

Transport (Tow Truck Reform) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 1 March 1995

(Brought in by Mr Brown and Mr Gude)

A BILL

to amend the **Transport Act 1983** and for other purposes.

Transport (Tow Truck Reform) Act 1995

The Parliament of Victoria enacts as follows:

1. Purpose

The main purpose of this Act is to amend the **Transport Act 1983** to improve the operation of the provisions regulating tow trucks.

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2. Commencement

(1) Subject to sub-sections (2) and (3), this Act comes into operation on the day on which it receives the Royal Assent.

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984.**)

(2) Sections 3 (a), (e), (f) and (g), 4 to 6, 8 (a), 11, 13 to 16 and 20 (1), (2) and (3) come into operation on 1 October 1995.

(3) Section 21 comes into operation on 2 October 1995.

PART 2—AMENDMENTS RELATING TO TOW TRUCKS

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3. *Changes to definitions*

In section 86 (1) of the **Transport Act 1983**—

(a) before the definition of **“allocation centre”** insert—

“accident” means an impact that results in damage to a motor vehicle where— 10

(a) the impact occurs on a highway; or

(b) immediately before the impact the motor vehicle was travelling on a highway; 15

“accident scene” means the area within a 2 kilometre radius from the approximate place of the accident;

“accident tow truck” means a tow truck specified in an accident towing licence; 20

“accident towing” means the towing of a damaged motor vehicle from an accident scene;’;

(b) in the definition of **“allocation centre”**, omit **“pursuant to regulations made under section 185”**; 25

(c) in the definition of **“authority to tow”**, omit **“damaged”**;

(d) for the definition of **“controlled area”** substitute— 30

“controlled area” means an area declared to be a controlled area under section 183A;’;

(e) after the definition of “goods” insert—

“**heavy accident tow truck**” means a tow truck—

5 (a) that has a load capacity of more than 4.5 tonnes and that is able to lift and carry a damaged or disabled motor vehicle completely off the road surface; or

10 (b) that has a load capacity of more than 3 tonnes and that is able to lift and tow a damaged or disabled motor vehicle;’;

(f) after the definition of “**hire and drive omnibus**” insert—

‘“**level 1 offence**” means—

15 (a) murder, manslaughter or an offence under Subdivision (1) or (4) of Division 1 of Part I of the **Crimes Act 1958** (homicide and serious assaults); or

20 (b) an offence under Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I of the **Crimes Act 1958** (serious sexual offences) or under any corresponding previous enactment or an attempt to commit any such offence or an assault with intent to commit any such offence; or

25 (c) any other assault punishable by imprisonment for 6 months or more;

30 “**level 2 offence**” means—

(a) an offence under section 71 of the **Drugs, Poisons and Controlled Substances Act 1981** (drug trafficking); or

35 (b) an offence under Division 2 of Part I of the **Crimes Act 1958** (theft and similar or associated offences);’;

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(g) after the definition of “**tow truck**” insert—

‘“**tow truck licence**” means an accident towing licence, a trade towing licence or a heavy accident tow truck towing licence;

“**trade towing**” means the towing of a motor vehicle in any circumstance other than accident towing;’.

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4. Insertion of sections 172–172N

For section 172 of the **Transport Act 1983** substitute—

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“172. Trade towing licence

(1) A person must not operate a tow truck for trade towing unless the person holds a trade towing licence, an accident towing licence or a heavy accident tow truck towing licence.

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Penalty: 50 penalty units.

(2) The licensing authority must grant a person a trade towing licence if the person—

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(a) applies for the licence in the form and manner specified by the licensing authority; and

(b) pays the appropriate application fee determined under section 147B.

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(3) A trade towing licence cannot be transferred to another person.

(4) Despite sub-section (1), a person does not need to hold a trade towing licence—

(a) to operate in a country area a motor vehicle to which is attached (temporarily or otherwise) a trailer which is used, or is intended to be

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used, for the towing of disabled motor vehicles; or

(b) to use such a motor vehicle to tow a disabled motor vehicle from a country area to any place that is not within a country area.

(5) For the purposes of sub-section (4), a “**country area**” is an area that is not within—

(a) a controlled area; or

(b) any area declared by the licensing authority by notice published in the Government Gazette to be a provincial city for the purposes of this section.

172A. Heavy accident tow truck towing licences

(1) A person must not operate a heavy accident tow truck for accident towing unless the person holds a heavy accident tow truck towing licence or an accident towing licence.

Penalty: 50 penalty units.

(2) A heavy accident tow truck towing licence only authorises the accident towing of vehicles that have a gross vehicle mass of 4.5 tonnes or more.

172B. Accident towing licence

(1) A person must not operate a tow truck for accident towing unless the person holds an accident towing licence.

Penalty: 50 penalty units.

(2) Sub-section (1) does not apply to a person who operates a heavy accident tow truck under a heavy accident tow

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truck towing licence to tow vehicles that have a gross vehicle mass of 4.5 tonnes or more from accident scenes.

- (3) A person must not operate a heavy accident tow truck for the accident towing of vehicles that have a gross vehicle mass of less than 4.5 tonnes unless the person holds an accident towing licence. 5
- Penalty: 50 penalty units. 10

172c. *Licence must be held in respect of each tow truck*

- (1) A tow truck licence only authorises the holder of the licence to operate one tow truck. 15
- (2) The holder of a tow truck licence may only use the licence to operate the particular tow truck specified in the licence.
- (3) It is a condition of every tow truck licence— 20
- (a) that the holder of the licence must be the registered owner of the tow truck specified in the licence; and
- (b) that the holder of the licence must notify the licensing authority of the details of the tow truck that is to be specified in the licence within 90 days of being granted the licence. 25
- (4) Sub-section (3) (a) applies regardless of when the licence was granted 30

172d. *Restriction on the granting of new heavy accident tow truck towing licences*

- (1) The licensing authority must not issue any new heavy accident tow truck 35

towing licences unless it is authorised to do so by the Minister.

5 (2) The Minister may only authorise the issue of new heavy accident tow truck towing licences if, in the opinion of the Minister after having regard to any increase in the need for heavy accident tow trucks, it is in the public interest that the number of heavy accident tow truck towing licences be increased.

10 (3) Despite sub-section (2), the Minister may also authorise the licensing authority to grant new heavy accident tow truck towing licences—

15 (a) to replace any heavy accident tow truck towing licences that have been cancelled; or

20 (b) if, in the opinion of the Minister, there are exceptional circumstances that justify the issue of new licences.

25 (4) If the Minister authorises the granting of new licences under sub-section (3) (b), he or she must publish his or her reasons for doing so in a notice in the Government Gazette.

30 (5) In authorising the issue of new licences under this section, the Minister must publish a notice in the Government Gazette stating that he or she has done so, and specifying the number of new licences that the licensing authority may issue.

35 (6) The licensing authority may only issue a heavy accident tow truck towing licence in accordance with sections 172F and 172H.

172E. Restriction on the granting of new accident towing licences

- (1) The licensing authority must not issue any new accident towing licences unless it is authorised to do so by the Minister. 5
- (2) The Minister may only authorise the issue of new accident towing licences with respect to a controlled area if, in the opinion of the Minister after having regard to any increase in the need for accident tow trucks in the controlled area, it is in the public interest that the number of accident towing licences for that area be increased. 10
- (3) The Minister may only authorise the issue of new accident towing licences with respect to an area that is not a controlled area if, in the opinion of the Minister after having regard to any increase in the population of that area, it is in the public interest that the number of accident towing licences for that area be increased. 15
- (4) Despite sub-sections (2) and (3), the Minister may also authorise the licensing authority to grant new accident towing licences with respect to an area— 20
- (a) to replace any accident towing licences with respect to that area that have been cancelled; or 30
- (b) if, in the opinion of the Minister, there are exceptional circumstances that justify the issue of new licences for that area.
- (5) If the Minister authorises the granting of new licences under sub-section (4) (b), he or she must publish his or her reasons 35

for doing so in a notice in the Government Gazette.

- 5 (6) In authorising the issue of new licences under this section, the Minister must publish a notice in the Government Gazette stating that he or she has done so, and specifying the number of new licences that the licensing authority may issue in respect of the relevant area.
- 10 (7) The licensing authority may only issue an accident towing licence in accordance with sections 172G and 172H.

172F. Notice that heavy accident tow truck towing licences available

15 On being authorised to issue one or more new heavy accident tow truck towing licences, the licensing authority may, by notice published in the Government Gazette—

- 20 (a) specify the number of new licences that the Minister has authorised it to grant; and
- 25 (b) specify the procedures to be followed for the granting of those licences;
- (c) specify whether the fees to be paid for the licences are to be determined by tender or are a fixed price;
- 30 (d) specify the details that must be included in an application for a licence;
- 35 (e) specify where, and by when, applications for a licence must be lodged;

- (f) provide that all applications for licences made before a specified time are to lapse.

172G. *Notice that accident towing licences available*

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On being authorised to issue one or more new accident towing licences with respect to a particular area, the licensing authority may, by notice published in the Government Gazette—

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- (a) specify the number of new licences that the Minister has authorised it to grant with respect to that area; and

- (b) specify the procedures to be followed for the granting of those licences;

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- (c) specify whether the fees to be paid for the licences are to be determined by tender or are a fixed price;

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- (d) specify the details that must be included in an application for a licence;

- (e) specify where, and by when, applications for a licence must be lodged;

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- (f) provide that all applications for licences to operate in that area made before a specified time are to lapse.

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172H. *Procedure applying to the grant of new licences*

- (1) This section applies to the granting of new accident towing licences and new heavy accident tow truck towing licences.

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- (2) If a notice under section 172F or 172G specifies that a fixed price is to be paid for a licence, the notice must also specify the price.
 - (3) Subject to the requirements set out in a notice, on the application of the owner, or the person who intends to become the owner, of a tow truck, the licensing authority may grant the owner or intending owner a licence.
 - (4) A fee must be paid for a licence.
 - (5) If a notice specifies that a fixed price is to be paid for the licences, the fixed price is the licence fee payable.
 - (6) If the tender method is adopted for the granting of the licences, the amount specified in the successful tender for a licence is the licence fee payable for that licence.
 - (7) An application for a licence must be accompanied by—
 - (a) any details or documents required by the notice; and
 - (b) the appropriate application fee determined under section 147B.
 - (8) The licensing authority may grant licences to applicants at any time within one year after the closing date for applications.
 - (9) The licensing authority must not grant a licence to any person who is not eligible to hold a licence under section 172J or 172K or who is awaiting the determination of any charges for a level 1 or level 2 offence.
 - (10) On granting a licence, the licensing authority may give the licence holder a

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certificate evidencing the grant of the licence.

- (11) The licensing authority may allow a licence fee to be paid by instalments and may issue a certificate evidencing the grant of the licence on the payment of the first instalment. 5

172I. *Review by A.A.T. of refusal to grant licence*

An applicant may apply to the Administrative Appeals Tribunal for a review of a decision by the licensing authority to refuse to grant an application for an accident towing licence or a heavy accident tow truck towing licence. 10
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172J. *Eligibility of person with criminal record to hold towing licence*

- (1) In this section, “**towing licence**” means an accident towing licence or a heavy accident tow truck towing licence. 20

- (2) A person who is convicted of a level 1 offence is not eligible to hold a towing licence—

- (a) if the person has no prior convictions for a level 1 or 2 offence— 25

- (i) for 7 years after the date of the conviction; or

- (ii) for 2 years after the completion of any term of imprisonment incurred as a result of the conviction— 30

whichever is the longer period;

(b) if the person has one or more prior convictions for a level 1 or 2 offence—

(i) for 10 years after the date of the conviction; or

(ii) for 2 years after the completion of any term of imprisonment incurred as a result of the conviction—

whichever is the longer period.

(3) A person who is convicted of a level 2 offence is not eligible to hold a towing licence—

(a) if the person has no prior convictions for a level 1 or 2 offence—

(i) for 4 years after the date of the conviction; or

(ii) for 1 year after the completion of any term of imprisonment incurred as a result of the conviction—

whichever is the longer period;

(b) if the person has one or more prior convictions for a level 1 or 2 offence—

(i) for 10 years after the date of the conviction; or

(ii) for 2 years after the completion of any term of imprisonment incurred as a result of the conviction—

whichever is the longer period.

(4) For the purpose of removing doubt, a reference in sub-sections (2) (b) (i) and (ii) and (3) (b) (i) and (ii) to a conviction is a reference to the latest conviction of the person of a level 1 or 2 offence.

- (5) A reference in this section to a conviction of a person for an offence—
- (a) includes a reference to a court finding the offence proven against the person, even though the court does not record a conviction against the person for the offence; and 5
- (b) includes a conviction incurred outside Victoria for an offence that, in the opinion of the licensing authority, corresponds to a level 1 or 2 offence. 10
- (6) For the purposes of this section, only convictions that occurred within the 10 years immediately before a conviction are to be considered as prior convictions. 15
- (7) The licensing authority may declare that a person is ineligible to hold a towing licence for a period of more than 10 years if, in view of— 20
- (a) the nature or seriousness of any offence that the person has been convicted of (including the nature of any aggravating circumstances involved in the offence); or 25
- (b) the nature and frequency of the offences the person has been convicted of—
- the licensing authority is of the opinion that the longer period of ineligibility will better ensure the maintenance of public confidence in the accident towing or heavy accident towing industry. 30
- (8) The licensing authority must make the declaration in writing, must specify the period of ineligibility and must give a copy of the declaration to the person. 35

(9) Sub-section (2) (a) (ii) or (b) (ii) or (3) (a) (ii) or (b) (ii) does not render a person ineligible to hold a towing licence if—

(a) the person started serving a term of imprisonment for an offence more than 2 years after the commission of the offence; and

(b) in the opinion of the licensing authority the delay was not the fault of the person.

172K. Eligibility of corporation to hold licence if director has serious criminal conviction

(1) A corporation is not eligible to hold an accident towing licence if any of its directors are not eligible to hold an accident towing licence.

(2) A corporation is not eligible to hold a heavy accident tow truck towing licence if any of its directors are not eligible to hold a heavy accident tow truck towing licence.

172L. Creation of allocation centre roster entitlements

(1) Each new accident towing licence granted under this Division in respect of a controlled area entitles the holder of the licence to one entitlement to a place in the roster of a depot controlled by the allocation centre of that area.

(2) Subject to section 172M (1) (b), on the declaration of a new controlled area, each person who holds an accident towing licence that authorises him, her or it to operate a tow truck in any part of the area that becomes the controlled area from a depot that is within the controlled

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area is entitled to one entitlement to a place in the roster of that depot.

- (3) If, on the date of such a declaration, a licence holder holds more than one accident towing licence authorising him, her or it to operate a tow truck in any part of the area that becomes the controlled area from a depot in that area, the licence holder is entitled to one such entitlement for each such licence held. 5 10
- (4) An entitlement cannot be transferred to another person or to another licence.
- (5) Despite sub-section (4), if a licence is transferred to another person in accordance with section 182, any entitlements that apply in respect of the licence become entitlements of the person to whom the licence has been transferred. 15
- (6) On the cancellation of an accident towing licence, any entitlements that apply in respect of the licence are extinguished (including any entitlements that were created before this section came into operation). 20 25

172M. *Effect of the creation of new controlled area on certain licences*

- (1) On the declaration of a new controlled area—
- (a) any licence that authorises the licence holder to engage in accident towing in the controlled area, but subject to a condition excluding the holder from engaging in accident towing in specified parts of the controlled area, becomes a licence that is not subject to that condition 30 35

nor to any associated condition requiring the use of plates with the word “restricted”;

5 (b) any licence that only authorises the licence holder to engage in accident towing from a depot that is within the controlled area if he, she or it is “previously bespoke” to the scene of an accident becomes a trade towing licence.

10 (2) For the purpose of removing doubt, a licence referred to in sub-section (1) (b) does not authorise its holder to engage in any accident towing and is not subject to any condition requiring the use of plates with the word “restricted”.

15 **172N. *Savings provision concerning existing licence holders***

20 (1) On 1 October 1995, a tow truck licence that is in force on that date—

25 (a) that only authorises the licence holder to engage in accident towing from a depot that is within a controlled area if he, she or it is “previously bespoke” to the scene of an accident becomes a trade towing licence;

30 (b) that authorises the licence holder to engage in accident towing and that is not a licence referred to in paragraph (a) becomes an accident towing licence;

35 (c) that authorises the licence holder to engage in trade towing only becomes a trade towing licence.

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- (2) Sub-section (1) also applies to suspended licences, but does not interfere with the suspension.
- (3) Sub-section (1) does not apply to any licence cancelled by section 174E (3). 5
- (4) Any condition imposed by the Roads Corporation on a tow truck licence before 1 October 1995 and that is in force on that date continues to apply until it is altered or cancelled under section 174A. 10
- (5) For the purpose of removing doubt, after 1 October 1995, a licence referred to in sub-section (1) (a) does not authorise its holder to engage in any accident towing and is not subject to any condition requiring the use of plates with the word “restricted”.’ 15

5. *Minor consequential amendments*

In the **Transport Act 1983**— 20

- (a) section 173 (2) is **repealed**;
- (b) in section 173A, for “tow truck licence” **substitute** “trade towing licence”.

6. *Review by Administrative Appeals Tribunal of criminal record ineligibility declarations etc.* 25

After section 174AB (b) of the **Transport Act 1983** **insert**—

“; or

(c) to make a declaration under section 172J (7).”.

7. *Insertion of sections 174C–174E* 30

After section 174B of the **Transport Act 1983** **insert**—

‘174c. Creation of allocation centre roster entitlements

(1) In this section and section 174D—

“**entitlement**” means an entitlement created under sub-section (2);

“**licence**” means a tow truck licence that authorises the licence holder to engage in accident towing.

(2) In each controlled area there are created by this section a number of entitlements to a place in the roster of the depots controlled by the allocation centre of that area equal to the number of licences that have been issued and that are still current in respect of that area.

(3) For the purposes of sub-section (2), a licence is issued in respect of a controlled area if it authorises the licence holder to operate within any part of the area from a depot which is in the area.

(4) On the date section 7 of the **Transport (Tow Truck Reform) Act 1995** comes into operation, each licence holder in a controlled area is entitled to one entitlement in respect of the roster applying to the depot in the controlled area that the licence holder is authorised to operate from.

(5) Also on that date, any licence that authorises the licence holder to engage in accident towing in a controlled area, but subject to a condition excluding the holder from engaging in accident towing in specified parts of the controlled area, becomes a licence that is not subject to that condition nor to any associated condition requiring the use of plates with the word “restricted”.

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- (6) If on that date a licence holder holds more than one licence with respect to a controlled area, the licence holder is entitled to one entitlement for each licence held. 5
- (7) Each new licence granted under this Division in respect of a controlled area entitles the holder of the licence to one entitlement in respect of the roster applying to the depot in the controlled area that the licence holder is authorised to operate from. 10
- (8) On the cancellation of a licence, any entitlements that apply in respect of the licence are extinguished. 15
- 174D. *Roster entitlements may be transferred before 1 October 1995***
- (1) At any time before 1 October 1995 a licence holder may transfer an entitlement— 20
- (a) to any other licence held by him, her or it; or
- (b) to the holder of any other licence.
- (2) A transfer becomes effective on— 25
- (a) the lodging of a transfer notice with the licensing authority in a form and manner approved by the licensing authority; and
- (b) the payment of the appropriate transfer fee determined under section 147B. 30
- (3) A transfer notice must clearly identify the licence from which, and to which, the entitlement is being transferred and must be signed by the licence holder transferring the entitlement. 35

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- (4) An entitlement may be transferred under this section to, or from, a licence that is suspended, but—
 - (a) the transfer does not interfere with the suspension; and
 - (b) an entitlement that is transferred from a suspended licence cannot be transferred back to that licence.

10 **174E. *Transitional provision concerning existing licence holders***

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- (1) On or before 30 September 1995, each tow truck licence holder must notify the licensing authority in writing of the details of the tow truck that the licence holder is operating under the licence.
 - (2) The notification must be made in the form and manner specified by the licensing authority and must—
 - 20 (a) include sufficient details to enable the tow truck to be identified; and
 - (b) state that the tow truck is roadworthy and complies with the regulations; and
 - 25 (c) state that the tow truck is not being operated under any other tow truck licence; and
 - (d) be signed by the licence holder.
 - (3) The tow truck licence of any licence holder who fails to comply with sub-section (1) is automatically cancelled on 1 October 1995.
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 - (4) If a licence holder holds more than one tow truck licence, sub-section (3) only applies to those of the licences with respect to which the holder has failed to comply with sub-section (1).

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- (5) A licence holder must not make any statement in a notification under this section that the licence holder knows is false or misleading.

Penalty: 50 penalty units.

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- (6) In addition to any other penalty a court may impose on finding an offence against a person under sub-section (5) proven, the court may cancel the person's tow truck licence.”.

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8. *Changes concerning implied conditions of accident towing licences*

In section 175 of the **Transport Act 1983**—

- (a) in sub-section (1), for “tow truck licence” **substitute** “accident towing licence”;
- (b) sub-sections (1) (e) and (g) are **repealed**;
- (c) in sub-section (2), for the phrase starting “Where in” and ending “repair there is” **substitute** “If there is a”.

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9. *Person must not charge for unauthorised towing or storage*

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After section 176 (2) (b) of the **Transport Act 1983** **insert**—

“; or

- (c) towing a vehicle, unless the towing was authorised in accordance with this Act and the regulations; or
- (d) storing a vehicle, unless the storing was authorised in writing by the person from whom the sum or charge is being sought.”.

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10. *Increase in penalties relating to unauthorised work*

- (1) At the foot of sections 176 (1) and (3) of the **Transport Act 1983** **insert**—

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“Penalty applying to this sub-section: 50 penalty units.”.

- (2) In sections 176 (1) and (3) of the **Transport Act 1983**, omit “against this Division”.

11. Insertion of section 176A

After section 176 of the **Transport Act 1983**
insert—

“176A. Obligations on repairers in respect of towed vehicles

(1) This section applies if a motor vehicle is damaged in an accident that occurs in a controlled area and is towed to a place by a tow truck.

(2) A person at the place must not begin to prepare a quotation for the cost of the damage to the vehicle or to repair the vehicle unless—

(a) the person has a duplicate copy of the authority to tow form and that form has written on it—

(i) the job number assigned to the damaged motor vehicle by the relevant allocation centre; and

(ii) the name and address of the driver of the tow truck, the address of the depot from which the tow truck operates and the name and address of the holder of the tow truck licence under which the tow truck operates; and

(b) the person confirms with the allocation centre that the job number is accurate and that the tow truck was authorised to tow the vehicle; and

(c) the person writes on the form a note stating—

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- (i) the person's name and the address of the place; and
 - (ii) that the confirmation has been obtained; and
 - (iii) the date and time that the confirmation was obtained; and
 - (iv) the confirmation number assigned to the confirmation by the allocation centre; and
 - (d) the person signs the note.
- (3) The person at the place to whom the duplicate copy of the authority to tow form is given must attempt to obtain the confirmation described in sub-section (2) (b) as soon as is practicable after being given the form.
- Penalty: 50 penalty units.
- (4) A person must not sign the note described in sub-section (2) (c) if any of the details in the note are false.
- Penalty: 50 penalty units.
- (5) If some or all of the details listed in sub-sections (2) (a) and (b) are wrong or missing from the duplicate copy of the authority to tow form, the owner of the vehicle (or the owner's agent) may ask the allocation centre to issue a new job number for the vehicle and to authorise the next rostered tow truck to tow the vehicle to a place specified by the owner (or agent).
- (6) If the owner of a vehicle (or the owner's agent) makes a request under sub-section (5)—
- (a) the allocation centre must comply with the request; and

(b) for the purposes of this Division, the towing of the vehicle under the new job number is to be considered to be accident towing.

- 5 (7) A person at the place must give a copy of the duplicate copy of the authority to tow form to the owner of the vehicle (or the owner's agent) and to any person authorised by the owner to repair, or to
10 prepare a quotation in relation to, the vehicle if asked to do so by the owner (or agent) or authorised person.

Penalty: 50 penalty units.

- 15 (8) A person must ensure that any written quotation prepared by the person and given to the owner of the vehicle (or to the owner's agent) is accompanied by a copy of the authority to tow form.

Penalty: 50 penalty units.

- 20 (9) It is a defence to a charge under sub-section (2), (3) or (8) if a person had a reasonable belief that the vehicle was not damaged in a controlled area.

- 25 (10) A person to whom sub-section (2) applies must—

(a) keep a copy of all authority to tow form copies that the person receives for 3 years after receiving them; and

- 30 (b) produce for inspection those copies and any records the person keeps in relation to quotations on being asked to do so by a member of the police force or an officer.

35 Penalty: 50 penalty units.

- (11) For the purpose of checking whether this section has been complied with, a

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member of the police force or an officer may—

- (a) at any reasonable time of the day or night enter any premises at which it appears damaged motor vehicles are being assessed or repaired; and 5
 - (b) inspect and copy any document produced for inspection under sub-section (6).
- (12) This section does not apply in respect of a motor vehicle that is towed to a place by a heavy accident tow truck under the authority of a heavy accident tow truck towing licence.’. 10

12. Substitution of section 177 15

For section 177 of the **Transport Act 1983** substitute—

“177. Offence to tout or solicit for work at an accident scene etc.

- (1) A person must not, at an accident scene, tout or solicit for any vehicle towing, storing or repairing business. 20
Penalty: 50 penalty units.
- (2) A person must not offer, obtain or attempt to obtain from any other person at an accident scene any form of authority or agreement (whether written or not) in relation to the towing or removal of a damaged motor vehicle from the accident scene. 25
Penalty: 50 penalty units. 30
- (3) A person must not offer, obtain or attempt to obtain from any other person any form of authority or agreement (whether written or not) in relation to the 35

5 repairing of, or the preparation of a quotation in relation to, a damaged motor vehicle at any time before the vehicle is stored at the address mentioned in the authority to tow.

Penalty: 50 penalty units.

(4) This section does not apply to anything done by a tow truck driver that he or she is permitted to do by the regulations.

10 (5) For the purpose of removing doubt, this section applies regardless of on whose behalf the touting, soliciting, offering, obtaining or attempting is done.

15 **177A. Cooling-off period for certain towing related repair agreements**

(1) This section applies if—

20 (a) the owner of a damaged motor vehicle (or a person authorised by the owner) signs an authority to repair the vehicle; and

25 (b) after the accident in which the vehicle was last damaged, the vehicle was towed to the place specified in the authority to tow; and

(c) the vehicle was still in or near that place at the time of the signing of the authority to repair; and

30 (d) within 48 hours of the signing of the authority to repair the owner of the vehicle (or the owner's agent) revokes the authority by written notice given to the person to whom the authority was given or to an employee of that person.

35

- (2) The owner is not liable to the person to whom the authority to repair was given for—
- (a) any damages or costs arising as a result of the signing of the authority or the revocation of the authority; or 5
 - (b) the cost of any work performed on the vehicle after it was towed to the storage place. 10
- (3) A reference in this section to an authority to repair includes a reference to any document that authorises the repair of the vehicle, regardless of the form of the document. 15

177B. *Owner not liable for repairs carried out at unauthorised place*

The owner of a damaged motor vehicle is not liable for the cost of any work performed on the vehicle if— 20

- (a) the vehicle was towed from the accident in which the vehicle was last damaged to a place other than the place specified in the authority to tow; and 25
- (b) the work is performed at that place.

177C. *Offence to fail to release towed vehicle*

- (1) This section applies to any person who is in control of any place to which a damaged or disabled vehicle has been towed. 30
- (2) The person must not—
- (a) refuse, frustrate or obstruct the release of; or

(b) fail to release—

the vehicle to its owner or the owner's agent.

Penalty: 50 penalty units.

5 (3) The person must ensure that no other person at the place—

(a) refuses, frustrates or obstructs the release of; or

(b) fails to release—

10 the vehicle to its owner or the owner's agent.

Penalty: 50 penalty units.

15 (4) It is a defence to a charge under sub-section (2) or (3) if the person is owed money by the owner or the owner's agent in respect of—

20 (a) work done by the person on the vehicle that was authorised in writing by the owner or the owner's agent; or

(b) towing charges, but only if the person holds-

25 (i) in the case of a disabled vehicle, a tow truck licence; or

(ii) in the case of a damaged vehicle, an accident towing licence-

30 and the charges either do not exceed the charges determined under section 184A or, if no charges are determined under that section, are reasonable.

(5) For the purpose of removing doubt—

35 (a) sub-section (4) does not apply if only storage charges are owed in respect of the vehicle;

(b) sub-section (4) (a) does not apply if section 177A applies.”.

13. Changes concerning the power to revoke or suspend licences

- (1) Section 180 (2) of the **Transport Act 1983** is repealed. 5
- (2) For section 181 (2) (b) of the **Transport Act 1983** substitute—
 - “(b) the holder of the licence is in breach of a licence condition specified by section 172C (3).” 10
- (3) Section 181 (2A) is **repealed**.

14. Insertion of sections 181A–181C

After section 181 of the **Transport Act 1983** insert—

- ‘181A. Suspension or cancellation of licence if offences committed** 15
- (1) In this section, “**towing licence**” means an accident towing licence or a heavy accident tow truck towing licence.
- (2) If a person holding a towing licence is charged with any level 1 or level 2 offence, the licensing authority must immediately suspend every towing licence held by the person. 20
- (3) If a person holding a towing licence is convicted of any level 1 or level 2 offence, the licensing authority must immediately cancel every towing licence held by the person. 25
- (4) If a person holding a towing licence is a corporation, and a director of the corporation is charged with, or convicted of, any level 1 or level 2 offence, the 30

licensing authority must immediately suspend every towing licence held by the corporation.

- 5
- (5) A suspension imposed under sub-section (3) remains in force while the director remains a director or employee of the corporation.
- 10
- (6) The licensing authority must immediately remove a suspension imposed under sub-section (1) if the charge is withdrawn or dismissed.
- 15
- (7) The licensing authority must immediately reinstate a licence cancelled under sub-section (2) if the conviction is overturned on appeal.
- 20
- (8) The licensing authority must immediately remove a suspension imposed under sub-section (3) if the charge is withdrawn or dismissed or the conviction is overturned on appeal.
- 25
- (9) If a licence is reinstated under sub-section (6), all entitlements that were extinguished when the licence was cancelled are revived.
- 30
- (10) A reference in this section to a conviction of a person for an offence—
- (a) includes a reference to a court finding the offence proven against the person, even though the court does not record a conviction against the person for the offence; and
- 35
- (b) includes a conviction incurred outside Victoria for an offence that, in the opinion of the licensing authority, corresponds to a level 1 or 2 offence.

- (11) The licensing authority is only required to take action under this section on it receiving—
- (a) a copy of the relevant court record certified by the registrar of the relevant court; or 5
 - (b) a statutory declaration made by the informant or the holder of the accident towing licence stating the relevant facts. 10

181B. Demerits Register

- (1) The Secretary must keep a Demerits Register and must record in the Register the demerit points that each tow truck licence holder and each holder of an accident towing driver authority incurs. 15
- (2) The circumstances in which demerit points are incurred, and the number of demerit points that are to be incurred in any particular circumstance, are as set out in the regulations. 20
- (3) The Secretary must immediately suspend for 1 month—
 - (a) the tow truck licence of any person who incurs 6 or more demerit points within any 3 year period in his, her or its capacity as the holder of the licence; 25
 - (b) the accident towing driver authority of any person who incurs 6 or more demerit points within any 3 year period in his or her capacity as the holder of an accident towing driver authority. 30
- (4) The Secretary must immediately suspend for 3 months— 35

5

(a) the tow truck licence of any person who incurs 12 or more demerit points within any 3 year period in his, her or its capacity as the holder of the licence;

10

(b) the accident towing driver authority of any person who incurs 12 or more demerit points within any 3 year period in his or her capacity as the holder of an accident towing driver authority.

(5) The Secretary must immediately suspend for 2 years—

15

(a) the tow truck licence of any person who incurs 18 or more demerit points within any 3 year period in his, her or its capacity as the holder of the licence;

20

(b) the accident towing driver authority of any person who incurs 18 or more demerit points within any 3 year period in his or her capacity as the holder of an accident towing driver authority.

25

(6) The regulations may set out circumstances in which the Secretary may cancel demerit points.

30

(7) The Secretary must notify in writing any person who incurs any demerit points that the demerit points have been recorded against the person in the Register and must do this as soon as is reasonably possible after the recording occurs.

35

(8) The fact that demerit points are recorded against a person is not admissible in evidence in any court proceedings.

- (9) Nothing in this section prevents the Secretary from separating the Register into 2 or more parts and from separately administering each part.

181c. Appeals concerning Demerits Register 5

- (1) A person may apply to the Administrative Appeals Tribunal for a review of a decision of the Secretary to suspend a licence or authority under section 181B on either or both of the following grounds— 10
- (a) that demerit points have been recorded against the person in error or because of wrongful or mistaken identity;
- (b) that a miscalculation has been made in assessing the total number of demerit points incurred by the person. 15
- (2) An application for a review must be made in accordance with the regulations.
- (3) The lodging of an application for review in accordance with the regulations stays the suspension of the licence or authority until the application is withdrawn or the Tribunal affirms the suspension after the review. 20
- (4) After reviewing a decision, the Tribunal may— 25
- (a) direct the Secretary to amend the Demerits Register in the way specified by the Tribunal; or
- (b) affirm the suspension.”. 30

15. Transfer of licences

- (1) In section 182 of the **Transport Act 1983**—
- (a) for “a tow truck licence” (wherever occurring) **substitute** “an accident towing licence or a heavy accident tow truck towing licence”; 35

(b) for “the tow truck licence” (wherever occurring) **substitute** “the accident towing licence or the heavy accident tow truck towing licence”;

5 (c) in sub-section (1), for “prescribed form and manner” **substitute** “form and manner specified by the licensing authority”;

(d) for sub-section (3) (b) **substitute**—

“(b) the appropriate transfer fee determined under section 147B.”.

10 (2) For section 182 (2) of the **Transport Act 1983** **substitute**—

“(2) The licensing authority may authorise the transfer of the licence if it is satisfied that the person to whom the licence is to be transferred is eligible to hold the licence.”.

15

16. Insertion of sections 182A–182G

After section 182 of the **Transport Act 1983** **insert**—

“182A. Requirement to hold an accident towing driver authority

20

(1) A person must not—

(a) drive an accident tow truck or a heavy accident tow truck; or

(b) accompany the driver of an accident tow truck or a heavy accident tow truck—

25

unless the person holds an accident towing driver authority.

Penalty: 50 penalty units.

30

(2) The holder of an accident towing licence or an accident towing driver authority must not allow a person—

(a) to drive an accident tow truck; or

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- (b) to accompany the driver of an accident tow truck—
 - unless the person holds an accident towing driver authority.
 - Penalty: 50 penalty units. 5
 - (3) The holder of a heavy accident tow truck towing licence or an accident towing driver authority must not allow a person—
 - (a) to drive a heavy accident tow truck; 10
 - or
 - (b) to accompany the driver of a heavy accident tow truck—
 - unless the person holds an accident towing driver authority. 15
 - Penalty: 50 penalty units.
 - (4) Despite sub-sections (1) (b), (2) and (3), a person who was the driver of, or a passenger in, a damaged motor vehicle at the time of an accident may accompany, and may be allowed to accompany, the driver of the accident tow truck or heavy accident tow truck that is towing the damaged motor vehicle from the accident scene. 20
 - (5) Despite sub-sections (1), (2) and (3), any person who is a mechanic and who is repairing, maintaining or testing an accident tow truck or a heavy accident tow truck may drive, and may be allowed to drive, the tow truck. 25

182B. Accident towing driver authority

- (1) The licensing authority must grant an accident towing driver authority to any person who— 35

5

(a) applies for the authority in the form and manner specified by the licensing authority and who provides the licensing authority with all the information and documents it requires in relation to the application; and

10

(b) has passed any test, or holds any qualification, specified by the licensing authority that relates to his or her fitness or ability to carry out accident towing or heavy accident towing or to deal with members of the public at an accident scene; and

15

(c) would not be ineligible to hold an accident towing licence under section 172J and is not awaiting the determination of any charges for a level 1 or level 2 offence and is not ineligible to hold an authority under section 182D; and

20

(d) has paid the appropriate application fee determined under section 147B.

25

(2) The licensing authority may grant an authority for a period of up to 3 years.

30

(3) An authority is subject to any condition the licensing authority notifies the holder in writing of at the time that it grants or renews the authority.

35

(4) After giving the holder of an authority the chance to be heard, the licensing authority may at any time impose further conditions on an authority or revoke or vary any conditions it has previously imposed.

(5) The licensing authority must give the holder of an authority written notice of

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any action that it takes under sub-section (4).

- (6) The holder of an authority must comply with any conditions to which the authority is subject of which the holder has received written notice. 5

Penalty: 20 penalty units.

- (7) Subject to evidence to the contrary, if a written notice was posted to the holder of an authority at the address shown on the authority, the holder is deemed to have received the notice on the 3rd postal business day after it was posted. 10

182c. *Obligations of authority holder*

- (1) The holder of an accident towing driver authority must carry the authority at any time he or she is driving an accident tow truck or a heavy accident tow truck or is at an accident scene. 15

Penalty: 15 penalty units. 20

- (2) On being asked to do so by any driver or owner of a damaged motor vehicle at an accident scene or by any member of the police force or officer, the holder of an accident towing driver authority must— 25

(a) produce the authority for inspection; and

(b) provide the name and address of the holder of the accident towing licence or heavy accident tow truck towing licence under which the tow truck is being operated and the number of that licence. 30

Penalty: 15 penalty units.

- (3) The holder of an authority must also—
- (a) sign the authority as soon as he or she receives it; and
 - (b) within 7 days of changing the address shown on the authority, notify the licensing authority of the new address and return the authority to the licensing authority to enable it to be amended; and
 - (c) return the authority to the licensing authority immediately if it becomes illegible or is altered or defaced.

Penalty: 10 penalty units.

- (4) A person who was the holder of an authority must immediately return it to the licensing authority if—
- (a) he or she ceases to hold a full driver licence to drive a motor vehicle under the **Road Safety Act 1986**; or
 - (b) the licensing authority notifies him or her in writing that it has been suspended or revoked.

Penalty: 20 penalty units.

- (5) Subject to evidence to the contrary, if a notice was posted to the holder of an authority at the address shown on the authority, the holder is deemed to have received the notice on the 3rd postal business day after it was posted.

182D. Eligibility of person who has committed serious traffic offences to hold authority

- (1) A person is not eligible to hold an accident towing driver authority while his or her driver licence is suspended or while he or she is disqualified from

- obtaining a driver licence after the cancellation of a driver licence.
- (2) A person who has had his or her driver licence suspended or cancelled and who commits a second or subsequent offence that results in the suspension or cancellation of his or her driver licence is not eligible to hold an accident towing driver authority—
- (a) for a further period after the period of the last suspension or disqualification following a cancellation ends equal to the period of suspension or disqualification; or
- (b) for 1 year after the period of the last suspension or disqualification ends—
- whichever is the longer period.
- (3) For the purposes of this section, an offence is only to be treated as a second offence if it was committed within 10 years after the person convicted of the offence had been convicted in relation to the first offence.
- (4) However, sub-section (3) does not apply to a person in a particular case if—
- (a) in the opinion of the licensing authority, either the circumstances of the first offence or the subsequent offence were such that it is against the public interest for sub-section (3) to apply; and
- (b) the Secretary gives the person a written notice stating that opinion.
- (5) A reference in this section to a conviction of a person for an offence—
- (a) includes a reference to a court finding the offence proven against the person, even though the court

does not record a conviction against the person for the offence; and

- 5 (b) includes a conviction incurred outside Victoria for an offence that, in the opinion of the licensing authority, corresponds to an offence referred to in this section.

182E. *Suspension or cancellation of authority*

10 Section 181A applies to the holder of an accident towing driver authority as if—

- (a) a reference to a towing licence in that section was a reference to an accident towing driver authority; and
15 (b) sub-section (5) of that section opened with the words “Subject to section 182D (2),”.

182F. *Replacement of authority*

20 The licensing authority may issue a duplicate accident towing driver authority if it is satisfied that the original authority has become illegible or been altered or defaced, or that it has been stolen, lost or destroyed.

182G. *Review by A.A.T. of refusal to grant accident towing driver authority*

25 An applicant may apply to the Administrative Appeals Tribunal for a review of a decision by the licensing authority—

- 30 (a) to refuse to grant an application for an accident towing driver authority;
(b) to impose or vary the conditions applying to an accident towing driver authority;

- (c) to refuse to issue a duplicate accident towing driver authority.”.

17. Insertion of sections 183A and 183B

After section 183 of the **Transport Act 1983** insert—

“183A. Roads Corporation may establish allocation schemes 5

The Roads Corporation may, by notice published in the Government Gazette, declare an area to be a controlled area for the purposes of this Division.

10

183B. Offence to attend accident without authorisation

- (1) A tow truck driver must not, without having obtained authorisation from, and been given a job number by, an allocation centre—

15

(a) attend an accident scene within a controlled area; or

(b) tow or attempt to tow a damaged vehicle from such an accident scene.

20

Penalty: 50 penalty units.

- (2) A tow truck driver who has been given a job number by an allocation centre must write that job number on any authority to tow form he or she obtains a signature to as a result of attending at the accident scene to which the job number relates.

25

Penalty: 50 penalty units.

- (3) This section does not apply to the driver of a heavy accident tow truck who is operating the tow truck in accordance with, and under the authority of, a heavy accident tow truck towing licence.”.

30

18. *Minor consequential amendments and additional regulation-making powers*

In the **Transport Act 1983**—

- 5 (a) in sections 173, 173A, 174, 174A, 174AB, 174B, 175, 181, 182, 184A and 185, for “Roads Corporation” (wherever occurring) **substitute** “licensing authority”;
- (b) in section 180 (1), for “Roads corporation” **substitute** “licensing authority”;
- 10 (c) in section 184 (2A), for “section 183A” **substitute** “section 183B”;
- (d) sections 185 (1) (a) (ii) and (v) and 185A are **repealed**;
- (e) after section 185 (1) (d) **insert**—
- 15 “(e) accident towing driver authorities;
- (f) the operation of the Demerits Register required by section 181B;
- (g) the inspection of tow trucks and towed vehicles;
- 20 (h) the conduct and duties of drivers of tow trucks including the keeping of records and the production of those records for inspection;”.

19. *Secretary to administer tow truck licences and accident towing driver authorities*

- 25 (1) In section 131 of the **Transport Act 1983**, omit “with respect to taxi-cabs”.
- (2) After section 138A (c) of the **Transport Act 1983** **insert**—
- “; and
- 30 (d) in relation to a tow truck licence—the Secretary; and
- (e) in relation to an accident towing driver authority—the Secretary.”.

20. Changes concerning fees

- (1) In section 147A (3) of the **Transport Act 1983**, after “any fee” **insert** “or instalment”.
- (2) After section 147A (3) of the **Transport Act 1983** **insert**— 5
 “(4) The holder of an accident towing licence must pay the appropriate annual fee determined under section 147B in respect of each allocation centre roster entitlement created by section 172L or 174C that applies to the licence. 10
 (5) The licensing authority may permit the holder of an accident towing licence to pay the annual fee payable in respect of the licence in instalments.”.
- (3) In section 147B (1) (a) of the **Transport Act 1983**— 15
 (a) after “147A (1)” **insert** “and (4)”;
 (b) for “172 (1)” **substitute** “172 (2), 172A (2), 172H (7)”;
 (c) **omit** “174 (3),”;
 (d) after “182 (3)” **insert** “, 182B (1)”.
- (4) In section 147B (1) (a) of the **Transport Act 1983**, 20
 after “174B (2),” **insert** “174D (2),”.

21. Repeal of transitional provisions inserted by this Act

- (1) Sections 174C, 174D and 174E of the **Transport Act 1983** are repealed.
- (2) In section 147B (1) (a) of the **Transport Act 1983**, 25
omit “174D (2),”.

PART 3—OTHER AMENDMENTS**22. Clarification concerning power of Minister etc. to delegate**

- In section 32 of the **Transport Act 1983**— 30
 (a) in sub-sections (1) and (1A), after “under this Act” **insert** “or the regulations”;

- (b) in sub-sections (2) and (3), after “any other Act”
insert “or the regulations,”.

23. Change to regulation making power with respect to safety work infringements

5 In section 215G of the **Transport Act 1983**—

(a) before “The Governor” **insert** “(1)”;

(b) at the end of the section **insert**—

“**(2)** Any regulations made under this section—

10 (a) may be of general or of specially limited application;

(b) may differ according to differences in time, place or circumstance.”.

24. Statute law revision

In the **Transport Act 1983**—

15 (a) in section 16 (3) (b), **omit** “and other parameters determined by the Victorian Transport Directorate”;

(b) in section 89 (2) (b), **omit** “; and” (where secondly occurring);

20 (c) in Schedule 1, in clause 1 (3) (a), for “Public Service Act 1974” **substitute** “**Public Sector Management Act 1992**”.

