

Passed by both Houses



New South Wales

Tow Truck Industry Amendment Bill 2008

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2008*



New South Wales

Tow Truck Industry Amendment Bill 2008

Act No , 2008

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.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Tow Truck Industry Amendment Act 2008*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Tow Truck Industry Act 1998 No 111

The *Tow Truck Industry Act 1998* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 6A

Insert after section 6:

6A Act does not apply to towing, salvage or storage of certain motor vehicles

This Act does not apply to the towing, salvage or storage of:

- (a) a forklift truck, or
- (b) a golf buggy, or
- (c) a ride-on mower, or
- (d) an excavator, or
- (e) a cherry picker, or
- (f) any other motor vehicle or class of motor vehicle prescribed by the regulations for the purposes of this section.

[2] Section 17 Application for licence

Insert after section 17 (2) (a):

- (a1) specify the term of licence sought by the applicant, and

[3] Section 17 (2) (c)

Omit "any". Insert instead "each".

[4] Section 18 Restrictions on granting licence

Insert after section 18 (3) (c):

- (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),

[5] Section 20 Licence conditions

Insert after section 20 (2) (c):

- (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),

[6] Section 20 (2) (d1)

Insert after section 20 (2) (d):

- (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,

[7] Section 20 (2) (h)–(i2)

Omit section 20 (2) (h) and (i). Insert instead:

- (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,
- (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,
- (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:
 - (i) confirm that the particulars specified in the notice are still accurate, or
 - (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,
- (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,

[8] Sections 22 and 22A

Omit section 22. Insert instead:

22 Term of licence

- (1) A licence may be granted:
 - (a) if subsection (2) applies, for a period of 3 years, or
 - (b) for a period of one year, or
 - (c) for such shorter period as the RTA determines.
- (2) A licence may be granted for a period of 3 years if:
 - (a) the applicant has requested that the licence be granted for a period of 3 years, and
 - (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
 - (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
 - (d) neither the applicant nor any of the applicant's close associates has, in the 5 years immediately before the date of the application:
 - (i) been subject to any prescribed disciplinary action under this Act, or
 - (ii) engaged in any prescribed conduct, and
 - (e) the RTA is satisfied that a 3-year licence should be granted.
- (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.
- (4) In this section:

prescribed conduct means any conduct that:

 - (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

- (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:
 - (i) the suspension of a licence or drivers certificate held by the applicant or close associate, or
 - (ii) the permanent revocation of a licence or drivers certificate held by the applicant or close associate, or
 - (iii) the disqualification of the applicant or close associate from holding a licence or drivers certificate.

prescribed disciplinary action means:

- (a) the suspension of a licence or drivers certificate held by the applicant or close associate, or
- (b) the permanent revocation of a licence or drivers certificate held by the applicant or close associate, or
- (c) the disqualification of the applicant or close associate from holding a licence or drivers certificate.

22A Renewal of licence

A licence may be renewed from time to time by making an application for a subsequent licence in accordance with this Act.

[9] Section 25 Application for drivers certificate

Insert after section 25 (2) (a):

- (a1) specify the term of drivers certificate sought by the applicant, and

[10] Section 29 Conditions of drivers certificate

Omit section 29 (2) (b). Insert instead:

- (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,
- (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,
- (b2) in the case of a drivers certificate granted for a term of 3 years—the certified driver must, within 28 days of

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:

- (i) confirm that the particulars specified in the notice are still accurate, or
 - (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,
- (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,

[11] Sections 31 and 31A

Omit section 31. Insert instead:

31 Term of drivers certificate

- (1) A drivers certificate may be granted:
 - (a) if subsection (2) applies, for a period of 3 years, or
 - (b) for a period of one year, or
 - (c) for such shorter period as the RTA determines.
- (2) A drivers certificate may be granted for a period of 3 years if:
 - (a) the applicant has requested that the drivers certificate be granted for a period of 3 years, and
 - (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
 - (c) the applicant is not, at the time the application is made, under investigation by the RTA in relation to any breach of a condition of a drivers certificate or any other contravention of this Act or the regulations, and
 - (d) the applicant has not, in the 5 years immediately before the date of the application:
 - (i) been subject to any prescribed disciplinary action under this Act, or
 - (ii) engaged in any prescribed conduct, and

- (e) the RTA is satisfied that a 3-year drivers certificate should be granted.
- (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.
- (4) In this section:
 - prescribed conduct* means any conduct that:
 - (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
 - (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:
 - (i) the suspension of a licence or drivers certificate held by the applicant, or
 - (ii) the permanent revocation of a licence or drivers certificate held by the applicant, or
 - (iii) the disqualification of the applicant from holding a licence or drivers certificate.

prescribed disciplinary action means:

- (a) the suspension of a licence or drivers certificate held by the applicant, or
- (b) the permanent revocation of a licence or drivers certificate held by the applicant, or
- (c) the disqualification of the applicant from holding a licence or drivers certificate.

31A Renewal of drivers certificate

A drivers certificate may be renewed from time to time by making an application for a subsequent drivers certificate in accordance with this Act.

[12] Section 41 Disciplinary action

Omit section 41 (2) (a). Insert instead:

- (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,
- (a1) in the case of a licence or drivers certificate granted for a term of 3 years—suspend the licence or drivers certificate

for a specified period and, when the suspension ends, reduce the period for which the licence or drivers certificate is in force so that it will cease to be in force on the next anniversary of its issue (and refund fees accordingly),

[13] Section 45 Application to Administrative Decisions Tribunal for review

Insert after section 45 (1) (a):

- (a1) the granting of a licence or drivers certificate to the person that is of a shorter duration than that for which the person applied,

[14] Section 54

Omit the section. Insert instead:

54 Charges and fees for towing, salvage, storage and related services

- (1) The regulations may make provision for or with respect to regulating the fees that can be charged by a licensee or certified driver 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.
- (2) Without limiting subsection (1), the regulations under this section can include provision that:
 - (a) fixes maximum fees or otherwise limits the fees that may be charged, or
 - (b) prohibits the charging of a fee for any specified service that is related or ancillary to the towing, salvage or storage of a motor vehicle, or
 - (c) specifies procedures to be followed by licensees and certified drivers in connection with the charging of fees.
- (3) A licensee or certified driver is not entitled to recover or retain any fee charged in contravention of regulations under this section.

[15] Section 61 Prohibition of “spotter’s fees”, “drop fees” and towing inducements

Omit “do not exceed any charges determined by the RTA” from the definition of *valuable thing* in section 61 (4).

Insert instead “are permitted to be charged under this Act and do not exceed any maximum charges fixed by the regulations”.

[16] Sections 63 and 63A

Omit section 63. Insert instead:

63 Touting or soliciting for towing work at scene of accident

- (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.

Maximum penalty: 50 penalty units.

- (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:

(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

(b) a police officer has informed the person that the police officer has organised for the towing of the relevant motor vehicle.

- (3) Subsection (1) does not prohibit a person from dealing with a towing authorisation in accordance with this Act and the regulations.

63A Touting or soliciting for repair work at scene of accident

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.

Maximum penalty: 50 penalty units.

[17] Section 66 Compliance with directions at scene of accident

Omit “the driver of a tow truck” from section 66 (1).

Insert instead “a certified driver”.

[18] Section 67 Passengers in tow trucks

Insert at the end of the section:

- (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:
 - (a) was the driver of, or was a passenger in, a motor vehicle involved in the accident, or
 - (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.

Maximum penalty: 50 penalty units.

[19] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Tow Truck Industry Amendment Act 2008

[20] Schedule 2, Part 5

Insert after Part 4:

**Part 5 Provisions consequent on enactment of
Tow Truck Industry Amendment Act 2008**

16 Definition

In this Part:

amending Act means the *Tow Truck Industry Amendment Act 2008*.

17 Pending applications

- (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.
- (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

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.

18 Previous conduct may be taken into account in considering application for 3-year licence or drivers certificate

- (1) Section 22 (2), as substituted by the amending Act, extends to conduct that occurred before the substitution of the subsection.
- (2) Section 31 (2), as substituted by the amending Act, extends to conduct that occurred before the substitution of the subsection.

19 Charging for work done in the past

- (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.
- (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.

20 Further requirement to notify changes in particulars

- (1) Section 20 (2) (i2), as inserted by the amending Act, extends to licences in force when the paragraph was inserted.
- (2) Section 29 (2) (b3), as inserted by the amending Act, extends to drivers certificates in force when the paragraph was inserted.