are taken to prevent damage to the motor vehicle while the regulated towing is being carried out (Maximum penalty: 50 penalty units) (see clause 69).

#### **Division 4 Offence relating to holders of assistant accreditations**

*Clause 70* requires the holder of an assistant accreditation, while involved in regulated towing, to ensure that all reasonable precautions are taken to prevent any damage to the motor vehicle being towed. Failure to do so is an offence with a maximum penalty of 50 penalty units.

#### **Division 5 Notification of particular matters**

*Part 4, division 5* sets out requirements to notify the chief executive and others of notifiable offences and contains penalties for non-compliance.

*Clause 71* defines certain terms for use within the division. This includes the definition of a *notifiable offence* which is an offence against a range of Acts including, for example, the *Drugs Misuse Act 1986*, the *Weapons Act 1990* and certain provisions of the Criminal Code.

The division requires the following notifications.

The holder of an operator accreditation must give the chief executive notice within 14 days if a new executive officer is appointed to a corporation, or a new partner joins a partnership, that holds an operator accreditation (see clause 72).

An applicant for accreditation must, unless they have reasonable excuse, notify the chief executive if they, an executive officer of a corporate applicant, or a partner if the applicant is a partnership, is charged with, or served an infringement notice for, a notifiable offence. The notification must be given as soon as practicable but no later than 14 days after the day the relevant person is charged or served with the infringement notice. The applicant must also, unless they have a reasonable excuse, notify the chief executive once the charge or infringement notice is finally dealt with. Again, the notification must be given as soon as practicable but no later than 14 days after the day the charge or infringement notice is dealt with (see clause 73).

The holder of an accreditation must, unless they have reasonable excuse, notify the chief executive if they or an executive officer of a corporation, or a partner in a partnership, that holds the accreditation is charged with, or served an infringement notice for, a notifiable offence. The holder must also, unless they have a reasonable excuse, notify the chief executive once the charge or infringement notice is finally dealt with (see clause 74).

An executive officer of a corporation that applies for, or holds, an operator accreditation must, unless they have a reasonable excuse, notify all other executive officers if they are charged with, or served an infringement notice for, a notifiable offence. The officer must also, unless they have a reasonable excuse, notify the other officers once the charge or infringement notice is finally dealt with (see clause 75). Clause 76 imposes the same requirements on a partner in a partnership that holds an operator accreditation.

A charge or conviction of a notifiable offence is relevant to whether a person is an appropriate person to continue to hold an accreditation and may be grounds for the chief executive to issue a show cause notice under Part 3 of the Bill, proposing to amend, suspend or cancel the accreditation.

The maximum penalty for failing to comply with the requirements of clauses 72 to 76 of the Bill is 20 penalty units.

### **Division 6 Other offences**

*Clause 77* contains two offences, with a maximum penalty of 40 penalty units each, where a person holds more than one driver accreditation or more than one assistant accreditation.

*Division 6* contains additional offences, with maximum penalties of 60 penalty units, where a person:

- obtains, or attempts to obtain, a towing authority when they do not hold a driver accreditation (see clause 78);
- obtains, or attempts to obtain, a private property towing consent when they do not hold an operator accreditation (see clause 79);
- give an official information that they know is false or misleading in a material particular (see clause 80); or
- commits certain acts of dishonesty or coercion relevant to matters within the Bill (see clause 81).

## **Part 5 Investigation and enforcement**

### **Division 1 Preliminary**

*Division 1* deals with preliminary matters for the part including defining various words and terms used within the part.

### **Division 2 Entry of places by authorised officers**

*Clause 85* provides that an authorised officer may enter a place if:

- the occupier consents and section 88 has been complied with;
- the place is a public place and open to the public;
- the entry is authorised under a warrant and, if there is an occupier of the place, section 95 has been complied with; or
- if the place is a place of business stated in an operator accreditation, or an authorised holding year for an operator accreditation and is open for business or otherwise open for entry.

*Clauses 86 to 89* deal with entry by consent and provide, for example, that:

- for the purpose of seeking consent from the occupier, the authorised officer may enter land around the premises or a part of the place that members of the public could ordinarily enter (see clause 87);
- the authorised officer must explain the purpose of entry to the occupier and tell the occupier that they are not required to provide consent to entry (see clause 88); and
- if the occupier consents to entry, the authorised officer may ask the occupier to sign an acknowledgement of the consent (see clause 89).

*Clauses 90 to 95* deal with entry under warrant and include provisions for:

- the making of applications for warrants by authorised officers (see clause 90);
- the issuing of warrants by magistrates where the magistrate is satisfied there are reasonable grounds for suspecting that there is, or will be within the next 7 days, at the place evidence of an offence against the Act (see clause 91);
- the making of electronic applications for warrants where there are urgent or other special circumstances (see clause 92);
- restricting the granting of warrants where the application is made by electronic means to circumstances where such an application was necessary and requiring the authorised officer to send the magistrate the written application at the first reasonable opportunity (see clause 93);
- dealing with defects in warrants (see clause 94); and
- the procedure an authorised officer must follow if intending to enter a place under a warrant including making a reasonable attempt to identify themselves to an occupier, provide the occupier with a copy of the warrant and give the occupier an opportunity to allow the officer immediate entry without using force (see clause 95).

### **Division 3 General powers of authorised officers after entering places**

*Clauses 96 to 99* deal with the general powers of authorised officers once they have entered a place. These include, for example, that the officer may, under clause 97:

- search any part of the place;
- inspect, examine or film any part of the place or anything at the place;
- take for examination a thing at the place; and
- copy a document at the place.

Under clause 98, an authorised officer can require an occupier or person at a place, to give the officer reasonable help to exercise powers under clause 97.

Importantly, when making a requirement under clause 98(1), the authorised officer must give the person an *offence warning* for the requirement. That requires the authorised officer to advise the person that, without a reasonable excuse, it will be an offence for the person to whom the direction is given, or of whom the requirement is made, not to comply with the direction or requirement. It is an offence, with a maximum penalty of 60 penalty units, for a person to fail to provide that help unless they have a reasonable excuse where that excuse may be that complying might tend to incriminate them or expose them to a penalty (see clause 99).

### **Division 4 Seizure by authorised officers and forfeiture**

*Clauses 100 to 102* set out the powers of authorised officers to seize evidence.

This includes, in clause 100, that an authorised officer who enters a place the officer may enter without the consent of an occupier and without a warrant may seize a thing at the place if the officer reasonably believes the thing is evidence of an offence against this Act and seizing it is necessary to prevent the thing being hidden, lost or destroyed or used to commit the offence.

*Clause 101* deals with seizure powers for authorised officers who enter a place with the consent of an occupier or with a warrant.

*Clause 102* allows an authorised officer to seize a thing even where there is a claim by another person to a lien or other security over the thing. Importantly, however, the seizure will not affect that person's claim.

*Clause 103* provides that the authorised officer may leave a seized thing at the place and restrict access to it or, alternatively, move it from that place.

*Clause 104* provides that it is an offence, with a maximum penalty of 60 penalty units, to fail to comply with a requirement from an authorised officer to deal with a seized thing in a particular way (for example, restricting access to the thing).

*Clause 105* provides that it is an offence, with a maximum penalty of 60 penalty units, to interfere with a seized thing or enter a restricted place or tamper with anything used to restrict access to the thing or the place.

*Clauses 106 to 108* set out safeguards for seized things including that:

- an authorised officer must generally provide a receipt for a seized thing (see clause 106);
- the chief executive must allow the owner of the thing access to inspect the thing from time to time and, if it is a document, to take a copy of it (see clause 107); and
- the chief executive must return the thing as soon as practicable after a proceeding or any appeal has ended but no later than 6 months after the day it was seized (see clause 108).

*Clauses 109 and 110* deal with the circumstances in which a seized thing may be forfeited to the State and the procedure to be followed if that occurs.

*Clause 111* provides that if a thing is forfeited to the State under section 109, it becomes the property of the State.

*Clause 112* then allows the chief executive to deal with the thing however the chief executive considers appropriate.

## **Division 5 Other information obtaining powers of authorised officers**

*Clauses 113 to 117* set out a range of other information gathering powers that authorised officers are provided with under the Bill. These include the power to require:

- certain persons to provide their name and address details and to provide evidence to support the correctness of the details provided;
- the production of documents, including documents required to be kept under the Act; and
- the certification of copies of documents by the person responsible for keeping the document.

Failure to comply with any of these requirements is an offence with a maximum penalty of 40 penalty units (see clauses 114, 116 and 117). Importantly, however, when making a requirement for personal details under clause 113 or a production or certification requirement under clause 115, the authorised officer must give the person an *offence warning* for the requirement. That requires the authorised officer to advise the person that, without a reasonable excuse, it will be an offence for the person of whom the requirement is made, not to comply with that requirement.

## **Division 6 Damage**

*Clause 118* requires authorised officers to take all reasonable steps when exercising their powers to minimise any inconvenience or damage.

*Clause 119* provides that if an authorised officer, or someone acting under their direction of authority, does damage something, the authorised officer must give notice of the damage as soon as possible to the owner or person in control of the thing. The notice must state particulars of the damage and that the person may claim compensation for the damage.

## **Division 7 Compensation**

*Clause 120* allows a person who has suffered loss due to the exercise, or purported exercise, of a power by or for an authorised officer to claim compensation from the State for that loss.

## **Division 8 Other offences relating to authorised officers**

*Clause 121* creates an offence, with a maximum penalty of 80 penalty units, for a person who obstructs an authorised officer, or someone helping an authorised officer, exercising a power.

*Clause 122* creates an offence, with a maximum penalty of 80 penalty units, for a person who threatens an authorised officer, or someone helping an authorised officer, exercising a power.

# **Part 6 Review of decisions and legal proceedings**

## **Division 1 Review of decisions**

*Clause 123* defines certain terms for use within the division.

*Clauses 124 and 125* set out a person's review rights. They provide:

- that the review process must commence with internal review by the chief executive (see clause 124);
- the procedure and timeframe for making an application for internal review (see clause 124); and
- if the person is not satisfied with the outcome of the internal review, they may apply to QCAT for a review of that internal review decision (see clause 125).

## **Division 2 Evidence**

*Clauses 126 to 128* provide for a range of evidentiary certificates and provisions that apply to proceedings under the Act.

## **Division 3 Proceedings**

*Clause 129* provides that proceedings for offences against the Act must be heard and decided summarily and sets out the timeframes within which those proceedings must be brought.

## **Part 7 Miscellaneous**

### **Division 1 Exemption decisions**

*Clause 130* allows an applicant for, or the holder of, an operator accreditation to apply to the chief executive for, and the chief executive may grant, an exemption from the requirement in clause 56(1)(b) relating to the storage of certain motor vehicles, and moveable property inside the vehicle, only at an authorised holding yard.

*Clauses 131 to 134* deal with administrative matters such as how the application must be made, the matters the chief executive must consider when deciding whether to issue the exemption, the giving of a notice of the decision to the applicant and how long the exemption lasts.

*Clause 135* provides that an exemption holder must comply with any alternative requirements stated in the notice of exemption and failure to do so carries a maximum penalty of 80 penalty units.

### **Division 2 Partnerships**

*Clause 136* sets out how the act applies in relation to partnerships. Generally, the Act applies to a partnership as if the partnership were a person. So, for example, an obligation or liability that the Act imposes on a partnership is imposed on each of the partners and can be discharged by any of the partners. Similarly, an offence that, other than for clause 136, would be committed by a partnership is taken to have been committed by each of the partners. Importantly, however, it is a defence for a partner to prove that they were not in a position to influence the conduct that led to the offence or, if they were, they took all reasonable steps to ensure the partnership complied with the provision.

### **Division 3 Records about accreditation**

*Clause 137* requires the chief executive to keep certain records about accreditations.

### **Division 4 Criminal history**

*Clause 138* allows the chief executive to obtain a written report about a person's criminal history from the police commissioner.

*Clause 139* allows the police commissioner to notify the chief executive about a change in the criminal history of the holder of an accreditation, including an executive officer in a corporation and a partner in a partnership that holds an accreditation.

### **Division 5 Disclosure of information about accreditations**

*Clauses 140 to 142* set out the circumstances in which the chief executive may disclose information about accreditations.

*Clause 143* authorises the chief executive to advise a person whether a driver or assistant accreditation is currently valid.

## **Division 6 Confidentiality and information sharing**

*Clause 144* imposes an obligation of confidentiality on certain persons who have acquired or had access to confidential information whilst performing functions under or in relation to administration of the Act. Given the significance of a breach of this obligation, it carries a maximum penalty of 200 penalty units.

*Clause 145* allows the chief executive to enter into an information-sharing arrangement with the police commissioner in relation to functions to be performed under the Act.

## **Division 7 Service of documents**

*Clauses 146 to 148* set out the manner in which documents under the Act may be served and provide for a certificate of service to be evidence of certain matters in relation to that service.

## **Division 8 Other provisions**

*Clause 149* provides that a smartcard accreditation is and remains the property of the State.

*Clause 150* provides that the chief executive may approve forms for use under the Act.

*Clause 151* set out the general regulation-making powers under the Act including, for example, the power to make regulations about:

- the making of an application for accreditation;
- the giving, renewal, amendment and replacement of an accreditation;
- the obligations, duties and standards of conduct of persons who hold an accreditation;
- the auditing by the chief executive of accreditation holders for compliance with this Act;
- fees payable under the Act; and
- maximum penalties of up to 80 penalty units for a contravention of a regulation.

*Clauses 152 to 154* provide regulation-making powers in relation to:

- the way in which applications may be made under the Act;
- accreditation documents for driver and assistant accreditations; and
- temporary holding yards for operator accreditations.

## **Part 8 Repeal and transitional provisions**

### **Division 1 Repeal**

*Clause 155* repeals the *Tow Truck Act 1973*.

### **Division 2 Transitional provisions**

#### **Subdivision 1 Preliminary**

*Clause 156* defines terms used in part 8, division 2 of the Bill. This division sets out the transitional provisions for the Bill.

## **Subdivision 2 Regulated areas**

*Clause 157* sets out the transitional provisions for regulated areas. A *regulated area* is defined in schedule 3 of the Bill as 'an area prescribed by regulation to be a regulated area'.

Clause 157(1) states that, from commencement, an existing regulated area is taken to be a regulated area under the Act. Clause 157(3) defines *existing regulated area* as an area that, immediately before commencement, was a regulated area under the 1973 Act. This provides for the continuation of existing regulated areas without change during the transition from the 1973 Act to the new scheme under the Bill.

Clause 157(2) states that clause 157 applies only until a regulation first prescribes an area to be a regulated area. This clause provides the head of power to amend or change regulated areas by making a regulation under the Act.

## **Subdivision 3 Provisions for authorities**

*Clause 158* provides for existing licences to be transitioned into the new scheme. Under the 1973 Act, a licence may be issued for a tow truck and the holder of the licence may carry out regulated towing. The equivalent of a licence under the Bill is an operator accreditation.

Clause 158(1) states that this section applies to licences that are in effect or are still in a period of suspension at the time of commencement. Clause 158(2) provides that these licences are taken to be operator accreditations and a document evidencing the licence is taken to be an accreditation document for the operator accreditation.

Clause 158(3) provides that a licence taken to be an operator accreditation under clause 158(2) continues for the remaining term of the licence, and the operator accreditation is subject to any conditions imposed on licence by the chief executive under section 10 of the 1973 Act. Clause 158(4) states that any suspension period imposed on a licence under the 1973 Act continues under the Bill.

*Clause 159* provides that, if a licence is taken to be an operator accreditation under clause 158, then certain premises are taken to be authorised holding yards for that accreditation.

*Clause 160* provides for existing driver's certificates to be transitioned into the new scheme. Under the 1973 Act, a person must hold a driver's certificate to tow a prescribed motor vehicle. The equivalent of a driver's certificate under the Bill is a driver accreditation.

Clause 160(1) states that this section applies to driver's certificates that are in effect or are still in a period of suspension at the time of commencement. Clause 160(2) provides that these driver's certificates are taken to be driver accreditations and a document evidencing the driver's certificate is taken to be an accreditation document for the driver accreditation.

Clause 160(3) provides that a driver's certificate taken to be a driver accreditation continues for the remaining term of the driver's certificate, and the driver accreditation is subject to any conditions imposed on driver's certificate by the chief executive under section 14A(1)(b) of the 1973 Act.

Clause 160(5) states that any suspension period imposed on a driver's certificate under the 1973 Act continues under the Bill.

*Clause 161* provides for existing assistant's certificates to be transitioned into the new scheme. Under the 1973 Act, a person must hold an assistant's certificate to assist with towing a prescribed motor vehicle. The equivalent of an assistant's certificate under the Bill is an assistant accreditation.

Clause 161(1) states that this section applies to assistant's certificates that are in effect or are still in a period of suspension at the time of commencement. Clause 161(2) provides that these assistant's certificates are taken to be assistant accreditations and a document evidencing the assistant's certificate is taken to be an accreditation document for the assistant accreditation.

Clause 161(3) provides that an assistant's certificate taken to be an assistant accreditation under clause 161(2) continues for the remaining term of the assistant's certificate, and the assistant accreditation is subject to any conditions imposed on the assistant's certificate by the chief executive under section 14A(1)(b) of the 1973 Act.

Clause 161(4) states that any suspension period imposed on an assistant's certificate under the 1973 Act continues under the Bill.

*Clause 162* provides transitional arrangements for existing applications made under the 1973 Act. This clause applies to an application to grant or renew a licence, driver's certificate or assistant's certificate that had not been decided before commencement of the Bill.

Clause 162(2) states that the application is taken to be a corresponding application that must be decided under the Act and clause 162(3) provides that anything done in relation to the application under the 1973 Act is taken to have been done under relevant provision of the Bill. The term *corresponding application* is defined in clause 162(5). Clause 162(4) applies to an application to renew a licence, driver's certificate or assistant's certificate made under the 1973 Act. The chief executive may decide the application under the Bill, even if the licence or certificate has expired at the time the Bill commences.

#### **Subdivision 4 Provisions for exemptions for licences**

*Clause 163* provides that decisions made under section 14 of the 2009 Regulation exempting licences relating to a tow to safety service from conditions mentioned in that regulation are taken to be exemption decisions under section 130 of the Bill.

*Clause 164* provides that existing applications made under section 14 of the 2009 Regulation for exemptions for licences relating to a tow to safety service from certain conditions are taken to be exemption applications under section 130 of the Bill.

#### **Subdivision 5 Provisions for offences**

*Clause 165* provides that if a person commits an offence against the 1973 Act prior to the commencement of the Bill, then a proceeding can be commenced or continued, and the person may be convicted of and punished for the offence, as if the 1973 Act was still in force.

*Clause 166* deals with the release of motor vehicles after the commencement of the Bill that were towed under a licence before the commencement.

*Clause 167* provides that section 63 applies to the disclosure of sensitive information obtained before or after commencement.

*Clause 168* provides that certain obligations to give notice under the 2009 Regulation will survive the commencement of the Bill.

*Clause 169* provides that section 72 applies in relation to the joining of a new partner to a partnership that occurred before commencement.

*Clause 170* provides that sections 73 to 76 will apply in relation to a charge or infringement notice only if they were served after the commencement.

## **Subdivision 6 Provisions for enforcement and reviews**

*Clause 171* provides that if a show cause notice had been issued to a person under the 1973 Act in relation to the person's authority and the chief executive had not yet decided whether to take action prior to commencement then the notice is taken to be a show cause notice under clause 39 of the Bill.

*Clause 172* provides that if an immediate suspension notice had been issued to a person under the 1973 Act in relation to the person's authority and the suspension period had not ended by commencement, then the notice is taken to be an immediate suspension notice under the Bill.

*Clause 173* provides that if a review of a decision about an authority had been started prior to commencement, then the 1973 Act continues to apply in relation to that review. However, the reviewed decision is taken to be a decision under the Bill.

## **Subdivision 7 Other matters**

*Clauses 174 to 179* set out miscellaneous provisions required to ensure an efficient transition from the 1973 Act to the provisions of the Bill. These include, for example, preserving existing towing consents, providing for applications for release of information made but not decided prior to commencement, providing that records required to be kept under the 1973 Act must continue to be kept and that existing information-sharing arrangements are taken to be information-sharing arrangements under the Bill.

*Clause 180* provides that, if the context permits, references to the 1973 Act, and provisions within that Act, can be taken as references to the Act or equivalent provisions within the Act.

*Clause 181* allows transitional regulations to be made for matters that have not been provided for, or sufficiently provided for, by the Bill. With the enactment of a new Act and regulation to govern regulated towing, it is important to provide some flexibility to facilitate the transition from the existing legislation. A transitional regulation may have retrospective operation but only to the date the section commences and not in a manner that decreases a person's rights or imposes liabilities on the person. The section, and any transitional regulation made under it, expire 2 years after its commencement.

## **Part 9 Amendment of other legislation**

### **Division 1 Amendment of this Act**

*Clause 183* amends the long title of the Bill to remove reference to the amendments that will be made by the Bill on its commencement.

## **Division 2 Amendment of Photo Identification Card Act 2008**

*Clause 184* states that part 9, division 2 of the Bill amends the *Photo Identification Card Act 2008*. *Clause 185(1)* makes a drafting amendment to the definition of *particular transport Act* in section 47A(6). *Clause 185(2)* amends paragraph (a) of the definition of *particular transport Act* to replace the reference to the 1973 Act with a reference to the *Tow Truck Act 2023*.

## **Division 3 Amendment of Police Powers and Responsibilities Act 2000**

*Clauses 186 to 191* amend the *Police Powers and Responsibilities Act 2000* to adopt new definitions and update references to the 1973 Act to now refer to the *Tow Truck Act 2023*.

## **Division 4 Amendment of State Penalties Enforcement Act 1999**

*Clause 193* amends section 73B of the *State Penalties Enforcement Act 1999* to insert a new definition of *holding yard* and a new definition of *towing authority* that removes the outdated reference to a towing authority under the 1973 Act.

## **Division 5 Amendment of Transport Operations (Passenger Transport) Act 1994**

*Clause 195* amends the *Transport Operations (Passenger Transport) Act 1994* to update a reference to the 1973 Act and to reflect, within the definition of *transport authority*, the introduction of driver and assistant accreditations under the Bill.

## **Division 6 Amendment of Transport Operations (Road Use Management) Act 1995**

*Clauses 197, 200, 201, 202, 203, 205, 206, 208, 209, 210 and 212* remove references to the 1973 Act as these matters are now dealt with in the Bill and no longer need to be provided for in the *Transport Operations (Road Use Management) Act 1995*.

*Clause 198* extends the power for an authorised officer to inspect a vehicle to circumstances where the officer has entered the vehicle under clause 85 of the Bill.

*Clause 199* extends certain powers for authorised officers to apply where a vehicle that is used, or is being used, to transport dangerous goods is in a place the officer has entered under clause 85 of the Bill.

*Clause 204* makes a minor amendment to recognise that a fee may be paid not only for a licence but also for the application for a licence.

*Clause 207* updates a reference in section 79(2C) of the *Transport Operations (Road Use Management) Act 1995* to a tow truck which is licensed, or should be licensed, under the 1973 Act while it operates as a tow truck under that Act. The amendment replaces that reference with references to relevant concepts within the Bill.

*Clause 211* updates a reference to the 1973 Act in section 150BA to be a reference to the *Tow Truck Act 2023* and updates the definition of *transport authority* to reflect the new driver and assistant accreditations.

*Clause 212* amends section 171(3) of the *Transport Operations (Road Use Management) Act 1995* to remove the ability to make regulations under that Act prescribing fees payable for the *Tow Truck Act 2023*.

*Clause 213* makes a minor drafting amendment to recognise that areas may be prescribed, as well as declared, under transport Acts.

*Clause 214* amends the Dictionary to the *Transport Operations (Road Use Management) Act 1995* to recognise that accreditations under the Bill are licences for the purposes of that Act and to update a reference to the 1973 Act.

## **Division 7 Amendment of Transport Planning and Coordination Act 1994**

*Clauses 216 and 217* replace references to the 1973 Act in sections 36F and 37 of the *Transport Planning and Coordination Act 1994* with references to the *Tow Truck Act 2023*.

## **Schedule 1 Notifiable offences under the Criminal Code**

*Schedule 1* lists the offences within the Criminal Code that are *notifiable offences* under paragraph (f) of the definition of that term in clause 71 of the Bill.

## **Schedule 2 Original decisions**

*Schedule 2* lists decisions made under the Bill for the definition of *original decision* in clause 123. A decision mentioned in schedule 2 is reviewable under part 6 of the Bill.

## **Schedule 3 Dictionary**

*Schedule 3* defines terms used in the Act.