

# Tow Truck and Other Legislation Amendment Bill 2018

## Explanatory Notes

### Short title

The short title of the Bill is the Tow Truck and Other Legislation Amendment Bill 2018.

### Policy objectives and the reasons for them

#### *Private property towing*

The *Tow Truck Act 1973* (TT Act) and *Tow Truck Regulation 2009* (TT Regulation) regulate the towing industry in Queensland. However, this regulatory framework applies only to towing vehicles from crash scenes and off-street regulated parking areas, and only in prescribed regulated areas in South East Queensland and along the east coast. All other forms of towing, including breakdown towing, trade towing, compliance towing, and removing vehicles from private property are not covered by the regulatory framework.

The Department of Transport and Main Roads (TMR) has periodically received complaints about the removal of vehicles from private property parking areas (hereafter referred to as *private property towing*). However, issues regarding this form of towing escalated in the first half of 2017. In response to rising community concerns, the Queensland Government commissioned an independent investigation into the tow truck and vehicle removal industry. The independent investigation culminated in a report titled *Independent Investigation into the Towing Industry: Removal of Vehicles from Private Property*.

The report acknowledged the divergent and often competing interests of stakeholders including motorists, property occupiers, and the towing industry. In particular, the report recognised:

- limited parking availability can be frustrating for motorists, with many acknowledging their fault in parking contrary to signage but still believing that having their vehicle towed away is unethical, opportunistic and disproportionate to the parking transgression;
- some property occupiers find unauthorised parking by motorists frustrating and detrimental to the rightful use of their parking spaces, with removal of the vehicles being viewed as a necessary self-help remedy to protect their interests; and
- towing operators regard private property towing as a legitimate practice to help enforce occupier's rights, but also acknowledge some in the industry may employ questionable business practices.

The report also examined the complex legal environment in which private property towing operates.

The report made 22 recommendations for reform to address issues regarding private property towing and raised a further eight matters for consideration about broader issues in the tow truck legislation. In 2017, the Queensland Government accepted all of the report's recommendations and matters for consideration and this Bill gives effect to the recommendations requiring legislative amendments.

### *Youth driving offences*

A person may be eligible for a P1 provisional licence, which allows them to drive unsupervised, at 17 years of age.

Transport legislation prescribes a range of offences for drivers who fail to comply with driver licensing requirements or who contravene the road rules. Penalties for these offences include periods of driver licence disqualification, fines and demerit points. More serious driving offences, such as drink and drug driving and dangerous driving, incur mandatory disqualification periods. However, under the *Youth Justice Act 1992* (YJ Act) a child who is found guilty of a driving offence only receives a mandatory disqualification if a conviction is recorded on their criminal record. If no conviction is recorded, the presiding Magistrate or judge has a discretion as to whether to impose a disqualification period.

In addition, the *State Penalties Enforcement Act 1999* (SPE Act) does not apply to children, other than to allow a child to pay a fine should they choose to. An unpaid penalty infringement notice issued to a child cannot be referred to the State Penalties Enforcement Registry (SPER), and enforcement orders, fine collection notices and warrants cannot be issued to enforce the payment of a fine.

Demerit points are accumulated when a person pays a fine, SPER makes an enforcement order or the person is found guilty by a court. The restriction prohibiting the referral and enforcement by SPER of unpaid penalty infringement notices for children therefore affects the allocation of demerit points against young drivers' traffic histories.

The commencement of the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016*, on 12 February 2018, raised the age of a child within the youth justice system to include 17-year-olds. This change excludes 17-year-olds from mandatory disqualifications for serious offences and from the SPER regime to recover unpaid fines and the demerit point system if they do not pay the fine for a demerit point offence.

To ensure young drivers aged 17 years continue to be accountable for their driving behaviour, the Bill contains amendments to the YJ Act and SPE Act. The amendments will ensure 17-year-olds remain subject to mandatory disqualification periods for serious driving offences, liable to enforcement action by SPER for unpaid penalty infringement notices for demerit point offences, and subject to the demerit point scheme.

### *Existing SPER debts*

The Bill contains amendments to the SPE Act to support the ongoing management of debts belonging to 17 year olds which were registered with SPER for enforcement when the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* commenced. These amendments will enable SPER to continue to enforce any debts owed by 17-year-olds that were registered with SPER prior to that commencement.

### *Tolling demand notices*

The tolling compliance process operates under a legislated framework in the *Transport Infrastructure Act 1994* (TI Act). Under this framework when a toll is unpaid, the toll road operator issues a toll invoice to the registered operator of the vehicle. The toll invoice includes unpaid tolls incurred over a set number of days, an image processing fee per unpaid toll, and one casual user invoice fee for issuing the invoice.

If the toll invoice remains unpaid, the toll road operator previously issued an individual demand notice for each unpaid toll, each attracting an administration charge. Consequently, there can be a significant escalation in the amount payable to the toll road operator if multiple tolls remain unpaid after the issue of a toll invoice and multiple demand notices are issued each attracting an administration charge.

Amendments to the TI Act are required to provide a clear statutory basis for aggregating unpaid tolls (and associated image processing fees) on demand notices, putting beyond doubt a toll road operator's ability to issue a single demand notice for multiple unpaid tolls with only one administration charge.

## **Achievement of policy objectives**

### *Private property towing*

The Bill achieves the policy objectives by amending the TT Act and TT Regulation to address issues regarding private property towing by:

- requiring that private property towing may only be performed in regulated areas by drivers and assistants who have the necessary certificates and are using licensed tow trucks;
- increasing the penalties for operating an unlicensed tow truck and operating, or being employed in connection with, a tow truck without a driver or assistant certificate;
- requiring towing operators to have towing consent evidencing an arrangement with the occupier to remove vehicles from the property;
- requiring towing operators to notify the police commissioner as soon as practicable after removing a vehicle from private property;
- imposing conduct requirements on tow truck licensees, drivers and assistants including prohibiting intimidating, abusive or insulting behaviour, and requiring reasonable steps be taken to locate the motorist before loading a vehicle onto the tow truck;
- providing that vehicles removed from private property may only be taken by the most direct route to the licence holder's nearest holding yard;
- setting maximum towing charges for a standard private property tow (\$250), the on-site release of a vehicle (\$150) and storing a vehicle (\$25);
- prohibiting the charging of call-out fees and charges for separate activities incidental to the towing service such as administration fees;
- safeguarding motorists' privacy by restricting the disclosure of information about the removal of a vehicle from private property and expressly protecting personal information about a vehicle's owner, driver or other party connected to a regulated towing service;
- allowing tow truck licences to be issued for a period of one to five years with scaled fees for both licences and driver and assistant certificates depending on the length of the term;
- removing the legislative requirement for when an application for a licence or certificate renewal must be made;

- increasing the maximum penalty that may be imposed under the TT Regulation from 20 penalty units to 80 penalty units; and
- clarifying that a person's entire criminal history, including any charge for an offence that has not been dealt with by a court or withdrawn or otherwise discontinued, may be considered when determining whether to grant a licence or certificate and whether a person is an appropriate person to continue to hold a licence or certificate.

Importantly, it is not intended that these amendments apply where the vehicle owner has expressly directed or requested the vehicle be towed. Nor will these amendments apply in circumstances where other legislation authorises the removal of the vehicle from private property. For example, where a police officer has authority under the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) or another Act to direct the removal of a vehicle, or where legislation relating to recovery of security interests in the vehicle applies. In these circumstances, the tow truck licence holder would not be required to have a towing consent evidencing an arrangement with the occupier.

#### *Youth driving offences*

The Bill achieves the objectives relating to youth driving offences by reinstating the penalty and enforcement regime applicable to driving offences by 17-year-olds that existed prior to 12 February 2018, including mandatory driver licence disqualification for serious driving offences and enforcement by SPER of unpaid infringement notices for demerit point offences. This ensures that demerit points can continue to be recorded on 17-year-olds' traffic histories where an infringement notice is not paid.

#### *Existing SPER debts*

Provisions in the Bill will achieve the policy objective of enabling the continued enforcement of any debts for 17-year-olds already registered with SPER at the time of their transfer to the youth justice system.

#### *Tolling demand notices*

The Bill achieves the policy objectives by providing a clear statutory basis for demand notice aggregation, thereby putting beyond doubt a toll road operator's ability to issue a single demand notice for multiple unpaid tolls (and associated image processing fees) with only one administration charge. This will streamline the toll road operator's processes and reduce administration charges for motorists while maintaining the integrity of enforcement procedures.

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

The approach outlined in the Bill regarding private property towing reflects the recommendations of the *Independent Investigation into the Towing Industry: Removal of Vehicles from Private Property*. Regulation supported by appropriate education of stakeholders is considered the most efficient and effective way of achieving the policy objectives.

There are no alternative ways of achieving the policy objectives relating to youth driving offences and tolling demand notices.

## **Estimated cost for government implementation**

The cost of implementing the proposed reforms will be minimal and will be met from existing budget allocations.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. Clauses in the Bill which potentially raise fundamental legislative principles issues are discussed below.

### *New offences and increased penalties for towing*

The Bill introduces new offences with new penalties and increases a number of existing penalties. These amendments may raise fundamental legislative principle issues relating to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992*).

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 about private property towing illustrates the need for increased 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 the penalties exceed the benefit to the person if they operate outside the new laws.

The most significant penalty increases are those for operating an unlicensed tow truck or performing towing services without the relevant driver's and assistant's certificate. Previously, under section 40(3) of the TT Act, providing damaged or seized vehicle towing in regulated areas when the tow truck was not licensed or the driver or assistant did not have a certificate carried a maximum penalty of 40 penalty units and an infringement notice fine of 2 penalty units. Under the proposed amendments in this Bill, the maximum penalty for undertaking regulated towing services without a licence will be 160 penalty units with infringement notice fine of 12 penalty units. Similarly the maximum penalty for undertaking regulated towing services without a driver's or assistant's certificate will be increased to 80 penalty units and the infringement notice fine increased to 6 penalty units.

The proposal to introduce new offences in relation to private property towing is designed to ensure vehicles and persons are appropriate for the task, the conduct of persons involved and administration around the towing is efficient, professional and sufficient to protect motorists' property and personal information.

The amendment to section 43(2)(u) to allow the maximum penalty in the TT Regulation to be 80 penalty units is proportionate to the other amendments to the new penalty regime. It is noted that this Bill does not impose 80 penalty unit penalties for any regulation offence, but the capacity to do so in the future is necessary to ensure government can respond appropriately and in a timely manner to protect consumers.

Ultimately, the proposed penalties are considered proportionate to the seriousness of the offences and are considered necessary to encourage compliance, maintain the integrity of the scheme and protect consumers.

*Amendment to definition of criminal history*

Clause 22 amends the definition of criminal history to be applied when assessing the appropriateness of applicants for, and holders of, tow truck licences and driver's and assistant's certificates. This amendment may raise fundamental legislative principle issues relating to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992*).

The proposed amendment clarifies that the chief executive may consider a person's entire criminal history when assessing whether they are an appropriate person to be granted, or to hold, a licence or driver's or assistant's certificate. The operation of the *Criminal Law (Rehabilitation of Offenders) Act 1986* currently allows consideration of the entire criminal history, however the provisions in the TT Act and TT Regulation in relation to the application of rehabilitation periods may create ambiguity. The proposed amendment seeks to clarify the position.

The proposed amended definition of criminal history will also slightly extend the charges that may be considered by the chief executive when assessing whether a person is an appropriate person to be granted, or to hold, a licence or driver's or assistant's certificate. The chief executive may currently consider any charges for offences under the *Criminal Code*, the *Drugs Misuse Act 1986*, section 790 of the *Police Powers and Responsibilities Act 2000* and the *Weapons Act 1990*. The amendment will extend this to any charges including, for example, charges under the *Summary Offences Act 2005* and the TORUM Act. However, the amendment will still not allow charges that have been withdrawn or otherwise discontinued to be considered as part of the person's criminal history.

The new definition is broadly consistent with the definition of criminal history that applies in the *Transport Operations (Passenger Transport) Act 1994* and is applied when assessing applicants for passenger transport operator accreditation and driver authorisations. As mentioned above, towing services may occur in the context of people who are injured or distressed. The approach taken in the Bill is justified because it is important for the chief executive to be fully informed of matters that may impact on the appropriateness of a person providing services to protect consumers.

*Powers of authorised officers*

Clause 14 will introduce new powers of authorised officers for enforcement of 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 (see section 4(3)(e) *Legislative Standards Act 1992*).

The powers outlined in the Bill are necessary to ensure investigation of offences can be conducted efficiently without the need for a warrant. The powers are limited to either entry by consent, or entry to the business premises or holding yard of tow truck licence holders, and entry to premises where the officer reasonably believes a prescribed motor vehicle is located. Authorised officers under the TT Act are also authorised officers under the TORUM Act and the proposed powers are consistent with the powers officers have under that Act.

### *Evidentiary provisions*

Clause 17 allows for the issue of certificates for certain evidential matters and allows courts to presume particular elements of an offence unless the defendant proves the contrary and may be seen as a reversal of the onus of proof (see section 4(3)(d) *Legislative Standards Act 1992*).

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 property was “private property” and a person was an “occupier” are also necessary to ensure efficient 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.

### *Power to regulate certain matters*

Clause 17 allows a regulation to indicate the requirements in the Act will not apply to private property towing in regulated circumstances. This may raise fundamental legislative principles issues because it may be viewed as having insufficient regard to the institution of Parliament by authorising the amendment of an Act through a regulation (see section 4(4)(c) *Legislative Standards Act 1992*).

The proposed provisions are necessary to ensure the legislative scheme is implemented in a flexible and practical way to avoid imposing a burden on those who were not intended to be captured by the scheme. If a regulation were to be made under the proposed section, through the usual regulation making processes, it would still be subject to scrutiny and possible disallowance by Parliament.

## **Consultation**

Community consultation was undertaken in relation to the towing industry reforms as part of the independent investigation. Information was gathered from the community through the tow truck hotline established by TMR to receive complaints and feedback on the towing industry. In addition, the investigation sought and received written submissions and held meetings with a range of stakeholders. The investigation considered 368 records of complaints and feedback received by the hotline, 41 written submissions, and feedback provided by a range of stakeholders during meetings. The consultation process included local governments, towing operators, private property owners and occupiers, motorists and community and industry representative organisations.

Community consultation was not undertaken in relation to the proposed amendments regarding youth driving offences as these are consequential amendments resulting from the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* and the amendments in this Bill will simply reinstate the previous legislative position.

Consultation was undertaken with Transurban Queensland and Brisbane City Council in relation to the proposed amendments for tolling demand notices with both parties supporting the proposal.

## **Previous Parliamentary Committee inquiry and report**

On 22 August 2017, the Tow Truck and Other Legislation Amendment Bill 2017, which is substantially the same as the current Bill, was introduced into the Legislative Assembly and referred to the former Parliamentary Public Works and Utilities Committee for detailed consideration. On 6 September 2017, the Committee held a public briefing on the Bill. The Committee also invited public submissions from industry and the community and written submissions were received from RACQ Operations Pty Ltd, the Queensland Trucking Association, the Queensland Law Society, Transurban Limited and the Shopping Centre Council of Australia. A late submission was provided by Toll Redress on 25 September 2017.

On 4 October 2017, the Committee tabled its report into the 2017 Bill (Report No.49 of the 55th Parliament) in which it recommended that the Bill be passed with just one amendment to require toll road operators to issue one aggregated demand notice, with only one administration charge, for multiple deferred toll amounts accumulated over a number of days. The report contained a Statement of Reservation from the Member for Southport relating to the towing reforms.

## **Consistency with legislation of other jurisdictions**

### *Private property towing*

New South Wales requires all tow truck operators to be licensed and drivers accredited, including when providing private property towing services. Maximum base charges are imposed for accident towing and stolen vehicle recovery towing. As at February 2018, the charges, exclusive of GST, are \$238 and \$157 respectively. Storage charges are set at \$23 per day in metropolitan areas and \$14 per day in non-metropolitan areas. These charges are the result of a review of towing industry fees undertaken by the New South Wales Independent Pricing and Regulatory Tribunal. New South Wales also provides a comprehensive list of additional charges that may not be imposed.

South Australia regulates all towing services in the greater Adelaide metropolitan area requiring tow trucks to be approved and drivers to be accredited. Charges for crash towing in South Australia are set at a maximum base charge of \$345 during business hours and \$402 outside of business hours. Maximum storage charges are \$15 per day (if the vehicle is uncovered) and \$25 if the vehicle is stored under cover.

In Victoria, where an occupier has entered into an agreement for the local government to control their parking area, the tow truck used to remove the vehicle must be licensed and the towing operator and driver accredited. Maximum base charges for crash towing in Victoria are \$216.20 during business hours and \$290 outside of business hours. Storage charges when vehicles are uncovered are \$11.16 and covered \$16.58.



### *Youth driving offences*

In New South Wales, Western Australia and Tasmania, mandatory driver licence disqualifications for children are imposed for driving offences. In Victoria, South Australia and the Northern Territory, the application of a disqualification is at the court's discretion.

### *Tolling demand notices*

The offence with respect to unpaid tolls in Queensland differs to similar offence provisions in New South Wales and Victoria. It is an offence in New South Wales not to pay a toll in the time and manner specified by the toll road operator. In Victoria, it is an offence to pass through a toll point without having an arrangement to pay.

## **Notes on provisions**

### **Part 1**

*Clause 1* states that this Act may be cited as the *Tow Truck and Other Legislation Amendment Act 2018*.

*Clause 2* outlines the commencement arrangements for the provisions of the Bill. It provides that part 2 and divisions 2 and 3 of part 6 commence on a date fixed by proclamation. The remaining provisions of the Bill will commence on assent.

### **Part 2**

*Clause 3* states that part 2 amends the *Tow Truck Act 1973* (TT Act).

*Clause 4* inserts new section 4D providing for the meaning of a towing consent for towing vehicles from an occupier's private property.

*Clause 5* amends section 5 of the TT Act to provide that a person must not operate a tow truck to tow prescribed motor vehicles in a regulated area unless the person holds a tow truck licence for the tow truck. Prescribed vehicles include damaged, seized and private property motor vehicles (as defined in the Bill in schedule 2 (Dictionary)). Regulated areas are listed in schedule 4 of the TT Regulation. The maximum penalty that may be imposed under section 5 has also been increased to 160 penalty units.

*Clause 6* amends section 6 of the TT Act to omit a redundant reference to issuing in relation to a tow truck licence.

*Clause 7* amends section 7 of the TT Act to provide for consistent wording in relation to granting tow truck licences.

*Clause 8* replaces sections 8 and 9 of the TT Act to allow licences to be issued for a term of up to 5 years, and to remove the requirement that applications for the renewal of a licence must be made 2 weeks prior to expiration of the licence.

*Clause 9* amends section 11 of the TT Act to provide that a permit issued pending determination of an application for a licence authorises the permit holder to tow motor vehicles in regulated areas.

*Clause 10* amends section 12 of the TT Act to apply the existing licence conditions to private property motor vehicles, and introduce relevant new conditions. As with the current licence conditions in section 12, compliance with the conditions is enforceable under section 40 of the Act.

*Clause 11* amends section 13 of the TT Act to provide that driver's and/or assistant's certificates or permits are required for activities involved in the towing of private property motor vehicles in regulated areas.

*Clause 12* amends section 17A of the TT Act to remove the requirement that applications for renewal of a driver's or assistant's certificate may be made no sooner than 2 weeks prior to expiration of the certificate.

*Clause 13* amends section 19 of the TT Act to provide that a permit issued pending determination of an application for a driver's or assistant's certificate authorises the permit holder to operate or be employed on, or in connection with the use of tow trucks in regulated areas.

*Clause 14* inserts new part 4A in the TT Act outlining powers for authorised officers, including allowing officers to enter places and exercise powers to search, inspect, copy or take extracts from documents, and to require production of documents required to be kept under the Act (also see clause 16 regarding production of documents requirements).

*Clause 15* inserts new sections 27A and 27B of the TT Act. New section 27A makes it an offence for a person to obtain or attempt to obtain a towing consent (as defined in schedule 2 (Dictionary)) if the person is not the holder of a tow truck licence. This offence supports the requirement that private property motor vehicles may only be towed by licensed tow trucks. New section 27B makes it an offence for an occupier of an unlicensed place (as defined in schedule 2 (Dictionary)) to keep a private property motor vehicle at that place. This offence reinforces the requirement that private property motor vehicles may only be towed to the nearest holding yard of the licence holder for the tow truck used to tow the vehicle.

*Clause 16* amends section 35 to require a licence holder, driver or assistant performing private property towing to produce documents such as licences or certificates or towing consents if asked by an authorised officer.

*Clause 17* replaces section 37 with new section 37 and 37A of the TT Act. New section 37 introduces evidentiary requirements necessary to ensure efficient prosecution of offences under the Act. New section 37A clarifies the application of the private property towing related provisions. In particular, this provision 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 amendments in this Bill. For example, the amendments are 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.

*Clause 18* makes a minor amendment to section 38 of the TT Act to remove an obsolete reference to a chapter of the *Police Powers and Responsibilities Act 2000* that no longer exists.

*Clause 19* makes a consequential amendment to section 40 of the TT Act to ensure the new licence conditions under section 12 are enforceable in the same way as existing licence conditions. The maximum penalty that may be imposed for a contravention of a licence condition has also been increased to 50 penalty units.

*Clause 20* amends the regulation-making powers in section 43 of the TT Act in relation to regulated areas, the type and amounts of charges that may be imposed, and the maximum penalty that may be imposed for an offence under a regulation.

*Clause 21* provides for transitional arrangements for persons who at the time of commencement of the tow truck related amendments, have pending applications for the grant or renewal of a licence. The current provisions will continue to apply to those applications.

*Clause 22* amends schedule 2 (Dictionary) in the TT Act to move some definitions from the TT Regulation to the TT Act, amend existing definitions and insert new definitions relevant to private property towing.

The definitions of conforming premises, holding yard and owner are moved, with minor amendments, from the TT Regulation to the TT Act. The definition of criminal history is amended to clarify that the provisions of the Criminal Law (Rehabilitation of Offenders) Act 1986 regarding rehabilitation periods and charges do not apply. Definitions are inserted for destination, found property, moveable property, occupier, prescribed motor vehicle, private property, private property motor vehicle, regulated area, towing consent, unlicensed place and valid to facilitate the regulation of private property towing. Also the definition of licence has a minor amendment.

### **Part 3**

*Clause 23* states that part 3 amends the *State Penalties Enforcement Act 1999* (SPE Act).

*Clause 24* amends section 5 of the SPE Act to provide that the Act applies to a child who is at least 17 years old in the same way it applies to an adult in relation to offences for which demerit points may be allocated against their traffic history under the TORUM Act. This will allow SPER to continue to issue enforcement orders against 17-year-olds for demerit point offences where an infringement notice issued for the offence remains unpaid.

*Clause 25* inserts a transitional provision into the SPE Act to deal with unpaid fines and penalties that were registered with SPER at the time 17-year-olds transitioned out of the adult justice system. Specifically, the Bill will ensure that any debts for 17-year-olds already registered with SPER (including any fees and costs payable under the SPE Act) when 17-year-olds transitioned out of the adult system can continue to be enforced. The amendments in this clause will only affect 17-year-olds and will not impact on the treatment of infringement notices issued for offences allegedly committed by persons under 17.

## Part 4

*Clause 26* provides that part 4 amends the *Transport Infrastructure Act 1994* (TI Act).

*Clause 27* amends section 92 to insert a new definition of ‘image processing fee’ for part 7.

*Clause 28* amends section 93 of the TI Act to clarify:

- an image processing fee is a user administration charge,
- a reference to an image processing fee includes a reference to a video matching fee, and
- the application of an administration charge.

*Clause 29* amends section 97 of the TI Act to alter the definition of *deferred toll amount* to include the unpaid toll and image processing fee for the toll. The administration charge is removed from the definition to facilitate aggregation of deferred toll amounts on a single demand notice.

*Clause 30* amends section 98 of the TI Act to establish that a motorist who uses a toll road who does not make an arrangement to pay in accordance with division 3 is liable for the unpaid toll, image processing fee for each unpaid toll and an administration charge.

*Clause 31* replaces section 99 of the TI Act with new sections 99 and 99AA. New section 99 clarifies the requirement for a demand notice issued to the registered operator of the vehicle used on a state toll road to specify each of the one or more deferred toll amounts for which the notice is given. The section also specifies a notice must not require the registered operator of the vehicle using a state toll road to pay more than one administration charge. It is the responsibility of the registered operator to either:

- pay the deferred toll amounts and administration charge, or
- provide a statutory declaration to assist in the identification of the driver of the vehicle at the time the unpaid toll was incurred, and pay any deferred toll amounts not covered by the statutory declaration and a single administration charge.

The section also provides that payment of an administration charge under the notice satisfies the liability for an administration charge under section 98(1)(b) for each toll included in a deferred toll amount listed in the notice.

New section 99AA allows the toll road operator to combine deferred toll amounts for state toll roads and local government tollways on to one aggregated demand notice, with only one administration charge. The section also clarifies that the payment of the administration charge is taken to be payment under both new sections 99(4) and 105ZH(4).

*Clause 32* amends section 99A of the TI Act to update a cross-reference.

*Clause 33* replaces section 101 of the TI Act with new sections 101 and 101A. New section 101 clarifies the requirement for a demand notice issued to the person identified as the driver of the vehicle used on a state toll road to specify each of the one or more deferred toll amounts for which the notice is given. This section also specifies that a notice must not require the person identified as the driver of the vehicle using a state toll road to pay more than one administration charge. It is the responsibility of the person identified as the driver to either:

- pay the deferred toll amounts and administration charge, or

- provide a statutory declaration to assist in the identification of the driver of the vehicle at the time the unpaid toll was incurred, and pay any deferred toll amounts not covered by the statutory declaration and a single administration charge.

The section also provides that payment of an administration charge under the notice satisfies the liability for an administration charge under section 98(1)(b) for each toll included in a deferred toll amount listed in the notice.

New section 101A allows the toll road operator to combine deferred toll amounts for state toll roads and local government tollways on one aggregated demand notice, with only one administration charge. The section also clarifies that payment of the administration charge is taken to be payment under both new sections 101(4) and 105ZK(4).

*Clause 34* amends section 105 of the TI Act to provide that an evidentiary certificate issued with respect to non-payment of an administration charge or user administration charge is evidence of each of those matters. This section makes consequential changes to update references.

*Clause 35* amends section 105B of the TI Act to insert a definition of *image processing fee* for part 8.

*Clause 36* amends section 105ZB of the TI Act to clarify:

- an image processing fee is a user administration charge
- a reference to an image processing fee includes a reference to a video matching fee, and
- the application of an administration charge.

*Clause 37* amends section 105ZF of the TI Act to alter the definition of *deferred toll amount* to include the unpaid toll and image processing fee for the toll. The administration charge is removed from the definition to facilitate aggregation of deferred toll amounts on a single demand notice.

*Clause 38* amends section 105ZG of the TI Act to establish that a motorist who uses a local government tollway who does not make an arrangement to pay in accordance with the subdivision is liable for the unpaid toll, image processing fee for each unpaid toll and an administration charge.

*Clause 39* amends section 105ZH of the TI Act to clarify the requirement for a demand notice issued to the registered operator of the vehicle used on a local government tollway to specify each of the one or more deferred toll amounts for which the notice is given. This section also specifies that a notice must not require the registered operator of the vehicle using a local government tollway to pay more than one administration charge. It is the responsibility of the registered operator to either:

- pay the deferred toll amounts and administration charge, or
- provide a statutory declaration to assist in the identification of the driver of the vehicle at the time the unpaid toll was incurred, and pay any deferred toll amounts not covered by the statutory declaration and a single administration charge.

The section also provides that payment of an administration charge under the notice satisfies the liability for an administration charge under section 105ZG(1)(b) for each toll included in a deferred toll amount listed in the notice.

The amendments also allow the tollway operator to combine deferred toll amounts for state toll roads and local government tollways on one aggregated demand notice, with only one administration charge.

*Clause 40* amends section 105ZI of the TI Act to update a cross-reference.

*Clause 41* amends section 105ZK to clarify the requirement for a demand notice issued to the person identified as the driver of the vehicle used on a local government tollway to specify each of the one or more deferred toll amounts for which the notice is given. This section also specifies that a notice must not require the person identified as the driver of the vehicle using a local government tollway to pay more than one administration charge. It is the responsibility of the identified driver to either:

- pay the deferred toll amounts and administration charge, or
- provide a statutory declaration to assist in the identification of the driver of the vehicle at the time the unpaid toll was incurred, and pay any deferred toll amounts not covered by the statutory declaration and a single administration charge.

The section also provides that payment of an administration charge under the notice satisfies the liability for an administration charge under section 105ZG(1)(b) for each toll included in a deferred toll amount listed in the notice.

The amendments also allow the tollway operator to combine deferred toll amounts for state toll roads and local government tollways on one aggregated demand notice, with only one administration charge.

*Clause 42* amends section 105ZO of the TI Act to provide that an evidentiary certificate issued with respect to non-payment of an administration charge is evidence of that matter.

*Clause 43* updates the cross-references in section 480(10) of the TI Act, replacing the definition of *relevant tolling offence*.

*Clause 44* amends item 5 of schedule 5 of the TI Act by replacing “unpaid toll” with “unpaid deferred toll amount” to clarify the reference to an administration charge.

*Clause 45* amends schedule 6 of the TI Act to redefine the definition of *administration charge* to include reference to the non-payment of a deferred toll amount. It also inserts a new definition of *image processing fee* for part 7 and part 8 of chapter 6.

## **Part 5**

*Clause 46* states that part 5 amends the *Youth Justice Act 1992* (YJ Act).

*Clause 47* amends section 254 of the YJ Act to provide that a child who is at least 17 years of age will continue to be subject to the mandatory driver licence disqualification provisions that apply to adults. Mandatory disqualification provisions apply to adults by operation of law, whether or not a conviction is recorded for the offence. As such, the amendment removes the requirement from section 254 that a conviction must be recorded for a child who is at least 17 years of age. It does this by inserting a new section 254(3A) into the YJ Act, which is subsequently re-numbered to become section 254(4). For children aged less than 17 years, the existing requirements will remain. That is, a court must order a specific period of

disqualification or that a conviction be recorded before a licence disqualification can be imposed.

## **Part 6**

*Clause 48* states that division 1 amends the *State Penalties Enforcement Regulation 2014* (SPE Regulation).

*Clause 49* makes consequential changes to update section references as a result of amendments to the TI Act.

*Clause 50* states that division 2 amends the SPE Regulation.

*Clause 51* amends existing, and introduces new, infringement notice amounts for entries in the SPE Regulation relating to offences under the TT Act and TT Regulation.

*Clause 52* states that division 3 amends the TT Regulation.

*Clause 53* omits section 10(3) of the TT Regulation to support the new definition of *criminal history* in the TT Act.

*Clause 54* amends section 13 to omit the definition of *approval* for that section.

*Clause 55* updates the section heading for section 17 of the TT Regulation.

*Clause 56* inserts new sections 17A, 17B and 17C in the TT Regulation. New section 17A requires the tow truck driver to carry a copy of the towing consent while undertaking private property towing activities, and new section 17C requires the licence holder to provide a copy of the towing consent to a motorist whose vehicle is towed or released on-site, if requested. New section 17B requires the licence holder to notify the police commissioner about a private property motor vehicle towed from private property.

*Clause 57* replaces sections 20 and 21 of the TT Regulation with new sections 20, 21 and 21A. New section 20 extends some of the conduct requirements that apply at the scene of an incident to private property towing, and new section 21 moves the remaining conduct requirements that apply at the scene of an incident to a new section. New section 21A replaces the existing provision regarding the disclosure of information to extend the protection of information to private property towing, and to enhance the protections by clarifying that they apply to personal information.

*Clause 58* amends section 25 of the TT Regulation to ensure record keeping requirements are appropriate for private property towing.

*Clause 59* amends section 26 of the TT Regulation to require licence holders to keep towing consents in safe custody for at least 1 year after the consent ceases to have effect.

*Clause 60* inserts new sections 29A and 29B of the TT Regulation. New section 29A requires the tow truck driver take reasonable steps to locate the vehicle's owner prior to loading a private property motor vehicle onto the tow truck, and, if the owner is located, to only load the vehicle if the owner refuses to move the vehicle or the driver reasonably believes the owner is unable or unwilling to move it from the property. The provision also requires the tow truck driver who has commenced but not completed loading the vehicle to release the vehicle without charge if the owner agrees to move the vehicle from the property.

New section 29B provides that if the tow truck driver or assistant has completed loading the vehicle onto the tow truck but the vehicle has not been moved from the property, and the vehicle's owner is present, the tow truck driver must advise the owner that they can pay an on-site release charge to have the vehicle released prior to it being removed from the property. If payment is made the vehicle must be released.

*Clause 61* amends section 30 of the TT Regulation to require the driver of a tow truck to only tow a private property motor vehicle by the most direct route to the nearest holding yard of the licence holder.

*Clause 62* replaces sections 31 to 34 of the TT Regulation with new sections 31, 32, 33, 34 and 34A. The new provisions introduce maximum charges for towing, storing and the on-site release of a private property motor vehicle, provide that the owner of a private property motor vehicle is liable for the payment of charges in relation to the towing and storage, prohibit the imposition of separate charges and provide that notice must be given before charging for viewing vehicles outside business hours.

*Clause 63* amends section 36 of the TT Regulation to provide that the chief executive can also investigate charges for releasing and storing vehicles.

*Clause 64* replaces section 37 of the TT Regulation to ensure that property found in prescribed motor vehicles that are towed is kept in safe custody until returned to its owner.

*Clause 65* inserts new section 40 of the TT Regulation to prescribe the regulated areas referred to in the Act.

*Clause 66* amends schedule 2 of the TT Regulation to prescribe the fees for 1, 2, 3, 4 and 5 year tow truck licences and driver's and assistant's certificates.

*Clause 67* amends schedule 3 of the TT Regulation to prescribe maximum towing, on-site release and storage charges for private property motor vehicles.

*Clause 68* amends schedule 4 of the TT Regulation to reflect the change in the authorising section for regulated areas.

*Clause 69* amends schedule 5 (Dictionary) of the TT Regulation to omit the definitions of conforming premises, disqualifying offence, driver licence, holding yard and owner which have been moved to the TT Act, and to amend the definition of approval. The amendment also inserts an amended definition of standard tow into the schedule. The definition of standard tow was previously in section 32 of the TT Regulation.