

[Act 1999 No 61]



New South Wales

Tow Truck Industry Amendment Bill 1999

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to provide that tow truck drivers must obtain a towing authorisation before carrying out any towing work that is allocated in accordance with a job allocation scheme under the *Tow Truck Industry Act 1998*,
 - (b) to provide that the Tow Truck Authority (the **TTA**) is a statutory body representing the Crown,
 - (c) to enable the TTA to determine certain fees under the Act instead of those fees being prescribed by the regulations,
 - (d) to provide a 48-hour “cooling-off” period in which a person who gives a vehicle repairer an authority to repair a motor vehicle while at the scene of the accident in which the vehicle was damaged may revoke that authority,
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- (e) to provide that all penalties for offences under the *Tow Truck Industry Act 1998* and the regulations that are recovered in prosecutions brought by, or for penalty notices issued by, officers of the TTA are to be paid into the Tow Truck Industry Fund,
- (f) to make other miscellaneous amendments to the *Tow Truck Industry Act 1998*.

This Bill also amends the *Road Transport (General) Act 1999* and the *Road Transport (Safety and Traffic Management) Act 1999* to clarify and strengthen certain provisions relating to the towing of vehicles that obstruct traffic, and to make other miscellaneous amendments.

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 on a day or days to be appointed by proclamation.

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

Clause 4 is a formal provision giving effect to the amendments to the *Road Transport (General) Act 1999* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Road Transport (Safety and Traffic Management) Act 1999* set out in Schedule 3.

Schedule 1 Amendment of Tow Truck Industry Act 1998

Job allocation scheme and towing authorisations

Currently under Division 1 of Part 4 of the *Tow Truck Industry Act 1998*, a tow truck driver is required to obtain a towing authorisation before towing a motor vehicle from an accident scene. Under the job allocation scheme established under Division 2 of Part 4, such towing work is to be allocated to a particular tow truck operator by a centralised job allocation centre.

Schedule 1 [15] replaces Divisions 1 and 2 with a single Division so as to link the requirement for obtaining a towing authorisation more directly to the job allocation scheme. Under the new Division:

- (a) a tow truck driver will generally be required to obtain a towing authorisation not only for accident towing but for any towing work that is allocated in accordance with the job allocation scheme (eg obstruction towing), and
- (b) any towing work to which the job allocation scheme applies can only be carried out by a person who is working for (or engaged by) a tow truck operator who is a participant in the scheme and who has been allocated the towing work.

The existing provisions relating to the establishment and operation of a job allocation scheme, and to towing authorisations generally, are preserved.

Schedule 1 [1] and **[20]** make consequential amendments.

Status of Tow Truck Authority and staff

Currently, the TTA is constituted as a body corporate that is not, and does not represent, the Crown. **Schedule 1 [3]** amends section 7 of the Act to change the status of the TTA to a statutory body representing the Crown.

Schedule 1 [4] provides that the TTA is subject to the control and direction of the Minister in exercising its functions.

Schedule 1 [5] provides that the staff of the TTA will be public servants employed under Part 2 of the *Public Sector Management Act 1988*.

Tow Truck Authority to determine fees

At present, the fees for granting licences and drivers certificates under the Act, and the fees to accompany applications for licences and drivers certificates, are prescribed by the regulations. **Schedule 1 [6]–[11]** provide for those fees to be determined by the TTA by order published in the Gazette.

Investigation of applications

Section 33 of the Act currently provides that the TTA may carry out investigations in relation to applications for licences and drivers certificates. **Schedule 1 [13]** makes it clear that, in the case of renewals, the TTA may carry out such investigations before the licensee or the holder of the drivers certificate concerned formally renews the licence or drivers certificate. **Schedule 1 [12]** and **[14]** make consequential amendments.

Authority to repair

Section 62 of the Act currently makes it an offence to obtain, or attempt to obtain, a person's authority for the repair of a motor vehicle damaged in an accident before the vehicle is delivered to the place specified in the towing authorisation. This provision is aimed primarily at tow truck drivers at accident scenes. **Schedule 1 [17]** provides that if an authority has been obtained in contravention of the provision, the person who gave the authority has 48 hours to revoke it and is not liable (if the person revokes the authority) for the cost of any work performed on the vehicle under the improperly obtained authority. **Schedule 1 [16]** makes it clear that the authority to repair is given in relation to a vehicle repairer rather than the tow truck driver who actually obtains the authority.

Other miscellaneous amendments

Schedule 1 [18] clarifies the circumstances in which directions may be given to tow truck drivers at the scene of an accident.

Schedule 1 [19] amends section 91 of the Act to provide that all penalties recovered for offences under the Act through the issue of penalty notices or prosecutions brought by officers of the TTA are to be paid into the Tow Truck Industry Fund.

Schedule 1 [21] and **[22]** amend clause 1 of Schedule 2 to allow savings and transitional regulations to be made consequential on the enactment of the proposed Act.

Schedule 1 [2] makes it clear that notes appearing in the *Tow Truck Industry Act 1998* do not form part of that Act.

Schedule 2 Amendment of Road Transport (General) Act 1999

Schedule 2 [1] omits a superfluous provision relating to the issuing of penalty notices under section 15 of the *Road Transport (General) Act 1999* for offences under the *Tow Truck Industry Act 1998*. Penalty notices for those offences are currently issued under the *Tow Truck Industry Act 1998*.

Under section 46 of the Act, the RTA may certify certain matters that are admissible as prima facie evidence in proceedings for offences under the road transport legislation. **Schedule 2 [2]** extends the matters that may be so certified by the RTA to include matters relating to towing authorisations under the *Tow Truck Industry Act 1998* and to matters appearing in the TTA's records relating to a job allocation scheme under that Act.

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

Section 75 of the *Road Transport (Safety and Traffic Management) Act 1999* provides for the removal (by the RTA and other roads authorities) of dangers and obstructions to traffic caused by vehicles that have been involved in an accident or have broken down. Obstruction towing work (ie any towing work carried out in accordance with section 75) is currently towing work to which the job allocation scheme under the *Tow Truck Industry Act 1998* applies.

Schedule 3 [1] makes it clear that the TTA may, in accordance with the job allocation scheme, cause the removal of any such vehicle in the circumstances to which section 75 applies. If a vehicle is caused to be removed by the TTA in accordance with the job allocation scheme, the vehicle is taken to have been removed by the appropriate roads authority (eg the RTA) for the purposes of recovering the cost of the towing from the person who had custody of the removed vehicle.

Schedule 3 [2] makes it an offence for a person to fail to comply with a direction of an authorised officer, or the TTA, under section 75 in relation to the removal of a vehicle, or to obstruct a person who is authorised to remove a vehicle in accordance with section 75.

Section 76 of the Act enables authorised officers of the RTA, and police officers, to cause unattended motor vehicles that are illegally standing on a prescribed place (eg a clearway) to be removed. Any towing work that is carried out under section 76 is currently towing work to which the job allocation scheme under the *Tow Truck Industry Act 1998* applies.

Schedule 3 [3] makes it clear that the TTA may also cause an unattended motor vehicle that is illegally standing on a prescribed place to be removed under section 76. The towing work will be allocated in accordance with the job allocation scheme. **Schedule 3 [8]** extends the definition of *prescribed place* to cover special tow-away areas established by the RTA. **Schedule 3 [9]** provides for the manner in which those areas are established.

Schedule 3 [4] and **[5]** remove the requirement for the police to notify persons whose vehicles are towed away under section 76 of the place to which the vehicles have been towed.

Explanatory note

Under section 76 (5) of the Act, the RTA may require the responsible person (eg the registered operator) for the vehicle that is removed, or the person who left it unattended, to pay the prescribed tow-away charge to the RTA. **Schedule 3 [6]** increases the maximum penalty for failing to pay the prescribed tow-away charge from 2 penalty units to 10 penalty units.

Under section 76 (6) (a) of the Act, the responsible person is not required to pay the prescribed tow-away charge if the person satisfies the RTA that the vehicle was at the relevant time stolen or a vehicle illegally taken or used. **Schedule 3 [7]** provides that the responsible person cannot, for the purposes of section 76 (6) (a), rely on a police report unless the report indicates the time and date that it was made.

Schedule 3 [10] provides that tow truck operators and drivers who carry out towing work in accordance with section 75 or 76 of the *Road Transport (Safety and Traffic Management) Act 1999* may take any reasonable or necessary action to facilitate the towing of the vehicle concerned, and are not liable for any damage caused in taking that action. Proposed section 76A also provides that the person or body (eg the RTA or the TTA) who authorised or caused the removal of the vehicle is not liable for any damage caused by the tow truck operator or driver.

Schedule 3 [11] enables regulations of a savings or transitional nature to be made as a consequence of the proposed Act.