



New South Wales

# Tow Truck Industry Amendment Bill 2008

## 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 Act***):

- (a) to extend the maximum duration of a tow truck operators licence, or a drivers certificate, from one year to 3 years, but only if the applicant requests a 3-year licence or certificate and satisfies other probity requirements, and
- (b) to require tow truck operators to maintain a holding yard and to provide reasonable access to motor vehicles being held in the operator's holding yard, and
- (c) to allow the regulations, rather than the Roads and Traffic Authority (***the RTA***), to cap all fees and charges for the towing, storage and salvage of a motor vehicle, as well as for any related or ancillary service, and
- (d) to extend the prohibition on touting and soliciting for work at the scene of an accident, so that it begins to apply immediately after a towing authorisation is obtained by any person in accordance with the Act or after a police officer has organised for the towing of the relevant motor vehicle, and

- (e) to ensure that an authorised officer, police officer or emergency services officer may direct any certified driver at the scene of an accident, not just the actual driver of a tow truck, and
- (f) to make it an offence for the driver of a tow truck to allow a person to travel as a passenger in the driver's tow truck that is proceeding to or from the scene of an accident, except in certain circumstances.

## 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 that gives effect to the amendments to the *Tow Truck Industry Act 1998* set out in Schedule 1.

**Clause 4** 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 Amendments

### Application of Act to certain motor vehicles

**Schedule 1 [1]** makes it clear that the Act does not apply to the towing, salvage and storage of some motor vehicles (such as forklifts, golf buggies and ride-on mowers).

### Extension of duration of some tow truck operators licences and drivers certificates to 3 years

**Schedule 1 [2] and [9]** require an applicant for a tow truck operators licence or a drivers certificate to specify the term of licence or certificate sought.

**Schedule 1 [8] and [11]** extend the maximum duration of a licence or drivers certificate from one year to 3 years, but only if the applicant satisfies certain probity requirements.

**Schedule 1 [12]** provides that, if a 3-year licence or drivers certificate is suspended, the licence or certificate, once re-instated, is to continue only until the next anniversary of its issue.

**Schedule 1 [13]** provides for the review of a decision to grant a licence or drivers certificate for a lesser term than that applied for.

### Obligations to maintain, and provide access to, holding yards

**Schedule 1 [3]** requires an application for a tow truck operators licence to specify each place intended to be used as a holding yard in carrying on the applicant's business as a tow truck operator.

**Schedule 1 [4]** provides that the RTA may refuse to grant an application for a tow truck operators licence on the ground that the applicant has not specified an appropriate place as a holding yard.

**Schedule 1 [5]** makes it a condition of a licence that the licensee must maintain at least one holding yard.

**Schedule 1 [6]** makes it a condition of a licence that the licensee must allow the owner of a motor vehicle stored at any holding yard used by the licensee reasonable access to the motor vehicle, during business hours, to collect items from the motor vehicle.

### **Conditions relating to charging for towing, salvage or storage and connected work**

**Schedule 1 [7] and [10]** impose conditions on a tow truck operators licence and a drivers certificate relating to the fees that can be charged for towing or salvage of a motor vehicle, or (only in the case of a licence) for storage of a motor vehicle, or for any service that is related to or ancillary to the towing, salvage or storage of a motor vehicle. They also impose conditions that provide that a licensee or certified driver must not charge a fee for work that was not actually done by or on behalf of the licensee or certified driver.

**Schedule 1 [14]** provides for fees and charges to be capped by the regulations, rather than by the RTA. In addition to towing, salvage and storage (which are currently regulated), the regulations can cap fees and charges for any service related to or ancillary to the towing, salvage or storage of a motor vehicle. The regulations can specify services for which the licensee or certified driver cannot charge a fee.

**Schedule 1 [15]** makes a consequential amendment.

### **Obligation to periodically update licence and certificate particulars**

**Schedule 1 [7]** also imposes conditions on a tow truck operators licence requiring the holder of a 3-year licence to periodically confirm particulars of the licence and requiring the holder of any licence to notify the RTA of any changes in licence particulars.

**Schedule 1 [10]** also imposes conditions on a drivers certificate requiring the holder of a 3-year drivers certificate to periodically confirm particulars of the certificate and requiring the holder of any certificate to notify the RTA of any changes in the certificate's particulars.

### **Prohibition on touting or soliciting for towing work at scene of accident**

**Schedule 1 [16]** amends the existing provision creating an offence of touting or soliciting for towing work at the scene of an accident by providing that, although a person who is lawfully attempting to obtain, or lawfully dealing with, a towing authorisation is exempt from the prohibition on touting or soliciting for work, that

exemption ceases once a towing authorisation is obtained by another person or the person is informed that a police officer has organised for the towing of the relevant motor vehicle.

### **Power to give directions at scene of accident**

**Schedule 1 [17]** ensures that an authorised officer, police officer or emergency services officer may give directions to any certified driver at the scene of an accident, not just the actual driver of a tow truck.

### **Prohibition on carrying passengers in tow trucks**

**Schedule 1 [18]** makes it an offence for the driver of a tow truck to allow a person to travel as a passenger in the driver's tow truck that is proceeding to or from the scene of an accident unless the person was the driver of, or was a passenger in, a motor vehicle involved in the accident or is a certified driver who is travelling as a passenger for the purpose of assisting the driver of the tow truck in carrying out towing work. (At present only the passenger would be guilty of an offence if the driver allowed him or her to travel in the tow truck.)

### **Savings and transitional provisions**

**Schedule 1 [19]** provides for the making of savings and transitional regulations as a consequence of the enactment of the proposed Act.

**Schedule 1 [20]** makes savings and transitional provisions consequent on the enactment of the proposed Act.

First print



New South Wales

# Tow Truck Industry Amendment Bill 2008

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New South Wales

# **Tow Truck Industry Amendment Bill 2008**

No. , 2008

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## **A Bill for**

An Act to amend the *Tow Truck Industry Act 1998* to make further provision in relation to tow truck operators licences, drivers certificates and the regulation of the tow truck industry.

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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 2008</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 Repeal of Act</b>	8
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	9 10
(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.	11 12

<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 3)	2
<b>[1] Section 6A</b>		3
Insert after section 6:		4
<b>6A Act does not apply to towing, salvage or storage of certain motor vehicles</b>		5 6
This Act does not apply to the towing, salvage or storage of:		7
(a) a forklift truck, or		8
(b) a golf buggy, or		9
(c) a ride-on mower, or		10
(d) an excavator, or		11
(e) a cherry picker, or		12
(f) any other motor vehicle or class of motor vehicle prescribed by the regulations for the purposes of this section.		13 14 15
<b>[2] Section 17 Application for licence</b>		16
Insert after section 17 (2) (a):		17
(a1) specify the term of licence sought by the applicant, and		18
<b>[3] Section 17 (2) (c)</b>		19
Omit “any”. Insert instead “each”.		20
<b>[4] Section 18 Restrictions on granting licence</b>		21
Insert after section 18 (3) (c):		22
(c1) that the applicant has not specified a place that is to be used as a holding yard in the course of the applicant’s business or the place so specified is more than 10 kilometres from the licensee’s place of business (unless the RTA approves of it being a greater distance from that place),		23 24 25 26 27
<b>[5] Section 20 Licence conditions</b>		28
Insert after section 20 (2) (c):		29
(c1) the licensee must maintain at least one holding yard which must be no more than 10 kilometres from the licensee’s place of business (unless the RTA approves of it being a greater distance from that place),		30 31 32 33

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<b>[6] Section 20 (2) (d1)</b>	1
Insert after section 20 (2) (d):	2
(d1) the licensee must allow the owner of any motor vehicle stored at any holding yard used by the licensee in the course of the licensee's business to have reasonable access to the motor vehicle, during business hours and at no charge to the owner, to collect items from the motor vehicle,	3 4 5 6 7 8
<b>[7] Section 20 (2) (h)–(i2)</b>	9
Omit section 20 (2) (h) and (i). Insert instead:	10
(h) the licensee must not charge a fee for the towing, salvage or storage of a motor vehicle, or for any service that is related to or ancillary to the towing, salvage or storage of a motor vehicle, if the charging of the fee would be in contravention of the regulations, and must not demand, receive or accept such a fee,	11 12 13 14 15 16
(i) the licensee must not charge a fee for work that was not actually done by the licensee or by an employee or subcontractor of the licensee,	17 18 19
(i1) in the case of a licence granted for a term of 3 years—the licensee must, within 28 days of receiving a notice from the RTA relating to such of the licensee's licence particulars, insurance particulars and particulars of close associates as are specified in the notice:	20 21 22 23 24
(i) confirm that the particulars specified in the notice are still accurate, or	25 26
(ii) provide details of any change in any of those particulars, and provide any documents relating to those particulars, that may be specified in the notice,	27 28 29
(i2) the licensee must notify the RTA, as soon as practicable, of any change in the licensee's licence particulars, insurance particulars and particulars of close associates that are prescribed by the regulations, and must provide the RTA with any documents relating to those particulars that are prescribed by the regulations,	30 31 32 33 34 35

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<b>[8] Sections 22 and 22A</b>	1
Omit section 22. Insert instead:	2
<b>22 Term of licence</b>	3
(1) A licence may be granted:	4
(a) if subsection (2) applies, for a period of 3 years, or	5
(b) for a period of one year, or	6
(c) for such shorter period as the RTA determines.	7
(2) A licence may be granted for a period of 3 years if:	8
(a) the applicant has requested that the licence be granted for a period of 3 years, and	9 10
(b) the applicant has held a licence for a continuous period of at least 3 years immediately before the date on which the subsequent licence will come into force (that is, during that period of 3 years, the applicant's licence was not suspended or revoked and did not lapse), and	11 12 13 14 15
(c) neither the applicant nor any of the applicant's close associates is, at the time the application is made, under investigation by the RTA in relation to any breach of a condition of a licence or any other contravention of this Act or the regulations, and	16 17 18 19 20
(d) neither the applicant nor any of the applicant's close associates has, in the 5 years immediately before the date of the application:	21 22 23
(i) been subject to any prescribed disciplinary action under this Act, or	24 25
(ii) engaged in any prescribed conduct, and	26
(e) the RTA is satisfied that a 3-year licence should be granted.	27 28
(3) A licence continues in force for the period for which it is granted, as specified in the licence, unless it is sooner revoked or suspended or otherwise ceases to be in force.	29 30 31
(4) In this section:	32
<i>prescribed conduct</i> means any conduct that:	33
(a) if the applicant or close associate applied for a licence or drivers certificate immediately after engaging in the conduct, would, in the opinion of the RTA, be sufficient to justify the application being refused, or	34 35 36 37

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(b)	if the applicant or close associate held a licence or drivers certificate at the time of engaging in the conduct, would, in the opinion of the RTA, be sufficient to justify:	1 2 3
(i)	the suspension of a licence or drivers certificate held by the applicant or close associate, or	4 5
(ii)	the permanent revocation of a licence or drivers certificate held by the applicant or close associate, or	6 7 8
(iii)	the disqualification of the applicant or close associate from holding a licence or drivers certificate.	9 10 11
	<i>prescribed disciplinary action</i> means:	12
(a)	the suspension of a licence or drivers certificate held by the applicant or close associate, or	13 14
(b)	the permanent revocation of a licence or drivers certificate held by the applicant or close associate, or	15 16
(c)	the disqualification of the applicant or close associate from holding a licence or drivers certificate.	17 18
<b>22A</b>	<b>Renewal of licence</b>	19
	A licence may be renewed from time to time by making an application for a subsequent licence in accordance with this Act.	20 21
<b>[9]</b>	<b>Section 25 Application for drivers certificate</b>	22
	Insert after section 25 (2) (a):	23
(a1)	specify the term of drivers certificate sought by the applicant, and	24 25
<b>[10]</b>	<b>Section 29 Conditions of drivers certificate</b>	26
	Omit section 29 (2) (b). Insert instead:	27
(b)	the certified driver must not charge a fee for the towing or salvage of a motor vehicle, or for any service that is related to or ancillary to the towing or salvage of a motor vehicle, if the charging of the fee would be in contravention of the regulations, and must not demand, receive or accept such a fee,	28 29 30 31 32 33
(b1)	the certified driver must not charge a fee for work that was not actually done by the certified driver, and must not demand, receive or accept such a fee,	34 35 36
(b2)	in the case of a drivers certificate granted for a term of 3 years—the certified driver must, within 28 days of	37 38

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receiving a notice from the RTA relating to such of the certified driver's drivers certificate particulars and insurance particulars as are specified in the notice:	1
(i) confirm that the particulars specified in the notice are still accurate, or	2
(ii) provide details of any change in any of those particulars, and provide any documents relating to those particulars, that may be specified in the notice,	3
(b3) the certified driver must notify the RTA, as soon as practicable, of any change in the certified driver's drivers certificate particulars that are prescribed by the regulations, and must provide the RTA with any documents relating to those particulars that are prescribed by the regulations,	4
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<b>[11] Sections 31 and 31A</b>	15
Omit section 31. Insert instead:	16
<b>31 Term of drivers certificate</b>	17
(1) A drivers certificate may be granted:	18
(a) if subsection (2) applies, for a period of 3 years, or	19
(b) for a period of one year, or	20
(c) for such shorter period as the RTA determines.	21
(2) A drivers certificate may be granted for a period of 3 years if:	22
(a) the applicant has requested that the drivers certificate be granted for a period of 3 years, and	23
(b) the applicant has held a drivers certificate for a continuous period of at least 5 years immediately before the date on which the subsequent drivers certificate will come into force (that is, during that period of 5 years, the applicant's drivers certificate was not suspended or revoked and did not lapse), and	24
(c) the applicant has held a drivers certificate for a continuous period of at least 5 years immediately before the date on which the subsequent drivers certificate will come into force (that is, during that period of 5 years, the applicant's drivers certificate was not suspended or revoked and did not lapse), and	25
(d) the applicant has not, in the 5 years immediately before the date of the application:	26
(i) been subject to any prescribed disciplinary action under this Act, or	27
(ii) engaged in any prescribed conduct, and	28
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(e)	the RTA is satisfied that a 3-year drivers certificate should be granted.	1 2
(3)	A drivers certificate continues in force for the period for which it is granted, as specified in the drivers certificate, unless it is sooner revoked or suspended or otherwise ceases to be in force.	3 4 5
(4)	In this section:	6
	<i>prescribed conduct</i> means any conduct that:	7
(a)	if the applicant applied for a licence or drivers certificate immediately after engaging in the conduct, would, in the opinion of the RTA, be sufficient to justify the application being refused, or	8 9 10 11
(b)	if the applicant held a licence or drivers certificate at the time of engaging in the conduct, would, in the opinion of the RTA, be sufficient to justify:	12 13 14
(i)	the suspension of a licence or drivers certificate held by the applicant, or	15 16
(ii)	the permanent revocation of a licence or drivers certificate held by the applicant, or	17 18
(iii)	the disqualification of the applicant from holding a licence or drivers certificate.	19 20
	<i>prescribed disciplinary action</i> means:	21
(a)	the suspension of a licence or drivers certificate held by the applicant, or	22 23
(b)	the permanent revocation of a licence or drivers certificate held by the applicant, or	24 25
(c)	the disqualification of the applicant from holding a licence or drivers certificate.	26 27
<b>31A</b>	<b>Renewal of drivers certificate</b>	28
	A drivers certificate may be renewed from time to time by making an application for a subsequent drivers certificate in accordance with this Act.	29 30 31
<b>[12]</b>	<b>Section 41 Disciplinary action</b>	32
	Omit section 41 (2) (a). Insert instead:	33
(a)	in the case of a licence or drivers certificate granted for a term of 1 year or less—suspend the licence or drivers certificate for a specified period,	34 35 36
(a1)	in the case of a licence or drivers certificate granted for a term of 3 years—suspend the licence or drivers certificate	37 38

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	for a specified period and, when the suspension ends,	1
	reduce the period for which the licence or drivers	2
	certificate is in force so that it will cease to be in force on	3
	the next anniversary of its issue (and refund fees	4
	accordingly),	5
<b>[13]</b>	<b>Section 45 Application to Administrative Decisions Tribunal for review</b>	<b>6</b>
	Insert after section 45 (1) (a):	7
	(a1) the granting of a licence or drivers certificate to the person	8
	that is of a shorter duration than that for which the person	9
	applied,	10
<b>[14]</b>	<b>Section 54</b>	<b>11</b>
	Omit the section. Insert instead:	12
	<b>54 Charges and fees for towing, salvage, storage and related services</b>	<b>13</b>
	(1) The regulations may make provision for or with respect to	14
	regulating the fees that can be charged by a licensee or certified	15
	driver for the towing, salvage or storage of a motor vehicle or for	16
	any service that is related to or ancillary to the towing, salvage or	17
	storage of a motor vehicle.	18
	(2) Without limiting subsection (1), the regulations under this	19
	section can include provision that:	20
	(a) fixes maximum fees or otherwise limits the fees that may	21
	be charged, or	22
	(b) prohibits the charging of a fee for any specified service that	23
	is related or ancillary to the towing, salvage or storage of a	24
	motor vehicle, or	25
	(c) specifies procedures to be followed by licensees and	26
	certified drivers in connection with the charging of fees.	27
	(3) A licensee or certified driver is not entitled to recover or retain	28
	any fee charged in contravention of regulations under this	29
	section.	30

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<b>[15] Section 61 Prohibition of “spotter’s fees”, “drop fees” and towing inducements</b>	1
	2
Omit “do not exceed any charges determined by the RTA” from the definition of <i>valuable thing</i> in section 61 (4).	3
	4
Insert instead “are permitted to be charged under this Act and do not exceed any maximum charges fixed by the regulations”.	5
	6
<b>[16] Sections 63 and 63A</b>	7
Omit section 63. Insert instead:	8
<b>63 Touting or soliciting for towing work at scene of accident</b>	9
(1) A person must not, at or within 500 metres of the scene of an accident, tout or solicit for any towing work in connection with the accident regardless of on whose behalf the touting or soliciting is done.	10
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Maximum penalty: 50 penalty units.	14
(2) Subsection (1) does not prohibit a person from attempting to obtain a towing authorisation in accordance with this Act and the regulations in relation to a motor vehicle at any time before:	15
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	17
(a) a towing authorisation is obtained by any person in accordance with this Act and the regulations for the towing of the relevant motor vehicle, or	18
	19
	20
(b) a police officer has informed the person that the police officer has organised for the towing of the relevant motor vehicle.	21
	22
	23
(3) Subsection (1) does not prohibit a person from dealing with a towing authorisation in accordance with this Act and the regulations.	24
	25
	26
<b>63A Touting or soliciting for repair work at scene of accident</b>	27
A person must not, at or within 500 metres of the scene of an accident, tout or solicit for any work involving the repair of a motor vehicle involved in the accident regardless of on whose behalf the touting or soliciting is done.	28
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Maximum penalty: 50 penalty units.	32
<b>[17] Section 66 Compliance with directions at scene of accident</b>	33
Omit “the driver of a tow truck” from section 66 (1).	34
Insert instead “a certified driver”.	35

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<b>[18] Section 67 Passengers in tow trucks</b>	1
Insert at the end of the section:	2
(2) The driver of a tow truck must not allow a person to travel as a passenger in the tow truck when it is proceeding to or from the scene of an accident unless the person:	3
(a) was the driver of, or was a passenger in, a motor vehicle involved in the accident, or	4
(b) is a certified driver who is travelling as a passenger for the purpose of assisting the driver of the tow truck in carrying out towing work.	5
Maximum penalty: 50 penalty units.	6
<b>[19] Schedule 2 Savings and transitional provisions</b>	7
Insert at the end of clause 1 (1):	8
<i>Tow Truck Industry Amendment Act 2008</i>	9
<b>[20] Schedule 2, Part 5</b>	10
Insert after Part 4:	11
<b>Part 5 Provisions consequent on enactment of Tow Truck Industry Amendment Act 2008</b>	12
<b>16 Definition</b>	13
In this Part:	14
<i>amending Act</i> means the <i>Tow Truck Industry Amendment Act 2008</i> .	15
<b>17 Pending applications</b>	16
(1) An applicant for a licence whose application was pending immediately before the commencement of section 17 (2) (a1) (as inserted by the amending Act) is to be given a reasonable opportunity to amend the application so as to specify a term for which the licence is sought. Any such pending application that is not amended by the applicant before it is finally dealt with by the RTA is to be treated as an application for a licence for a term of 1 year.	17
(2) An applicant for a drivers certificate whose application was pending immediately before the commencement of section 25 (2) (a1) (as inserted by the amending Act) is to be given a reasonable opportunity to amend the application so as to specify	18

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	a term for which the drivers certificate is sought. Any such pending application that is not amended by the applicant before it is finally dealt with by the RTA is to be treated as an application for a drivers certificate for a term of 1 year.	1 2 3 4
<b>18</b>	<b>Previous conduct may be taken into account in considering application for 3-year licence or drivers certificate</b>	5 6
	(1) Section 22 (2), as substituted by the amending Act, extends to conduct that occurred before the substitution of the subsection.	7 8
	(2) Section 31 (2), as substituted by the amending Act, extends to conduct that occurred before the substitution of the subsection.	9 10
<b>19</b>	<b>Charging for work done in the past</b>	11
	(1) Section 20 (2) (h), as substituted by the amending Act, does not apply to fees and charges for the towing, salvage or storage of a motor vehicle carried out before the paragraph was substituted, or for work performed or a service rendered in connection with the towing, salvage or storage of a motor vehicle before the paragraph was substituted.	12 13 14 15 16 17
	(2) Section 29 (2) (b), as substituted by the amending Act, does not apply to fees and charges for the towing or salvage of a motor vehicle carried out before the paragraph was substituted, or for work performed or a service rendered in connection with the towing or salvage of a motor vehicle before the paragraph was substituted.	18 19 20 21 22 23
<b>20</b>	<b>Further requirement to notify changes in particulars</b>	24
	(1) Section 20 (2) (i2), as inserted by the amending Act, extends to licences in force when the paragraph was inserted.	25 26
	(2) Section 29 (2) (b3), as inserted by the amending Act, extends to drivers certificates in force when the paragraph was inserted.	27 28