



New South Wales

Tow Truck Industry Regulation 2008

under the

Tow Truck Industry Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Tow Truck Industry Act 1998*.

ERIC ROOZENDAAL, M.L.C.,
Minister for Roads

Explanatory note

The object of this Regulation is to remake, with minor changes, the *Tow Truck Industry Regulation 1999* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation makes provision for the following matters:

- (a) further particulars that are to be included in an application for a tow truck operators licence (*a licence*) and in an application for a tow truck drivers certificate (*a drivers certificate*),
- (b) the payment of application fees for licences and drivers certificates,
- (c) the prescribed offences that disqualify an applicant from holding a licence or drivers certificate for a period of 10 years from the date the applicant was convicted or found guilty of the offence,
- (d) further grounds on which the Roads and Traffic Authority may refuse an application for a licence or drivers certificate,
- (e) further licence and drivers certificate conditions,
- (f) an exemption from holding “on-hook” liability insurance in respect of tow trucks used solely for towing vehicles for wrecking purposes,
- (g) other miscellaneous matters relating to licences and drivers certificates, including the variation of conditions and pending applications,
- (h) the manner in which towing authorisations are to be completed, signed and dealt with,
- (i) additional licence conditions and requirements in relation to holding yards,

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- (j) other miscellaneous offences, including offences relating to misuse of licences and drivers certificates, the inspection of tow trucks, conduct of the tow truck drivers, record-keeping and invoices,
- (k) the offences that are prescribed so that they may be dealt with by way of penalty notice and the penalty payable when dealt with in that manner,
- (l) certain other miscellaneous matters, including exemptions for interstate tow trucks, tow truck drivers and operators.

This Regulation is made under the *Tow Truck Industry Act 1998*, including section 105 (the general regulation-making power).

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Part 1 Preliminary

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Tow Truck Industry Regulation 2008*.

2 Commencement

This Regulation commences on 1 September 2008.

Note. This Regulation replaces the *Tow Truck Industry Regulation 1999* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

imprisonment includes penal servitude, home detention, periodic detention or a suspended sentence of imprisonment.

owner of a motor vehicle includes the responsible person for the vehicle within the meaning of the *Road Transport (General) Act 2005*.

the Act means the *Tow Truck Industry Act 1998*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Meaning of “tow” and “tow truck”

(1) In accordance with paragraph (e) of the definition of ***tow*** in section 3 (1) of the Act, ***tow*** includes tow by use of a rigid frame, rigid bar or similar device.

(2) In accordance with section 4 (2) of the Act, car carriers are declared not to be tow trucks for the purposes of the Act.

(3) In subclause (2):

car carrier means a motor vehicle combination that is designed or adapted for use for the transport of motor vehicles, being a combination:

- (a) that is not equipped or fitted with any lifting equipment (whether portable or fixed) to load the motor vehicles to be transported, and
- (b) onto which the motor vehicles to be transported are loaded by travelling along a ramp under their own propulsion.

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Division 1 Provisions relating to licences

5 Particulars to be included in licence applications

For the purposes of section 17 (2) (g) of the Act, the following particulars are prescribed:

- (a) if the applicant is an individual—the name of the applicant (including any aliases by which the applicant is or was known), and the applicant’s current residential address and date of birth,
- (b) if the applicant is a corporation—the name of the corporation, the name and residential address of each director, the address of the registered office of the corporation (if different from the applicant’s place of business) and the certificate of incorporation,
- (c) in the case of a business that is to be carried on in partnership—the name of the partnership and the name, current residential address and date of birth of each partner,
- (d) the trading name (if any) of the business that is to be operated under the authority of the licence and evidence that it has been registered as a registered business name,
- (e) the name, current residential address and date of birth of each person who is employed or engaged by the applicant to drive, use or operate tow trucks as part of the applicant’s business,
- (f) the name, current residential address and date of birth of each close associate of the applicant (including any aliases by which the close associate is or was known),
- (g) proof that the applicant owns or is the lessee of any place specified for use as a holding yard in carrying on the applicant’s business,
- (h) proof that the applicant has obtained public liability insurance and “on-hook” liability insurance (unless the applicant would be exempt from the requirement to hold such insurance in accordance with clause 12).

Note. Under section 17 (2) (g) of the Act, an application for a licence must also contain such other particulars as are required by the approved application form.

6 Application for licence

- (1) In this clause, *licence application fee* means the fee referred to in section 17 (2) (h) of the Act.
- (2) The RTA may refuse to determine an application for a licence until the licence application fee is paid.

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- (3) If the application is made in respect of a business carried on in partnership, a single licence application fee is payable.
 - (4) A licence application fee is non-refundable.

7 Offences that disqualify applicants for licences

- (1) For the purposes of section 18 (2) (b) and (3) (i) of the Act, the following offences are prescribed (regardless of whether they were committed in New South Wales):
 - (a) any offence involving an assault of any kind against a person,
 - (b) any offence relating to the possession or use of a firearm or other weapon,
 - (c) any offence involving the supply or possession of a prohibited drug, or the cultivation (for a commercial purpose), supply or possession of a prohibited plant, within the meaning of the *Drug Misuse and Trafficking Act 1985*,
 - (d) any offence involving fraud, dishonesty or stealing,
 - (e) any offence involving robbery (whether armed or otherwise),
 - (f) any offence involving the recruitment of another person to carry out or assist in carrying out a criminal activity within the meaning of section 351A of the *Crimes Act 1900*,
 - (g) any offence involving participation in a criminal group or participation in any criminal activity of a criminal group within the meaning of Division 5 of Part 3A of the *Crimes Act 1900*,
being an offence in respect of which the penalty imposed was imprisonment, a direction under a community service order that the offender perform community service work for 100 or more hours or a monetary penalty of \$1,000 or more, or a combination of any of those penalties.
- (2) However, if in the case of an applicant for a subsequent licence, the applicant, or a close associate of the applicant, was convicted of an offence specified in subclause (1):
 - (a) before 1 December 2006 (being the commencement date of the *Tow Truck Industry Amendment (Miscellaneous) Regulation 2006*), and
 - (b) in respect of which the only penalty imposed was a direction under a community service order that the offender perform community service work for 100 or more hours,that offence is not, in so far as the application is concerned, a prescribed offence for the purposes of section 18 (2) (b) and (3) (i) of the Act.

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- (3) In subclause (2), *applicant for a subsequent licence* means a person who applies for a licence before, or within 10 days of, the expiry of his or her licence.

8 Qualifications of tow truck operators

- (1) The RTA may determine competency standards in relation to tow truck operators. The standards may include levels of accreditation.
- (2) The standards may be developed by the RTA in consultation with the tow truck industry, or be prepared by any other person or body and endorsed by the RTA.
- (3) If the RTA determines any such competency standards, the standards must be published in the Gazette.
- (4) For the purposes of section 18 (3) (g) of the Act, any competency standards determined by the RTA and published in the Gazette are prescribed.

9 Additional grounds for refusing licence application

For the purposes of section 18 (4) of the Act, an application for a licence may be refused if:

- (a) any close associate of the applicant has, within the period of 10 years before the application for the licence was made:
- (i) been refused a licence, or
 - (ii) had his or her licence permanently revoked, or
 - (iii) been the subject of disciplinary action under Division 4 of Part 3 of the Act that resulted in the close associate being disqualified from holding a licence or having his or her licence suspended or permanently revoked, or
- (b) the RTA reasonably believes that information given in the licence application is false or misleading.

10 Payment of licence fee

- (1) In this clause, *licence fee* means the fee referred to in section 21 of the Act.
- (2) The RTA may refuse to grant a licence until the licence fee is paid.
- (3) If a licence is granted in respect of a business carried on in partnership, a single licence fee is payable for the licence.

11 Licence conditions

For the purposes of section 20 (2) (l) of the Act, the following conditions are prescribed:

- (a) the licensee must ensure that each person who is employed or engaged by the licensee to drive a licensed tow truck is provided with, and is given an opportunity to read, a copy of an approved summary of the Act and this Regulation,
- (b) the licensee must explain to each such person the provisions of the approved summary,
- (c) the licensee must ensure that each person who is employed or engaged by the licensee to drive a licensed tow truck signs and dates a written declaration to the effect that the person understands his or her obligations under the Act and this Regulation,
- (d) the licensee must sign and date a written declaration to the effect that the licensee has complied with the conditions referred to in paragraphs (a)–(c),
- (e) the licensee must keep each such signed declaration at the licensee’s place of business for such time as the person remains employed or engaged by the licensee and for a period of 2 years from the date that the person ceases employment with, or was last engaged by, the licensee,
- (f) the licensee must produce a copy of any such signed declaration on request to an authorised officer or send a copy to the RTA on receipt of a notice in writing by the RTA,
- (g) the licensee must ensure that each driver complies with any directions of the RTA relating to the wearing or use of clothing or equipment for protection or safety purposes,
- (h) the licensee must keep a record of the registration details of each tow truck operated by the licensee,
- (i) except as provided by clause 54, the licensee may only operate under the authority of the licence the licensed tow trucks that are specified in the licence,
- (j) the licensee must hold public liability and “on-hook” liability insurance.

12 Exemption from “on-hook” liability insurance requirement

A licensee is exempt from the requirement, under clause 11 (j), that the licensee maintain “on-hook” liability insurance in respect of any tow truck that is used, or intended to be used, solely for towing motor

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vehicles for the purposes of metal recycling or vehicle demolishing or dismantling by a vehicle-wrecker.

13 Exemption from certain licence conditions for tow trucks registered interstate

- (1) This clause applies to a licensee who intends to operate tow trucks that are registered outside New South Wales.
- (2) A licensee to which this clause applies is exempt from the provisions of section 20 (2) (e) of the Act, but only if the licensee ensures that each licensed tow truck displays, on the front and back of the tow truck in an approved manner, and so as to be clearly legible, a sign approved for the purposes of this clause.

Division 2 Provisions relating to drivers certificates

14 Particulars to be included in drivers certificate applications

For the purposes of section 25 (2) (b) of the Act, the following particulars are prescribed:

- (a) the name of the applicant (including any aliases by which the applicant is or was known), and the applicant's current residential address and date of birth,
- (b) if applicable, the name and licence number of the applicant's current or prospective employer,
- (c) a recent colour photograph (as specified in the approved application form) of the applicant's head and shoulders only, that clearly shows the applicant's face.

Note. Under section 25 (2) (b) of the Act, an application for a drivers certificate must also contain such other particulars as are required by the approved application form.

15 Application for drivers certificate

- (1) In this clause, *drivers certificate application fee* means the fee referred to in section 25 (2) (c) of the Act.
- (2) The RTA may refuse to determine an application for a drivers certificate until the drivers certificate application fee is paid.
- (3) A drivers certificate application fee is non-refundable.

16 Offences that disqualify applicants for drivers certificates

- (1) For the purposes of section 26 (2) (b) of the Act, the following offences are prescribed (regardless of whether they were committed in New South Wales):
 - (a) any offence involving an assault of any kind against a person,

- (b) any offence relating to the possession or use of a firearm or other weapon,
 - (c) any offence involving the supply or possession of a prohibited drug, or the cultivation (for a commercial purpose), supply or possession of a prohibited plant, within the meaning of the *Drug Misuse and Trafficking Act 1985*,
 - (d) any offence involving fraud, dishonesty or stealing,
 - (e) any offence involving robbery (whether armed or otherwise),
 - (f) any offence involving the recruitment of another person to carry out or assist in carrying out a criminal activity within the meaning of section 351A of the *Crimes Act 1900*,
 - (g) any offence involving participation in a criminal group or participation in any criminal activity of a criminal group within the meaning of Division 5 of Part 3A of the *Crimes Act 1900*,
being an offence in respect of which the penalty imposed was imprisonment, a direction under a community service order that the offender perform community service work for 100 or more hours or a monetary penalty of \$1,000 or more, or a combination of any of those penalties.
- (2) However, if in the case of an applicant for a subsequent drivers certificate, the applicant, or a close associate of the applicant, was convicted of an offence specified in subclause (1):
- (a) before 1 December 2006 (being the commencement date of the *Tow Truck Industry Amendment (Miscellaneous) Regulation 2006*), and
 - (b) in respect of which the only penalty imposed was a direction under a community service order that the offender perform community service work for 100 or more hours,
- that offence is not, in so far as the application is concerned, a prescribed offence for the purposes of section 26 (2) (b) of the Act.
- (3) In subclause (2), ***applicant for a subsequent drivers certificate*** means a person who applies for a drivers certificate before, or within 10 days of, the expiry of his or her drivers certificate.

17 Qualifications of tow truck drivers

- (1) The RTA may determine competency standards in relation to tow truck drivers. The standards may include levels of accreditation.
- (2) The standards may:
 - (a) be developed by the RTA in consultation with the tow truck industry, or

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- (b) be prepared by any other person or body and endorsed by the RTA.
- (3) If the RTA determines any such competency standards, the standards must be published in the Gazette.
- (4) For the purposes of section 26 (3) (b) of the Act, any competency standards determined by the RTA and published in the Gazette are prescribed.

18 Additional grounds for refusing application for drivers certificate

- (1) For the purposes of section 26 (4) of the Act, the grounds on which an application for a drivers certificate must be refused include any case in which:
 - (a) the applicant has been disqualified from holding a driver licence, or
 - (b) the applicant's driver licence has been suspended or cancelled (other than for fine default under the *Fines Act 1996*),on more than one occasion during the period of 3 years immediately before the application for the driver certificate was made.
- (2) For the purposes of subclause (1), it does not matter that any of the periods of disqualification, suspension or cancellation occurred during only part of the 3-year period.

19 Particulars on drivers certificate

For the purposes of section 28 (2) (d) of the Act, a drivers certificate must contain the following particulars:

- (a) the expiry date of the certificate,
- (b) the driver licence number of the certified driver.

20 Conditions of drivers certificate

For the purposes of section 29 (2) (c) of the Act, the following conditions are prescribed:

- (a) the certified driver must comply with any directions of the RTA relating to the wearing or use of clothing or equipment for protection or safety purposes,
- (b) the certified driver must, before towing a motor vehicle, ensure that the type of tow truck intended to be used is suitable for towing that particular motor vehicle.

21 Payment of drivers certificate fee

The RTA may refuse to grant a drivers certificate until the fee referred to in section 30 of the Act is paid.

Division 3 General provisions**22 Variation of licence conditions**

If a licensee or certified driver applies for an amendment of the licence or drivers certificate concerned in accordance with section 35 of the Act, the RTA may charge the applicant a fee of \$50 in respect of the application.

23 Refund of fees if licence or drivers certificate voluntarily surrendered

- (1) If a licensee or certified driver voluntarily surrenders the licence or drivers certificate in accordance with section 40 of the Act, the RTA may, but is not required to, refund part of the fee paid for the granting of the licence or drivers certificate. The amount to be refunded is to be determined by the RTA.
- (2) In determining the amount of any such refund, the RTA may retain an administration fee of \$50.

24 Pending application for subsequent licence or drivers certificate

If:

- (a) a person who is the holder of a licence or drivers certificate (*the current licence or drivers certificate*) applies for a subsequent licence or drivers certificate before the term of the current licence or drivers certificate expires, and
- (b) the person has paid the relevant application fee for the subsequent licence or drivers certificate, and
- (c) the application has not been dealt with by the time the current licence or drivers certificate expires,

the authority conferred by the current licence or drivers certificate continues until 90 days after the expiry of the current licence or drivers certificate, or until such time as the person is notified of the granting or refusal of the subsequent licence or drivers certificate, whichever is the sooner.

25 Furnishing of information

A person who is the holder of a licence or drivers certificate must notify the RTA in writing of the following, as soon as practicable after it occurs:

- (a) any change in the person's residential address,

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- (b) any change in the person's postal address,
 - (c) any change in the status of the person's driver licence.
- Maximum penalty: 5 penalty units.

Part 3 Towing authorisations

26 Definition

In this Part:

towing authorisation book means a book, comprising approved towing authorisation forms, issued by the RTA.

27 Exception from requirement to obtain towing authorisations for towing work

In accordance with section 49 (2) (b) of the Act, a person is not required to obtain a towing authorisation for towing work if:

- (a) an authorised officer has indicated to the person that a towing authorisation is not required for the towing work, and
- (b) the towing is carried out in accordance with the directions of the authorised officer.

28 Requirement to leave accident scene once towing authorisations obtained

If, in relation to an accident involving one or more motor vehicles, a person or persons have obtained the required towing authorisations, any other person who has attended the scene of the accident for the purpose of obtaining towing work by the use of a tow truck (but who has not obtained a towing authorisation) must not remain at the scene of the accident.

Maximum penalty: 50 penalty units.

29 Persons who may give towing authorisations

A towing authorisation for the towing of a motor vehicle by a tow truck may only be given by:

- (a) the owner or driver of the motor vehicle to be towed, or
- (b) a police officer, or
- (c) an authorised officer.

30 Completion of, and dealing with, towing authorisations

For the purposes of section 51 (4) of the Act, a person who obtains a towing authorisation must ensure:

- (a) that the authorisation:
 - (i) is in the approved form, and
 - (ii) is included in a towing authorisation book, and

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- (iii) is signed by the person and by the person giving the authorisation, and
 - (iv) specifies a place as the place to which the motor vehicle is to be towed, and
 - (v) is otherwise completed (to the extent that is reasonably practicable in the circumstances) in the approved manner and by the insertion of the information required by the approved form, and
- (b) that the original towing authorisation and 2 copies are completed, and
- (c) that the towing authorisation used is the next available towing authorisation in order of serial number.

31 False information in towing authorisations

A person must not record anything in a towing authorisation that the person knows to be false or misleading.

Maximum penalty: 20 penalty units.

32 Other requirements relating to towing authorisations

- (1) A person who obtains a towing authorisation for the towing of a motor vehicle by a tow truck must:
- (a) immediately provide a copy of the towing authorisation to the person giving the authorisation, and
 - (b) within 72 hours of completing the towing work to which the towing authorisation relates, deliver the original towing authorisation to the holder of the licence under which the tow truck is operated, and
 - (c) keep a copy of the towing authorisation in the towing authorisation book.
- Maximum penalty: 50 penalty units.
- (2) A person who obtains a towing authorisation must, before towing the motor vehicle by a tow truck, complete and attach to the motor vehicle in the approved manner a notice (*the towing notice*) that is in the approved form and that contains the following information:
- (a) the serial number of the towing authorisation to which the towing notice relates,
 - (b) the name of the licensee and the number of the licence under which the tow truck is authorised to be operated,
 - (c) the name, and drivers certificate number, of the person who obtained the towing authorisation,

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- (d) the registration number of the motor vehicle to which the towing authorisation relates,
 - (e) the place to which the motor vehicle is to be towed.
- Maximum penalty: 50 penalty units.
- (3) A person must not remove a copy of a towing notice that is attached to a motor vehicle in accordance with subclause (2) unless:
 - (a) the person is the insurer of the motor vehicle, or
 - (b) in any case where the motor vehicle is not insured—the person is the owner or driver of the motor vehicle, or
 - (c) the person is acting under the written authority of a person referred to in paragraph (a) or (b).
- Maximum penalty: 50 penalty units.
- (4) A licensee must ensure that each tow truck driver who is employed or engaged by the licensee complies with the requirements of this clause.
- Maximum penalty: 50 penalty units.

33 Towing authorisation books

- (1) The RTA may, on application by a licensee and on payment of the approved fee, issue the licensee with a towing authorisation book for each tow truck operating under the licence.
 - (2) A licensee must provide a towing authorisation book to each certified driver carrying out towing work under the licence that requires a towing authorisation.
- Maximum penalty: 25 penalty units.
- (3) A certified driver must not carry out any towing work that requires a towing authorisation unless the driver is in possession of a towing authorisation book.
- Maximum penalty: 15 penalty units.
- (4) A certified driver must produce any towing authorisation book in the driver's possession for inspection on demand by an authorised officer or police officer and allow the person to whom it is produced to take extracts from, or to make copies of, any entry in that book.
- Maximum penalty: 15 penalty units.
- (5) As soon as a certified driver completes a towing authorisation book, the driver must deliver the book to the licensee who gave it to the driver.
- Maximum penalty: 15 penalty units.

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Part 3 Towing authorisations

34 Keeping and production of towing authorisations

- (1) A copy of any towing authorisation received by a licensee must be provided by the licensee to the RTA within 28 days of the towing authorisation being completed.

Maximum penalty: 5 penalty units.

- (2) A licensee must:

- (a) keep the following for at least 5 years at the licensee's place of business as specified in the licence:

- (i) the original of each completed towing authorisation that relates to a tow truck operated under the licence,
(ii) any towing authorisation book that has been issued to the licensee, and

- (b) immediately on demand by an authorised officer or a police officer, produce for inspection any such towing authorisation or towing authorisation book kept by the licensee or any copy of such an authorisation to which the licensee has reasonable access, and

- (c) allow the person to whom such a towing authorisation or towing authorisation book is produced to take extracts from, or to make copies of, the authorisation or book or to remove the authorisation or book for the purposes of evidence.

Maximum penalty: 20 penalty units.

- (3) If a licence expires or is revoked or surrendered, the person to whom the licence was issued must return to the RTA within 7 days of the expiration, revocation or surrender:

- (a) any completed original towing authorisation that has been delivered to the person, and
(b) any towing authorisation books supplied to the person, and
(c) any towing notice that has not been completed.

Maximum penalty: 20 penalty units.

Part 4 Holding yards

35 Location of holding yards

It is a condition of a licence that any holding yard of the licensee must, unless otherwise approved, be located no more than 10 kilometres from the licensee's place of business.

36 Security requirements

- (1) Except as provided by subclause (2), a licensee must ensure that any holding yard of the licensee:
 - (a) is surrounded by a security fence that is not less than 2 metres high and that has gates with locks, and
 - (b) has flood lighting installed, and
 - (c) has an approved security alarm system installed.

Maximum penalty: 5 penalty units.

- (2) The RTA may, by notice in writing, exempt a licensee from any requirement under subclause (1). Such an exemption may be granted subject to the condition that the licensee comply with a requirement specified in the notice.
- (3) A licensee must ensure that the security fence surrounding any holding yard of the licensee is properly maintained and, if damaged, is repaired as soon as possible.

Maximum penalty: 5 penalty units.

37 Storage capacity

It is a condition of a licence that any holding yard of the licensee is capable of storing any motor vehicle towed under the authority of the licence to the holding yard.

38 Access to holding yard

It is a condition of a licence that any holding yard of the licensee is accessible at all times by each licensed tow truck operated by the licensee.

39 Holding yard register

- (1) It is a condition of a licence that the licensee must keep a register (the *holding yard register*) in the approved form and manner, and in accordance with this clause, in relation to any holding yard of the licensee.

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Part 4 Holding yards

- (2) The following particulars are to be recorded in the holding yard register:
 - (a) the time and date on which each motor vehicle is towed into and out of the holding yard,
 - (b) the name of the tow truck driver who towed the motor vehicle to the holding yard,
 - (c) the name and contact details of the person who authorised the release of the motor vehicle from the holding yard,
 - (d) the make, model, type and colour of the motor vehicle,
 - (e) the registration number of the motor vehicle, or, if there is no registration number, the chassis number or the engine number (if any) of the vehicle,
 - (f) the serial number of the towing authorisation obtained in relation to the motor vehicle.
- (3) The holding yard register is to contain a copy of any written authorisation for the release of a motor vehicle from the holding yard that is received by the licensee.

40 Certain operators not required to maintain a holding yard

- (1) Nothing in the Act requires the following tow truck operators to maintain a holding yard:
 - (a) a tow truck operator who only operates tow trucks with a gross combination mass of 25 tonnes or more,
 - (b) a tow truck operator who operates tow trucks only for towing motor vehicles for the purposes of metal recycling or vehicle demolishing or dismantling by a vehicle-wrecker.
- (2) A person towing a motor vehicle for any such tow truck operator is exempt from section 51 (3) of the Act.

Part 5 Other offences and requirements

41 Offence to incite or encourage commission of offence

A person must not:

- (a) incite or encourage any other person to commit an offence under the Act or this Regulation, or
- (b) offer any inducement to another person that is likely to result in the other person committing an offence under the Act or this Regulation.

Maximum penalty: 50 penalty units.

42 Misuse of licences and drivers certificates

A person must not:

- (a) forge or fraudulently alter a licence or drivers certificate (whether or not it is in force), or
- (b) give possession of a licence or drivers certificate to another person for the purpose of using it unlawfully, or
- (c) steal a licence or drivers certificate, or
- (d) knowingly have possession of a forged, fraudulently altered, borrowed or stolen licence or drivers certificate.

Maximum penalty: 50 penalty units.

43 Lost or stolen etc licences and drivers certificates

A licensee or certified driver must, within 7 days of becoming aware that the licence or drivers certificate has been lost, stolen, damaged, destroyed, altered or defaced:

- (a) notify the RTA in writing of that occurrence, and
- (b) in the case of a damaged, altered or defaced licence or drivers certificate—return it to the RTA.

Maximum penalty (paragraph (a)): 5 penalty units.

Maximum penalty (paragraph (b)): 20 penalty units.

44 Tow truck equipment

- (1) It is a condition of a licence that each tow truck operated under the authority of the licence must be fitted with the following equipment:
 - (a) a flashing or rotating warning light that is of an approved kind,
 - (b) fully adjustable mounted lights to enable the safe loading and unloading of motor vehicles onto or from the tow truck when it is dark.

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Part 5 Other offences and requirements

- (2) It is a condition of a licence that each tow truck operated under the authority of the licence to do accident towing must be equipped with:
- (a) a broom, shovel and durable rubbish container for the removal of accident debris, and
 - (b) a foam or dry chemical powder fire extinguisher of at least 4.5 kg capacity, and that the fire extinguisher is maintained in a serviceable condition.
- (3) In this clause:
- broom** means a brush or similar implement of bristles, nylon or twigs with a handle at least 1.2 metres long.
- shovel** means an implement consisting of a broad metal blade or scoop attached to a handle at least 1.2 metres long and designed for taking up and removing loose matter (such as earth, snow, coal and the like).

45 Particulars to be displayed on tow trucks

A person must not drive, stand or operate, or allow to be driven, stood or operated, a tow truck that is being operated under the authority of a licence unless there is displayed (by being printed in block letters and figures at least 50 mm high) on the right-hand or off-side of the tow truck and so as to be clearly legible:

- (a) the name of the person who is the licensee holding the licence under which that tow truck is operated, and
- (b) the number of the licence.

Maximum penalty: 10 penalty units.

46 Inspection of tow trucks

- (1) The RTA or an authorised officer may, by notice in writing given to a tow truck operator (**an inspection notice**), require the production of a specified tow truck under the operator's control for inspection by a person authorised by the RTA.
- (2) The tow truck operator must comply with the requirement.
Maximum penalty: 20 penalty units.
- (3) An inspection notice must:
- (a) specify the time and place for the inspection of the tow truck, and
 - (b) allow at least 24 hours from the time the notice is given for the operator to comply with the requirement.
- (4) The person authorised by the RTA to carry out the inspection of the tow truck is, following the inspection, to provide the tow truck operator with an assessment notice.

- (5) The assessment notice may:
- (a) require the carrying out of such repairs or modifications as are specified in the notice, and
 - (b) require those repairs or modifications to be completed within a specified period.
- (6) The tow truck operator must comply with any such requirement.
Maximum penalty: 20 penalty units.
- (7) The tow truck operator must provide the RTA with the following:
- (a) a copy of the assessment notice within 24 hours of receiving it from the person who carried out the inspection,
 - (b) within 24 hours of completing any repairs or modifications required by the assessment notice—a certificate, in the approved form, declaring that the repairs or modifications have been completed.
- Maximum penalty: 10 penalty units.
- (8) Any costs associated with the inspection of a tow truck under this clause, or with the carrying out of any repairs or modifications of a tow truck, are to be paid by the tow truck operator concerned.

47 Tow truck number-plates to be visible while towing

If any number-plate issued under section 57 of the Act in respect of a tow truck is likely to be obscured by a motor vehicle that is to be towed by the tow truck, the driver of the tow truck must ensure that the number-plate is:

- (a) displayed at the rear of the towed vehicle, or
- (b) displayed in such other manner that it remains clearly visible.

Maximum penalty: 5 penalty units.

48 Conduct and duties of tow truck drivers

- (1) The driver of a tow truck that is authorised to be operated under the authority of a licence must:
- (a) behave in an orderly manner and with civility and propriety while:
 - (i) operating the tow truck, or
 - (ii) attending the scene of a motor vehicle accident, or
 - (iii) complying with a requirement under paragraph (b) or (c), and

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(b) comply with any reasonable requirement made of the driver by an authorised officer or police officer in relation to the administration of the Act or this Regulation, and

(c) comply with any reasonable requirement made of the driver by a member of staff of the Ambulance Service of NSW, or an emergency services officer (within the meaning of section 32A of the *State Emergency and Rescue Management Act 1989*), who is attending the scene of a motor vehicle accident.

Maximum penalty (subclause (1) (a)): 25 penalty units.

Maximum penalty (subclause (1) (b) and (c)): 50 penalty units.

(2) The licensee holding the licence under which the tow truck is being operated must ensure that each tow truck driver whose services are being used by the licensee complies with subclause (1).

Maximum penalty: 10 penalty units.

49 Licensee required to keep certain records of non-accident towing work

(1) A licensee must make a record of the following matters in relation to each occasion on which a licensed tow truck is used or operated by a relevant tow truck driver for any towing work other than accident towing work:

(a) the time and date on which a motor vehicle is towed,

(b) details of where the motor vehicle is towed from and the destination of the tow,

(c) the registration number of the motor vehicle, or, if there is no registration number, the chassis number or the engine number (if any) of the vehicle,

(d) the name and contact details of the person who arranged for the motor vehicle to be towed,

(e) the name and contact details of any person who takes possession of the towed motor vehicle at the destination of the tow,

(f) details of any charges made by the licensee in relation to the tow.

Note. Section 60 of the Act also requires certain information to be recorded by a licensee on each occasion on which a licensed tow truck is used or operated by a tow truck driver.

(2) Any such record must:

(a) be in the approved form, and

(b) include particulars of the name and business address of the licensee, and

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- (c) be completed in the approved manner and as soon as practicable in relation to each occasion on which the licensed tow truck is used or operated.
 - (3) The licensee must keep the record at the licensee's place of business for at least 5 years after the information is recorded.
 - (4) If the licence is revoked or suspended or otherwise ceases to be in force, the licensee must provide to the RTA any records kept in accordance with this section.
 - (5) The licensee must, on demand by an authorised officer or a police officer, provide the officer with the name and address of any tow truck driver whose services have been or are being used by the licensee.
Maximum penalty (subclauses (1)–(5)): 50 penalty units.
 - (6) In this clause, *relevant tow truck driver* means a tow truck driver who is employed or engaged by the licensee or whose services are otherwise used by the licensee.

50 Records relating to charges

- (1) It is a condition of a licence that a licensee must, in accordance with this clause, make and keep a fully itemised record of the charges made by the licensee in relation to each motor vehicle that is towed under the authority of the licence.
- (2) Each such record must provide details justifying the amounts charged in relation to the towing, salvage or storage concerned.
- (3) The licensee must:
 - (a) keep a copy of the record at the licensee's place of business for at least 5 years after it is completed, and
 - (b) keep any document or material that justifies the charging of a particular amount, and
 - (c) produce any such record or related document for inspection by an authorised officer or a police officer if requested to do so, and
 - (d) permit the person to whom the record or related document is produced to make copies of or take extracts from the record or document or remove the record or document for the purposes of evidence.
- (4) On expiry, cancellation or surrender of a licence, the former licensee must provide to the RTA any records or documents kept in accordance with this clause.
Maximum penalty (subclause (4)): 50 penalty units.

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Clause 51 Tow Truck Industry Regulation 2008

Part 5 Other offences and requirements

51 Invoices

- (1) A licensee, or a person acting on behalf of a licensee, must include the following in any invoice for towing work:
- (a) the name of the licensee as shown in the licensee's licence,
 - (b) the business name (if any) of the licensee and the relevant ABN,
 - (c) the name of the person to whom the invoice is issued,
 - (d) a description of the towing work to which the invoice relates,
 - (e) such fees (in itemised form) as are charged by the licensee in relation to the following:
 - (i) any salvage relating to the relevant vehicle,
 - (ii) the towing of the relevant vehicle,
 - (iii) any storage of the relevant vehicle,
 - (f) any other fee charged by the licensee in relation to the vehicle, fully described and set out in itemised form.

Maximum penalty: 10 penalty units.

- (2) A licensee must not request or require payment of a fee charged in relation to towing work unless a copy of the invoice for that work is provided to the person to whom the invoice is issued.

Maximum penalty: 10 penalty units.

- (3) A person must not include any matter that the person knows to be false or misleading in a material particular in an invoice for any towing work.

Maximum penalty: 50 penalty units.

- (4) A licensee must:

- (a) keep at the licensee's place of business (as specified in the licence) a copy of each invoice issued by, or on behalf of, the licensee for a period of 5 years after its issue, and
- (b) on demand by an authorised officer or a police officer within that period of 5 years, produce for inspection the copy of any such invoice, and
- (c) allow the person to whom the copy is produced to take extracts from, or to make copies of, the invoice, or to remove the invoice for the purposes of producing it as evidence in any proceedings.

Maximum penalty: 10 penalty units.

52 Disposal of unclaimed motor vehicles

- (1) This clause applies to any motor vehicle that:
- (a) has a value of less than \$500, and

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- (b) has been towed to any holding yard of a licensee, and
 - (c) is being held by the licensee.
- (2) If:
- (a) a motor vehicle to which this clause applies has been held by the licensee for more than 28 days, and
 - (b) no arrangement has been made during that period by the owner of the vehicle for its collection,
- the licensee may take action, in accordance with this clause, to sell or otherwise lawfully dispose of the vehicle.
- (3) The licensee must give the owner of the motor vehicle written notice of the licensee's intention to dispose of the motor vehicle. However, the licensee is not required to notify the owner if the licensee is, after making all reasonable inquiries, unable to identify or locate the owner.
- (4) If the owner of the motor vehicle fails to arrange for the collection of the motor vehicle within 28 days of the notice being given to the owner, the licensee may dispose of the vehicle.
- (5) If the motor vehicle is sold and the owner of the vehicle subsequently makes a claim in respect of the vehicle, the licensee is to refund to the owner the difference (if any) between the amount for which the vehicle was sold and the amount of money payable to the licensee by the owner in respect of the towing and storage of the vehicle (including all the costs incurred by the licensee in connection with this clause).
- (6) A licensee cannot dispose of a motor vehicle to which this clause applies unless the Commissioner of Police has issued the licensee with a certificate to the effect that the vehicle is not for the time being stolen.
- (7) A licensee is not liable for any damages arising out of the disposal of a motor vehicle to which this clause applies.
- (8) A licensee is not entitled to rely on this clause unless the licensee establishes that the motor vehicle disposed of had, at the time of disposal, a value of less than \$500.
- (9) A licensee who disposes of a motor vehicle under this clause must, within 7 days after the disposal, make a record that includes the following details:
- (a) the date on which the motor vehicle was disposed of,
 - (b) the manner in which the motor vehicle was disposed of,
 - (c) if the motor vehicle was sold—the name and address of the person to whom the motor vehicle was sold and the amount for which it was sold,

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- (d) the make, model, type, colour, registration number (if any), chassis number (if any) and engine number (if any) of the motor vehicle.

Maximum penalty: 5 penalty units.

- (10) Any such record made must be kept for at least 5 years after it is made.
Maximum penalty: 20 penalty units.

53 Prohibited tow trucks

- (1) Subject to subclause (2), one-tonne tow trucks are prescribed as a class of prohibited tow truck for the purposes of section 56 of the Act.
- (2) A one-tonne tow truck that is operated under the authority of a licence is not a prohibited tow truck if the RTA has approved its use and operation as a condition of the licence.
- (3) In this clause:
one-tonne tow truck means any tow truck that does not comply with the following requirements:
 - (a) a load capacity of at least 1.2 tonnes,
 - (b) a lifting apparatus with a safe working load of one tonne or more,
 - (c) capacity to tow vehicles that exceed 2 tonnes.

54 Stand-by tow trucks

- (1) If a licensed tow truck is temporarily out of operation while undergoing repair or service, the licensee concerned may use and operate a tow truck (other than a tow truck specified in the licence) in place of the licensed tow truck, but only with the approval of the RTA. Such a tow truck is referred to in this clause as a **stand-by tow truck**.
- (2) A licensee may apply to the RTA, in the approved form and manner, for approval of the use and operation of a stand-by tow truck. Such an application must be made at least 72 hours (or such other time as may be approved by the RTA) before the stand-by tow truck is used and operated in place of the licensed tow truck specified in the application.
- (3) The RTA may approve the use and operation of a stand-by tow truck only if the RTA is satisfied that the following requirements are complied with:
 - (a) the number-plate issued under section 57 of the Act to the licensed tow truck that is being replaced must be displayed on the stand-by tow truck,
 - (b) the stand-by tow truck must be registered under the *Road Transport (Vehicle Registration) Act 1997* and display its registration number-plates,

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- (c) the stand-by tow truck must comply with the requirements of the Act and this Regulation, and with the conditions of the licence concerned, in relation to tow trucks,
 - (d) the stand-by tow truck must display in the approved manner an approved sign indicating that the tow truck is a stand-by tow truck.
- (4) A licensee who is using or operating a stand-by tow truck must:
- (a) ensure that the requirements specified in subclause (3) are complied with, and
 - (b) maintain a record, in the approved form, of the use and operation of the stand-by tow truck and keep that record in the approved manner.
- Maximum penalty: 20 penalty units.
- (5) A person must not hire, lease or supply a tow truck to a licensee for use and operation as a stand-by tow truck without the approval of the RTA.
Maximum penalty: 20 penalty units.
- (6) Any such approval may only be given if an application is made to the RTA in the approved form and manner.
- (7) While a stand-by tow truck is being used and operated in place of a licensed tow truck in accordance with this clause, the stand-by tow truck is taken to be a licensed tow truck for the purposes of the Act and this Regulation.

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Clause 55 Tow Truck Industry Regulation 2008

Part 6 Miscellaneous provisions

Part 6 Miscellaneous provisions

55 Exemption relating to interstate tow truck drivers and operators

- (1) A person who holds a licence, permit or other authority issued under the law of another State or Territory that authorises the person to drive or operate a tow truck in that State or Territory is exempt from the requirements under the Act to hold a licence or drivers certificate.
- (2) Such an exemption does not apply to or in respect of any towing work if the towing of the vehicle concerned starts in this State.
- (3) This clause does not affect any entitlement, under the *Mutual Recognition (New South Wales) Act 1992*, of a person who holds a licence, permit or other authority issued under the law of another State or Territory to drive or operate a tow truck (including in respect of the towing of a vehicle that starts in this State) without holding a licence or drivers certificate under the *Tow Truck Industry Act 1998*.

Note. The *Mutual Recognition (New South Wales) Act 1992* requires the tow truck driver or operator to notify and register with the RTA. The RTA may impose conditions on such registration so that the only towing work that may be carried out is towing work of a type authorised by the interstate licence, permit or other authority held by the tow truck driver or operator.

56 Penalty notices

For the purposes of section 89 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 1 is prescribed as an offence for which a penalty notice may be issued, and
- (b) the prescribed penalty for such an offence is the amount specified in Column 2 of Schedule 1.

57 Savings

Any act, matter or thing that had effect under the *Tow Truck Industry Regulation 1999* immediately before the repeal of that Regulation is taken to have effect under this Regulation.

Schedule 1 Penalty notice offences

(Clause 56)

Column 1	Column 2
Offence	Penalty
Offences under the Act	
Section 15	\$2,200
Section 23	\$1,100
Section 37 (1)	\$550
Section 49 (1)	\$1,100
Section 49A (1)	\$440
Section 50 (1)	\$1,100
Section 51	\$1,100
Section 53	\$1,100
Section 56 (1)	\$2,200
Section 57 (2)	\$550
Section 58	\$1,100
Section 59	\$1,100
Section 60	\$1,100
Section 61 (1)	\$550
Section 61 (2) or (3)	\$2,200
Section 62	\$1,100
Section 63 (1)	\$1,100
Section 64	\$2,200
Section 65	\$250
Section 66 (1)	\$1,100
Section 67	\$1,100
Section 68	\$1,100
Section 69	\$550
Section 70	\$550
Section 71	\$1,100

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Schedule 1 Penalty notice offences

Column 1	Column 2
Offence	Penalty
Section 72 (1)	\$1,650
Section 72 (2)	\$550
Section 73	\$550
Section 74	\$1,100
Section 75	\$1,100
Offences under this Regulation	
Clause 25	\$110
Clause 28	\$1,100
Clause 32	\$1,100
Clause 33 (2)	\$550
Clause 33 (3), (4) or (5)	\$335
Clause 34 (1)	\$110
Clause 34 (2) or (3)	\$440
Clause 42 (c)	\$1,100
Clause 43 (a)	\$110
Clause 43 (b)	\$440
Clause 45	\$355
Clause 46 (2) and (6)	\$440
Clause 46 (7)	\$220
Clause 47	\$110
Clause 48 (1)	\$550
Clause 49	\$440
Clause 51 (1)	\$220
Clause 52 (9)	\$110
Clause 52 (10)	\$440
Clause 54 (4) or (5)	\$440

BY AUTHORITY