



ANNO TRICESIMO

**ELIZABETHAE II REGINAE**

A.D. 1981

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**No. 98 of 1981****An Act to amend the Motor Vehicles Act, 1959-1981.***[Assented to 23 December 1981]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

**Short titles.**

1. (1) This Act may be cited as the "Motor Vehicles Act Amendment Act, (No. 5), 1981".

(2) The Motor Vehicles Act, 1959-1981, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Motor Vehicles Act, 1959-1981".

**Commencement.**

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation made for the purposes of this Act, suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

**Amendment of s. 5—  
Interpretation.**

3. Section 5 of the principal Act is amended—

(a) by inserting in subsection (1) before the definition of "articulated motor vehicle" the following definitions:

"accident" means a collision or impact (whether caused accidentally or on purpose) resulting in damage to a motor vehicle:

"accident towing direction" in relation to a motor vehicle damaged in an accident means a direction to tow that motor vehicle from the scene of the accident, being a direction given to a towtruck operator by or on behalf of a member of the police force in accordance with the accident towing roster scheme:

"accident towing roster scheme" means the accident towing roster scheme provided for by the regulations;:

- (b) by inserting in subsection (1) after the definition of “articulated motor vehicle” the following definition:

“authority to tow” in relation to a damaged motor vehicle means authorization in writing to remove the motor vehicle given for the purposes of this Act by the owner or person in charge of the vehicle or an inspector or member of the police force;;

- (c) by inserting in subsection (1) after the definition of “commercial motor vehicle” the following definition:

“the committee” means the consultative committee established under section 139b;;

- (d) by inserting in subsection (1) after the definition of “court” the following definition:

“declared area” means—

(a) the municipalities of Adelaide, Brighton, Burnside, Campbelltown, Elizabeth, Enfield, Gawler, Glenelg, Henley and Grange, Hindmarsh, Kensington and Norwood, Marion, Mitcham, Noarlunga, Payneham, Port Adelaide, Prospect, St. Peters, Salisbury, Tea Tree Gully, Thebarton, Unley, Walkerville, West Torrens and Woodville;

(b) the district council districts of Munno Para, East Torrens and Stirling;

(c) the wards known as the Happy Valley, Coromandel, Clarendon and Kangarilla wards of the district council of Meadows;

(d) the portion of the Hundred of Willunga that lies within the district council district of Willunga;

and

(e) a part of the State declared by regulation to be within the area;;

- (e) by inserting in subsection (1) after the definition of “owner” the following definition:

“premises” includes land and the fences, walls or structures on the boundaries of land;;

- (f) by inserting in subsection (1) after the definition of “primary producer” the following definition:

“quotation for repair” means an assessment or estimate of the actual or probable cost of repairing damage to a motor vehicle;;

- (g) by inserting in subsection (1) after the definition of “registered owner” the following definition:

“registered premises” in relation to a towtruck operator means the premises registered in the name of the towtruck operator pursuant to the accident towing roster scheme;;

- (h) by inserting in subsection (1) after the definition of “road” the following definition:

“scene of an accident” means the area within a radius of two hundred metres from the point at which a vehicle involved in an accident has, as an immediate result of the accident, come or been brought to a stationary position;;

(i) by inserting in subsection (1) after the definition of “stamp duty” the following definition:

“temporary towtruck certificate” means a temporary towtruck certificate issued by the Registrar under Part IIIC;;

(j) by striking out from subsection (1) the definitions of “towtruck” and “towtruck certificate” and substituting the following definitions:

“tow” in relation to a motor vehicle means tow, partially lift and tow, lift and carry or carry a motor vehicle by means of another motor vehicle:

“towtruck” means a motor vehicle (including a trailer attached to a motor vehicle) designed, adapted or intended to lift and carry or partially lift and tow a motor vehicle that is incapable, by reason of damage or malfunction, of being operated properly under its own motive power:

“towtruck certificate” means a towtruck certificate issued by the Registrar under Part IIIC:

“towtruck driver” means a person who drives or operates the equipment of a towtruck:

“towtruck operator” means a person who carries on a business of or that includes towing motor vehicles;;

and

(k) by inserting in subsection (1) after the definition of “trailer” the following definition:

“the Tribunal” means the Towtruck Tribunal established under Part IIIC.

4. Sections 98c to 98m of the principal Act are repealed and the following sections are substituted:

Repeal of ss. 98c to 98m and substitution of new sections.

Interpretation.

98c. In this Part—

“inspector” means an inspector appointed under this Part.

Certain towtruck drivers required to hold certificates.

98d. (1) Subject to subsection (2), no person shall drive or operate the equipment of a towtruck within the declared area unless he is the holder of a towtruck certificate or temporary towtruck certificate.

Penalty: One thousand dollars.

(2) Subsection (1) does not prevent a person who does not hold a towtruck certificate or temporary towtruck certificate from driving or operating the equipment of a towtruck within the declared area in the course of a business conducted from a place of business outside the declared area, provided that the towtruck is not used for the purpose of towing a motor vehicle damaged in an accident occurring within the declared area.

98e. (1) An application for a towtruck certificate must be made to the Registrar in such manner and form, contain such information and be accompanied by such papers and documents (including photographs) as the Registrar may require.

Applications for towtruck certificates.

(2) An applicant for a towtruck certificate must, if the Registrar so requires—

(a) undergo such tests or furnish such other evidence as the Registrar may require of his ability to drive and operate the equipment of a towtruck of a kind specified by the Registrar;

(b) furnish the Registrar with such further information, papers or documents as the Registrar may require;

and

(c) verify by statutory declaration information furnished for the purposes of the application.

(3) An applicant for a towtruck certificate must at the time of making the application pay the prescribed application fee to the Registrar.

98f. (1) Subject to this Act, an applicant shall be entitled to be granted a towtruck certificate if—

Entitlement to be granted towtruck certificate.

(a) he is of or above the age of eighteen years;

(b) he is the holder of a class 2 or class 3 driver's licence granted and in force under Part III;

(c) he is a fit and proper person to be granted a towtruck certificate;

(d) he has an adequate knowledge of the provisions of this Act relating to driving and operating the equipment of towtrucks;

and

(e) he is proficient in driving and operating the equipment of a towtruck of the kind specified by the Registrar.

(2) Where due application is made for a towtruck certificate under this Part and the applicant is entitled to be granted the certificate, the Registrar shall, upon payment of the prescribed fee, grant the certificate.

98g. (1) A towtruck certificate in force immediately before the commencement of this section shall, subject to this Act, remain in force for the term for which it was granted or last renewed and, upon the expiration of that term, may be renewed in accordance with this section.

Renewal of towtruck certificates.

(2) A towtruck certificate granted or renewed after the commencement of this section shall, subject to this Act, remain in force for a period of twelve months from the grant or renewal of the certificate and may from time to time be renewed for successive periods of twelve months.

(3) An application for renewal of a towtruck certificate must be made to the Registrar in such manner and form as may be required by the Registrar.

(4) Where due application is made for renewal of a towtruck certificate, the Registrar shall, upon payment of the prescribed fee, renew the certificate.

Conditions  
of towtruck  
certificates.

98h. (1) The Registrar may, upon granting or renewing a towtruck certificate, or at any other time, by notice in writing to the holder of the certificate, impose a condition of the certificate.

(2) The Registrar may, at any time, by notice in writing to the holder of a towtruck certificate, vary or revoke a condition of the certificate.

(3) No person who is the holder of a towtruck certificate shall contravene or fail to comply with a condition of the certificate.

Penalty: Five hundred dollars.

Surrender  
of towtruck  
certificate.

98i. A person who is the holder of a towtruck certificate may, at any time, surrender his certificate and the certificate shall thereupon cease to have any effect.

Suspension  
of towtruck  
certificate.

98j. A towtruck certificate shall be deemed to be suspended for any period for which the holder of the certificate is not the holder of a class 2 or class 3 driver's licence that is in force under Part III.

Temporary  
towtruck  
certificates.

98k. (1) The Registrar may, in such circumstances as he thinks fit, grant a person a temporary towtruck certificate authorizing that person to drive and operate the equipment of a towtruck during a period specified in the certificate.

(2) The Registrar may, upon granting a temporary towtruck certificate, or at any other time, by notice in writing to the holder of the certificate, impose a condition of the certificate.

(3) The Registrar may, at any time, by notice in writing to the holder of a temporary towtruck certificate, vary or revoke a condition of the certificate.

(4) A temporary towtruck certificate in force immediately before the commencement of this section shall be deemed to have been granted under this section and shall, subject to this Act, remain in force for the period for which it was granted.

(5) No person who is the holder of a temporary towtruck certificate shall contravene or fail to comply with a condition of the certificate.

Penalty: Five hundred dollars.

Form of  
certificates.

981. (1) Towtruck certificates and temporary towtruck certificates shall be in a form determined by the Registrar.

(2) The Registrar may, at any time, by notice in writing to the holder of a towtruck certificate or temporary towtruck certificate, require the certificate to be returned to him at a place and within a period specified in the notice for the purpose of varying the form of the certificate or replacing the certificate with a certificate in a different form.

(3) A person given a notice under this section shall not fail to comply with the notice.

Penalty: Five hundred dollars.

98m. (1) The Registrar may, on the application of the holder of a towtruck certificate or temporary towtruck certificate, on proof to his satisfaction of the loss or destruction of the certificate, or on the surrender of the certificate to the Registrar, and on payment of the prescribed fee, issue to the holder a duplicate certificate.

Duplicate certificates.

(2) The Registrar may, for reasonable cause, remit a fee payable under subsection (1).

(3) A duplicate issued under this section shall have effect as if it were the original.

98ma. (1) Where a towtruck certificate or temporary towtruck certificate is cancelled or suspended under this Act, the Registrar may, by notice in writing to the former holder of the certificate, require the certificate to be returned to him at a place and within a period specified in the notice.

Return of certificates when cancelled or suspended.

(2) A person given a notice under this section shall not fail to comply with the notice.

Penalty: Five hundred dollars.

98mb. (1) The Registrar shall keep a register of all towtruck certificates and temporary towtruck certificates granted under this Part and record in the register all related conditions, suspensions, cancellations and disqualifications.

Register of certificates.

(2) The register shall contain such other information as the Registrar deems necessary for the administration of this Part and be in a form fixed by the Registrar.

98mc. (1) A towtruck operator shall not cause, suffer or permit a person to drive or operate the equipment of a towtruck in the course of his business in circumstances in which that person is required to hold a towtruck certificate or temporary towtruck certificate unless—

Towtruck operators to notify Registrar of towtruck drivers in their employ.

(a) that person holds a towtruck certificate or temporary towtruck certificate;

and

(b) the towtruck operator has notified the Registrar in writing that that person will be employed in his business as a towtruck driver.

Penalty: Five hundred dollars.

(2) Where notification has been given under subsection (1) (b) of the employment of a person as a towtruck driver and that person dies or ceases to be so employed, the towtruck operator shall, within forty-eight hours, notify the Registrar in writing of that fact.

Penalty: Five hundred dollars.

98md. (1) No person shall, for or in expectation of a fee, reward or benefit of any kind, or in the course of a business, proceed to, or be present at, the scene of an accident that occurred within the declared area for any purpose related to the removal, storage, repair or wrecking of a motor vehicle that was damaged in the accident unless—

Only persons directed by police to proceed to or be present at scene of accident for purposes related to removal, wrecking or repair.

(a) he is the holder of a towtruck certificate;

(b) he is acting pursuant to an accident towing direction given—

(i) if he is a towtruck operator—to him;

or

(ii) in any other case—to a towtruck operator by whom he is employed;

and

(c) he is proceeding or has proceeded to the scene of the accident in a towtruck registered in the name of the towtruck operator to whom the accident towing direction was given.

Penalty: Five thousand dollars.

(2) In any proceedings for an offence against subsection (1), an allegation in the complaint that the defendant was acting for a purpose related to the removal, storage, repair or wrecking of a motor vehicle damaged in the accident shall, in the absence of proof to the contrary, be deemed to be proved.

(3) A member of the police force or an inspector may, for the purpose of protecting the driver, owner or person in charge of a motor vehicle damaged in an accident (whether occurring within or outside the declared area) from undue soliciting or harassment, require a person to leave the scene of the accident, or give such other direction as he thinks fit to a person present at the scene of the accident.

(4) A person shall comply with any requirement or direction given under this section.

Penalty: One thousand dollars.

Towing of  
vehicle at  
or from  
scene of  
accident.

98me. (1) No person shall, for or in expectation of a fee, reward or benefit of any kind, or in the course of a business, tow or otherwise remove a motor vehicle damaged in an accident that occurred within the declared area at or from the scene of the accident unless—

(a) he is the holder of a towtruck certificate;

(b) he is acting pursuant to an accident towing direction given—

(i) if he is a towtruck operator—to him;

or

(ii) in any other case—to a towtruck operator by whom he is employed;

(c) he tows the damaged vehicle by means of a towtruck registered in the name of the towtruck operator to whom the accident towing direction was given;

and

(d) he has before removing the damaged vehicle personally obtained from the owner or person in charge of the vehicle or an inspector or member of the police force authorization to remove the vehicle in the form of a valid authority to tow.

Penalty: Five thousand dollars.

(2) An authority to tow is not valid for the purposes of subsection (1)—

- (a) if it is given by a towtruck operator, towtruck driver or a person acting on behalf of a towtruck operator, or towtruck driver, unless the towtruck operator or towtruck driver is the owner of the damaged vehicle or was the driver of, or a passenger in, the vehicle immediately before the accident occurred;
  - (b) if it is given by a person under the age of sixteen years;
  - (c) unless it is contained in a document issued by the Registrar to the towtruck operator to whom the accident towing direction was given for use as an authority to tow;
  - (d) unless it is signed and completed in triplicate;
  - (e) unless the towtruck driver before presenting the document to any person for signature fully and accurately enters in the document the particulars required by the document;
  - (f) unless the document is signed by the person authorizing removal of the damaged vehicle;
- and
- (g) unless the towtruck driver, forthwith upon obtaining the signature of the person authorizing removal of the damaged vehicle, signs the document himself and enters in it the date and time at which each person signed it and then forthwith delivers the original of the authority to that other person.

(3) A towtruck driver who has obtained an authority to tow under this section authorizing him to remove a vehicle from the scene of an accident shall remove the vehicle in accordance with the terms of the authority to the address specified in the authority by the shortest route practicable and leave the vehicle at that address until it is lawfully removed from there.

Penalty: One thousand dollars.

(4) No person shall prevent by intimidation or force a person duly authorized to remove a damaged motor vehicle from the scene of an accident from doing so, or from delivering the vehicle to and leaving it at the place specified in the authority.

Penalty: One thousand dollars.

(5) Where a towtruck driver has been given, or expects to be given, a fee, reward or benefit of any kind in anticipation of, or return for, his removing a damaged vehicle from the scene of an accident to a particular place (other than the registered premises of the towtruck operator to whom the accident towing direction was given), the towtruck driver shall not solicit from the owner or person in charge of the vehicle authorization to remove the vehicle to that place.

Penalty: One thousand dollars.

(6) Where, in proceedings for an offence against subsection (5), it is proved that the defendant solicited from the owner or person in charge of a motor vehicle authorization to remove the vehicle from the scene of an accident to a place other than the registered premises of



the towtruck operator to whom the accident towing direction was given, the defendant shall be deemed, in the absence of proof to the contrary, to have been given, or to have expected to be given, a fee, reward or benefit of any kind in anticipation of, or return for, his removing the vehicle to that place.

(7) No person shall alter any of the particulars in an authority to tow under this section without the consent of the person who gave the authority indicated by signature of that person in the margin of the authority near to the alteration.

Penalty: One thousand dollars.

(8) Where an alteration is made to any of the particulars in an authority to tow under this section, the authority is not valid for the purposes of this section unless the signatures of the towtruck driver and the person who gave the authority appear in the margin of the authority near to the alteration.

(9) No person shall solicit a person who has signed an authority to tow a motor vehicle from the scene of an accident, for a revocation or variation of that authority, or for any further or other authorization superseding that authority.

Penalty: One thousand dollars.

(10) An inspector or a member of the police force present at the scene of an accident may, by oral or written direction, revoke an authority to tow if he considers that—

(a) the particulars required to be entered in the authority have not been fully or correctly entered;

(b) the authority or an alteration of the authority has been obtained or made in contravention of a provision of this Act;

or

(c) the removal or repair of the vehicle should be delayed in order to preserve evidence for the purpose of future court proceedings.

(11) An inspector or a member of the police force may give such directions as are reasonable in the circumstances to a towtruck operator or towtruck driver requiring that person to tow or remove a motor vehicle at or from the scene of an accident (whether or not an authority to tow has been obtained in respect of that vehicle and whether the accident occurred within or outside the declared area) for the purpose of removing or preventing an obstruction or danger arising or likely to arise from the accident.

(12) No towtruck operator or towtruck driver shall, without reasonable excuse, fail to comply with a direction given under subsection (11).

Penalty: One thousand dollars.

(13) A towtruck driver who has obtained an authority to tow under this section in relation to a motor vehicle—

(a) shall within the period of ten hours after obtaining the authority deliver the duplicate and triplicate copies of the

authority to the registered premises of the towtruck operator to whom the accident towing direction in relation to that motor vehicle was given;

and

- (b) until he has so delivered those copies of the authority, carry them with him and, on demand, produce them for inspection to an inspector or member of the police force.

Penalty: One thousand dollars.

(14) A towtruck operator (being a towtruck driver or the employer of a towtruck driver who has obtained an authority to tow) shall ensure—

- (a) that the duplicate and triplicate copies of the authority to tow are completed in the prescribed manner with the prescribed additional information;

- (b) that the duplicate copy so completed is forwarded to the Registrar in such manner and within such time as may be prescribed;

and

- (c) retain the triplicate copy at his registered premises for a period of not less than three years after his receipt of the authority.

Penalty: One thousand dollars.

(15) Where a towtruck operator removes a motor vehicle from the scene of an accident in accordance with an authority to tow to the place specified in the authority and leaves the vehicle at that place, the towtruck operator shall be entitled to recover from the owner of the vehicle, by action in a court of competent jurisdiction, as a debt due to him, a fee for so removing the vehicle determined according to the prescribed scale of fees.

98mf. (1) Where a motor vehicle damaged in an accident is stored by or on behalf of a towtruck operator (being a towtruck operator who engages in the towing of motor vehicles damaged in accidents occurring within the declared area) otherwise than at his registered premises, the towtruck operator shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

Storage of vehicles by towtruck operators.

(2) Where a motor vehicle has been removed by a towtruck operator in accordance with an authority to tow from the scene of an accident that occurred within the declared area to the registered premises of the towtruck operator for storage of the vehicle at those premises, the towtruck operator shall—

- (a) store the vehicle at those premises in accordance with the regulations until it is lawfully removed from the premises;

and

- (b) be entitled to recover from the owner of the vehicle, by action in a court of competent jurisdiction, as a debt due to him, a fee for so storing the vehicle determined according to the prescribed scale of fees.

98mg. (1) Where a motor vehicle has been removed from the scene of an accident to the place specified in an authority to tow given in relation to that vehicle, no person shall, for or in expectation of a fee,

Removal of vehicle from place to which it was removed from the scene of an accident.

reward or benefit of any kind, or in the course of a business, remove the vehicle from that place except—

(a) pursuant to a written direction in the form determined by the Registrar of the owner of the vehicle or a person duly authorized to act on his behalf to a place specified in the direction, being a direction given after the removal of the vehicle to the place specified in the authority to tow;

or

(b) with the approval of the Registrar to a place and in accordance with the conditions specified in the approval.

Penalty: One thousand dollars.

(2) The Registrar may, upon application made in writing by a person into whose possession a motor vehicle has come as a result of its removal from the scene of an accident in accordance with the terms of an authority to tow, give his approval by notice in writing, upon such conditions as he thinks fit and specifies in the approval, for the vehicle to be removed to a place specified in the approval, if he is satisfied that that person has made reasonable attempts to obtain the permission of the owner of the vehicle or a person duly authorized to act on his behalf to remove the vehicle to another place and that it is reasonable in the circumstances that the vehicle be removed to that other place.

Contracts relating to the repair of certain motor vehicles.

98mh. (1) No person shall, at the scene of any accident within the declared area involving or affecting a motor vehicle, or, where the vehicle was removed from the scene of the accident by a towtruck, within the period of twelve hours following that accident, solicit the owner, driver or person in charge of the vehicle for a contract, authority, insurance claim or other document for or relating to the storage, wrecking or repair or a quotation for repair of the vehicle or for revocation or variation of any such contract, authority, insurance claim or document.

Penalty: One thousand dollars.

(2) No contract for a quotation for repair of a motor vehicle or for repair of a motor vehicle, being a motor vehicle that has been damaged in an accident within the declared area, shall, if entered into before the prescribed time, be enforceable or relied upon in any way unless—

(a) the contract is in writing (and, in addition, in the case of a contract for a quotation for repair of a motor vehicle, is in the prescribed form) and has been signed by the owner of the vehicle or some person duly authorized to act on his behalf;

(b) there is printed conspicuously on that contract in capital letters in bold, black type so as to be clearly seen the words "This contract is unenforceable unless the owner of the motor vehicle or some person duly authorized to act on his behalf confirms the contract not less than six hours nor more than fourteen days after the signing of the contract";

(c) the owner of the vehicle or person duly authorized to act on his behalf is given a duplicate of the contract immediately

after signing the contract and the other party to the contract has obtained from that person an acknowledgement in writing of receipt of the duplicate;

and

- (d) the owner of the vehicle or some person duly authorized to act on his behalf has not less than six hours nor more than fourteen days after the signing of the contract notified the other party to the contract in writing that the owner confirms the contract.

(3) No amount shall be payable, nor shall a lien arise, in respect of the cost of making repairs to, or preparing a quotation for repair of, a motor vehicle referred to in subsection (2) where the repairs are made or the quotation is prepared before the prescribed time unless the repairs are made or the quotation is prepared pursuant to a contract that has been entered into and confirmed in accordance with subsection (2).

(4) In this section "the prescribed time" means—

- (a) where the vehicle was removed from the scene of the accident by a towtruck—the time at which after the vehicle was so removed the owner or some person duly authorized to act on his behalf recovers actual physical possession of the vehicle;

or

- (b) the expiration of twenty-four hours after the removal of the vehicle from the scene of the accident,

whichever last occurs.

(5) An agreement or arrangement that purports to exclude, modify or restrict the operation of this section shall to that extent be void and of no effect.

(6) A purported waiver of a right conferred by this section shall be void and of no effect.

(7) The provisions of this section, other than subsection (1), do not apply to a contract to which the Door to Door Sales Act, 1971-1979, applies.

98mi. (1) A person who has in his possession or control a motor vehicle that has been damaged in an accident and removed from the scene of the accident by a towtruck or that has broken down and been removed by a towtruck, shall, at the request of the owner of the vehicle or a person acting on his behalf, and upon payment or tender of payment of all amounts lawfully claimed from the owner in relation to—

Duty to  
surrender  
vehicle.

- (a) removal of the vehicle from the scene of the accident or the place at which it broke down;
- (b) storage of the vehicle;
- (c) quotation for repair of the vehicle;
- (d) repair of the vehicle,

forthwith deliver up the vehicle to the owner or person acting on his behalf.

Penalty: Two thousand dollars.

(2) Notwithstanding the provisions of section 98mf (2), no amount shall be payable for storage of a motor vehicle referred to in subsection (1) for a period exceeding fourteen days unless notices in the prescribed form and containing the prescribed information have been given in the prescribed manner before the vehicle has been stored for that period.

(3) An agreement or arrangement that purports to exclude, modify or restrict the operation of subsection (2) shall to that extent be void and of no effect.

(4) Subject to subsection (5), where an inspector has reason to believe that a person has failed to deliver up a vehicle in contravention of subsection (1), the inspector may seize and remove the vehicle and deliver it to the owner or person acting on his behalf and for that purpose may exercise the powers conferred on inspectors for the purpose of an investigation under section 98p.

(5) An inspector shall not exercise the powers conferred by subsection (4) except upon the authority of a warrant issued by a justice.

Accident spotting.

98mj. (1) No person shall enter into an agreement or arrangement under which information relating to the occurrence of an accident involving or affecting a motor vehicle or to the location of a motor vehicle damaged in an accident is, for a fee, reward or benefit of any kind, furnished to or by that person for any purpose relating to the towing, storage, repair or wrecking of the vehicle.

Penalty: Two thousand dollars.

(2) Where in any proceedings for an offence against subsection (1) it is proved that information of the kind referred to in that subsection was furnished to or by the defendant, the defendant shall be deemed, in the absence of proof to the contrary, to have entered into an agreement or arrangement under which such information is, for a fee, reward or benefit, furnished to or by him, for a purpose relating to the towing, storage, repair or wrecking of the vehicle.

Off-the-hook transactions.

98mk. (1) No person shall directly or indirectly give or agree or offer to give, or receive, agree to receive, or solicit, a fee, reward or benefit of any kind for or in expectation of obtaining for himself or another person—

- (a) the work of repairing or wrecking a damaged motor vehicle;
  - (b) permission to prepare or give a quotation for repair of a damaged motor vehicle;
  - (c) permission to place a damaged motor vehicle in storage;
- or
- (d) possession or control of a damaged motor vehicle for any purpose related to the storage, repair or wrecking of the vehicle.

Penalty: Five thousand dollars.

(2) Where in any proceedings for an offence against subsection (1) circumstances are proved from which it is reasonable to infer that the defendant was a party to a transaction to which that subsection applies, it shall be deemed to be proved, in the absence of proof to the contrary, that he was a party to such a transaction.

98ml. (1) A person who is the holder of a towtruck certificate or temporary towtruck certificate shall have his certificate fixed to his clothing in accordance with the regulations at all times when he is driving or riding in or upon a towtruck or operating the equipment of a towtruck.

Towtruck driver to carry certificate while driving towtruck.

Penalty: Five hundred dollars.

(2) A person who is the holder of a towtruck certificate or temporary towtruck certificate shall, upon being requested by a member of the police force or an inspector to do so, forthwith deliver the certificate to the member of the police force or inspector for his inspection.

Penalty: Five hundred dollars.

5. Section 98n of the principal Act is amended by striking out the passage "Two hundred dollars" and substituting the passage "Five hundred dollars".

Amendment of s. 98n—  
Traders plates not to be used for the purpose of a towtruck in certain circumstances.

6. Section 98o of the principal Act is amended—

(a) by striking out from subsection (1) the passage "Two hundred dollars" and substituting the passage "Five hundred dollars";

(b) by striking out from subsection (2) the passage "Two hundred dollars" and substituting the passage "Five hundred dollars";

(c) by striking out from subsection (3) the passage "two hundred dollars" and substituting the passage "five hundred dollars";

and

(d) by inserting after subsection (4) the following subsection:

(5) Notwithstanding any other provision of this section, one other person who is the holder of a towtruck certificate or temporary towtruck certificate may accompany the driver (in addition to any other persons referred to in subsection (1) or (2)) on any towtruck with a mass of more than five tonnes.

Amendment of s. 98o—  
Persons who may ride in towtruck.

7. Section 98p of the principal Act is amended by striking out from paragraph (b) of subsection (4) the passage "as soon as reasonably practicable (but in any event within forty-eight hours)" and substituting the word "forthwith".

Amendment of s. 98p—  
Inspectors.

8. The following sections are inserted after section 98p of the principal Act:

Insertion of new sections 98pa to 98pg.

98pa. (1) An inspector may, for the purposes of an investigation, by notice in writing given to a person require the person—

Power to require production or attendance for investigations.

(a) within the time and in the manner specified to furnish information specified in the notice;

(b) within or at the time and at the place specified to produce for inspection a vehicle or other object or books, papers, documents or records of any kind specified in the notice;

or

(c) at a reasonable time and at the place specified in the notice to attend in person in order to enable an inspector to put questions to that person.

(2) No person shall, without reasonable excuse, fail to comply with a requirement of an inspector made under subsection (1).

Penalty: Two thousand dollars.

Reference of certain matters to the consultative committee.

98pb. (1) The Registrar shall, before refusing an application for a towtruck certificate or temporary towtruck certificate, or before imposing a condition of a certificate under this Part, refer the matter to the committee for decision by the committee.

(2) Where a matter is decided by the committee pursuant to this section, the Registrar shall give effect to the decision of the committee.

Towtruck Tribunal.

98pc. (1) A tribunal shall be established entitled the "Towtruck Tribunal".

(2) The Tribunal shall consist of three members appointed by the Governor, of whom—

(a) one, who shall be the chairman of the Tribunal, shall be a person holding judicial office under the Local and District Criminal Courts Act, 1926-1981, a special magistrate or a legal practitioner of not less than seven years' standing;

(b) one shall be a person nominated by the Minister from a panel of three persons nominated by the South Australian Automobile Chamber of Commerce, Incorporated;

and

(c) one shall be a person nominated by the Minister, being a person who, in the opinion of the Minister, has appropriate knowledge of the towtruck industry.

(3) A member of the Tribunal shall be appointed for such term of office, not exceeding three years, as the Governor may determine and on the expiration of his term of office shall be eligible for re-appointment.

(4) The Governor may appoint a person to be the deputy of a member of the Tribunal (being a person with the same qualifications for appointment as that member) and such a person shall, while acting in the absence of that member, be deemed to be a member of the Tribunal with all the powers, authorities, duties and obligations of the member of whom he has been appointed to be the deputy.

(5) If the Minister, by notice in writing given to the South Australian Automobile Chamber of Commerce, Incorporated, requests that body to nominate a panel of persons for the purposes of the appointment of a member of the Tribunal or deputy of such a member and that body does not within the period specified in the notice nominate such a panel, the Governor may appoint a person nominated by the Minister to be a member of the Tribunal or a deputy of such a member, and a person so appointed shall, for all purposes, be deemed to have been duly appointed to be such a member or deputy.

(6) A person appointed under subsection (2) or (4) shall be entitled to receive such allowances and expenses (if any) as may from time to time be determined by the Governor.

98pd. (1) The Tribunal may, upon the application of a person made in the prescribed manner, or of its own motion, inquire into the conduct of a person who holds or has held a towtruck certificate or temporary towtruck certificate. Inquiries.

(2) If after conducting an inquiry under subsection (1) into the conduct of a person, the Tribunal is satisfied that proper cause exists for disciplinary action, the Tribunal may do one or more of the following:

- (a) reprimand the person;
- (b) impose a penalty of an amount not exceeding five hundred dollars;
- (c) suspend for a period specified by the Tribunal or until the fulfilment of a condition imposed by the Tribunal, or until the further order of the Tribunal, a towtruck certificate or temporary towtruck certificate held by the person, or cancel the certificate;
- (d) disqualify the person either temporarily or permanently, or, until the fulfilment of a condition imposed by the Tribunal, or until the further order of the Tribunal, from obtaining a towtruck certificate or temporary towtruck certificate.

(3) There shall be proper cause for disciplinary action in relation to a person who holds or has held a towtruck certificate or temporary towtruck certificate if—

- (a) the certificate was improperly obtained;
- (b) the person has contravened or failed to comply with a provision of this Act;
- (c) the person has contravened or failed to comply with a condition of the certificate;
- (d) the person has contravened, or failed to comply with, a provision of the *Wireless and Telegraphy Act 1905* of the Commonwealth, as amended from time to time;
- (e) the person has been convicted, or guilty, of an offence involving dishonest, threatening or violent behaviour or involving the use of a motor vehicle;

or

- (f) the person has been guilty of any other act or default of such a nature that, in the opinion of the Tribunal, disciplinary action should be taken against the person.

(4) Where a person has expiated, in accordance with the Police Offences Act, 1953-1981, an offence that attracts demerit points under this Act, he shall be deemed, for the purposes of subsection (3), to have been convicted of the offence.

(5) The Tribunal shall give to the person whose conduct is the subject of an inquiry under this Part, and to the person (if any) upon whose application the inquiry is to be held, not less than seven days' notice of the time and place at which it intends to conduct the inquiry and shall



afford the person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Tribunal.

(6) If a person to whom notice has been given pursuant to subsection (5) does not attend at the time and place fixed by the notice, the Tribunal may hold the inquiry in his absence.

(7) Subject to this Act, the procedure at an inquiry shall be as determined by the Tribunal.

(8) A person whose conduct becomes the subject of an inquiry conducted by the Tribunal and a person upon whose application an inquiry is held under this Part may be represented by counsel at the inquiry.

(9) In an inquiry the Tribunal shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms, and it shall not be bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

(10) The Tribunal may, upon the determination of an inquiry under this Part, make such orders as to costs as the Tribunal thinks just and reasonable.

(11) Where the Tribunal makes an order for the payment of a penalty or costs against a person who holds a towtruck certificate or temporary towtruck certificate and the penalty or costs are not paid within the time fixed by the Tribunal, the Tribunal may suspend the certificate of that person until the penalty or costs are paid, or for such period as the Tribunal thinks fit.

(12) Where the Tribunal has ordered the payment of a penalty or costs, the penalty or costs shall be recoverable summarily.

**Review.**

98pe. (1) A person aggrieved by any decision or order made by the Registrar under the accident towing roster scheme may apply to the Tribunal for a review of the decision or order.

(2) The application for review must be made within one month of the making of the decision or order to be reviewed, but the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the application be so made.

(3) The Tribunal may, on the review, do one or more of the following, according to the nature of the case—

- (a) confirm the decision or order subject to the review;
- (b) substitute, or make, in addition, any decision or order that could have been made in the first instance;
- (c) make any further or other order as to costs or any other matter that the case requires.

(4) The person making a decision or order that may be subject to review under this section shall, if so required by a person in relation to whom the decision or order was made, state in writing the reasons for the decision or order.

(5) If the reasons for a decision or order are not given in writing at the time of the making of the decision or order and the person in relation to whom it was made then requested that the reasons be given in writing, the time for making an application for review shall run from the time of service upon that person of the written statement of those reasons.

(6) Where a decision or order has been made and the person that made the decision or order or the Tribunal is satisfied that an application for review of the decision or order has been made, that person or the Tribunal may suspend the operation of the decision or order until the completion of the review.

(7) Where the person that made a decision or order has suspended the operation of the decision or order under subsection (6), that person may terminate the suspension, and where the Tribunal has done so, the Tribunal may terminate the suspension.

(8) Subject to this Act, the procedure for a review shall be as determined by the Tribunal.

(9) Where the Tribunal has ordered the payment of costs, the costs shall be recoverable summarily.

98pf. (1) The Tribunal may for the purposes of an inquiry or review under this Part— Powers of Tribunal.

- (a) by summons signed on behalf of the Tribunal by one of its members require the attendance before the Tribunal of any person whom it thinks fit to call before it;
- (b) by summons signed on behalf of the Tribunal by one of its members, require the production of any motor vehicle, books, papers, documents or other thing;
- (c) inspect any motor vehicle, books, papers, documents or other things produced before it, and retain them for such reasonable period as it thinks fit, and make copies of such books, papers or documents or any of their contents;
- (d) require a person to make an oath or affirmation that he will truly answer all questions put to him by the Tribunal or a person appearing before it relevant to any matter arising in the hearing (which oath or affirmation may be administered by a member of the Tribunal);

or

- (e) require a person (other than counsel) appearing before the Tribunal (whether he has been summoned to appear or not) to answer relevant questions put to him by a member of the Tribunal or by a person appearing before it.

(2) Subject to subsection (3), if a person—

- (a) who has been served with a summons to attend before the Tribunal neglects or fails to attend in obedience to the summons;
- (b) who has been served with a summons to produce any motor vehicle, books, papers, documents or other thing, neglects or fails to comply with the notice;

(c) misbehaves himself before the Tribunal, wilfully insults the Tribunal or a member of the Tribunal, or interrupts the proceedings of the Tribunal;

or

(d) refuses to be sworn or to affirm, or to answer a relevant question, when required to do so by the Tribunal,

he shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(3) A person shall not be obliged to answer a question put to him in proceedings before the Tribunal if the answer to the question would tend to incriminate him.

(4) In the course of an inquiry the Tribunal may receive in evidence, and act upon—

(a) a transcript of evidence in proceedings before any court or tribunal;

or

(b) a finding or judgment of any court or tribunal,

that may be relevant to the proceedings.

Protection  
for Registrar.

98pg. No liability shall attach to—

(a) the Registrar;

(b) a member of the committee;

or

(c) a member of the Tribunal,

for an act or omission in good faith and in the performance or discharge or purported performance or discharge of a power, function or duty conferred by or under this Act.

Amendment of  
s. 134a—  
Right of  
appeal.

9. Section 134a of the principal Act is amended by striking out paragraph (b) of subsection (1) and the word “or” occurring immediately before that paragraph.

Amendment of  
s. 135—  
False  
statements.

10. Section 135 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) A person shall not in furnishing information, or compiling a record, pursuant to this Act make, or include in the record, a statement that is false or misleading in a material particular.

Penalty: One thousand dollars or imprisonment for six months.

Amendment of  
s. 135a—  
Bribes.

11. Section 135a of the principal Act is amended—

(a) by inserting after the passage “under this Act,” the word “solicit,”;

and

(b) by striking out the passage “Four hundred dollars” and substituting the passage “One thousand dollars or imprisonment for six months”.

12. Section 138a of the principal Act is amended by inserting after the passage "under this Act" the passage "or to hold a position on an accident towing roster established under the accident towing roster scheme".

Amendment of s. 138a—  
Commissioner of Police to give certain information to Registrar.

13. Section 139b of the principal Act is amended—

(a) by inserting after subsection (3) the following subsection:

(3a) The Minister may appoint a suitable person to be the deputy of a member of the consultative committee and any such person shall, while acting in the absence of that member, be deemed to be a member of the committee with all the powers, authorities, duties and obligations of a member of the committee.;

Amendment of s. 139b—  
Consultative committee.

and

(b) by inserting after subsection (7) the following subsection:

(8) No proceedings, decision or order of the consultative committee in relation to any matter shall be called into question, quashed or set aside by reason of any antecedent decision or action by the Registrar, or a delegate of the Registrar, in relation to the matter pursuant to this Act.

14. The following section is inserted after section 139b of the principal Act:

Insertion of new s. 139c.

139c. Except as otherwise provided in this Act, a document or notice required or authorized by this Act to be given to or served on a person may—

Notices.

(a) be served on that person personally;

or

(b) be sent by post addressed to that person at his last known place of residence, employment or business.

15. Section 140 of the principal Act is amended by striking out the passage "the register of motor vehicles or in the register of licences" and substituting the passage "any register kept pursuant to this Act".

Amendment of s. 140—  
Evidence of registers.

16. Section 141 of the principal Act is amended—

(a) by inserting after paragraph (a) the following paragraphs:

(ab) that premises described in the certificate were not on a specified day or during a specified period the registered premises of a towtruck operator described in the certificate;

(ac) that a motor vehicle described in the certificate was or was not on a specified day or during a specified period registered in the name of a person or a business name described in the certificate;;

Amendment of s. 141—  
Evidence by certificate of Registrar.

and

- (b) by striking out from paragraph (g) the passage "given the Registrar notice" and substituting the passage "given, furnished or produced to the Registrar any notice, document or object required by or".

Amendment of  
s. 142—  
Facilitation  
of proof.

17. Section 142 of the principal Act is amended—

- (a) by striking out from paragraph (e) the passage "for fee or reward" and substituting the passage "for or in expectation of any fee or reward or benefit";

and

- (b) by inserting after paragraph (e) the following paragraph:

(f) a document purporting to be a certificate signed by a member of the police force of or above the rank of inspector stating that a person specified in the certificate was or was not given an accident towing direction on a day specified and in relation to a motor vehicle and accident specified in the certificate shall be proof of the matters so stated in the absence of proof to the contrary.

Amendment of  
s. 143—  
Causing or  
permitting  
offences.

18. Section 143 of the principal Act is amended by striking out from subsection (1) the passage "to drive a motor vehicle" and substituting the passage "to do or omit to do anything".

Insertion of  
new s. 143a.

19. The following section is inserted after section 143 of the principal Act:

Offences by  
corporations.

143a. Where a person convicted of an offence against this Act is a corporation, every member of the governing body of the corporation shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless he proves that he could not by the exercise of reasonable diligence have prevented the commission of the offence by the corporation.

Amendment of  
s. 145—  
Regulations.

20. Section 145 of the principal Act is amended—

- (a) by striking out paragraph (h) and the word "and" occurring immediately before that paragraph and substituting the following paragraphs:

(h) providing for an accident towing roster scheme and for that purpose may by regulation—

- (i) provide for and regulate the issuing of directions by or on behalf of members of the police force for towtrucks to proceed to the scenes of accidents occurring in the declared area;
- (ii) provide for and regulate the administration of, an accident towing roster under which the towtrucks of towtruck operators holding positions on the roster may be directed to proceed to the scenes of accidents occurring within the declared area, or, if the declared area is divided into zones, within a particular zone;

- (iii) empower the Minister to declare, by notice published in the *Gazette*, that the declared area shall be divided into zones specified in the notice, and to vary or revoke any such declaration by a subsequent notice;
- (iv) empower the Registrar to determine applications by towtruck operators for positions on an accident towing roster;
- (v) prescribe the qualifications that applicants must have in order to be granted positions on an accident towing roster;
- (vi) otherwise provide for and regulate applications for and the allocation of positions on an accident towing roster;
- (vii) provide for and prescribe the duties of and regulate the activities and conduct of towtruck operators holding positions on an accident towing roster;
- (viii) empower the Registrar to stipulate conditions with which towtruck operators holding positions on an accident towing roster must comply;
- (ix) empower the Registrar to reprimand a towtruck operator who holds a position on an accident towing roster, to remove or suspend him from the roster or to reduce the number of positions held by him on the roster and prescribe the circumstances in which the Registrar may exercise those powers;
- (x) provide for tests or examinations for the purpose of determining applications for positions on an accident towing roster;
- (xi) prohibit any conduct that might interfere with the operation or administration of an accident towing roster or the issuing of accident towing directions;
- (xii) regulate the activities and conduct of persons employed or acting in the course of the business of a towtruck operator holding a position on an accident towing roster;
- (xiii) prescribe the standards and requirements for and provide for the registration of the premises used by towtruck operators who hold positions on an accident towing roster;
- (xiv) require the display at towtruck operators' registered premises of signs of a prescribed size, construction and form and containing the prescribed information and regulate the positioning of such signs;

- (xv) regulate the storage at the registered premises of towtruck operators of vehicles damaged in accidents;
  - (xvi) prescribe the standards and requirements for and provide for the approval by the Registrar of towtrucks and equipment carried on towtrucks used for towing motor vehicles damaged in accidents in the declared area and prohibit the driving of towtrucks that do not comply with the prescribed standards and requirements or that have not been so approved;
  - (xvii) provide for and prescribe the hours at which towtruck operators must be ready and able to engage in towing pursuant to accident towing directions;
  - (xviii) require towtruck operators to insure against risks of damage to or loss relating to motor vehicles towed or stored in the course of their businesses;
  - (xix) prescribe application fees and fees payable annually for positions on an accident towing roster being fees which may vary according to prescribed factors;
  - (xx) provide for the issuing of documents to be used as authorities to tow and the fees for issuing such documents;
  - (xxi) regulate the possession or use of documents issued by the Registrar for use as authorities to tow;
  - (xxii) prescribe the duties of a towtruck driver or towtruck operator where a document issued for use as an authority to tow, or an authority to tow, or a copy of an authority to tow, is lost, destroyed, rendered unusable or illegible or cancelled;
  - (xxiii) require the keeping and preserving of records by persons holding or formerly holding positions on an accident towing roster;
  - (xxiv) require the provision of information to the Registrar by towtruck operators holding positions on an accident towing roster;
- (i) providing for the inspection of towtrucks and equipment carried on towtrucks;
- (j) prescribing the forms of certificates, notices or documents required or authorized to be given under Part IIIC or under the regulations or providing that the forms of such certificates, notices or documents shall be as determined by the Minister;
- (k) prescribing the fees for certificates under Part IIIC which may be of varying amounts according to factors prescribed in the regulations;

(l) exempting, or conferring on the Registrar a power to exempt, a person from compliance with a specified provision of Part IIIC or regulation made for the purposes of that Part for a period and subject to conditions specified in the regulations or by the Registrar;

and

(m) prescribing and providing for penalties not exceeding one thousand dollars for any breach of, or failure to comply with, the regulations.;

and

(b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:

(2) Any regulations made under this section or any other section of this Act may be of general application or limited by reference to time, places, circumstances or any other factor.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor