

TOW TRUCK BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to provide for a licensing scheme for tow truck operators and a certification scheme for tow truck drivers; and
- (b) to regulate aspects of towing work, including requiring the use of towing authorities and the provision of a work allocation scheme for motor vehicle accidents; and
- (c) to constitute the Tow Truck Industry Council to regulate matters relating to the tow truck industry,

and to make provision for other related matters.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

Clause 3 defines expressions used in the proposed Act.

Clause 4 exempts a tow truck operated by the Crown or a statutory body representing the Crown from the Act. The Act will apply to a tow truck operator who is working for the Crown, or any such statutory body, under a contract or arrangement.

PART 2 - OPERATORS LICENCES AND DRIVERS CERTIFICATES

Division 1 - Tow truck operators licences

Clause 5 makes it an offence for a person to carry on the business of a tow truck operator, or advertise any such business, unless the person is the holder of a tow truck operators licence and the kind of operations carried out, or advertised, are permitted by the licence.

Clause 6 provides for the making of applications for licences to the Tow Truck Industry Council ("the Council") and the matters to be included in applications.

Clause 7 provides for the determination of licence applications by the Council. In general, a licence must not be granted unless the applicant meets all of the qualifications set out in proposed section 8. However the Council may waive this requirement in special circumstances.

Clause 8 sets out the qualifications for a licence, including a requirement that the person is, in the opinion of the Council, a fit and proper person to hold a licence, as well as other qualifications relating to premises, tow trucks and training.

Clause 9 provides that a licence may be granted subject to conditions, including a condition specifying the kind of towing work that may be carried out. The clause also sets out conditions applying to every licence.

Clause 10 enables the Council to amend a licence by varying its conditions or by adding or omitting conditions.

Clause 11 enables the Council to determine licence fees.

Clause 12 states that the duration of a licence is 1 year or such shorter period as may be specified in the licence, unless it is sooner cancelled or surrendered.

Clause 13 enables a licence holder to apply to the Council to have the name of a proposed partner in the holder's business added to the licence.

Division 2 - Tow truck drivers certificates

Clause 14 defines "tow truck" for the purposes of the Division.

Clause 15 makes it an offence for a person to drive or stand a tow truck on a public street, to use or assist in the use of a tow truck on a public street or to obtain or attempt to obtain a towing authority, unless the person is the holder of a drivers certificate.

Clause 16 makes it an offence for a tow truck operator to use the services of a person who does not hold a drivers certificate to do anything for which a drivers certificate is required under the proposed Act.

Clause 17 provides for the making of applications for drivers certificates to the Council and the matters to be included in applications.

Clause 18 provides for the determination of drivers certificate applications by the Council. A drivers certificate must not be granted unless the applicant meets all the qualifications set out in proposed section 19.

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Clause 19 sets out the qualifications for a drivers certificate, including a requirement that the person holds a silver or gold driver's licence as well as other qualifications relating to being a fit and proper person and training.

Clause 20 provides that a drivers certificate may be granted subject to conditions.

Clause 21 enables the Council to amend a drivers certificate by varying its conditions or by adding or omitting conditions.

Clause 22 enables the Council to determine fees for drivers certificates.

Clause 23 states that the duration of a drivers certificate is 1 year or such shorter period as may be specified in the drivers certificate, unless it is sooner cancelled or surrendered.

Division 3 - Licences and drivers certificates generally

Clause 24 requires the Council to give notice to persons whose applications for a licence or drivers certificate or the amendment of a licence are refused.

Clause 25 confers on an applicant a right to appeal to a Local Court against the Council's refusal of an application for a licence or drivers certificate or for the amendment of a licence.

Clause 26 provides that, unless the Local Court otherwise orders, an amendment to a licence continues in force until any appeal against the amendment is determined.

Clause 27 sets out the determinations which may be made by a Local Court on an appeal.

Clause 28 enables the Council to request and consider a police report as to the character of a person when the Council is deciding whether a person is a fit and proper person to hold a licence or drivers certificate.

Clause 29 provides for the issue of duplicate licences or drivers certificates.

Clause 30 requires the Council to keep a register of licences and drivers certificates and provides for the inspection of the register by officials and members of the public.

Clause 31 makes it an offence for a person to make any statement which the person knows to be false or misleading in an application for a licence or drivers certificate or for the amendment of a licence.

Clause 32 makes it an offence for a person to hold himself or herself out as the holder of a licence or drivers certificate if the person is not the holder of the licence or drivers certificate.

Clause 33 enables licences and drivers certificates to be surrendered.

PART 3 - TOW TRUCK OPERATIONS

Division 1 - Towing authorities

Clause 34 makes it an offence for a person who is required by the regulations to obtain a towing authority to tow a motor vehicle on a public street without a towing

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authority that has been obtained, completed, signed and dealt with, in accordance with the regulations.

Clause 35 sets out a power to make regulations with respect to towing authorities.

Division 2 - Allocation of towing work

Clause 36 sets out a power to make regulations with respect to a scheme for the allocation of towing work.

Division 3 - Other offences relating to towing operations

Clause 37 makes it an offence to give, or offer to give, a valuable thing to obtain, personally or for another person, the work of repairing a motor vehicle damaged in an accident or otherwise requiring towing. It also makes it an offence to demand, receive, or offer to receive, a valuable thing to obtain, for another person, the work of repairing a motor vehicle damaged in an accident or otherwise requiring towing. The purpose of the proposed section is to prohibit "drop fees" from being given and received.

Clause 38 makes it an offence to do anything, by threats, intimidation or coercion, to a person in connection with the obtaining of a towing authority or obtaining the work of repairing a motor vehicle damaged in an accident or otherwise requiring towing.

Clause 39 makes it an offence for a tow truck driver to tow a motor vehicle from the scene of an accident without first clearing the debris from the accident that relates to the towed motor vehicle.

Clause 40 makes it an offence for a person who is not the holder of a drivers certificate, and who is not the driver or passenger of a motor vehicle proposed to be or being towed, to travel as a passenger in a tow truck proceeding to or from an accident.

Division 4 - Tow trucks

Clause 41 enables the Roads and Traffic Authority to issue distinctive number-plates for tow trucks.

Clause 42 sets out a power to make regulations with respect to the design, construction and equipment of tow trucks.

Clause 43 sets out a power to make regulations with respect to the periodic inspection of tow trucks by the Roads and Traffic Authority or a person authorised by the Authority.

PART 4 - DISCIPLINARY PROCEEDINGS

Clause 44 provides that any person may make a complaint that the holder of a licence or drivers certificate should be dealt with under the proposed Part.

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Clause 45 provides that a complaint is to be lodged with the Council.

Clause 46 sets out the grounds on which a licence holder may be dealt with under the proposed Part.

Clause 47 sets out the grounds on which the holder of a drivers certificate may be dealt with under the proposed Part.

Clause 48 requires the Council to serve, on a person against whom a complaint is made ("the defendant"), a notice calling on the defendant to show cause why the person should not be dealt with under the proposed Part. After considering any representations made by the defendant, the Council must decide whether or not to hold an inquiry or cause an inquiry to be held by a committee of the Council into the complaint. The complainant is to be notified of the action taken.

Clause 49 sets out the procedure for the conduct of inquiries into complaints.

Clause 50 sets out the determinations which the Council may make if, after an inquiry is held, it is of the opinion that a ground exists for dealing with the defendant under the proposed Part. Determinations which may be made include a requirement that a monetary penalty be paid to the Council and the cancellation or suspension of a licence or drivers certificate.

Clause 51 provides for the suspension of the licence or drivers certificate of a defendant who fails to pay a monetary penalty within 21 days of it being imposed.

Clause 52 requires notice of the cancellation or suspension of a licence or drivers certificate to be given to the holder and requires a cancelled or suspended licence or drivers certificate to be delivered to the Council.

Clause 53 confers on a defendant a right to appeal to a Local Court against a determination of the Council under clause 50.

Clause 54 provides that, unless the Local Court otherwise orders, the Council's determination has no effect until any relevant appeal is withdrawn or the determination is confirmed by the Local Court.

Clause 55 sets out the determinations which may be made by a Local Court on an appeal.

PART 5 - TOW TRUCK INDUSTRY COUNCIL

Clause 56 constitutes the Council. The Council is to have 8 part-time members consisting of a Chairperson, an officer of the Roads and Traffic Authority and 6 members representing industry and consumer groups.

Clause 57 provides that the Council has the functions conferred or imposed on it by or under the proposed Act or any other legislation.

Clause 58 sets out particular functions of the Council relating to the proposed Act and the tow truck industry.

Clause 59 empowers the Council to determine maximum charges by tow truck operators for the towing, salvage or storage of motor vehicles.

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Clause 60 authorises the Council to employ necessary staff.

Clause 61 enables the Council to engage consultants.

PART 6 - FINANCE

Clause 62 establishes, as a Special Deposits Account in the Treasury, the Tow Truck Industry Fund.

Clause 63 sets out the money which is to be paid into the Tow Truck Industry Fund.

Clause 64 sets out the payments which may be made from the Tow Truck Industry Fund.

Clause 65 provides for the financial year of the Council.

Clause 66 sets out the Council's investment powers.

PART 7 - GENERAL

Clause 67 enables the Council to refund fees paid in respect of an application for a licence or drivers certificate or in respect of a licence or drivers certificate if an application is refused or a licence or drivers certificate is cancelled.

Clause 68 makes it an offence, except in certain specified circumstances, to disclose information obtained in connection with the administration or execution of the proposed Act.

Clause 69 empowers the Council to delegate its functions.

Clause 70 provides for procedures on appeals under the proposed Act.

Clause 71 exculpates from personal liability the Council, the Chairperson of the Council, the members of the Council and any person acting under the direction of the Council, for any matter or thing done in good faith for the purpose of executing the proposed Act or any other Act.

Clause 72 provides that the Act prevails despite any stipulation to the contrary or any contract or agreement.

Clause 73 empowers the Council to require information from any person relating to a tow truck, towing or the business of a tow truck operator and makes it an offence for a person to fail to comply with any such requirement.

Clause 74 requires the holder of a licence, while carrying on the business of a tow truck operator, to produce the licence, and the holder of a drivers certificate, who is engaged in towing work, to produce the drivers certificate, on demand by specified persons.

Clause 75 empowers a person authorised in writing by the Council to enter premises or a tow truck for the purpose of ascertaining whether a person is contravening or has contravened the proposed Act or the regulations and, while there, to make examinations and inquiries.

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Clause 76 requires an authorised person to produce his or her authorisation if requested to do so.

Clause 77 creates offences relating to the obstruction etc. of persons acting under proposed section 75.

Clause 78 is an evidentiary provision that enables a certificate to be given for the purpose of proving, in proceedings, that a person was a tow truck operator, employed as a tow truck driver or the holder of a licence or drivers certificate or that a licence or drivers certificate was suspended or cancelled.

Clause 79 provides for the service of documents under the proposed Act, including the service of documents on the Council.

Clause 80 empowers the Council to recover penalties or other money owed to it as a debt in a court of competent jurisdiction.

Clause 81 makes directors, or persons concerned in the management, of corporations liable for offences committed by corporations under the proposed Act.

Clause 82 provides for the taking of proceedings for offences against the proposed Act or regulations under the proposed Act.

Clause 83 sets out the power to make regulations under the proposed Act.

Clause 84 provides for the repeal of the Acts specified in Schedule 3.

Clause 85 amends the Public Authorities (Financial Arrangements) Act 1987 to enable the Council to obtain financial accommodation under that Act.

Clause 86 amends the Public Finance and Audit Act 1983 to subject the Council to the requirements of that Act relating to statutory bodies.

Clause 87 is a formal provision that gives effect to the Schedule of savings, transitional and other provisions.

Schedule 1 contains provisions relating to the constitution and members of the Council.

Schedule 2 contains provisions relating to the procedure of the Council.

Schedule 3 specifies the Acts to be repealed by the proposed Act.

Schedule 4 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.