

Accident Towing Services Act 2007

No. 30 of 2007

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Victoria

Accident Towing Services Act 2007[†]

No. 30 of 2007

[Assented to 24 July 2007]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is—

- (a) to promote the safe, efficient and timely provision of accident towing services and other related services by—
 - (i) licensing the operation of tow trucks that provide accident towing services; and

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- (ii) accrediting operators of accident towing service businesses and managers of depots from which accident towing services are provided; and
 - (iii) accrediting tow truck drivers when driving licensed tow trucks or providing accident towing services; and
 - (iv) providing for other matters related to the provision of accident towing services; and
 - (v) providing for matters related to the storage and repair of motor vehicles; and
- (b) to make consequential and related amendments to the **Infringements Act 2006**, the **Melbourne City Link Act 1995**, the **Police Regulation Act 1958**, the **Road Safety Act 1986** and the **Transport Act 1983**.

2 Commencement

- (1) Section 1, this section and clause 10 of Schedule 3 come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day to be proclaimed.
- (3) If a provision of this Act referred to in subsection (2) does not come into operation before 1 January 2009, it comes into operation on that day.

3 Definitions

(1) In this Act—

accident damaged motor vehicle means a motor vehicle that has been damaged as the result of a road accident so that the motor vehicle—

- (a) cannot be driven safely on a road; or
- (b) cannot be driven on a road without compromising the safety of other road users;

accident towing demerit point means a demerit point incurred in accordance with regulations made under this Act;

accident towing service means the service of operating tow trucks for the following purposes—

- (a) the purpose of towing accident damaged motor vehicles, where the towing of the accident damaged motor vehicle takes place between the time when the road accident in which the motor vehicle is damaged occurs and the time when the motor vehicle is first delivered to the place specified in the authority to tow;
- (b) the purpose of clearing road accident scenes;

accident towing service business means the trade or business of operating tow trucks for hire or reward for the purpose of providing accident towing services;

accredited person means the holder of—

- (a) a towing operator accreditation; or
- (b) a towing depot manager accreditation;
or
- (c) a tow truck driver accreditation;

allocation body, in relation to a controlled area,
means—

- (a) if a person or body has been appointed
under section 47 to be the allocation
body for that area, that person or body;
or
- (b) in any other case, VicRoads;

approved code of practice means a code of
practice the making of which, and (where the
case so requires) the amending of which, has
been approved by the Minister under Part 7;

authorised officer means a person appointed as an
authorised officer under section 178;

authority to tow means an authorisation, obtained
in accordance with Division 1 of Part 5, by
the driver of a tow truck to tow an accident
damaged motor vehicle;

Chief Commissioner of Police means the Chief
Commissioner of Police appointed under the
Police Regulation Act 1958;

Commission means the Essential Services
Commission established under the **Essential
Services Commission Act 2001**;

controlled area means any area declared to be a
controlled area under section 46;

corporation has the same meaning as in section 9
of the Corporations Act;

daily storage charge means an amount determined by the Minister under section 211 as the fee to be paid each day for the storing of an accident damaged motor vehicle;

Department means the Department of Infrastructure;

depot means a premises from which tow trucks are being operated in the course of an accident towing service business;

designated road means—

- (a) the Link road;
- (b) the Extension road;
- (c) EastLink;
- (d) any freeway within the meaning of the **Road Management Act 2004**;
- (e) any road that has been declared under section 119A of the **Road Management Act 2004** to be a road to which that section applies;

director, in relation to a corporation, has the same meaning as it has in section 9 of the Corporations Act;

drive, in relation to a motor vehicle, includes being in control of the motor vehicle;

driver accreditation objective means the objective set out in section 97;

EastLink has the same meaning as in the **EastLink Project Act 2004**;

Extension road has the same meaning as in the **Melbourne City Link Act 1995**;

Freeway Corporation has the same meaning as in the **EastLink Project Act 2004**;

heavy tow truck means a tow truck that is capable of towing motor vehicles with a gross vehicle mass of 4 tonnes or more;

heavy tow truck licence means a licence under section 11;

industry accreditation objective means the objective set out in section 55;

inspector means—

- (a) an authorised officer; or
- (b) a member of the force who has been authorised by the Chief Commissioner of Police to exercise powers for the purposes of this Act;

infringement notice has the same meaning as in the **Infringements Act 2006**;

job number means the number given by an allocation body to an authorisation given by that body to tow an accident damaged motor vehicle from a road accident scene in the controlled area of that body;

licensed (heavy) tow truck means a heavy tow truck that is specified in a heavy tow truck licence;

licensed (regular) tow truck means a regular tow truck that is specified in a regular tow truck licence;

licensed tow truck means a licensed (regular) tow truck or a licensed (heavy) tow truck;

limited tow truck licence means a regular tow truck licence issued under section 10(2) or 10(3) or a heavy tow truck licence issued under section 11(2) or 11(3);

Link road has the same meaning as in the **Melbourne City Link Act 1995**;

Melbourne controlled area means the area declared to be the Melbourne controlled area under section 46;

Note

See also clause 9 of Schedule 3 for the transitional meaning of this term.

Melbourne licence means a regular tow truck licence, the specified depot for which is in the Melbourne controlled area;

member of the force has the same meaning as in the **Police Regulation Act 1958**;

Note

This term is expressed in the **Police Regulation Act 1958** to apply to every person (whether male or female) employed in the force and ***the force*** in that Act is defined to mean officers and other members of the police force of Victoria whether employed upon land or upon water.

motor vehicle has the same meaning as in section 86(1) of the **Transport Act 1983**;

nominated person means a person nominated under section 64;

non-limited tow truck licence means a tow truck licence that is not a limited tow truck licence;

operate, in relation to a tow truck, means directing, controlling or being responsible for the tow truck, but does not mean driving the tow truck;

owner, in relation to a tow truck, includes the following—

- (a) a person who is the owner of the tow truck;
- (b) a person who has the use of the tow truck under a lease agreement;

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- (c) a person in whose name a tow truck is registered under the **Road Safety Act 1986** or any Act or Ordinance of any State or Territory of the Commonwealth corresponding to this Act;

regular tow truck means a tow truck that is capable of towing motor vehicles with a gross vehicle mass of less than 4 tonnes;

regular tow truck licence means a licence under section 10;

relevant agency means a relevant agency (that is not an enforcement agency) within the meaning of the **Melbourne City Link Act 1995**;

relevant person, in relation to an applicant for accreditation under Part 3 or a person accredited under Part 3, means—

- (a) any person who holds a share in the capital of, or an entitlement to receive income derived from, the business to which the application or accreditation relates and by virtue of that interest is able to exercise a significant influence over or with respect to the management of the activities to which the application or the accreditation relates; or
- (b) any person who is entitled to exercise any power to participate in the management of the activities to which the application or the accreditation relates or to elect or appoint any person connected with the management of the business to which the application or accreditation relates; or

- (c) any person who is a director, secretary, member of the committee of management, or connected with the management, of the business to which the application or accreditation relates;

road has the same meaning as in the **Road Safety Act 1986**;

road accident means an impact or collision of one or more motor vehicles—

- (a) on a road or road related area; or
(b) not on a road or road related area, if immediately before the impact or collision one or more of the vehicles involved in the impact or collision had been travelling on a road or road related area;

road accident scene means an area within a 2 kilometre radius of a road accident;

road accident scene roster, in relation to a controlled area, means the roster of allocations to attend road accident scenes in the controlled area that is kept by the allocation body for that area;

road related area has the same meaning as in the **Road Safety Act 1986**;

salvage, in the case of an accident damaged motor vehicle that cannot be moved by a tow truck from the position it is in as a result of the road accident without the assistance of another motor vehicle or equipment, means the moving of the motor vehicle from that position to a place where it may be towed by a tow truck without assistance;

self-management area means an area declared to be a self-management area under section 52;

service standard means a service standard determined under section 75;

specified depot in relation to a licensed tow truck, means the depot specified in the tow truck licence under which the tow truck operates;

temporary permit means a permit granted under section 35;

tow, in relation to any motor vehicle, includes—

- (a) lifting and towing the motor vehicle;
- (b) lifting and carrying the motor vehicle;
- (c) lifting the motor vehicle for the purpose of towing the motor vehicle;

tow truck means—

- (a) any motor vehicle—
 - (i) that is equipped with a crane, winch, ramp or other lifting device; and
 - (ii) that is used or intended to be used for the towing of motor vehicles;or
- (b) a motor vehicle to which is attached, temporarily or otherwise, a trailer or device that is—
 - (i) equipped with a winch or ramp or other lifting device; and
 - (ii) that is used or intended to be used for the towing of motor vehicles;

towing depot manager accreditation means an accreditation under section 57(2);

towing operator accreditation means an accreditation under section 57(1);

tow truck driver accreditation means an accreditation under section 99;

tow truck licence means a licence under Part 2;

VicRoads means the Roads Corporation established under Part II of the **Transport Act 1983**.

- (2) In this Act, a reference to a person who has been found guilty of an offence is a reference to a person—
- (a) against whom a court has made a formal finding that he or she is guilty of the offence; or
 - (b) from whom a court has accepted an admission under section 100 of the **Sentencing Act 1991** that he or she has committed the offence, or from whom a similar admission has been accepted under equivalent provisions of the laws of a jurisdiction other than Victoria; or
 - (c) against whom a finding has been made under—
 - (i) section 17(1)(b) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** that he or she was not guilty of the offence because of mental impairment; or
 - (ii) section 17(1)(c) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** that he or she committed the offence—or against whom a similar finding has been made under equivalent provisions of the laws of a jurisdiction other than Victoria—
- being an admission or finding that has not been subsequently quashed or set aside by a court.
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- (3) In this Act, a reference to a person who has been charged with an offence is a reference to a person—
- (a) against whom a presentment has been made or an indictment has been laid for the offence; or
 - (b) against whom a charge has been filed for the offence, whether or not—
 - (i) a summons to answer the charge; or
 - (ii) a warrant to arrest the person—
has been issued or served.
- (4) In this Act, a reference to a charge that has not been finally disposed of is a reference to a charge that has not been finally dealt with by—
- (a) being withdrawn or by the entering of a nolle prosequi; or
 - (b) the charge having been dismissed by a court; or
 - (c) the person against whom the charge has been laid having been discharged by a court following a committal hearing; or
 - (d) the person against whom the charge has been laid having been acquitted or found guilty of the offence that was the subject of the charge by a court; or
 - (e) any other prescribed means.
- (5) If under the **Public Administration Act 2004** the name of the Department of Infrastructure is changed, the reference in subsection (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.
-

4 Objective

The objective of this Act is to—

- (a) promote the safe, efficient and timely provision of accident towing services and other related services;
- (b) ensure that persons who are providing accident towing services—
 - (i) are of appropriate character; and
 - (ii) are technically competent to provide the services; and
 - (iii) when providing the services, act with integrity and in a manner that is safe, timely, efficient and law abiding, and in particular, that regard is had for vulnerable persons.

5 Act to bind the Crown

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2—REQUIREMENTS AS TO TOW TRUCKS

Division 1—Requirements for operating and driving certain tow trucks

6 Requirements for operating regular tow trucks

- (1) A person must not operate a regular tow truck for the purpose of providing an accident towing service unless—
- (a) the person holds a towing operator accreditation; and
 - (b) the person holds a regular tow truck licence that authorises the operation of the regular tow truck; and
 - (c) the person is operating the tow truck to provide accident towing services in relation to accident damaged motor vehicles with a gross vehicle mass of less than 4 tonnes; and
 - (d) the person is the registered operator (within the meaning of the **Road Safety Act 1986**) of the tow truck.

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

- (2) A person who is operating a regular tow truck for the purpose of providing an accident towing service must do so from the depot specified in the licence.

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

7 Requirements for operating heavy tow trucks

- (1) A person must not operate a heavy tow truck for the purpose of providing an accident towing service unless—
- (a) the person holds a towing operator accreditation; and
 - (b) the person holds a heavy tow truck licence that authorises the operation of the heavy tow truck; and
 - (c) the person is operating the tow truck to provide accident towing services in relation to accident damaged motor vehicles with a gross vehicle mass of 4 tonnes or more; and
 - (d) the person is the registered operator (within the meaning of the **Road Safety Act 1986**) of the tow truck.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (2) A person who is operating a heavy tow truck for the purpose of providing an accident towing service must do so from the depot specified in the licence.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

8 Requirements for driving regular tow trucks towing accident damaged motor vehicles

A person must not drive a regular tow truck for the purpose of providing an accident towing service unless there is in force a regular tow truck licence that authorises the operation of the regular tow truck.

Penalty: 60 penalty units.

9 Requirements for driving heavy tow trucks towing accident damaged motor vehicles

A person must not drive a heavy tow truck for the purpose of providing an accident towing service unless there is in force a heavy tow truck licence that authorises the operation of the heavy tow truck.

Penalty: 60 penalty units.

Division 2—Licensing

10 Power to license the operation of regular tow trucks

- (1) Subject to subsections (2) and (3), VicRoads may license a person to operate a regular tow truck that is specified in the licence—
 - (a) for the purpose of providing accident towing services in relation to accident damaged motor vehicles with a gross vehicle mass of less than 4 tonnes; and
 - (b) from the depot specified in the licence.
- (2) In the case of a licence authorised by the Minister to be issued under section 14(2)(d), VicRoads may license the relevant agency or contractor (as the case requires) to operate a regular tow truck that is specified in the licence—

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- (a) for the purpose of providing accident towing services in relation to accident damaged motor vehicles with a gross vehicle mass of less than 4 tonnes; and
 - (b) on the whole or any part of the Link road or Extension road, as specified in the licence, or on any other designated road that is specified in the licence; and
 - (c) from the depot specified in the licence.
- (3) In the case of a licence authorised by the Minister to be issued under section 14(2)(e), VicRoads may license the Freeway Corporation or contractor (as the case requires) to operate a regular tow truck that is specified in the licence—
- (a) for the purpose of providing accident towing services in relation to accident damaged motor vehicles with a gross vehicle mass of less than 4 tonnes; and
 - (b) on the whole or any part of EastLink, as specified in the licence, or on any other designated road that is specified in the licence; and
 - (c) from the depot specified in the licence.

11 Power to license the operation of heavy tow trucks

- (1) Subject to subsections (2) and (3), VicRoads may license a person to operate a heavy tow truck that is specified in the licence—
 - (a) for the purpose of providing accident towing services in relation to accident damaged motor vehicles with a gross vehicle mass of 4 tonnes or more; and
 - (b) from the depot specified in the licence.
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- (2) In the case of a licence authorised by the Minister to be issued under section 15(2)(d), VicRoads may license the relevant agency or contractor (as the case requires) to operate a heavy tow truck that is specified in the licence—
- (a) for the purpose of providing accident towing services in relation to accident damaged motor vehicles with a gross vehicle mass of 4 tonnes or more; and
 - (b) on the whole or any part of the Link road or Extension road, as specified in the licence, or on any other designated road that is specified in the licence; and
 - (c) from the depot specified in the licence.
- (3) In the case of a licence authorised by the Minister to be issued under section 15(2)(e), VicRoads may license the Freeway Corporation or contractor (as the case requires) to operate a heavy tow truck that is specified in the licence—
- (a) for the purpose of providing accident towing services in relation to accident damaged motor vehicles with a gross vehicle mass of 4 tonnes or more; and
 - (b) on the whole or any part of EastLink, as specified in the licence, or on any other designated road that is specified in the licence; and
 - (c) from the depot specified in the licence.

12 Issue of new licences and re-issue of certain limited licences

- (1) Subject to subsection (2), VicRoads must not issue a new regular tow truck licence under section 10 or a new heavy tow truck licence under section 11 unless VicRoads does so in accordance with an authorisation of the Minister under Division 3.
- (2) If, under section 13(2) or 13(3), a limited tow truck licence ceases to be held by a person, VicRoads may issue a new licence, under section 10(2) or 10(3), or 11(2) or 11(3), in substitution of the licence that has ceased to be in force, to a person entitled under the relevant subsection to hold such a licence.

13 Period for which licence remains in force

- (1) Subject to subsection (2), a tow truck licence remains in force until the licence is cancelled or surrendered.
- (2) If a limited tow truck licence held by a relevant agency or a contractor to a relevant agency ceases to be held by the relevant agency or contractor, the licence ceases to be in force.
- (3) If a limited tow truck licence, held by the Freeway Corporation or a contractor to the Freeway Corporation, ceases to be held by the Freeway Corporation or contractor, the licence ceases to be in force.

Division 3—Authorisation for issue of new tow truck licences

14 Ministerial authorisation for the issue of regular tow truck licences

- (1) The Minister may authorise the issuing of regular tow truck licences for an area.
- (2) The Minister must not make an authorisation under this section for the whole or any part of a controlled area unless—
 - (a) the Minister considers it to be in the public interest to do so having regard to any increase in the need for regular tow trucks in the area; or
 - (b) the licences to be issued are to replace licences that have been cancelled for the area; or
 - (c) the Minister considers that there are exceptional circumstances in the area that justify the further issue of regular tow truck licences for the area; or
 - (d) in the case of the Link road or the Extension road, the licences are to be issued to—
 - (i) a relevant agency; or
 - (ii) a person who is contracted by a relevant agency to provide accident towing services for the whole or a part of the Link road or Extension road—

and the Minister is of the opinion that the issue of the licences is necessary to enable the relevant agency to perform its obligations, exercise its rights or carry out its functions under this Act or the **Melbourne City Link Act 1995**, regulations made under this Act or that Act or the Agreement or

Extension Agreement within the meaning of that Act; or

- (e) in the case of EastLink, the licences are to be issued to—
- (i) the Freeway Corporation within the meaning of the **EastLink Project Act 2004**; or
 - (ii) a person who is contracted by the Freeway Corporation to provide accident towing services for the whole or a part of Eastlink—

and the Minister is of the opinion that the issue of the licences is necessary to enable the Freeway Corporation to perform its obligations, exercise its rights or carry out its functions under this Act or the **EastLink Project Act 2004**, regulations made under this Act or that Act or the Agreement within the meaning of that Act.

- (3) The Minister must not make an authorisation under this section for an area that is not within a controlled area unless—
- (a) the Minister considers it to be in the public interest to do so having regard to the need for regular tow trucks in the area; or
 - (b) licences to be issued are to replace licences that have been cancelled for the area; or
 - (c) the Minister considers that there are exceptional circumstances in the area to be specified in the licence that justify the further issue of regular tow truck licences for that area.

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- (4) In making an authorisation under this section, the Minister must specify the number of licences that are authorised to be issued.
 - (5) In making an authorisation to which subsection (2)(d) or (2)(e) applies—
 - (a) the Minister may require VicRoads to impose the conditions, specified in the authorisation, on the licences; and
 - (b) the Minister is not required to comply with section 16; and
 - (c) the Minister may specify fees that are payable for the licences.

15 Ministerial authorisation for the issue of heavy tow truck licences

- (1) The Minister may authorise the issuing of heavy tow truck licences for an area.
- (2) The Minister must not make an authorisation under this section unless—
 - (a) the Minister considers it to be in the public interest to do so having regard to any increase in the need for heavy tow trucks in the area; or
 - (b) the licences to be issued are to replace licences that have been cancelled for the area; or
 - (c) the Minister considers that there are exceptional circumstances in the area that justify the further issue of heavy tow truck licences for the area; or

(d) in the case of the Link road or the Extension road, the licences are to be issued to—

- (i) a relevant agency; or
- (ii) a person who is contracted by a relevant agency to provide accident towing services for the whole or a part of the Link road or Extension road—

and the Minister is of the opinion that the issue of the licences is necessary to enable the relevant agency to perform its obligations, exercise its rights or carry out its functions under this Act or the **Melbourne City Link Act 1995**, regulations made under this Act or that Act or the Agreement or Extension Agreement within the meaning of that Act; or

(e) in the case of EastLink, the licences are to be issued to—

- (i) the Freeway Corporation within the meaning of the **EastLink Project Act 2004**; or
- (ii) a person who is contracted by the Freeway Corporation to provide accident towing services for the whole or a part of EastLink—

and the Minister is of the opinion that the issue of the licences is necessary to enable the Freeway Corporation to perform its obligations, exercise its rights or carry out its functions under this Act or the **EastLink Project Act 2004**, regulations made under this Act or that Act or the Agreement within the meaning of that Act.

(3) In making an authorisation under this section, the Minister must specify the number of licences that are authorised to be issued.

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- (4) In making an authorisation to which subsection (2)(d) or (2)(e) applies—
- (a) the Minister may require VicRoads to impose the conditions, specified in the authorisation, on the licences; and
 - (b) the Minister is not required to comply with section 16; and
 - (c) the Minister may specify fees that are payable for the licences.

16 Notice of Ministerial authorisations under this Division

On making an authorisation under this Division the Minister must—

- (a) cause notice of the authorisation to be published in the Government Gazette; and
- (b) specify, in the notice, the number of licences that are authorised to be issued.

Division 4—Process for issuing new tow truck licences

17 Notice that non-limited tow truck licences available

On being authorised to issue one or more new non-limited tow truck licences, VicRoads may, by notice published in the Government Gazette—

- (a) specify the number of new licences that the Minister has authorised it to issue and, if relevant, the area in respect of which the licences may be issued; and
 - (b) specify the procedures to be followed for the issuing of those licences; and
 - (c) specify whether the fees to be paid for the licences are to be determined by tender or are a fixed price; and
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- (d) if a fixed price is to be paid, specify the price that is to be paid; and
 - (e) specify the details that must be included in an application for a licence; and
 - (f) specify where, and by when, applications for a licence must be lodged; and
 - (g) provide that all applications for licences, or all applications for licences to operate in a particular area, made before a specified time are to lapse.

18 Applications for non-limited tow truck licences

- (1) If a notice has been published under section 17, a person may apply to VicRoads for a non-limited tow truck licence specified in the notice.
- (2) An application must—
 - (a) be made in the manner and form determined by VicRoads as set out in the notice; and
 - (b) be accompanied by—
 - (i) the fee payable for the application as determined under section 213; and
 - (ii) any information or thing, as set out in the notice, that is reasonably required by VicRoads in order to assess the application.

19 Time within which VicRoads must deal with application

- (1) VicRoads must decide whether to approve or refuse an application under section 18 within one year after the closing date for applications.
- (2) On deciding whether to approve or refuse to approve an application under section 18, VicRoads must give notice of the decision to the applicant.

20 Approval of applications

- (1) VicRoads must not approve an application under section 18—
 - (a) unless VicRoads is satisfied—
 - (i) that the applicant holds a towing operator accreditation; and
 - (ii) that the applicant is the registered operator (within the meaning of the **Road Safety Act 1986**) of the tow truck in respect of which the licence is to be issued; or
 - (b) if the fee payable for the application as determined under section 213 has not been paid.
- (2) An applicant for a non-limited tow truck licence whose application has been approved must give VicRoads details in writing of the tow truck that is to be specified in the licence within 90 days of receiving the notice under section 19(2).
- (3) VicRoads may, on the written application of an applicant, extend the period of 90 days specified in subsection (2).
- (4) Approval of an application ceases to have effect if the details of the tow truck are not given to VicRoads within the time provided for in this section.

21 Issue of non-limited tow truck licences to approved applicants etc.

VicRoads must issue a non-limited tow truck licence to a person whose application for such a licence has been approved—

- (a) if VicRoads has been given the details of the tow truck on or before the approval of the application, on approving the application; or

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- (b) if VicRoads has not been given the details of the tow truck on or before the approval of the application, on receiving the details of the tow truck in accordance with section 20(2).

22 VicRoads' discretion as to persons to whom limited tow truck licences issued

VicRoads may issue a new limited tow truck licence to a person under the relevant authorisation of the Minister, if VicRoads is satisfied that the person to whom the licence is to be issued holds a towing operator accreditation.

Division 5—General provisions applying to tow truck licences

23 Fees payable for licences

- (1) The fee that must be paid for a non-limited tow truck licence on the issuing of the licence is—
- (a) if the notice that is published in the Government Gazette of the authorisation of the Minister under Division 3 has specified a fixed price, the fixed price so specified; or
 - (b) if a tender method is adopted for the granting of non-limited tow truck licences, the amount specified in the successful tender for the licence.
- (2) Despite subsection (1), VicRoads may allow a licence fee to be paid by instalments.
- (3) The fee that must be paid for the issue of a limited tow truck licence must be the fee specified by the Minister in the authorisation made under Division 3.

24 Certificate on issue of licence

- (1) If VicRoads issues a tow truck licence it must give the licence holder a certificate evidencing the issue of the licence that sets out the name and address of the licence holder.
- (2) If VicRoads allows a licence fee to be paid by instalments, it may issue a certificate under subsection (1) on the payment of the first instalment.

25 Conditions on licences

- (1) On the issue of a tow truck licence by VicRoads, VicRoads may impose conditions on the licence.
 - (2) VicRoads may at any time, on VicRoads' own initiative or on the written application of the holder of a tow truck licence—
 - (a) vary or revoke a condition imposed on the licence; or
 - (b) impose a new condition on the licence.
 - (3) VicRoads must not, on VicRoads' own initiative, vary or revoke a condition on a tow truck licence or impose a new condition on a tow truck licence unless VicRoads has first given the holder of the licence—
 - (a) notice of the variation, revocation or imposition of the condition; and
 - (b) an opportunity to make written submissions on the variation, revocation or imposition of the condition.
 - (4) A tow truck licence is also subject to any condition that applies to the licence and that is set out in regulations made under this Act.
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26 Offence not to comply with conditions on licence

The holder of a tow truck licence must comply with a condition to which the licence is subject.

Penalty: In the case of a natural person,
30 penalty units;

In the case of a body corporate,
150 penalty units.

27 Specified tow trucks

- (1) Despite section 10, VicRoads may, on an application under subsection (2), exempt the holder of a Melbourne licence from the requirement that a tow truck be specified in respect of the licence.
- (2) The holder of a Melbourne licence may apply to VicRoads for an exemption under subsection (1).
- (3) VicRoads may, on an application under subsection (4), alter the specification of a tow truck in a tow truck licence by substituting another tow truck for the tow truck so specified.
- (4) The holder of a tow truck licence may apply to VicRoads for the specification of the tow truck in the licence to be altered under subsection (3).
- (5) An application under this section must—
 - (a) be in the form approved by VicRoads; and
 - (b) contain the information required by VicRoads.

28 Nature of and dealings with tow truck licences

- (1) A tow truck licence forms part of the property of the holder of the licence and may be dealt with accordingly.

- (2) Despite subsection (1), the holder of a tow truck licence is not entitled to transfer the licence held by that person or any of the holder's rights under the licence to another person, whether by way of assignment, lease or any other means.
- (3) Subsection (2) does not apply to a transfer of a tow truck licence under this Part.

29 Transfer of tow truck licence to another person

- (1) On receiving an application under section 30 VicRoads may approve the transfer of a tow truck licence held by one person to another person.
- (2) VicRoads must not approve the transfer of a licence under subsection (1) unless VicRoads is satisfied that the person to whom the licence is to be transferred—
 - (a) holds a towing operator accreditation; and
 - (b) is the registered operator (within the meaning of the **Road Safety Act 1986**) of the tow truck specified in the licence; and
 - (c) in the case of a licence issued under section 10(2) or 11(2), is a relevant agency or a person who is contracted to provide accident towing services to a relevant agency; and
 - (d) in the case of a licence issued under section 10(3) or 11(3), is the Freeway Corporation or a person who is contracted to provide accident towing services to the Freeway Corporation.

30 Application for transfer of tow truck licence

- (1) The holder of a tow truck licence may apply to VicRoads for approval to transfer the licence to another person.
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- (2) An application under subsection (1) must—
- (a) be made in the manner and form determined by VicRoads; and
 - (b) be accompanied by any information or thing required by VicRoads.

31 Recording and taking effect of transfer

- (1) If—
- (a) VicRoads has approved the transfer of a tow truck licence; and
 - (b) VicRoads has received a document of transfer—
 - (i) in the form approved by VicRoads; and
 - (ii) containing the information that is reasonably required by VicRoads in order to give effect to the transfer; and
 - (iii) executed by the holder of the licence and the person to whom the licence is being transferred—

VicRoads must record the transfer of the tow truck licence in the register kept under subsection (4), in accordance with the document of transfer.

- (2) The transfer of a tow truck licence takes effect on the recording of the transfer by VicRoads in the register kept under subsection (4).
- (3) On the recording of the transfer by VicRoads, VicRoads may amend the certificate issued in relation to the tow truck licence under section 24 to record the name and address of the new holder of the licence.
- (4) VicRoads must keep a register of tow truck licences.

Division 6—Cancellation and suspension of tow truck licences

32 VicRoads may cancel or suspend a tow truck licence

- (1) VicRoads may cancel or suspend a tow truck licence if—
 - (a) the holder of the licence has not complied with a condition of the licence; or
 - (b) the holder of the licence has not complied with a provision of this Act, the **Road Safety Act 1986**, the **Transport Act 1983** or regulations made under this Act or those Acts.
 - (2) If VicRoads determines under subsection (1) to suspend a licence, VicRoads must determine the period for which the licence is to be suspended.
 - (3) Before taking action under subsection (1), VicRoads must—
 - (a) give the holder of the licence written notice of the action that VicRoads proposes to take and of the reasons for taking that action; and
 - (b) allow the holder of the licence to make written representations about the intended action within 10 business days (or any other period that VicRoads and the holder of the licence agree on); and
 - (c) must have regard to any written representations made within the time specified in paragraph (b).
 - (4) Subsection (3) does not apply if VicRoads considers it necessary to take immediate action in the interests of public safety.
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- (5) VicRoads must—
- (a) give the holder of the licence—
 - (i) details of any action taken under subsection (1); and
 - (ii) a statement of reasons for any action taken under subsection (1); and
 - (iii) if the licence is suspended, the period of the suspension; and
 - (b) notify the holder of the licence that the person has a right to seek review of VicRoads' decision under Division 11.
- (6) VicRoads must give the details, the statement of reasons and notice under subsection (5) in writing.

33 Effect of cancellation or suspension of accreditation of licence holder

- (1) If the towing operator accreditation of the holder of a tow truck licence is cancelled, on the cancellation of that accreditation, the tow truck licence is to be taken to be cancelled.
- (2) Subsection (1) does not apply if, not more than 60 days after the cancellation of the accreditation, and in accordance with this Part, the licence is transferred to another person.
- (3) If the towing operator accreditation of the holder of a tow truck licence is suspended, on the accreditation being suspended, the tow truck licence is to be taken to be suspended for the period of the suspension of the accreditation.
- (4) If, not more than 60 days after the accreditation of the holder of a tow truck licence is suspended, the tow truck licence is transferred to another person, subsection (3) ceases to apply to the licence on the taking effect of the transfer.

34 Requirement to surrender licence certificate on cancellation or suspension of towing operator accreditation

The holder of a tow truck licence whose towing operator accreditation is cancelled or suspended must, within 7 days after the accreditation is cancelled or suspended, surrender the licence certificate to VicRoads.

Penalty: 20 penalty units.

Division 7—Permits to operate tow trucks in specific circumstances

35 Temporary permits

- (1) VicRoads may grant a permit to the holder of a tow truck licence, authorising the tow truck specified in the licence to be operated in a manner not authorised by the licence or in a manner that is contrary to the manner authorised by the licence.
- (2) VicRoads may impose any conditions on the permit that VicRoads thinks fit.
- (3) A permit under this section remains in force for the period determined by VicRoads and specified in the permit.
- (4) An application for a permit must be in the form determined by and contain the information required by VicRoads.
- (5) The holder of a permit must comply with the permit, including any conditions on the permit.

Penalty: In the case of a natural person,
30 penalty units;

In the case of body corporate,
150 penalty units.

- (6) A person does not commit an offence under Division 1 or section 26 if that person is operating a tow truck in accordance with a temporary permit.

36 Offence not to carry permit when driving

If a tow truck is being operated under a temporary permit, the driver of the tow truck must carry the permit in the tow truck.

Penalty: 20 penalty units.

37 Offence not to produce permit when asked

The driver of a tow truck that is being operated under a temporary permit must produce the permit if he or she is asked to do so by—

- (a) an authorised officer; or
- (b) a member of the force; or
- (c) the owner or driver of an accident damaged motor vehicle that is, or is about to be, towed by the tow truck.

Penalty: 20 penalty units.

Division 8—Offences as to regular and heavy tow trucks

38 Offence not to take care in driving or operating tow truck

- (1) The driver of a tow truck, when towing an accident damaged motor vehicle, must not—
- (a) lose or damage the motor vehicle; or
 - (b) lose or damage anything in or on the motor vehicle.

Penalty: 20 penalty units.

- (2) In any proceedings for an offence against subsection (1), it is a defence if the person charged—
- (a) complied with any Code of Practice approved by the Minister under Part 7 that applies to drivers of tow trucks when towing accident damaged motor vehicles; and
 - (b) took all the precautions that were appropriate in the circumstances.
- (3) The holder of a tow truck licence must take all reasonable steps to ensure that—
- (a) any accident damaged motor vehicle that is being towed by the tow truck specified in the licence is not lost or damaged; and
 - (b) nothing in or on a motor vehicle is lost or damaged.

Penalty: In the case of a natural person,
20 penalty units;
In the case of a body corporate,
100 penalty units.

39 Offence to leave tow truck standing for more than a certain period

The driver of a tow truck must not leave the tow truck standing at a road accident scene in a manner that obstructs the road for any longer period than is necessary to—

- (a) get authorisation to tow an accident damaged motor vehicle that is at the road accident scene (where so required); and
- (b) load the motor vehicle onto the tow truck.

Penalty: 20 penalty units.

40 Offence for persons to travel in accident damaged motor vehicles

- (1) The driver of a tow truck must not permit or allow a person to travel in an accident damaged motor vehicle that is being towed from a road accident scene by the tow truck.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply to an accident damaged motor vehicle that is being towed if—
- (a) the motor vehicle has a gross vehicle mass of 4 tonnes or more; and
 - (b) it is necessary for a person to steer or control the motor vehicle to enable the motor vehicle to be towed safely.

41 Certain persons may be ordered to leave restricted road accident area

- (1) A member of the force or an authorised officer may direct a person referred to in subsection (2) to leave a restricted road accident area if the member or officer believes on reasonable grounds that the person's presence is—
- (a) causing an unwarranted obstruction to traffic; or
 - (b) hindering efforts to attend to any injured person or damaged property; or
 - (c) otherwise hindering or obstructing the orderly towing of a motor vehicle from the place where the road accident occurred.
- (2) A direction under subsection (1) may be given to—
- (a) the holder of a tow truck licence;
 - (b) a tow truck driver;

- (c) a person who carries out, or is engaged in the business of carrying out, repair work on accident damaged motor vehicles;
 - (d) a person acting on behalf of a person referred to in paragraph (a), (b) or (c).
- (3) A person must not, without reasonable excuse, fail to comply with a direction given to him or her under subsection (1).
- Penalty: 20 penalty units.
- (4) Subsection (1) is in addition to any other powers of a member of the force under any Act or at common law for or with respect to maintaining public order.
- (5) In this section *restricted road accident area* means an area within a 500 metre radius of a place where an accident damaged motor vehicle has come to rest after the road accident in which the motor vehicle was damaged.

Division 9—Operation of tow trucks in controlled areas

42 Offence for regular tow trucks to attend road accident scenes in controlled areas without allocation

- (1) The holder of a regular tow truck licence must not cause the tow truck operating under that licence—
- (a) to attend a road accident scene in a controlled area; or
 - (b) to be used to tow, or attempt to tow, an accident damaged motor vehicle from a road accident scene in a controlled area—

unless the allocation body for that area has authorised that the tow truck operating under the licence so attend or be so used, and the allocation

body has given a job number for that authorisation to the holder of the licence.

Penalty: 100 penalty units.

- (2) The driver of a regular tow truck must not—
- (a) attend a road accident scene in a controlled area; or
 - (b) use the tow truck to tow, or attempt to tow an accident damaged motor vehicle from a road accident scene in a controlled area—

unless the allocation body for that area has authorised that the tow truck so attend or be so used, and the allocation body has given a job number for that authorisation to the holder of the licence for the tow truck.

Penalty: 50 penalty units.

- (3) Subsections (1) and (2) do not apply to any attendance at a road accident scene, or any towing of, or attempt to tow, an accident damaged motor vehicle from a road accident scene by a regular tow truck—
- (a) if the road accident scene is on a designated road; and
 - (b) if—
 - (i) in the case of a road accident scene that is on the Link road or Extension road, the tow truck driver is authorised by the relevant corporation (within the meaning of the **Melbourne City Link Act 1995**) to attend road accident scenes on that road; or

- (ii) in the case of a road accident scene that is on EastLink, the tow truck driver is authorised by the Freeway Corporation within the meaning of the **EastLink Project Act 2004**, to attend road accident scenes on that road; or
 - (iii) in the case of a road accident scene that is on a designated road (within the meaning of paragraph (d) or (e) of the definition of *designated road*), the tow truck driver is authorised under section 119A of the **Road Management Act 2004** to attend accident scenes on that road; and
- (c) if in a case in which the tow truck driver tows an accident damaged motor vehicle from the road accident scene, the tow truck driver tows the motor vehicle to a safe and convenient place near the road or a place approved by VicRoads.

43 Salvage exemption

Section 42 does not apply to a tow truck that is being driven or operated for the purpose of salvaging an accident damaged motor vehicle if—

- (a) the attendance of the tow truck is necessary for the salvage of the motor vehicle; and
- (b) the tow truck does not tow any accident damaged motor vehicle from the road accident scene at which the salvaging is taking place.

44 Prohibition on towing of vehicles removed from designated roads unless allocated

- (1) If an accident damaged motor vehicle has been damaged in a road accident on a designated road and has been towed from the road accident scene to a place in accordance with section 42(3), the holder of a regular tow truck licence must not cause a tow truck operating under that licence to be used to tow, or attempt to tow, the vehicle from that place, unless the allocation body for that area has authorised that the tow truck operating under the licence be so used, and the allocation body has given a job number for that authorisation to the holder of the licence.

Penalty: 100 penalty units.

- (2) If an accident damaged motor vehicle has been damaged in a road accident on a designated road and has been towed from the road accident scene to a place in accordance with section 42(3), the driver of a regular tow truck must not use the tow truck to tow, or attempt to tow, that vehicle from that place unless the allocation body for that area has authorised that the tow truck be so used, and the allocation body has given a job number for that authorisation to the holder of the licence for that tow truck.

Penalty: 50 penalty units.

45 Further allocation offences

- (1) The holder of a regular tow truck licence must not cause more than one accident damaged motor vehicle to be towed under a job number by the tow truck specified in that licence.

Penalty: 100 penalty units.

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- (2) The driver of a regular tow truck must not tow more than one accident damaged motor vehicle under a job number.

Penalty: 50 penalty units.

46 Declaration of controlled areas

- (1) VicRoads may, by notice, declare an area to be a controlled area.
- (2) A notice under subsection (1)—
- (a) must be published in the Government Gazette; and
 - (b) may apply, adopt or incorporate any matter contained in any document formulated, issued, prescribed or published by any person whether—
 - (i) wholly or partly or as amended by the notice; or
 - (ii) as formulated, issued, prescribed or published at the time the order is made or at any time before then.

47 Appointment of allocation body

- (1) VicRoads may, by notice, appoint a person or body to be the allocation body for a controlled area.
- (2) An appointment under this section remains in force for the period specified by VicRoads in the appointment.
- (3) A notice under this section must be published in the Government Gazette.

48 Creation of allocation roster entitlements

Each regular tow truck licence issued under this Part entitles the holder of the licence to one entitlement to a place on the road accident scene roster for a controlled area, if the licence has a specified depot in that area.

49 Circumstances in which roster entitlements can be applied to another licence

Despite sections 48 and 50, if the holder of a Melbourne licence is exempted from the requirement that a tow truck be specified for the licence, the holder may apply the entitlement of that licence to any other Melbourne licence held by that person.

50 Nature of allocation roster entitlement

- (1) An allocation roster entitlement is not capable of being transferred to another person or to another regular tow truck licence.
- (2) On the cancellation of a regular tow truck licence, any entitlements that apply in respect of the licence are extinguished (including any entitlements that were created before this section came into operation).

Division 10—Self-management areas

51 Licence holder offences as to road accident scenes in self-management areas

- (1) The holder of a regular tow truck licence must not cause a tow truck operating under that licence—
 - (a) to attend a road accident scene in a self-management area; or

- (b) to tow, or attempt to tow, an accident damaged motor vehicle from a road accident scene in a self-management area—

unless the specified depot for the licence is in the self-management area.

Penalty: 50 penalty units.

- (2) The holder of a regular tow truck licence, who operates the tow truck under the licence from a depot in a self-management area, must not cause the tow truck—
- (a) to attend a road accident scene that is not in a self-management area; or
- (b) to tow, or attempt to tow, an accident damaged motor vehicle from a road accident scene that is not in a self-management area—

unless the holder of the licence is authorised to do so under this Act.

Penalty: 100 penalty units.

52 Self-management areas

- (1) VicRoads may, in writing, declare an area to be a self-management area and must specify, in the declaration, the terms and conditions on which the self-management area is to be managed.
- (2) A self-management area must not include any area that is in a controlled area.
- (3) VicRoads may, by declaration, amend or revoke a declaration made under subsection (1) at any time.
- (4) A declaration under this section must be published in the Government Gazette.

Division 11—VCAT review

53 Review of decision by VCAT

- (1) An applicant for a tow truck licence or the holder of a tow truck licence may apply to VCAT for review of a decision to which this section applies, if that person's interests are affected by the decision.
 - (2) This section applies to a decision under this Part—
 - (a) on an application for a tow truck licence, to issue or refuse to issue the tow truck licence; or
 - (b) to impose a condition on a tow truck licence; or
 - (c) to vary or revoke a condition on a tow truck licence; or
 - (d) to refuse to exempt the holder of a Melbourne licence from the requirement that a tow truck be specified in respect of the licence; or
 - (e) to refuse to alter the specification of a tow truck in a licence by substituting another tow truck; or
 - (f) to refuse to approve the transfer of a tow truck licence to another person; or
 - (g) to cancel or suspend a tow truck licence; or
 - (h) to refuse to grant a temporary permit; or
 - (i) to impose conditions on a temporary permit.
 - (3) In reviewing a decision specified in subsection (2)(a), VCAT must not make a decision that is inconsistent with any authorisation of the Minister under Division 3.
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54 Time period for making application to VCAT

An application for review under section 53 must be made within 28 days of the later of—

- (a) the day on which the decision is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
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PART 3—INDUSTRY ACCREDITATION

Division 1—Objective and requirement for accreditation

55 Industry accreditation objective

The industry accreditation objective is the objective that—

- (a) accident towing services are provided safely, reliably and efficiently; and
- (b) the persons providing such services—
 - (i) are of appropriate character; and
 - (ii) when providing the services, act with integrity and in a manner that is safe, timely, efficient and law abiding.

56 Offence to operate or manage accident towing service business without accreditation

- (1) A person must not carry on an accident towing service business unless the person holds a towing operator accreditation.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (2) A person must not manage an accident towing service business from a depot unless the person holds a towing depot manager accreditation.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (3) Subsection (2) does not apply to a person who holds a towing operator accreditation.

- (4) A person must not falsely represent that the person is accredited under this Part or holds an accreditation under this Part of a specified kind.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

57 VicRoads to accredit persons to carry on or manage accident towing services business

- (1) VicRoads may accredit a person to carry on an accident towing service business.
- (2) VicRoads may accredit a person to manage an accident towing service business from a depot.

58 How long accreditation remains in force

- (1) An accreditation under this Part remains in force until—
- (a) it is cancelled or surrendered; or
- (b) the expiry of the period determined by VicRoads, which must not be more than 5 years—
- whichever is the sooner.
- (2) The period determined by VicRoads under subsection (1)(b) must be specified in the certificate of accreditation.

Division 2—Application for accreditation

59 Applications for tow truck operating accreditations

- (1) A person may apply to VicRoads for the grant or renewal of a towing operator accreditation.
- (2) A person may apply to VicRoads for the grant or renewal of a towing depot manager accreditation.

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- (3) Despite subsections (1) and (2), an unincorporated body or association, including a partnership, is not capable of applying for, or holding, accreditation under this Part.

60 Making of application

- (1) An application under section 59 must—
- (a) be made in the manner and form determined by VicRoads; and
 - (b) include the name and address of the applicant; and
 - (c) be accompanied by—
 - (i) the fee (if any) for the application determined in accordance with section 213; and
 - (ii) evidence, if required by regulations made under this Act, that each relevant person in relation to the applicant satisfies the requirements for the accreditation applied for; and
 - (iii) any other thing determined to be required by VicRoads that has been approved by the Minister and published in the Government Gazette; and
 - (d) in the case of an application by a corporation, include the nomination of a nominated person under section 64.
- (2) For the purposes of subsection (1), any information or thing that VicRoads requires to accompany an application or to be included in the application must be limited to any information or thing that VicRoads reasonably requires in order to assess the application.
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61 VicRoads may require further information etc.

- (1) VicRoads may require an applicant to—
 - (a) supply any further information or thing as specified by VicRoads that VicRoads reasonably requires in order to assess the application;
 - (b) verify, in the manner and form determined by VicRoads, the information or thing supplied for the purpose of the application;
 - (c) sign the application.
- (2) For the purposes of subsection (1)(c), if the applicant is a corporation, the application must be signed in accordance with section 127 of the Corporations Act.

62 Chief Commissioner of Police may supply information to VicRoads

The Chief Commissioner of Police may, in accordance with the processes agreed on with VicRoads, notify VicRoads of any relevant findings of guilt in relation to an applicant for accreditation under this Part or any relevant person in relation to an applicant for accreditation under this Part.

63 Time within which VicRoads must deal with application

- (1) Subject to this section, VicRoads must decide whether to approve or refuse an application for accreditation under this Part within 90 days after receiving the application.
- (2) VicRoads may, before the expiry of the period specified in subsection (1), decide to extend the period within which it may decide whether to approve or refuse an application.

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- (3) If VicRoads decides under subsection (2) to extend the period within which it may decide whether to approve or refuse an application, VicRoads must notify the applicant in writing of that decision and the new period within which VicRoads intends to make its decision whether to approve or refuse the application.

64 Nominated person

- (1) A corporation that is an applicant for accreditation under this Part must nominate in the application for accreditation a qualified person who is responsible for ensuring that the corporation complies with its duties under this Act.
- (2) If a nominated person ceases to be a nominated person, the holder of accreditation under this Part must, within 30 days after the person ceases to be a nominated person—
- (a) notify VicRoads that the person has ceased to be a nominated person; and
 - (b) nominate another qualified person to be the person responsible for ensuring that the corporation complies with its duties under this Act; and
 - (c) provide the nomination in writing to VicRoads.

Penalty: 300 penalty units.

- (3) VicRoads may communicate with and serve notices on a person nominated under this section in relation to—
- (a) the application for accreditation under this Part for which the person was nominated; or
 - (b) the accreditation under this Part for which the person was nominated.

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- (4) Service on a nominated person by VicRoads is taken to be service on the applicant for accreditation or on the holder of accreditation under this Part.
- (5) In this section, *qualified person*, in relation to a corporation that is an applicant for accreditation or the holder of accreditation under this Part, means a person who is an officer or employee of the corporation primarily responsible for managing the operation of the business of the corporation.

65 When VicRoads may approve an application for accreditation

- (1) VicRoads may approve an application for accreditation under this Part, with or without imposing conditions, if—
- (a) the application has not been refused under section 66, 67 or 68; and
 - (b) VicRoads is satisfied that—
 - (i) the applicant has complied with the application requirements under this Part; and
 - (ii) the applicant is suitable to be accredited; and
 - (iii) the issuing of accreditation is appropriate having regard to the industry accreditation objective.
- (2) To avoid doubt, in exercising a discretion to approve or refuse an application for accreditation under this Part, VicRoads may have regard to—
- (a) the place where the applicant, the nominated person or a relevant person in relation to the applicant, resides or carries on business; and

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- (b) in the case of an applicant that is a corporation, whether the applicant is registered under the Corporations Act and where it has its principal place of business.

66 Mandatory refusal of accreditation

- (1) VicRoads must refuse an application for accreditation under this Part if VicRoads believes on reasonable grounds that—
- (a) subject to subsection (2), the applicant, a nominated person or a relevant person in relation to the applicant has been found guilty of an offence listed in clause 1 of Schedule 1; or
- (b) the applicant is disqualified under section 70 or 81 from applying for the relevant accreditation; or

Note

Section 87 provides that if VicRoads has refused an application under paragraph (a) or (b) the applicant may make an application to the original jurisdiction of VCAT for an order that VicRoads grant or renew accreditation under this Part.

- (c) if the applicant is a natural person, the applicant is insolvent under administration within the meaning of the Corporations Act; or
- (d) if the applicant is a corporation—
- (i) a receiver or receiver and manager, within the meaning of the Corporations Act, has been appointed in relation to the applicant; or
- (ii) the applicant has been placed in administration under the Corporations Act or under the law of any place outside Australia; or

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- (iii) a court has made an order under the Corporations Act for the winding up of the applicant.
- (2) Subsection (1)(a) does not apply to the renewal of an accreditation under this Part if the offence listed in clause 1 of Schedule 1, which the applicant was found guilty of, was considered—
- (a) in any previous application by the applicant for accreditation or renewal under this Part; or
 - (b) in any disciplinary proceedings under this Part against the applicant.

67 Refusal of accreditation unless VicRoads satisfied it is appropriate

VicRoads must refuse an application for accreditation under this Part if it believes on reasonable grounds that the applicant, or a nominated person or a relevant person in relation to the applicant, has been found guilty of an offence listed in clause 2 of Schedule 1, unless VicRoads is satisfied that the applicant has demonstrated that the issue of the accreditation is appropriate having regard to the industry accreditation objective.

68 Discretionary refusal of accreditation

- (1) VicRoads may refuse an application for accreditation under this Part if it is aware that the applicant, or a nominated person or a relevant person in relation to the applicant—
- (a) has been found guilty of an offence listed in clause 3 of Schedule 1; or
 - (b) is subject to a charge for an offence listed in Schedule 1 that has not been finally disposed of at the time of considering the application.
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- (2) VicRoads may refuse an application for accreditation under this Part if it believes on reasonable grounds that—
- (a) the applicant has contravened a service standard applicable to an accreditation held, or previously held, by the applicant under this Part; or
 - (b) the applicant has contravened a condition imposed on an accreditation held, or previously held, by the applicant under this Part; or
 - (c) the nominated person or a relevant person in relation to the applicant has contravened a service standard applicable to, or a condition imposed on, an accreditation held by or previously held by the nominated person or the relevant person under this Part; or
 - (d) the applicant, the nominated person or a relevant person in relation to the applicant has contravened a provision of this Act.
- (3) VicRoads may refuse an application for accreditation referred to it by VCAT under section 87(2)(a)(ii) if VicRoads is not satisfied as to the matters set out in section 65(1)(b).
- (4) In exercising a discretion under this section in relation to an offence, VicRoads must have regard to—
- (a) the nature and gravity of the offence or alleged offence and its relevance to the activities in respect of which accreditation is sought; and
 - (b) the period of time since the offence or alleged offence was committed or was alleged to have been committed; and
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- (c) if there has been a finding of guilt or a conviction, whether the finding of guilt or the conviction was recorded; and
 - (d) if there has been a finding of guilt or a conviction, the sentence (if any) imposed for the offence; and
 - (e) the age of the applicant or nominated person or relevant person when the offence or alleged offence was committed or was alleged to have been committed; and
 - (f) if there has been a finding of guilt or a conviction, whether or not the conduct that constituted the offence has been decriminalised since the offence was committed; and
 - (g) the behaviour of the applicant or nominated person or relevant person since committing the offence or since the offence was alleged to have been committed; and
 - (h) the likelihood of the applicant or nominated person or relevant person committing an offence in the future, in particular, any future threat to persons involved in accidents or the owners of accident damaged motor vehicles; and
 - (i) any information given by the applicant, nominated person or relevant person; and
 - (j) any other matter that VicRoads considers relevant.

69 Notification and reasons to be given if accreditation refused

- (1) If an application for accreditation is refused under section 66(1)(a) or 66(1)(b), VicRoads must notify the applicant for accreditation under this Part—
 - (a) of the decision; and
 - (b) that the applicant has a right to apply to VCAT under section 87.
- (2) If an application for accreditation is refused under section 66(1)(c) or 66(1)(d), VicRoads must notify the applicant for accreditation under this Part of the decision.
- (3) If VicRoads decides to refuse to accredit an applicant for accreditation under section 67 or 68, VicRoads must—
 - (a) notify the applicant—
 - (i) of the decision; and
 - (ii) that the applicant has a right to seek review of the decision under section 88; and
 - (b) give the applicant a statement of reasons for the decision.
- (4) A notification and a statement of reasons under this section must be—
 - (a) made in writing; and
 - (b) given to the applicant as soon as practicable after the application is refused.

70 Disqualification for applying for accreditation

- (1) If an application for accreditation is refused under this Part, VicRoads may, having regard to the industry accreditation objective, determine that the applicant is disqualified from applying for
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accreditation under this Part for the period determined by VicRoads.

- (2) The period determined by VicRoads under subsection (1) must not exceed 5 years.
- (3) In making a determination under subsection (1), if the applicant has been found guilty of an offence listed in Schedule 1, VicRoads must have regard to the circumstances set out in section 68(4).
- (4) If VicRoads disqualifies an applicant under subsection (1) VicRoads must, as soon as reasonably practicable—
 - (a) notify the applicant for accreditation under this Part in writing; and
 - (b) set out in the notice—
 - (i) the period of disqualification; and
 - (ii) VicRoads' reasons for disqualifying the applicant for that period.

Note

A person who has been disqualified under this Part may apply to VCAT for review of this decision: see section 88.

71 Disqualification ceases if there has been a relevant change of circumstances

- (1) If there has been a relevant change of circumstances in relation to a person who has been disqualified from applying for accreditation under this Part, that person may apply in writing to VicRoads for a declaration that the disqualification ceases to have effect.

Note

This applies to any disqualification made by VicRoads under this Part: see sections 70 and 81.

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- (2) If an application is made to VicRoads under subsection (1) and VicRoads is satisfied that there has been a relevant change of circumstances in relation to the applicant, VicRoads must declare that the disqualification in relation to the applicant ceases to have effect.
- (3) In this section a *relevant change of circumstances* includes where—
- (a) a finding of guilt of the person is quashed or set aside by a court after the date of the disqualification; or
 - (b) a finding on which the decision to disqualify the person was based is quashed or set aside after the date of the disqualification.

Division 3—Accreditation conditions and service standards

72 Conditions on accreditation

- (1) In accrediting an applicant under this Part, VicRoads may limit the accreditation in any way it thinks appropriate, taking into account the industry accreditation objective, including—
- (a) imposing conditions on the accreditation that are not inconsistent with any condition applicable under subsection (2); or
 - (b) restricting the accreditation.

Example

VicRoads may, in the case of a towing operator accreditation, restrict the accreditation to the operation of tow trucks in a particular geographical area.

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- (2) An accreditation under this Part is subject to any condition set out in regulations made under this Act that applies to the accreditation.

73 VicRoads may vary, revoke or impose new conditions

- (1) VicRoads may at any time on its own initiative or on the written application of the holder of the accreditation under this Part—
- (a) vary or revoke a condition imposed by VicRoads on an accreditation under this Part; or
 - (b) impose a new condition on an accreditation under this Part.
- (2) If VicRoads decides on its own initiative to take action under subsection (1), VicRoads must—
- (a) give the holder of the accreditation under this Part written notice of the action that VicRoads is considering taking; and
 - (b) allow the holder of the accreditation under this Part to make written representations about the intended action within 10 business days of receiving the notice (or any other period that VicRoads and the accredited person agree on); and
 - (c) consider any submission that was made by the holder of the accreditation within the period set out in paragraph (b).
- (3) Subsection (2) does not apply if VicRoads considers it necessary to take immediate action in the interests of public safety.

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- (4) VicRoads must, in writing—
- (a) give to the holder of the accreditation under this Part—
 - (i) details of any action taken under subsection (1); and
 - (ii) a statement of reasons for any action taken under subsection (1); and
 - (b) notify the holder of the accreditation under this Part that the person has a right to seek review of VicRoads' decision under section 88.

74 Offence to fail to comply with conditions

The holder of an accreditation under this Part must comply with any conditions imposed on the accreditation under this Part.

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

75 Service standards

- (1) The Minister may, by notice published in the Government Gazette, determine minimum service standards to be met by all holders of accreditation under this Part or by a specified class, or specified classes, of accredited person or persons under this Part.
- (2) Standards may be determined under this section in relation to—
 - (a) in the case of the holder of a towing operator accreditation—
 - (i) complaint handling processes;
 - (ii) the provision of information in relation to complaints to VicRoads;

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- (b) in the case of the holder of a towing depot manager accreditation—
- (i) managing the processing of complaints on behalf of the relevant towing operator;
 - (ii) managing the provision of information in relation to complaints to VicRoads.
- (3) Before determining standards under subsection (1) the Minister must—
- (a) cause a notice in accordance with subsection (4) to be published in respect of the proposed standards in the Government Gazette; and
 - (b) provide an exposure draft of the proposed standards to representatives of the accident towing industry and the Minister administering the **Fair Trading Act 1999**; and
 - (c) consider all comments and submissions received in response to the notice within the period specified in the notice.
- (4) A notice must—
- (a) state the reason for, and the objectives of, the proposed standards; and
 - (b) specify where a copy of the proposed standards can be obtained; and
 - (c) invite public comments or submissions within such time (being not less than 28 days from the publication of the notice) as is specified in the notice.
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Division 4—Certificates of accreditation

76 Issue of certificate of accreditation

- (1) On accrediting an applicant under this Part VicRoads must allocate an accreditation number to the accredited person and issue a certificate of accreditation that—
 - (a) is in the form approved by VicRoads; and
 - (b) sets out—
 - (i) the accreditation number allocated to the accredited person; and
 - (ii) the name of the holder of the accreditation; and
 - (iii) the address of the holder of the accreditation; and
 - (iv) the kind of accreditation; and
 - (v) any conditions to which the accreditation is subject; and
 - (vi) the date of expiry of the accreditation; and
 - (vii) any additional information that VicRoads considers appropriate.
 - (2) On accrediting an applicant under this Part VicRoads must also give the accredited person a copy of the service standards applicable to the accreditation.
 - (3) VicRoads may, on the application of the accredited person accompanied by the fee (if any) determined by VicRoads under section 213, issue a replacement certificate of accreditation if VicRoads is satisfied (whether on the production of a statutory declaration or otherwise) that the certificate last issued to the accredited person has been lost, stolen or destroyed.
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- (4) A person who has made an application under subsection (3) on the ground that a certificate has been lost or stolen and who subsequently recovers the lost or stolen certificate must, within 14 days after the day on which the certificate is recovered—
- (a) notify VicRoads of the recovery; and
 - (b) return the recovered certificate to VicRoads unless informed by VicRoads that it is not necessary to do so.

Penalty: 20 penalty units.

77 Offence not to notify of change of address and return certificate

If the holder of an accreditation under this Part changes address, the holder must, within 7 days of changing address—

- (a) notify VicRoads of the change to the holder's address; and
- (b) return the certificate of accreditation to VicRoads and apply to VicRoads to amend the certificate to reflect the change of address or to issue a replacement certificate.

Penalty: 20 penalty units.

78 Offence to retain illegible certificate

If the certificate of accreditation of the holder of an accreditation under this Part becomes illegible or is altered or defaced, the holder must return the certificate to VicRoads and apply for the issue of a replacement certificate within 7 days of becoming aware that the certificate has become illegible or has been altered or defaced.

Penalty: 20 penalty units.

Division 5—Disciplinary action

79 When VicRoads must cancel accreditation

If VicRoads becomes aware that the holder of an accreditation under this Part or a nominated person or relevant person in relation to the holder of accreditation has been found guilty of an offence listed in clause 1 of Schedule 1, VicRoads must cancel the accreditation.

Note

A person whose accreditation has been cancelled under this section may apply to VCAT under section 87.

80 When VicRoads may take disciplinary action

- (1) VicRoads may take disciplinary action against an accredited person in respect of an accreditation held by that person under this Part if satisfied—
 - (a) that the accredited person or the nominated person or a relevant person in relation to the accredited person has contravened a provision of this Act or regulations made under this Act; or
 - (b) that the accredited person has contravened—
 - (i) a condition of the accredited person's accreditation; or
 - (ii) a service standard applicable to the accredited person's accreditation; or
 - (c) that the accredited person or the nominated person or a relevant person in relation to the accredited person has committed an offence listed in clause 2 or 3 of Schedule 1; or
 - (d) that the accredited person or the nominated person or a relevant person in relation to the accredited person has contravened a condition of any tow truck licence held by

the accredited person, the nominated person or the relevant person; or

(e) that the action is appropriate having regard to the industry accreditation objective.

(2) If a matter has been referred to VicRoads from VCAT under section 87(2)(b)(ii), VicRoads may take disciplinary action against the accredited person in respect of an accreditation held by that person under this Part.

81 Disciplinary action that may be taken in relation to accreditations

(1) If VicRoads decides under section 80 to take disciplinary action against an accredited person in respect of an accreditation held by that person under this Part, VicRoads may take one or more of the following actions (*disciplinary action*)—

(a) cancel the accreditation and disqualify the holder from applying for an accreditation under this Part for a period not exceeding 5 years;

(b) suspend the accreditation for a period not exceeding one year;

(c) if the accreditation is already suspended—

(i) cancel the accreditation and disqualify the holder from applying for an accreditation under this Part for a period not exceeding 5 years; or

(ii) suspend the accreditation for an additional period not exceeding one year;

(d) impose a new condition on, or vary a condition on, the accreditation;

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- (e) direct the person or a relevant person in relation to the person, to undertake particular training;
 - (f) warn the holder of the accreditation that more serious action may be taken in the future if the holder repeats the behaviour;
 - (g) reprimand the holder of the accreditation.
- (2) If an accredited person holds more than one kind of accreditation under this Part, VicRoads may take action in relation to any one or more of the accreditations.

82 Procedure for taking disciplinary action

- (1) If VicRoads is considering taking disciplinary action against a person under section 80, VicRoads must serve on that person a notice (a *disciplinary notice*) that—
- (a) states the action being considered by VicRoads (including any possible period of suspension or disqualification from applying for accreditation under this Part); and
 - (b) if the accredited person holds more than one kind of accreditation under this Part, states the accreditation or accreditations to which the possible action would relate; and
 - (c) states the grounds as to why VicRoads is considering taking action; and
 - (d) invites the person to make a written submission within a stated period as to why such action should not be taken.
- (2) For the purposes of subsection (1)(d), the period stated in the disciplinary notice must be a period of at least 28 days after the day on which the disciplinary notice is served on the accredited person.

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- (3) If the person that VicRoads is considering taking disciplinary action against provides a written submission to VicRoads within the period stated in the disciplinary notice, VicRoads must consider the written submission before making any decision to take disciplinary action against that person.

83 Notice of disciplinary action

VicRoads must, as soon as practicable, serve written notice on the person accredited under this Part of any decision to take, or not to take, disciplinary action and, if the decision is to take disciplinary action, of—

- (a) the disciplinary action being taken; and
- (b) the date, which must not be earlier than 7 days after the day on which the notice under this section is served, on which any disciplinary action takes effect.

84 Immediate suspension of accreditation

- (1) Despite section 82, VicRoads may suspend an accreditation under this Part without serving a disciplinary notice if VicRoads believes on reasonable grounds that it is in the public interest having regard to the industry accreditation objective, that the accreditation held by the person be suspended before a decision is made to take disciplinary action in relation to the person.
 - (2) If VicRoads has decided to suspend an accreditation under subsection (1), VicRoads must serve on the person a notice (an *immediate suspension notice*) suspending the accreditation.
 - (3) An immediate suspension notice must set out the reasons for the suspension.
 - (4) A suspension under this section has effect on the service of the immediate suspension notice.
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- (5) If accreditation under this Part has been suspended under subsection (1), the suspension ceases to have effect—
- (a) if a decision is made to take disciplinary action under section 80, on the coming into effect of the disciplinary action; or
 - (b) if VicRoads reinstates the accreditation, on the date of the re-instatement; or
 - (c) if—
 - (i) a disciplinary notice has not been served on the person; and
 - (ii) the accreditation of the person has not been reinstated—within 14 days of service of the immediate suspension notice, on the day immediately following the expiry of that period.

85 Effect of suspension of accreditation

During the period of a suspension of accreditation under this Part, the person who is the subject of the suspension is taken—

- (a) not to hold an accreditation of the kind that has been suspended; and
- (b) to be disqualified from applying for an accreditation under this Part.

86 Return of certificate of accreditation

- (1) The holder of a cancelled or suspended accreditation under this Part must, no later than 7 days after the cancellation or suspension takes effect—
 - (a) return the certificate of accreditation to VicRoads; or

- (b) if the certificate has been lost, stolen or destroyed, give VicRoads a statement, verified by a statutory declaration signed by or on behalf of the holder, that the certificate has been lost, stolen or destroyed.

Penalty: 20 penalty units.

- (2) If a person's accreditation under this Part is suspended and the period of accreditation has not expired when the suspension ends, VicRoads must return the certificate of accreditation to the person once the suspension ends.

Division 6—VCAT review and jurisdiction

87 Original jurisdiction of VCAT in relation to mandatory refusal or cancellation

- (1) A person—
- (a) whose application for accreditation under section 59 is refused on a ground set out in section 66(1)(a) or 66(1)(b); or
 - (b) whose accreditation is cancelled under section 79—

may apply to VCAT for an order under subsection (2).

- (2) On an application under subsection (1) VCAT may—
- (a) in the case of an application under subsection (1)(a)—
 - (i) direct VicRoads to accredit the applicant; or
 - (ii) refer the matter to VicRoads to consider whether the application for accreditation should be approved despite section 66(1)(a) or 66(1)(b); or

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- (b) in the case of an application under subsection (1)(b)—
- (i) direct VicRoads to reinstate the accreditation of the applicant; or
 - (ii) refer the matter to VicRoads to consider whether disciplinary action should be taken against the applicant under section 80; or
- (c) in any case, dismiss the application.
- (3) VCAT must not make an order directing VicRoads to accredit an applicant under subsection (2)(a)(i) unless VCAT is satisfied that—
- (a) the issuing of accreditation is appropriate having regard to the industry accreditation objective; and
 - (b) the applicant is suitable to be accredited; and
 - (c) the applicant has complied with the application requirements under this Part.
- (4) VCAT must not make an order directing VicRoads to reinstate the accreditation of the applicant under subsection (2)(b)(i) unless VCAT is satisfied that—
- (a) accreditation is appropriate having regard to the industry accreditation objective; and
 - (b) the applicant is suitable to be accredited.
- (5) In making an order under subsection (2) in a matter involving an offence listed in clause 1 of Schedule 1 VCAT may have regard to—
- (a) any matter referred to in section 68(4)(a) to 68(4)(i); and
 - (b) any other matter that VCAT considers relevant.
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88 Review of decision by VCAT

- (1) Subject to subsection (2), a person affected by a decision of VicRoads under this Part—
 - (a) to refuse an application under this Part to grant or renew accreditation; or
 - (b) to impose a condition on an accreditation under this Part; or
 - (c) to vary or revoke a condition on an accreditation under this Part; or
 - (d) to suspend or cancel an accreditation under this Part; or
 - (e) to disqualify the person from applying for accreditation under this Part—

may apply to VCAT for review of that decision.

- (2) Subsection (1) does not apply to a decision made by VicRoads under section 66 or 79.

89 Time period for making application to VCAT

- (1) An application under section 87(1) must be made within 28 days after the day on which the decision of VicRoads is made.
- (2) An application for review under section 88(1) must be made within 28 days after the later of—
 - (a) the day on which the decision of VicRoads is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Division 7—Miscellaneous

90 Accredited person to keep records

- (1) A person who holds a towing operator accreditation must—
- (a) record and maintain all information relating to complaints made in relation to the holder of the accreditation; and
 - (b) if requested by VicRoads, provide information to VicRoads about complaints that the holder of the accreditation is aware of that have been made in relation to the holder of the accreditation.

Penalty: In the case of a natural person,
30 penalty units;

In the case of a body corporate,
150 penalty units.

- (2) A person who holds a towing depot manager accreditation must, in relation to the accident towing service business carried on at the depot—
- (a) manage the record-keeping and maintenance of all information relating to complaints made in relation to the business; and
 - (b) if requested by VicRoads, provide information to VicRoads in relation to complaints made in relation to the business.

Penalty: In the case of a natural person,
30 penalty units;

In the case of a body corporate,
150 penalty units.

91 Accreditation cannot be transferred

- (1) An accreditation under this Part—
 - (a) is personal to the person who holds it; and
 - (b) is not capable of being transferred or assigned to any other person or of being otherwise dealt with by the person who holds it; and
 - (c) does not vest by operation of law in any other person.
- (2) A purported transfer, assignment or lease of an accreditation and any other purported dealing with an accreditation by the person who holds it is of no effect.
- (3) The holder of an accreditation must not purport to transfer or assign the accreditation to any other person or otherwise purport to deal with it.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (4) This section does not apply to the surrender of an accreditation in accordance with this Part.

92 Holder of accreditation and Chief Commissioner of Police to notify VicRoads of finding of guilt

- (1) If the holder of an accreditation under this Part or a nominated person or a relevant person in relation to the accredited person is found guilty of an offence listed in clause 1 or 2 of Schedule 1, the holder must notify VicRoads of the finding of guilt within 7 days of the holder being found guilty or of becoming aware that the nominated person or relevant person has been found guilty.

Penalty: 60 penalty units.

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- (2) If the holder of accreditation under this Part or a nominated person or a relevant person in relation to the accredited person is charged with an offence listed in clause 1 or 2 of Schedule 1, the holder must notify VicRoads of the charge within 7 days of the holder being so charged or of becoming aware that the nominated person or relevant person has been so charged.

Penalty: 60 penalty units.

- (3) Subsections (1) and (2) do not require a person to give to VicRoads any details that have already been provided to VicRoads by the person.
- (4) The Chief Commissioner of Police may, in accordance with processes agreed on with VicRoads, notify VicRoads of any relevant findings of guilt in relation to an accredited person and of any relevant findings of guilt in relation to any nominated person and any relevant person in relation to the accredited person.

93 Offence not to notify of suspension or cancellation of accreditation

If the holder of an accreditation under this Part employs or engages any person to drive a licensed tow truck, the holder of the accreditation must notify the driver of any suspension or cancellation of the holder's accreditation under this Part within 7 days of receiving notice of the suspension or cancellation.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

94 Surrender of accreditation

- (1) An accredited person under this Part, other than a person whose accreditation has been suspended, may apply in writing to VicRoads for consent to the surrender of the accreditation.
- (2) An application under subsection (1) must be accompanied by the certificate of accreditation unless—
 - (a) the certificate has already been returned to VicRoads; or
 - (b) the certificate has been lost, stolen or destroyed.
- (3) If subsection (2)(b) applies, the application must be accompanied by a statement, verified by a statutory declaration signed by or on behalf of the accredited person, that the certificate has been lost, stolen or destroyed.

95 Consent to surrender

- (1) If an application is made under section 94, VicRoads must consent to the surrender unless VicRoads is taking, or proposing to take, action to cancel or suspend the accreditation.
- (2) VicRoads may impose any condition on the consent to surrender that VicRoads considers reasonably necessary to protect the interests of a third party.
- (3) If VicRoads consents to the surrender of an accreditation under subsection (1) and imposes a condition on the consent, the person to whom the condition applies must comply with the condition.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

96 Information disclosure by VicRoads

- (1) VicRoads may, if it considers it necessary for the provision of safe accident towing services, disclose to any other person information obtained or collected by VicRoads in the performance or exercise of its functions or powers under this Part.
 - (2) VicRoads may, if it considers it desirable for the provision of safe tow truck services, publish any information referred to in subsection (1).
 - (3) A publication under subsection (2) must not identify any person.
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PART 4—DRIVER ACCREDITATION

Division 1—Objective and requirement for accreditation

97 Driver accreditation objective

The driver accreditation objective is the objective that drivers of tow trucks—

- (a) provide safe and convenient services to persons using the tow trucks and other persons, particularly persons involved in road accidents; and
- (b) are technically competent to drive the relevant tow truck and provide the relevant services; and
- (c) are of appropriate character; and
- (d) when providing the services, act with integrity and in a manner that is safe, timely, efficient, responsible and law abiding.

98 Offence to drive licensed tow truck or tow truck providing accident towing services without accreditation

- (1) A person must not drive or accompany the driver of a licensed tow truck or a tow truck that is being driven for the purpose of providing accident towing services unless the person holds a tow truck driver accreditation.

Penalty: 60 penalty units.

- (2) The holder of a tow truck driver accreditation must not allow a person to—
 - (a) drive a licensed tow truck or a tow truck that is being driven for the purpose of providing accident towing services and that is a tow truck that is apparently under the care and control of the holder of the accreditation; or

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- (b) accompany the holder when he or she is driving a licensed tow truck, or a tow truck that is being driven for the purpose of providing accident towing services—

unless that person holds a tow truck driver accreditation.

Penalty: 60 penalty units.

- (3) Subsections (1) and (2) do not apply to—

- (a) a person who was the driver of, or a passenger in, an accident damaged motor vehicle at the time of the road accident, who—
- (i) accompanies the driver of the tow truck that is towing the accident damaged motor vehicle from the road accident scene; and
 - (ii) if required, accompanies the driver of the tow truck after the accident damaged motor vehicle has been towed, for the purpose of being driven to the person's home or other convenient place; or
- (b) a person who was the driver of, or a passenger in, a motor vehicle at the time the motor vehicle was damaged in a road accident who accompanies the driver of the tow truck if—
- (i) the accident damaged motor vehicle is outside a controlled area; and
 - (ii) the tow truck is travelling to the accident damaged motor vehicle for the purpose of towing it.

- (c) any person who is repairing, maintaining or testing a tow truck, as long as that person is not driving the tow truck to or from a road accident scene.

99 VicRoads to accredit persons to drive licensed tow truck and accompany driver

VicRoads may accredit a person to drive or accompany the driver of a licensed tow truck or a tow truck that is being driven for the purpose of providing accident towing services.

100 How long accreditation remains in force

- (1) A tow truck driver accreditation remains in force for 3 years or until the accreditation is cancelled or surrendered, whichever is the sooner.
- (2) The period of accreditation must be specified in the certificate of accreditation.

Division 2—Application for accreditation

101 Applications for tow truck driver accreditation

A person may apply to VicRoads for the grant or renewal of a tow truck driver accreditation.

102 Making of application

- (1) An application under section 101 must—
- (a) be made in the manner and form determined by VicRoads; and
- (b) include the name and address of the applicant; and
- (c) be accompanied by—
- (i) the fee (if any) for the application determined in accordance with section 213; and
- (ii) any information or thing required by VicRoads.

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- (2) For the purposes of subsection (1), any information or thing that VicRoads requires to accompany an application or to be included in the application must be limited to any information or thing VicRoads reasonably requires in order to assess the application.

103 VicRoads may require further information

VicRoads may require an applicant to—

- (a) supply further information or things as specified by VicRoads that VicRoads reasonably requires in order to assess the application;
- (b) verify, in the manner and form determined by VicRoads, the information or thing supplied for the purpose of the application;
- (c) sign the application or provide a signature to VicRoads that can be digitised;
- (d) supply a photograph or digitised image of the applicant to VicRoads or submit to be photographed by VicRoads.

104 Chief Commissioner of Police may supply information to VicRoads

The Chief Commissioner of Police may, in accordance with the processes agreed on with VicRoads, notify VicRoads of any relevant findings of guilt in relation to an applicant for accreditation under this Part.

105 Time within which VicRoads must deal with application

- (1) Subject to this section, VicRoads must decide whether to approve or refuse an application for accreditation under this Part within 30 days after receiving the application.

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- (2) VicRoads may, before the expiry of the period specified in subsection (1), decide to extend the period within which it may decide whether to approve or refuse an application if VicRoads requires the applicant to supply further information or things.
 - (3) If VicRoads decides under subsection (2) to extend the period within which it may decide whether to approve or refuse an application, VicRoads must notify the applicant in writing of that decision and the new period within which VicRoads intends to make its decision whether to approve or refuse the application.

106 When VicRoads may approve an application for accreditation

VicRoads may approve an application for accreditation under this Part, with or without imposing conditions, if—

- (a) the application has not been refused under section 107, 108 or 109; and
- (b) VicRoads is satisfied that—
 - (i) the applicant has complied with the application requirements under this Part; and
 - (ii) the applicant is technically competent and sufficiently fit and healthy to be able to provide the service to which the accreditation relates; and
 - (iii) the issuing of accreditation is appropriate having regard to the driver accreditation objective.

107 Mandatory refusal of accreditation

- (1) VicRoads must refuse an application under section 101 if VicRoads believes on reasonable grounds that the applicant—
- (a) does not hold a driver licence under the **Road Safety Act 1986**; or
 - (b) subject to subsection (2), has been found guilty of an offence listed in clause 1 of Schedule 2; or
 - (c) is disqualified under section 111 or 125 from applying for accreditation under this Part.

Note

Section 132 provides if VicRoads has refused an application under paragraph (b) or (c) the applicant may make an application to the original jurisdiction of VCAT for an order that VicRoads grant or renew accreditation under this Part.

- (2) Subsection (1)(b) does not apply to the renewal of an accreditation under this Part if the offence listed in clause 1 of Schedule 2, which the applicant was found guilty of, was considered—
- (a) in any previous application by the applicant for accreditation or renewal under this Part; or
 - (b) in any disciplinary proceedings under this Part against the applicant.

108 Refusal of accreditation unless VicRoads satisfied it is appropriate

VicRoads must refuse an application under section 101 if VicRoads believes on reasonable grounds that the applicant has been found guilty of an offence listed in clause 2 of Schedule 2, unless VicRoads is satisfied that the applicant has demonstrated that the issue of accreditation is

appropriate having regard to the driver accreditation objective.

109 Discretionary refusal of accreditation

- (1) VicRoads may refuse an application for accreditation under section 101 if VicRoads—
 - (a) is aware that the applicant has been found guilty of an offence listed in clause 3 of Schedule 2; or
 - (b) is aware that the applicant is subject to a charge for an offence listed in Schedule 2 that has not been finally disposed of at the time of considering the application.
- (2) VicRoads may refuse an application for accreditation referred to it by VCAT under section 132(2)(a)(ii) if VicRoads is not satisfied as to the matters set out in section 106(b).
- (3) In exercising a discretion under this section in relation to an offence, VicRoads must have regard to—
 - (a) the nature and gravity of the offence or alleged offence and its relevance to the activities in respect of which accreditation is sought; and
 - (b) the period of time since the offence or alleged offence was committed or was alleged to have been committed; and
 - (c) if there has been a finding of guilt or a conviction, whether the finding of guilt or the conviction was recorded; and
 - (d) if there has been a finding of guilt or a conviction, the sentence (if any) imposed for the offence; and

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- (e) the age of the applicant when the offence or alleged offence was committed or was alleged to have been committed; and
 - (f) if there has been a finding of guilt or a conviction, whether or not the conduct that constituted the offence has been decriminalised since the offence was committed; and
 - (g) the behaviour of the applicant since committing the offence or since the offence was alleged to have been committed; and
 - (h) the likelihood of the applicant committing an offence in the future, in particular, any future threat to persons involved in accidents or the owners of accident damaged motor vehicles; and
 - (i) any information given by the applicant; and
 - (j) any other matter that VicRoads considers relevant.

110 Notification and reasons to be given if accreditation refused

- (1) If an application for accreditation is refused under section 107(1)(b) or 107(1)(c), VicRoads must notify the applicant for accreditation under this Part—
 - (a) of the decision; and
 - (b) that the applicant has a right to apply to VCAT under section 132.
- (2) If an application for accreditation is refused under section 107(1)(a), VicRoads must notify the applicant for accreditation under this Part of the decision.

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- (3) If VicRoads decides to refuse to accredit an applicant for accreditation under section 108 or 109, VicRoads must—
- (a) notify the applicant—
 - (i) of the decision; and
 - (ii) that the applicant has a right to seek review under section 133; and
 - (b) give the applicant a statement of reasons for the decision.
- (4) A notification and a statement of reasons under this section must be—
- (a) made in writing; and
 - (b) given to the applicant as soon as practicable after the application is refused.

111 Disqualification from applying for accreditation

- (1) If an application for a tow truck driver accreditation is refused under this Part, VicRoads may, having regard to the driver accreditation objective, determine that the applicant is disqualified from applying for a tow truck driver accreditation for the period determined by VicRoads.
- (2) The period determined by VicRoads under subsection (1) must not exceed 5 years.
- (3) In making a determination under subsection (1), if the applicant has been found guilty of an offence listed in Schedule 2, VicRoads must have regard to the circumstances set out in section 109(3).

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- (4) If VicRoads disqualifies an applicant under subsection (1) VicRoads must, as soon as reasonably practicable—
- (a) notify the applicant for accreditation under this Part in writing; and
 - (b) set out in the notice—
 - (i) the period of disqualification; and
 - (ii) VicRoads' reasons for disqualifying the applicant for that period.

Note

A person who has been disqualified under this Part may apply to VCAT for review of this decision: see section 133.

112 Disqualification ceases if there has been a relevant change of circumstances

- (1) If there has been a relevant change of circumstances in relation to a person who has been disqualified from applying for tow truck driver accreditation, that person may apply in writing to VicRoads for a declaration that the disqualification ceases to have effect.

Note

This applies to any disqualification made by VicRoads under this Part, see sections 111 and 125.

- (2) If an application is made to VicRoads under subsection (1) and VicRoads is satisfied that there has been a relevant change of circumstances in relation to the applicant, VicRoads must declare that the disqualification in relation to the applicant ceases to have effect.

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- (3) In this section a *relevant change of circumstances* includes where—
- (a) a finding of guilt of the person is quashed or set aside by a court after the date of the disqualification; or
 - (b) a finding on which the decision to disqualify the person was based is quashed or set aside after the date of the disqualification.

Division 3—Accreditation conditions

113 Conditions on accreditation

- (1) VicRoads may impose conditions on a tow truck driver accreditation either—
 - (a) on issuing or renewing the accreditation; or
 - (b) from time to time during the course of an accreditation.
- (2) In considering whether or not to impose conditions on an accreditation, VicRoads must have regard to the driver accreditation objective and the conditions imposed may include conditions intended to improve the safety and convenience of people involved in road accidents.

114 VicRoads may vary, revoke or impose new conditions

- (1) VicRoads may from time to time on its own initiative or on the written application of the holder of the tow truck driver accreditation—
 - (a) vary or revoke a condition imposed by it on the accreditation; or
 - (b) impose a new condition on the accreditation.

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- (2) If VicRoads decides on its own initiative to take action under subsection (1), VicRoads must—
- (a) give the holder of the tow truck driver accreditation written notice of the action that VicRoads is considering taking; and
 - (b) allow the holder of the tow truck driver accreditation to make written submissions about the intended action within 10 business days of receiving the notice (or any other period that VicRoads and the accredited person agree on); and
 - (c) consider any submission that was made by the holder of the tow truck driver accreditation within the period set out in paragraph (b).
- (3) Subsection (2) does not apply if VicRoads considers it necessary to take immediate action in the interests of public safety.
- (4) VicRoads must, in writing—
- (a) give to the holder of the tow truck driver accreditation—
 - (i) details of any action taken under subsection (1); and
 - (ii) a statement of reasons for any action taken under subsection (1); and
 - (b) notify the holder of the tow truck driver accreditation that the person has a right to seek review of VicRoads' decision under section 133.

115 Offence to fail to comply with conditions

The holder of a tow truck driver accreditation must comply with any conditions on the accreditation.

Penalty: 20 penalty units.

Division 4—Certificates of accreditation

116 Issue of certificate of accreditation

- (1) On accrediting an applicant under this Part VicRoads must allocate an accreditation number to the accredited person and issue a certificate of accreditation that—
 - (a) is in the form approved by VicRoads; and
 - (b) includes a photograph or digitised image of the accredited person in a form and size approved by VicRoads; and
 - (c) sets out—
 - (i) the accreditation number allocated to the accredited person; and
 - (ii) the name and address of the holder of the accreditation; and
 - (iii) the type of tow truck the holder is accredited to drive; and
 - (iv) any conditions to which the accreditation is subject; and
 - (v) the date of expiry of the accreditation; and
 - (vi) any additional information that VicRoads considers appropriate.
- (2) VicRoads may, on the application of the accredited person accompanied by the fee (if any) determined by VicRoads under section 213, issue a replacement certificate of accreditation if VicRoads is satisfied (whether on the production of a statutory declaration or otherwise) that the certificate last issued to the accredited person has been lost, stolen or destroyed.

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- (3) A person who has made an application under subsection (2) on the ground that a certificate has been lost or stolen and who subsequently recovers the lost or stolen certificate must, within 14 days after the day on which the certificate is recovered—
- (a) notify VicRoads of the recovery; and
 - (b) return the recovered certificate to VicRoads unless informed by VicRoads that it is not necessary to do so.

Penalty: 10 penalty units.

117 Offence not to sign certificate on receipt

If a certificate of accreditation issued under section 116 does not contain a digitised signature of the holder of the tow truck driver accreditation, the holder must, on receiving the certificate of accreditation, sign the certificate.

Penalty: 10 penalty units.

118 Offence not to notify of change of address and return certificate

If the holder of an accreditation under this Part changes address, the holder must, within 7 days of changing address—

- (a) notify VicRoads of the change to the holder's address; and
- (b) return the certificate of accreditation to VicRoads and apply to VicRoads to amend the certificate to reflect the change of address or to issue a replacement certificate.

Penalty: 10 penalty units.

119 Offence to retain illegible certificate

If the certificate of accreditation of the holder of a tow truck driver accreditation becomes illegible or is altered or defaced, the holder must return the certificate to VicRoads and apply for the issue of a replacement certificate within 7 days of becoming aware that the certificate has become illegible or has been altered or defaced.

Penalty: 10 penalty units.

120 Offence not to carry certificate when driving

If the holder of a tow truck driver accreditation is driving a tow truck in circumstances in which he or she is required under this Part to have the accreditation, he or she must carry his or her certificate of accreditation.

Penalty: 15 penalty units.

121 Offence not to produce certificate when asked

The holder of a tow truck driver accreditation must produce his or her certificate of accreditation if—

- (a) he or she is driving a tow truck in circumstances in which he or she is required under this Part to be accredited; and
- (b) the holder of accreditation is asked to produce the certificate by—
 - (i) an authorised officer; or
 - (ii) a member of the force; or
 - (iii) the owner or driver of an accident damaged motor vehicle that is being, or is about to be, towed by the holder of the accreditation.

Penalty: 15 penalty units.

Division 5—Disciplinary action

122 When VicRoads must cancel accreditation

If VicRoads becomes aware that the holder of a tow truck driver accreditation has been found guilty of an offence listed in clause 1 of Schedule 2, VicRoads must cancel the accreditation.

Note

A person whose accreditation has been cancelled under this section may apply to VCAT under section 132.

123 Accreditation cancelled or suspended if driver licence cancelled, expired or suspended

- (1) If the driver licence of a holder of a tow truck driver accreditation expires or is cancelled under the **Road Safety Act 1986**, the holder's tow truck driver accreditation is taken to be cancelled.
- (2) If the driver licence of a holder of a tow truck driver accreditation is suspended under the **Road Safety Act 1986**, the holder's tow truck driver accreditation is taken to be suspended for the period of time for which the driver licence remains suspended.

124 When VicRoads may take disciplinary action

- (1) VicRoads may take disciplinary action against an accredited person in respect of a tow truck driver accreditation held by that person if satisfied—
 - (a) that the accredited person has contravened—
 - (i) a provision of this Act or regulations made under this Act; or
 - (ii) a condition of the accredited person's accreditation; or

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- (b) that the accredited person has committed an offence listed in clause 2 or 3 of Schedule 2; or
 - (c) that the accredited person has caused the contravention of a condition of a tow truck licence issued in respect of a tow truck driven by the accredited person; or
 - (d) that the action is appropriate having regard to the driver accreditation objective.
- (2) If a matter has been referred to VicRoads from VCAT under section 132(2)(b)(ii), VicRoads may take disciplinary action against the accredited person in respect of an accreditation held by that person under this Part.

125 Disciplinary action that may be taken in relation to accreditations

If VicRoads decides under section 124 to take disciplinary action against an accredited person in respect of a tow truck driver accreditation held by that person, VicRoads may take one or more of the following actions (*disciplinary action*)—

- (a) cancel the accreditation and disqualify the holder from applying for a tow truck driver accreditation for a period not exceeding 5 years;
 - (b) suspend the accreditation for a period not exceeding one year;
 - (c) if the accreditation is already suspended—
 - (i) cancel the accreditation and disqualify the holder from applying for a tow truck driver accreditation for a period not exceeding 5 years; or
 - (ii) suspend the accreditation for an additional period not exceeding one year;
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- (d) impose a new condition on, or vary a condition on, the accreditation;
 - (e) direct the person to undertake particular training;
 - (f) warn the holder of the accreditation that more serious action may be taken in the future if the holder repeats the behaviour;
 - (g) reprimand the holder of the accreditation.

126 Procedure for taking disciplinary action

- (1) If VicRoads proposes to take disciplinary action against a person under section 124, VicRoads must serve on that person a notice (a *disciplinary notice*) that—
 - (a) states the action being considered by VicRoads (including any possible period of suspension or disqualification from applying for a tow truck driver accreditation); and
 - (b) states the grounds as to why VicRoads is considering taking action; and
 - (c) invites the person to make a written submission within a stated period as to why such action should not be taken.
 - (2) For the purposes of subsection (1)(c), the period stated in the disciplinary notice must be a period of at least 28 days after the day on which the disciplinary notice is served on the accredited person.
 - (3) If the person that VicRoads is considering taking disciplinary action against provides a written submission to VicRoads within the period stated in the disciplinary notice, VicRoads must consider the written submission before making any decision to take disciplinary action against that person.
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127 Notice of disciplinary action

VicRoads must, as soon as practicable, serve written notice on the holder of a tow truck driver accreditation of any decision to take, or not to take, disciplinary action and, if the decision is to take disciplinary action, of—

- (a) the disciplinary action being taken; and
- (b) the date, which must not be earlier than 7 days after the day on which the notice under this section is served, on which any disciplinary action takes effect.

128 Immediate suspension of accreditation

- (1) Despite section 127, VicRoads may suspend a tow truck driver accreditation without serving a disciplinary notice if VicRoads believes on reasonable grounds that it is in the public interest, having regard to the driver accreditation objective, that the accreditation held by the person be suspended before a decision is made to take disciplinary action in relation to the person.
 - (2) VicRoads, on being satisfied that the holder of a tow truck driver accreditation—
 - (a) has been charged with an offence listed in clause 1 of Schedule 2 and the charge has not been finally disposed of, must suspend the accreditation;
 - (b) has been charged with an offence listed in clause 2 or 3 of Schedule 2 and the charge has not been finally disposed of, may suspend the accreditation.
 - (3) If VicRoads has decided to suspend an accreditation under subsection (1) or (2), VicRoads must serve on the person a notice (an *immediate suspension notice*) suspending the accreditation.
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- (4) An immediate suspension notice must set out the reasons for the suspension.
- (5) A suspension under this section has effect on the service of the immediate suspension notice.
- (6) If a tow truck driver accreditation has been suspended under this section, the suspension ceases to have effect—
- (a) if a decision is made to take disciplinary action under section 124, on the coming into effect of the disciplinary action; or
 - (b) if VicRoads reinstates the accreditation, on the date of the re-instatement; or
 - (c) if—
 - (i) a disciplinary notice has not been served on the accredited person; and
 - (ii) the accreditation of the person has not been reinstated—within 14 days of service of the immediate suspension notice, on the day immediately following the expiry of that period.
- (7) If a tow truck driver accreditation has been suspended under subsection (2), the suspension ceases to have effect—
- (a) if the person charged with the offence is found not guilty or the charge is withdrawn or discharged, on the date of that finding, withdrawal or discharge; or
 - (b) if VicRoads re-instates the accreditation, on the date of the re-instatement; or
 - (c) if the person is found guilty of the charge, once VicRoads has made a decision as to the action to be taken under section 125.
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129 Effect of suspension of accreditation

During the period of a suspension of tow truck driver accreditation, the person who is the subject of the suspension is taken—

- (a) not to hold a tow truck driver accreditation; and
- (b) to be disqualified from applying for a tow truck driver accreditation.

130 Return of certificate of accreditation

(1) The holder of a cancelled or suspended tow truck driver accreditation must, no later than 7 days after the cancellation or suspension takes effect—

- (a) return the certificate of accreditation to VicRoads; or
- (b) if the certificate has been lost, stolen or destroyed, give VicRoads a statement, verified by a statutory declaration signed by or on behalf of the holder, that the certificate has been lost, stolen or destroyed.

Penalty: 15 penalty units.

(2) If a person's accreditation is suspended and the period of accreditation has not expired when the suspension ends, VicRoads must return the certificate of accreditation to the person once the suspension ends.

131 Compensation for lost income during suspension

(1) A person whose accreditation has been suspended under section 128(2) may apply to VicRoads for a determination of compensation for any income lost during the period of suspension if—

- (a) the person is found not guilty of the offence for which the accreditation has been suspended; or

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- (b) the charge for which the accreditation has been suspended is withdrawn or discharged.
 - (2) An application under subsection (1) must be—
 - (a) made in writing; and
 - (b) made in the form approved by VicRoads; and
 - (c) accompanied by any information or thing required by VicRoads.
 - (3) On receiving an application under subsection (1), VicRoads may determine the amount of compensation to which the person is entitled.
 - (4) An amount determined by VicRoads under subsection (3) may be recovered as a debt owed by the Crown to the holder of the accreditation.

Division 6—VCAT review and jurisdiction

132 Original jurisdiction of VCAT in relation to mandatory refusal

- (1) A person—
 - (a) whose application for accreditation under section 101 is refused on a ground set out in section 107(1)(b) or 107(1)(c); or
 - (b) whose accreditation is cancelled under section 122—may apply to VCAT for an order under subsection (2).
- (2) On an application under subsection (1) VCAT may—
 - (a) in the case of an application under subsection (1)(a)—
 - (i) direct VicRoads to accredit the applicant; or

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- (ii) refer the matter to VicRoads to consider whether the application for accreditation should be approved despite section 107(1)(b) or 107(1)(c); or
- (b) in the case of an application under subsection (1)(b)—
- (i) direct VicRoads to reinstate the accreditation of the applicant; or
- (ii) refer the matter to VicRoads to consider whether disciplinary action should be taken against the applicant under section 124; or
- (c) in any case, dismiss the application.
- (3) VCAT must not make an order directing VicRoads to accredit an applicant under subsection (2)(a)(i) unless VCAT is satisfied that—
- (a) the issuing of accreditation is appropriate having regard to the driver accreditation objective; and
- (b) the applicant is technically competent and sufficiently fit and healthy to be able to provide the service to which the accreditation relates; and
- (c) the applicant has complied with the application requirements under this Part.
- (4) VCAT must not make an order directing VicRoads to reinstate the accreditation of the applicant under subsection (2)(b)(i) unless VCAT is satisfied that—
- (a) accreditation is appropriate having regard to the driver accreditation objective; and
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- (b) the applicant is technically competent and sufficiently fit and healthy to be able to provide the service to which the accreditation relates.
 - (5) In making an order under subsection (2) in a matter involving an offence listed in clause 1 of Schedule 2 VCAT may have regard to—
 - (a) any matter referred to in section 109(3)(a) to 109(3)(i); and
 - (b) any other matter that VCAT considers relevant.

133 Review of decision by VCAT

- (1) Subject to subsection (2), a person affected by a decision of VicRoads under this Part—
 - (a) to refuse an application to grant or renew a tow truck driver accreditation; or
 - (b) to impose a condition on a tow truck driver accreditation; or
 - (c) to vary or revoke a condition on a tow truck driver accreditation; or
 - (d) to suspend or cancel a tow truck driver accreditation; or
 - (e) to disqualify the person from applying for accreditation under this Part—may apply to VCAT for review of that decision.
- (2) Subsection (1) does not apply to a decision made by VicRoads under section 107 or 122.

134 Time period for making application to VCAT

- (1) An application under section 132(1) must be made within 28 days after the day on which the decision of VicRoads is made.

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- (2) An application for review under section 133(1) must be made within 28 days after the later of—
- (a) the day on which the decision of VicRoads is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Division 7—Miscellaneous

135 Accreditation cannot be transferred

- (1) A tow truck driver accreditation—
- (a) is personal to the person who holds it; and
 - (b) is not capable of being transferred or assigned to any other person or otherwise dealt with by the person who holds it; and
 - (c) does not vest by operation of law in any other person.
- (2) A purported transfer, assignment or lease of an accreditation and any other purported dealing with an accreditation by the person who holds it is of no effect.
- (3) The holder of an accreditation must not purport to transfer or assign it to any other person or otherwise purport to deal with it.

Penalty: 30 penalty units.

- (4) This section does not apply to the surrender of an accreditation in accordance with this Part.

136 Holder of accreditation and Chief Commissioner of Police to notify of finding of guilt

- (1) If the holder of a tow truck driver accreditation is found guilty of an offence listed in clause 1 or 2 of Schedule 2, the holder must notify VicRoads of the finding of guilt within 7 days of the holder being found guilty.

Penalty: 5 penalty units.

- (2) If the holder of a tow truck driver accreditation is charged with an offence listed in clause 1 or 2 of Schedule 2, the holder must notify VicRoads of the charge within 7 days of the holder being so charged.

Penalty: 5 penalty units.

- (3) Subsections (1) and (2) do not require a person to give to VicRoads any details that have already been provided to VicRoads by the person.

- (4) The Chief Commissioner of Police may, in accordance with processes agreed on with VicRoads, notify VicRoads of any relevant findings of guilt in relation to an accredited person.

137 Offence not to notify of suspension or cancellation of accreditation

If the holder of a tow truck driver accreditation is employed or engaged by a person who holds a tow truck licence, the holder of the tow truck driver accreditation must notify the holder of the tow truck licence of any suspension or cancellation of his or her tow truck driver accreditation within 28 days of receiving notice of the suspension or cancellation.

Penalty: 5 penalty units.

138 Surrender of accreditation

- (1) An accredited person under this Part, other than a person whose accreditation has been suspended, may apply in writing to VicRoads for consent to the surrender of the accreditation.
- (2) An application under subsection (1) must be accompanied by the certificate of accreditation unless—
 - (a) the certificate has already been returned to VicRoads; or
 - (b) the certificate has been lost, stolen or destroyed.
- (3) If subsection (2)(b) applies, the application must be accompanied by a statement, verified by a statutory declaration signed by or on behalf of the accredited person, that the certificate has been lost, stolen or destroyed.

139 Consent to surrender

- (1) If an application is made in accordance with section 138, VicRoads must consent to the surrender unless VicRoads is taking, or proposing to take, action to cancel or suspend the accreditation.
- (2) VicRoads may impose any condition on the consent to surrender that VicRoads considers reasonably necessary to protect the interests of a third party.
- (3) If VicRoads consents to the surrender of an accreditation under subsection (1) and imposes a condition on the consent, the person to whom the condition applies must comply with the condition.

Penalty: 20 penalty units.

140 Information disclosure by VicRoads

- (1) VicRoads may, if VicRoads considers it necessary for the provision of safe accident towing services, disclose to any other person information obtained or collected by VicRoads in the performance or exercise of its functions or powers under this Part.
 - (2) VicRoads may, if it considers it desirable for the provision of safe accident towing services, publish any information referred to in subsection (1).
 - (3) A publication under subsection (2) must not identify any person.
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PART 5—GENERAL ACCIDENT TOWING AND RELATED OPERATIONS

Division 1—Authority to tow

141 Definitions

In this Part—

safe and convenient place means the place to which an accident damaged motor vehicle is towed following its removal in accordance with section 42(3) from a road accident scene located on a designated road;

owner includes the agent of an owner.

142 Offence to tow vehicle from road accident scene without owner authority

- (1) In the case of a road accident scene that is not on a designated road, a tow truck driver must not tow an accident damaged motor vehicle from the road accident scene without obtaining an authorisation to tow that vehicle—
 - (a) that is given by—
 - (i) the owner of the vehicle; or
 - (ii) the driver of the vehicle; or
 - (iii) a person as provided in subsection (3); and
 - (b) that is in writing in the prescribed form; and
 - (c) that is completed in accordance with subsection (4) and signed by the person giving the authorisation.

Penalty: 30 penalty units.

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- (2) In the case of a road accident scene that is on a designated road, a tow truck driver must not tow an accident damaged motor vehicle from a safe and convenient place without obtaining an authorisation to tow that vehicle—
- (a) that is given by—
 - (i) the owner of the vehicle; or
 - (ii) the driver of the vehicle; or
 - (iii) a person as provided in subsection (3);
and
 - (b) that is in writing in the prescribed form; and
 - (c) that is completed in accordance with subsection (4) and signed by the person giving the authorisation.

Penalty: 30 penalty units.

- (3) For the purposes of subsections (1)(a) and (2)(a), an authorisation may be given by a member of the force if the owner or driver of the accident damaged motor vehicle is absent from the road accident scene or the safe and convenient place, or is unable to give authorisation to tow due to incapacity.
- (4) For the purposes of subsections (1) and (2) an authorisation must be completed to provide the following information—
- (a) the name of, and tow truck driver accreditation number allocated under section 116 to, the driver of the tow truck;
and
 - (b) the address of the depot from which the tow truck operates; and

- (c) the name and address of the holder of the tow truck licence under which the tow truck operates; and
 - (d) the name and address of the place to which the motor vehicle is to be removed; and
 - (e) any other information required by regulations made under this Act.
- (5) Before obtaining the signature of the person giving the authorisation, the tow truck driver must ensure that the authorisation is completed in accordance with subsection (4).
- (6) An authorisation to tow an accident damaged motor vehicle from a road accident scene or a safe and convenient place given by a member of the force in accordance with subsection (3) is deemed to have been given by the owner of the accident damaged motor vehicle.
- (7) A member of the force who gives an authorisation in accordance with subsection (3) is not to be taken to have entered into any contract, whether as a member of the force, or on his or her own behalf or otherwise, with the tow truck driver or the holder of the tow truck licence for the tow truck to pay any fees or expenses incurred as a result of the towing of the accident damaged motor vehicle, merely because the member of the force has given the authorisation.

143 Authority to tow for towing in a controlled area

In addition to the information set out in section 142(4), a tow truck driver who is obtaining authorisation to tow an accident damaged motor vehicle from—

- (a) a road accident scene; or
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(b) a safe and convenient place—

located in a controlled area under a job number given by an allocation body must record the job number assigned to the road accident scene or the safe and convenient place on that authorisation.

Penalty: 50 penalty units.

144 Tow truck driver must provide copy of authority to tow to owner before towing the vehicle

Before towing an accident damaged motor vehicle under an authority to tow, the tow truck driver must give a copy of the authority to tow to the person who has given the authority.

Penalty: 30 penalty units.

145 Authority to tow to be carried and produced and job number to be given

(1) If an accident damaged motor vehicle is being towed in the course of providing an accident towing service, the driver of the tow truck that is towing the motor vehicle must have in the tow truck an authority to tow for that motor vehicle.

Penalty: 20 penalty units.

(2) The driver of a tow truck that is towing an accident damaged motor vehicle in the course of providing an accident towing service must, if requested to do so by a member of the force or an authorised officer—

(a) produce for inspection an authority to tow for the accident damaged motor vehicle being towed; and

(b) give details about the origin and destination of the accident damaged motor vehicle being towed; and

- (c) allow the member of the force or an authorised officer to inspect or examine the accident damaged motor vehicle being towed.

Penalty: 20 penalty units.

- (3) Subsections (1) and (2) do not apply to the towing of an accident damaged motor vehicle from a road accident scene on a designated road to a safe and convenient place.
- (4) The driver of a tow truck that is towing an accident damaged motor vehicle under a job number must give that job number to any member of the force or authorised officer who asks for the number.

Penalty: 20 penalty units.

146 Removal of accident damaged motor vehicles

The driver of a tow truck must ensure that an accident damaged motor vehicle that is towed under an authority to tow is taken to the place specified in the authority to tow.

Penalty: 30 penalty units.

Division 2—Offences at road accident scenes

147 Offence to seek repair work at road accident scene

A person must not offer, obtain or attempt to obtain from any other person at a road accident scene any form of authority or agreement (whether written or not) in relation to the preparation of a quotation in relation to, or the repairing of, an accident damaged motor vehicle at any time before the vehicle is stored at the address specified in the authority to tow.

Penalty: 60 penalty units.

148 Offence to tout or solicit for business for any vehicle at a road accident scene in a controlled area

- (1) A person must not contact any person at a road accident scene in a controlled area, to tout or solicit for any business that is in the nature of the following—
- (a) towing of accident damaged motor vehicles by regular tow trucks;
 - (b) storing of accident damaged motor vehicles;
 - (c) repairing of accident damaged motor vehicles.

Penalty: 60 penalty units.

- (2) A person must not offer, obtain or attempt to obtain from any other person at a road accident scene in a controlled area any form of authority or agreement (whether written or not) in relation to the towing or removal of an accident damaged motor vehicle by a regular tow truck from the road accident scene.

Penalty: 60 penalty units.

- (3) This section applies whether or not the person who is touting or soliciting or offering, obtaining or attempting to obtain an authority or agreement is doing so on his or her own behalf or on behalf of another person.

149 Exception for authorised tow truck drivers at road accident scenes

- (1) Despite section 148, a regular tow truck driver who is at a road accident scene in a controlled area may do any of the following—
- (a) approach the driver of an accident damaged motor vehicle, or other person authorised under this Part to sign an authority to tow for the vehicle, to—

- (i) offer to tow the vehicle; and
- (ii) offer, obtain or attempt to obtain an authority to tow for the vehicle;
- (b) enter, or offer to enter, into an agreement with a person to store an accident damaged motor vehicle at the specified depot of the tow truck.
- (2) Subsection (1) only applies if the tow truck driver has authorisation from the allocation body to attend that road accident scene.

Division 3—Storage of accident damaged motor vehicles

150 Storage of accident damaged motor vehicles

- (1) The holder of a tow truck licence for a tow truck that is towing an accident damaged motor vehicle under an authority to tow must ensure that the motor vehicle is towed to the place specified in the authority to tow and stored at a secure area at that place at all times unless—
 - (a) it is being returned to the owner of the motor vehicle; or
 - (b) it is being removed to another place with the written authority of the owner of the motor vehicle or other valid authority.

Penalty: 20 penalty units.

- (2) Without limiting subsection (1)(b), an accident damaged motor vehicle is removed pursuant to a valid authority if it is removed in compliance with a request by—
 - (a) a member of the force acting in the course of his or her duties; or

- (b) an insurer of the accident damaged motor vehicle acting with the consent of the owner; or
- (c) a person who has a secured or an unsecured interest in the accident damaged motor vehicle.

151 Provisions concerning damaged vehicle storage

- (1) If an accident damaged motor vehicle is being stored at a secure place in accordance with section 150, the holder of the tow truck licence—
 - (a) must, within 10 business days after the day the vehicle is towed to the place specified in the authority to tow, give the owner of the vehicle a written notice stating the amount of the storage charges that are owing at the date of the notice, the daily rate at which the charges are continuing to accumulate and the fact that those charges are continuing to accumulate; and
 - (b) must give the owner of the vehicle such a notice before the expiry of each period of 20 business days after the date of the issue of the first notice.

Penalty: 30 penalty units.

- (2) The obligation imposed on the holder of the tow truck licence by subsection (1) ceases to apply as soon as—
 - (a) the vehicle is removed from the place specified in the authority to tow or in accordance with section 150; or

- (b) an agreement for the repair of the vehicle is signed with a person who carries on a repair business at or from the place specified in the authority to tow if the agreement sets out the amount of the storage charges that are owed at the time that the agreement is signed.

152 No consideration to be paid for obtaining or handing over any work in respect of an accident damaged motor vehicle

- (1) A person must not—
 - (a) so as to obtain any work in respect of an accident damaged motor vehicle, offer to pay; or
 - (b) so as to hand over any work to another in respect of the accident damaged motor vehicle, receive—

any consideration, other than any charges for the towing or storage of the motor vehicle charged in accordance with this Act.

Penalty: 30 penalty units.

- (2) A person must not charge a sum for the provision of an accident towing service or for the storage of an accident damaged motor vehicle unless the charge is determined in accordance with any determination made under section 211, if any such determination has been made.

Penalty: 30 penalty units.

- (3) In any proceedings against a person for an offence under subsection (2), if the offence is proved, the court may order that person to refund any sum paid in excess of the sums described in subsection (2).

Division 4—Obligations on repairers

153 No repair work to be carried out without owner's approval

- (1) A person must not commence or carry out repair work on an accident damaged motor vehicle without the approval in writing of the owner of the motor vehicle.

Penalty: 30 penalty units.

- (2) A person is not entitled to sue for or recover any sum or charge for—
- (a) commencing or carrying out any repair work that is not approved under subsection (1); or
 - (b) preparing, without the approval in writing of the owner of the motor vehicle, any quotation to repair an accident damaged motor vehicle; or
 - (c) towing an accident damaged motor vehicle as part of providing accident towing services, unless the towing was authorised in accordance with this Act and regulations made under this Act; or
 - (d) storing an accident damaged motor vehicle unless—
 - (i) the storing was authorised in writing by the person from whom the sum or charge is being sought; and
 - (ii) the sum or charge is not more than the amount determined in accordance with subsection (3).
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- (3) For the purposes of subsection (2)(d)(ii) the sum or charge is determined by—
 - (a) dividing the total number of hours that the vehicle has been stored up to the relevant time by 24; and
 - (b) multiplying the result by the daily storage charge.
- (4) If the result of the calculation made under subsection (3) is not a whole number, it may be increased to the next highest whole number.
- (5) If any sum or charge referred to in subsection (2) is recovered in circumstances in which subsection (2) applies, the person on whose behalf it is recovered is guilty of an offence unless the person repays it as soon as practicable.

Penalty: 30 penalty units.

154 Cooling-off period for certain towing related repair agreements

- (1) Subject to subsection (2), if—
 - (a) the owner of an accident damaged motor vehicle signs an agreement to repair the vehicle; and
 - (b) the accident damaged motor vehicle has been towed to the place specified in the authority to tow; and
 - (c) at the time of the signing of the agreement to repair, the vehicle is still in or near that place—

the owner of the motor vehicle may, within 3 working days after the signing of the agreement to repair, terminate the agreement to repair by giving written notice to the person to whom the agreement has been given or to an employee of that person.

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- (2) The owner of a vehicle is not entitled to terminate an agreement to repair the vehicle under this section if, following the period of one working day after the signing of the agreement, the owner signs a written waiver of the right to terminate the agreement.
 - (3) If an agreement to repair the vehicle is terminated under this section, the owner is not liable to the person to whom the agreement has been given for—
 - (a) any damages or costs arising as a result of the signing of the agreement or the termination of the agreement; or
 - (b) the cost of any work performed on the vehicle after it was towed to the storage place.

155 Owner not liable for repairs carried out at unauthorised place

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

- (a) the vehicle has been towed from the road accident scene to a place other than the place specified in the authority to tow; and
- (b) the work is performed at that place.

156 Offence to fail to release towed vehicle

- (1) A person who is in control of a place to which an accident damaged motor vehicle has been towed must not—
 - (a) refuse, frustrate or obstruct the release of; or
 - (b) fail to release—the vehicle from that place to its owner.

Penalty: 50 penalty units.

- (2) A person who is in control of a place to which an accident damaged motor vehicle has been towed must ensure that no other person at the place—
- (a) refuses, frustrates or obstructs the release of;
or
 - (b) fails to release—
- the vehicle to its owner.
Penalty: 50 penalty units.
- (3) It is a defence to a charge under subsection (2) if the person who—
- (a) refuses, frustrates or obstructs the release of;
or
 - (b) fails to release—
- the accident damaged motor vehicle to its owner is not within the control of the person who is in control of the place to which the motor vehicle has been towed.
- (4) It is a defence to a charge under subsection (1) or (2) if the person is owed money by the owner in respect of—
- (a) work done by the person on the vehicle that was authorised in writing by the owner; or
 - (b) towing charges charged in accordance with this Act; or
 - (c) storage charges charged in accordance with this Act.
- (5) Subsection (4)(a) does not apply if the work done by the person is done pursuant to an agreement that is terminated under section 154.

Division 5—Obligations on repairers in relation to accident towing services in a controlled area

157 Definitions

(1) In this Division—

endorsed authority to tow means an authority to tow on which a note has been endorsed in accordance with sections 158(a)(iii) and 158(a)(iv);

relevant accident damaged motor vehicle means an accident damaged motor vehicle that is towed from a road accident scene or, in the case of a designated road, the safe and convenient place, in a controlled area by a regular tow truck.

(2) For the purposes of this Division—

- (a) a reference to an authority to tow includes a reference to a copy of an authority to tow; and
- (b) a reference to an endorsed authority to tow includes a reference to a copy of an endorsed authority to tow.

158 Obligations on repairers in respect of relevant accident damaged motor vehicles

A person must not begin to prepare a quotation for the cost of the damage to a relevant accident damaged motor vehicle, or to repair the vehicle, unless—

- (a) the person has—
 - (i) obtained the authority to tow for that vehicle; and
 - (ii) confirmed with the allocation body that the job number recorded on the authority to tow is accurate and the tow

truck was authorised to tow the vehicle;
and

- (iii) written on the authority to tow a note stating—
 - (A) his or her name and business address; and
 - (B) that the confirmation has been obtained; and
 - (C) the date and time that the confirmation was obtained; and
 - (D) the confirmation number assigned to the confirmation by the allocation body; and
- (iv) signed the note; or
- (b) the person has obtained an endorsed authority to tow which has been endorsed by another person; or
- (c) the person has been given a copy of a certificate issued under section 162 in relation to the relevant accident damaged motor vehicle.

Penalty: 30 penalty units.

159 Copies of noted-up forms must be given to owners etc.

- (1) A person who has endorsed an authority to tow under sections 158(a)(iii) and 158(a)(iv) must give that endorsed authority to tow to the owner of the relevant accident damaged motor vehicle and to any person authorised by the owner to prepare a quotation in relation to, or to repair, the relevant accident damaged motor vehicle, if asked to do so by the owner or authorised person.

Penalty: 30 penalty units.

- (2) A person who has been authorised to prepare a quotation must ensure that any written quotation prepared by the person and given to the owner of the relevant accident damaged motor vehicle is accompanied by the endorsed authority to tow.

Penalty: 30 penalty units.

160 Obligations on repairers if the authority to tow is defective or not provided

- (1) A person who has obtained an authority to tow for the purpose of preparing a quotation in relation to, or repairing, a relevant accident damaged motor vehicle in circumstances in which sections 158(a)(iii) and 158(a)(iv) should have been, but have not been, complied with in relation to the authority to tow must notify VicRoads, in writing within 5 business days after receiving the authority to tow, of the failure to comply with sections 158(a)(iii) or 158(a)(iv).

Penalty: 30 penalty units.

- (2) If the owner of a relevant accident damaged motor vehicle—
- (a) asks a person to prepare a quotation, or to repair, that motor vehicle; and
 - (b) does not give the person an endorsed authority to tow (or a certificate under section 162) in relation to the vehicle within 5 business days after making the request—

the person must notify VicRoads in writing of that failure within 5 business days after the end of that 5 day period.

Penalty: 30 penalty units.

(3) If—

- (a) the owner of a relevant accident damaged motor vehicle asks a person (the *repairer*) to prepare a quotation in relation to, or to repair, that motor vehicle and states that another person has complied with sections 158(a)(iii) and 158(a)(iv) in relation to the authority to tow relating to the vehicle; and
- (b) the repairer asks for an endorsed authority to tow from that other person, but does not receive the endorsed authority to tow from that person within 5 business days after making the request—

the repairer must notify VicRoads in writing within 5 business days after the end of that 5 day period that the endorsed authority to tow has not been received.

Penalty: 30 penalty units.

161 Repairers must keep copy of authority to tow

A person who receives an authority to tow for the purpose of preparing a quotation in relation to, or repairing, a relevant accident damaged motor vehicle—

- (a) must keep the authority to tow for 3 years after receiving it; and
- (b) must produce for inspection that authority to tow and any records the person keeps in relation to quotations on being asked to do so by a member of the force or an authorised officer.

Penalty: 30 penalty units.

162 Owner may apply for certificate if authority to tow defective or lost

- (1) If the owner of a relevant accident damaged motor vehicle—
- (a) has not received an authority to tow in relation to the towing of that vehicle from the road accident scene or safe and convenient place (as the case requires); or
 - (b) has received an authority to tow in relation to the towing of that vehicle from the road accident scene or safe and convenient place (as the case requires), but—
 - (i) the authority to tow, or any note that has been subsequently added to the authority to tow, contains a defect that is of such a nature that it is not possible for a person to comply with section 158; or
 - (ii) the authority to tow has been lost, destroyed, mutilated or become fully or partially illegible—

the owner may apply to VicRoads for a certificate authorising the preparation of a quotation in relation to the vehicle and for the vehicle to be repaired.

- (2) An application for a certificate must be in a form approved by VicRoads and must contain the details required by VicRoads.
- (3) VicRoads must comply with a request for a certificate within 5 business days after receiving—
- (a) a completed application for the certificate; and
 - (b) the fee (if any) prescribed for the application.

163 Exception in relation to Division 5 offences

It is a defence to a charge under this Division if a person has a reasonable belief that an accident damaged motor vehicle was not damaged in a controlled area.

PART 6—ENFORCEMENT

Division 1—Accident towing demerit points

164 Demerits Register

VicRoads must keep an Accident Towing Demerits Register and must record in the Register the accident towing demerit points that an accredited person incurs.

165 Circumstances in which accident towing demerit points are incurred and amount

- (1) The circumstances in which accident towing demerit points are incurred and the determination of the date on which the points are to be recorded as incurred are as prescribed.
- (2) The number of accident towing demerit points that are to be incurred for a prescribed offence is the number prescribed for the offence.

166 Period of suspension of accreditation

- (1) The period of suspension of accreditation under this Act for incurring 6 to 11 (both inclusive) accident towing demerit points within any 3 year period is one month.
- (2) The period of suspension of accreditation under this Act for incurring 12 to 17 (both inclusive) accident towing demerit points within any 3 year period is 3 months.
- (3) The period of suspension of accreditation under this Act for incurring 18 or more accident towing demerit points within any 3 year period is 2 years.

167 VicRoads may suspend accreditation on service of notice

- (1) VicRoads may serve a notice of suspension on an accredited person suspending all accreditations held by that person under this Act—
 - (a) if the person has incurred 6 to 11 (both inclusive) accident towing demerit points within any 3 year period, for one month;
 - (b) if the person has incurred 12 to 17 (both inclusive) accident towing demerit points within any 3 year period, for 3 months;
 - (c) if the person has incurred 18 or more accident towing demerit points within any 3 year period, for 2 years.
- (2) A notice served under subsection (1) must contain the prescribed particulars.

168 Accident towing demerit points expire after period of suspension

At the end of a period of suspension under this Division, the accident towing demerit points that were used to calculate the period of suspension must be disregarded when calculating the period of any further suspension under section 166.

169 Date suspension of accreditation becomes effective

- (1) Subject to this section and section 172(2), the suspension of accreditation under section 167 takes effect on and from the date determined by VicRoads and specified in the notice served under section 167(1).
- (2) If an accreditation that is suspended under section 167 is suspended under another provision of this Act, the suspension under section 167 takes effect on and from the date the other suspension ceases to have effect.

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- (3) If an accreditation that is suspended under section 167 is cancelled under another provision of this Act and the person who held the accreditation subsequently obtains a new accreditation under this Act, the suspension under section 167 applies to the new accreditation and takes effect on and from the date the new accreditation is granted.

170 Cancellation of accident towing demerit points

VicRoads may cancel accident towing demerit points in the prescribed circumstances.

171 Recording of accident towing demerit points not admissible in evidence except in limited circumstances

The fact that accident towing demerit points are recorded against an accredited person is not admissible in evidence except—

- (a) in proceedings in VCAT brought under section 172; or
- (b) if it is necessary to give evidence of that fact in order to establish—
 - (i) that the accredited person has been sent a notice advising that the person had incurred accident towing demerit points; or
 - (ii) that the accreditation of the accredited person had been suspended under this Act; or
 - (iii) that the accredited person had been served with a notice advising the person of the suspension of accreditation.

172 Review by VCAT

- (1) A person may apply to VCAT for review of the decision by VicRoads to record accident towing demerit points in the Accident Towing Demerits Register against that person on the ground—
 - (a) that VicRoads recorded accident towing demerit points other than as required by regulations made under this Act; or
 - (b) that an error has been made in the addition of the number of accident towing demerit points incurred by the person in a relevant period.
- (2) The operation of a suspension of accreditation under section 167 is stayed on the lodging of an application for review until—
 - (a) the date on which the application is determined; or
 - (b) if the application is withdrawn, the date on which VCAT gives leave to the applicant to withdraw the application.

Note

Section 74 of the **Victorian Civil and Administrative Tribunal Act 1998** specifies the procedure involved in withdrawing an application to VCAT.

- (3) If VCAT is satisfied that the recording of the accident towing demerit points was made in accordance with this Act and regulations made under this Act, VCAT must confirm the decision to record those points.
 - (4) On an application under subsection (1), VCAT may by order—
 - (a) direct VicRoads to record the accident towing demerit points as required by regulations made under this Act; or
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- (b) direct VicRoads to correct an error made in the addition of the number of accident towing demerit points incurred by the applicant in a relevant period; or
 - (c) in dismissing the application, if accreditation has been suspended as a result of the incurring of accident towing demerit points, order that the suspension of accreditation takes effect from a date specified in the order.
- (5) An application for review under subsection (1) must be made within 28 days after the later of—
- (a) the day on which the decision of VicRoads is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (6) If, as a result of an order made by VCAT under subsection (4)(a) or (4)(b), the recorded amount of accident towing demerit points incurred by an accredited person is amended by VicRoads—
- (a) if the total number of accident towing demerit points recorded against the accredited person is less than 6, a suspension notice served on the accredited person under section 167 ceases to have effect; or
 - (b) if the total number of accident towing demerit points recorded against the accredited person is 6 or more, the person's accreditation is taken to be suspended for the period set out in section 167 corresponding to the amended number of points and any
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suspension notice for a period more than this period ceases to have effect.

Division 2—Infringement notices

173 Infringement notices, offences and penalties

- (1) An authorised officer or a member of the force may serve an infringement notice on any person he or she reasonably believes has committed an offence against this Act or regulations made under this Act which is prescribed for the purposes of this section.
- (2) An offence referred to in subsection (1), for which an infringement notice may be served, is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The penalty for the purposes of this section in respect of any infringement specified in subsection (1) is the amount prescribed in respect of that infringement.

Division 3—Improvement notices

174 Improvement notices

- (1) If VicRoads believes on reasonable grounds—
 - (a) that an accredited person is contravening or has contravened a service standard; or
 - (b) that an accredited person is contravening or has contravened a condition of the person's accreditation; or
 - (c) that a person licensed under Part 2 is contravening or has contravened a condition of the person's licence; or

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- (d) that a person licensed under Part 2, an accredited person, or a relevant person in relation to a person accredited under Part 3, is contravening or has contravened a provision of—
- (i) this Act other than sections 6(2), 7(2), 8, 9, 34, 38, 56, 76, 91, 92, 95, 98, 115, 116, 135, 136, 180, 203(2) and (3) and this section; or
 - (ii) any regulations made under this Act—

in circumstances that make it likely the contravention will continue or be repeated, VicRoads may serve on the person an improvement notice requiring the person to remedy the contravention or likely contravention, or the matters or activities causing the contravention or likely contravention, within the period specified in the notice.

- (2) An improvement notice must—
- (a) state the basis for VicRoads' belief on which the service of the notice is based; and
 - (b) specify the standard, condition or provision that VicRoads believes has been, is being or is likely to be, contravened; and
 - (c) specify a date (with or without a time) by which the person is required to remedy the contravention or likely contravention or the matters or activities causing the contravention or likely contravention, that VicRoads considers reasonable having regard to the purpose of the accreditation or licensing and the nature of the contravention or likely contravention; and
 - (d) set out the penalty for contravening the notice; and
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- (e) include a statement to the effect of section 176; and
 - (f) state that the notice is served under this section; and
 - (g) state how the person may seek review of the service of the notice.
- (3) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.
- (4) Without limiting subsection (3), an improvement notice may include—
- (a) a direction that if the person has not remedied the contravention, likely contravention, matters or activities (as the case may be) by the date and time (if any) specified in the notice, an activity to which the notice relates is to cease until VicRoads has certified in writing that the contravention or likely contravention has, or the matters or activities have, been remedied; and
 - (b) interim directions, or interim conditions, restrictions or other limitations on the carrying out of any activities to which the notice relates, that VicRoads considers necessary to minimise risks to safety or the risk of a serious failure to provide reliable and efficient accident towing services.
- (5) A person on whom an improvement notice is served must comply with the notice.

Penalty: 20 penalty units.

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- (6) If an application for review of a decision under this section has been made under section 177, VicRoads must not give a certificate under subsection (4)(a) in relation to the improvement notice concerned until after the review ends.

175 Formal irregularities or defects in notice

An improvement notice is not invalid merely because of—

- (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or
- (b) a failure to use the correct name of the person on whom the notice is served if the notice sufficiently identifies the person and is served on the person in accordance with section 217 or 218, as the case requires.

176 Proceedings for offences not affected by improvement notices

The service of an improvement notice does not affect any proceeding for an offence against this Act or regulations made under this Act in connection with any matter in respect of which the notice was served.

177 Review of decision by VCAT

- (1) A person may apply to VCAT for review of a decision by VicRoads to serve an improvement notice on that person under section 174.
- (2) An application for review under subsection (1) must be made within 28 days after the later of—
 - (a) the day on which the decision of VicRoads is made; or

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- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Division 4—Authorised officers

178 Appointment of authorised officer

- (1) VicRoads, by instrument, may appoint any person (including any person employed in the Department under Part 3 of the **Public Administration Act 2004**) who is suitably qualified or trained to exercise the powers of an authorised officer under this Act.
- (2) Without limiting the persons who may be appointed under subsection (1), a person authorised under Part 9 of the **Road Safety Act 1986** may be an authorised officer for the purposes of this Act.
- (3) An appointment under this section is for the term, and subject to the conditions, specified in the instrument of appointment.
- (4) Without limiting the conditions to which the appointment of an authorised officer may be subject, a condition may specify one or more of the following—
 - (a) the functions and powers under this Act that may not be exercised by the authorised officer;
 - (b) the functions and powers under this Act that may be exercised by the authorised officer;

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- (c) the circumstances or manner in which a function or power under this Act may be exercised by the authorised officer.

179 Identity cards

- (1) VicRoads must issue an identity card to an authorised officer.
- (2) An identity card must—
- (a) contain the name and a photograph of the authorised officer to whom it is issued; and
 - (b) identify the authorised officer to whom it is issued as an authorised officer appointed under this Part.

180 Return of identity cards

If a person to whom an identity card has been issued ceases to be an authorised officer, the person must return the identity card to VicRoads as soon as practicable.

Penalty: 10 penalty units.

Division 5—Searches of tow trucks

181 Power to enter and search tow trucks for compliance purposes

- (1) For the purpose of determining whether this Act, regulations made under this Act or a service standard is being complied with, an inspector may enter and search a tow truck that is—
- (a) on any road or road related area; or
 - (b) in any public place.
- (2) Without limiting subsection (1), an inspector who enters and searches a tow truck under subsection (1) may, for the purpose set out in that subsection, do any one or more of the following—

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- (a) weigh the tow truck or any part of the tow truck or its equipment or load; or
 - (b) otherwise measure or test the tow truck or any part of the tow truck or its equipment or load (other than a passenger); or
 - (c) take samples, photographs or film, videotape or otherwise record images or record sounds; or
 - (d) require any person in or on the tow truck to produce to the inspector any document that is required to be kept for the purpose set out in subsection (1) and that is located in or on the tow truck that is in the person's custody or possession or under the person's control; or
 - (e) make copies of, or take extracts from, any document that is required to be kept for the purpose set out in subsection (1) and that is kept in or on the tow truck; or
 - (f) exercise any other power under this Act conferred on the inspector for those purposes.
- (3) This section does not authorise the use of force, but the inspector may do any or all of the following—
- (a) open unlocked doors, panels, objects or other things, or open unlocked places;
 - (b) move, but not take away, anything that is not locked up or sealed.
- (4) This section does not authorise an inspector to search a person, even if the person is part of a tow truck's load.
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182 Power to enter and search tow trucks for the purpose of obtaining evidence of contravention

- (1) If an inspector believes on reasonable grounds that a tow truck has been used, or is being used, in contravention of this Act, regulations made under this Act or a service standard, an inspector may enter and search the tow truck if it is—
 - (a) on any road or road related area; or
 - (b) in any public place.
- (2) An inspector may form the necessary belief during or after a search under section 181, or independently of a search under section 181.
- (3) Without limiting subsection (1), an inspector who enters and searches a tow truck under subsection (1) may, for the purposes set out in that subsection, do any one or more of the following—
 - (a) do anything that he or she may do in conducting a search for compliance purposes under section 181;
 - (b) search for anything that may be evidence of the commission of an offence against this Act, regulations made under this Act or a service standard; or
 - (c) search for and inspect any documents, devices or other things that relate to the tow truck or any part of its equipment or load and that are located in or on the tow truck; or
 - (d) copy any documents located in or on the tow truck that the inspector believes on reasonable grounds provide, or may on further inspection provide, evidence of a contravention of this Act, regulations made under this Act or a service standard.

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- (4) The inspector may seize and remove any documents, devices or other things from the tow truck that the inspector believes on reasonable grounds provide, or may on further examination provide, evidence of a contravention of this Act, regulations made under this Act or a service standard.
 - (5) This section does not authorise the use of force, but the inspector may do any or all of the following—
 - (a) open unlocked doors, panels, objects or other things, or open unlocked places;
 - (b) move, but not take away, anything that is not locked up or sealed.
 - (6) This section does not authorise an inspector to search a person, even if the person is part of a tow truck's load.

183 Production of identification by inspectors before vehicle searches

- (1) This section applies if—
 - (a) an inspector wishes to search a tow truck under this Division; and
 - (b) the driver, or another person apparently in charge of the tow truck, is present in, on or near the tow truck.
 - (2) Before starting to search the tow truck, an inspector who is not a member of the force must identify himself or herself to the driver or person by producing his or her identity card for inspection by the driver or person.
 - (3) In the case of an inspector who is a member of the force, but who is not in uniform, before starting to search the tow truck he or she must identify himself or herself to the driver or person by
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producing his or her identification as a member of the force.

- (4) In the case of an inspector who is a member of the force and who is in uniform, before starting to search the tow truck he or she must, if requested to do so by the driver or person, state orally his or her name, rank and place of duty.
- (5) If an inspector decides to start a search under section 182 while in the process of conducting a search for compliance purposes under section 181, it is not necessary for the inspector to comply with subsection (2), (3) or (4) again if the inspector starts the search under section 182 during, or immediately after, the search for compliance purposes under section 181.

184 Production of identification during searches

- (1) An inspector conducting a search of a tow truck under this Division must, if asked to do so, produce for inspection—
 - (a) if the inspector is an authorised officer, his or her identity card;
 - (b) if the inspector is a member of the force who is not in uniform, his or her identification as a member of the force.
- (2) An inspector must comply with subsection (1) even if he or she has complied with section 183.
- (3) An inspector who is a member of the force and who is in uniform conducting a search of a tow truck under this Division must, if requested to do so by the driver or other person apparently in charge of the tow truck, state orally his or her name, rank and place of duty unless he or she has already done so to that driver or other person in compliance with section 183 or this subsection.

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- (4) It is not necessary for an inspector to comply with a request to produce identification that is made by a person to whom the inspector has already produced that identification before or during a search.

185 Consent not needed for searches

An inspector may exercise a power under this Division at any time, and without the consent of the tow truck driver, or other person apparently in charge of the vehicle, or any other person.

Division 6—Search of business premises

186 Entry or search of premises with consent

- (1) If an inspector believes on reasonable grounds that a person has contravened this Act, regulations made under this Act or a service standard, the inspector, with the consent of the occupier of the premises at which the person is conducting an accident towing service business or a business of repairing accident damaged motor vehicles, may—
- (a) enter and search the premises, including any tow truck found on the premises;
 - (b) examine anything found at the premises that the inspector believes on reasonable grounds to be connected with the alleged contravention;
 - (c) seize anything found on the premises which the inspector believes on reasonable grounds to be connected with the alleged contravention;
 - (d) in the case of any document on the premises, if the inspector believes on reasonable grounds that it is connected with the alleged
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- contravention, the inspector may do all or any of the following—
- (i) require the document to be produced for examination;
 - (ii) examine, make copies of or take extracts from the document, or arrange for the making of copies or the taking of extracts to be done on the premises or elsewhere;
 - (iii) remove the document for so long as is reasonably necessary to make copies of or take extracts from the document;
- (e) make any still or moving image or audio-visual recording that the inspector believes on reasonable grounds is necessary for the purpose of establishing the alleged contravention.
- (2) In addition to any power under this section, in relation to a tow truck an inspector may do anything he or she may do under section 181.
- (3) An inspector must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the inspector—
- (a) has—
 - (i) if the inspector is an authorised officer, produced his or her identity card for inspection; or
 - (ii) if the inspector is a member of the force who is not in uniform, produced his or her identification as a member of the force; or
 - (iii) if the inspector is a member of the force who is in uniform, stated his or her name, rank and place of duty; and
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- (b) has informed the occupier—
- (i) of the purpose of the search; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of anything found during the search; and
 - (iii) that the occupier may refuse to consent to the taking of any copy of or extract from a document found on the premises during the search; and
 - (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.
- (4) If an occupier consents to an entry and search, the inspector who requested consent must, before entering the premises, ask the occupier to sign an acknowledgment stating—
- (a) that the occupier has been informed of the purpose of the search and that anything seized or taken in the search with the consent of the occupier may be used in evidence in proceedings; and
 - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search or to the seizure of anything or to the taking of any sample, copy or extract; and
 - (c) that the occupier has consented to such an entry and search; and
 - (d) the date and time that the occupier consented.
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- (5) If an occupier consents to the seizure or taking of any thing during a search under this section, the inspector must, before seizing or taking the thing, ask the occupier to sign an acknowledgment stating—
- (a) that the occupier has consented to the seizure or taking of the thing; and
 - (b) the date and time that the occupier consented.
- (6) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the inspector leaves the premises.
- (7) If, in any proceeding, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the thing.

187 Entry of premises open to the public

An inspector may enter and inspect any part of a premises which is, at the time of the entry and inspection, open to the public.

188 Entry without consent or warrant

- (1) For the purpose of monitoring compliance with this Act, regulations made under this Act or a service standard, an inspector may, subject to subsection (2)—
- (a) enter and search any premises, including any tow truck found on the premises, at which the inspector believes on reasonable grounds—
 - (i) a person is conducting an accident towing services business or a business of repairing accident damaged motor vehicles; or

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- (ii) a person is keeping a record or document that is required to be kept by this Act or regulations made under this Act, or that may show whether or not this Act, regulations made under this Act or a service standard is being complied with;
 - (b) examine anything found on the premises;
 - (c) seize anything found on the premises or secure anything found on the premises against interference, if the inspector believes on reasonable grounds that it is connected with a contravention of this Act, regulations made under this Act or a service standard;
 - (d) examine and test any equipment found on the premises that is of a kind used in connection with an accident towing services business or a business of repairing accident damaged motor vehicles;
 - (e) in the case of any document on the premises, do all or any of the following—
 - (i) require the document to be produced for examination;
 - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies of or the taking of extracts to be done on the premises or elsewhere;
 - (iii) remove the document for so long as is reasonably necessary to make copies of or take extracts from the document;
 - (f) make any still or moving image or audio-visual recording;
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- (g) bring any equipment onto the premises that the inspector believes on reasonable grounds is necessary for the examination or processing of things (including documents) found at the premises in order to determine whether they are things that may be seized under this section.
- (2) An inspector—
- (a) must not exercise a power under subsection (1) in any part of the premises that is used for residential purposes; and
 - (b) must not exercise a power under subsection (1) except—
 - (i) between the hours of 9 a.m. to 5 p.m.; or
 - (ii) when the premises are open for business.
- (3) If an inspector exercises a power of entry under this section without the owner or occupier being present the inspector must, on leaving the premises, leave a notice setting out—
- (a) the time of entry; and
 - (b) the purpose of entry; and
 - (c) a description of things done while on the premises; and
 - (d) the time of departure; and
 - (e) the procedure for contacting VicRoads for further details of the entry.
- (4) In addition to any power under this section, in relation to a tow truck an inspector may do anything he or she may do under section 181(2).
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189 Search warrant

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to any premises at which a person is conducting an accident towing service business, or a business of repairing accident damaged motor vehicles, if the inspector believes on reasonable grounds that there is, or may be within the next 72 hours, on the premises, evidence of the commission of an offence against this Act, regulations made under this Act or a service standard.
 - (2) If a magistrate is satisfied that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on any premises at which the person is conducting an accident towing service business, or a business of repairing accident damaged motor vehicles, a thing or things of a particular kind that may be evidence of the commission of an offence against this Act, regulations made under this Act or a service standard, the magistrate may issue a search warrant authorising an inspector named in the warrant and any assistants the inspector considers necessary—
 - (a) to enter the premises, or the part of premises, named or described in the warrant; and
 - (b) to search for and seize any thing named or described in the warrant.
 - (3) In addition to any other requirement, a search warrant issued under this section must state—
 - (a) the offence suspected; and
 - (b) the premises to be searched; and
 - (c) a description of the thing for which the search is to be made; and
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- (d) any conditions to which the warrant is subject; and
 - (e) whether entry is authorised to be made at any time or during stated hours; and
 - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form set out in regulations made under that Act.
 - (5) Despite section 78 of the **Magistrates' Court Act 1989**, a search warrant must not authorise an inspector to arrest a person.
 - (6) Subject to any provision to the contrary in this Division, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

190 Announcement before entry

- (1) Before executing a search warrant, the inspector named in the warrant or any other person authorised under section 189(2)—
 - (a) must announce that he or she is authorised by the warrant to enter the premises; and
 - (b) must give any person at the premises an opportunity to allow entry to the premises.
 - (2) An inspector need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of any person; or
 - (b) that the effective execution of the warrant is not frustrated.
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191 Details of warrant to be given to occupier

- (1) If the occupier is present at the premises where a search warrant is being executed, the inspector must—
 - (a) identify himself or herself to the occupier; and
 - (b) give to the occupier a copy of the warrant.
- (2) If the occupier is not present at the premises where a search warrant is being executed, the inspector must—
 - (a) identify himself or herself to a person at the premises; and
 - (b) give the person a copy of the warrant.

192 Seizure of things not mentioned in the warrant

A search warrant authorises the inspector executing the warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize any thing which is not of the kind described in the warrant if—

- (a) the inspector believes on reasonable grounds that the thing—
 - (i) is of a kind that could have been included in a warrant issued under this Division; or
 - (ii) will afford evidence about a contravention of this Act, regulations made under this Act or a service standard; and
 - (b) in the case of seizure, the inspector believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in contravention of this Act, regulations made under this Act or a service standard.
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193 Embargo notice

- (1) An inspector executing a search warrant under section 189 who is authorised by that warrant to seize any thing may, if the thing cannot, or cannot readily, be physically seized and removed, issue an embargo notice in the prescribed form—
 - (a) by causing a copy of the notice to be served on the occupier; or
 - (b) if that person cannot be located after all reasonable steps have been taken to do so, by affixing a copy of the notice to the thing in a prominent position.
- (2) A person who knows that an embargo notice relates to a thing must not—
 - (a) sell; or
 - (b) lease; or
 - (c) without the written consent of the inspector who issued the embargo notice, move; or
 - (d) transfer; or
 - (e) otherwise deal with—
the thing or any part of the thing.

Penalty: 60 penalty units.
- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that the defendant moved the thing or the part of the thing for the purpose of protecting and preserving it.
- (4) Despite anything in any other Act, a sale, lease, transfer or other dealing with a thing in contravention of this section is void.

Division 7—Processes to deal with seized equipment or goods

194 Use or seizure of electronic equipment at premises

(1) If—

- (a) while acting under section 188, an inspector finds a thing at the premises that is or includes a disk, tape or other device for the storage of information; and
- (b) there is at the premises equipment that may be used with the disk, tape or other storage device; and
- (c) the inspector believes on reasonable grounds that information stored in the disk, tape or other storage device may be relevant to determine whether this Act, regulations made under this Act or a service standard has or have been complied with—

the inspector may operate, or may require the occupier of the premises or an employee of the occupier to operate, the equipment to access the information.

(2) If the inspector finds that a disk, tape or other storage device at the premises contains information that the inspector believes on reasonable grounds stores information that is relevant to determine whether this Act, regulations made under this Act or a service standard has or have been complied with, the inspector—

- (a) may put the information in a documentary form and seize the documents so produced;
or

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- (b) may copy the information to another disk, tape or other storage device and remove that disk, tape or storage device from the premises; or
 - (c) if it is not practicable to put the information in a documentary form or to copy the information, may seize the disk, tape or other storage device and the equipment that enables the information to be accessed.
- (3) An inspector must not operate or seize equipment for a purpose set out in this section unless the inspector believes on reasonable grounds that the operation can be carried out without damage to the equipment.

195 Copies of certain things seized to be given

- (1) If, in exercising a power under this Part, an inspector seizes—
- (a) a document; or
 - (b) a thing that can be readily copied; or
 - (c) a storage device that contains information that can be readily copied—

the inspector must give a copy of the document, thing or information (certified as correct by the inspector) to the owner or the custodian of the document, thing or device within 21 days after the seizure.

- (2) Subsection (1) does not apply if the inspector is unable to discover the identity of the owner or custodian of the document, thing or device.
- (3) If it is not practicable to comply with subsection (1) in respect of a thing before the inspector finishes the search, the inspector must give a receipt for it to the person from whom it is seized and removed.

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- (4) A copy of a document, thing or information, certified under subsection (1) shall be received in all courts and tribunals to be evidence of equal validity to the original.

196 Access to seized things

- (1) If a thing is seized under this Part, the inspector who seized the thing must, if practicable, allow the person who would normally be entitled to possession of it reasonable access to it while it remains in the possession, or under the control, of the inspector.
- (2) This section does not apply if the inspector has given the person an accurate copy of the thing.

197 Retention and return of seized documents or things

- (1) If an inspector seizes a document or other thing under this Part, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
- (a) proceedings for the purpose for which the document or thing was seized or retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
 - (b) the Magistrates' Court makes an order under section 198 extending the period during which the document or thing may be retained.
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198 Magistrates' Court may extend 3 month period

- (1) An inspector may apply to the Magistrates' Court within 3 months after seizing a document or other thing under this Part for an extension (not exceeding 3 months) of the period for which the inspector may retain the document or thing but so that the total period of retention does not exceed 12 months.
- (2) The Magistrates' Court may order such an extension if it is satisfied that the total period of retention of the document or thing does not exceed 12 months and that retention of the document or thing is necessary—
 - (a) for the purpose of an investigation into whether a contravention of this Act, regulations made under this Act or a service standard has occurred; or
 - (b) to enable evidence of a contravention of this Act, regulations made under this Act or a service standard to be obtained for the purpose of a proceeding under this Act.
- (3) The Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

Division 8—General

199 Requirement to assist inspector during entry

To the extent that it is reasonably necessary to determine compliance with this Act, regulations made under this Act or a service standard, an inspector exercising a power of entry in respect of premises under and in accordance with Division 6 may require the occupier of the premises—

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- (a) to give information to the inspector, orally or in writing; and
 - (b) to produce documents to the inspector; and
 - (c) to give reasonable assistance to the inspector.

200 Self-incrimination not an excuse

- (1) A person is not excused from complying with a requirement or direction made under this Division on the ground that complying with the requirement or direction may result in information being provided that might incriminate the person.
 - (2) Any information obtained from a natural person under this Division is not admissible in evidence against the person in criminal proceedings other than proceedings in respect of the provision of false information.
 - (3) Despite subsection (2), any information obtained from a person under section 201 is admissible in evidence against the person in criminal proceedings.
 - (4) Despite subsection (2), any information obtained from a person under this Division that is contained in any document or item—
 - (a) that the person is required to keep by this Act, regulations made under this Act or a service standard; or
 - (b) that was obtained without the direct assistance of the person—is admissible in evidence against the person in any criminal proceedings.
 - (5) For the purposes of subsection (4), a person provides direct assistance in the obtaining of a document or item if the person is required to identify, to reveal the location of, or to explain the contents of, the document or item.
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201 Direction to state name and address

(1) An inspector may, for the purpose of determining compliance with this Act, regulations made under this Act or a service standard, direct an individual whom the inspector believes on reasonable grounds is, or may be, the holder of an accreditation or licence under this Act, to state his or her name and business address.

(2) A person must comply immediately with a direction under subsection (1).

Penalty: 5 penalty units.

(3) A person must not, in purported compliance with a direction, knowingly provide a false name or address.

Penalty: 5 penalty units.

(4) In any proceedings against a person for an offence of failing to state the person's business address, it is a defence if the person charged establishes that the person did not have a business address or that the person's business address was not connected (directly or indirectly) with the provision of accident towing services.

(5) This section does not affect any other law that requires a person to state the person's name or address.

202 Manner of giving directions

If giving a direction under this Act, the inspector giving the direction must warn the person to whom the direction is given that it is an offence under this Act to fail to comply with the direction.

203 Offences as to compliance with requirements of, obstructing or hindering or impersonating an inspector

- (1) A person must not, without reasonable excuse, refuse or fail to comply with a requirement of VicRoads or an inspector under this Part.

Penalty: 60 penalty units.

- (2) A person must not obstruct or hinder an inspector who is exercising a power or function under this Part.

Penalty: 60 penalty units.

- (3) A person must not impersonate an inspector.

Penalty: 60 penalty units.

204 Persons who may bring proceedings

- (1) The following persons are the only persons who may bring proceedings for an offence against this Act or regulations made under this Act—

- (a) VicRoads;
- (b) an authorised officer who has the written authorisation of VicRoads (either generally or in a particular case);
- (c) a member of the force.

- (2) VicRoads may give an authorisation for the purposes of subsection (1)(b).

- (3) An authorisation under subsection (2) is sufficient authority to continue proceedings in any case where the court amends the charge, warrant or summons.

- (4) An authorised officer who brings proceedings may conduct the proceedings before the court.
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PART 7—CODES OF PRACTICE

205 Codes of practice

- (1) For the purpose of providing practical guidance to the holders of accreditations under this Act, the Minister may approve one or more codes of practice.
- (2) A code of practice—
 - (a) may consist of any code, standard, rule, specification or provision relating to any aspect of the operating or driving of tow trucks for the purpose of providing accident towing services; and
 - (b) may apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved, or as amended, formulated or published from time to time.
- (3) The approval of a code of practice takes effect on the day on which notice of the approval is published in the Government Gazette, or on any later day specified in the notice.

206 Amendment of approved codes of practice

- (1) The Minister may approve any amendment to the whole, or any part, of an approved code of practice.
- (2) The approval of an amendment to an approved code of practice takes effect on the day on which notice of the approval of the amendment is published in the Government Gazette, or on any later day specified in the notice.

207 Revocation of approvals of codes of practice

- (1) The Minister may revoke an approval of a code of practice.
- (2) The approval of an approved code of practice ceases to have effect at the end of the day on which notice of the revocation of the approval under subsection (1) is published in the Government Gazette, or on any later day specified in the notice.

208 Availability of approved codes of practice

The Minister must cause—

- (a) a current copy of every approved code of practice; and
- (b) a copy of every document applied, incorporated or referred to in an approved code of practice (in the form in which that document has effect in the approved code of practice)—

to be made available for inspection by members of the public without charge at the office of VicRoads during normal office hours.

209 Minister must consult before approving code of practice or amendment or revocation of code of practice

Before the Minister approves a code of practice or any amendment of an approved code of practice, or revocation of the approval of a code of practice under this Part, the Minister must consult with any person or body that may be affected by the making, amending or revocation of the code of practice.

210 Effect of approved code of practice

A person does not incur any civil or criminal liability merely because that person has failed to comply with any provision of an approved code of practice.

PART 8—MISCELLANEOUS

211 Minister to determine charges for accident towing services and other services

The Minister may determine the amounts that may be charged by the providers of the following—

- (a) accident towing services;
- (b) the service of storing accident damaged motor vehicles—

for the provision of those services.

212 Determinations of charges

- (1) The Minister must not make a determination under section 211 unless he or she—
 - (a) has referred the matter to the Commission for investigation under Division 9 of Part VI of the **Transport Act 1983** and has received the Commission's report on the investigation; and
 - (b) has received a report from VicRoads.
- (2) A determination of the Minister under section 211—
 - (a) may be of general or of specially limited application; and
 - (b) may differ according to differences in time, place or circumstance.
- (3) A determination under section 211 takes effect when it is published in the Government Gazette, or, if a later day is specified in the determination, on that day.

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- (4) A determination under section 211 may be amended or revoked and the provisions of this section apply to any such amendment or revocation of a determination in the same manner as that in which they apply to the making of the determination.

213 Power of VicRoads to determine fees

- (1) VicRoads may determine fees for applications under this Act.
- (2) VicRoads must obtain the approval of the Minister for any determination made under subsection (1).
- (3) Any fee determined under subsection (1) may differ according to differences in time, place or circumstance.
- (4) Any fee determined by VicRoads under subsection (1) must be published in the Government Gazette.

214 Power of delegation

Without limiting section 32(2) of the **Transport Act 1983**, VicRoads may by instrument delegate to a public sector employee employed by the Department (by name or description of office) any power VicRoads has under this Act other than this power of delegation.

Note

Section 32(2) of the **Transport Act 1983** gives VicRoads the power to delegate its powers under any Act to an officer of VicRoads.

215 Offence to provide false or misleading information

- (1) A person must not either deliberately or recklessly—
- (a) provide any information under this Act that is false or misleading; or
 - (b) provide under this Act any document that is false or misleading; or
 - (c) make any representation under this Act that provides a false or misleading impression; or
 - (d) fail to include any matter in any information or document provided under this Act if the failure causes the information or document to be false or misleading; or
 - (e) engage in conduct, or a course of conduct, for a purpose that is relevant to this Act, if that conduct is misleading or deceptive, or is likely to mislead or deceive.

Penalty: 50 penalty units.

- (2) Subsection (1)(b) does not apply if, at the time the person provided the document the person either—
- (a) informed the person or body to whom the document was provided that the record contained a detail that was false or misleading and specified in what respect it was false or misleading; or
 - (b) took all reasonable steps to provide that person or body with that information.

216 No compensation payable

- (1) Subject to section 131, no compensation is payable to any person in respect of or as a consequence of any decision or determination made under this Act—

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- (a) to grant, issue, renew, reject, suspend or cancel any accreditation, licence or other authority under this Act; or
 - (b) to add or vary any condition of a licence under this Act; or
 - (c) to alter the depot or area in respect of which any licence has been granted under this Act.
- (2) Without limiting subsection (1) and subject to section 131, no compensation is payable to any person in respect of, or as a consequence of, a decision of VicRoads under Part 3 or 4—
- (a) to approve or refuse an application for accreditation; or
 - (b) to impose a condition, restriction or other limitation on an accreditation; or
 - (c) to vary or revoke a condition, restriction or other limitation on an accreditation; or
 - (d) to take disciplinary action.

217 Service of documents on natural persons

A document required or permitted by this Act to be served on a person other than a corporation must be served—

- (a) by delivering the document to that person personally; or
- (b) by prepaying and posting the document as a letter addressed to that person at his or her last known place of residence or business or, if he or she is carrying on business at 2 or more places, at one of those places; or
- (c) by leaving the document at the last known place of residence of that person with some person apparently a resident of that place and apparently not less than 16 years of age; or

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- (d) by leaving the document at the last known place of business of that person, or if he or she is carrying on business at 2 or more places, at one of those places, with some person apparently in the service of that person and apparently not less than sixteen years of age.

218 Service of documents on corporations and address of corporations

- (1) A document required by this Act to be served on a person, being a corporation, must be served—
- (a) by prepaying and posting the document as a letter addressed to the corporation at its last known place of business or, if it is carrying on business at two or more places, at one of those places; or
 - (b) by leaving it at that place, or at one of those places, with some person apparently in the service of the corporation and apparently not less than sixteen years of age.
- (2) A corporation's address is the corporation's registered office under the Corporations Act or the corporation's principal place of business.

219 When service deemed to be effective

- (1) Subject to evidence to the contrary, if a document required or permitted by this Act to be served on a person was posted to an accredited person at the address shown on the person's certificate of accreditation, the person is deemed to have received the notice on the third postal business day after it was posted.

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- (2) Subject to evidence to the contrary, if a document required or permitted by this Act to be served on the holder of a licence under Part 2 was posted to the licence holder at the address shown on the person's licence certificate, the person is deemed to have received the notice on the third postal business day after it was posted.

220 Evidentiary provisions

- (1) A certificate purporting to be signed by the Chief Executive of VicRoads, appointed under the **Transport Act 1983**, certifying any of the matters set out in subsection (2) is admissible in evidence in any proceeding and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.
- (2) A certificate referred to in subsection (1) may certify any of the following matters—
- (a) that on a stated day, a stated document was the whole or a part of a register kept under section 31(4) or 164;
 - (b) that on a stated day a person was, or was not, an authorised officer;
 - (c) that a stated document is an instrument of appointment made under section 178(1);
 - (d) that a stated document is an identity card, or a copy of an identity card, issued under section 179(1);
 - (e) that a stated document is a Ministerial authorisation made under section 14(1) or 15(1);
 - (f) that an authorised officer is authorised by VicRoads under section 204(1)(b) to bring proceedings for an offence against this Act or regulations made under this Act;
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- (g) that a stated document is—
- (i) a certificate of a tow truck licence issued under section 24(1);
 - (ii) a certificate of accreditation issued under section 76(1) or 116(1);
 - (iii) a replacement certificate of accreditation issued under section 76(3) or 116(2);
 - (iv) an improvement notice made under section 174;
 - (v) an instrument of delegation under section 214;
- (h) that a stated document is a copy of a thing referred to in paragraph (g).

221 Offences by bodies corporate

- (1) If a body corporate contravenes any provision of this Act, each officer (within the meaning of section 9 of the Corporations Act) of the body corporate who knowingly authorised or permitted the contravention is to be taken to have contravened the same provision.
- (2) A person may be proceeded against and convicted under a provision in accordance with subsection (1), whether or not the body corporate has been proceeded against or convicted.
- (3) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act.

222 Conduct by officers, employees or agents

- (1) For the purpose of any proceedings under this Act, any conduct engaged in on behalf of a body corporate is deemed to have been engaged in also by the body corporate, if the conduct was engaged in by an employee, agent or officer (within the meaning of section 9 of the Corporations Act) of the body corporate within the scope of the employee, agent or officer's actual or apparent authority.
- (2) For the purpose of any proceedings under this Act, any conduct engaged in on behalf of a person other than a body corporate (the *principal*) is deemed to have been engaged in also by the principal, if the conduct was engaged in by an employee of the principal within the scope of the employee's actual or apparent authority.
- (3) If, in any proceedings under this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—
 - (a) that the conduct was engaged in by an officer of that body corporate within the scope of the officer's actual or apparent authority and the officer had that state of mind; or
 - (b) that the conduct was engaged in by an agent of the body corporate and—
 - (i) the agent acted at the specific direction or with the specific consent or agreement of the body corporate; or
 - (ii) the agent had that state of mind; or
 - (iii) the body corporate was aware of the agent's state of mind when the conduct was engaged in.

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- (4) If, in any proceedings under this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show—
- (a) that the conduct was engaged in by an employee of that person within the scope of the employee's actual or apparent authority and the employee had that state of mind; or
 - (b) that the conduct was engaged in by an agent of the person and—
 - (i) the agent acted at the specific direction or with the specific consent or agreement of the person; or
 - (ii) the agent had that state of mind; or
 - (iii) the person was aware of the agent's state of mind when the conduct was engaged in.
- (5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

223 Regulations

- (1) The Governor in Council may make regulations for or with respect to the following—
- (a) prescribing and regulating in respect of persons who are holders of accreditations under this Act—
 - (i) the conduct and duties of such persons; and
 - (ii) generally, conditions relating to the operation and use of motor vehicles when driven by such persons;

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- (b) accreditations under this Act, including, but not limited to—
 - (i) conditions to which such accreditations or any class of such accreditations are subject; and
 - (ii) qualifications to be required of, and the tests to be passed by, applicants for such accreditations; and
 - (iii) applications for such accreditations and the cancellation or suspension of such accreditations;
 - (c) licences under this Act, including but not limited to—
 - (i) conditions to which such licences or any class of such licences are subject; and
 - (ii) applications for such licences and the cancellation or suspension of such licences;
 - (d) the operation of road accident scene rosters in controlled areas, including, but not limited to, the removal or suspension of persons from the roster;
 - (e) duties of tow truck drivers at road accident scenes;
 - (f) the design, construction, equipment, maintenance and repair of tow trucks used for the purpose of providing accident towing services;
 - (g) any matter with respect to the demerits system and the Accident Towing Demerits Register;
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- (h) prescribing offences to be infringement offences and prescribing the penalties for those offences;
 - (i) prescribing requirements to keep records and the manner and form in which records are to be kept;
 - (j) authorities to tow;
 - (k) prescribing forms;
 - (l) prescribing fees;
 - (m) any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Any regulations made under this section—
- (a) may be of general or of specially limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may prescribe penalties of not more than 20 penalty units for any contravention of the regulations; and
 - (d) may confer a power or discretionary authority on a person or body or a class of person or body; and
 - (e) may apply, adopt or incorporate (with or without modification) any matter contained in a document as in force at the time the regulations are made or at any time before then; and
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- (f) may provide for the exemption of a specified person, body or thing or a specified class of person, body or thing from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.

224 Transitional provisions for commencement of new Scheme

Schedule 3 has effect.

**PART 9—AMENDMENTS TO THE TRANSPORT ACT AND
OTHER ACTS**

See:
Act No.
9921.
Reprint No. 12
as at
1 January
2007
and
amending
Act Nos
95/2005,
97/2005,
9/2006,
47/2006,
48/2006,
71/2006 and
85/2006.
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Division 1—Amendments to the Transport Act 1983

225 Objects and functions of Roads Corporation

In section 16(2) of the **Transport Act 1983**, for "2004" substitute "2004, the **Accident Towing Services Act 2007**".

226 Substitution of heading to Part VI

For the heading to Part VI of the **Transport Act 1983** substitute—

**"PART VI—LICENSING OF CERTAIN
VEHICLES AND DRIVER ACCREDITATION"**.

227 Definitions

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

- (a) *accident*; and
 - (b) *accident scene*; and
 - (c) *accident tow truck*; and
 - (d) *accident towing*; and
 - (e) *allocation centre*; and
 - (f) *authority to tow*; and
 - (g) *carry*; and
 - (h) *controlled area*; and
 - (i) *damaged motor vehicle*; and
 - (j) *heavy accident tow truck*; and
 - (k) *operator*, in relation to a tow truck; and
 - (l) *tow*; and
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- (m) *tow truck*; and
 - (n) *tow truck licence*; and
 - (o) *trade towing*.
- (2) In section 86(1) of the **Transport Act 1983** in the definition of *owner*—
- (a) in paragraphs (a) and (b), for "commercial passenger vehicle, commercial goods vehicle or tow truck" **substitute** "commercial passenger vehicle or commercial goods vehicle";
 - (b) in paragraph (c), for—
 - "(ii) a commercial goods vehicle;
 - (v) a tow truck—"**substitute—**
 - "(ii) a commercial goods vehicle—".

228 Annual licence fees

- (1) In section 147A(1) of the **Transport Act 1983**—
- (a) **omit** "or tow truck licence";
 - (b) **omit** "or tow truck (as the case requires)".
- (2) In section 147A(3) of the **Transport Act 1983**, **omit** "or tow truck licence".
- (3) Sections 147A(4) and (5) of the **Transport Act 1983** is **repealed**.

229 Setting of fees

In section 147B(1) of the **Transport Act 1983**—

- (a) for paragraph (a) **substitute—**
 - "(a) the fees payable under sections 140(2), 143A(7)(b), 147A(1) and (4), 149(1A)(b), 150(3), 151(2), 152 and 154(2); and";

(b) in paragraph (b), **omit** "or tow trucks" and "or tow truck".

230 Goods vehicle used as passenger vehicle to be licensed

For section 155(2)(d) of the **Transport Act 1983** substitute—

"(d) carried in a tow truck, if that carriage is not prohibited under the **Accident Towing Services Act 2007**".

231 Repeal of Division 8 of Part VI, Tow Trucks

Division 8 of Part VI of the **Transport Act 1983** is **repealed**.

232 Reference by Minister

For section 186(1)(c) of the **Transport Act 1983** substitute—

"(c) charges determined under section 213 of the **Accident Towing Services Act 2007**—".

Division 2—Amendments to the Road Safety Act 1986

233 Definitions

(1) In section 3(1) of the **Road Safety Act 1986**, for the definition of *commercial motor vehicle* substitute—

"*commercial motor vehicle* means—

- (a) a commercial goods vehicle or a commercial passenger vehicle within the meaning of Part VI of the **Transport Act 1983**; or
- (b) a tow truck within the meaning of the **Accident Towing Services Act 2007**;"

See:
Act No.
127/1986.
Reprint No. 10
as at
9 November
2006 and
amending
Act Nos
19/1991,
97/2005,
48/2006 and
81/2006.
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vic.gov.au

- (2) In section 84C(1) of the **Road Safety Act 1986**, in the definition of *tow truck* for "**Transport Act 1983**" substitute "**Accident Towing Services Act 2007**".

234 Removal of vehicles from council controlled areas

- (1) For section 90F(3) of the **Road Safety Act 1986** substitute—

"(3) A vehicle removed in accordance with this section from a council controlled area must be towed from the area by a tow truck, within the meaning of the **Accident Towing Services Act 2007**".

- (2) Section 90F(4) of the **Road Safety Act 1986** is repealed.

- (3) For section 90F(5) of the **Road Safety Act 1986** substitute—

"(5) A vehicle that has been towed under this section must be taken to, and stored at, the place specified by the member of the police force and released to its owner or the owner's agent on payment by that person of a release fee."

235 Disclosure of information

After section 92(3)(g) of the **Road Safety Act 1986** insert—

- "(ga) for the purposes of the **Accident Towing Services Act 2007**;"

**Division 3—Amendments to the Infringements Act 2006, the
Police Regulation Act 1958 and the Melbourne City Link
Act 1995**

See:
Act No.
12/2006.
Reprint No. 1
as at
1 July 2006
and
amending
Act Nos
48/2006 and
81/2006.
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**236 Alteration of references in the Infringements
Act 2006**

(1) For section 34(b) of the **Infringements Act 2006**
substitute—

"(b) an offence under the **Accident Towing
Services Act 2007** does not prevent the
incurring of accident towing demerit points
under that Act in relation to that offence."

(2) In section 98 of the **Infringements Act 2006**, for
"Part VI of the **Transport Act 1983** operating in
accordance with a licence granted under
Division 8 of that Part" **substitute** "the **Accident
Towing Services Act 2007**".

See:
Act No.
6338.
Reprint No. 11
as at
9 November
2006
and
amending
Act Nos
97/2005,
24/2006,
43/2006 and
48/2006.
LawToday:
www.
legislation.
vic.gov.au

**237 Alteration of references in the Police Regulation
Act 1958**

In section 127A(1F) of the **Police Regulation Act
1958—**

(a) for "a tow truck operator within the meaning
of Part VI of the **Transport Act 1983**"
substitute "the operator or driver of a tow
truck, within the meaning of the **Accident
Towing Services Act 2007**, or a person who
manages a depot, within the meaning of that
Act,";

(b) for "92(3)(d)" **substitute** "92(3)(da)".

238 Amendment of Melbourne City Link Act 1995

Section 114A(3) of the **Melbourne City Link Act 1995** is **repealed**.

See:
Act No.
107/1995.
Reprint No. 6
as at
10 February
2006
and
amending
Act Nos
61/2005,
32/2006,
48/2006,
63/2006,
74/2006,
81/2006 and
85/2006.
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239 Repeal of Part

This Part is **repealed** on 1 January 2010.

SCHEDULES

SCHEDULE 1

Sections 66, 67, 68, 70(3), 79, 80, 87, 92

INDUSTRY ACCREDITATION OFFENCES

1 Serious violent offences

The offences listed in this clause are the following—

- (a) an offence specified in clause 3 of Schedule 1 to the **Sentencing Act 1991**; or
- (b) an offence under a law of a jurisdiction other than Victoria (including jurisdictions outside Australia) that, if it had been committed in Victoria, would have constituted an offence of a kind listed in paragraph (a).

2 Fraud, dishonesty, violence, sexual offences or drug trafficking

The offences listed in this clause are the following—

- (a) an offence specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** that is not an offence of a kind listed in clause 1(a); or
- (b) an offence involving fraud, dishonesty, or violence punishable by imprisonment of 3 months or more; or
- (c) an offence specified in clause 2 of Schedule 1 to the **Sentencing Act 1991** that is not an offence specified in clause 3 of that Schedule or referred to in paragraph (b); or

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- (d) an offence specified in clause 4 of Schedule 1 to the **Sentencing Act 1991** that is not an offence of a kind listed in paragraph (b); or
 - (e) an offence under a law of a jurisdiction other than Victoria (including jurisdictions outside Australia) that, if it had been committed in Victoria, would have constituted an offence of a kind listed in this clause.

3 Other offences

The offences listed in this clause are any offences that are not offences of a kind listed in clauses 1 or 2.

SCHEDULE 2

Sections 107, 108, 109, 111(3), 122, 124, 128(2), 132(5), 136

DRIVER ACCREDITATION OFFENCES

1 Serious violent offences and sexual offences

The offences listed in this clause are the following—

- (a) an offence specified in clause 3 of Schedule 1 to the **Sentencing Act 1991**; or
- (b) an offence against the **Crimes Act 1958** that involves sexual penetration (within the meaning given by section 35(1) of the **Crimes Act 1958**); or
- (c) an offence against a provision of the **Crimes Act 1958** amended or repealed before the commencement of Part 9 of this Act of which the necessary elements at the time it was committed consisted of elements that constitute an offence of a kind listed in paragraph (b); or
- (d) an offence under a law of a jurisdiction other than Victoria (including jurisdictions outside Australia) that, if it had been committed in Victoria, would have constituted an offence of a kind listed in this clause.

2 Fraud, dishonesty, violence, sexual offences or drug trafficking

The offences listed in this clause are the following—

- (a) an offence specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** that is not an offence of a kind listed in clause 1(a); or

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- (b) an offence involving fraud, dishonesty, or violence punishable by imprisonment of 3 months or more; or
 - (c) an offence specified in clause 2 of Schedule 1 to the **Sentencing Act 1991** that is not an offence specified in clause 3 of that Schedule or referred to in paragraph (b); or
 - (d) an offence specified in clause 4 of Schedule 1 to the **Sentencing Act 1991** that is not an offence of a kind listed in paragraph (b); or
 - (e) an offence under a law of a jurisdiction other than Victoria (including jurisdictions outside Australia) that, if it had been committed in Victoria, would have constituted an offence of a kind listed in this clause.

3 Other offences

The offences listed in this clause are any offences that are not offences of a kind listed in clauses 1 or 2.

SCHEDULE 3

Section 224

**TRANSITIONAL PROVISIONS FOR NEW ACCIDENT
TOWING SERVICES SCHEME**

1 Definitions

In this Schedule—

commencement day means the day on which
Part 9 of this Act commences;

disqualified person, in respect of—

- (a) tow truck driver accreditation, means a person in respect of whom, if the person were to be an applicant for tow truck driver accreditation, VicRoads would be required to refuse accreditation under section 107; or
- (b) towing operator accreditation, means a person in respect of whom, if the person were to be an applicant for a towing operator accreditation, VicRoads would be required to refuse the accreditation under section 66(1);

old Act means the **Transport Act 1983** as in force immediately before the commencement day;

old accident towing licence means an accident towing licence, within the meaning of Part VI of the old Act, being a licence that is in force immediately before the commencement day;

old demerits register means the register of demerit points kept by the Secretary under section 181B of the old Act as in force immediately before the commencement day;

old driver authority means an accident towing driver authority that has been issued under section 182B of the old Act and that is in force immediately before the commencement day;

old heavy accident tow truck towing licence means a heavy accident tow truck towing licence, within the meaning of Part VI of the old Act, that is in force immediately before the commencement day;

old limited tow truck licence means—

(a) a heavy accident towing licence within the meaning of Part VI of the old Act; or

(b) an accident towing licence within the meaning of Part VI of the old Act—

that is in force immediately before the commencement day and that is held by a relevant agency;

Secretary means the person who is, for the time being, the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department.

2 Tow Truck Driver Authorities

A person who was, immediately before the commencement day, the holder of an old driver authority—

(a) who is not a disqualified person; or

(b) who is a disqualified person who has been determined to be eligible by VicRoads under clause 10(1)(a)—

is taken to be the holder of a tow truck driver accreditation that is taken to—

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- (c) continue in force for the remainder of the period of the old driver authority; and
 - (d) be subject to the same conditions as those that applied to the old driver authority immediately before the commencement day, to the extent that those conditions are not inconsistent with this Act.

3 Accident towing licences

- (1) A person who was, immediately before the commencement day, the holder of an old heavy accident tow truck towing licence is taken to be the holder of a heavy tow truck licence—
 - (a) for which the tow truck, to which the licence applied immediately before the commencement day, is taken to be the specified tow truck for the licence; and
 - (b) that—
 - (i) is taken to continue in force for the remainder of the period of the old licence; and
 - (ii) is taken to be subject to the same conditions as those that applied to the old licence immediately before the commencement day, to the extent that those conditions are not inconsistent with this Act or regulations made under this Act; and
 - (iii) in the case of such a licence that is an old limited tow truck licence, is taken to be a limited tow truck licence.
 - (2) A person who was, immediately before the commencement day, the holder of an old accident towing licence is taken to be the holder of a regular tow truck licence—
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- (a) for which the tow truck, to which the licence applied immediately before the commencement day, is taken to be the specified tow truck for the licence; and
- (b) that—
- (i) is taken to continue in force for the remainder of the period of the old licence; and
 - (ii) is taken to be subject to the same conditions as those that applied to the old licence immediately before the commencement day, to the extent that those conditions are not inconsistent with this Act or regulations made under this Act; and
 - (iii) in the case of such a licence that is an old limited tow truck licence, is taken to be a limited tow truck licence.

4 Operator accreditations

A person who was, immediately before the commencement day, the holder of an old heavy accident tow truck towing licence or the holder of an old accident towing licence—

- (a) who is not a disqualified person; or
- (b) who is a disqualified person who has been determined to be eligible by VicRoads under clause 10(1)(b) or 10(1)(c)—

is taken to be the holder of a towing operator accreditation that is to be taken to remain in force for a period of 12 months from the commencement day, unless sooner cancelled or suspended under this Act.

5 Demerit points

If, immediately before the commencement day, a person is recorded in the old demerits register as having incurred demerit points, the demerit points so recorded are taken to be accident towing demerit points within the meaning of this Act incurred by that person and, for the purposes of this Act, the point in time at which the demerit points have been incurred is to be taken to be the same point in time as that which applied under the old Act.

6 Determination of tow truck charges

A determination of the Minister that has been made under section 184A of the old Act, and that is in force immediately before the commencement day, is taken to be a determination made under section 211 and may be amended or revoked accordingly.

7 Continuation of operation of regulations

If Part 9 of this Act commences before 14 November 2008, despite that commencement, Part 4 of the Transport (Tow Truck) Regulations 2005, as in force immediately before that commencement is to be taken to continue in force until 14 November 2008, as if the Regulations were made under this Act, and the following provisions apply—

- (a) the Regulations may be amended or revoked as if they were made under this Act;
- (b) in the Regulations—

licensing authority is to be taken to mean VicRoads.

8 Saving of references in agreements etc.

(1) Any reference to the Director of Public Transport in any relevant agreement, instrument, deed or other document, so far as it relates to any period after the commencement day and if not inconsistent with the context or subject-matter, must be construed as a reference to VicRoads.

(2) In this clause—

relevant agreement, instrument, deed or other document means any agreement, instrument, deed or other document—

- (a) entered into under Division 8 of Part VI of the **Transport Act 1983** (as in force before its repeal by this Act); and
- (b) in force immediately before the commencement day.

9 Melbourne controlled area

(1) Despite the commencement of Part 9 of this Act, the Melbourne controlled area is to be taken to be the area described by a declaration published in the Government Gazette on 31 October 2002 at pages 2919 to 2921.

(2) This clause is repealed on the first anniversary of its commencement.

10 Determinations of eligibility

(1) VicRoads may determine that—

- (a) the holder of an old driver authority who is a disqualified person in respect of tow truck driver accreditation is eligible to be taken to be the holder of a tow truck driver accreditation; or

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- (b) the holder of an old heavy accident tow truck towing licence who is a disqualified person in respect of towing operator accreditation is eligible to be taken to be the holder of a towing operator accreditation; or
 - (c) the holder of an old accident towing licence who is a disqualified person in respect of towing operator accreditation is eligible to be taken to be the holder of a towing operator accreditation.
- (2) VicRoads must—
- (a) refuse an application for a determination under subclause (1)(a) unless VicRoads is satisfied that the applicant has demonstrated that there are exceptional circumstances that make the determination appropriate having regard to the driver accreditation objective.
 - (b) refuse an application for a determination under subclause (1)(b) or (c) unless VicRoads is satisfied that the applicant has demonstrated that there are exceptional circumstances that make the determination appropriate having regard to the industry accreditation objective.
- (3) In making a determination under subclause (1) VicRoads may have regard to all or any of the following matters—
- (a) the nature and gravity of any relevant offence or alleged offence and its relevance to the activities in respect of which accreditation is sought; and
 - (b) the period of time since the offence or alleged offence was committed or was alleged to have been committed; and
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- (c) if there has been a finding of guilt or a conviction, whether the finding of guilt or the conviction was recorded; and
 - (d) if there has been a finding of guilt or a conviction, the sentence (if any) imposed for the offence; and
 - (e) the age of the applicant or nominated person or relevant person when the offence or alleged offence was committed or was alleged to have been committed; and
 - (f) if there has been a finding of guilt or a conviction, whether or not the conduct that constituted the offence has been decriminalised since the offence was committed; and
 - (g) the behaviour of the applicant or nominated person or relevant person since committing the offence or since the offence was alleged to have been committed; and
 - (h) the likelihood of the applicant or nominated person or relevant person committing an offence in the future, in particular, any future threat to persons involved in accidents or the owners of accident damaged motor vehicles; and
 - (i) any information given by the applicant, nominated person or relevant person; and
 - (j) any other matter that VicRoads considers relevant.
- (4) A person who is the holder of an old driver authority, an old heavy accident tow truck towing licence or an old accident towing licence may apply to VicRoads for a determination under subclause (1).
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- (5) An application under this clause must be made before the commencement day.
 - (6) So far as is necessary to give effect to this clause before the commencement day, words and phrases used in this clause have the same meaning as they would have if the remaining provisions of the Act were in operation.
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ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 19 April 2007

Legislative Council: 20 June 2007

The long title for the Bill for this Act was "A Bill for an Act to make provision for accident towing services and other matters relating to the towing, storage and repair of motor vehicles, to amend the **Infringements Act 2006**, the **Melbourne City Link Act 1995**, the **Police Regulation Act 1958**, the **Road Safety Act 1986** and the **Transport Act 1983** and for other purposes."