



New South Wales

# Tow Truck Industry Amendment Bill 2007

## Explanatory note

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

## Overview of Bill

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

- (a) to abolish the Tow Truck Authority and transfer its tow truck industry regulatory functions to the Roads and Traffic Authority, and
- (b) to abolish the job allocation scheme, and
- (c) to require towing authorisations to be obtained for the carrying out of accident towing work, and
- (d) to make other amendments of a minor or consequential nature.

The Bill also makes consequential amendments to various other Acts and Regulations.

## Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act by proclamation.

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

**Clause 4** is a formal provision that gives effect to the consequential amendments to the other legislation set out in Schedule 2.

**Clause 5** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## **Schedule 1      Amendment of Tow Truck Industry Act 1998**

### **Amendments relating to abolition of TTA and transfer of functions to RTA**

The Tow Truck Authority (*TTA*), its Board and the Tow Truck Industry Advisory Council are established under Part 2 of the Principal Act to manage and regulate the tow truck industry. **Schedule 1 [6]** abolishes the TTA, its Board and the Advisory Council and transfers all of the tow truck industry regulatory functions of the TTA to the Roads and Traffic Authority (*RTA*).

Currently under the Principal Act there is established a fund known as the Tow Truck Industry Fund. This fund receives all money, and pays all expenditure for the purposes of the Principal Act. **Schedule 1 [16]–[20]** ensure that all money received by the RTA under the Principal Act is retained and paid out of the Tow Truck Industry Fund.

The Principal Act contains various miscellaneous provisions relating to the administration of the TTA (including its financial year, recovery of money, delegation of functions and protection from personal liability). The *Transport Administration Act 1988* contains similar administrative provisions that apply to the RTA. Accordingly, **Schedule 1 [21], [22], [24] and [29]** remove unnecessary sections from the Principal Act.

**Schedule 1 [34]** specifies the date on which the TTA is to be abolished and makes it clear that the assets, rights and liabilities of the TTA become those of the RTA. Also, anything done by the TTA is taken to have been done by the RTA. The financial year reporting requirements of the TTA are extended to include the period of time up to its abolition.

**Schedule 1 [4]** removes definitions that are no longer required as a result of the above amendments.

**Schedule 1 [1], [2], [5], [13], [23], [25], [26] and [32]** make minor consequential amendments as a result of the abolition of the TTA.

### **Amendments relating to abolition of job allocation scheme**

The Principal Act currently provides for a job allocation scheme for towing work. **Schedule 1 [8]** abolishes the job allocation scheme by removing provisions relating to its establishment, administration and operation.

**Schedule 1 [7], [10] and [30]** make minor consequential amendments as a result of the abolition of the job allocation scheme.

### **Amendments relating to accident towing work**

**Schedule 1 [9]** inserts proposed sections 49 and 49A into the Principal Act. Proposed section 49 provides that accident towing work must not be undertaken unless a towing authorisation has been obtained for the towing work. A towing authorisation is not required if a direction to tow is given by a police officer or authorised officer. Proposed section 49A makes it an offence for a person to obtain, or attempt to obtain, a towing authorisation in respect of towing work for which a towing authorisation has already been given.

**Schedule 1 [3]** inserts the definitions of “accident”, “accident towing work” and “scene of an accident” (currently contained in the *Tow Truck Industry Regulation 1999*) into the Principal Act.

**Schedule 1 [11], [14] and [15]** make minor consequential amendments as a result of the amendments relating to accident towing work.

### **Other amendments**

The Principal Act currently provides that the TTA may determine maximum charges that may be charged by tow truck operators. **Schedule 1 [12]** provides that charges determined by the RTA must be published in the Gazette.

The Principal Act enables the TTA to serve documents on a person by personal delivery, delivery to the person’s place of residence or business or by post. **Schedule 1 [27]** provides that the RTA may, in addition to these methods of service, serve documents by facsimile transmission. The Principal Act also provides that a document may be served on the TTA at any of its offices. **Schedule 1 [28]** also provides that a document may be served on the RTA at its Head Office or other offices as prescribed by the regulations.

**Schedule 1 [33]** amends Schedule 2 to the Principal Act to enable regulations containing savings or transitional provisions to be made as a consequence of the enactment of the proposed Act.

Uncommenced Schedule 3.1 to the Principal Act inserts proposed clause 9 of Part 4 of Schedule 2 to the *Administrative Decisions Tribunal Act 1997* so as to provide for the constitution of the Tow Truck Industry Disciplinary Panel. **Schedule 1 [35]** repeals the uncommenced Schedule and **Schedule 1 [31]** is a consequential amendment.

## **Schedule 2    Consequential amendments of other legislation**

As a result of the abolition of the TTA, **Schedule 2.1–2.6** make minor consequential amendments to the *Administrative Decisions Tribunal (General) Regulation 2004*, *Public Finance and Audit Act 1983*, *Road Transport (General) Act 2005*, *Road Transport (General) Regulation 2005*, *Road Transport (Safety and Traffic Management) Act 1999* and *Transport Administration Act 1988* respectively.



New South Wales

# Tow Truck Industry Amendment Bill 2007

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New South Wales

# **Tow Truck Industry Amendment Bill 2007**

No. , 2007

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## **A Bill for**

An Act to amend the *Tow Truck Industry Act 1998* to abolish the Tow Truck Authority and transfer its functions to the Roads and Traffic Authority and to repeal provisions relating to the job allocation scheme; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Tow Truck Industry Amendment Act 2007</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5
<b>3 Amendment of Tow Truck Industry Act 1998 No 111</b>	6
The <i>Tow Truck Industry Act 1998</i> is amended as set out in Schedule 1.	7
<b>4 Consequential amendments of other legislation</b>	8
The Acts and Regulations specified in Schedule 2 are amended as set out in that Schedule.	9 10
<b>5 Repeal of Act</b>	11
(1) This Act is repealed on the day following the day on which all of the provisions of the Act have commenced.	12 13
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	14 15

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<b>Schedule 1</b>	<b>Amendment of Tow Truck Industry Act</b>	1
	<b>1998</b>	2
	(Section 3)	3
<b>[1] Long title</b>		4
	Omit “to constitute the Tow Truck Authority and the Tow Truck Industry Advisory Council;”.	5 6
<b>[2] The whole Act (other than Schedule 2), except where otherwise amended by this Schedule</b>		7 8
	Omit “TTA” wherever occurring. Insert instead “RTA”.	9
<b>[3] Section 3 Definitions</b>		10
	Insert in alphabetical order in section 3 (1):	11
	<i>accident</i> means any collision, impact or other event (however caused) resulting in damage to a motor vehicle.	12 13
	<i>accident towing work</i> means the towing or carrying away by a tow truck of a motor vehicle involved in an accident, either from the scene of the accident or from the place to which the motor vehicle has been moved following the accident.	14 15 16 17
	<i>scene of an accident</i> means an area proximate to the point where a motor vehicle involved in an accident has, as an immediate result of the accident, come or been brought to a stationary position.	18 19 20 21
<b>[4] Section 3 (1)</b>		22
	Omit the definitions of <i>Advisory Council</i> , <i>appointed member</i> , <i>Board</i> , <i>Director-General</i> , <i>General Manager</i> , <i>motor vehicle accident</i> and <i>TTA</i> .	23 24
<b>[5] Section 3 (1)</b>		25
	Omit the definition of <i>authorised officer</i> . Insert instead:	26
	<i>authorised officer</i> means a member of staff of the Roads and Traffic Authority Division of the Government Service who is authorised in writing by the RTA for the purposes of this Act.	27 28 29

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<b>[6] Part 2 Administration</b>	1
Omit the Part. Insert instead:	2
<b>Part 2 Functions of RTA in relation to tow truck industry</b>	3
	4
<b>7 Functions of RTA under this Act</b>	5
The RTA has the following functions under this Act:	6
(a) to regulate the tow truck industry in accordance with this Act and the regulations,	7
	8
(b) to make reports and recommendations to the Minister with respect to the licensing of tow truck operators and drivers, and the design, construction and equipment of tow trucks,	9
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	11
(c) to inform the public about the tow truck industry,	12
(d) to promote and undertake research into the tow truck industry,	13
	14
(e) whenever it considers it necessary to do so, or is requested by the Minister to do so, to make reports or recommendations with respect to the operation of this Act or the tow truck industry.	15
	16
	17
	18
<b>[7] Part 4, Division 1, heading</b>	19
Omit “ <b>Job allocation scheme</b> ”. Insert instead “ <b>Towing authorisations</b> ”.	20
<b>[8] Sections 46–48</b>	21
Omit the sections.	22
<b>[9] Sections 49 and 49A</b>	23
Omit section 49. Insert instead:	24
<b>49 Requirement to obtain towing authorisation</b>	25
(1) A certified driver must not carry out, or attempt to carry out, any accident towing work unless a towing authorisation has been obtained for the towing work.	26
	27
	28
Maximum penalty: 50 penalty units.	29
(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:	30
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	32
(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	33
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	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	1 2 3
	(b) in such circumstances as may be prescribed by the regulations.	4 5
(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.	6 7 8 9
(4)	The regulations may provide that a towing authorisation is required in such other circumstances as may be prescribed.	10 11
(5)	A towing authorisation required by or under this section is to be in the approved form.	12 13
<b>49A</b>	<b>Restrictions on obtaining towing authorisations after authority already granted</b>	14 15
(1)	A person must not obtain, or attempt to obtain, a towing authorisation in respect of any motor vehicle if another person has obtained a towing authorisation for the motor vehicle. Maximum penalty: 20 penalty units.	16 17 18 19
(2)	However, subsection (1) does not apply if the towing work authorised by the towing authorisation concerned has been completed.	20 21 22
<b>[10]</b>	<b>Section 50 Restrictions on obtaining towing authorisations</b>	23
	Omit section 50 (1) (d) and (e).	24
<b>[11]</b>	<b>Section 50 (2)</b>	25
	Omit the subsection.	26
<b>[12]</b>	<b>Section 54 Towing and other charges</b>	27
	Omit “from time to time” from section 54 (1).	28
	Insert instead “, by order published in the Gazette.”	29
<b>[13]</b>	<b>Section 57 Tow truck number-plates</b>	30
	Omit “, according to the advice of the TTA,” from section 57 (1).	31
<b>[14]</b>	<b>Section 60 Licensee required to keep certain records</b>	32
	Omit “motor vehicle” from section 60 (2) (b) (iii).	33

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Tow Truck Industry Amendment Bill 2007

Schedule 1 Amendment of Tow Truck Industry Act 1998

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<b>[15] Sections 61, 63 and 65–70</b>	1
Omit “a motor vehicle accident” wherever occurring.	2
Insert instead “an accident”.	3
<b>[16] Section 91 Tow Truck Industry Fund</b>	4
Omit “TTA” from section 91 (1) (a). Insert instead “RTA under this Act”.	5
<b>[17] Section 91 (1) (a1)</b>	6
Omit “officers of the TTA”. Insert instead “the RTA or authorised officers”.	7
<b>[18] Section 91 (1) (b)</b>	8
Omit the paragraph. Insert instead:	9
(b) all money borrowed by or advanced to the RTA for the purposes of this Act or appropriated by Parliament for the purposes of the RTA under this Act.	10 11 12
<b>[19] Section 91 (3) (b)</b>	13
Omit “TTA” wherever occurring. Insert instead “RTA under this Act”.	14
<b>[20] Section 91 (3) (c)</b>	15
Omit the paragraph.	16
<b>[21] Section 93 Financial year</b>	17
Omit the section.	18
<b>[22] Section 94 Recovery of money</b>	19
Omit the section.	20
<b>[23] Section 95 Arrangements for supply of Police records</b>	21
Omit “and the RTA” and “or the RTA” from section 95 (1).	22
<b>[24] Section 97 Delegation</b>	23
Omit the section.	24
<b>[25] Section 99 Disclosure of information</b>	25
Omit “(or any other Act conferring or imposing functions on the TTA)” from section 99 (1).	26 27

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<b>[26] Section 101 Evidence</b>	1
Omit “the General Manager, or by an officer authorised by the TTA” from section 101 (2).	2 3
Insert instead “the Chief Executive of the RTA, or by a member of staff of the RTA authorised by the Chief Executive”.	4 5
<b>[27] Section 102 Service of documents</b>	6
Insert “or facsimile transmission” after “by post” in section 102 (1) (c).	7
<b>[28] Section 102 (3)</b>	8
Omit the subsection. Insert instead:	9
(3) A document may be served on the RTA under this Act by leaving it at, or by sending it by post to, the Head Office of the RTA or any of its other offices as may be prescribed by the regulations.	10 11 12
<b>[29] Section 104 Protection from personal liability</b>	13
Omit the section.	14
<b>[30] Section 105 Regulations</b>	15
Omit section 105 (2) (o).	16
<b>[31] Section 108 Amendment of other Acts</b>	17
Omit the section.	18
<b>[32] Schedule 1 Members and procedure of Board and Advisory Council</b>	19
Omit the Schedule.	20
<b>[33] Schedule 2 Savings and transitional provisions</b>	21
Insert at the end of clause 1 (1):	22
<i>Tow Truck Industry Amendment Act 2007</i>	23

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<b>[34] Schedule 2, Part 4</b>	1
Insert at the end of the Schedule:	2
<b>Part 4 Provisions consequent on enactment of Tow Truck Industry Amendment Act 2007</b>	3 4
<b>10 Definitions</b>	5
In this Part:	6
<i>amending Act</i> means the <i>Tow Truck Industry Amendment Act 2007</i> .	7 8
<i>assets</i> means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money, securities and choses in action).	9 10 11 12
<i>document</i> means any Act (other than this Act) or statutory instrument, or any other instrument, or any other contract or agreement.	13 14 15
<i>liabilities</i> means any liabilities, debts or obligations (whether present or future and whether vested or contingent).	16 17
<i>relevant commencement date</i> means the day on which section 7 as substituted by the amending Act commences.	18 19
<i>rights</i> means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).	20 21
<b>11 Abolition of Tow Truck Authority</b>	22
The Tow Truck Authority is abolished on the relevant commencement date.	23 24
<b>12 Transfer of assets</b>	25
The assets, rights and liabilities of the Tow Truck Authority as at the relevant commencement date become the assets, rights and liabilities of the Roads and Traffic Authority.	26 27 28
<b>13 Action taken by Tow Truck Authority</b>	29
Anything done by the Tow Truck Authority and having effect immediately before the relevant commencement date is taken to have been done by the RTA.	30 31 32
<b>14 References to Tow Truck Authority</b>	33
In any document, a reference to the Tow Truck Authority is to be read as or as including a reference to the RTA.	34 35

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<b>15</b>	<b>Annual report of the Tow Truck Authority for the 2006–2007 financial year</b>	1
		2
	The annual report of the Tow Truck Authority for the 2006–2007 financial year is taken to include the period commencing 1 July 2007 and ending on the relevant commencement date.	3
	Accordingly, for the purposes of the <i>Annual Reports (Statutory Bodies) Act 1984</i> , the 2006–2007 financial year of the Tow Truck Authority is taken to end on the relevant commencement date.	4
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		8
<b>[35]</b>	<b>Schedule 3 Amendment of other Acts</b>	9
	Omit the Schedule.	10

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<b>Schedule 2</b>	<b>Consequential amendments of other legislation</b>	1
		2
	(Section 4)	3
<b>2.1</b>	<b>Administrative Decisions Tribunal (General) Regulation 2004</b>	4
		5
	<b>Clause 11 Reviewable decisions excluded from internal review under section 53 of the Act</b>	6
		7
	Omit “Tow Truck Authority” from clause 11 (g).	8
	Insert instead “Roads and Traffic Authority”.	9
<b>2.2</b>	<b>Public Finance and Audit Act 1983 No 152</b>	10
	<b>Schedule 2 Statutory bodies</b>	11
	Omit “Tow Truck Authority”.	12
<b>2.3</b>	<b>Road Transport (General) Act 2005 No 11</b>	13
	<b>Section 230 Certificate evidence</b>	14
	Omit “, or 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 that Act” from section 230 (3).	15
		16
		17
<b>2.4</b>	<b>Road Transport (General) Regulation 2005</b>	18
	<b>Schedule 2 Authorised officers</b>	19
	Omit the definition of <i>Class 5 officer</i> .	20
<b>2.5</b>	<b>Road Transport (Safety and Traffic Management) Act 1999 No 20</b>	21
		22
<b>[1]</b>	<b>Section 75 Removal of dangers and obstructions to traffic</b>	23
	Omit section 75 (1A), (1B) and (3A) (b).	24
<b>[2]</b>	<b>Section 76 Removal of unattended motor vehicles or trailers from certain places</b>	25
		26
	Omit “or the Tow Truck Authority” from section 76 (1) wherever occurring.	27

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<b>2.6 Transport Administration Act 1988 No 109</b>	1
<b>[1] Section 46 Constitution of RTA</b>	2
Insert “, the <i>Tow Truck Industry Act 1998</i> ” after “the <i>Road Transport (Driver Licensing) Act 1998</i> ” in section 46 (2) (a).	3 4
<b>[2] Section 78 Payments into Roads and Traffic Authority Fund</b>	5
Insert after section 78 (1) (b) (ii):	6
(iiia) any money received under the <i>Tow Truck Industry Act 1998</i> , and	7 8