

TOW TRUCK INDUSTRY BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Motor Vehicle Repairs (Tow Truck Industry) Amendment Bill 1987 is cognate with this Bill.

The object of this Bill is to introduce a new scheme for the regulation of the tow truck industry, including—

- (a) the constitution of a Tow Truck Industry Corporation of New South Wales and Tow Truck Industry Committee of New South Wales;
- (b) the conferring on the Corporation (instead of the Commissioner for Motor Transport) of functions relating to the licensing of tow truck operators and the granting of permits to tow truck drivers and tow truck drivers' assistants and disciplinary and other functions relating to the tow truck industry;
- (c) the establishment by regulation of regional roster systems for the attendance of tow trucks at motor vehicle accidents; and
- (d) the establishment by regulation of regional systems for the use of "holding yards" to which motor vehicles must be towed after accidents (unless the owner or driver or a member of the police force otherwise directs) and at which the vehicles are to be held for a specified minimum period.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be appointed by proclamation..

Tow Truck Industry 1987

Clause 3 defines expressions used in the proposed Act. In particular, “holding yard” is defined as a place to which motor vehicles are towed after an accident, “tow truck operator” means a person who operates tow trucks for certain purposes and a “towing authority” is an authority required by the proposed Act to be given for the towing of a motor vehicle on a public street. “Operate” is defined, in relation to a tow truck, as meaning to tow or offer to tow a motor vehicle by means of the tow truck. “Tow” and “Tow truck” are defined in wide terms. (However the relevant provisions of the Act generally only regulate tow trucks when being used to tow vehicles from the scenes of motor vehicle accidents and breakdowns.)

Clause 4 exempts from the operation of the proposed Act tow trucks operated by the Crown. It also enables the regulations to exempt other persons from the operation of the proposed Act.

PART 2—ADMINISTRATION

Division 1—Tow Truck Industry Corporation

Clause 5 provides for the constitution of the Tow Truck Industry Corporation. The Corporation’s functions may be exercised by the Secretary of the Department of Industrial Relations and Employment or by the General Manager of the Corporation in accordance with the Secretary’s directions. The General Manager of the Corporation will be the person who is for the time being Chairman of the Motor Vehicle Repair Industry Council.

Clause 6 states the functions of the Corporation.

Clause 7 enables staff of the Corporation to be employed under the Public Service Act 1979 and provides that the Corporation may arrange for the use of the services of any staff or facilities of any government department or administrative office.

Division 2—Tow Truck Industry Committee

Clause 8 constitutes the Tow Truck Industry Committee which will be chaired by the General Manager of the Corporation and will have not more than 6 other members.

Clause 9 sets out the Committee’s functions, including to keep under review the operation of the proposed Act, to report or make recommendations to the Minister and to promote improvement in the standard of services provided by the tow truck industry.

PART 3—LICENCES AND PERMITS

Division 1—Tow truck operators’ licences

Clause 10 makes it an offence to carry on or advertise the carrying on of the business of a tow truck operator without a tow truck operator’s licence. The maximum penalty is \$10,000 or 6 months’ imprisonment, or both.

Clause 11 provides for the making of applications to the Corporation for licences. A joint licence may be applied for by 2 or more persons. An application must specify the tow trucks to be operated and any holding yard to be used by the applicant and, in the case of a corporation, the corporation’s directors. The applicant must also deposit an operating deposit which is to be used as a security in the event of a penalty being imposed on the applicant in disciplinary proceedings.

Tow Truck Industry 1987

Clause 12 provides for the grant or refusal by the Corporation of an application for a licence. The Corporation may not grant a licence unless the applicant satisfies certain conditions, including being a fit and proper person to hold a licence, nominating a holding yard (if applicable) and being over the age of 18 years. Where an applicant is a corporation, its directors must be fit and proper persons to hold a licence.

Clause 13 provides that the Commissioner for Motor Transport is to issue distinctive number-plates for tow trucks which, according to the advice of the Corporation, are to be specified in licences.

Clause 14. Subclause (1) sets out the conditions applicable to every licence. These include a stipulation that tow trucks display the distinctive number-plates, that any tow trucks operated by the holder comply with the relevant laws, and that the holder or any employee complies with the Radiocommunications Act 1983 of the Commonwealth. Subclauses (2)–(5) provide that a licence may be subject to any other conditions imposed by the Corporation and that the Corporation may vary, add and delete conditions to which a licence is subject.

Clause 15 provides that a licence is to remain in force for one year from the date that it is granted unless it is sooner cancelled or surrendered.

Clause 16 provides that an application for the amendment of a licence may be made where certain circumstances change, including commencing to carry on business in partnership, changes of tow trucks being operated and a change in the holding yard being used.

Division 2—Drivers' permits and assistants' permits

Clause 17 defines "tow truck" for the purposes of the proposed Division.

Clause 18 makes it an offence to drive or stand a tow truck or to obtain or attempt to obtain a towing authority without a driver's permit. The maximum penalty is \$2,000.

Clause 19 makes it an offence to assist in the operation of a tow truck on a public street without an assistant's permit. The maximum penalty is \$2,000.

Clause 20 makes it an offence for a tow truck operator to employ or engage a person to do anything for which a permit is required under the proposed Act unless the person is the holder of such a permit. The maximum penalty is \$2,000.

Clause 21 provides for the making of applications to the Corporation for drivers' permits and assistants' permits.

Clause 22 provides for the grant or refusal by the Corporation of an application for a driver's permit or an assistant's permit. The Corporation may not grant a permit unless the applicant is a fit and proper person to hold a permit and is over the age of 18 years.

Clause 23 provides that a permit may be subject to conditions imposed by the Corporation and that the Corporation may vary, add and delete conditions to which a permit is subject.

Clause 24 provides that a permit is to remain in force for one year from the date that it is granted unless it is sooner cancelled or surrendered.

Division 3—Licences and permits generally

Clause 25 provides that the Corporation shall give an applicant for a licence or permit or for the amendment of a licence notice of refusal of the application.

Clause 26 enables the holder of a licence or permit to surrender it to the Corporation.

Tow Truck Industry 1987

Clause 27 enables the Corporation to request the Commissioner of Police to make inquiries as to the character of a person where the Corporation is deciding whether the person is a fit and proper person to hold a licence or permit.

Clause 28 provides for the refund of operating deposits to licence holders and former licence holders when an application for a licence is refused or a licence expires or is surrendered or cancelled. It also authorises the refund of fees in accordance with the regulations.

Clause 29 enables the Corporation to issue duplicate licences or permits to replace lost or destroyed licences or permits.

Clause 30 provides for the maintenance by the Corporation of a register of licences and permits and for its inspection.

Clause 31 makes it an offence for a person, in connection with an application for a licence or permit or for the amendment of a licence, to make a statement which is false or misleading in a material particular. The maximum penalty is \$2,000 or 3 months' imprisonment, or both.

PART 4—REGULATION OF TOW TRUCK INDUSTRY

Division 1—Roster system

Clause 32 enables regulations to be made with respect to the establishment, administration and operation of a roster system for the attendance of tow trucks at motor vehicle accidents.

Clause 33 makes it an offence for a tow truck driver or operator to attend a motor vehicle accident otherwise than in accordance with a roster system where such a system has been established. The maximum penalty is \$10,000 or 6 months' imprisonment, or both. By clause 33 (2) the owner or driver of a vehicle damaged in an accident is required to use the tow truck provided under the roster system and members of the police force are not entitled to operate a separate roster system for damaged vehicles taken under their care.

Division 2—Towing authorities

Clause 34 enables regulations to be made with respect to towing authorities, including procedures for dealing with those authorities.

Clause 35 makes it an offence to tow a motor vehicle on a public street without first having obtained a properly completed and signed towing authority. The maximum penalty is \$2,000.

Division 3—Holding yards

Clause 36 enables regulations to be made in respect of the establishment, use and operation of holding yards.

Clause 37 makes it an offence for a person to tow a motor vehicle from the scene of a motor vehicle accident to a place other than the relevant holding yard or a place directed by the owner or driver unless a member of the police force authorises or requires the motor vehicle to be towed to some other place (other than the premises of a motor vehicle repairer). It will also be an offence for a person to remove a motor vehicle from a holding yard before the expiration of 24 hours after its arrival (or such lesser period as is prescribed) unless directed to do so by a member of the police force, an inspector under the proposed Act or the owner. The maximum penalty is \$2,000.

Tow Truck Industry 1987

Division 4—Other regulatory provisions

Clause 38 makes it an offence for a person to give or receive “spotter’s fees” for information about a motor vehicle accident or “drop fees” for obtaining for another person repair work on a motor vehicle damaged in a motor vehicle accident. The maximum penalty is \$10,000 or 6 months’ imprisonment, or both.

Clause 39 makes it an offence for a person to threaten any person so as to obtain a towing authority for or repair work on a motor vehicle damaged in a motor vehicle accident. The maximum penalty is \$10,000 or 6 months’ imprisonment, or both.

Clause 40 makes it an offence for a person to obtain or to attempt to obtain authority to repair a motor vehicle before the motor vehicle is delivered to the holding yard or other duly authorised place to which it is towed from the scene of a motor vehicle accident. The maximum penalty is \$10,000 or 6 months’ imprisonment, or both.

Clause 41 makes it an offence for the driver of a tow truck to obstruct a public street or to stand at the scene of a motor vehicle accident for any longer than is necessary for towing purposes. The maximum penalty is \$1,000.

Clause 42 makes it an offence for a holder of a licence or permit who is acting in contravention of the proposed Act or regulations to neglect or fail to comply with a direction by an inspector under the proposed Act or a member of the police force to leave the scene of a motor vehicle accident. The maximum penalty is \$10,000 or 6 months’ imprisonment, or both.

Clause 43 makes it an offence for a person (other than the driver of a tow truck, a driver’s assistant or the owner of or passenger in a motor vehicle being towed) to travel as a passenger in a tow truck. The maximum penalty is \$2,000.

Clause 44 enables regulations to be made to fix charges for the towing, salvage or storage of a motor vehicle.

PART 5—DISCIPLINARY PROCEEDINGS

Clause 45 defines certain expressions used in the proposed Part.

Clause 46 sets out the grounds on which action may be taken against the holder of a tow truck operator’s licence. The grounds include contravention of a licence condition or provision of the proposed Act or regulations, conviction of certain offences, fraudulent or dishonest conduct in relation to the carrying on of the business of a tow truck operator, insolvency, ceasing to carry on the business of a tow truck operator and being, for any other reason, not a fit and proper person to hold a licence.

Clause 47 sets out the grounds on which action may be taken against the holder of a driver’s permit or an assistant’s permit. The grounds include contravention of a permit condition or provision of the proposed Act or regulations and being, for any other reason, not a fit and proper person to hold a permit.

Clause 48 states that complaints are to be lodged with the Corporation and, when made by members of the public, are to be accompanied by the prescribed fee.

Clause 49 provides for the issue of a notice to a person about whom a complaint is made to show cause why the person should not be dealt with under the proposed Part. If, after considering the representations of the person, the Corporation is satisfied that further action is warranted, the Corporation may hold an inquiry into the matter or appoint a delegate to do so.

Tow Truck Industry 1987

Clause 50 deals with the procedures for the holding of an inquiry. The clause enables inquiries to be held in the absence of a defendant and the parties at an inquiry to be represented, with the approval of the Corporation, by a barrister or solicitor or by an agent.

Clause 51 sets out the determinations which may be made by the Corporation after an inquiry on finding that a ground exists for dealing with a defendant. The Corporation may take no further action, give a reprimand, impose a penalty not exceeding \$1,000 or cancel or suspend the licence or permit. The power to impose any such penalty may not be delegated.

Clause 52 provides for payment and recovery of penalties imposed by the Corporation and enables the Corporation to deduct the amount of such a penalty from the operating deposit of any licence holder concerned.

Clause 53 requires the Corporation, before cancelling or suspending a licence or permit, to notify the holder of the licence or permit.

PART 6—APPEALS

Clause 54 gives an applicant for a licence or permit or the amendment of a licence, or a person whose licence or permit has been amended by the Corporation, or a person against whom the Corporation has taken disciplinary proceedings, a right to appeal to the Industrial Commission.

Clause 55 confers the relevant jurisdiction on a judicial member of the Industrial Commission.

Clause 56 sets out the procedures for the hearing of an appeal by the Industrial Commission.

Clause 57 enables the parties to an appeal to be represented by a barrister or solicitor or by an agent.

Clause 58 sets out the determinations which may be made by the Industrial Commission in an appeal.

Clause 59 prevents any appeal from a determination of the Industrial Commission in an appeal.

PART 7—GENERAL

Clause 60 establishes the Tow Truck Industry Corporation Account as a Special Deposits Account in the Treasury.

Clause 61 provides that the financial year of the Corporation shall commence on 1 January.

Clause 62 makes it an offence to disclose information obtained in connection with the administration or execution of the proposed Act. The maximum penalty is \$1,000.

Clause 63 provides for the delegation of functions by the Corporation.

Clause 64 prohibits any person from making an agreement which would annul, vary or exclude any of the provisions of the proposed Act.

Clause 65 empowers the Corporation to obtain information relating to any towing or the business of a tow truck operator.

Tow Truck Industry 1987

Clause 66 provides that the holder of a licence or permit shall produce the licence or permit on demand by an inspector under the proposed Act or a member of the police force. It also provides that the holder of a driver's permit shall produce a duplicate licence on demand.

Clause 67 sets out the powers of entry and examination of inspectors under the proposed Act.

Clause 68 makes it an offence for a person to obstruct, refuse to obey a request or requirement of, or conceal any person from, an inspector under the proposed Act. The maximum penalty is \$2,000.

Clause 69 makes provision for evidentiary matters.

Clause 70 provides for service of documents required to be served on a person under the proposed Act or on the Corporation.

Clause 71 states that fees etc. due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

Clause 72 provides for directors to be liable, in certain circumstances, for offences committed by corporations under the proposed Act.

Clause 73 provides that proceedings for offences under the proposed Act or the regulations may be taken before a Local Court constituted by a Magistrate sitting alone.

Clause 74 confers immunity from liability on persons acting under the direction of the Corporation or the Committee and on members of the Committee.

Clause 75 sets out regulation making powers. Regulations may be made with respect to licences and permits, advertising by tow truck operators, records of tow truck operators, the furnishing of information, the payment of operating deposits and other specified matters relating to tow truck operators and tow trucks.

Clause 76 repeals the Tow-truck Act 1967.

Clause 77 and Schedule 2 contain savings, transitional and other provisions. Schedule 2 provides for the records of the Commissioner for Motor Transport in relation to the Tow-truck Act 1967 to be delivered to the Corporation. The Schedule also contains a power to make regulations of a savings or transitional nature necessary as a result of the proposed Act.

Clause 78 amends Schedule 2 to the Public Finance and Audit Act 1983.

Schedule 1 contains provisions relating to the members and procedure of the Committee.
