



# **Tow Truck Act 1973**

**Current as at 16 April 2018**

© State of Queensland 2018



This work is licensed under a Creative Commons Attribution 4.0 International License.



## Queensland

# Tow Truck Act 1973

## Contents

---

		Page
<b>Part 1</b>	<b>Preliminary provisions</b>	
1	Short title . . . . .	5
2	Commencement . . . . .	5
4	Definitions . . . . .	5
4A	Further provision for definition motor vehicle . . . . .	5
4B	Members of firm or partnership . . . . .	6
4C	Who is an appropriate person . . . . .	6
4D	Meaning of towing consent . . . . .	7
<b>Part 2</b>	<b>Licences</b>	
5	Requirement as to licence for tow truck . . . . .	8
6	Application for licence . . . . .	8
7	Form and authority of licence . . . . .	8
8	Term of licence . . . . .	9
9	Renewal of licence . . . . .	9
10	Imposition of conditions of licence . . . . .	10
11	Permits to tow motor vehicles . . . . .	10
12	Conditions of licence . . . . .	11
<b>Part 3</b>	<b>Certificates</b>	
<b>Division 1</b>	<b>General</b>	
13	Required certificates etc. . . . .	15
14	Application for driver's or assistant's certificate . . . . .	16
14A	Decision on application . . . . .	17
15	Written notice of granting of certificate and of conditions or variations 17	
16	What driver's or assistant's certificate authorises . . . . .	18
17	Term of driver's or assistant's certificate . . . . .	18
17A	Renewal of driver's or assistant's certificate . . . . .	18

Contents

---

18	Driver's certificate dependent on driver licence . . . . .	18
19	Permit for applicant for driver's or assistant's certificate . . . . .	19
<b>Division 3</b>	<b>Restricted release of information about driver's certificate or assistant's certificate</b>	
19H	Restricted written release of information . . . . .	19
19I	Restricted oral release of particular information . . . . .	20
<b>Part 4</b>	<b>Authorities and permits</b>	
<b>Division 1</b>	<b>Preliminary</b>	
20	Definitions for pt 4 . . . . .	21
21	Consideration of public interest for pt 4 . . . . .	21
<b>Division 2</b>	<b>Cancellation, suspension, amendment and surrender of authorities</b>	
21A	Cancellation or suspension of authorities . . . . .	22
21B	Immediate suspension of authority . . . . .	24
21C	Further action after immediate suspension . . . . .	25
21D	Amending, suspending or cancelling authority . . . . .	26
21E	Other amendments of authorities . . . . .	27
21F	Surrender of authority on authority holder's request . . . . .	28
21G	Delivery of cancelled or suspended authority . . . . .	28
<b>Division 3</b>	<b>Record keeping</b>	
21H	Records . . . . .	29
<b>Part 4A</b>	<b>Powers of authorised officers relating to prescribed motor vehicles</b>	
21I	Entry to places . . . . .	29
21J	Powers . . . . .	30
<b>Part 5</b>	<b>Offences</b>	
22	Authority to repair . . . . .	30
23	Consideration for obtaining certain information or work . . . . .	31
24	False statements and representations, and coercion . . . . .	32
25	Offences with respect to authorised officers . . . . .	32
26	Excess of authority . . . . .	33
27	Execution against motor vehicle . . . . .	33
27A	Obtaining, or attempting to obtain, towing consent . . . . .	35
27B	Storing private property motor vehicle at unlicensed place . . . . .	35
<b>Part 6</b>	<b>Review</b>	
28	Internal review of decisions . . . . .	35
29	Review of decisions by QCAT . . . . .	36
<b>Part 7</b>	<b>General provisions</b>	

34	Smartcard certificate is property of the State . . . . .	36
35	Production of particular documents . . . . .	37
35A	Production of document evidencing driver's certificate or permit before commencing a tow . . . . .	37
36	Chief executive may obtain information from police commissioner—criminal history . . . . .	38
36A	Notice of change in police information about a person—criminal history 39	
36B	Exchange of information . . . . .	40
36C	Confidentiality . . . . .	41
37	Evidentiary matters . . . . .	41
37A	Application of Act in relation to particular motor vehicles . . . . .	43
38	Exemptions . . . . .	43
39	Service of documents . . . . .	44
40	Offences generally and penalty . . . . .	44
42	Indemnity to persons administering Act . . . . .	45
42A	Approval of forms . . . . .	45
43	Regulation-making power . . . . .	45
<b>Part 8</b>	<b>Transitional provisions</b>	
<b>Division 1</b>	<b>Transitional provision for 1973 No. 39</b>	
44	Tow-truck Act 1973 references . . . . .	49
<b>Division 2</b>	<b>Transitional provision for Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013</b>	
45	Applications not finally decided . . . . .	49
<b>Division 3</b>	<b>Transitional provision for Holidays and Other Legislation Amendment Act 2015</b>	
46	Digital photos and digitised signatures . . . . .	50
<b>Division 4</b>	<b>Transitional provisions for Serious and Organised Crime Legislation Amendment Act 2016</b>	
47	Definition for division . . . . .	50
48	Applications not finally decided . . . . .	50
49	Show cause process not finally decided . . . . .	51
50	Proceedings not finally decided . . . . .	51
<b>Division 5</b>	<b>Transitional provision for Tow Truck and Other Legislation Amendment Act 2018</b>	
51	Existing licence applications . . . . .	52
<b>Schedule 1</b>	<b>Reviewable decisions . . . . .</b>	<b>53</b>
<b>Schedule 2</b>	<b>Dictionary . . . . .</b>	<b>54</b>



---

# Tow Truck Act 1973

## An Act to provide for the control and regulation of tow trucks and their operation

### Part 1 Preliminary provisions

#### 1 Short title

This Act may be cited as the *Tow Truck Act 1973*.

#### 2 Commencement

This Act shall come into operation on a date appointed by proclamation.

#### 4 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

#### 4A Further provision for definition *motor vehicle*

Where in the definition *motor vehicle* there is used an expression that is not itself defined in schedule 2 and to which a meaning is assigned by the *Transport Operations (Road Use Management) Act 1995*, that expression has the meaning assigned to it by that Act; but if by a regulation made under this Act a meaning is assigned to such an expression either generally or for a particular purpose the expression shall, for the purposes of the regulations, have the meaning so assigned by the regulation.

#### **4B Members of firm or partnership**

For the purposes of this Act, in cases where a firm or partnership is the holder of a licence or permit, every member of that firm or partnership shall be deemed to be a holder of that licence or permit.

#### **4C Who is an appropriate person**

- (1) Without limiting what the chief executive may take into account when deciding whether a person is an appropriate person to hold or continue to hold a licence or certificate under this Act, regard must be had to the following—
- (a) the person's criminal history and, if the person is a corporation, the criminal history of each of its executive officers;
  - (b) the person's traffic history;
  - (c) the person's conduct while performing activities under a licence or certificate;
  - (d) whether the person has been charged with or convicted of—
    - (i) an offence against this Act; or
    - (ii) a disqualifying offence;
  - (e) whether the person has held a licence or certificate that has been cancelled and, if so, why it was cancelled;
  - (f) whether the person holds a licence or certificate that has been or is suspended and, if so, why it was suspended;
  - (g) whether the person is capable of satisfactorily performing the activities authorised under a licence or certificate, including because of any known medical condition or physical or mental incapacity;
  - (h) whether the person is subject to a domestic violence order, an interstate order or registered New Zealand order as defined in the *Domestic and Family Violence Protection Act 2012*;



- (i) whether the person has been charged with or convicted of having committed an offence in another State or another country that, if committed in Queensland, would be an offence against the *Weapons Act 1990*;
  - (j) whether the person has been charged with or convicted of having committed an offence in another State or another country that, if committed in Queensland, would be an offence against the *Drugs Misuse Act 1986*;
  - (k) whether the person is, or has been, the subject of a control order or registered corresponding control order.
- (2) The chief executive may not take into account criminal intelligence given by the police commissioner to the chief executive under section 36B when deciding whether a person is an appropriate person to hold or continue to hold a licence or certificate under this Act.
- (3) In this section—
- certificate* means—
- (a) an assistant's certificate; or
  - (b) a driver's certificate.
- traffic history*, of a person, see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

#### **4D Meaning of *towing consent***

- (1) A *towing consent* is a document, in the approved form, between an occupier of private property and the holder of a licence that states there is an arrangement between the occupier and the holder under which the holder may, until the arrangement is revoked by the occupier, tow a private property motor vehicle from the property.
- (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.

## **Part 2 Licences**

### **5 Requirement as to licence for tow truck**

A person must not personally, or by his or her servant or agent, operate a tow truck for towing prescribed motor vehicles in a regulated area unless the tow truck is licensed and the person is the holder of the licence.

Maximum penalty—160 penalty units.

### **6 Application for licence**

- (1) An application for a licence shall be made to the chief executive and the applicant shall comply with all conditions prescribed by the regulations.
- (2) The chief executive must consider any report of the police commissioner given under section 36 about the applicant or an executive officer of the applicant, and any other matter the chief executive considers relevant, and if the chief executive is satisfied that—
  - (a) the applicant is an appropriate person to hold a licence; and
  - (b) the motor vehicle or motor vehicles in respect of which the application is made and its or their equipment are suitable;

the chief executive may grant to the applicant a licence.

### **7 Form and authority of licence**

- (1) A licence—
  - (a) shall authorise the operation of the tow truck or tow trucks in respect of which it is granted, subject always to this Act; and
  - (b) shall state the place from which the business of operating the tow truck or tow trucks in respect of which it is granted may be conducted; and

- (c) may be renewed from time to time; and
  - (d) shall not be transferable.
- (2) A licence shall not be granted or renewed unless the tow truck or tow trucks in respect of which the application is made is or are registered under a regulation under the *Transport Operations (Road Use Management) Act 1995*.

## **8 Term of licence**

- (1) A licence may be granted for a term of not more than 5 years.
- (2) A licence comes into force on the day it is granted.
- (3) A licence stops being in force if it—
  - (a) expires; or
  - (b) is cancelled, suspended or surrendered.
- (4) A licence suspended under this Act is taken not to be in force during the period of the suspension.

## **9 Renewal of licence**

- (1) The holder of a licence may apply to the chief executive to renew the licence.
- (2) The application must—
  - (a) be made as prescribed by regulation; and
  - (b) be accompanied by the fee prescribed by regulation.
- (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.
- (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—
  - (a) the holder; or

- (b) if the holder is a corporation—any of the holder's executive officers.
- (5) A licence renewed under this section—
- (a) starts on the day the renewal is granted; and
  - (b) is granted for a term of not more than 5 years; and
  - (c) must state the expiry date for the licence.

## **10 Imposition of conditions of licence**

The chief executive may upon the grant or renewal of a licence impose such conditions as the chief executive thinks fit by inserting in or affixing to the licence particulars of those conditions and may at any time and from time to time vary the conditions to which a licence is subject by written notice to the holder.

## **11 Permits to tow motor vehicles**

- (1) The chief executive may upon application, payment of the prescribed fee and upon being satisfied as to the identity of the applicant for the permit issue a permit that authorises the holder thereof to tow motor vehicles in a regulated area by means of the tow truck specified therein pending the determination of an application for a licence.
- (2) A permit issued pursuant to subsection (1)—
- (a) shall, subject to this Act, be in force for such period not exceeding 6 months as the chief executive determines; and
  - (b) may be revoked by the chief executive at any time; and
  - (c) may be issued subject to all or any of the conditions to which a licence may be subject and to such other conditions as are specified in the permit.

---

## 12 Conditions of licence

- (1) Every licence shall be subject to the performance and observance by the holder thereof of the provisions of this Act with respect to the licence or to the tow truck or tow trucks to which the licence relates and of the conditions particularised in the licence or affixed thereto.
- (2) Without limiting the generality of the provisions of subsection (1), each of the following is a condition of every licence—
  - (a) that any tow truck to which the licence relates and its equipment comply with the provisions of any Act relating to the design, construction and serviceability of the tow truck or, as the case may be, its equipment;
  - (b) that the provisions of any Act relating to limits of weight or speed that are applicable to any tow truck to which the licence relates are complied with;
  - (c) that the provisions of any Act relating to the limitation of hours of driving are observed;
  - (d) that the holder of the licence shall not operate any tow truck to which the licence relates unless it has been inspected as required under a regulation under the *Transport Operations (Road Use Management) Act 1995* and there is a current certificate of inspection under that regulation for the vehicle;
  - (e) 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;
  - (f) that a person shall not on a road tow a damaged or seized motor vehicle (not being a motor vehicle that is owned by the holder of the licence) by means of any tow truck to which the licence relates unless the person has obtained the consent of the owner thereof, the owner's agent or an authorised officer to remove that motor vehicle and a duly signed towing authority relating to that motor vehicle dealt with as prescribed;

- (g) that a person shall not obtain or attempt to obtain a signature on a form of towing authority unless there has first been entered on that form the full address of the place to which the motor vehicle the subject of the towing authority will be towed and, where any business is carried on in that place, the name of the business;
- (h) that all reasonable precautions shall be taken by the holder of the licence and the driver of any tow truck to which the licence relates and any person employed thereon to prevent loss from, or damage to, a prescribed motor vehicle while being towed by the tow truck and that those precautions shall be taken by the holder of the licence while the motor vehicle is otherwise under his or her control;
- (i) that the holder of the licence must—
  - (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
  - (ii) ensure the inventory is made as soon as reasonably practicable after the vehicle arrives at its destination; and
  - (iii) keep the inventory at the place of business stated in the licence;
- (j) that a person shall not tow a damaged or seized motor vehicle from the scene of an incident or seizure by means of any tow truck to which the licence relates to a place other than the place referred to in paragraph (g);
- (k) that where a motor vehicle has been towed to the place referred to in paragraph (g), a person shall not, except to return the motor vehicle to the registered owner thereof or the registered owner's agent authorised in writing, remove the motor vehicle to another place without the written authority of that owner or agent given after the motor vehicle has been towed to the place from which it is to be removed;

- (l) that where a damaged or seized motor vehicle has been towed to a place where it is under the control of the holder of the licence, a person shall not refuse to deliver the motor vehicle to the registered owner thereof or the registered owner's agent duly authorised in writing on request by the owner or the owner's agent after payment of reasonable charges for the towing and storing of the motor vehicle, and where repair work has been authorised by the owner or the owner's agent, for that repair work, has been made or tendered;
- (m) that a person other than the holder of a certificate shall not accompany the driver of any tow truck to which the licence relates while the tow truck is proceeding to the scene of an incident or seizure, or towing a damaged or seized motor vehicle from the scene of an incident or seizure, unless in either case the person was the owner or the owner's agent or the driver of or a passenger in that motor vehicle;
- (n) that a person shall not obtain or attempt to obtain at the scene of an incident or seizure authority for the towing of a damaged or seized motor vehicle by means of any tow truck to which the licence relates unless the person is the driver of the tow truck having the authority express or implied of the holder of the licence, his or her servants or agents;
- (o) that the holder of the licence shall not, unless he or she is the holder of a driver's certificate obtain or attempt to obtain any authority referred to in paragraph (f);
- (p) that the driver of any tow truck to which the licence relates shall not (except to the extent necessary to connect the towing equipment of the tow truck to a damaged or seized motor vehicle in respect of which the driver has obtained a towing authority) permit the tow truck to stand upon a road so as to cause an obstruction or to stand at the scene of an incident or seizure for a period longer than that which would reasonably be required to obtain a towing authority in respect of a

- damaged or seized motor vehicle for which no towing authority has been given;
- (q) that any tow truck to which the licence relates shall not be used to tow a damaged or seized motor vehicle while any person is travelling as a passenger in the damaged or seized motor vehicle;
  - (r) that the holder of the licence and any person employed by the holder of the licence on or in connection with the use of any tow truck to which the licence relates shall comply with the provisions of the *Radiocommunications Act 1992* (Cwlth), and shall not permit or suffer any other person to contravene the provisions of that Act;
  - (s) that the holder of the licence shall not charge a sum other than a reasonable sum for the towing, salvage or storage of a motor vehicle;
  - (t) for the towing of a private property motor vehicle from private property—that a person—
    - (i) if the person is not the holder of a certificate—must not accompany the driver of the tow truck to which the licence relates while the tow truck is—
      - (A) proceeding to the property; or
      - (B) towing the vehicle; and
    - (ii) must not tow the vehicle unless the holder of the licence has a valid towing consent from the occupier of the property relating to the towing of the vehicle from the property; and
    - (iii) must not tow the vehicle while a person is inside it; and
    - (iv) must not cause, or allow to be caused, an unreasonable obstruction on private property or a road by a tow truck to which the licence relates; and
    - (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.
- (3) In this section—
- certificate* means—
- (a) a driver's certificate; or
  - (b) an assistant's certificate.

## **Part 3                      Certificates**

### **Division 1                General**

#### **13        Required certificates etc.**

- (1) A person must not, in a regulated area—
- (a) operate a tow truck to tow a prescribed motor vehicle unless the person is the holder of—
    - (i) a driver's certificate; or
    - (ii) a permit under section 19 authorising the person to operate a tow truck to tow a prescribed motor vehicle; or

- (b) be employed on or in connection with the use of a tow truck at or near a towing location unless the person is the holder of—
  - (i) a driver's certificate; or
  - (ii) an assistant's certificate; or
  - (iii) a permit under section 19.

Maximum penalty—60 penalty units.

- (2) Also, a person must not, in a regulated area, travel in a tow truck to or from a towing location unless the person—
  - (a) is the holder of—
    - (i) a driver's certificate; or
    - (ii) an assistant's certificate; or
    - (iii) a permit under section 19; or
  - (b) is the owner of a motor vehicle at the towing location, or the owner's agent; or
  - (c) was the driver of, or a passenger in, a vehicle at the towing location.

Maximum penalty—40 penalty units.

- (3) In this section—

*towing location* means—

  - (a) the scene of an incident; or
  - (b) a place at which a motor vehicle has been seized; or
  - (c) private property on which a private property motor vehicle is parked.

## **14 Application for driver's or assistant's certificate**

- (1) A person may apply to the chief executive for the grant of a driver's certificate or an assistant's certificate.
- (2) The application must be made in accordance with a regulation.

---

## **14A Decision on application**

- (1) The chief executive must consider an application made under section 14 and do 1 of the following—
  - (a) grant the application;
  - (b) grant the application subject to conditions;
  - (c) refuse to grant the application.
- (2) However, before deciding an application, the chief executive—
  - (a) must consider the matters prescribed under a regulation for this section; and
  - (b) may consider any other matter the chief executive considers relevant.
- (3) Also, the chief executive must not grant the application if the chief executive is not satisfied the applicant is an appropriate person to hold a driver's certificate or an assistant's certificate.

## **15 Written notice of granting of certificate and of conditions or variations**

- (1) If the chief executive grants the application, the chief executive must give the applicant written notice—
  - (a) that the person has been granted a driver's certificate or an assistant's certificate; and
  - (b) of any condition imposed on the certificate.

*Note—*

Under section 21A, the certificate may be cancelled or suspended if the holder of the certificate contravenes a condition.

- (2) The chief executive may, by written notice given to the holder of a driver's certificate or assistant's certificate, vary a condition to which the certificate is subject.

## **16 What driver's or assistant's certificate authorises**

- (1) A driver's certificate (*driver's certificate*) authorises the holder of the certificate to operate a tow truck.
- (2) An assistant's certificate (*assistant's certificate*) authorises the holder of the certificate to be employed on or in connection with a tow truck.

## **17 Term of driver's or assistant's certificate**

- (1) A driver's certificate or assistant's certificate is granted for the term, stated in the written notice given under section 15 for the certificate, of not longer than 5 years.
- (2) However, a driver's certificate or assistant's certificate may be renewed for successive terms of not longer than 5 years.

## **17A Renewal of driver's or assistant's certificate**

- (1) The holder of a driver's certificate or assistant's certificate may apply for its renewal to the chief executive.
- (2) Sections 14 to 17 apply to an application for renewal of a driver's certificate or assistant's certificate in the same way as they apply to an application for a driver's certificate or assistant's certificate.

## **18 Driver's certificate dependent on driver licence**

- (1) This section applies if—
  - (a) the driver licence held by the holder of a driver's certificate is suspended or cancelled; or
  - (b) the holder surrenders the licence.
- (2) The driver's certificate—
  - (a) if the licence is suspended—is automatically suspended on the day the licence is suspended and is of no effect while the licence is suspended; or

- 
- (b) if the licence is cancelled or surrendered—is automatically cancelled on the day the licence is cancelled or surrendered.

## **19 Permit for applicant for driver's or assistant's certificate**

- (1) The chief executive may, upon application and payment of the prescribed fee and upon the chief executive being satisfied as to the identity of the applicant for the permit, grant the applicant a permit that authorises the holder thereof to operate or as the case requires be employed on or in connection with the use of a tow truck in a regulated area pending the determination of an application for a driver's certificate or assistant's certificate.
- (2) A permit granted under subsection (1)—
  - (a) shall, subject to this Act, be in force for such period not exceeding 6 months as the chief executive determines; and
  - (b) may be revoked by the chief executive at any time; and
  - (c) may be granted subject to all or any of the conditions to which a driver's certificate or an assistant's certificate may be subject and to such other conditions as are specified in the permit.

## **Division 3 Restricted release of information about driver's certificate or assistant's certificate**

### **19H Restricted written release of information**

- (1) The chief executive may release, in writing, information kept under this Act about a person's driver's certificate or assistant's certificate to—
  - (a) on receiving an application in the approved form—
    - (i) the person; or

- (ii) with the person's written consent—another entity;  
or
  - (b) the police commissioner for the purpose of any function of the police commissioner or any function of the police service.
- (2) Also, the chief executive may release, in writing, to an entity information kept under this Act about a person's driver's certificate or assistant's certificate if—
  - (a) the person produces a document evidencing the certificate to the entity as proof of the person's identity; and
  - (b) the entity applies in the approved form for the information; and
  - (c) the information is necessary to verify the validity of the certificate.
- (3) An application mentioned in subsection (1)(a) or (2)(b) may be made by electronic communication.

## **19I Restricted oral release of particular information**

- (1) The chief executive may orally release, to a person, information kept under this Act about the person's driver's certificate or assistant's certificate.
- (2) However, subsection (1) applies only if the chief executive is satisfied that the person is the person to whom the information relates.

### *Example for subsection (2)—*

The chief executive may be satisfied as required under subsection (2) if the person correctly answers a series of questions, or produces a document, for identifying the person.

---

## Part 4 Authorities and permits

### Division 1 Preliminary

#### 20 Definitions for pt 4

In this part—

*authority* means—

- (a) an assistant's certificate; or
- (b) a driver's certificate; or
- (c) a licence.

*authority holder* means a person to whom an authority granted under this Act is issued.

#### 21 Consideration of public interest for pt 4

- (1) When considering whether it is in the public interest to cancel, suspend or immediately suspend an authority holder's authority, regard must be had to the following—
  - (a) the need to ensure that the reputation of the tow truck industry is not affected by the involvement in the industry of persons likely to adversely affect the industry's reputation;
  - (b) the legitimate expectation members of the public, particularly vulnerable members of the public, have that they will not be subject to assaults or aggressive, coercive or otherwise inappropriate behaviour from persons involved in the tow truck industry.

*Examples for subsection (1)—*

- 1 It may be in the public interest to cancel or suspend, or if authorised under section 21B, immediately suspend a tow truck driver's or an operator's authority because the person is charged with possessing a weapon in contravention of the *Weapons Act 1990* or a dangerous drug in contravention of the *Drugs Misuse Act*

[s 21A]

---

1986 and the offence was committed while performing activities under the authority.

- 2 It may be in the public interest to cancel or suspend, or if authorised under section 21B, immediately suspend a tow truck driver's or an operator's authority because the person is charged with a number of offences of obstructing a police officer in the performance of the officer's duties and the alleged offences happened while the person was not performing activities under the authority.
  - 3 It may be in the public interest to cancel or suspend, or if authorised under section 21B, immediately suspend a tow truck driver's authority if the driver assaults a person at a crash scene.
- (2) Subsection (1) does not limit what may be considered in deciding the public interest for the purposes of this Act.

## **Division 2                      Cancellation, suspension,    amendment and surrender of    authorities**

### **21A      Cancellation or suspension of authorities**

- (1) The chief executive may cancel or suspend an authority holder's authority under section 21D on any of the following grounds—
  - (a) the authority—
    - (i) was issued in error; or
    - (ii) was granted or renewed because of a false or fraudulent document, statement or representation;
  - (b) the authority holder—
    - (i) is convicted of an offence against this Act; or
    - (ii) has, since the issue of the authority, been charged with or convicted of a disqualifying offence; or
    - (iii) contravenes a condition of the authority; or
    - (iv) stops being a tow truck operator, driver or assistant;



- (c) for an authority holder that is a corporation—an executive officer of the holder is or has been—
    - (i) convicted of an offence against this Act; or
    - (ii) charged with or convicted of a disqualifying offence;
  - (d) the authority holder can not properly drive the class of motor vehicle stated in the authority because of a medical condition, or physical or mental incapacity;
  - (e) the motor vehicle stated in the authority is no longer suitable for use under the authority;
  - (f) the authority holder has given false or misleading information to—
    - (i) an authorised officer; or
    - (ii) an authorised officer under the Heavy Vehicle National Law (Queensland);
  - (g) public safety has been endangered, or is likely to be endangered, because of the authority holder’s conduct;
  - (h) having regard to the conduct of the authority holder, when performing activities under the authority or at any other time, the chief executive believes, on reasonable grounds—
    - (i) the person is no longer an appropriate person to hold an authority; or
    - (ii) it is in the public interest to cancel or suspend the authority.
- (2) The chief executive may not cancel or suspend an authority holder’s authority on the basis of criminal intelligence given by the police commissioner to the chief executive under section 36B.

## **21B Immediate suspension of authority**

- (1) Despite section 21D, the chief executive may immediately suspend an authority holder's authority by written notice given to the authority holder on the following grounds—
  - (a) public safety has been endangered, or is likely to be endangered, because of the authority holder's conduct and the authority should be immediately suspended;
  - (b) having regard to the conduct of the authority holder, when performing activities under the authority or at any other time, the chief executive believes, on reasonable grounds—
    - (i) the person is no longer an appropriate person to hold an authority and the authority should be immediately suspended; or
    - (ii) it is in the public interest to immediately suspend the authority.
- (2) Without limiting the chief executive's powers under subsection (1), it is enough to immediately suspend an authority holder's authority if—
  - (a) a person complains to a police officer about the conduct of the authority holder and, having regard to the nature of the complaint, the chief executive believes, on reasonable grounds, the conduct complained of justifies taking action under subsection (1); or
  - (b) having regard to statements or other information about the conduct of the authority holder given to the chief executive, the chief executive believes, on reasonable grounds, the statements or other information justifies taking action under subsection (1).
- (3) If the chief executive immediately suspends the authority, the suspension has effect under this section until the earlier of the following—
  - (a) the chief executive informs the authority holder of the chief executive's decision under section 21D(4);

- (b) the end of 56 days after the notice is given to the authority holder or the end of any further period or periods by which the suspension is extended under subsection (5).
- (4) The notice of immediate suspension must state—
  - (a) the reasons for the decision; and
  - (b) the general effect of subsection (3); and
  - (c) the prescribed review information for the decision.
- (5) The chief executive may extend the period for which an authority is suspended under subsection (1) for a further period or periods of not more than 56 days on each occasion.
- (6) However, in deciding whether to extend or further extend the period of the suspension of an authority holder's authority, the chief executive must have regard to—
  - (a) the information that was available to the chief executive when the chief executive first suspended the authority under subsection (1); and
  - (b) any further information relevant to the suspension that is in the chief executive's possession or of which the chief executive has since become aware; and
  - (c) whether in all the circumstances it is appropriate that the suspension be further extended.

## **21C Further action after immediate suspension**

- (1) This section applies if—
  - (a) under section 21B, the chief executive immediately suspends an authority; and
  - (b) the chief executive also proposes to take proposed action under section 21D.
- (2) The notice under section 21B must also—
  - (a) state the information mentioned in section 21D(3)(a), (b) and (c) in relation to the proposed action; and

[s 21D]

---

- (b) if the proposed action is suspension of the authority—  
state the proposed suspension period; and
  - (c) invite the person to show cause in writing, within a  
stated time of at least 28 days, why the proposed action  
should not be taken.
- (3) Section 21D(4) to (6) applies to the proposed action as if the  
notice had been given under section 21D(3).
- (4) Despite subsection (3), section 21D(4)(a)(i) or (b)(ii) does not  
limit the chief executive's powers to extend the period of  
suspension under section 21B(5).

## **21D Amending, suspending or cancelling authority**

- (1) This section applies if the chief executive considers a ground  
exists under section 21A to suspend or cancel an authority  
holder's authority.
- (2) However, this section does not apply if section 21E applies.
- (3) Before taking action to suspend or cancel the authority (the  
*proposed action*), the chief executive must give the authority  
holder a written notice—
- (a) stating the proposed action; and
  - (b) stating the grounds for the proposed action; and
  - (c) outlining the facts and circumstances forming the basis  
for the grounds; and
  - (d) if the proposed action is suspension of the authority—  
stating the proposed suspension period; and
  - (e) inviting the person to show cause in writing, within a  
stated time of at least 28 days, why the proposed action  
should not be taken.
- (4) If, after considering all written representations made within  
the stated time, the chief executive still considers a ground  
exists to take the proposed action, the chief executive may—
- (a) if the proposed action was to suspend the authority—

- (i) suspend the authority for no longer than the period stated in the notice; or
    - (ii) amend the authority in the way the chief executive considers appropriate; or
  - (b) if the proposed action was to cancel the authority—
    - (i) cancel the authority; or
    - (ii) suspend the authority for a period; or
    - (iii) amend the authority in the way the chief executive considers appropriate.
- (5) However, if the proposed action relates to a matter that is the subject of a proceeding before a court that has not been finally decided, the chief executive—
- (a) need not make a decision under subsection (4) until the proceeding is finally decided; but
  - (b) must make the decision as soon as reasonably practicable after the proceeding is finally decided.
- (6) The chief executive must inform the person of the decision under subsection (4) by written notice.
- (7) If the chief executive decides to take action under subsection (4), the notice must state—
- (a) the reasons for the decision; and
  - (b) the prescribed review information for the decision.

## **21E Other amendments of authorities**

- (1) This section applies only if the chief executive proposes to amend an authority holder's authority—
- (a) for a formal or clerical reason; or
  - (b) in another way that does not adversely affect the person's interests; or
  - (c) if the person asks.

[s 21F]

---

- (2) The chief executive may make amendments of a type mentioned in subsection (1) by written notice given to the authority holder.

## **21F Surrender of authority on authority holder's request**

- (1) An authority holder may surrender the authority holder's authority by giving the chief executive written notice of the surrender.
- (1A) The notice must be accompanied by any document evidencing the authority.

*Example—*

If the person holds a driver's certificate and has been given a smartcard certificate, the person must return the smartcard certificate with the notice of surrender.

- (2) On the surrender day, the authority stops having effect.
- (3) In this section—

*surrender day*, for a surrendered authority, means—

- (a) the day stated in the notice of surrender as the day the surrender takes effect; or
- (b) if no day is stated in the notice, the day the chief executive receives the notice.

## **21G Delivery of cancelled or suspended authority**

If the chief executive cancels or suspends an authority under this division, the authority holder must deliver any document evidencing the authority to the chief executive within the time specified by the chief executive in the notice of cancellation or suspension.

Maximum penalty—20 penalty units.

---

## **Division 3                      Record keeping**

### **21H      Records**

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

- (a) applications for the grant of authorities and permits;
- (b) the grant, refusal, cancellation or suspension of authorities;
- (c) the revocation of permits.

## **Part 4A                              Powers of authorised officers relating to prescribed motor vehicles**

### **21I      Entry to places**

- (1) An authorised officer may enter a place if—
  - (a) its occupier consents to the entry; or
  - (b) it is a place of business stated on a licence, or is a holding yard owned or leased by the holder of the licence, and the entry is made when the place is—
    - (i) open for the conduct of business or otherwise open for entry; or
    - (ii) required under the licence to be open for inspection; or
  - (c) the officer reasonably suspects a prescribed motor vehicle has been towed to the place.
- (2) An authorised officer may, without the occupier's consent—
  - (a) enter a public place when the place is open to the public;  
or

- (b) enter the land around premises to ask its occupier for consent to enter the premises.
- (3) For subsection (1)(a), the *Transport Operations (Road Use Management) Act 1995*, section 27 applies as if a reference in that section to an authorised officer includes a person acting under the authority of the chief executive under this Act.
- (4) In this section—  
*occupier*, of a place, includes a person who reasonably appears to be the occupier, or in charge, of the place.

## 21J Powers

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

- (a) search any part of a place (an *entered place*) the officer has entered under section 21I;
- (b) inspect, copy, or take an extract from, a document at an entered place;
- (c) require a person to produce for inspection a document required to be kept by the person under this Act.

# Part 5 Offences

## 22 Authority to repair

A person—

- (a) shall not at the scene of an incident obtain or attempt to obtain authority from another person for the repair of a damaged motor vehicle; or
- (b) shall not, where a damaged motor vehicle is towed by a tow truck, obtain or attempt to obtain from another person authority for the repair of the motor vehicle before it is delivered to the address entered on the towing authority relating to the motor vehicle.



---

## 23 Consideration for obtaining certain information or work

- (1) A person—
- (a) shall not for the purpose of obtaining a towing authority or enabling any other person to obtain a towing authority, give or receive or agree to give or receive any valuable thing in consideration of the furnishing of information or advice about—
    - (i) the occurrence of an incident or seizure; or
    - (ii) the presence of—
      - (A) a damaged motor vehicle on a road; or
      - (B) a seized motor vehicle on a road that is an off-street regulated parking area for which there is an arrangement mentioned in the *Transport Operations (Road Use Management) Act 1995*, section 104; or
  - (b) shall not give or agree or offer to give any valuable thing in consideration of the obtaining for himself or herself or any other person of the work of repairing a damaged motor vehicle; or
  - (c) shall not receive or agree or offer to receive any valuable thing in consideration of the obtaining from any other person of the work of repairing a damaged motor vehicle.
- (2) In this section—
- valuable thing*** includes any money, loan, office, place, employment, benefit or advantage and any commission or rebate payment in excess of actual value of goods or service, deduction or percentage, bonus or discount or any forbearance to demand any money or money's worth or valuable thing, but does not include any reasonable charge in respect of the towing, salvage or storage of a damaged motor vehicle or the towing or storage of a seized motor vehicle.

## **24 False statements and representations, and coercion**

A person shall not—

- (a) knowingly make any false statement in any application under this Act; or
- (b) falsely advertise himself or herself or hold himself or herself out as being the holder of a licence, certificate or permit under this Act, or suffer or allow any such advertisement or holding out; or
- (c) falsely represent to any person that a vehicle is a tow truck to which a licence under this Act relates; or
- (d) obtain or attempt to obtain by force or undue influence a consent to remove a damaged or seized motor vehicle or a signature on a towing authority.

## **25 Offences with respect to authorised officers**

A person shall not—

- (a) assault, resist or obstruct an authorised officer in the exercise of his or her powers or in the discharge of his or her duties under this Act, or attempt so to do; or
- (b) fail to facilitate by all reasonable means the entry into or on premises from which a tow truck operator conducts his or her business, or vehicle by an authorised officer; or
- (c) fail to answer any question put to the person in pursuance of this Act by an authorised officer or give to any such question an answer that is in any respect false or misleading; or
- (d) fail to comply with the lawful requisition or any part of the lawful requisition of an authorised officer; or
- (e) when required by or under this Act to furnish any assistance or to furnish any information to an authorised officer, fail to furnish that assistance or information, as the case may be, or, in the latter case, furnish information that is in any respect false or misleading; or

- (f) fail, without reasonable excuse, the proof whereof shall lie upon the person, to produce any licence, certificate or permit, or book, notice, record, document or writing that the person is required under this Act by an authorised officer to produce or fail to allow an authorised officer to take a copy of or extract from any such licence, certificate or permit, book, notice, record, document or writing; or
- (g) directly or indirectly prevent any person from appearing before or being questioned by an authorised officer, or attempt so to do; or
- (h) use any threat or any abusive or insulting language to an authorised officer or to any other person with respect to any inspection, examination or interrogation.

## **26 Excess of authority**

A person shall not operate a tow truck otherwise than in conformity with the authority conferred by a licence relating to that tow truck.

## **27 Execution against motor vehicle**

- (1) Any warrant of execution for the amount of any penalty for an offence against section 5 or 26 may be executed by seizure and sale of the goods and chattels of the offender and, where the motor vehicle in respect of which the offence was committed is not the sole and absolute property of the offender, by seizure and sale of that motor vehicle as if it were the sole and absolute property of the offender.
- (1A) Where the motor vehicle in respect of which the offence was committed comprised a trailer attached to a motor vehicle the warrant may be executed by seizure and sale of the trailer or the motor vehicle to which it was attached, or both of them.
- (2) If it appears to the person to whom the warrant is directed that the motor vehicle is not, at the time of its seizure, the sole and absolute property of the offender, such person shall pay the

whole of the proceeds of the sale of the motor vehicle to the clerk of the court to whom the warrant orders the person to pay the amount to be levied thereunder.

- (2A) So much of such proceeds as exceeds the amount ordered to be levied and the costs and charges of the execution shall be deemed to have come into the custody of the clerk of the court in connection with the proceedings in respect of the offence.
- (3) Any justice shall, upon the application of the chief executive or a person acting under the general or particular authority of the chief executive, issue a warrant of execution for any amount that has not been paid of any penalty for an offence against section 5 or 26.
- (3A) Notwithstanding the provisions of the *Justices Act 1886* a justice—
- (a) shall not postpone the issue of the warrant of execution; and
  - (b) shall issue the warrant of execution notwithstanding that the decision adjudging the penalty made no provision for the levy thereof by distress or execution, or directed that in default of payment thereof forthwith or within a time allowed the offender should be imprisoned.
- (4) This section does not authorise the execution of a warrant for recovery of any amount of penalty for an offence against section 5 or 26—
- (a) before the expiration of the time (if any) for payment of the penalty allowed by the justices adjudging the penalty as part of their decision; or
  - (b) after the offender has been imprisoned for default in paying the penalty.
- (5) In this section—
- penalty** includes any costs or fees which the justices adjudging the penalty ordered, as part of their decision, to be paid.

---

**27A Obtaining, or attempting to obtain, towing consent**

A person must not obtain, or attempt to obtain, a towing consent unless the person is the holder of a licence.

Maximum penalty—50 penalty units.

**27B Storing private property motor vehicle at unlicensed place**

- (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.

Maximum penalty—60 penalty units.

- (2) This section does not apply in relation to a private property motor vehicle that is owned by the occupier.

- (3) In this section—

*occupier*, of an unlicensed place, means—

- (a) if a business is conducted at the place—the proprietor of the business; or
- (b) otherwise—a person who may lawfully exclude other persons from the place.

## Part 6 Review

**28 Internal review of decisions**

- (1) This section applies to a person whose interests are affected by a decision mentioned in schedule 1.
- (2) The person may ask the chief executive to review the decision.
- (3) The person is entitled to receive a statement of reasons for the decision whether or not the provision under which the decision is made requires that the person be given a statement of reasons for the decision.

- (4) The *Transport Planning and Coordination Act 1994*, part 5, division 2—
  - (a) applies to the review; and
  - (b) provides—
    - (i) for the procedure for applying for the review and the way it is to be carried out; and
    - (ii) that the person may apply to QCAT to have the original decision stayed; and
    - (iii) for the person to be given a QCAT information notice if the decision on the review is not the decision sought by the person.

## **29 Review of decisions by QCAT**

- (1) This section applies to a person who has been given a QCAT information notice for a decision on a review under section 28 of a decision mentioned in schedule 1.
- (2) The person may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

# **Part 7 General provisions**

## **34 Smartcard certificate is property of the State**

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

---

### **35 Production of particular documents**

- (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.

Maximum penalty—40 penalty units.

- (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.

Maximum penalty—40 penalty units.

- (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.

Maximum penalty—40 penalty units.

- (4) In this section—

*copy*, of a towing consent, includes the original towing consent.

### **35A Production of document evidencing driver's certificate or permit before commencing a tow**

- (1) This section applies if the driver of a tow truck makes an offer or intends to make an offer to tow a damaged motor vehicle by means of a tow truck.
- (2) The driver must, either before or when making the offer to tow the motor vehicle, produce the document evidencing the driver's certificate or permit held by the driver for inspection by the person to whom the offer is made or intended to be made.
- (3) This section applies whether or not the person to whom the offer is made or intended to be made asks the driver to produce the document.

**36 Chief executive may obtain information from police commissioner—criminal history**

- (1) The chief executive may ask the police commissioner for a written report about a person's criminal history, including whether the person is, or has been, the subject of a control order or registered corresponding control order, to help in deciding whether—
  - (a) the person is an appropriate person to hold, or continue to hold, a licence or certificate under this Act; or
  - (b) a corporation of which the person is an executive officer is an appropriate person to hold, or continue to hold, a licence under this Act.
- (2) For subsection (1), the chief executive's request may include the following information—
  - (a) the person's name and any other name the chief executive believes the person may use or may have used;
  - (b) the person's sex and date and place of birth;
  - (c) details of the person's driver licence under the *Transport Operations (Road Use Management) Act 1995*;
  - (d) details of the person's licence or certificate under this Act.
- (3) If asked by the chief executive, the police commissioner must give the chief executive a written report about the person's criminal history.
- (4) Subsection (3) applies to the criminal history in the police commissioner's possession or to which the police commissioner has access.
- (5) A report under subsection (3) must, if the person is, or has been, the subject of a control order or registered corresponding control order—
  - (a) state the details of the order; or
  - (b) be accompanied by a copy of the order.



---

**36A Notice of change in police information about a person—  
criminal history**

- (1) This section applies if—
  - (a) the police commissioner reasonably suspects a person is—
    - (i) the holder of a licence or certificate under this Act;  
or
    - (ii) an executive officer of a corporation that is the holder of a licence under this Act; and
  - (b) the person’s criminal history changes.
- (2) The police commissioner may notify the chief executive that the person’s criminal history has changed.
- (3) The police commissioner’s notice to the chief executive must state the following—
  - (a) the person’s name and any other name the police commissioner believes the person may use or may have used;
  - (b) the person’s gender and date and place of birth;
  - (c) whether the change is—
    - (i) a charge made against the person for an offence; or
    - (ii) a conviction of the person;
  - (d) details of the charge or conviction.
- (4) A notice under subsection (3) must also, if the person is, or has been, the subject of a control order or registered corresponding control order—
  - (a) state the details of the order; or
  - (b) be accompanied by a copy of the order.

### **36B Exchange of information**

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

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

*relevant agency* means the following—

  - (a) the police commissioner;
  - (b) the chief executive of a department;
  - (c) a local government;

- 
- (d) a person prescribed by regulation.

### **36C Confidentiality**

- (1) A person must not disclose, record or use information the person gained—
- (a) through involvement in the administration of this Act; or
  - (b) because of an opportunity provided by the involvement.
- Maximum penalty—200 penalty units.
- (2) However, a person may disclose, record or use the information—
- (a) in the discharge of a function under this Act; or
  - (b) if it is authorised—
    - (i) under another Act or a regulation; or
    - (ii) by the person to whom the information relates; or
  - (c) in a proceeding before a court or tribunal in which the information is relevant.
- (3) Subsection (2)(b)(ii) does not apply if the information is criminal intelligence.
- (4) In this section—
- disclose* information means—
- (a) intentionally or recklessly disclose the information; or
  - (b) allow access to the information.
- information* includes a digital photo and digitised signature.

### **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—
      - (A) the owner of a vehicle; or
      - (B) the holder of a licence, certificate or permit relating to a tow truck; or
    - (ii) any thing is, or was, a vehicle of a particular class or description; or
    - (iii) any place is, or was—
      - (A) a road, or part of a road; or
      - (B) a private property, or part of a private property; or
    - (iv) a person was an occupier of private property or another place;

---

is evidence of the matter or matters alleged, and in the absence of evidence to the contrary is conclusive evidence of the matter or matters.

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

- (1) Sections 5, 13 and 26 do not apply to a person who travels in, is employed on or about, or who uses a tow truck, if—
  - (a) the person—
    - (i) is a qualified motor mechanic; and
    - (ii) is using the tow truck for road testing it for, or after completing, mechanical adjustment or repairs to it or its equipment; or
  - (b) the person is using the tow truck to tow a motor vehicle registered, under the *Transport Operations (Road Use Management) Act 1995*, in the name of the owner of the tow truck.
- (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—
  - (a) under any of the following laws, or a direction or request of a person acting in accordance with any of the following laws—
    - (i) an Act of the Commonwealth or a State;
    - (ii) a local law; or
  - (b) in a circumstance prescribed by regulation.

### **38 Exemptions**

- (1) Where pursuant to the regulations, exemption or conditional exemption from compliance with all or any of the provisions of this Act is granted, the provisions in respect of which the exemption or conditional exemption is granted shall, while the exemption or conditional exemption remains in force, cease to

apply to the extent provided by the regulations subject, in the case of a conditional exemption, to the conditions imposed.

- (2) However, even though a person is exempt under a regulation from stated provisions of this Act, a regulation made under section 43 for the purposes of the *Police Powers and Responsibilities Act 2000*, chapter 4, 5 or 22 applies to the person.

### **39 Service of documents**

A notice or other document required by this Act to be given by the chief executive to any person may be given—

- (a) by serving it personally on the person to whom it is directed; or
- (b) by leaving it at the address of the place of residence of the person to whom it is directed last known to the person by whom it is required to be given; or
- (c) by prepaid post letter addressed to the person to whom it is directed at the address of the place of the person's residence last known to the person by whom it is required to be given.

### **40 Offences generally and penalty**

- (1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.
- (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.

Maximum penalty—50 penalty units.

- (3) 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.

Maximum penalty—50 penalty units.

- (4) Save where a specific penalty is otherwise prescribed a person who commits an offence against this Act is liable to a penalty of 40 penalty units.
- (5) A penalty imposed by this Act may be recovered by way of summary proceedings before a Magistrates Court constituted under the *Justices Act 1886*.
- (6) A court before which a person is convicted of an offence against this Act shall cause particulars of the conviction to be furnished to the chief executive.

## **42 Indemnity to persons administering Act**

A person does not incur liability for anything done for the purposes of this Act or done in good faith and purporting to be for the purposes of this Act.

## **42A Approval of forms**

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

## **43 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may make provision about the following—
  - (a) the making of applications for licences, certificates or permits;
  - (b) the grant and renewal of licences or certificates and the grant of permits;
  - (c) the return or destruction of documents evidencing a licence or certificate after expiry of the licence or certificate;
  - (d) obtaining and dealing with towing authorities;

- (e) the identification of the holder of a licence, certificate or permit in a document evidencing that the person holds the licence, certificate or permit;
- (f) the damaging of documents;
- (g) the replacement of documents;
- (h) the notification of a change of personal particulars;
- (i) the carrying of documents;
- (j) the duties and standard of conduct of persons operating tow trucks and of persons employed on or in connection with the use of tow trucks;
- (k) the inspection of tow trucks by an authorised officer for the purposes of determining whether or not they comply with this Act and the action to be taken if tow trucks do not so comply, and in connection with any inspection authorising the entry in or upon any tow truck, building or place;
- (l) the powers of an authorised officer to enter upon premises from which a tow truck operator conducts his or her business and to inspect, seize and make copies of those records, and the production of those records by any person having custody thereof upon the requisition of an authorised officer;
- (m) the production to authorised officers and other prescribed persons of licences, certificates, permits and other documents;
- (n) the fees payable under this Act and the purposes for which those fees are payable, and the fixing of those fees;
- (o) the design, classification, construction, equipment and identification of tow trucks;
- (p) the minimum age and required qualifications of—
  - (i) drivers of tow trucks; or
  - (ii) other persons to be employed on or in connection with the use of tow trucks;



- (q) the conditions under which tow trucks may be operated;
  - (r) the areas in which tow trucks may be operated to tow prescribed motor vehicles;
  - (s) premises or places to which tow truck operators deliver or cause to be delivered motor vehicles towed by the tow truck they operate and the use of those premises or places by those operators and the towing of motor vehicles thereto;
  - (t) investigating charges being made, or that should be made, for—
    - (i) towing, storing or releasing prescribed motor vehicles; or
    - (ii) salvaging damaged motor vehicles;
  - (u) appointing persons to investigate matters mentioned in paragraph (t);
  - (v) the powers of persons appointed to investigate matters mentioned in paragraph (t);
  - (w) the things for which tow truck operators may impose a charge, and the maximum and minimum amounts for any charge;
  - (x) the amounts to be charged for towing and keeping vehicles impounded under the *Police Powers and Responsibilities Act 2000*, chapter 4 or 22;
  - (y) notification of the sale, disposal or acquisition of licensed tow trucks or tow trucks in respect of which permits have been issued;
  - (z) the granting of exemption or conditional exemption from compliance with all or any of the provisions of this Act and the revocation of any exemption or conditional exemption so granted;
  - (za) penalties of not more than 80 penalty units for each offence against a regulation.
- (3) Without limiting subsection (1) or (2), a regulation may provide for the following—

[s 43]

---

- (a) a document evidencing a driver's certificate or assistant's certificate to be in the form of a card or something similar approved by the chief executive and on which information may be stored electronically;
  - (b) a PIN to be used by the holder of a driver's certificate or assistant's certificate as a security measure to protect information stored electronically on a document evidencing the certificate.
- (4) Also, without limiting subsections (1) to (3), a regulation may provide that—
- (a) a document evidencing a person's driver's certificate or assistant's certificate may include on it information about another transport authority held by the person under a prescribed transport Act, if allowed under that Act; or
  - (b) information about a driver's certificate or an assistant's certificate may be included on another transport authority.

*Note—*

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

- (5) In this section—

***prescribed transport Act*** means—

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

***transport authority*** means—

- (a) a driver's certificate or an assistant's certificate; or
- (b) driver authorisation under the *Transport Operations (Passenger Transport) Act 1994*; or

- (c) a prescribed authority (other than a Queensland driver licence) under the *Transport Operations (Road Use Management) Act 1995*.

## **Part 8 Transitional provisions**

### **Division 1 Transitional provision for 1973 No. 39**

#### **44 Tow-truck Act 1973 references**

In an Act or document, a reference to the *Tow-truck Act 1973* is a reference to this Act.

### **Division 2 Transitional provision for Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013**

#### **45 Applications not finally decided**

- (1) This section applies if, immediately before the commencement, the chief executive had not finally decided an application for the grant or renewal of an authority.
- (2) The chief executive must decide the application under this Act as amended by the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*.
- (3) In this section—  
*authority* means—
  - (a) an assistant's certificate; or
  - (b) a driver's certificate; or
  - (c) a licence.

*commencement* means the commencement of this section.

### **Division 3                      Transitional provision for Holidays and Other Legislation Amendment Act 2015**

#### **46            Digital photos and digitised signatures**

A digital photo or digitised signature of a person kept under this Act by the chief executive immediately before the commencement is, on the commencement, taken to be kept under the TPC Act by the chief executive of the department in which that Act is administered.

### **Division 4                      Transitional provisions for Serious and Organised Crime Legislation Amendment Act 2016**

#### **47            Definition for division**

In this division—

*authority* means—

- (a) an assistant's certificate; or
- (b) a driver's certificate; or
- (c) a licence.

#### **48            Applications not finally decided**

- (1) This section applies if, immediately before the commencement, the chief executive had not finally decided an application for the grant or renewal of an authority.
- (2) The chief executive must decide the application under this Act as in force after the commencement.

---

#### **49 Show cause process not finally decided**

- (1) This section applies if—
  - (a) the chief executive had given a written notice to an authority holder under section 21C(2) or 21D(3); and
  - (b) immediately before the commencement, the chief executive had not finally dealt with matters relating to the written notice under section 21D(6) (the *show cause process*).
- (2) The show cause process must continue under this Act as in force after the commencement.

#### **50 Proceedings not finally decided**

- (1) This section applies if, immediately before the commencement, the following proceedings had been started but not finally dealt with—
  - (a) a proceeding before QCAT for a review of a relevant decision;
  - (b) a proceeding before the Supreme Court about a relevant decision.
- (2) The proceeding is discontinued and the matter is remitted to the chief executive for the chief executive to decide again under this Act as in force after the commencement.
- (3) QCAT or the Supreme Court must return to the police commissioner any criminal intelligence relating to the proceeding in QCAT's or the Supreme Court's possession or control.
- (4) For subsection (1), a proceeding had not been finally dealt with if—
  - (a) QCAT or the Supreme Court had not made a decision; or
  - (b) QCAT or the Supreme Court had made a decision but the appeal period for the decision had not ended; or

(c) QCAT or the Supreme Court had made a decision and an appeal against the decision had started but not ended.

(5) In this section—

***criminal intelligence*** means criminal intelligence within the meaning of repealed section 30(7).

***relevant decision*** means a decision for which an information notice was given under repealed section 21AA or repealed section 27A.

***repealed***, in relation to a provision of this Act, means the provision as in force immediately before the commencement.

## **Division 5                      Transitional provision for Tow Truck and Other Legislation Amendment Act 2018**

### **51           Existing licence applications**

(1) This section applies if, immediately before the commencement, an application for the grant or renewal of a licence had been made but not decided.

(2) Sections 6 and 8 of the pre-amended Act continue to apply in relation to the application as if the *Tow Truck and Other Legislation Amendment Act 2018* had not been enacted.

(3) In this section—

***pre-amended Act*** means this Act as in force immediately before the commencement.

## **Schedule 1      Reviewable decisions**

sections 28 and 29

### **Part 1                  Licences**

- 1    Failing to grant and issue a licence under section 6
- 2    Failing to renew a licence under section 9
- 3    Imposing a condition on the grant or renewal of a licence under section 10
- 4    Varying licence conditions under section 10
- 5    Suspending or cancelling a licence under section 21B or 21D
- 6    Amending a licence under section 21D

### **Part 2                  Driver's certificates and assistant's certificates**

- 1    Failing to grant a certificate under section 14A
- 2    Imposing a condition on the grant or renewal of a certificate under section 14A
- 3    Varying a condition of a certificate under section 15
- 4    Failing to renew a certificate under section 17A
- 5    Suspending or cancelling a certificate under section 21B or 21D
- 6    Amending a certificate under section 21D

## Schedule 2 Dictionary

### section 4

***approved form*** means a form approved under section 42A.

***articulated motor vehicle*** means a motor vehicle having at its rear a portion on wheels that is pivoted on and partly superimposed on the forward part of the vehicle.

***assistant's certificate*** see section 16(2).

***authorised officer*** means an authorised officer under the *Transport Operations (Road Use Management) Act 1995* or a person acting under the authority of the chief executive.

***conforming premises*** means premises consisting of an area at ground level that—

- (a) complies with the requirements of the *Local Government Act 2009*; and
- (b) is either—
  - (i) enclosed by a fence or wall that—
    - (A) is structurally sound; and
    - (B) is at least 2.1m in height from the ground; and
    - (C) has lockable gates or doors that are closed and securely locked other than when a motor vehicle is being moved into or out of the area; or
  - (ii) if the area does not comply with subparagraph (i)—an area the chief executive considers has another security barrier that is sufficient to prevent the entry of unauthorised persons into the area and the unauthorised removal of motor vehicles or property from the area.

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



---

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

- (a) despite section 6 of that Act—a conviction of the person to which the section applies; and
- (b) despite section 5 of that Act—a charge made against the person that has not been dealt with by a court, or withdrawn or otherwise discontinued.

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

***damaged*** means damaged in an incident.

***destination***—

- (a) for a damaged or seized motor vehicle—means the place mentioned in section 12(2)(j) to which the vehicle has been towed; or
- (b) for a private property motor vehicle—a holding yard.

***digital photo***, of a person, see the TPC Act, schedule 1.

***digitised signature***, of a person, see the TPC Act, schedule 1.

***disqualifying offence*** see the *Transport Operations (Road Use Management) Act 1995*, schedule 4, definition *disqualifying offence*, paragraph (b).

***driver licence*** has the meaning given by the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

***driver's certificate*** see section 16(1).

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

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

***found property***, for a prescribed motor vehicle that has been towed, means—

- (a) if the vehicle is unlocked—movable property found in the vehicle when the vehicle arrives at its destination; or

- (b) otherwise—movable property inside the vehicle that is visible from outside the vehicle at the time the vehicle arrives at its destination.

**holding yard** means conforming premises owned or leased solely by the holder of a licence and used, or to be used, by the holder to store—

- (a) prescribed motor vehicles towed under the licence; and
- (b) found property for prescribed motor vehicles towed under the licence.

**incident** means a collision or impact, however caused—

- (a) that happens on a road and results in damage to a motor vehicle; or
- (b) that happens off a road and results in damage to a motor vehicle, if immediately before the collision or impact the motor vehicle was travelling on the road.

**licence** means a licence with respect to a tow truck granted under this Act and in force at any material time.

**motor vehicle** means a motor car, motorcycle, motor omnibus, motor truck, motor utility truck, trolley vehicle, tractor or traction engine, a trailer attached to or drawn by a motor vehicle, and any other vehicle propelled or designed for propulsion wholly or partly by gas, motor spirit, oil, electricity, steam or other mechanical power: the term includes an articulated motor vehicle but does not include a vehicle used on a railway or tramway.

**movable property** includes a radio or sound production device.

**occupier**, of private property, means a person who may lawfully exclude other persons from the property.

**operate**, with respect to a tow truck, means to tow or offer to tow a motor vehicle by means of a tow truck, for hire or for any consideration or in the course of any trade or business.

**owner**, of a motor vehicle, includes the following—

- (a) a joint owner or a part owner of the vehicle;

- (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.

***permit*** means—

- (a) a permit issued under section 11; or
- (b) a permit granted under section 19.

***police commissioner*** means the commissioner of the police service.

***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.

***prescribed review information***, for a decision, means information that a person to whom a notice about the decision is given under section 21B(1) or 21D(6) may—

- (a) under section 28—ask for the decision to be reviewed by the chief executive; and
- (b) under the *Transport Planning and Coordination Act 1994*, part 5, division 2—apply to QCAT for the decision to be stayed; and
- (c) under section 29—ask for the chief executive’s decision on the review (the ***reviewed decision***) to be reviewed by QCAT; and

- (d) under the QCAT Act—apply for the reviewed decision to be stayed.

***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.

***QCAT information notice*** means a notice complying with the QCAT Act, section 157(2).

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

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

***road*** has the meaning assigned to that term by the *Transport Operations (Road Use Management) Act 1995*.

***seized***, for a motor vehicle, means seized by a police officer under the *Police Powers and Responsibilities Act 2000*, section 124 because of section 125(1)(d) or (2) of that Act, from a road that is an off-street regulated parking area for which there is an arrangement mentioned in the *Transport Operations (Road Use Management) Act 1995*, section 104.

***smartcard assistant's certificate*** means an assistant's certificate in the form provided for under section 43(3)(a).

***smartcard certificate*** means a smartcard driver's certificate or a smartcard assistant's certificate.

***smartcard driver's certificate*** means a driver's certificate in the form provided for under section 43(3)(a).

***tow*** with respect to a motor vehicle includes carry, lift and tow, lift and carry and lift for the purpose of towing.

***towing authority*** means an authority given, on the approved form, for the towing of a motor vehicle.

***towing consent*** see section 4D.

***tow truck*** means a motor vehicle—

- (a) equipped with a lifting or loading device capable of being used for the towing of a motor vehicle; or
- (b) being used at the material time for the towing of a trailer on which a damaged or seized motor vehicle is being carried.

***TPC Act*** means the *Transport Planning and Coordination Act 1994*.

***unlicensed place*** means a place that is not—

- (a) a place of business stated on a licence; or
- (b) a holding yard.

***valid***, for a towing consent, means in force.