



Queensland

Tow Truck and Other Legislation Amendment Bill 2018



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2018

A Bill

for

An Act to amend the State Penalties Enforcement Act 1999, the State Penalties Enforcement Regulation 2014, the Tow Truck Act 1973, the Tow Truck Regulation 2009, the Transport Infrastructure Act 1994 and the Youth Justice Act 1992 for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Tow Truck and Other Legislation Amendment Act 2018*. 4
5

Clause 2 Commencement 6

The following provisions commence on a day to be fixed by proclamation— 7
8

(a) part 2; 9

(b) part 6, divisions 2 and 3. 10

Part 2 Amendment of Tow Truck Act 1973 11
12

Clause 3 Act amended 13

This part amends the *Tow Truck Act 1973*. 14

Clause 4 Insertion of new s 4D 15

Part 1— 16

insert— 17

4D Meaning of *towing consent* 18

(1) A *towing consent* is a document, in the approved 19
form, between an occupier of private property and 20
the holder of a licence that states there is an 21
arrangement between the occupier and the holder 22

| | | |
|-----------------|--|-------------|
| | under which the holder may, until the arrangement is revoked by the occupier, tow a private property motor vehicle from the property. | 1 2 3 |
| | (2) To remove any doubt, it is declared that a towing consent does not constitute legal authority for the towing of a motor vehicle from private property. | 4 5 6 |
| Clause 5 | Amendment of s 5 (Requirement as to licence for tow truck) | 7 8 |
| | (1) Section 5, ‘unless it’— <i>omit, insert</i> — | 9 10 |
| | for towing prescribed motor vehicles in a regulated area unless the tow truck | 11 12 |
| | (2) Section 5— <i>insert</i> — | 13 14 |
| | Maximum penalty—160 penalty units. | 15 |
| Clause 6 | Amendment of s 6 (Application for licence) | 16 |
| | Section 6(2), ‘and issue’— <i>omit.</i> | 17 18 |
| Clause 7 | Amendment of s 7 (Form and authority of licence) | 19 |
| | Section 7, ‘issued’— <i>omit, insert</i> — | 20 21 |
| | granted | 22 |
| Clause 8 | Replacement of ss 8 and 9 | 23 |
| | Sections 8 and 9— <i>omit, insert</i> — | 24 25 |

[s 8]

- 8 Term of licence** 1
- (1) A licence may be granted for a term of not more than 5 years. 2
3
- (2) A licence comes into force on the day it is granted. 4
- (3) A licence stops being in force if it— 5
- (a) expires; or 6
- (b) is cancelled, suspended or surrendered. 7
- (4) A licence suspended under this Act is taken not to be in force during the period of the suspension. 8
9
- 9 Renewal of licence** 10
- (1) The holder of a licence may apply to the chief executive to renew the licence. 11
12
- (2) The application must— 13
- (a) be made as prescribed by regulation; and 14
- (b) be accompanied by the fee prescribed by regulation. 15
16
- (3) The chief executive may renew the licence if satisfied the holder of the licence continues to be an appropriate person to hold the licence. 17
18
19
- (4) For deciding whether the holder of the licence continues to be an appropriate person to hold the licence, the chief executive must have regard to any report given to the chief executive by the police commissioner under section 36 about— 20
21
22
23
24
- (a) the holder; or 25
- (b) if the holder is a corporation—any of the holder’s executive officers. 26
27
- (5) A licence renewed under this section— 28
- (a) starts on the day the renewal is granted; and 29

| | | |
|------------------|---|----------------------------|
| | (b) is granted for a term of not more than 5 years; and | 1 2 |
| | (c) must state the expiry date for the licence. | 3 |
| Clause 9 | Amendment of s 11 (Permits to tow motor vehicles) | 4 |
| | Section 11(1), after ‘vehicles’— | 5 |
| | <i>insert—</i> | 6 |
| | in a regulated area | 7 |
| Clause 10 | Amendment of s 12 (Conditions of licence) | 8 |
| | (1) Section 12(2)— | 9 |
| | <i>insert—</i> | 10 |
| | (da) that a person acting under the authority of the licence or a certificate must not unlock a private property motor vehicle without the consent of the vehicle’s owner or the owner’s agent; | 11 12 13 14 15 |
| | (2) Section 12(2)(g), ‘damaged or seized’— | 16 |
| | <i>omit, insert—</i> | 17 |
| | prescribed | 18 |
| | (3) Section 12(2)(h)— | 19 |
| | <i>omit, insert—</i> | 20 |
| | (h) that the holder of the licence must— | 21 |
| | (i) ensure an inventory of found property is made for each prescribed motor vehicle that is towed by a tow truck to which the licence relates; and | 22 23 24 25 |
| | (ii) ensure the inventory is made as soon as reasonably practicable after the vehicle arrives at its destination; and | 26 27 28 |

[s 10]

- (iii) keep the inventory at the place of
business stated in the licence; 1
2
- (4) Section 12(2)(i) and (j), ‘paragraph (f)’— 3
omit, insert— 4
paragraph (g) 5
- (5) Section 12(2)(l), ‘driver’s certificate or an assistant’s’— 6
omit. 7
- (6) Section 12(2)(n), ‘paragraph (e)’— 8
omit, insert— 9
paragraph (f) 10
- (7) Section 12(2)— 11
insert— 12
- (s) for the towing of a private property motor 13
vehicle from private property—that a 14
person— 15
- (i) if the person is not the holder of a 16
certificate—must not accompany the 17
driver of the tow truck to which the 18
licence relates while the tow truck is— 19
- (A) proceeding to the property; or 20
(B) towing the vehicle; and 21
- (ii) must not tow the vehicle unless the 22
holder of the licence has a valid towing 23
consent from the occupier of the 24
property relating to the towing of the 25
vehicle from the property; and 26
- (iii) must not tow the vehicle while a person 27
is inside it; and 28
- (iv) must not cause, or allow to be caused, 29
an unreasonable obstruction on private 30
property or a road by a tow truck to 31
which the licence relates; and 32

-
- (v) must, before towing the vehicle, take reasonable steps to locate the vehicle's owner; and
 - (vi) must not, after taking reasonable steps to find the vehicle's owner, take longer than is reasonably necessary to tow the vehicle; and
 - (vii) may only tow the vehicle to the nearest holding yard that is owned or leased by the holder of the licence; and
 - (viii) must not move the vehicle from a holding yard without the written authority of the vehicle's owner or the owner's agent; and
 - (ix) if there are no outstanding charges under this Act for which the owner of the vehicle is liable—must not refuse, or cause another person to refuse, to release the vehicle to the owner, or the owner's agent.
- (8) Section 12(2)(da) to (s)—
renumber as section 12(2)(e) to (t).
- (9) Section 12—
insert—
- (3) In this section—
certificate means—
 - (a) a driver's certificate; or
 - (b) an assistant's certificate.

Clause 11 Amendment of s 13 (Required certificates etc.)

- (1) Section 13, after 'must not'—
insert—

[s 11]

- , in a regulated area 1
- (2) Section 13(a), after ‘truck’— 2
insert— 3
to tow a prescribed motor vehicle 4
- (3) Section 13(b) and (c)— 5
omit, insert— 6
- (b) be employed on or in connection with the 7
use of a tow truck at or near a towing 8
location unless the person is the holder of— 9
- (i) a driver’s certificate; or 10
(ii) an assistant’s certificate; or 11
(iii) a permit under section 19. 12
- Maximum penalty—60 penalty units. 13
- (4) Section 13— 14
insert— 15
- (2) Also, a person must not, in a regulated area, travel 16
in a tow truck to or from a towing location unless 17
the person— 18
- (a) is the holder of— 19
- (i) a driver’s certificate; or 20
(ii) an assistant’s certificate; or 21
(iii) a permit under section 19; or 22
- (b) is the owner of a motor vehicle at the towing 23
location, or the owner’s agent; or 24
- (c) was the driver of, or a passenger in, a 25
vehicle at the towing location. 26
- Maximum penalty—40 penalty units. 27
- (3) In this section— 28
towing location means— 29

| | | |
|------------------|---|----------------------|
| | (a) the scene of an incident; or | 1 |
| | (b) a place at which a motor vehicle has been seized; or | 2 3 |
| | (c) private property on which a private property motor vehicle is parked. | 4 5 |
| Clause 12 | Amendment of s 17A (Renewal of driver’s or assistant’s certificate) | 6 7 |
| | (1) Section 17A(2)— <i>omit.</i> | 8 9 |
| | (2) Section 17A(3)— <i>renumber</i> as section 17A(2). | 10 11 |
| Clause 13 | Amendment of s 19 (Permit for applicant for driver’s or assistant’s certificate) | 12 13 |
| | Section 19(1), after ‘truck’— <i>insert</i> — | 14 15 |
| | in a regulated area | 16 |
| Clause 14 | Insertion of new pt 4A | 17 |
| | After section 21H— <i>insert</i> — | 18 19 |
| | Part 4A Powers of authorised officers relating to prescribed motor vehicles | 20 21 22 23 |
| | 21I Entry to places | 24 |
| | (1) An authorised officer may enter a place if— | 25 |

[s 14]

- (a) its occupier consents to the entry; or 1
- (b) it is a place of business stated on a licence, 2
or is a holding yard owned or leased by the 3
holder of the licence, and the entry is made 4
when the place is— 5
 - (i) open for the conduct of business or 6
otherwise open for entry; or 7
 - (ii) required under the licence to be open 8
for inspection; or 9
- (c) the officer reasonably suspects a prescribed 10
motor vehicle has been towed to the place. 11
- (2) An authorised officer may, without the occupier’s 12
consent— 13
 - (a) enter a public place when the place is open 14
to the public; or 15
 - (b) enter the land around premises to ask its 16
occupier for consent to enter the premises. 17
- (3) For subsection (1)(a), the *Transport Operations* 18
(Road Use Management) Act 1995, section 27 19
applies as if a reference in that section to an 20
authorised officer includes a person acting under 21
the authority of the chief executive under this Act. 22
- (4) In this section— 23
occupier, of a place, includes a person who 24
reasonably appears to be the occupier, or in 25
charge, of the place. 26

21J Powers 27

An authorised officer may do any of the following 28
for investigating or enforcing a requirement under 29
this Act— 30

- (a) search any part of a place (an **entered place**) 31
the officer has entered under section 21I; 32

| | | |
|------------------|--|----------------|
| | (b) inspect, copy, or take an extract from, a document at an entered place; | 1 2 |
| | (c) require a person to produce for inspection a document required to be kept by the person under this Act. | 3 4 5 |
| Clause 15 | Insertion of new ss 27A and 27B | 6 |
| | Part 5— | 7 |
| | <i>insert—</i> | 8 |
| | 27A Obtaining, or attempting to obtain, towing consent | 9 10 |
| | A person must not obtain, or attempt to obtain, a towing consent unless the person is the holder of a licence. | 11 12 13 |
| | Maximum penalty—50 penalty units. | 14 |
| | 27B Storing private property motor vehicle at unlicensed place | 15 16 |
| | (1) An occupier of an unlicensed place must not store at the place a private property motor vehicle that has been towed by a tow truck to the place. | 17 18 19 |
| | Maximum penalty—60 penalty units. | 20 |
| | (2) This section does not apply in relation to a private property motor vehicle that is owned by the occupier. | 21 22 23 |
| | (3) In this section— | 24 |
| | <i>occupier</i> , of an unlicensed place, means— | 25 |
| | (a) if a business is conducted at the place—the proprietor of the business; or | 26 27 |
| | (b) otherwise—a person who may lawfully exclude other persons from the place. | 28 29 |

[s 16]

| | | |
|------------------|--|----------------------------------|
| Clause 16 | Replacement of s 35 (Production of document evidencing licence, certificate or permit to authorised officer) | 1 2 |
| | Section 35— | 3 |
| | <i>omit, insert—</i> | 4 |
| | 35 Production of particular documents | 5 |
| | (1) The holder of a licence, driver’s certificate, assistant’s certificate or permit must, if asked by an authorised officer, produce to the officer the document evidencing the licence, certificate or permit. | 6 7 8 9 10 |
| | Maximum penalty—40 penalty units. | 11 |
| | (2) If a tow truck is, or has been used, to tow a private property motor vehicle from private property, the holder of the licence for the tow truck must, if asked by an authorised officer, produce to the officer a copy of a towing consent held by the holder. | 12 13 14 15 16 17 |
| | Maximum penalty—40 penalty units. | 18 |
| | (3) The driver of a tow truck that is being, or has been, used to tow a private property motor vehicle must, if asked by an authorised officer, produce to the officer a copy of a towing consent being carried in the tow truck. | 19 20 21 22 23 |
| | Maximum penalty—40 penalty units. | 24 |
| | (4) In this section— | 25 |
| | <i>copy</i> , of a towing consent, includes the original towing consent. | 26 27 |
| Clause 17 | Replacement of s 37 (Evidentiary provisions) | 28 |
| | Section 37— | 29 |
| | <i>omit, insert—</i> | 30 |

37 Evidentiary matters

- In a proceeding under this Act, the following apply—
- (a) a certificate purporting to be signed by the chief executive certifying that on a stated day or during a stated period the particulars in the certificate about any of the matters mentioned in section 21H did or did not appear in the records kept under that section is, on its production in the proceeding, admissible as evidence, and in the absence of evidence to the contrary is conclusive evidence of the matters in the certificate;
 - (b) a document purporting to be a report given to the chief executive for this Act in relation to an applicant or the holder of a licence, certificate or permit and relevant to the matter of inquiry is, on its production in an appeal against the chief executive's decision, admissible as evidence of the matters in the document;
 - (c) a document purporting to be a copy of a licence or other document and certified as a true copy by the chief executive is evidence of the licence or document;
 - (d) a certificate purporting to be signed by the police commissioner stating the commissioner received, or did not receive, notice, in the approved form, about the towing of a private property motor vehicle is evidence of the matters stated in the certificate;
 - (e) the allegation in a complaint that—
 - (i) a person is or is not, or was or was not, at a time or date stated in the complaint—

[s 17]

- (A) the owner of a vehicle; or 1
 - (B) the holder of a licence, certificate 2
or permit relating to a tow truck; 3
or 4
 - (ii) any thing is, or was, a vehicle of a 5
particular class or description; or 6
 - (iii) any place is, or was— 7
 - (A) a road, or part of a road; or 8
 - (B) a private property, or part of a 9
private property; or 10
 - (iv) a person was an occupier of private 11
property or another place; 12
- is evidence of the matter or matters alleged, 13
and in the absence of evidence to the 14
contrary is conclusive evidence of the matter 15
or matters. 16

**37A Application of Act in relation to particular 17
motor vehicles 18**

- (1) Sections 5, 13 and 26 do not apply to a person who 19
travels in, is employed on or about, or who uses a 20
tow truck, if— 21
 - (a) the person— 22
 - (i) is a qualified motor mechanic; and 23
 - (ii) is using the tow truck for road testing it 24
for, or after completing, mechanical 25
adjustment or repairs to it or its 26
equipment; or 27
 - (b) the person is using the tow truck to tow a 28
motor vehicle registered, under the 29
*Transport Operations (Road Use 30
Management) Act 1995*, in the name of the 31
owner of the tow truck. 32

| | | |
|------------------|--|----------------------|
| | (2) The provisions of this Act relating to the towing of private property motor vehicles do not apply to a person to the extent the person is involved in towing a private property motor vehicle— | 1 2 3 4 |
| | (a) under any of the following laws, or a direction or request of a person acting in accordance with any of the following laws— | 5 6 7 8 |
| | (i) an Act of the Commonwealth or a State; | 9 10 |
| | (ii) a local law; or | 11 |
| | (b) in a circumstance prescribed by regulation. | 12 |
| Clause 18 | Amendment of s 38 (Exemptions) | 13 |
| | Section 38(2), ‘4A,’— | 14 |
| | <i>omit.</i> | 15 |
| Clause 19 | Amendment of s 40 (Offences generally and penalty) | 16 |
| | (1) Section 40(2)— | 17 |
| | <i>omit, insert—</i> | 18 |
| | (2) If the holder of a licence contravenes a condition of the licence mentioned in section 12(2)(a) to (d), the holder commits an offence against this Act. | 19 20 21 |
| | Maximum penalty—50 penalty units. | 22 |
| | (2A) If a person contravenes a condition of the licence mentioned in section 12(2)(e) to (t), the person and, if the person is not the holder of the licence, the holder, commits an offence against this Act. | 23 24 25 26 |
| | Maximum penalty—50 penalty units. | 27 |
| | (2) Section 40(2A) to (5)— | 28 |
| | <i>renumber</i> as section 40(3) to (6). | 29 |

[s 20]

| | | |
|------------------|---|----|
| Clause 20 | Amendment of s 43 (Regulation-making power) | 1 |
| (1) | Section 43(2)(m)— | 2 |
| | <i>omit, insert—</i> | 3 |
| | (m) the minimum age and required qualifications of— | 4 |
| | (i) drivers of tow trucks; or | 5 |
| | (ii) other persons to be employed on or in connection with the use of tow trucks; | 6 |
| (2) | Section 43(2)— | 7 |
| | <i>insert—</i> | 8 |
| | (na) the areas in which tow trucks may be operated to tow prescribed motor vehicles; | 9 |
| (3) | Section 43(2)(p)— | 10 |
| | <i>omit, insert—</i> | 11 |
| | (p) investigating charges being made, or that should be made, for— | 12 |
| | (i) towing, storing or releasing prescribed motor vehicles; or | 13 |
| | (ii) salvaging damaged motor vehicles; or | 14 |
| | (pa) appointing persons to investigate matters mentioned in paragraph (t); | 15 |
| | (pb) the powers of persons appointed to investigate matters mentioned in paragraph (t); | 16 |
| (4) | Section 43(2)(q)— | 17 |
| | <i>omit, insert—</i> | 18 |
| | (q) the things for which tow truck operators may impose a charge, and the maximum and minimum amounts for any charge; | 19 |
| (5) | Section 43(2)(r), ‘, 4A’— | 20 |
| | <i>omit.</i> | 21 |
| | | 22 |
| | | 23 |
| | | 24 |
| | | 25 |
| | | 26 |
| | | 27 |
| | | 28 |
| | | 29 |
| | | 30 |
| | | 31 |

-
- (6) Section 43(2)(u), ‘20’— 1
omit, insert— 2
80 3
(7) Section 43(2)(fa) to (u)— 4
renumber as section 43(2)(g) to (za). 5

| | | |
|------------------|--|----|
| Clause 21 | Insertion of new pt 8, div 5 | 6 |
| | Part 8— | 7 |
| | <i>insert</i> — | 8 |
| | Division 5 | 9 |
| | Transitional provision for | 10 |
| | Tow Truck and Other | 11 |
| | Legislation Amendment | 12 |
| | Act 2018 | 12 |
| | 51 Existing licence applications | 13 |
| | (1) This section applies if, immediately before the | 14 |
| | commencement, an application for the grant or | 15 |
| | renewal of a licence had been made but not | 16 |
| | decided. | 17 |
| | (2) Sections 6 and 8 of the pre-amended Act continue | 18 |
| | to apply in relation to the application as if the <i>Tow</i> | 19 |
| | <i>Truck and Other Legislation Amendment Act</i> | 20 |
| | <i>2018</i> had not been enacted. | 21 |
| | (3) In this section— | 22 |
| | <i>pre-amended Act</i> means this Act as in force | 23 |
| | immediately before the commencement. | 24 |
| Clause 22 | Amendment of sch 2 (Dictionary) | 25 |
| | (1) Schedule 2, definition <i>criminal history</i> — | 26 |
| | <i>omit.</i> | 27 |

[s 22]

- (2) Schedule 2— 1
- insert—* 2
- conforming premises*** means premises consisting 3
of an area at ground level that— 4
- (a) complies with the requirements of the *Local 5
Government Act 2009*; and 6
- (b) is either— 7
- (i) enclosed by a fence or wall that— 8
- (A) is structurally sound; and 9
- (B) is at least 2.1m in height from the 10
ground; and 11
- (C) has lockable gates or doors that 12
are closed and securely locked 13
other than when a motor vehicle is 14
being moved into or out of the 15
area; or 16
- (ii) if the area does not comply with 17
subparagraph (i)—an area the chief 18
executive considers has another 19
security barrier that is sufficient to 20
prevent the entry of unauthorised 21
persons into the area and the 22
unauthorised removal of motor 23
vehicles or property from the area. 24
- criminal history***, of a person, means the person’s 25
criminal history within the meaning of the 26
*Criminal Law (Rehabilitation of Offenders) Act 27
1986*, and includes— 28
- (a) despite section 6 of that Act—a conviction 29
of the person to which the section applies; 30
and 31
- (b) despite section 5 of that Act—a charge 32
made against the person that has not been 33

-
- dealt with by a court, or withdrawn or
otherwise discontinued. 1
2
- destination***— 3
- (a) for a damaged or seized motor vehicle— 4
means the place mentioned in section 5
12(2)(j) to which the vehicle has been 6
towed; or 7
- (b) for a private property motor vehicle—a 8
holding yard. 9
- found property***, for a prescribed motor vehicle 10
that has been towed, means— 11
- (a) if the vehicle is unlocked—movable 12
property found in the vehicle when the 13
vehicle arrives at its destination; or 14
- (b) otherwise—movable property inside the 15
vehicle that is visible from outside the 16
vehicle at the time the vehicle arrives at its 17
destination. 18
- holding yard*** means conforming premises owned 19
or leased solely by the holder of a licence and 20
used, or to be used, by the holder to store— 21
- (a) prescribed motor vehicles towed under the 22
licence; and 23
- (b) found property for prescribed motor 24
vehicles towed under the licence. 25
- movable property*** includes a radio or sound 26
production device. 27
- occupier***, of private property, means a person who 28
may lawfully exclude other persons from the 29
property. 30
- owner***, of a motor vehicle, includes the 31
following— 32
- (a) a joint owner or a part owner of the vehicle; 33

[s 22]

- (b) for a motor vehicle registered under the *Transport Operations (Road Use Management) Act 1995* or under a corresponding law of another State—every person in whose name the vehicle is registered;
- (c) for a motor vehicle the subject of a hiring agreement, hire-purchase agreement or leasing agreement—the person who has the use of the vehicle as hirer or lessee under the agreement;
- (d) a person who is authorised to have and has control, charge or management of the vehicle.
- prescribed motor vehicle*** means—
- (a) a damaged motor vehicle; or
- (b) a private property motor vehicle; or
- (c) a seized motor vehicle; or
- (d) another motor vehicle of a type prescribed by regulation.
- private property***—
- (a) means land, or a road over land, from which the occupier of the land may lawfully exclude other persons; and
- (b) despite paragraph (a), does not include land or a road controlled by—
- (i) the Commonwealth; or
- (ii) the State; or
- (iii) a local government.
- private property motor vehicle*** means a motor vehicle—
- (a) that is, or was, parked on private property; and

-
- (b) whose owner has not expressly requested or directed the towing of the vehicle from the property. 1
2
3
- regulated area* means an area prescribed by regulation to be a regulated area. 4
5
- towing consent* see section 4D. 6
- unlicensed place* means a place that is not— 7
- (a) a place of business stated on a licence; or 8
- (b) a holding yard. 9
- valid*, for a towing consent, means in force. 10
- (3) Schedule 2, definition *licence*, ‘issued’— 11
omit, insert— 12
granted 13

Part 3 **Amendment of State Penalties Enforcement Act 1999** 14 15

Clause 23 **Act amended** 16
This part amends the *State Penalties Enforcement Act 1999*. 17

Clause 24 **Amendment of s 5 (Act has limited application to children)** 18
19

(1) Section 5(1), ‘This Act’— 20
omit, insert— 21

Subject to subsections (2) and (3), this Act 22

(2) Section 5(2)— 23
omit, insert— 24

(2) If a child aged at least 17 years is served with an infringement notice for a transport demerit points 25
26

[s 25]

| | | | |
|------------------|---|--|----------------------|
| | offence, this Act applies to the child in relation to the offence in the same way it applies to an adult. | 1 2 | |
| | (3) An enforcement order, fine collection notice or warrant may not be issued under this Act against a child except as allowed under subsection (2). | 3 4 5 | |
| | (4) A reference in this Act to a Magistrates Court includes, in relation to a matter involving a child, a reference to the Childrens Court. | 6 7 8 | |
| | (5) In this section— <i>transport demerit points offence</i> means an offence for which a number of demerit points may be allocated against the offender’s traffic history under a regulation under the <i>Transport Operations (Road Use Management) Act 1995</i> . | 9 10 11 12 13 14 | |
| Clause 25 | Insertion of new pt 10, div 8 | 15 | |
| | Part 10— | 16 | |
| | <i>insert—</i> | 17 | |
| | Division 8 | Transitional provision for Tow Truck and Other Legislation Amendment Act 2018 | 18 19 20 21 |
| | 195 Application of Act to particular 17 year old children | 22 23 | |
| | (1) This section applies if— | 24 | |
| | (a) before the youth justice commencement, the registrar— | 25 26 | |
| | (i) registered a default certificate for an offence under section 33; or | 27 28 | |

-
- (ii) registered the prescribed particulars of an unpaid amount under section 34; and
- (b) immediately before the youth justice commencement—
- (i) there was still a relevant unpaid amount for the registered default certificate or registered particulars; and
- (ii) the person required to pay the relevant unpaid amount was 17 years old.
- (2) Despite the amendment of section 5 by the amending Acts—
- (a) each of the following has effect—
- (i) the registration of the default certificate or prescribed particulars;
- (ii) any current enforcement order for the relevant unpaid amount; and
- (b) this Act applies in relation to the person and the relevant unpaid amount as if pre-amended section 5 were still in force.
- (3) To remove any doubt, it is declared that, for subsection (2)(b), a reference in pre-amended section 5 to a child within the meaning of the *Youth Justice Act 1992* is a reference to a person who has not turned 17 years.
- (4) If the date of a current enforcement order mentioned in subsection (2)(a)(ii) is less than 28 days before the youth justice commencement, this Act applies as if the date of the order were the date of commencement of this section.
- (5) In this section—
- amending Acts*** means—

[s 26]

(a) the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016*; and 1
2
3

(b) the *Tow Truck and Other Legislation Amendment Act 2018*. 4
5

current enforcement order means an 6
enforcement order that, immediately before the 7
youth justice commencement, was in effect for a 8
relevant unpaid amount. 9

pre-amended section 5 means section 5 as in 10
force immediately before the youth justice 11
commencement. 12

relevant unpaid amount, for a registered default 13
certificate or registered particulars— 14

(a) means the amount SPER is responsible for 15
collecting because of the registration; and 16

(b) includes any fees or costs payable under this 17
Act in relation to the amount. 18

youth justice commencement means the 19
commencement of the *Youth Justice and Other 20
Legislation (Inclusion of 17-year-old Persons) 21
Amendment Act 2016*, schedule 1. 22

Part 4 **Amendment of Transport Infrastructure Act 1994** 23 24

Clause 26 **Act amended** 25
This part amends the *Transport Infrastructure Act 1994*. 26

Clause 27 **Amendment of s 92 (Definitions for pt 7)** 27
Section 92— 28
insert— 29

| | | |
|------------------|---|----------------------------|
| | <i>image processing fee</i> see section 93(6)(a). | 1 |
| Clause 28 | Amendment of s 93 (Tolls) | 2 |
| | Section 93(5) and (6)— | 3 |
| | <i>omit, insert—</i> | 4 |
| | (5) An administration charge under the gazette notice must not be more than the reasonable cost, under this division, of— | 5 6 7 |
| | (a) issuing a notice about an unpaid toll; and | 8 |
| | (b) collecting the unpaid toll, an image processing fee for the toll and the administration charge. | 9 10 11 |
| | (6) A user administration charge under the gazette notice, for a toll— | 12 13 |
| | (a) may include a fee (an <i>image processing fee</i>) that is not more than the reasonable cost of capturing, processing and using an image to identify a vehicle at a toll plaza for the toll; and | 14 15 16 17 18 |
| | (b) so far as it does not comprise an image processing fee, must not be more than the reasonable cost, under this division, of administering and collecting payment of the toll. | 19 20 21 22 23 |
| | (7) A reference in the gazette notice to a video matching fee is taken to be a reference to an image processing fee. | 24 25 26 |
| Clause 29 | Amendment of s 97 (Definition for div 3) | 27 |
| | Section 97, definition <i>deferred toll amount</i> , paragraph (b)— | 28 |
| | <i>omit, insert—</i> | 29 |
| | (b) the amount of the image processing fee for the toll. | 30 31 |

[s 30]

| | | |
|------------------|---|----------------------------------|
| Clause 30 | Amendment of s 98 (Liability for administration charge in addition to unpaid toll) | 1 2 |
| (1) | Section 98, heading, after ‘Liability for’— <i>insert</i> — image processing fee and | 3 4 5 |
| (2) | Section 98(1), ‘of the administration charge for the toll.’— <i>omit, insert</i> — of— (a) the image processing fee for the toll; and (b) an administration charge. | 6 7 8 9 10 |
| (3) | Section 98(2), ‘administration charge for the toll’— <i>omit, insert</i> — image processing fee or administration charge | 11 12 13 |
| Clause 31 | Replacement of s 99 (Notice to vehicle’s registered operator) | 14 15 |
| | Section 99— <i>omit, insert</i> — 99 Notice to vehicle’s registered operator | 16 17 18 |
| (1) | The toll road operator may give the registered operator of the vehicle a written notice in the approved form under this section if the toll road operator has not received the deferred toll amount. | 19 20 21 22 |
| (2) | The notice must specify each of the 1 or more deferred toll amounts for which it is given. | 23 24 |
| (3) | The notice must require the registered operator to do either of the following, within the prescribed time, for each deferred toll amount listed in the notice— (a) pay the deferred toll amount to the toll road operator; | 25 26 27 28 29 30 |

-
- (b) give the toll road operator the registered operator's statutory declaration in the approved form containing information that—
- (i) if the registered operator is an individual—establishes, to the extent it is reasonably practicable for the registered operator to do so, that the registered operator was not the driver when liability for the toll included in the deferred toll amount was incurred; and
 - (ii) gives the toll road operator all the help the registered operator can reasonably give for establishing the name and address of the person who was the driver when liability for the toll included in the deferred toll amount was incurred.
- (4) The notice may also require the registered operator to pay an administration charge stated in the notice if there are any deferred toll amounts listed in the notice for which the registered operator does not give a statutory declaration under subsection (3)(b).
- (5) The notice must not require the registered operator to pay more than 1 administration charge, even if the notice is given for 2 or more deferred toll amounts.
- (6) If the notice is given in contravention of subsection (5), it is of no effect.
- (7) The registered operator must comply with the notice unless the registered operator has a reasonable excuse.
- Maximum penalty—15 penalty units.
- (8) Payment of an administration charge required by

[s 32]

the notice also satisfies the liability for the 1
administration charge that arose under section 2
98(1)(b) in relation to each toll included in a 3
deferred toll amount listed in the notice. 4

(9) For giving the notice, the registered operator's 5
address for service may be taken to be a 6
residential, postal or business address recorded 7
for the registered operator under the registration 8
Act applying to the designated vehicle's 9
registration. 10

99AASingle notice under ss 99 and 105ZH 11

- (1) A single notice may be given to the registered 12
operator that is a notice under section 99 and a 13
notice under section 105ZH. 14
- (2) If a single notice is given, only 1 administration 15
charge may be charged under the notice. 16
- (3) Payment of an administration charge mentioned 17
in subsection (2) is taken to be payment of the 18
administration charge under both section 99(4) 19
and section 105ZH(4). 20

**Clause 32 Amendment of s 99A (Corporation may be taken to be 21
driver of vehicle) 22**

Section 99A(1)(b), 'section 99(2)(b)(ii)'— 23
omit, insert— 24
section 99(3)(b)(ii) 25

**Clause 33 Replacement of s 101 (Notice to person identified as 26
driver) 27**

Section 101— 28
omit, insert— 29

101 Notice to person identified as driver

- 1
- (1) The toll road operator may give a notice in the approved form to a person under this section if the toll road operator—
- 2
- 3
- 4
- (a) has not received the deferred toll amount;
- 5
- and
- 6
- (b) considers, on reasonable grounds, it has correctly identified the person as the driver.
- 7
- 8
- (2) The notice must specify each of the 1 or more deferred toll amounts for which it is given.
- 9
- 10
- (3) The notice must require the person to do either of the following, within the prescribed time, for each deferred toll amount listed in the notice—
- 11
- 12
- 13
- (a) pay the deferred toll amount to the toll road operator;
- 14
- 15
- (b) give the toll road operator the person's statutory declaration in the approved form containing information that—
- 16
- 17
- 18
- (i) establishes, to the extent it is reasonably practicable for the person to do so, that the person was not the driver when liability for the toll included in the deferred toll amount was incurred;
- 19
- 20
- 21
- 22
- 23
- and
- 24
- (ii) gives the toll road operator all the help the person can reasonably give for establishing the name and address of the person who was the driver when liability for the toll included in the deferred toll amount was incurred.
- 25
- 26
- 27
- 28
- 29
- 30
- (4) The notice may also require the person to pay an administration charge stated in the notice if there are any deferred toll amounts listed in the notice for which the person does not give a statutory declaration under subsection (3)(b).
- 31
- 32
- 33
- 34
- 35

[s 34]

- (5) The notice must not require the person to pay more than 1 administration charge, even if the notice is given for 2 or more deferred toll amounts. 1
2
3
4
- (6) If the notice is given in contravention of subsection (5), it is of no effect. 5
6
- (7) The person must comply with the notice unless the person has a reasonable excuse. 7
8
Maximum penalty—15 penalty units. 9
- (8) Payment of an administration charge required by the notice also satisfies the liability for the administration charge that arose under section 98(1)(b) in relation to each toll included in a deferred toll amount listed in the notice. 10
11
12
13
14

101A Single notice under ss 101 and 105ZK 15

- (1) A single notice may be given to a person that is a notice under section 101 and a notice under section 105ZK. 16
17
18
- (2) If a single notice is given, only 1 administration charge for the notice may be charged. 19
20
- (3) Payment of an administration charge mentioned in subsection (2) is taken to be payment of the administration charge under both section 101(4) and section 105ZK(4). 21
22
23
24

Clause 34 Amendment of s 105 (Evidence and procedure) 25

- (1) Section 105(1)(c)(vi)— 26
omit, insert— 27
(vi) an administration charge payable under a notice given under section 99 or 101 has not been paid; 28
29
30

| | | |
|------------------|---|----------------------------|
| | (via) a user administration charge for a toll has not been paid; | 1 2 |
| (2) | Section 105(1)(c)(via) to (viii)— <i>renumber</i> as section 105(1)(c)(vii) to (ix). | 3 4 |
| Clause 35 | Amendment of s 105B (Definitions for pt 8) | 5 |
| | Section 105B— | 6 |
| | <i>insert</i> — | 7 |
| | <i>image processing fee</i> see section 105ZB(6)(a). | 8 |
| Clause 36 | Amendment of s 105ZB (Local government to give notice of tolling matters) | 9 10 |
| | Section 105ZB(5) and (6)— | 11 |
| | <i>omit, insert</i> — | 12 |
| | (5) An administration charge under the notice under subsection (1) must not be more than the reasonable cost, under this division, of— | 13 14 15 |
| | (a) issuing a notice about an unpaid toll; and | 16 |
| | (b) collecting the unpaid toll, an image processing fee for the toll and the administration charge. | 17 18 19 |
| | (6) A user administration charge under the notice under subsection (1) for a toll— | 20 21 |
| | (a) may include a fee (an <i>image processing fee</i>) that is not more than the reasonable cost of capturing, processing and using an image to identify a vehicle at a toll plaza for the toll; and | 22 23 24 25 26 |
| | (b) so far as it does not comprise an image processing fee, must not be more than the reasonable cost, under this division, of | 27 28 29 |

[s 37]

| | | |
|------------------|---|-------------|
| | administering and collecting payment of the toll. | 1 2 |
| | (7) A reference in the notice under subsection (1) to a video matching fee is taken to be a reference to an image processing fee. | 3 4 5 |
| Clause 37 | Amendment of s 105ZF (Definition for sdiv 3) | 6 |
| | Section 105ZF, definition <i>deferred toll amount</i> , paragraph (b)— | 7 8 |
| | <i>omit, insert—</i> | 9 |
| | (b) the amount of the image processing fee for the toll. | 10 11 |
| Clause 38 | Amendment of s 105ZG (Liability for administration charge in addition to unpaid toll) | 12 13 |
| | (1) Section 105ZG, heading, after ‘Liability for’— | 14 |
| | <i>insert—</i> | 15 |
| | image processing fee and | 16 |
| | (2) Section 105ZG(1), ‘of the administration charge for the toll.’— | 17 18 |
| | <i>omit, insert—</i> | 19 |
| | of— | 20 |
| | (a) the image processing fee for the toll; and | 21 |
| | (b) an administration charge. | 22 |
| | (3) Section 105ZG(2), ‘administration charge for the toll’— | 23 |
| | <i>omit, insert—</i> | 24 |
| | image processing fee or administration charge | 25 |

| | | |
|------------------|--|--|
| Clause 39 | Replacement of s 105ZH (Notice to vehicle's registered operator) | 1 |
| | | 2 |
| | Section 105ZH— | 3 |
| | <i>omit, insert—</i> | 4 |
| | 105ZH Notice to vehicle's registered operator | 5 |
| | (1) The local government tollway operator may give the registered operator of the vehicle a written notice in the approved form under this section if the local government tollway operator has not received the deferred toll amount. | 6 7 8 9 10 |
| | (2) The notice must specify each of the 1 or more deferred toll amounts for which it is given. | 11 12 |
| | (3) The notice must require the registered operator to do either of the following, within the prescribed time, for each deferred toll amount listed in the notice— | 13 14 15 16 |
| | (a) pay the deferred toll amount to the local government tollway operator; | 17 18 |
| | (b) give the local government tollway operator the registered operator's statutory declaration in the approved form containing information that— | 19 20 21 22 |
| | (i) if the registered operator is an individual—establishes, to the extent it is reasonably practicable for the registered operator to do so, that the registered operator was not the driver when liability for the toll included in the deferred toll amount was incurred; and | 23 24 25 26 27 28 29 30 |
| | (ii) gives the local government tollway operator all the help the registered operator can reasonably give for establishing the name and address of the person who was the driver when | 31 32 33 34 35 |

[s 40]

| | | |
|------------------|---|----------------------------------|
| | liability for the toll included in the | 1 |
| | deferred toll amount was incurred. | 2 |
| (4) | The notice may also require the registered operator to pay an administration charge stated in the notice if there are any deferred toll amounts listed in the notice for which the registered operator does not give a statutory declaration under subsection (3)(b). | 3 4 5 6 7 8 |
| (5) | The notice must not require the registered operator to pay more than 1 administration charge, even if the notice is given for 2 or more deferred toll amounts. | 9 10 11 12 |
| (6) | If the notice is given in contravention of subsection (5), it is of no effect. | 13 14 |
| (7) | The registered operator must comply with the notice unless the registered operator has a reasonable excuse. | 15 16 17 |
| | Maximum penalty—15 penalty units. | 18 |
| (8) | Payment of an administration charge required by the notice also satisfies the liability for the administration charge that arose under section 105ZG(1)(b) in relation to each toll included in a deferred toll amount listed in the notice. | 19 20 21 22 23 |
| (9) | For giving the notice, the registered operator's address for service may be taken to be a residential, postal or business address recorded for the registered operator under the registration Act applying to the designated vehicle's registration. | 24 25 26 27 28 29 |
| (10) | Section 99AA provides for giving a single notice under section 99 and this section. | 30 31 |
| Clause 40 | Amendment of s 105ZI (Corporation may be taken to be driver of vehicle) | 32 33 |
| | Section 105ZI(1)(b), 'section 105ZH(2)(b)(ii)'— | 34 |

omit, insert—

1

section 105ZH(3)(b)(ii)

2

Clause 41 Replacement of s 105ZK (Notice to person identified as driver)

3

4

Section 105ZK—

5

omit, insert—

6

105ZK Notice to person identified as driver

7

(1) The local government tollway operator may give a notice in the approved form to a person under this section if the local government tollway operator—

8

9

10

11

(a) has not received the deferred toll amount; and

12

13

(b) considers, on reasonable grounds, it has correctly identified the person as the driver.

14

15

(2) The notice must specify each of the 1 or more deferred toll amounts for which it is given.

16

17

(3) The notice must require the person to do either of the following, within the prescribed time, for each deferred toll amount listed in the notice—

18

19

20

(a) pay the deferred toll amount to the local government tollway operator;

21

22

(b) give the local government tollway operator the person's statutory declaration in the approved form containing information that—

23

24

25

26

(i) establishes, to the extent it is reasonably practicable for the person to do so, that the person was not the driver when liability for the toll included in the deferred toll amount was incurred; and

27

28

29

30

31

32

[s 42]

| | | |
|------------------|--|---------------------------------|
| | (ii) gives the local government tollway operator all the help the person can reasonably give for establishing the name and address of the person who was the driver when liability for the toll included in the deferred toll amount was incurred. | 1 2 3 4 5 6 7 |
| | (4) The notice may also require the person to pay an administration charge stated in the notice if there are any deferred toll amounts listed in the notice for which the person does not give a statutory declaration under subsection (3)(b). | 8 9 10 11 12 |
| | (5) The notice must not require the person to pay more than 1 administration charge, even if the notice is given for 2 or more deferred toll amounts. | 13 14 15 16 |
| | (6) If the notice is given in contravention of subsection (5), it is of no effect. | 17 18 |
| | (7) The person must comply with the notice unless the person has a reasonable excuse. Maximum penalty—15 penalty units. | 19 20 21 |
| | (8) Payment of an administration charge required by the notice also satisfies the liability for the administration charge that arose under section 105ZG(1)(b) in relation to each toll included in a deferred toll amount listed in the notice. | 22 23 24 25 26 |
| | (9) Section 101A provides for giving a single notice under section 101 and this section. | 27 28 |
| Clause 42 | Amendment of s 105ZO (Evidence and procedure) | 29 |
| | (1) Section 105ZO(1)(c)(vi)— <i>omit, insert—</i> | 30 31 |

| | | |
|------------------|--|--|
| | (vi) an administration charge payable under a notice given under section 105ZH or 105ZK has not been paid; | 1 2 3 |
| | (2) Section 105ZO(1)(c)(vii), ‘the user’— <i>omit, insert</i> — a user | 4 5 6 |
| Clause 43 | Amendment of s 480 (Disposal of fees, penalties etc.) Section 480(10), definition <i>relevant tolling offence</i> — <i>omit, insert</i> — <i>relevant tolling offence</i> means an offence against section 105ZH(7), 105ZJ(4) or 105ZK(7). | 7 8 9 10 11 |
| Clause 44 | Amendment of sch 5 (Tolling matters for toll road or local government tollway) Schedule 5, item 5, ‘unpaid toll’— <i>omit, insert</i> — unpaid deferred toll amount | 12 13 14 15 16 |
| Clause 45 | Amendment of sch 6 (Dictionary) (1) Schedule 6, definition <i>administration charge</i> — <i>omit.</i> (2) Schedule 6— <i>insert</i> — <i>administration charge</i> means an administration charge set in relation to non-payment of a deferred toll amount. <i>image processing fee</i> — (a) for chapter 6, part 7—see section 93(6)(a); or | 17 18 19 20 21 22 23 24 25 26 27 |

[s 46]

(b) for chapter 6, part 8—see section 1
105ZB(6)(a). 2

Part 5 **Amendment of Youth Justice Act 1992** 3
4

Clause 46 **Act amended** 5
This part amends the *Youth Justice Act 1992*. 6

Clause 47 **Amendment of s 254 (Disqualification)** 7
(1) Section 254(1), definition *disqualified*, ‘driver’s’— 8
omit, insert— 9
driver 10
(2) Section 254(3)(a), after ‘child’— 11
insert— 12
aged less than 17 years 13
(3) Section 254— 14
insert— 15
(3A) If— 16
(a) a child aged at least 17 years is found guilty 17
of an offence under the Criminal Code, 18
Transport Operations (Road Use 19
Management) Act 1995 or another Act; and 20
(b) were the child convicted of the offence as an 21
adult, the child would be disqualified by the 22
conviction by operation of law; 23
the child is also disqualified to the same extent. 24
(4) Section 254(4) and (5), ‘subsection (6)’— 25
omit, insert— 26

| | | |
|-------------------|--|----------------|
| | subsection (7) | 1 |
| (5) | Section 254(6)— | 2 |
| | <i>omit, insert—</i> | 3 |
| | (6) Subsections (5) and (6) apply only if the child is of an age when persons generally are eligible to obtain a driver licence. | 4 5 6 |
| (6) | Section 254(3A) to (6)— | 7 |
| | <i>renumber</i> as section 254(4) to (7). | 8 |
| Part 6 | Amendment of subordinate legislation | 9 10 |
| Division 1 | Amendments of State Penalties Enforcement Regulation 2014 commencing on assent | 11 12 13 |
| Clause 48 | Regulation amended | 14 |
| | This division amends the <i>State Penalties Enforcement Regulation 2014</i> . | 15 16 |
| Clause 49 | Amendment of sch 1 (Infringement notice offences and fines for nominated laws) | 17 18 |
| (1) | Schedule 1, entry for <i>Transport Infrastructure Act 1994</i> , column 1, ‘s 99(3)—’ | 19 20 |
| | <i>omit, insert—</i> | 21 |
| | s 99(7) | 22 |
| (2) | Schedule 1, entry for <i>Transport Infrastructure Act 1994</i> , column 1, ‘s 101(3)—’ | 23 24 |
| | <i>omit, insert—</i> | 25 |
| | s 101(7) | 26 |

[s 50]

- | | | |
|-----|--|----------------|
| (3) | Schedule 1, entry for <i>Transport Infrastructure Act 1994</i> , column 1, ‘s 105ZH(3)’— | 1 2 |
| | <i>omit, insert—</i> | 3 |
| | s 105ZH(7) | 4 |
| (4) | Schedule 1, entry for <i>Transport Infrastructure Act 1994</i> , column 1, ‘s 105ZK(3)’— | 5 6 |
| | <i>omit, insert—</i> | 7 |
| | s 105ZK(7) | 8 |
| (5) | Schedule 1, entry for <i>Transport Infrastructure Act 1994</i> , administering authority for an infringement notice offence entry, ‘section 105ZH(3), 105ZJ(4) or 105ZK(3)’— | 9 10 11 |
| | <i>omit, insert—</i> | 12 |
| | section 105ZH(7), 105ZJ(4) or 105ZK(7) | 13 |
| (6) | Schedule 1, entry for <i>Transport Infrastructure Act 1994</i> , authorised person for service of infringement notices entry, paragraph (b), ‘section 99(3), 100(4) or 101(3)’— | 14 15 16 |
| | <i>omit, insert—</i> | 17 |
| | section 99(7), 100(4) or 101(7) | 18 |
| (7) | Schedule 1, entry for <i>Transport Infrastructure Act 1994</i> , authorised person for service of infringement notices entry, paragraph (c), ‘section 105ZH(3), 105ZJ(4) or 105ZK(3)’— | 19 20 21 |
| | <i>omit, insert—</i> | 22 |
| | section 105ZH(7), 105ZJ(4) or 105ZK(7) | 23 |

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| Division 2 | Amendments of State Penalties Enforcement Regulation 2014 commencing on proclamation | 24 25 26 |
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| Clause 50 | Regulation amended | 27 |
| | This division amends the <i>State Penalties Enforcement Regulation 2014</i> . | 28 29 |

| | | |
|------------------|--|--------|
| Clause 51 | Amendment of sch 1 (Infringement notice offences and fines for nominated laws) | 1 2 |
| | (1) Schedule 1, entry for <i>Tow Truck Act 1973</i> , entries for s 5, s 13(a), s 13(b), s 13(c), s 35 and s 40(2)— | 3 4 |
| | <i>omit.</i> | 5 |
| | (2) Schedule 1, entry for <i>Tow Truck Act 1973</i> — | 6 |
| | <i>insert</i> — | 7 |
| s 5 | | 12 |
| s 13(1)(a) | | 6 |
| s 13(1)(b) | | 6 |
| s 13(2) | | 2 |
| s 27A | | 5 |
| s 27B(1) | | 6 |
| s 35(1) | | 2 |
| s 35(2) | | 2 |
| s 35(3) | | 2 |
| s 40(2) | | 5 |
| s 40(3) | other than for a contravention of a licence condition mentioned in the <i>Tow Truck Act 1973</i> , section 12(2)(t)(iv), (v) or (vi) | 5 |
| | (3) Schedule 1, entry for <i>Tow Truck Regulation 2009</i> , entries for s 21, s 25(1), s 26, s 32(1), s 33 and s 34— | 8 9 |
| | <i>omit.</i> | 10 |
| | (4) Schedule 1, entry for <i>Tow Truck Regulation 2009</i> — | 11 |
| | <i>insert</i> — | 12 |
| s 17A | | 3 |

[s 52]

| | |
|------------|---|
| s 17B(2) | 3 |
| s 17C(2) | 3 |
| s 20(2)(d) | 5 |
| s 21A(2) | 5 |
| s 25(2) | 2 |
| s 26(1) | 2 |
| s 26(2) | 2 |
| s 29B(2) | 3 |
| s 29B(3) | 5 |
| s 29B(4) | 5 |
| s 32 | 5 |
| s 33(1) | 5 |
| s 33(2) | 5 |
| s 33(3) | 5 |
| s 34 | 5 |
| s 34A | 5 |

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|-------------------|---|---|
| Division 3 | Amendment of Tow Truck Regulation 2009 | 1 |
| | | 2 |

| | | |
|------------------|---|---|
| Clause 52 | Regulation amended | 3 |
| | This division amends the <i>Tow Truck Regulation 2009</i> . | 4 |

| | | |
|------------------|---|---|
| Clause 53 | Amendment of s 10 (Grant of certificate or miscellaneous permit) | 5 |
| | Section 10(3)— | 6 |
| | | 7 |

| | | |
|------------------|--|----------------|
| | <i>omit.</i> | 1 |
| Clause 54 | Amendment of s 13 (Application by holder for replacement document) | 2 3 |
| | Section 13(8), definition <i>approval</i> — | 4 |
| | <i>omit.</i> | 5 |
| Clause 55 | Amendment of s 17 (Documents to be carried) | 6 |
| | Section 17, heading— | 7 |
| | <i>omit, insert</i> — | 8 |
| | 17 Holder of miscellaneous permit or certificate must carry particular documents | 9 10 |
| Clause 56 | Insertion of new ss 17A–17C | 11 |
| | Part 2, division 4— | 12 |
| | <i>insert</i> — | 13 |
| | 17A Copy of towing consent must be carried | 14 |
| | A person who is driving a tow truck must carry a copy of a valid towing consent while conducting an activity to which the consent relates. | 15 16 17 |
| | Maximum penalty—30 penalty units. | 18 |
| | 17B Police commissioner must be notified about towing of private property motor vehicle | 19 20 |
| | (1) This section applies if a tow truck is used to tow a private property motor vehicle from private property. | 21 22 23 |
| | (2) The holder of the licence for the tow truck must give the police commissioner a notice, as required by subsection (3), about the tow. | 24 25 26 |
| | Maximum penalty—30 penalty units. | 27 |

[s 57]

| | |
|--|----------------------------|
| (3) The notice must be— | 1 |
| (a) in the approved form; and | 2 |
| (b) given to the police commissioner— | 3 |
| (i) as soon as reasonably practicable after the tow; and | 4 5 |
| (ii) but no later than 1 hour after the private property motor vehicle is stored in a holding yard. | 6 7 8 |
| | |
| 17C Copy of towing consent must be given | 9 |
| (1) This section applies if— | 10 |
| (a) a private property motor vehicle is— | 11 |
| (i) towed from private property by a tow truck; or | 12 13 |
| (ii) released by the driver of a tow truck to its owner under section 29B; and | 14 15 |
| (b) the owner of the vehicle asks either of the following persons for a copy of the towing consent relating to the towing or release— | 16 17 18 |
| (i) the driver of the tow truck; or | 19 |
| (ii) the holder of the licence for the tow truck. | 20 21 |
| (2) The holder of the licence must, as soon as reasonably practicable, but in any event within 2 business days after the owner of the private property motor vehicle makes the request, give the owner a copy of the towing consent. | 22 23 24 25 26 |
| Maximum penalty—30 penalty units. | 27 |
| | |
| Clause 57 Replacement of ss 20 and 21 | 28 |
| Sections 20 and 21— | 29 |

omit, insert—

20 Wilful injury etc. at scene of incident or on private property

(1) This section applies to the holder of an approval acting under the authority of the approval—

(a) at the scene of an incident; or

(b) on private property to tow a private property motor vehicle from the property.

(2) The holder of the approval must not, either directly or indirectly—

(a) cause or threaten wilful injury to a person at the scene or on the private property; or

(b) cause or threaten wilful damage to a person's property at the scene or on the private property; or

(c) intimidate or harass a person at the scene or on the private property; or

(d) abuse or insult a person at the scene or on the private property.

Maximum penalty—50 penalty units.

21 Conduct at scene of incident

The holder of an approval must not, when acting under the authority of the approval at the scene of an incident, either directly or indirectly—

(a) prevent or hinder the delivery of first aid or medical treatment to a person at the scene; or

(b) obtain, or attempt to obtain, the signature of an owner of a motor vehicle involved in the incident, or the owner's agent, on a towing authority, if the owner or agent appears

[s 57]

| | |
|---|-------------|
| unable to make an informed decision about whether or not to sign the towing authority. | 1 2 |
| <i>Examples of an owner or agent who appears unable to make an informed decision under paragraph (b)—</i> | 3 4 |
| • an owner or agent who has been injured in the incident | 5 6 |
| • an owner or agent who is distressed as a result of another person being killed or injured in the incident | 7 8 9 |
| Maximum penalty—50 penalty units. | 10 |

21A No disclosure of information 11

- (1) This section applies to a relevant person who, in the course of carrying out the person's business or occupation, obtains— 12
13
14
- (a) information about any of the following (each a *vehicle event*)— 15
16
- (i) an incident or the seizure of a motor vehicle; 17
18
- (ii) the towing of a private property motor vehicle from private property; 19
20
- (iii) the release of a private property motor vehicle under section 29B; or 21
22
- (b) personal information about the owner or driver of a motor vehicle or a private property motor vehicle, or another person, involved in connection with a vehicle event. 23
24
25
26
- (2) The relevant person must not disclose the information to another person other than— 27
28
- (a) the owner of the motor vehicle or private property motor vehicle involved in the vehicle event, or the owner's agent; or 29
30
31

| | |
|---|-------------------|
| (b) another relevant person carrying out that person's business or occupation in connection with the vehicle; or | 1 2 3 |
| (c) an authorised officer. | 4 |
| Maximum penalty—50 penalty units. | 5 |
| (3) In this section— | 6 |
| <i>personal information</i> , about a person, means information about the person from which the person's identity is apparent or can reasonably be ascertained. | 7 8 9 10 |
| <i>relevant person</i> means— | 11 |
| (a) the holder of a licence, certificate or permit; or | 12 13 |
| (b) another person employed, engaged or acting in connection with the towing, storage or release of a prescribed motor vehicle. | 14 15 16 |
| <i>Examples</i> — | 17 |
| • an employee of the holder of a licence who carries out administrative duties for the holder | 18 19 |
| • a security guard employed or engaged at a holding yard used to store prescribed motor vehicles | 20 21 22 |
| Clause 58 Replacement of s 25 (Records to be kept) | 23 |
| Section 25— | 24 |
| <i>omit, insert</i> — | 25 |
| 25 Records to be kept | 26 |
| (1) This section applies if, under a licence or towing permit— | 27 28 |
| (a) a motor vehicle is towed from the scene of an incident or is seized; or | 29 30 |
| (b) a private property motor vehicle is towed from private property; or | 31 32 |

[s 58]

- | | | |
|-------|--|-----------------------|
| (c) | a private property motor vehicle is released under section 29B. | 1 2 |
| (2) | The holder of the licence or towing permit must— | 3 |
| (a) | record the prescribed particulars for the motor vehicle or private property motor vehicle within 24 hours after the particulars are supplied to, or become known to, the holder; and | 4 5 6 7 8 |
| (b) | keep the record at the place of business stated in the licence or permit. | 9 10 |
| | Maximum penalty—20 penalty units. | 11 |
| (3) | In this section— | 12 |
| | <i>prescribed particulars</i> means— | 13 |
| (a) | for a damaged or seized motor vehicle towed from the scene of an incident or that is seized— | 14 15 16 |
| (i) | the name and address of the person who gave the holder of the licence or towing permit information about the incident or seizure; and | 17 18 19 20 |
| (ii) | the place, date and approximate time of the incident or seizure; and | 21 22 |
| (iii) | the make, and registration or other identification number, of the vehicles in the incident or seizure; and | 23 24 25 |
| (iv) | the registration or other identification number of each tow truck attending the incident or seizure; or | 26 27 28 |
| (b) | for a private property motor vehicle towed from private property— | 29 30 |
| (i) | the name and address of the occupier of the property; and | 31 32 |

| | | |
|------------------|--|----------------------|
| (ii) | the make, and registration or other identification number, of the vehicle; and | 1 2 3 |
| (iii) | the registration or other identification number of each tow truck attending the property; and | 4 5 6 |
| (iv) | how the holder of the licence or towing permit under which the vehicle was towed became aware of the vehicle's presence on the property; and | 7 8 9 10 |
| (v) | if a person told the holder about the vehicle's presence on the property—the name and address of the person; and | 11 12 13 14 |
| (vi) | the date and approximate time the vehicle was towed from the property; and | 15 16 17 |
| (vii) | the date and time the vehicle arrived at a holding yard; or | 18 19 |
| (c) | for a private property motor vehicle released under section 29B— | 20 21 |
| (i) | each prescribed particular mentioned in paragraph (b)(i) to (v); and | 22 23 |
| (ii) | the date and approximate time the vehicle was released. | 24 25 |
| Clause 59 | Amendment of s 26 (Custody of records) | 26 |
| | Section 26— | 27 |
| | <i>insert—</i> | 28 |
| (2) | The holder of a licence who obtains a towing consent must keep the consent— | 29 30 |
| (a) | in safe custody at the place of business stated in the licence; and | 31 32 |

[s 60]

| | | |
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| | (b) for 1 year after the consent stops being in force. | 1 2 |
| | Maximum penalty—20 penalty units. | 3 |
| Clause 60 | Insertion of new ss 29A and 29B | 4 |
| | Part 3— | 5 |
| | <i>insert—</i> | 6 |
| | 29A Dealing with private property motor vehicles | 7 |
| | (1) The driver of a tow truck may tow a private property motor vehicle that is on private property from the property only if— | 8 9 10 |
| | (a) the driver can not, after taking reasonable steps, find the owner of the vehicle; or | 11 12 |
| | (b) if the driver finds the owner of the vehicle— | 13 |
| | (i) the owner refuses to move the vehicle; or | 14 15 |
| | (ii) the driver reasonably believes the owner can not, or will not, move the vehicle from the property within a reasonable time. | 16 17 18 19 |
| | Maximum penalty—50 penalty units. | 20 |
| | (2) Subsection (3) applies if— | 21 |
| | (a) the driver of a tow truck has started but not finished doing either of the following in preparation for the towing of a private property motor vehicle from private property— | 22 23 24 25 26 |
| | (i) lifting the vehicle with, and securing the vehicle to, the tow truck; | 27 28 |
| | (ii) otherwise moving the vehicle onto, and securing the vehicle to, the tow truck; and | 29 30 31 |

-
- (b) the owner of the vehicle agrees to move the vehicle from the private property within a reasonable time. 1
2
3
- (3) The driver must immediately release the private property motor vehicle to the owner without charge. 4
5
6
Maximum penalty—50 penalty units. 7
- (4) In this section— 8
tow includes attach to a tow truck. 9
tow truck includes a lifting or loading device with which a tow truck is equipped. 10
11
- 29B On-site release of private property motor vehicle** 12
13
- (1) This section applies if— 14
- (a) a private property motor vehicle on private property— 15
16
- (i) has been loaded onto a tow truck by the driver of a tow truck; and 17
18
- (ii) has not been moved from the property; and 19
20
- (b) the owner of the vehicle is present. 21
- (2) The driver of the tow truck must tell the owner, before moving the private property motor vehicle from the property, that if the owner pays the on-site release charge imposed by the holder of the licence that relates to the tow truck, the vehicle will be immediately released. 22
23
24
25
26
27
Maximum penalty—30 penalty units. 28
- (3) If the owner of the private property motor vehicle pays the driver the on-site release charge before the vehicle is moved from the property, the driver must immediately release the vehicle to the 29
30
31
32

[s 61]

| | | |
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| | owner. | 1 |
| | Maximum penalty—50 penalty units. | 2 |
| (4) | The on-site release charge must not be more than the amount stated in schedule 3, part 2. | 3 4 |
| | Maximum penalty—50 penalty units. | 5 |
| (5) | In this section— | 6 |
| | <i>loaded</i> , onto a tow truck, means lifted or otherwise moved onto, and secured to, the tow truck in every way necessary to prepare the vehicle to be moved by the tow truck. | 7 8 9 10 |
| | <i>on-site release charge</i> means an amount for the release of a private property motor vehicle before it is moved from private property. | 11 12 13 |
| | <i>tow truck</i> includes a lifting or loading device with which a tow truck is equipped. | 14 15 |
| Clause 61 | Amendment of s 30 (Most direct route to be used) | 16 |
| | Section 30— | 17 |
| | <i>insert</i> — | 18 |
| (2) | The driver of a tow truck who tows a private property motor vehicle from private property must, as soon as practicable, tow the vehicle by the most direct route to the nearest holding yard owned or leased by the holder of the licence for the tow truck. | 19 20 21 22 23 24 |
| | Maximum penalty—20 penalty units. | 25 |
| Clause 62 | Replacement of ss 31–34 | 26 |
| | Sections 31 to 34— | 27 |
| | <i>omit, insert</i> — | 28 |

| | |
|---|----------------------------|
| 31 Vehicle owner liable for charges | 1 |
| (1) This section applies if— | 2 |
| (a) a motor vehicle is towed under a towing authority signed by an authorised officer; or | 3 4 |
| (b) the holder of an approval tows a private property motor vehicle from private property in accordance with the Act. | 5 6 7 |
| (2) The owner of the motor vehicle or private property motor vehicle is liable for the payment of— | 8 9 10 |
| (a) the towing charges payable for towing the motor vehicle; and | 11 12 |
| (b) any charge imposed under section 34 for storing the vehicle. | 13 14 |
| (3) This section does not limit a person’s rights or liabilities under another law. | 15 16 |
| <i>Example of a person’s rights or liabilities under another law—</i> | 17 18 |
| a person’s common law rights | 19 |
| | |
| 32 Particular charges prohibited | 20 |
| The holder of an approval must not, in addition to a charge imposed under another provision of this regulation, impose a charge for any of the following in relation to the towing, release or storage of a prescribed vehicle— | 21 22 23 24 25 |
| (a) responding to a request to tow the vehicle or attend a place at which the vehicle is located; | 26 27 28 |
| (b) travelling to the place at which the vehicle is located; | 29 30 |
| (c) taking steps to find the owner of the vehicle; | 31 |

[s 62]

| | |
|---|----------------------|
| (d) using a lifting or loading device with which a tow truck is equipped; | 1 2 |
| (e) using fuel; | 3 |
| (f) administrative work; | 4 |
| (g) taking or producing photographs; | 5 |
| (h) preparing or sending documents or information; | 6 7 |
| <i>Example of a document—</i> | 8 |
| inventory of personal property | 9 |
| (i) storing personal property; | 10 |
| (j) if the vehicle is being stored in a holding yard— | 11 12 |
| (i) allowing the owner of the vehicle, or the owner's agent, to view, have access to or take personal property from, the vehicle during business hours; or | 13 14 15 16 |
| (ii) moving the vehicle within the yard. | 17 |
| Maximum penalty—50 penalty units. | 18 |
| 33 Towing charges | 19 |
| (1) The holder of an approval must not charge more than the amount stated in schedule 3, part 1, item 1 for a standard tow of a damaged motor vehicle from the scene of an incident. | 20 21 22 23 |
| Maximum penalty—50 penalty units. | 24 |
| (2) The holder of an approval must not charge more than the amount stated in schedule 3, part 1, item 2 for a standard tow of a private property motor vehicle from private property. | 25 26 27 28 |
| Maximum penalty—50 penalty units. | 29 |
| (3) The holder of an approval must not charge more than is reasonable in all the circumstances for | 30 31 |

| | |
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| towing— | 1 |
| (a) a damaged motor vehicle from the scene of an incident, other than by a standard tow; or | 2 3 |
| (b) a seized motor vehicle from the scene of a seizure; or | 4 5 |
| (c) a private property motor vehicle from a private property, other than by a standard tow. | 6 7 8 |
| Maximum penalty—50 penalty units. | 9 |
| 34 Storage charges | 10 |
| The holder of an approval must not impose a charge for storing a motor vehicle in a holding yard unless— | 11 12 13 |
| (a) for a damaged or seized motor vehicle—the holder gives the owner, or the owner’s agent, a written notice stating— | 14 15 16 |
| (i) that the charge is to be imposed no sooner than 2 days after the notice is given; and | 17 18 19 |
| (ii) the amount of the charge; or | 20 |
| (b) for a private property motor vehicle—the amount of the charge is not more than the amount stated in schedule 3, part 3. | 21 22 23 |
| Maximum penalty—50 penalty units. | 24 |
| 34A Notice of charge for viewing outside business hours | 25 26 |
| A person must not charge the owner of a motor vehicle being stored in a holding yard, or the owner’s agent, to view the motor vehicle outside business hours unless, before the owner or agent views the vehicle, the person gives the owner or | 27 28 29 30 31 |

[s 63]

| | | |
|------------------|--|----------------------------|
| | agent a written notice about the amount to be charged. | 1 2 |
| | Maximum penalty—50 penalty units. | 3 |
| Clause 63 | Amendment of s 36 (Chief executive may investigate charges) | 4 5 |
| | Section 36, after ‘towing’— | 6 |
| | <i>insert</i> — | 7 |
| | , releasing, storing | 8 |
| Clause 64 | Replacement of s 37 (Movable property to be kept in safe custody) | 9 10 |
| | Section 37— | 11 |
| | <i>omit, insert</i> — | 12 |
| | 37 Found property must be kept in safe custody | 13 |
| | (1) This section applies in relation to found property for a prescribed motor vehicle that has been towed. | 14 15 16 |
| | (2) The holder of the licence or towing permit under which the prescribed motor vehicle was towed must keep the found property in safe custody until the property is returned to its owner or the owner’s agent. | 17 18 19 20 21 |
| | Maximum penalty—20 penalty units. | 22 |
| Clause 65 | Replacement of s 40 (Exemption from Act, ss 5, 13 and 26) | 23 24 |
| | Section 40— | 25 |
| | <i>omit, insert</i> — | 26 |
| | 40 Regulated areas—Act, sch 2 | 27 |
| | (1) For the Act, schedule 2, definition <i>regulated area</i> , | 28 |

| | |
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| the areas stated in schedule 4 are prescribed. | 1 |
| (2) For schedule 4, a reference to a shire or city by name is a reference to the shire or city of that name declared as a local government area under the <i>Local Government Act 1993</i> as in force immediately before the changeover day. | 2 3 4 5 6 |
| <i>Notes—</i> | 7 |
| 1 Under the <i>Local Government Act 1993</i> as in force immediately before the changeover day, shires and cities were described in the <i>Local Government (Areas) Regulation 2005</i> , schedule 1 as in force immediately before the changeover day. | 8 9 10 11 12 |
| 2 Each map mentioned in the <i>Local Government (Areas) Regulation 2005</i> , schedule 1 as in force immediately before the changeover day can be— | 13 14 15 |
| (a) accessed by members of the public, free of charge, on the department’s website; or | 16 17 |
| (b) purchased from any office of the department in which the <i>Survey and Mapping Infrastructure Act 2003</i> is administered. | 18 19 20 |
| (3) In this section— | 21 |
| <i>changeover day</i> means 15 March 2008. | 22 |
| <i>Note—</i> | 23 |
| The changeover day declared under the <i>Local Government Act 1993</i> , section 159YE(2) for all new, adjusted and continuing local government areas listed in schedule 1A of that Act is 15 March 2008. See the notice published in the gazette on 23 November 2007 at page 1680. | 24 25 26 27 28 29 |
| Clause 66 Amendment of sch 2 (Fees) | 30 |
| (1) Schedule 2, item 1(a)— | 31 |
| <i>omit, insert—</i> | 32 |
| (a) for each tow truck— | |
| (i) licence for 1 year | 403.00 |

[s 66]

| | | | |
|---|--|----------|---|
| | (ii) licence for 2 years | 727.75 | |
| | (iii) licence for 3 years | 1,045.45 | |
| | (iv) licence for 4 years | 1,349.00 | |
| | (v) licence for 5 years | 1,638.50 | |
| | (2) Schedule 2, item 2— | | 1 |
| | <i>omit, insert—</i> | | 2 |
| 2 | Application for a renewal of a licence (Act, s 9(2)(b)), for each tow truck— | | |
| | (a) renewal for 1 year | 403.00 | |
| | (b) renewal for 2 years | 727.75 | |
| | (c) renewal for 3 years | 1,045.45 | |
| | (d) renewal for 4 years | 1,349.00 | |
| | (e) renewal for 5 years | 1,638.50 | |
| | (3) Schedule 2, items 4 to 7— | | 3 |
| | <i>omit, insert—</i> | | 4 |
| 4 | Application for a driver's certificate (Act, s 14)—the total of the following— | | |
| | (a) base application fee— | | |
| | (i) driver's certificate for 1 year | 104.45 | |
| | (ii) driver's certificate for 2 years | 146.25 | |
| | (iii) driver's certificate for 3 years | 187.15 | |
| | (iv) driver's certificate for 4 years | 226.25 | |
| | (v) driver's certificate for 5 years | 263.50 | |
| | (b) additional application fee | 42.45 | |
| 5 | Application for an assistant's certificate (Act, s 14)—the total of the following— | | |
| | (a) base application fee— | | |

| | | |
|---|---|--------|
| | (i) assistant’s certificate for 1 year | 104.45 |
| | (ii) assistant’s certificate for 2 years | 146.25 |
| | (iii) assistant’s certificate for 3 years | 187.15 |
| | (iv) assistant’s certificate for 4 years | 226.25 |
| | (v) assistant’s certificate for 5 years | 263.50 |
| | (b) additional application fee | 42.45 |
| 6 | Application for a renewal of a driver’s certificate (Act, s 17A)— | |
| | (a) renewal for 1 year | 104.45 |
| | (b) renewal for 2 years | 146.25 |
| | (c) renewal for 3 years | 187.15 |
| | (d) renewal for 4 years | 226.25 |
| | (e) renewal for 5 years | 263.50 |
| 7 | Application for a renewal of an assistant’s certificate (Act, s 17A)— | |
| | (a) renewal for 1 year | 104.45 |
| | (b) renewal for 2 years | 146.25 |
| | (c) renewal for 3 years | 187.15 |
| | (d) renewal for 4 years | 226.25 |
| | (e) renewal for 5 years | 263.50 |

| | | |
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| Clause 67 | Replacement of sch 3 (Maximum towing charges) | 1 |
| | Schedule 3— | 2 |
| | <i>omit, insert—</i> | 3 |
| | Schedule 3 Maximum amounts that may be charged | 4 |
| | | 5 |
| | sections 29B(4), 33 and 34(b) | 6 |

[s 68]

Part 1 **Standard tow charge** 1

| | \$ (including GST) |
|--|--------------------------|
| 1 Standard tow of a damaged motor vehicle from the scene of an incident— | |
| (a) For the first 50km | 348.95 |
| (b) For each kilometre over 50km | 6.90 |
| 2 Standard tow of a private property motor vehicle from private property | 250.00 |

Part 2 **On-site release charge** 2

| | \$ (including GST) |
|------------------------|--------------------------|
| on-site release charge | 150.00 |

Part 3 **Storage charge** 3

| | \$ (including GST) |
|---|--------------------------|
| storing private property motor vehicle in a holding yard, per day | 25.00 |

| | |
|--|---|
| Clause 68 Amendment of sch 4 (Tow truck regulated areas) | 4 |
| Schedule 4, heading— | 5 |

omit, insert—

1

Schedule 4 Regulated areas

2

section 40(1)

3

Clause 69 Amendment of sch 5 (Dictionary)

4

(1) Schedule 5, definitions *approval, conforming premises, disqualifying offence, driver licence, holding yard* and *owner—*

5

6

7

omit.

8

(2) Schedule 5—

9

insert—

10

approval means a licence, certificate or permit.

11

standard tow, of a damaged vehicle or private property motor vehicle, means—

12

13

(a) a tow of the vehicle; and

14

(b) if the vehicle is a damaged motor vehicle being towed from the scene of an incident—
includes—

15

16

17

(i) not more than 60 minutes working time at the scene; and

18

19

(ii) moving the vehicle from the scene to a place stated in the towing authority; and

20

21

22

(iii) storing the vehicle in a holding yard for not more than 72 hours; and

23

24

(c) if the vehicle is a private property motor vehicle being towed from a private property—includes—

25

26

27

(i) not more than 60 minutes working time on the property; and

28

29

[s 69]

- (ii) moving the vehicle from the property to a holding yard; and 1
2
- (iii) storing the vehicle in a holding yard for not more than 72 hours. 3
4
- working time*** means— 5
- (a) for a damaged motor vehicle at the scene of an incident—time spent at the scene, after an authorising person has signed a towing authority for the motor vehicle— 6
7
8
9
 - (i) preparing the vehicle for towing; and 10
 - (ii) cleaning up the scene; or 11
- (b) for a private property motor vehicle on private property—means time spent on the property— 12
13
14
 - (i) taking reasonable steps to find the owner of the vehicle; and 15
16
 - (ii) preparing the vehicle for towing. 17

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