



New South Wales

Tow Truck Industry Amendment Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Tow Truck Industry Act 1998* (***the Act***):

- (a) to extend the maximum duration of a tow truck operators licence, or a drivers certificate, from one year to 3 years, but only if the applicant requests a 3-year licence or certificate and satisfies other probity requirements, and
 - (b) to require tow truck operators to maintain a holding yard and to provide reasonable access to motor vehicles being held in the operator's holding yard, and
 - (c) to allow the regulations, rather than the Roads and Traffic Authority (***the RTA***), to cap all fees and charges for the towing, storage and salvage of a motor vehicle, as well as for any related or ancillary service, and
 - (d) to extend the prohibition on touting and soliciting for work at the scene of an accident, so that it begins to apply immediately after a towing authorisation is obtained by any person in accordance with the Act or after a police officer has organised for the towing of the relevant motor vehicle, and
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- (e) to ensure that an authorised officer, police officer or emergency services officer may direct any certified driver at the scene of an accident, not just the actual driver of a tow truck, and
- (f) to make it an offence for the driver of a tow truck to allow a person to travel as a passenger in the driver's tow truck that is proceeding to or from the scene of an accident, except in certain circumstances.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Tow Truck Industry Act 1998* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Application of Act to certain motor vehicles

Schedule 1 [1] makes it clear that the Act does not apply to the towing, salvage and storage of some motor vehicles (such as forklifts, golf buggies and ride-on mowers).

Extension of duration of some tow truck operators licences and drivers certificates to 3 years

Schedule 1 [2] and [9] require an applicant for a tow truck operators licence or a drivers certificate to specify the term of licence or certificate sought.

Schedule 1 [8] and [11] extend the maximum duration of a licence or drivers certificate from one year to 3 years, but only if the applicant satisfies certain probity requirements.

Schedule 1 [12] provides that, if a 3-year licence or drivers certificate is suspended, the licence or certificate, once re-instated, is to continue only until the next anniversary of its issue.

Schedule 1 [13] provides for the review of a decision to grant a licence or drivers certificate for a lesser term than that applied for.

Obligations to maintain, and provide access to, holding yards

Schedule 1 [3] requires an application for a tow truck operators licence to specify each place intended to be used as a holding yard in carrying on the applicant's business as a tow truck operator.

Schedule 1 [4] provides that the RTA may refuse to grant an application for a tow truck operators licence on the ground that the applicant has not specified an appropriate place as a holding yard.

Schedule 1 [5] makes it a condition of a licence that the licensee must maintain at least one holding yard.

Schedule 1 [6] makes it a condition of a licence that the licensee must allow the owner of a motor vehicle stored at any holding yard used by the licensee reasonable access to the motor vehicle, during business hours, to collect items from the motor vehicle.

Conditions relating to charging for towing, salvage or storage and connected work

Schedule 1 [7] and [10] impose conditions on a tow truck operators licence and a drivers certificate relating to the fees that can be charged for towing or salvage of a motor vehicle, or (only in the case of a licence) for storage of a motor vehicle, or for any service that is related to or ancillary to the towing, salvage or storage of a motor vehicle. They also impose conditions that provide that a licensee or certified driver must not charge a fee for work that was not actually done by or on behalf of the licensee or certified driver.

Schedule 1 [14] provides for fees and charges to be capped by the regulations, rather than by the RTA. In addition to towing, salvage and storage (which are currently regulated), the regulations can cap fees and charges for any service related to or ancillary to the towing, salvage or storage of a motor vehicle. The regulations can specify services for which the licensee or certified driver cannot charge a fee.

Schedule 1 [15] makes a consequential amendment.

Obligation to periodically update licence and certificate particulars

Schedule 1 [7] also imposes conditions on a tow truck operators licence requiring the holder of a 3-year licence to periodically confirm particulars of the licence and requiring the holder of any licence to notify the RTA of any changes in licence particulars.

Schedule 1 [10] also imposes conditions on a drivers certificate requiring the holder of a 3-year drivers certificate to periodically confirm particulars of the certificate and requiring the holder of any certificate to notify the RTA of any changes in the certificate's particulars.

Prohibition on touting or soliciting for towing work at scene of accident

Schedule 1 [16] amends the existing provision creating an offence of touting or soliciting for towing work at the scene of an accident by providing that, although a person who is lawfully attempting to obtain, or lawfully dealing with, a towing authorisation is exempt from the prohibition on touting or soliciting for work, that

exemption ceases once a towing authorisation is obtained by another person or the person is informed that a police officer has organised for the towing of the relevant motor vehicle.

Power to give directions at scene of accident

Schedule 1 [17] ensures that an authorised officer, police officer or emergency services officer may give directions to any certified driver at the scene of an accident, not just the actual driver of a tow truck.

Prohibition on carrying passengers in tow trucks

Schedule 1 [18] makes it an offence for the driver of a tow truck to allow a person to travel as a passenger in the driver's tow truck that is proceeding to or from the scene of an accident unless the person was the driver of, or was a passenger in, a motor vehicle involved in the accident or is a certified driver who is travelling as a passenger for the purpose of assisting the driver of the tow truck in carrying out towing work. (At present only the passenger would be guilty of an offence if the driver allowed him or her to travel in the tow truck.)

Savings and transitional provisions

Schedule 1 [19] provides for the making of savings and transitional regulations as a consequence of the enactment of the proposed Act.

Schedule 1 [20] makes savings and transitional provisions consequent on the enactment of the proposed Act.