

[STATE ARMS]

New South Wales

Tow Truck Industry Bill 1998

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 improve the effectiveness of the licensing scheme for tow truck operators and the certification scheme for tow truck drivers,
- (b) to tighten the requirements for suitability for tow truck operators licences and drivers certificates,
- (c) to regulate aspects of towing work, including requiring the use of towing authorisations and the provision of a job allocation scheme for towing work,
- (d) to facilitate the enforcement of the regulatory scheme and offences under the proposed Act,
- (e) to constitute a new Tow Truck Authority (the *TTA*) as the regulatory and administrative authority for the tow truck industry,
- (f) to confer on the TTA functions relating to the regulation and control of the tow truck industry, and to enable it to take disciplinary action against tow truck operators and drivers,
- (g) to establish a Tow Truck Industry Advisory Council to provide advice to the TTA on regulatory improvements and on matters relating to the industry generally.

This Bill replaces the *Tow Truck Act 1989* with a new legislative scheme that implements the recommendations contained in the *Tow Truck Industry Review Interim Report* (as released by the Government).

Part 1 Preliminary

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 defines words and expressions used in the proposed Act. In particular, *authorised officer* includes an officer of the TTA, the Roads and Transport Authority (the *RTA*) or the Department of Transport who is authorised in writing by the TTA. A *tow truck operator* means a person who conducts a business that involves the operation of any tow truck for the purposes of towing motor vehicles.

Clause 4 defines the term *tow truck* for the purposes of the proposed Act.

Clause 5 describes who is a *close associate* of a licensee or an applicant for a tow truck operators licence.

Clause 6 exempts a tow truck operated by the Crown or a statutory body representing the Crown from the proposed Act. The proposed Act will apply to a tow truck operator who is working for the Crown, or any such statutory body, under a contract or arrangement. The proposed section also provides for a regulation-making power to exempt persons from the operation of the proposed Act.

Part 2 Administration

Division 1 Tow Truck Authority

Clause 7 constitutes the TTA as a statutory corporation that does not represent the Crown.

Clause 8 describes the general functions of the TTA.

Division 2 Management and staff of TTA

Clause 9 provides for the constitution of the Board of the TTA. The Board is to consist of the General Manager of the TTA and 2 members appointed by the Minister.

Clause 10 outlines the functions of the Board. Primarily, the Board is to determine the policies of the TTA.

Clause 11 provides for the employment of staff (including a General Manager) by the TTA.

Clause 12 outlines the role of the General Manager. Primarily, the General Manager is responsible for the day-to-day management of the TTA subject to the policies and general directions of the Board.

Division 3 Tow Truck Industry Advisory Council

Clause 13 establishes the Tow Truck Industry Advisory Council (the *Advisory Council*). The Advisory Council is to have members consisting of the General Manager, an officer each from the RTA, the Department of Fair Trading and the Department of Transport, a representative of the Police Service, and such other members as may be appointed by the Minister from nominations made by certain industry groups (including insurers).

Clause 14 provides that the primary function of the Advisory Council is to advise the TTA on matters relating to the operation and regulation of the tow truck industry generally, and any other matters as may be identified, or referred to the Advisory Council, by the TTA.

Part 3 Tow truck operators licences and drivers certificates

Division 1 Tow truck operators licences

Clause 15 makes it an offence for a person to carry on a business as a tow truck operator unless the person holds a tow truck operators licence (a *licence*) and the kind of towing work carried on by the person in the course of that business is authorised by the licence.

Clause 16 provides for different classes of licences that relate to different kinds of towing work.

Clause 17 provides for the making of applications for licences to the TTA and the matters to be included in applications.

Clause 18 outlines the mandatory and discretionary grounds for refusing to grant an application for a licence. In particular, the TTA must refuse an application if the applicant has, in the 10-year period before the application was made, been convicted or found guilty of a prescribed offence. The TTA may refuse an application if the applicant is not a fit and proper person to hold a licence, if the applicant is not the registered owner of each tow truck proposed to be operated, or if the granting of

the licence would be contrary to the public interest.

Clause 19 provides for the granting of a licence. If a licence is granted, it authorises the licensee to carry on only the kind of towing work specified in the licence.

Clause 20 provides for a licence to be granted subject to conditions specified in the licence, and to such conditions as are outlined in the proposed section.

Clause 21 empowers the regulations to determine fees for the granting of licences.

Clause 22 provides that a licence generally has a term of one year, and it may be renewed by making an application for a subsequent licence.

Division 2 Tow truck drivers certificates

Clause 23 sets out the circumstances in which a person (ie a tow truck driver) is required to hold a drivers certificate. It will be an offence for a certified driver to carry on towing work that is not of the kind specified in the certificate.

Clause 24 provides for different classes of drivers certificate that relate to different kinds of towing work.

Clause 25 provides for the making of applications for drivers certificates to the TTA and the matters to be included in applications.

Clause 26 outlines the mandatory and discretionary grounds for refusing to grant an application for a drivers certificate. In particular, the TTA must refuse an application if the applicant has, in the 10-year period before the application was made, been convicted or found guilty of a prescribed offence, or if the applicant does not hold a full driver licence. The TTA may refuse an application if the applicant is not a fit and proper person to hold a drivers certificate or if the granting of the certificate would be contrary to the public interest.

Clause 27 provides for the granting of a drivers certificate. If a certificate is granted, it authorises the driver to carry on only the kind of towing work specified in the certificate.

Clause 28 provides that a drivers certificate is to contain a photograph of the driver and other relevant information in the approved form.

Clause 29 provides for a drivers certificate to be granted subject to conditions specified in the certificate, and to such conditions as are outlined in the proposed section (eg each drivers certificate is subject to the condition that the driver take reasonable precautions to prevent loss of or from, or damage to, any motor vehicle being towed by the driver).

Clause 30 empowers the regulations to determine fees for the granting of drivers certificates.

Clause 31 provides that a drivers certificate generally has a term of one year, and it may be renewed by making an application for a new drivers certificate.

Clause 32 provides that a drivers certificate is taken to be automatically revoked if the driver's driver licence ceases to be in force.

Division 3 General provisions relating to licences and drivers certificates

Clause 33 enables the TTA to investigate applications for licences and drivers certificates in order to check the suitability of the applicant concerned.

Clause 34 enables the TTA to require further information in relation to an application.

Clause 35 provides for the variation by the TTA of the conditions to which a licence or drivers certificate is subject. The licensee or certified driver concerned may apply for any such variation.

Clause 36 makes it an offence for an applicant for a licence or drivers certificate, or for a variation of conditions, to provide a false or misleading statement in the application.

Clause 37 requires licensees or certified drivers to notify the TTA of proposed changes to the particulars specified in the licence or drivers certificate concerned.

Clause 38 provides for the issue of duplicate licences or drivers certificates.

Clause 39 requires the TTA to keep a register of licences and drivers certificates.

Clause 40 enables licences and drivers certificates to be surrendered voluntarily.

Division 4 Disciplinary action by TTA

Clause 41 sets out the disciplinary action that may be taken by the TTA against licensees and certified drivers. Action may be taken to suspend or revoke a licence or drivers certificate, or to disqualify a

person from holding a licence or drivers certificate, and may be taken against a person who has surrendered his or her licence or certificate or who is subject to concurrent criminal or civil proceedings.

Clause 42 specifies the grounds on which the TTA may take disciplinary action against a licensee or certified driver under the proposed Division. For example, the TTA may take action for any reason for which the licensee or certified driver would have been refused a licence or certificate in the first place, or if the licensee or driver has been charged with an indictable offence.

Clause 43 provides for the implementation of disciplinary action by the TTA.

Clause 44 makes it clear that a suspended licence or drivers certificate does not authorise the person concerned to carry on the activity formerly authorised by the licence or certificate.

Division 5 Review by Administrative Decisions Tribunal

Clause 45 confers jurisdiction on the Administrative Decisions Tribunal to review decisions by the TTA in relation to licences and drivers certificates and to review certain disciplinary action taken by the TTA.

Part 4 Regulation of tow truck industry and towing operations

Division 1 Towing authorisations

Clause 46 makes it an offence to tow any motor vehicle involved in an accident from the scene of the accident before obtaining a towing authorisation for that tow.

Clause 47 provides that towing authorisations may be obtained only by certified tow truck drivers who are operating licensed tow trucks. The proposed section also provides for other restrictions relating to the obtaining of towing authorisations.

Clause 48 provides that a towing authorisation only authorises the towing of a motor vehicle specified in the authorisation to the destination specified (or in accordance with the regulations). The clause also requires the towing authorisation to be completed, signed and dealt with in accordance with the regulations.

Clause 49 provides for a regulation-making power relating to towing authorisations.

Clause 50 provides for a towing authorisation to be in the approved form.

Clause 51 makes it an offence to alter a towing authorisation after it has been signed.

Division 2 Job allocation scheme

Clause 52 provides for the establishment, administration and operation of a scheme for the allocation of towing work and the attendance of tow trucks at the scenes of accidents involving motor vehicles.

Clause 53 makes it an offence to contravene any such job allocation scheme (eg if a tow truck driver attends an accident scene that has not been allocated to the driver under the scheme).

Division 3 Miscellaneous provisions relating to tow trucks and towing operations

Clause 54 authorises the TTA to determine the maximum charges that may be charged for the towing, salvage or storage of motor vehicles.

Clause 55 provides for a regulation-making power relating to the design, construction and equipment of tow trucks.

Clause 56 makes it an offence to use or operate certain kinds of tow trucks.

Clause 57 authorises the RTA to issue distinctive number-plates for tow trucks. Such number-plates are not transferable.

Division 4 Miscellaneous offences

Clause 58 makes it an offence to contravene any condition of a licence or drivers certificate.

Clause 59 makes it an offence to employ or use the services of a person to do anything for which a drivers certificate is required under the proposed Act.

Clause 60 requires a licensee to make certain records relating to tow truck drivers who are employed or engaged by the licensee. Such records must be kept for at least 5 years and be produced on demand for inspection by an authorised officer or police officer.

Clause 61 prohibits accident "spotter's fees", and smash repair "drop fees" from being given and received, and also prohibits the giving or offering of certain inducements for the purposes of obtaining towing work.

Clause 62 makes it an offence for a person to attempt to obtain an authority for the repairing of a motor vehicle involved in an accident before the vehicle has been towed away from the scene of the accident.

Clause 63 prohibits touting or soliciting for towing or repair work at the scene of an accident.

Clause 64 makes it an offence to threaten, intimidate or coerce a person for the purpose of obtaining towing or repair work, for the purpose of preventing another person from obtaining towing or repair work, or for the purpose of preventing another person from complying with the proposed Act.

Clause 65 requires a tow truck driver who tows a motor vehicle away from the scene of an accident to make all reasonable efforts in the circumstances to remove debris from the scene.

Clause 66 requires a person attempting to obtain towing work at the scene of an accident to comply with any reasonable direction given by an authorised officer, a police officer or an emergency services officer who is at the scene.

Clause 67 restricts the persons who may travel as passengers in a tow truck.

Clause 68 restricts a tow truck driver from standing the tow truck in the vicinity of the scene of a motor vehicle accident for a time longer than is reasonably necessary to obtain a towing authorisation and to secure the motor vehicle to the tow truck. If there are no towing authorisations to be obtained in relation to the accident, the driver must not stand the tow truck in the vicinity of the scene without reasonable excuse.

Clause 69 requires a certified tow truck driver to wear his or her certificate in a manner that enables the face of the certificate to be clearly visible.

Clause 70 requires a licensee or certified tow truck driver to produce the licensee's licence or the drivers certificate, respectively, to an authorised officer or police officer on demand.

Clause 71 makes it an offence to advertise that any unlicensed person carries on the business of a tow truck operator.

Clause 72 makes it an offence to make any representation that an unlicensed or uncertified person is a licensee or a certified tow truck driver.

Clause 73 requires a licence or drivers certificate to be immediately returned to the TTA on the suspension or revocation of the licence or drivers certificate, respectively.

Clause 74 makes it an offence to abuse the authority conferred by a licence or drivers certificate.

Clause 75 makes it an offence to impersonate an authorised officer.

Part 5 Enforcement and procedural provisions

Division 1 Powers relating to investigations, inquiries and directions

Clause 76 provides that powers under the proposed Division may be exercised for certain purposes only (eg to determine whether there has been a contravention of the proposed Act or the regulations).

Clause 77 enables the TTA to require a corporation to nominate an individual for the purposes of the proposed Division (eg to answer questions).

Clause 78 enables the TTA, an authorised officer or a police officer to require the production of certain information or records.

Clause 79 empowers authorised officers and police officers to require persons to answer certain questions and to demand a person's name and address.

Clause 80 enables the TTA to conduct inquiries into any matter connected with the tow truck industry (including inquiries for the purposes of taking disciplinary action against a licensee or certified tow truck driver).

Clause 81 provides for powers of entry and inspection and other related matters (eg power to stop and search tow trucks).

Clause 82 provides a regulation-making power in relation to the inspection and repair of tow trucks.

Clause 83 provides for the issue of search warrants in connection with suspected offences under the proposed Act and the regulations.

Clause 84 enables the TTA to give directions to persons in relation to certain matters such as the use or operation of tow trucks.

Clause 85 provides for offences under the proposed Division (eg failing to comply with a requirement,

or obstructing an authorised officer or the police).

Clause 86 provides certain safeguards in relation to the exercise of powers under the proposed Division.

Division 2 Procedural provisions

Clause 87 provides that proceedings for offences under the proposed Act are to be dealt with summarily before a Local Court.

Clause 88 makes directors of corporations liable for offences under the proposed Act that are committed by corporations.

Clause 89 provides that certain offences under the proposed Act and the regulations may be dealt with by way of penalty notices (ie "on the spot" infringement notices).

Clause 90 enables a court to order a licensee or certified tow truck driver to surrender the licence or drivers certificate to the court if the licensee or driver is convicted of an offence by the court or in certain other circumstances.

Part 6 Miscellaneous provisions

Clause 91 continues the Tow Truck Industry Fund and specifies the purposes for which money in the Fund is to be applied.

Clause 92 provides for the investment of money in the Fund.

Clause 93 provides for the financial year of the TTA.

Clause 94 empowers the TTA to recover money owed to it under the proposed Act as a debt.

Clause 95 enables the TTA to enter into arrangements with the Commissioner of Police and the RTA for the supply of certain information.

Clause 96 provides that the effect of a conviction becoming a spent conviction (ie after 10 years) and therefore not being required to be disclosed or considered does not apply in relation to an application for a licence or drivers certificate under the proposed Act.

Clause 97 empowers the TTA to delegate its functions.

Clause 98 requires an authorised officer to produce his or her identification if required to do so.

Clause 99 makes it an offence, except in certain specified circumstances, to disclose information obtained in connection with the administration or execution of the proposed Act.

Clause 100 enables the TTA to refund fees paid in respect of the issue of a licence or drivers certificate or if the licence or certificate is suspended or revoked.

Clause 101 is an evidentiary provision that enables a certificate to be given for the purpose of proving, in proceedings, certain matters (such as whether a person was a licensed tow truck operator or certified tow truck driver).

Clause 102 provides for the service of notices and other documents under the proposed Act.

Clause 103 provides that the proposed Act prevails despite any stipulation to the contrary in any contract or agreement.

Clause 104 exculpates certain persons from personal liability.

Clause 105 empowers the making of regulations for the purposes of the proposed Act.

Clause 106 gives effect to the Schedule of savings and transitional provisions.

Clause 107 repeals the *Tow Truck Act 1989* and the *Tow Truck Regulation 1990*.

Clause 108 gives effect to the Schedule of amendments to other Acts.

Clause 109 provides for a review of the proposed Act after 5 years.

Schedule 1

Schedule 1 contains provisions relating to the members and procedure of the TTA Board and the Advisory Council.

Schedule 2 contains savings and transitional provisions, including a power to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act. Special provision is

made for the continuation of existing tow truck operators licences and existing drivers certificates.

Schedule 3 contains amendments to other Acts that are largely consequential on the enactment of the proposed Act. The amendment to the *Administrative Decisions Tribunal Act 1997* provides that the Administrative Decisions Tribunal will be constituted by a special Tow Truck Industry Disciplinary Panel for the purposes of reviewing decisions under the proposed Act. One of the Tribunal members will be a member assigned to the Tribunal on the recommendation of the Minister administering the proposed Act in order to provide expertise in matters relating to the tow truck industry.