

TOW TRUCK INDUSTRY AMENDMENT BILL 2008

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Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [4.06 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The key objectives of the bill are to further improve the regulation of the tow truck industry, reduce red tape, protect customers, and better protect the safety of drivers at accident scenes. This bill will amend the Tow Truck Industry Act in several key areas. The Act will be changed to allow operators and drivers with proven track records to apply for three-year licences and certificates at a discounted rate, provided that they meet certain eligibility requirements. There are amendments to cap charges relating or ancillary to towing work to prevent unscrupulous operators charging unjustified and excessive fees for relatively minor towing-related services. These changes will increase driver safety and improve driver conduct at accident scenes by preventing the practice of drivers carrying hawkers with them who harass consumers into signing towing agreements. Various miscellaneous amendments will clarify provisions to assist with the interpretation of the Act and strengthen the regulatory framework.

In 2007, the Government introduced broad reforms to improve the administration of the tow truck industry. The former Tow Truck Authority was dissolved and the Roads and Traffic Authority [RTA] was established as the industry regulator on 1 December 2007. This has enabled a streamlining of the functions that were previously shared between the Tow Truck Authority and the RTA, and better use of the capacity of the RTA, particularly in regard to compliance and enforcement. It has enabled us to capitalise on the strong relationship that the RTA has with the New South Wales Police Force, for example, in conducting joint compliance operations in tow truck hot spot areas. It has provided a statewide network via the RTA's motor registries to deliver better services to industry and better educate consumers of tow truck services.

This bill builds on these recent reforms and demonstrates the Government's strong commitment to reducing red tape and enhancing consumer protection. The amendments in the bill today have the support of the New South Wales Police Force and other key industry stakeholders, such as the Insurance Council of Australia, the Waste Contractors and Recyclers Association, and reputable operators within the industry. Many of the amendments have been developed as a result of representations made by both industry and stakeholders. Disreputable industry operatives may object to several of the proposed reforms as they are designed to improve compliance with the intent of the legislation and will therefore enhance the RTA's ability to take disciplinary action. However, the Government makes no apologies to this minority, who seek to undermine other reputable operators.

One key amendment in the bill will extend the maximum period for which tow truck operators licences and drivers certificates may be granted from 12 to 36 months. Currently, all tow truck operators and drivers are required to hold an operators licence and drivers certificate respectively. These licences and certificates are only issued for a maximum period of 12 months. This means that industry is required to submit numerous documents each year, which is time consuming and costly. These arrangements are particularly burdensome for operators and drivers who have a good disciplinary record and who have maintained the same business structure and operations since entering the industry. To reduce this burden, the amendments will extend the maximum period for which a licence or certificate can be issued from 12 months to three years.

The new three-year licences and certificates will be offered at a discounted rate to the single year renewal fee. This is a win-win scenario for drivers and operators, who will have less paperwork and reduced costs. However, the new three-year licences and certificates will only be available to drivers with a proven track record and who have a good disciplinary record. For operators to be eligible, they must have been operating under the same operators licence in continuum for three years preceding the lodgement of an application.

In the case of a driver, he must have held a continuous drivers certificate for five years preceding the lodgement of the application for the new certificate or licence. Further, to be eligible, the driver, licensee or any close associates of the licensee must not be under investigation by the RTA in relation to a breach of their licence or certificate, or any other contravention of the Act or regulations, and must not have committed actions in the five years preceding the lodgement of the application which would warrant the suspension, revocation or cancellation of a licence. As per the existing arrangements, operators will still be required to provide a certificate of currency to confirm that all insurance requirements have been fulfilled.

Criminal name checks, driver licence checks and vehicle registration checks will continue to be undertaken by the RTA. Additionally, if a new three-year licence or certificate is revoked or cancelled the driver or licensee will be ineligible to make an application for a new extended licence or certificate until they again satisfy the relevant criteria. In the event of

a suspension, the operator or driver will not be entitled to resume the three-year licence or certificate but will automatically be placed on a licence or certificate not exceeding 12 months.

Another key feature of the bill is the amendment to provide for the capping of charges relating to procedures and tasks that are related or ancillary to towing. Currently, the Government may set maximum prices that operators and drivers may charge for the towing, salvage, or storage of motor vehicles. This is to prevent disreputable industry operatives from taking advantage of motorists at accident scenes when they are vulnerable and/or in a state of stress and confusion, and from charging exorbitant fees to tow and store their motor vehicles. Although maximum charges are prescribed, there are unscrupulous operators and drivers who impose unnecessary and inflated charges associated with tasks ancillary or related to towing, that is, charges that are not strictly captured under towing, salvage or storage but which are nevertheless strongly associated with towing.

Let me outline some examples of ridiculous charges that have been imposed on motorists: the cleaning of small quantities of oil and fluids from the tray of a tow truck, which have attracted charges of anywhere between \$60 to \$150; the issue of an invoice or the sending of a facsimile, which can cost the consumer up to \$50; and the payment of a fee to release a motor vehicle or personal items in the vehicle, such as a baby capsule, from the holding yard, which can cost up to \$50. Unbelievably, one tow truck driver prosecuted by the former Tow Truck Authority had imposed additional charges of up to \$314 and claimed these charges were for providing services such as a drink of water to the motorist and dropping the motorist home in the course of towing the vehicle.

These charges typically disguise what are known as drop fees, which are commissions paid by smash repairers to tow truck drivers for the delivery of accident-damaged motor vehicles. Drop fees can range from \$150 to several thousands of dollars. The bottom line is that these charges are unacceptable and will no longer be tolerated. The bill will therefore allow the RTA to determine the maximum charges that may be charged by operators and drivers for ancillary components of a tow.

Another key amendment to the Act relates to the carrying of unauthorised passengers in tow trucks. Under section 67 of the Act, a person must not travel as a passenger in a tow truck that is travelling to or from the scene of a motor vehicle accident unless they are a passenger or driver of the motor vehicle involved in the accident, or they hold a tow truck driver certificate. The intent of this section is to prevent tow truck drivers arriving at accident scenes with passengers who, upon arrival at the scene, engage tow truck drivers from competing companies in arguments or violence in order to distract, intimidate and delay them in their efforts to legally obtain a towing authorisation. This tactic allows the tow truck driver who carries such a passenger to obtain a towing authorisation at the expense of other competing drivers.

It is not uncommon for the offending passenger to leave the scene of the accident once police arrive or once directed to leave by police. However, often by this stage the tow truck driver who has brought the passenger has already obtained a towing authorisation. The current penalty for breaching this section of the Act is imposed against the person who travels as the passenger. However, it is extremely difficult to obtain credible proof of identity and residential details of the passenger so that a penalty can be imposed. The amendment outlined in the bill will mean that the tow truck driver who drove the passenger to the accident scene will also be penalised. The addition of such a penalty will be an effective measure in deterring tow truck drivers from participating in this type of activity.

Another important amendment outlined in the bill relates to the compliance of drivers at accident scenes. Currently under section 66 of the Act, a driver of a tow truck at an accident scene must comply with any reasonable direction given by an authorised officer, police officer or emergency services officer. However, some tow truck businesses have sent two certified drivers in one tow truck to an accident scene to get around these directions. For example, when instructed to leave an accident scene by a police officer, one of the drivers will hand the towing authorisation booklet to the other driver, who then persists in soliciting the tow. The police can issue an infringement notice to both drivers for failing to comply with their direction.

However, as the provision specifies compliance with directions from authorised officers by the driver of the truck, the police are required to prove which individual was in fact the driver of the tow truck. As this cannot often be proven, charges can be dismissed when the matter comes before a court. Accordingly, it is proposed to amend the Act to replace references to "the driver of the truck" with "a certified driver". This amendment will eliminate ambiguities in relation to driver conduct at accident scenes. The bill also introduces an amendment to specify that the Act does not apply to the towing, salvage and storage of some vehicles such as forklift trucks, golf buggies and ride-on mowers. These types of vehicles were never meant to be captured by the legislation and the amendment clarifies this situation.

In conclusion, the bill will build on the success of the wide-ranging reforms recently implemented by the New South Wales Government. The amendments in the bill will further improve the regulation of the tow truck industry. They will reduce red tape and costs to industry, and they will better protect motorists who rely on tow truck services. I commend the bill to the House.