



New South Wales

Tow Truck Industry Amendment Act 1999 No 61

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New South Wales

Tow Truck Industry Amendment Act 1999 No 61

Act No 61, 1999

An Act to amend the *Tow Truck Industry Act 1998* to make further provision with respect to the allocation of towing work, towing authorisations, fees and administrative matters; to amend the *Road Transport (General) Act 1999* and the *Road Transport (Safety and Traffic Management) Act 1999* with respect to the removal of vehicles and other related matters; and for other purposes. [Assented to 24 November 1999]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Tow Truck Industry Amendment Act 1999*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Tow Truck Industry Act 1998 No 111

The *Tow Truck Industry Act 1998* is amended as set out in Schedule 1.

4 Amendment of Road Transport (General) Act 1999 No 18

The *Road Transport (General) Act 1999* is amended as set out in Schedule 2.

5 Amendment of Road Transport (Safety and Traffic Management) Act 1999 No 20

The *Road Transport (Safety and Traffic Management) Act 1999* is amended as set out in Schedule 3.

Schedule 1 Amendment of Tow Truck Industry Act 1998

(Section 3)

[1] Section 3, definition of “towing authorisation”

Omit the definition from section 3 (1). Insert instead:

towing authorisation means an authorisation required under Part 4.

[2] Section 3 (3)

Insert after section 3 (2):

(3) Notes included in this Act do not form part of this Act.

[3] Section 7 Constitution of Tow Truck Authority

Omit section 7 (2). Insert instead:

(2) The TTA is a statutory body representing the Crown.

[4] Section 8 Functions of TTA

Insert after section 8 (2):

(3) The TTA is, in the exercise of its functions other than making a report or recommendation to the Minister, subject to the control and direction of the Minister.

[5] Section 11

Omit the section. Insert instead:

11 Staff of TTA

(1) The staff of the TTA (including the General Manager) is to be employed under Part 2 of the *Public Sector Management Act 1988*.

- (2) The TTA may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a Government department, public authority or local authority. Any such person of whose services the TTA makes use is, for the purposes of this Act, an officer of the TTA.
- (3) The TTA may engage consultants.

[6] Section 17 Application for licence

Omit “prescribed by the regulations” from section 17 (2) (h).
Insert instead “determined by the TTA by order published in the Gazette”.

[7] Section 21 Licence fees

Omit section 21 (1). Insert instead:

- (1) The TTA may, by order published in the Gazette, determine fees for the granting of licences.

[8] Section 21 (2)

Omit “the regulations”. Insert instead “the TTA”.

[9] Section 25 Application for drivers certificate

Omit “prescribed by the regulations” from section 25 (2) (c).
Insert instead “determined by the TTA by order published in the Gazette”.

[10] Section 30 Drivers certificate fees

Omit section 30 (1). Insert instead:

- (1) The TTA may, by order published in the Gazette, determine fees for the granting of drivers certificates.

[11] Section 30 (2)

Omit “the regulations”. Insert instead “the TTA”.

[12] Section 33 Investigation of application for licence or drivers certificate

Omit section 33 (1). Insert instead:

- (1) The TTA may carry out such investigations and inquiries as the TTA thinks necessary to enable it to properly consider an application for a licence or drivers certificate.

[13] Section 33 (5)

Insert after section 33 (4):

- (5) For the purposes of this section and section 34, a person who is the holder of a licence or drivers certificate (*the current licence or drivers certificate*) is taken to have applied for a subsequent licence or drivers certificate if:
 - (a) the TTA has, before the current licence or drivers certificate is due to expire, given that person notice that the current licence or drivers certificate is due to expire, and
 - (b) the person does not, within the time specified in the notice, notify the TTA that the person does not intend to apply for a subsequent licence or drivers certificate.

[14] Section 34 TTA may require further information in relation to application

Omit “who is an applicant” from section 34 (1).

Insert instead “who has applied”.

[15] Part 4, Divisions 1 and 2

Omit the Divisions. Insert instead:

Division 1 Job allocation scheme

46 Establishment, administration and operation of job allocation scheme

- (1) The regulations may make provision for or with respect to the establishment, administration and operation of a scheme for the allocation of towing work.

- (2) In particular, the regulations may, in relation to any such scheme:
- (a) identify activities that are taken to be towing work for the purposes of this Part, and
 - (b) specify the kinds of towing work to which the scheme applies, and
 - (c) confer powers on the TTA or any other person or body with respect to the administration and operation of the scheme, and
 - (d) provide for the establishment and operation of a job allocation centre for the purposes of the administration of the scheme, and
 - (e) provide for the operation of the scheme in any specified area, and
 - (f) provide that the scheme applies differently to different specified areas, and
 - (g) prescribe fees and charges that are payable to the TTA (including fees that are payable in connection with participation in the scheme, and providing for the time at which such fees are to be paid), and
 - (h) make provision for or with respect to any other matter relating to the administration and operation of the scheme.
- (3) If towing work is allocated in accordance with a job allocation scheme, the participant concerned does not, in any capacity, act as agent for the TTA or for any other person or body that allocates the work under the scheme. For the purposes of this Part, a *participant* is a licensee who is approved for the time being in accordance with the regulations to participate in a job allocation scheme established under this Part.
- (4) A job allocation scheme applies despite any contract or other arrangement under which any pre-arranged towing work is to be carried out by a tow truck operator to whom the contract or arrangement relates.

- (5) For the purposes of subsection (4), *pre-arranged towing work* means any towing work that is arranged before the need for the actual towing work arises, and whether before or after the commencement of this Division, by any person or body (including any organisation representing the interests of the owners of motor vehicles, or a roads authority).
- (6) The TTA, or any person or body acting on behalf of the TTA, or the Crown, is not liable to compensate any person for any loss suffered by the person as a result of the establishment, administration or operation of a job allocation scheme under this Division.

47 Contravention of job allocation scheme—towing by non-participant

A licensee, or a certified driver or other person employed or engaged by a licensee, must not carry out, or attempt to carry out, any towing work to which a job allocation scheme applies unless the licensee is a participant for the time being in the scheme.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

48 Contravention of job allocation scheme—unallocated towing work

A participant, or a certified driver or other person who is employed or engaged by a participant to carry out any towing work, must not carry out, or attempt to carry out, any towing work to which a job allocation scheme applies unless the towing work has been allocated to the participant in accordance with the job allocation scheme.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

49 Requirement to obtain towing authorisation

- (1) A participant, or a certified driver who is employed or engaged by a participant, must not carry out, or attempt to carry out, any towing work to which the job allocation scheme applies unless a towing authorisation has been obtained for the towing work.

Maximum penalty: 50 penalty units.

- (2) However, a person is not required to comply with subsection (1) if the person is carrying out, or is attempting to carry out, the towing work:
 - (a) in accordance with any direction of a police officer or an authorised officer (including a direction that is given by telephone or other electronic transmission) to move a motor vehicle that, in the opinion of the officer, is causing an unreasonable obstruction to traffic, to the nearest place where it no longer causes an obstruction to traffic, or
 - (b) in such circumstances as may be prescribed by the regulations.
- (3) A police officer or authorised officer may only give a direction described in subsection (2) (a) if, in the opinion of the officer, the motor vehicle cannot reasonably, in the circumstances, be driven away.
- (4) The regulations may provide that a towing authorisation is required in such other circumstances as may be prescribed (whether or not those circumstances are associated with a job allocation scheme).

50 Restrictions on obtaining towing authorisations

- (1) A person must not obtain, or attempt to obtain, a towing authorisation for the carrying out of towing work unless:
 - (a) the person holds a drivers certificate, and
 - (b) the person is the driver of a licensed tow truck, and
 - (c) the tow truck is standing at or in the vicinity of the motor vehicle that is required to be towed, and
 - (d) the licensee who operates the tow truck is a participant in a job allocation scheme to which the towing work applies, and
 - (e) the towing work has been allocated in accordance with the job allocation scheme to that licensee, and
 - (f) the towing work is to be carried out by the tow truck referred to in paragraph (c).

Maximum penalty: 50 penalty units.

- (2) A towing authorisation is to be in the approved form.

51 Towing in accordance with towing authorisation

- (1) A towing authorisation authorises the towing only of the motor vehicle that is specified in the authorisation.
- (2) If a person has obtained a towing authorisation for the towing of a motor vehicle, the person must tow the motor vehicle in accordance with the particulars specified in the authorisation.

Maximum penalty: 50 penalty units.

- (3) Without limiting subsection (2), the person must tow the motor vehicle concerned:
 - (a) to the destination specified in the authorisation, or
 - (b) if the specified destination is not accessible at the time of the towing:
 - (i) to the nearest holding yard specified in the licence under the authority of which the tow truck is operated, and
 - (ii) to the specified destination as soon as is reasonably practicable after the specified destination becomes accessible, or
 - (c) if a destination is not specified in the towing authorisation:
 - (i) to the nearest holding yard specified in the licence under the authority of which the tow truck is operated, or
 - (ii) in accordance with the regulations.

Maximum penalty: 50 penalty units.

- (4) A person who is required to obtain a towing authorisation must ensure that the towing authorisation is completed and dealt with in accordance with the regulations.

Maximum penalty: 50 penalty units.

52 Regulations relating to towing authorisations

The regulations may:

- (a) specify the persons who may give a towing authorisation, and

- (b) specify the particulars that must be specified in a towing authorisation (including the destination to which a motor vehicle is to be towed in accordance with the authorisation), and
- (c) prescribe fees and charges payable to the TTA in relation to towing authorisations, and
- (d) prescribe the procedures for dealing with towing authorisations, and
- (e) make provision for the keeping of records in relation to towing authorisations, and
- (f) prohibit a person from inducing another person to sign a towing authorisation by knowingly making a false or misleading statement, and
- (g) make provision for or with respect to any other matter relating to towing authorisations.

53 Alteration of completed towing authorisation prohibited

A person must not, without reasonable excuse, alter a towing authorisation after it has been signed in accordance with the regulations.

Maximum penalty: 50 penalty units.

[16] Section 62 Prohibition on obtaining authority to repair

Insert “by a particular repairer” after “repair”.

[17] Section 62 (2) and (3)

Insert at the end of the section:

- (2) If:
 - (a) an authority for the repair of a motor vehicle is obtained in contravention of subsection (1), and
 - (b) within 48 hours after obtaining the authority the person who gave the authority to repair (or the person’s agent) revokes the authority by written notice given to the repairer in respect of whom the authority was given or to an employee of that repairer,

the person revoking the authority is not liable for any costs or damages arising as a result of giving the authority or revoking the authority, or for the cost of any work performed on the vehicle after it was towed to the place specified in the towing authorisation.

- (3) In this section, *repairer* means a person who carries on the business of repairing motor vehicles.

[18] Section 66 Compliance with directions at scene of accident

Omit section 66 (1). Insert instead:

- (1) If the driver of a tow truck is at the scene of a motor vehicle accident, the driver must comply with any reasonable direction given to the driver by an authorised officer, police officer or emergency services officer who is present at the scene and who is exercising his or her official duties as such an officer.

Maximum penalty: 50 penalty units.

Note. It is an offence under section 75 (3A) of the *Road Transport (Safety and Traffic Management) Act 1999* to fail to comply with any direction given by an authorised officer or police officer in the exercise of the officer's functions of removing an obstruction to traffic on a road or road related area.

[19] Section 91 Tow Truck Industry Fund

Insert after section 91 (1) (a):

- (a1) all penalties for offences under this Act and the regulations that are recovered in prosecutions brought by, or penalty notices issued by, officers of the TTA, and

[20] Section 105 Regulations

Omit "Division 2" from section 105 (2) (o). Insert instead "Division 1".

[21] Schedule 2 Savings and transitional provisions

Omit "this Act" from clause 1 (1). Insert instead:

the following Acts:

this Act

Tow Truck Industry Amendment Act 1999

Tow Truck Industry Amendment Act 1999 No 61

Schedule 1 Amendment of Tow Truck Industry Act 1998

[22] Schedule 2, clause 1 (2)

Omit “this Act”. Insert instead “the Act concerned”.

Schedule 2 Amendment of Road Transport (General) Act 1999

(Section 4)

[1] Section 15 Penalty notices for certain offences

Omit section 15 (1) (i).

[2] Section 46 Certificate evidence and other evidentiary provisions

Insert after section 46 (1) (d):

- (e) a matter that appears in a towing authorisation within the meaning of the *Tow Truck Industry Act 1998*,
- (f) a matter that appears in any record, kept by or on behalf of the Tow Truck Authority, relating to the operation of a job allocation scheme established under Part 4 of the *Tow Truck Industry Act 1998*.

Schedule 3 Amendment of Road Transport (Safety and Traffic Management) Act 1999

(Section 5)

[1] Section 75 Removal of dangers and obstructions to traffic

Insert after section 75 (1):

- (1A) If a danger or obstruction to traffic on a road or road related area is caused by a vehicle that has been involved in an accident or has broken down, the Tow Truck Authority may cause the vehicle to be removed in accordance with a job allocation scheme established under Part 4 of the *Tow Truck Industry Act 1998*.
- (1B) If a vehicle referred to in subsection (1A) is authorised to be removed by the Tow Truck Authority in accordance with such a job allocation scheme, the vehicle is, for the purposes of subsections (2) and (3), taken to have been removed by the appropriate roads authority.

[2] Section 75 (3A)

Insert after section 75 (3):

- (3A) A person who, without reasonable excuse:
 - (a) fails to comply with any direction given to the person by an authorised officer in exercising a function under subsection (1), or
 - (b) fails to comply with any direction given to the person by the Tow Truck Authority in relation to the removal of a vehicle under subsection (1A), or
 - (c) obstructs a person who is authorised to remove a vehicle in accordance with this section,

is guilty of an offence.

Maximum penalty: 20 penalty units.

[3] Section 76 Removal of unattended motor vehicles or trailers from certain places

Insert “or the Tow Truck Authority” after “officer” wherever occurring in section 76 (1).

[4] Section 76 (3) (b)

Omit the paragraph.

[5] Section 76 (4)

Omit the subsection.

[6] Section 76 (7)

Omit “2 penalty units”. Insert instead “10 penalty units”.

[7] Section 76 (8A)

Insert after section 76 (8):

(8A) For the purposes of subsection (6) (a), the responsible person cannot rely on any police report stating that the vehicle was stolen or illegally taken or used at the relevant time unless the report indicates the time and date that it was made.

[8] Section 76 (9), definition of “prescribed place”

Insert at the end of paragraph (b) of the definition:

, or

(c) any road or road-related area that is within a special tow-away area referred to in subsection (10).

[9] Section 76 (10)–(12)

Insert after section 76 (9):

(10) The Authority may establish special tow-away areas for the purposes of this section.

(11) Any such area may be established by order published in the Gazette, or by the erection of signs in or about the area concerned, or both.

- (12) If the Authority establishes a special tow-away area, it is to cause a notice to be published in at least 2 newspapers circulating in the area to which the special tow-away area relates. The notice must describe or identify the special tow-away area, and specify the period for which the area concerned is to operate as a special tow-away area.

[10] Section 76A

Insert after section 76:

76A Removal of vehicles—incidental provisions relating to towing

- (1) If a motor vehicle or trailer is removed in accordance with section 75 or 76 by a tow truck, the person operating or driving the tow truck may take such action as is reasonable or necessary to facilitate the towing of the vehicle or trailer in a manner that does the least damage to the vehicle or trailer. In taking any such action, the person is not liable for any damage to the vehicle or trailer that the person causes.

Note. For example, a tow truck driver may need to break into an unattended motor vehicle that is causing an obstruction in order to release the hand brake and avoid doing serious damage to the vehicle's transmission.

- (2) If a motor vehicle or trailer is removed in accordance with section 75 or 76 by a tow truck, the person or body that authorised or caused the removal is not vicariously liable for any damage caused to the vehicle or trailer by the person operating or driving the tow truck.

[11] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Tow Truck Industry Amendment Act 1999

[Minister's second reading speech made in—
Legislative Assembly on 27 October 1999
Legislative Council on 16 November 1999]

BY AUTHORITY