



Regulatory Impact Statement

Tow Truck Industry Regulation – August 2019



Customer
Service

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Executive summary

The *Tow Truck Industry Regulation 2019 (the proposed Regulation)* is proposed by the Hon Kevin Anderson MP, Minister for Better Regulation and Innovation.

The current *Tow Truck Industry Regulation 2008 (the current Regulation)* came into force on 01 September 2008 to support the *Tow Truck Industry Act 1998 (the Act)*. The NSW Government intends to remake the current Regulation as on 01 September 2020 it will lapse under the sunset provisions of the *Subordinate Legislation Act 1989*.

The proposed Regulation would repeal the current Regulation. The main purpose of the proposed Regulation is to provide the legislative support for the operation of the Act.

The tow truck industry plays an integral role on NSW roads in providing services to the general public, the government and commercial organisations.

The Act and current Regulation aim to improve the effectiveness of the licensing scheme for tow truck operators, the certification scheme for tow truck drivers and the regulation of towing work.

In December 2014, a review of tow truck fees and licensing was undertaken by the Independent Pricing and Regulatory Tribunal titled, 'Review of tow truck fees and licensing in NSW'. A number of the resulting recommendations are considered as part of the proposed Regulation.

The key changes in the proposed Regulation include:

- protecting consumers by improving compliance in the industry and ensuring all relevant information is provided to motorists
- reducing red tape for example by removing unnecessary automatic licence cancellation
- exempting recreational vehicles (including caravans), licensed mechanics and multi-deck car carriers from licensing requirements where they do not represent a risk to consumers and businesses
- updating penalties for consistency, to reflect the nature of the offence and allow for an escalated compliance response, which is fairer both to the consumer and the industry
- strengthening provisions in relation to false or misleading information for consistency and as an appropriate deterrent for tow truck operators and drivers
- modernising the provisions for holding yards and tow truck equipment
- streamlining fee structures by changing the business hours requirements to reflect peak traffic and accident time periods in metropolitan Sydney, increasing the surcharge rate and allowing for additional fees to be charged for the removal of debris
- updating the Consumer Price Index (CPI) to be consistent with Fair Trading regulation practices.

This Regulatory Impact Statement (**RIS**) has been prepared as part of the making of the proposed Regulation and:

- identifies and assesses direct and indirect costs and benefits, to ensure that the proposed Regulation is necessary, appropriate and proportionate to risk
- demonstrates, when compared to alternative options, that it provides the greatest net benefit or the least net cost to the community
- demonstrates that any regulatory burden or impact on government, industry or the community is justified.

The RIS sets out the rationale and objectives of the proposed Regulation and the various options for achieving the objectives. It also provides a discussion on important aspects of the proposed Regulation and seeks feedback from stakeholders and the community. This RIS should be read in conjunction with the proposed Regulation.

There will be a four week public consultation period on the proposed Regulation.

Submissions are invited on any of the matters raised in the discussion or anything else contained in the proposed Regulation. All submissions will be considered and evaluated, and any necessary changes will be made to address the issues identified before the proposed Regulation is finalised. The process for submitting comments is explained in the following section.

Consultation process

Making a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the proposed Regulation, whether or not it is addressed in this RIS. Matters covered by the principal Act – *Tow Truck Industry Act 1998* – are not the subject of the consultation process.

To assist you in making a submission an optional online submission form will be available on our website at www.fairtrading.nsw.gov.au or <https://www.nsw.gov.au/improving-nsw/have-your-say/>. However, this form is not compulsory and submissions can be in any written format.

Submissions can be made by email and the Department requests that any documents provided to us are produced in an 'accessible' format. Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>.

Please forward submissions by:

Email to: TTIR2019@finance.nsw.gov.au

Mail to: Tow Truck Industry Regulation 2019

Better Regulation Division, Department of Customer Service

McKell Building

2-24 Rawson Place

SYDNEY NSW 2000

The closing date for submissions is close of business 5 pm Thursday 29 August.

We invite you to read this paper and provide comments. You can download the RIS and the proposed Regulation from www.fairtrading.nsw.gov.au. Printed copies can be requested from NSW Fair Trading by phone on 13 32 20.

Important note: release of submissions

All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with reasons. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in

accordance with the requirements of the *Government Information (Public Access) Act 2009*). It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

Identified stakeholders

This RIS has been provided directly to some stakeholder organisations. A list of these stakeholders is provided at **Appendix 5**.

Evaluation of submissions

All submissions will be considered and assessed. The proposed Regulation will be amended, if necessary, to address issues identified in the consultation process. If further information is required, targeted consultation will be held before the Regulation is finalised.

Commencement of the Regulation

After the Minister for Better Regulation and Innovation has finalised the Regulation, it will be submitted to the Governor for approval.

Once approved by the Governor, the Regulation will be published on the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au and in the NSW Government Gazette. Information on how to access the Gazette is available on the NSW Parliamentary Counsel's website.

It is proposed the Regulation will commence in the last quarter of 2019.

Objective and Rationale for the Proposed Regulation

Need for Government Action

Government action is necessary at this point in time as the current Regulation is due for automatic repeal on 1 September 2020 under the *Subordinate Legislation Act 1989*.

Objective

The primary objective of the Regulation is to provide the legislative support and administrative detail for the operation of the Act. The Regulation is a detailed component of the tow truck industry regulatory framework in NSW and forms a critical link between the Act and monitoring compliance. It is integral to the effective operation and achievement of the Acts objects. The objects of the Act are:

- to improve the effectiveness of the licensing scheme for tow truck operators and the certification scheme for tow truck drivers
- to tighten the requirements for suitability for tow truck operators licences and drivers certificates
- to regulate aspects of towing work, including requiring the use of towing authorisations and the provision of a job allocation scheme for towing work
- to facilitate the enforcement of the regulatory scheme and offences under the proposed Act
- to regulate obligations to maintain and provide access to safe and secure holding yards.

The aims of the proposed Regulation are to:

- maintain the integrity of the tow truck industry regulatory framework in NSW
- balance the interests of consumers with tow truck operators and drivers
- balance compliance with the needs of businesses.

Options for achieving objectives

The primary objective is to ensure the continued operation of the Act as intended and to maintain the integrity of the tow truck industry regulatory framework in NSW. Three options were assessed and are detailed below:

Option 1 – Maintain the status quo

Do not make the proposed Regulation, and instead remake the current Regulation rolling over existing provisions and with no changes.

Option 2 – Make the proposed Regulation

Under the proposed Regulation existing provisions are rolled over where they are still current and other provisions are updated or inserted to ensure they are current and consistent.

Option 3 – Take no action

No action will mean the current Regulation will lapse under the sunset provisions of *the Subordinate Legislation Act 1989* and a replacement Regulation would not be made.

Criteria used to assess the regulatory options

The following criteria, which relate to the regulatory objectives, are used in the evaluation of the three options:

- the extent to which the option supports the objectives of the Act
- the cost effectiveness of each option, in terms of costs and benefits to industry, consumers and government
- the extent the option contributes to the overall efficiency of the regulatory system.

Impact assessment of options

Assessment of option 1

Maintain the status quo – do not make the proposed Regulation and instead remake the Regulation rolling over the existing provisions into the new Regulation.

Option 1: Costs

The costs of this option on industry, the community and the NSW Government would remain substantially the same. However, the current issues within the Regulation would not be resolved.

Industry costs under option 1 would be moderate and may vary depending on the business structure and practices of an individual or company. These issues include but are not limited to:

- the missed opportunity for resolving inefficiencies and ambiguities within the Regulation
- the missed opportunity to modernise the Regulation to reflect new technologies and best practice
- caravan operators who only wish to transport a caravan to and from trade shows or to other business premises are unintentionally being captured under the regulatory scheme
- licensed mechanics are unable test drive a vehicle to assess a tow truck for roadworthiness and safety purposes
- the loss of savings as a result of the red tape reduction measures in the proposed Regulation including removing automatic revocation due to medical reasons or failure to renew a drivers licence.

The overall cost impact of option 1 on industry has been assessed as **medium**.

Consumer costs are moderate under option 1. The consumer in the tow truck industry is largely the general public and in particular motorists who are often injured or vulnerable after a motor vehicle accident. Consumer protection measures are built into the current Regulation. However, there are issues within the current Regulation that need to be addressed. These issues relate, but are not limited to:

- a loss of opportunity to resolve compliance issues and update penalties to be proportionate and consistent
- a failure to inform consumers of their rights when selecting a tow truck driver/operator, or the safety and security of a vehicle in a holding yard.

The overall cost impact of option 1 on the consumer has been assessed as **medium**.

Government costs would continue to be the same under option 1. NSW Fair Trading, through its administration of the Act and Regulation, would incur similar administrative and financial costs if the current Regulation was remade without amendment. Measures within the proposed Regulation including the modernisation, improved efficiency, increased compliance and consumer protection would not be implemented. For example, updating references to local government names and boundaries. In addition, there is a reputational risk to the Government in not updating the Regulation consistent with relevant IPART recommendations. Therefore, there is an opportunity cost for government in relation to proceeding with option 1.

The overall cost impact on government of this option has been assessed as **medium**.

Option 1: Benefits

Renewing the current Regulation in its current form would achieve the objectives of the Act. The provisions are already familiar to industry, residents and Government. Therefore, no changes would be required to existing practices and procedures, saving time and money.

Industry benefits under option 1 are moderate. Tow truck drivers and operators would still be required to comply with the requirements of the current Regulation. This means that consumers would still be protected. The primary benefit of option 1 for industry is the savings achieved because of the absence of any costs associated with transitioning to the new requirements of the proposed Regulation. This includes costs associated with ensuring compliance. Members of the industry can continue operations under usual practices. As the proposed Regulation introduces new and enhanced provisions designed to improve consumer protection in the industry, proceeding with option 1 would remove any new regulatory impact of these requirements from the industry.

The overall benefits for industry of option 1 have been assessed as **medium**.

Consumer benefits of option 1 relate primarily to the time and effort saved in not having to adapt to any new legislation or requirements. Consumers would continue to benefit from the consumer protection mechanisms of the current Regulation. Option 1 would still provide the necessary administrative mechanisms to support the Act. However, this option would see a continuation of an out-dated regulatory framework which has not kept pace with current standards or approaches.

While there are some benefits for consumers, the overall benefits have been assessed as **low**.

Government benefits would be focused on the administrative savings that could be achieved through the continuation of the status quo. Proceeding with option 1 would mean guidance and advice material provided by Fair Trading would not need to be updated. There would be no requirement to publicise any legislative changes. Fair Trading staff would not need to be re-trained on the new legislation. However, option 1 would not improve the current issues.

For this reason, the overall benefit to government has been assessed as **low**.

Option 1: Conclusion

Remaking the current tow truck Regulation in its present form would not impose any new costs on industry or consumers, but it would not respond to the IPART recommendations or result in any significant benefits or improvements in the sector. Enhancements provided in the proposed Regulation would not be realised. This would have an overall negative impact on industry, consumers and the government. For these reasons, **option 1 is not the preferred option**.

Assessment of option 2

Make the proposed Regulation – the Act would commence and the provisions of the proposed Regulation would provide updated legislative support and administrative detail for the Act. The proposed Regulation is a necessary and detailed component of the tow truck industry regulatory framework in NSW and forms a critical link between the Act and monitoring compliance.

Option 2: Costs

Industry costs of option 2 would be varied as the proposed Regulation would reduce red tape but would also increase compliance in targeted areas.

The following have been identified as potential costs for industry under option 2:

- administrative costs for some additional mandatory reporting for holding yards and registers, which may need to be updated
- possible one-off costs for installing surveillance equipment at holding yards
- business costs for tow truck operators in the Sydney metropolitan area, related to extending business hours from 8am to 5pm to 7am to 7pm on business days. The afterhours surcharge would be increased from 20 percent to 25 percent. There would be a one-off cost to adjust the charging rate and then an ongoing cost as during this time rates would be less. However, this is balanced by increasing the surcharge by 5 percent for work done outside these hours (see clauses 52(d) and 58(e)).

The overall cost impact of option 1 on industry has been assessed as **medium**.

Consumer costs associated with making the proposed Regulation are minimal. They are not likely to incur any direct costs as a result of this option.

The overall cost impact of option 2 on consumers has been assessed as **low**.

Government costs would not change significantly as a result of option 2. The government incurs costs in administering the legislation as per usual. In addition, Government would incur one-off implementation costs associated with updating the various forms, guidance material and systems required to reflect change in the proposed Regulation.

This cost is outweighed by the efficiency cost of reforming the Regulation. The proposed Regulation does not otherwise impose any new costs for Fair Trading and the overall cost impact of option 2 on government has been assessed as **low**.

Option 2: Benefits

Making the proposed Regulation would achieve the objectives of the Act and provide a number of additional benefits to make the Act more effective and efficient. The results would be a range of improvements for industry, consumers and government.

Industry benefits include measures that remove unnecessary regulation in areas where the potential consumer detriment is low. For instance:

- the proposed Regulation removes overly prescriptive requirements. This includes, that a tow truck operated under the current Regulation must have a broom and shovel that fits a specific definition. This definition is not necessary to achieve the aim of a tow truck driver meeting their obligation to remove any debris caused by a motor vehicle accident before leaving the accident scene
- recreational vehicles including caravans would no longer be unintentionally captured when towing their caravans and recreational vehicles to and from trade shows or to the repairers, suppliers, manufacturers and business premises (see definition of recreational vehicles at **Appendix 2**)
- mechanics would also be allowed to drive a tow truck to test the performance and safety of the vehicle under certain circumstances (see clause 95), without needing to be licensed.

The overall benefits for industry have therefore been assessed as **high**.

Consumer benefits would improve under option 2. The proposed Regulation aims to improve the consumer experience and protect the rights of consumers particularly when they are in vulnerable situations following a motor vehicle accident. The following have been identified as potential benefits for consumers under option 2:

- ensuring tow truck drivers complete all parts of the towing authorisation and explain to consumers their rights when selecting a service provider
- increasing consumer protection by strengthening and developing a consistent approach to target tow truck drivers or operators who provide false or misleading information
- extending tow truck industry business hours from 7am to 7pm in the Sydney metropolitan area on business days, to reflect peak traffic flows when accidents happen. This means consumers are not charged a surcharge during peak hour accident times
- modernising the provisions by incorporating plain English requirements to improve ease of use for consumers and industry
- modernising the holding yard provisions with an emphasis on ensuring vehicles are kept in a safe and secure environment.

Benefits in existing the Regulation are retained. Consumers have all the current protections including a licensing and certification scheme for tow truck drivers and operators and the monitoring of compliance to ensure minimum standards of professionalism and behaviour in the industry.

The overall benefits for industry have therefore been assessed as **high**.

Government benefits would continue to incur similar ongoing administrative costs under this option. The current Regulation is more than 10 years old. It is in the best interests of the government to serve the public by reviewing the current Regulation to ensure laws are kept up to date and relevant. This involves keeping its promise of actioning the IPART recommendations and ensuring the industry is functioning effectively and efficiently. There may be some additional up-front one-off implementation costs resulting from the need to inform the industry about the proposed changes. However, the government would benefit from a modern and consistent regulatory approach that improves compliance and protects the consumer whilst also balancing the needs of industry by removing unnecessary red tape. For this reason, the overall benefit to the government has been assessed as **high**.

Option 2: Conclusion

The proposed Regulation meets the regulatory objectives of the Act. It would provide a more streamlined and consistent approach to regulation of the tow truck industry. This option addresses several weaknesses in the current Regulation. It provides the greatest benefit to the industry, community and government outweighing any new costs. The cost impact of the proposed Regulation would be partly offset by the red tape reduction measures in reducing compliance burdens on industry.

For these reasons, option 2 is the preferred option.

Assessment of option 3

No action – allow the existing Regulation to lapse on 1 September 2020, under the sunset provisions of the *Subordinate Legislation Act 1989* and do not replace the Regulation.

Option 3: Costs

Industry costs would be incurred if the current Regulation is allowed to lapse. The Act would still be in force and operators would be able to continue running their business. However, the Regulation contains important forms, procedures, guidance and rules that assist tow truck drivers and operators. For example, the tow truck authorisation book, holding yard provisions and information relating to licence and driver certificate applications. Without these provisions, the intention and detail of the Act would not be clear, which would lead to an increase in the number of disputes. This would result in greater costs for operators due to the time and money spent dealing with problems where disagreements arise.

The overall cost to industry has been assessed as **medium**.

Consumer costs would be significant under option 3. The consumer protection for motorists contained in the Regulation would disappear, such as:

- maximum fees and measures to prevent overcharging
- regulating to ensure a safe and secure holding yard to protect their property
- recording the location of a motorist's vehicle
- ensuring the consumer is aware of their rights
- ensuring all relevant information including the quotation for towing services is provided to the consumer.

This means that vulnerable motorists who are injured or distressed following an accident would not have adequate protection when entering into tow truck agreements. This may lead to a large financial impact.

As such, the overall costs of option 3 on consumers has been assessed as **high**.

Government costs would increase under option 3. The number of complaints received by Fair Trading would likely increase, requiring additional staff resources to effectively deal with the response. There would also be an increasing number of matters in dispute, which would increase administration costs for Government. Allowing the Regulation to lapse would also remove the ability for penalty notices to be issued by Fair Trading. All breaches of the Act would need to be pursued through the courts, resulting in a substantial increase in compliance costs. This would make it difficult to discourage any illegal

behaviour in the tow truck industry, such as intimidation, bribery and property damage. It would also create problems in maintaining an organised road side accident scene.

For these reasons, the overall costs to government of this option have been assessed as **high**.

Option 3: Benefits

Without the Regulation, the Act would not be able to function as intended. There are no benefits to this option.

Industry benefits would be minimal, but there would be some savings achieved as a result of the removal of the regulatory requirements imposed on operators. For instance, this would remove the maximum fees that tow truck drivers or operators could charge for towing, salvage or storage of motor vehicles. This would benefit them as they could potentially make more profit. This includes the financial benefit of not having to pay licence fees as stipulated in the Regulation.

The overall benefit to operators of option 3 has been assessed as **low**.

Consumer benefits is nil. The loss of the consumer protection provisions of the Regulation would mean there is no benefit to consumers in allowing the Regulation to lapse.

The overall benefit to consumers of option 3 has been assessed as **nil**.

Government benefits would also be very minor and primarily relate to the savings achieved in time and resources in not having to remake the Regulation. However, these would be far outweighed by the costs associated with handling more complaints as detailed above and the reputational cost of not adequately protecting the public and not implementing the IPART recommendations.

As such, the overall benefits to government of option 3 have been assessed as **low**.

Option 3: Conclusion

The Act cannot function as intended without the supporting Regulation. The proposed Regulation provides considerable legislative support to the Act and without it the aims of the Act could not be achieved.

Taking no action would result in the current Regulation lapsing on 1 September 2020, with no replacement Regulation being made. This option would significantly reduce consumer protection. Without the Regulation, many important aspects of the Act would not function effectively and there are few, if any real benefits associated with allowing the Regulation to lapse.

Further action by the Government would be required to enact these functions, such as amending the current Act to enshrine the proposed requirements of the Regulation. This would reduce the capacity to amend the requirements quickly to respond to problems that may arise for consumers or to address changes in industry practices. For these reasons, **option 3 is not the preferred option.**

Summary of costs and benefits for each option

A summary of the costs and benefits for all three options is shown in **Table 1**. This shows that option 2 has the highest overall benefit to the industry, consumers and Government.

Option	Likely costs	Likely benefits	Overall benefit
Option 1	Medium	Low	Negative
Option 2	Low	High	Positive
Option 3	High	Low	Negative

Table 1: Summary of costs and benefits for each option

Preferred option

After analysing the costs and benefits to consumers, industry and government of each option, the option that supports the objectives of the Act and contributes to the overall efficiency of the regulatory system is **option 2 - making the proposed Regulation**. The proposed Regulation would facilitate the operation of the Act and provide the most benefit to the community, industry and the Government.

The primary objective of the Regulation is to provide the legislative support and administrative detail for the operation of the Act. When looking at the overall objectives of balancing the consumer, industry and business, option 2 provides the greatest overall benefit. This is summarised in **Table 2**. As shown in the table below, option 1 may reduce red tape but would not provide any other overall benefits. Option 3 may also be more flexible for industry and reduce red tape but would not give the necessary support to the Act. Option 2 would provide increased consumer protection, compliance, reduce red tape and provide flexibility and clarity for the industry.

Options	Benefits			
	Increased consumer protection	Improved compliance	Reduced red tape	Flexibility and clarity for industry
Options 1: Maintain the status quo	✗	✗	✓	✗
Option 2: Make the proposed Regulation	✓	✓	✓	✓
Option 3: Take no action	✗	✗	✓	✓

Table 2: Summary of benefits for each option

Discussion of the proposed Regulation

Submissions are welcome on any aspect of the proposed Regulation or any other relevant issue, whether or not raised in this RIS. However, the following discussion points provide greater context for some provisions in the proposed Regulation and explore some regulatory options for these provisions. A comparison of the current Regulation and the provisions of the proposed Regulation is provided in **Appendix 4**.

Part 1 Preliminary

Date of Commencement (clause 2)

The current Regulation will automatically repeal on 01 September 2020 under the *Subordinate Legislation Act 1989*. The proposed Regulation will replace the current Regulation on 01 September 2020 or earlier when it is made.

Meaning of “tow” and “tow truck” – multi deck car carriers (clause 4)

Clause 4 of the current Regulation sets out the meaning of “tow” and “tow truck.” The proposed Regulation would be amended to prevent multi deck car carriers from unintentionally falling within the definition of a “tow truck.” It is not appropriate that they fall under the requirements of tow truck operators as the multi deck car carriers do not provide towing services to consumers or for the benefit of others.

Multi deck car carriers use lifting devices to raise and lower the decks to increase vehicle capacity on the trailer. These devices are not used to move the vehicles onto the carrier, but they are still captured, technically, in the definition of a tow truck. By changing the definition multi-deck car carriers would be excluded from being a tow truck.

1. Do you think it is appropriate to exclude multi-deck car carriers from the definition of a tow truck?

2. Are there any other types of work that should be included or excluded from the definition of “tow” and “tow truck”?

Part 2 Licences and drivers certificates

Information in licence applications

Disclosure of criminal convictions be included in licensing applications (clause 5)

Clause 5 of the current Regulation sets out additional information that is required to be included in licence applications. The proposed Regulation would be amended to include a requirement that an applicant must disclose if they have been convicted of an offence under the Regulation. The types of offences that would disqualify an applicant include assault and/or the supply or possession of a prohibited drug. The key pieces of legislation are listed under clauses 7 of the proposed Regulation.

The provisions have been introduced to protect consumers and reduce unlawful behaviour within the industry. If an applicant has been convicted or found guilty of an offence under clause 7 then their application is refused. This would also improve the reputation of tow truck operators who are being unfairly affected by a minority of tow truck industry members acting inappropriately. This will lead to the effective and efficient operation of the industry.

Proof that an applicant has obtained relevant approval for the use of a holding yard (clause 5)

The proposed Regulation requires that a licence applicant must provide evidence that they have approval from the local council or relevant consent authority for the use of holding yard specified in their licence application. This regulatory change is proposed to ensure that operators store motor vehicles in a legally approved location.

Additionally, the clause aims to increase consumer protection by:

- ensuring tow truck drivers store a vehicle in an appropriate location
- discouraging illegal activity
- minimising noise complaints from the public.

Clause 9 of the proposed Regulation contains the relevant enforcement provision. This clause states that if the applicant has not obtained the necessary approval for the use of a holding yard, then this is a ground for refusing a licence application. This provision is important to enforce the requirements under the proposed Regulation and to protect the property of consumers. This is also consistent with IPART recommendations 21 and 22.

3. Do you agree that an applicant must provide proof they have the relevant consent approval for the use of a holding yard? If so, why?

Exemption from automatic revocation of a licence for medical reasons or failure to renew (clauses 96 and 97)

Currently under section 32 of the Act, if a driver's licence is cancelled or suspended for any reason than their tow truck drivers' certificate is also revoked. This also means that a tow truck driver must complete a new application and fee payment to be licenced again. Under the proposed Regulation a tow truck drivers certificate would not be revoked but only suspended:

- if their driver's license is suspended due to medical reasons. Their certificate would be reinstated once they are medically fit to drive again
- due to the expiry of their drivers' licence, until their driver's licence has been renewed.

These exemptions are proposed to reduce red tape. It is also considered unfair that there is an automatic revocation of a tow truck drivers' certificate, for medical reasons or if their driver's license expires before they have a chance to renew the licence. This is also consistent with IPART recommendations 88 and 90.

4. Do you agree that a tow truck drivers certificate should only be suspended and not revoked for medical reasons or for failure to renew a drivers licence? If so, why?

Offences that disqualify applicants for operator licenses and driver certificates (clauses 7, 16)

Clauses 7 and 16 outline offences that disqualify applicants for operator licences and drivers certificates. Sections 18 and 26 of the Act specifically state that the offences listed are a mandatory ground for refusal of a licence or driver certificate if there is a conviction or a finding of guilt. The proposed Regulation inserts additional laws into the clause to disqualify licence applications, including:

- consorting with convicted offenders – section 93X *Crimes Act 1900*
- contravene serious crime prevention order – section 8 *Crimes (Serious Crime Prevention Orders) Act 2016*
- contravene public safety order – section 87ZA *Law Enforcement (Powers and Responsibilities) Act 2002*
- contravene firearms prohibition order – section 74 *Firearms Act 1996*
- car or boat rebirthing – section 154G *Crimes Act 1900*
- dealing with property suspected of being proceeds of crime – section 193C *Crimes Act 1900*.

These clauses provide offences that would automatically disqualify an applicant for a tow truck operators license. These pieces of legislation are considered necessary to help prevent the entry of criminal behaviour into the tow truck industry.

5. Do you think there are any other crimes that should prevent a licensee or driver certificate holder from holding a license? If so, why?

6. Are all of the offences listed in clauses 7 and 16 proportionate to the penalty of automatic revocation if convicted? If so, why?

Part 3 Towing authorisations

Completion of and dealing with towing authorisations (clause 43)

The current Regulation sets out the requirements relating to towing authorisations. The proposed Regulation would contain amendments to provide increased consumer protection by tightening towing authorisation requirements. The amendments contained in clause 43 would include an obligation to:

- complete the quotation for towing services form and provide it to the motorist
- explain the rights of the owner/driver of a towed vehicle to:
 - decide where the vehicle will be towed
 - decide who will tow the vehicle
 - contact anyone prior to signing the form for advice on the right place to tow the vehicle
 - refuse to accept a tow for any reason
 - receive a completed and signed copy of the written towing authorisation form containing contact details for the tow truck operator, who will be towing the vehicle and a completed quotation for towing and storage services.

Motorists are in a vulnerable position after a car accident and appropriate law needs to be in place to protect their rights. For example, they can contact their insurer if they would like their opinion/preference on the best place to tow their vehicle.

Additionally, tow truck driver non-compliance is routinely detected during field enforcement audits in relation to providing the quotation for towing services and the rights of owners/drivers. This is undermining the purpose of informing consumers of their rights when selecting a service provider. These new provisions are designed to help prevent this.

7. Do you think any other information should be included in the towing authorisation form?

8. Are there any other rights of the owner/driver that should be included in the Regulation?

Part 4 Holding yards

Security requirements for storage of vehicles (clause 46)

Part 4 of the current Regulation sets out the requirements and obligations for tow truck operators in relation to holding yards. The proposed Regulation intends to emphasise the requirements of a licensee to maintain premises, which provide safe and secure temporary storage for motor vehicles. Under clause 46 of the proposed Regulation, a safe and secure holding yard must include the following security measures:

- a security fence more than 2 metres high that has gates with locks
- flood lighting installed
- a closed-circuit television system (CCTV) or a monitored security alarm system installed.

The intention of this clause is to improve compliance by introducing the option to use CCTV to prevent damage or theft. This moves toward the overall purpose of keeping the owner or driver of a vehicle's possessions safe and secure. This is supported under IPART recommendations 19 and 23.

9. Is there anything else that should be included in the holding yard provisions to ensure the safety of vehicles?

Part 5 Fees for towing, salvage, storage and related services

Standard business hours extended to 7am to 7pm on business days in the Sydney metropolitan area (clauses 52, 53 and 54)

Under the current Regulation business hours are between 8am to 5pm. A surcharge of 20 percent can be charged to motorists outside these hours. Under the proposed Regulation, clauses 52, 53 and 54 the business hours would be extended to 7am to 7pm in the Sydney metropolitan area. Outside these hours a surcharge can be charged. This change has been implemented so that standard rates reflect peak accident times and accommodate the needs of consumers. This is supported by IPART recommendation 17 and also by the Transport for NSW Centre For Road Safety's statistical statement

for the year ended 31 December 2017 entitled, 'Road Traffic Casually Crashes in New South Wales' and particularly in tables 11a-e.

The afterhours surcharge has been increased from 20 to 25 percent to provide an incentive for tow truck operators and licensees working outside the standard hours. This means that tow truck operators would receive a higher amount of money if they work outside the new proposed business hours.

However, under clauses 52(c)(ii), 53(c)(ii) and 54(c)(ii) of the proposed Regulation the current hours of 8am to 5pm and surcharge of 20 percent have been maintained in non-metropolitan areas. This is due to the fact that extending the hours in non-metropolitan areas would not always reflect peak traffic and accident times. This is consistent with IPART recommendation 18.

Charging for debris for heavy vehicles (clause 58)

Under section 65 of the Act a tow truck driver has an obligation to remove any debris from the scene of an accident before leaving the scene. This requirement is accompanied by a maximum penalty of \$1,100 (10 penalty units). In addition, under the Regulation a tow truck driver is not able to charge a fee for the clean-up of debris. The proposed Regulation is amended to allow heavy vehicle tow operators to charge a fee unit of 0.6 per hour for any work involved in the cleaning of glass or debris from the scene of an accident. A set 0.6 fee unit has been inserted to avoid potential issues of excessive fees being charged.

This clause has been changed to allow tow truck drivers and operators to be reimbursed for their time, particularly as heavy vehicle accidents tend to have a large clean-up. This is also consistent with IPART recommendations 8,15 and 16.

Charging for debris in non-metropolitan areas (clause 52)

Similarly, light vehicle operators would be allowed to charge a fee unit of 0.6 per hour for the clean-up of debris or loads on roads with a speed limit greater than 80km per hour. This amendment is based on the premise that often more time is spent on the clean-up of debris in rural areas compared to urban areas. The proposal is also supported under IPART recommendation 14.

10. Do you think a fee unit of 0.6 per hour is an appropriate amount for the clean-up of debris from a heavy vehicle accident or accidents in non-metropolitan areas? If so, why?

Part 6 Other offences and requirements

Tow truck equipment (clause 83)

The current Regulation prescribes specific equipment that each tow truck must have as a condition of their licence. The proposed Regulation emphasises that a tow truck driver must have the appropriate equipment to efficiently clean up the debris at the scene of an accident. The changes include:

- removing the prescriptive requirements that restrict the possible choice of available brooms and shovels from suppliers, which can negatively affect storage in a tow truck and are not always the best equipment for cleaning up debris
- ensuring the equipment is maintained in good working order
- emphasising the efficient removal of debris.

The proposed Regulation also includes in clause 26(2)(v) that scrap metal operators must also have appropriate equipment in their tow truck. This is consistent with the tow truck equipment required under the authority of a licence.

11. Do you think the tow truck equipment outlined in clause 83 is appropriate for the clean-up of debris? If so, why?

12. Do you think that scrap metal operators should be required to keep clean-up equipment in their tow truck? If so, why?

Disposal of unclaimed motor vehicles (clause 90)

The current Regulation outlines the requirements for the disposal of unclaimed motor vehicles. Currently, a motor vehicle must have a value of less than \$500 for the clause to apply. Clause 90 of the proposed Regulation would be amended so that an operator can lawfully dispose of an unclaimed vehicle that has a value of less than \$3,000 (at the time of disposal). The proposed Regulation also changes the amount of days for reasonable attempts to occur to identify or locate the owner from 28 days to 14 days.

Too many unclaimed vehicles in a holding yard means that tow truck operators cannot work as efficiently. The unclaimed motor vehicles take up space in their holding yard, restricting the number of vehicles they can accept. A number of operators have identified that unclaimed accident vehicles are often problematic as an operator has to wait a long time before legally being able to dispose of the vehicle. In addition, increasing the monetary value for disposal from \$500 to \$3,000 modernises the Regulation to reflect the real costs of vehicles for scrap metal. These changes mean that operators can

legally dispose of more vehicles earlier, which would cut costs and red tape. This change is based on recommendations 69 and 70 of the IPART Report.

13. Do you think that the amount of \$3,000 is an appropriate amount for the disposal of unclaimed vehicles? If so, why?

14. Do you agree with the proposal to reduce the number of days from 28 days to 14 for the disposal of an unclaimed motor vehicle, after reasonable attempts have been made to locate the owner? If so, why?

Part 7 Miscellaneous provisions and Schedule 1 Penalty notice offences

Exemptions from the requirement to hold a licence

Recreational vehicle exemption (clause 94)

Under the current Regulation persons who transport caravans using tow trucks are captured under the regulatory scheme. It is proposed that motor vehicles used to tow recreational vehicles are exempt from having to apply for a licence when they transport to or from:

- trade shows
- suppliers or manufacturers
- business premises
- specialist repairers.

A 'recreational vehicle' is defined to include motor homes, campervans, caravans, camper trailers and tent trailers. The caravan industry has reported that some individuals and groups attend trade shows throughout NSW and states and only transport their own display campers to and from these events. It is not intended to capture these people in the tow truck licensing scheme. They should be able to transport their camper trailers to/from these events, without the need for a licence.

The purpose of the Act is to protect consumers from misconduct by tow truck operators and to discourage any illegal behaviour. Businesses who use their own tow trucks to transport recreational vehicles including caravans to and from showrooms, expo venues or for their own benefit is unlikely to be work that should be captured under the tow truck regulatory scheme. The exemption would reduce costs, inconvenience and administrative burden for businesses, without increasing the risk of consumer or community harm.

15. Do you agree that those who tow recreational vehicles should be exempt from the requirement to be licensed under the Regulation? If so, why?

Mechanics exemption (clause 95)

Currently a motor vehicle mechanic, test driving a tow truck is required to hold a tow truck licence. Under clause 95 a licensed mechanic is exempt from the tow truck requirements relating to drivers certificates:

- when inspecting or assessing a tow truck to determine the nature and extent of repair work
- assessing a tow truck for safety purposes or road worthiness.

This exemption would include the following restrictions to ensure that it cannot be exploited. A mechanic must:

- only drive the tow truck within 5 kilometre radius of their business premises
- not perform an inspection or assessment at the scene of an accident
- carry necessary identification to allow a police officer to identify them as mechanic when they pull over the tow truck, as part of their compliance activities.

Mechanics are a ground for exemption as they do not provide towing services to consumers or for the benefit of others and they do not pose a risk to consumers under the conditions proposed above.

16. Do you agree that mechanics should be allowed to drive a tow truck under the circumstances outlined above? If so, why?

Exemption for towing certain equipment

The NSW Government is considering exempting companies and persons who are using their own tow trucks to transport their own equipment, from licensing requirements. Currently companies who use a tow truck to transport equipment such as mini loaders, skid steer loaders and lighting need to be licensed under the Act. This is due to the way a tow truck activity is defined. A person who uses a 'tow truck' for towing a 'motor vehicle' is captured under the licencing requirements of the Act. The Act defines a 'tow truck' (section 4). A 'motor vehicle' is defined as a 'motor vehicle' or 'trailer' under the *Road Transport Act 2013 (NSW)*. This definition is broad, thus it includes other vehicles and equipment, in addition to cars. For instance, a motor vehicle means a vehicle that is built to be propelled by a motor that forms part of the vehicle. For example, this definition includes a ride on mower. A trailer is defined as a vehicle that is built to be towed or is not capable of being propelled.

This means equipment such as a lighting towers are included within the definition as they form part of a trailer under the definition (please see full definitions of a “motor vehicle” and “trailer in **Appendix 2**).

The following diagram shows how the regulatory system is set up.

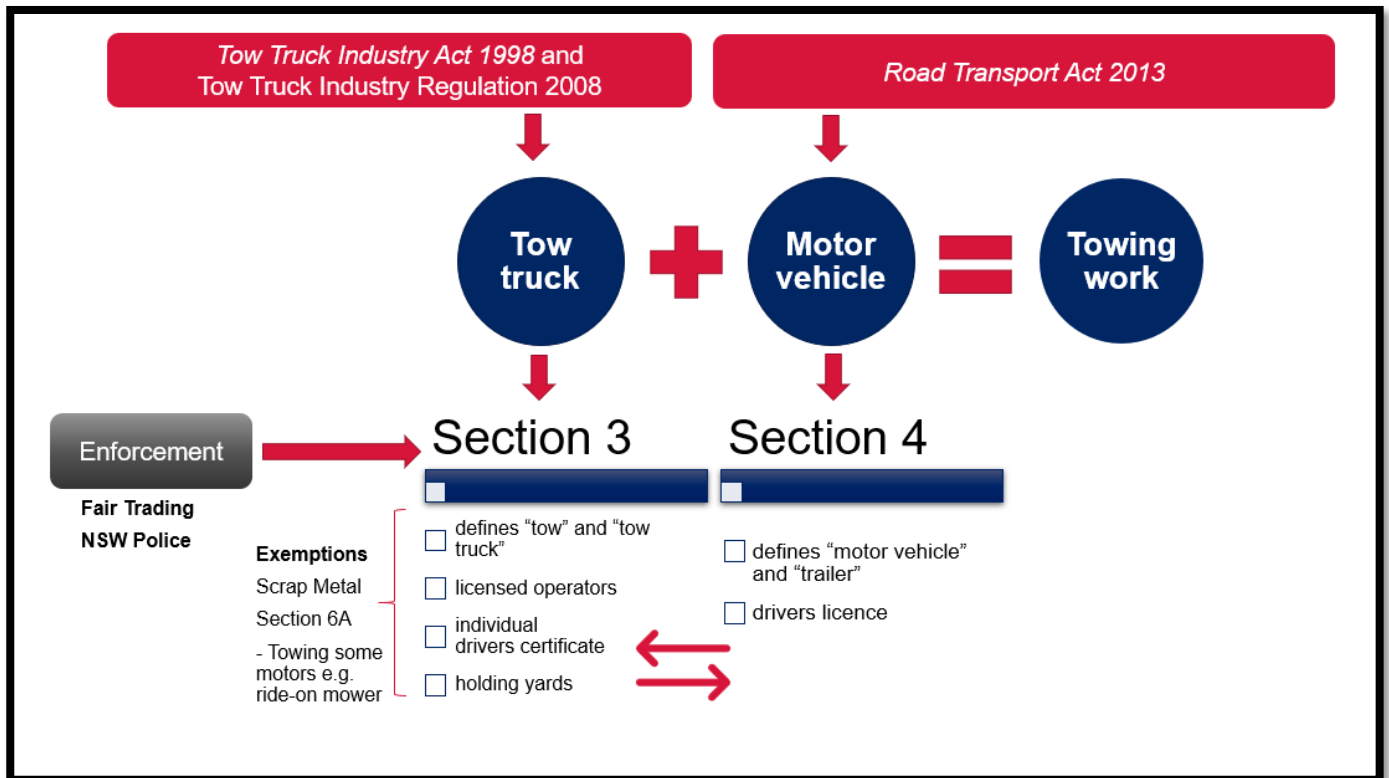


Figure 1: Legislative framework explained

Under section 6A of the Act there is a list of ‘motor vehicles’ that are not captured by the licensing requirement:

- forklift truck
- golf buggy
- ride-on mower
- excavator
- cherry picker.

If a tow truck is towing these machines, listed above, then they are not required to be licenced.

Under section 6A there is an option to list more equipment in the Regulation, currently falling under the definition of a ‘motor vehicle’, to be exempt. The Government is seeking your views as to whether there is any additional equipment that would warrant an exemption under the law.

17. Do you agree with the proposal to add types of motor vehicles that are allowed to be towed without a licence or driver certificate? What type of equipment should be exempt and why?

Penalty notices

The proposed Regulation aims to facilitate appropriate enforcement for the provisions contained in the regulatory scheme. The penalties under the current Regulation have been changed to be consistent across the Regulation, proportionate to the breach and to provide for an escalated compliance response. A table indicating all of the penalty changes in the Regulation is contained in **Appendix 6**.

Proportionate and consistent – improving compliance

Penalties have been changed to be proportionate and consistent across the proposed Regulation. All clauses under the proposed Regulation that attract a maximum a \$550 penalty amount (5 penalty units) have been increased to a maximum of \$1,100 (10 penalty units). This is because a \$550 penalty amount is not a sufficient deterrent to offenders.

This incorporates the following principles:

- Legislation should provide a higher penalty for an offence of greater seriousness
- Punishment must be proportionate to the type and severity of the breach
- Penalties should be consistent with existing penalties for offences of a similar kind or seriousness.

For instance, under clause 85 of the proposed Regulation the penalty amount of \$550 (5 penalty units) has been increased to a maximum of \$1,100 (10 penalty units) and a corresponding penalty notice amount of \$220. This clause is about tow truck number plates to be visible while towing. This is an important compliance requirement and needs to be updated to reflect inflation and to provide an effective enforcement measure for the clause. One penalty unit is equal to \$110 and the amount has not been increased since 1987.

18. Do you agree that the penalty should match the crime? Do you think a maximum a \$550 penalty amount is too low to act as a deterrent?

Increased compliance response – penalty notice offences

Fair Trading NSW adopts a compliance policy that offers a compliance matrix for members of the tow truck industry, as shown in **Figure 2** below. Upon detection of a breach, compliance officers issue a caution or warning letter to notify a tow truck driver or operator clarifying the requirements of the law. They use education programs in preference to immediate prosecution. The next step is to issue a fine or penalty infringement notice where appropriate. The final response is for the matter to be prosecuted in court.

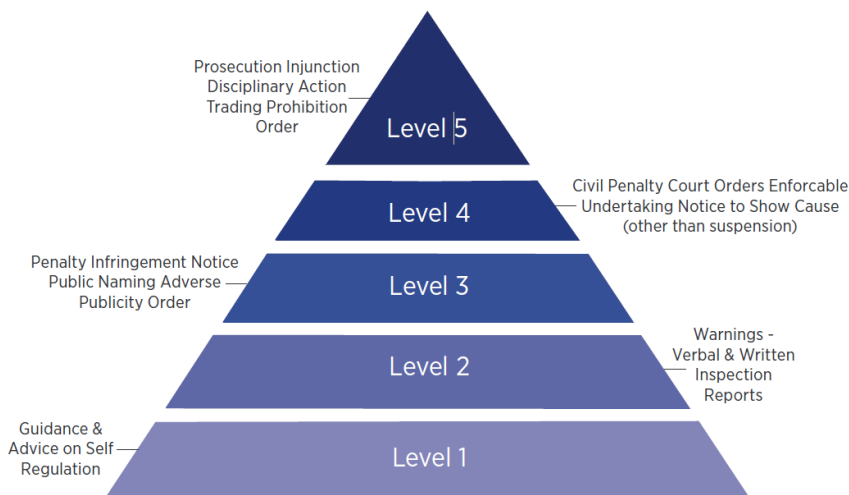


Figure 2: Summary of the Fair Trading Compliance and Enforcement Approach

Under the proposed Regulation an increased number of penalty notice amounts have been inserted into 'Schedule 1 Penalty notice offences.' This means that a matter would not automatically be taken to court in the first instance.

The penalty notice amounts are set at a level designed to deter offending but are a considerably lower penalty than the maximum penalty for prosecution in court. This provides for an increased compliance response. This in turn means that members of the tow truck industry can avoid going to court and pay a lesser fine, for a lesser offence where no intent needs to be proven.

For instance, under clause 40W of the current Regulation a sign must be installed to inform customers about storage fees. This offence has a maximum of 10 penalty units (\$1,100) and means a licensee must go to court as a result of breaching this clause. However, under the proposed Regulation (now clause 70) a licensee may be issued with an on-the-spot fine of \$220 avoiding court costs and incurring a maximum penalty of \$1,100. The penalty is proportionate to the severity of the offence. This is shown in **figure 3**.

1. • **Penalty Infringement Notice** e.g. cl 40W fine of \$220
2. • **Court and maximum penalty** e.g. cl 40W \$1,100 (10 penalty units)

Figure 3: compliance matrix example

False and misleading information

The proposed Regulation seeks to improve compliance by targeting members of the industry who are providing false or misleading information in important documentation. For example, under clause 42 of the proposed Regulation the maximum penalty units have been increased from 20 to 50 penalty units to make it consistent with similar offences in the current Regulation (see cl 89 (3)). This is because clause 89(3) is also an offence about false or misleading information. This has been changed to be consistent and proportionate to the seriousness of the offence.

19. Do you think any of the penalties in the Regulation need to be changed? If so why?

Schedule 2 Adjustment of fees for inflation

Consumer Price Index

Under Schedule 2 of the proposed Regulation, the base year calculation rate for fee units has been changed from March 2018 to March 2017. The CPI fees covered under this change relate to the fees that tow truck drivers charge their clients. Please see 'Part 4A Fees for towing, salvage, storage and related services' in the Regulation. Twelve Regulations in the Customer Service portfolio use the March 2017 CPI as the base year, however the tow truck Regulation uses March 2018. This has resulted in two fee units applying to portfolio schemes, being \$100 (March 2018 base year) and \$102.07 (March 2017 base year). Thus it is proposed to change the two truck CPI base year to be consistent with all other regulatory fee calculation rates in the portfolio. This would result in a slight increase in fees tow truck drivers charge consumers, by \$2.07 per fee unit.

20. Do you think it is appropriate to change the CPI fee to be consistent with other Regulation fee calculations in the Customer Service portfolio?

21. Do you have any other feedback on the proposed Regulation?

Appendix 1: History of Tow Truck Regulation

NSW has the highest number of tow truck industry business establishments in Australia, largely due to its population and the concentration of motor vehicles. For this reason it is important that NSW provides an efficient and effective regulatory system.

In 1998 a regulatory framework was introduced in response to illegal and unscrupulous behaviour exhibited by a minority of tow truck operators and drivers in the industry.

In December 2014, a review of tow truck fees and licensing was undertaken by the Independent Pricing and Regulatory Tribunal entitled, 'Review of tow truck fees and licensing in NSW'. In 2015, the NSW Government released its response to the IPART report, which supported either in full or in part 59 of the 107 recommendations.

Administrative responsibility for tow trucks legislation was transferred from Roads and Maritime Services (RMS) (Department of Transport) to Fair Trading, Department of Customer Service (former Department of Finance, Services & Innovation) on 1 July 2017.

A number of the IPART recommendations were implemented by RMS and the remaining recommendations have been considered as part of this proposed Regulation, where appropriate.

The current Regulation introduced maximum fees and strengthened licensing requirements to combat these concerns.

On 1 July 2019, the Department of Finance, Services & Innovation became the Department of Customer service.

Appendix 2: Definitions

Tow Truck Industry Act 1998

Motor vehicle: means a motor vehicle (other than a light rail vehicle) or trailer within the meaning of the *Road Transport Act 2013*.

Tow: includes:

- (a) lift and tow, or lift and carry, and
- (b) lift for the purpose of towing or carrying, and
- (c) carry on a trailer, and
- (d) place onto a trailer for the purpose of carrying, and
- (e) any other action prescribed by the regulations for the purposes of this definition, but does not include any activity declared by the regulations not to be towing for the purposes of this Act.

Tow truck: means any of the following motor vehicles that are used or operated for the purposes of towing motor vehicles:

- (a) a motor vehicle that is equipped with a lifting device,
- (b) a motor vehicle that is equipped with a trailer, towing attachment or other similar device,
- (c) a motor vehicle that is fitted with a tilt table-top, or with a tilt table-top and winch,
- (d) a motor vehicle that is fitted with a self-loading table-top that is capable of being detached from the motor vehicle for the purpose of loading or unloading another vehicle,
- (e) any other motor vehicle prescribed by the regulations for the purposes of this definition.

(2) A **tow truck** does not include:

- (a) a motor vehicle that is declared by the regulations not to be a tow truck for the purposes of this Act (any such motor vehicle may be described by reference to a particular class of motor vehicle), or
- (b) a motor vehicle referred to in subsection (1) if it is used or operated in such circumstances, or for such purposes, as may be prescribed by the regulations for the purposes of this subsection.

Road Transport Act 2013:

Motor vehicle: means a vehicle that is built to be propelled by a motor that forms part of the vehicle.

Trailer means a vehicle that:

- (a) is built to be towed, or is towed, by a motor vehicle, and
- (b) is not capable of being propelled in the course of normal use on roads or road related areas without being towed by a motor vehicle, whether or not its movement is aided by some other power source, but does not include:
 - (c) a motor vehicle being towed, or
 - (d) anything declared by the statutory rules to be excluded from this definition.

Tow Truck Industry Regulation 2008 (current):

Meaning of “tow” and “tow truck:”

- (1) In accordance with paragraph (e) of the definition of **tow** in section 3 (1) of the Act, **tow** includes tow by use of a rigid frame, rigid bar or similar device.
- (2) In accordance with section 4 (2) of the Act, car carriers are declared not to be tow trucks for the purposes of the Act.
- (3) In subclause (2):
 - car carrier** means a motor vehicle combination that is designed or adapted for use for the transport of motor vehicles, being a combination:
 - (a) that is not equipped or fitted with any lifting equipment (whether portable or fixed) to load the motor vehicles to be transported, and
 - (b) onto which the motor vehicles to be transported are loaded by travelling along a ramp under their own propulsion.

Proposed Regulation:

Recreational vehicle: includes motor homes, campervans, caravans, camper trailers and tent trailers.

Appendix 3: Regulation making powers

Section in the Act	Regulation making power under the Act	The proposed Regulation	
		Clause	Scope of clause
Part 1 Preliminary			
3(e)	Expand or restrict the definitions	51	Prescribes the definition of “Sydney metropolitan area” to update it to the correctly named local government areas.
4(1) and (2)	Expand or restrict the definition of “tow truck”	4	Prescribes multi deck car carriers that use lifting devices for raising and lowering the deck/s are not included within the definition of a “tow truck.”
5(2)	Expand or restrict the definition of what is a relevant position within the definition of a close associate	-	None prescribed.
6(3)	Allows for the creation of exemptions and subsequent provisions	26(2)(a)	Prescribes the deletion “scrap metal facility” and replace with “scrap metal business registered under with the Scrap Metal Industry Act 2016.”
		26(2)(d), (2)(h), (2)(l) & 27(2)	Prescribes all clauses consistently use the term either “on request” when responding to an authorised officer or police officer.
		26 (2)(m)(iii) (C)	Prescribes the inclusion of “Vehicle Identification number (VIN)” as a relevant record item.
		26(2)(v)	Prescribes that scrap metal operators must also have appropriate equipment in their tow truck for the clean-up of debris. This is consistent with the tow truck equipment required under the authority of a licence in clause 83.
		27	Prescribes an additional subclause that a person must produce an exemption authority when, “using or operating, or assisting in the use or operation of, a licensed tow truck on a road or road related area at any time.”
		34	Prescribes the clause heading is updated to: “Provision of signs for additional exempted tow truck.”

		35	Prescribes that the person who holds an exemption authority must return it within 14 days if the authority is revoked or expired.
		36	Prescribes the clause heading is updated to: "Register of exemption authority holders."
		94	Prescribes that motor vehicles used to tow recreational vehicles are exempt from having to apply for a license when they transport vehicles to or from: <ul style="list-style-type: none"> • trade shows • suppliers or manufacturers • business premises • specialist repairers.
		95	Prescribes that a licensed mechanic is exempt from the tow truck requirements relating to drivers certificates: <ul style="list-style-type: none"> • when inspecting or assessing a tow truck to determine the nature and extent of repair work or • assessing a tow truck for safety purposes or road worthiness • within 5 kilometres of their licensed business premises (consistent with the <i>Motor Dealers and Repairers Act 2013</i>) • the licensed mechanic must not perform an inspection or assessment at the scene of an accident • must carry and produce their tradespersons certificate to an authorised officer on request.
		96	Prescribes that a certified driver is exempt from automatic revocation if their driver's license is suspended due to medical reasons. Allows for the tow truck driver's licence to be suspended until they are medically fit to drive.
		97	Prescribes that a certified driver is exempt from automatic revocation due to the expiry of their drivers licence. This means the tow truck driver's licence is suspended until their licence has been renewed.
6A	Establishes motor vehicle or class of motor vehicle that the Act does not apply	-	Proposes to add additional motor vehicle or class of motor vehicle that the Act does not apply.

Part 2			
8-14 (Repealed)			
Part 3 Tow truck operators licences and drivers certificates			
17(2)	Establish particulars within a license application	-	None prescribed.
18 (4)	Establishes additional mandatory or discretionary grounds for license application refusals	3, 7 and 16	Prescribes the penalty triggers in clause 7 and 16 to be removed as well as the definition of imprisonment in clause 3.
		7(e)(f) (j) - (m) & 16 (e)(f) (j)-(m)	Prescribes that clauses 7 and 16 should include the following offences: <ul style="list-style-type: none"> - consorting with convicted offenders – s 93X <i>Crimes Act 1900</i> - contravene serious crime prevention order – s 8 <i>Crimes (Serious Crime Prevention Orders) Act 2016</i> - contravene public safety order – s 87ZA <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> - contravene firearms prohibition order – s 74 <i>Firearms Act 1996</i> - car or boat rebirthing – s154G of the <i>Crimes Act 1900</i> - dealing with property suspected of being proceeds of crime – s193C of the <i>Crimes Act 1900</i>.
		9(b)	Prescribes an additional ground for refusing a licence application includes if the applicant is subject to: <ul style="list-style-type: none"> - a firearms prohibition order under the <i>Firearms Act 1996</i> - a weapons prohibition order under the <i>Weapons Prohibition Act 1998</i> a serious crime prevention order under the <i>Crimes (Serious Crime Prevention Orders) Act 2016</i> .
		9(c)	Prescribes an additional ground for refusing an application includes if the applicant has not obtained the relevant approval for use of a specified place as a holding yard for their business.
9(d)	Prescribes an additional ground for refusing a licence, to include disciplinary action taken against an applicant in relation to their failure to abide by		

			the holding yard requirements in Part 4 of the Regulation.
		18(3)	Prescribes that an application must be refused if their drivers' licence has been disqualified, suspended or cancelled by a corresponding law of another state.
		18(4)	Prescribes the definition of corresponding law to mean a law of another State or a Territory that makes provisions with respect to driver licensing.
20(2)(1)	Create license conditions	-	None prescribed.
25(2)	Establish particulars to be included in an application for a drivers certificate	-	None prescribed.
26(2)	Provide additional mandatory or discretionary grounds for refusing the granting of an application for a drivers certificate.	-	None prescribed.
28(2)	Establish particulars to be included in the drivers certificate	-	None prescribed.
29(2)	Create conditions of drivers certificate	-	None prescribed.
42(1)	Establish grounds for taking disciplinary action	-	None prescribed.
Part 4 Regulation of tow truck industry and towing operations			
49(2) and (4)	Establishes circumstances when a towing authorisation is required and circumstances when a towing authorisation is not required.	-	None prescribed
		41(a)(iv)	Prescribes the removal of the words "a place" with "an address."
		41(a)(v)	Prescribes that a person who obtains a towing authorisation must ensure that the authorisation specifies an alternate address where the motor vehicle will be towed to if the original address is not accessible.

		42(2)	Prescribes that a person, must not, induce another person to sign a towing authorisation by making a false or misleading statement.
		43(1)	<p>Prescribes that the tow truck driver must complete the quotation for towing services form and provide it the motorist. Prescribes that the tow truck driver must complete the quotation for towing services form and provide it the motorist.</p> <p>Prescribes that the tow truck driver must explain the rights of the owner/driver of a towed vehicle to:</p> <ul style="list-style-type: none"> - decide where the vehicle will be towed - decide who will tow the vehicle - contact anyone prior to signing the form for their assistance on the right place to tow the vehicle - refuse to accept a tow for any reason - receive a completed and signed copy of the written towing authorisation form containing contact details for the tow truck operator who will be towing the vehicle and a completed quotation for towing and storage services.
		43(4)	Prescribes a new sub-clause which includes the element of attaching the towing authorisation to the motor vehicle.
54	Create regulation with respect to fees that can be charged by a licensee or certified driver for towing work.	52(d)	Prescribes the charging of a fee of 0.6 units for each hour or part of an hour for cleaning glass or debris at the scene of an accident for light vehicle accidents in non-metro areas on roads with a speed limit greater than 80 km per hour.
		52 - 54	Prescribes changes to the clauses to indicate that in the Sydney metropolitan area, an after-hours surcharge should apply to light vehicles outside the hours of 7am to 7pm on business days, and this surcharge should be a maximum of 25 percent.
		57(b)	Prescribes the removal of the reference to "manufacturer" to be consistent with section 4 of the <i>Road Transport Act 2013</i> .
		58(e)	Prescribes the charging of a fee of 0.6 units for each hour or part of an hour for cleaning glass or debris at the scene of an accident for heavy vehicle tow operators.
		62	Prescribes a consistent fee should apply to both accident towing and stolen vehicles salvage as the type of work is similar.

		78(a)	Prescribes the charging of debris in certain circumstances.
		78(j)	Allows for the charging of fees about salvage in certain circumstances.
		Part 5 Fees for towing, salvage, storage and related services	Minor text changes. For example, “can” has become “may” and “cannot” has become “must not”, in line with current NSW drafting practice.
		Schedule 2	Prescribes the base year calculation rate for Consumer Price Index (CPI) has been changed from March 2018 to March 2017.
55	Regulate or make provisions with respect to the design, construction and equipment of tow trucks	83	Prescribes an amendment to the tow truck equipment provisions to: <ul style="list-style-type: none"> – ensure warning lights and mounted lights are maintained in good working order – equipment and tools to enable the efficient removal of accident debris – a fire extinguisher that is maintained in serviceable condition removal of the definition of broom and shovel.
56	Describe a class of prohibited tow trucks	-	None prescribed.
61(3)	Prescribes the nature of an inducement in consideration of the obtaining, personally or for another person, of the towing of a motor vehicle that has been involved in an accident of that otherwise requires towing	-	None prescribed.
Part 5 Enforcement and procedural provisions			
82	Establish any matter relating to the inspection of tow trucks	-	None prescribed.
89(2) and (4)	Regulate with respect to a penalty notice offence and	50	See Appendix 5 – proposed penalty amendments.

	the amount payable under a penalty notice		
Part 6 Miscellaneous provisions			
105(2) (a)	Create regulation with respect to licenses and drivers certificates	3	Prescribes the “protective clothing policy” means the document titled <i>Tow Truck Industry Protective Clothing Policy</i> made available on a publicly available website maintained by the Department, as in force from time to time.
		5 & 28	Prescribes that information related to any alias by which a person was known is relevant information in a licence application and an application for an exemption authority.
		5(g)(ii)	Prescribes that an applicant must obtain relevant proof for the use of a holding yard in carrying out their business.
		5 (i)	Prescribes a requirement that the applicant disclose whether they have been convicted of an offence under the Regulation.
		6	Prescribes the clause heading is updated to: “Licence application fee.”
		11(a)	Prescribes that it is a licence condition that each driver complies with the protective clothing policy.
		14(f)	Prescribes a tow truck driver must disclose in their drivers certificate application whether or not they have been convicted of an offence.
		15	Prescribes the clause heading is updated to: “Drivers certificate application fee.”
		16(2)	Prescribes the reference to a “close associate” is omitted.
		18	Prescribes the clause heading is updated to: “Additional mandatory grounds for refusing drivers certificate application.”
		19(c)	Prescribes that replacement certificates are allowed to be issued endorsed with “R” on the certificate.
		20(a)	Prescribes that it is a condition of a drivers certificate that the certified driver must comply with the protective clothing policy.
22	Prescribes the clause heading is updated to:		

			"Variation of licence or drivers certificate conditions."
		23	Prescribes the clause heading is updated to: "Refund of fee if licence or drivers certificate voluntarily surrendered."
		44(4), 45(2)(b), 87(5) & 89(4)(b)	Prescribes all clauses consistently use the term "on request" when responding to an authorised officer or police officer.
		85	Prescribes the clause heading is updated to: "Lost or stolen licences and drivers certificates."
105(2)(b)	Creates provisions in relation to the use and operation of tow trucks	-	None prescribed.
105(2)(c)	Creates provisions in relation to the advertising of the business of any tow truck operator	-	None prescribed.
105(2)(d)	Regulate with respect to holding yards	43(3)(e)	Prescribes that vehicles towed to a holding yard with a towing authorisation must show the full holding yard address.
		43(6)	Prescribes that a tow truck driver must not sign up more than one motor vehicle from an accident prior to completing and towing the initial vehicle.
		46	Prescribes that a holding yard of the licensee must have a closed-circuit television system installed and/or a monitored security alarm system installed.
		48(2)	Prescribes a separate holding yard register must be kept for each holding yard listed on a licence.
		48(3)(d)	Prescribes that the holding yard register must contain a copy of a written authorisation for the release of a motor vehicle from the holding yard.
		48(3)(e)	Prescribes that the movement of vehicles between approved holding yards of a licensee must be recorded in the holding yard register.
		48(3)(f)	the holding yard register must also contain a vehicle's VIN if there is no registration number.
		48(4)	Prescribes that a holding yard register is to be completed within 24 hours after each occasion on

			which each motor vehicle is towed into and out of the holding yard.
		49(1)(a)	Prescribes that the exemption to the requirement for a holding yard only applies when a tow truck is used with a gross combination mass of 25 tonnes or more for the purpose of towing heavy motor vehicles.
		77	Prescribes that a separate fee must not be charged for moving a motor vehicle between approved holding yards of a licensee.
105(2)(e)	Regulate with respect to the making and keeping of records by tow truck operators and drivers	87(1)(c) (ii)	Prescribes the licensee must also record the make, model and colour of the vehicle and if there is no registration number - the vehicles Vehicle Identification Number (VIN).
105(2)(f)	Regulate with respect to the display of signs by tow truck operators and drivers	-	None prescribed.
105(2)(g)	Regulate with respect to the particulars to be displayed on tow trucks	-	None prescribed.
105(2)(h)	Create regulation with respect to licenses and drivers certificates	25	Prescribes that the clause heading is updated to: "Requirement to notify the Secretary."
		25	Prescribes that a licence or driver certificate holder must notify the Secretary in writing within 14 days if they have been convicted or found guilty of an offence listed under clauses 7 and 16.
		25	Prescribes the removal of the word "practicable" and change this to "14 days."
105(2)(j)	Regulate with respect to the conduct and duties of those who use tow trucks	86	Prescribes that the clause heading is updated to: "Conduct and duties."
		86(1)(d)	Prescribes that a certified driver, licensee, an operator holding an exemption authority and a person employed by an operator holding an exemption authority must all comply with the conduct and duties.
		86(2)	Prescribes all persons to whom this clause applies to must behave in an orderly manner and with civility and propriety at any time in the conduct of towing work or towing operations.
		86(2)(c)	Prescribes that a person to whom this clause applies must also comply with any reasonable

			requirement made of the person by a member of staff of the Ambulance Service of NSW (within the meaning of section 67A of the <i>Health Services Act 1997</i>), who is attending the scene of an accident.
105(2)(n)	Regulate with respect to the disposal of unclaimed motor vehicles in the care or custody of tow truck operators	90(1)(a) & 90(8)	Prescribes a vehicle can be disposed of according to the requirements of the clause if they have a value of less than "\$3,000."
		90(2)	Prescribes the licensee may, after 14 days, begin the process of disposing of a vehicle with a value of less than \$3,000.
105(3)	Create new offences	43	See Appendix 5 – proposed penalty amendments.

Table 3: Regulation making powers of the Act and scope of the proposed Regulation

Appendix 4: Summary of the proposed changes to the Regulation

Existing clause	Proposed change to clause	Reason for the change
3 – Definitions	3 – Now includes a definition of the “protective clothing policy” which means the document titled <i>Tow Truck Industry Protective Clothing Policy</i> made available on a publicly available website maintained by the Department, as in force from time to time.	Provide greater clarity within the Regulation.
3 – Definitions	3 – Removes the definition of imprisonment.	Removes inconsistent penalty between the Act and Regulation.
4 – Meaning of “tow” and “tow truck”	4 – Multi deck car carriers that use lifting devices for raising and lowering the deck/s are not included within the definition of a “tow truck.”	Updating relevant exemptions where they do not represent a risk to the consumer or industry.
5 – Particulars to be included in licence applications	5 (b), (c) & (e)– Information related to any alias by which a person was known is relevant information in a licence application.	Include all relevant information is included in a licence application.
5 – Particulars to be included in licence applications	5(g)(ii) – An applicant must have proof that they have approval for the use of a holding yard in carrying out their business.	Ensure holding yards are kept safe and secure.
5 – Particulars to be included in licence applications	5(i) – The applicant must disclose in their licence application whether they have been convicted of an offence under the Regulation.	To prevent compliance issues.
6 – Application for licence	6 – The clause heading is updated to: “Licence application fee”	Improves readability.
7 – Offences that disqualify applicants for licences	7 (e) (f) (j) - (m) – The penalty trigger has been removed.	To remove an inconsistency and rely on the penalty provisions in section 18(2)(b) and (3)(i) of the Act.
7 – Offences that disqualify applicants for licences	7 – The clause should include the following offences: <ul style="list-style-type: none"> – consorting with convicted offenders – s 93X <i>Crimes Act 1900</i> – contravene serious crime prevention order – s 8 <i>Crimes (Serious Crime Prevention Orders) Act 2016</i> – contravene public safety order – s 87ZA <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> – contravene firearms prohibition order – s 74 <i>Firearms Act 1996</i> – car or boat rebirthing – s154G of the <i>Crimes Act 1900</i> 	

	<ul style="list-style-type: none"> - dealing with property suspected of being proceeds of crime – s193C of the <i>Crimes Act 1900</i>. 	
9 – Additional grounds for refusing licence application	<p>9(b) – An additional ground for refusing a licence application includes if the applicant is subject to:</p> <ul style="list-style-type: none"> - a firearms prohibition order under the <i>Firearms Act 1996</i> - a weapons prohibition order under the <i>Weapons Prohibition Act 1998</i> - a serious crime prevention order under the <i>Crimes (Serious Crime Prevention Orders) Act 2016</i>. 	To reduce risk to public safety during the licence application process.
9 – Additional grounds for refusing licence application	<p>9(c) – An additional ground for refusing an application includes if the applicant has not obtained the necessary approval for use of a specified place as a holding yard for their business.</p>	To ensure that tow truck operators have a safe and secure holding yard to store motor vehicles.
9 – Additional grounds for refusing licence application	<p>9(d) – Prescribes an additional ground for refusing a licence, to include disciplinary action taken against an applicant in relation to their failure to abide by the holding yard requirements in Part 4 of the Regulation.</p>	To ensure that tow truck operators have a safe and secure holding yard to store motor vehicles.
11 – Licence conditions	<p>11(a) - (f) – Removes requirement to read and keep a signed “approved summary of the Act and Regulation.”</p>	Removes unnecessary red tape. Important information about the Regulation of the industry will be on the Fair Trading website.
11 – Licence conditions	<p>11(a) – Prescribes that it is a licence condition that each driver complies with the protective clothing policy.</p>	To align with current industry standards and expectations and improve clarity.
14 – Particulars to be included in drivers certificate applications	<p>14(f) – A tow truck driver must disclose in their drivers certificate application whether or not they have been convicted of an offence.</p>	To increase consumer protection.
15 – Application for drivers certificate	<p>15 – The clause heading is updated to: “Drivers certificate application fee”</p>	Improves clarity.
16 – Offences that disqualify applicants for drivers certificates	<p>16(2) – The reference to a “close associate” is omitted.</p>	The definition of a “close associate” is not applicable to a tow truck driver.
16 – Offences that disqualify applicants for drivers certificates	<p>16 (e) (f) (j) - (m) – The clause should include the following offences:</p> <ul style="list-style-type: none"> - consorting with convicted offenders – s 93X <i>Crimes Act 1900</i> - contravene serious crime prevention order – s 8 <i>Crimes (Serious Crime Prevention Orders) Act 2016</i> 	To increase consumer protection.

	<ul style="list-style-type: none"> – contravene public safety order – s 87ZA <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> – contravene firearms prohibition order – s 74 <i>Firearms Act 1996</i> – car or boat rebirthing – s154G of the <i>Crimes Act 1900</i> – dealing with property suspected of being proceeds of crime – s193C of the <i>Crimes Act 1900</i>. 	
16 – Offences that disqualify applicants for drivers certificates	16 – The penalty trigger in clause 16 is deleted.	To remove an inconsistency and rely on the penalty provisions in section 26(2)(b) of the Act.
18 – Additional grounds for refusing application for drivers certificate	18 – The clause heading is updated to: “Additional mandatory grounds for refusing drivers certificate application.”	Improves clarity.
18 – Additional grounds for refusing application for drivers certificate	18(3) – An application must be refused if their drivers’ licence has been disqualified, suspended or cancelled by a corresponding law of another state.	To ensure consistency between jurisdictions.
18 – Additional grounds for refusing application for drivers certificate	18(4) – The definition of corresponding law to mean a law of another State or a Territory that makes provisions with respect to driver licensing.	To ensure consistency between jurisdictions.
19 – Particulars on drivers certificate	19(c) – Replacement certificates are allowed to be issued endorsed with “R” on the certificate.	To align with existing industry best practice.
20 – Conditions of drivers certificate	20(a) – It is a condition of a drivers certificate that the certified driver must comply with the protective clothing policy.	To align with current industry standards and expectations and improve clarity.
22 – Variation of licence conditions	22 – Prescribes the clause heading is updated to: “Variation of licence or drivers certificate conditions.”	Improves clarity.
23 – Refund of fees if licence or drivers certificate voluntarily surrendered	23 – Prescribes the clause heading is updated to: “Refund of fee if licence or drivers certificate voluntarily surrendered.”	Improves clarity.
25 – Furnishing of information	25 – The clause heading is updated to: “Requirement to notify the Secretary.”	Improves clarity.
25 – Furnishing of information	25 – The removal of the word “practicable” and change this to “14 days.”	To remove uncertainty within the Regulation and better align with other NSW licensing requirements.
25 – Furnishing of information	25 – a licence or driver certificate holder must notify the Secretary in writing within 14 days if	To improve compliance.

	they have been convicted or found guilty of an offence listed under clauses 7 and 16.	
25A – Exemption from requirement to hold a licence	26(2)(a) – The words “scrap metal facility” are deleted and replaced with “scrap metal business registered under with the Scrap Metal Industry Act 2016.”	Ensure consistency with the <i>Scrap Metal Industry Act 2016</i> .
25A – Exemption from requirement to hold a licence	26(2)(m)(iii)(C) – The inclusion of “Vehicle Identification number (VIN)” as a relevant record item.	To ensure that the Regulation aligns with current best practice.
25A – Exemption from requirement to hold a licence	26(2)(v) – Scrap metal operators must also have appropriate equipment in their tow truck. This is consistent with the tow truck equipment required under the authority of a licence in clause 83.	To ensure those operating under an exemption still have the appropriate equipment in their vehicle.
25B – Exemption from requirement to hold a drivers certificate	27(2) – A person must produce an exemption authority when, “using or operating, or assisting in the use or operation of, a licensed tow truck on a road or road related area at any time.”	To be consistent with the requirements under s 70 of the Act.
25C – Application for exemption authority	28 – Including information relating to any alias by which a person was known is relevant information in an application for an exemption authority.	To provide all relevant information for compliance and licensing purposes and to be consistent across the legislation.
25I – Proposed additional tow truck to be provided with additional signs	34 – The clause heading is updated to: “Provision of signs for additional exempted tow truck.”	Improves clarity.
25J – Requirement to return exemption authority	35 – The person who holds an exemption authority must return it within 14 days if the authority is revoked or expired.	To remove uncertainty within the Regulation and better align with other NSW licensing requirements.
25K – Register of holders of exemption authority	36 – The clause heading is updated to: “Register of exemption authority holders.”	Improves clarity.
30 – Completion of, and dealing with, towing authorisations	41(a)(iv) – The words “a place” with are replaced with “an address.”	To remove uncertainty within the Regulation.
30 – Completion of, and dealing with, towing authorisations	41(a)(v) – A person who obtains a towing authorisation must ensure that the authorisation specifies an alternate address where the motor vehicle will be towed to if the original address is not accessible.	To increase consumer protection and ensure the consumer is aware of their rights.
31 – False information in towing authorisations	42(2) – That a person, must not, induce another person to sign a towing authorisation by making a false or misleading statement.	To provide a more modern compliance regime targeting fraud and corruption.
32 – Other requirements relating to towing authorisations	43(1) – The tow truck driver must complete the quotation for towing services form and provide it the motorist.	To increase consumer protection and ensure the consumer is aware of their rights.

	<p>The tow truck driver must explain the rights of the owner/driver of a towed vehicle to:</p> <ul style="list-style-type: none"> – decide where the vehicle will be towed – decide who will tow the vehicle – contact anyone prior to signing the form for their assistance on the right place to tow the vehicle – refuse to accept a tow for any reason – receive a completed and signed copy of the written towing authorisation form containing contact details for the tow truck operator who will be towing the vehicle and a completed quotation for towing and storage services. 	
32 – Other requirements relating to towing authorisations	43(3)(e) – Vehicles towed to a holding yard with a towing authorisation must show the full holding yard address.	To increase consumer protection and ensure that the consumer has all relevant information.
32 – Other requirements relating to towing authorisations	43(4) & (5) – Splitting the clause to create a new sub-clause with the element of attaching the towing authorisation to the motor vehicle.	For compliance purposes and to increase consumer protection.
32 – Other requirements relating to towing authorisations	43(6) – A tow truck driver must not sign up more than one motor vehicle from an accident prior to completing and towing the initial vehicle.	For compliance purposes and to increase consumer protection.
33 – Towing authorisation books	44(4) – Change the term “on demand to “on request” to use a consistent term throughout the Regulation.	To use consistent terms within the Regulation.
34 – Keeping and production of towing authorisations	45(2)(b) – Change the term “on demand to “on request” to use a consistent term throughout the Regulation.	To use consistent terms within the Regulation.
35 – Location of holding yards	35 – This clause has been deleted as it is repetitive and is already contained under section 20(2) (c1) of the Act.	Removes unnecessary red tape.
36 – Security requirements	46 – A holding yard of the licensee must have a closed-circuit television system installed and/or a monitored security alarm system installed.	To ensure the safe and secure storage of motor vehicles.
37 – Storage capacity	37 – This clause has been deleted.	Removes unnecessary red tape.
39 – Holding yard register	48(2) – A separate holding yard register must be kept for each holding yard listed on a licence.	To improve compliance and good record keeping practices.
39 – Holding yard register	48(3)(d) – The holding yard register must contain a copy of a written authorisation for the release of a motor vehicle from the holding yard.	To improve compliance and good record keeping practices.

39 – Holding yard register	48(3)(e) – The movement of vehicles between approved holding yards of a licensee must be recorded in the holding yard register.	To improve compliance and good record keeping practices.
39 – Holding yard register	48(3)(f) – the holding yard register must also contain a vehicle’s VIN if there is no registration number.	To improve compliance and good record keeping practices.
39 – Holding yard register	48(4) – A holding yard register is to be completed within 24 hours after each occasion on which each motor vehicle is towed into and out of the holding yard.	To improve compliance and good record keeping practices.
40 – Certain operators not required to maintain a holding yard	49(1)(a) – The exemption to the requirement for a holding yard only applies when towing a gross combination mass of 25 tonnes or more for the purpose of towing heavy motor vehicles.	To improve compliance and ensure the clause is operated for its intended purpose.
40C – Maximum fees for accident towing work involving light motor vehicles	52 – In the Sydney metropolitan areas, an after-hours surcharge should apply to light vehicles outside the hours of 7am to 7pm on business days, and this surcharge should be a maximum of 25 percent.	To streamline fee structures to reflect peak accident times.
40C – Maximum fees for accident towing work involving light motor vehicles	52(d) – Allows the charging of a fee of 0.6 units for each hour or part of an hour for cleaning glass or debris at the scene of an accident for light vehicle accidents in non-metro areas on roads with a speed limit greater than 80 km per hour.	To remove red tape and streamline fee structures.
40D – Maximum fees for recovery towing work involving light motor vehicles	53 – In the Sydney metropolitan area, an after-hours surcharge should apply to light vehicles outside the hours of 7am to 7pm on business days, and this surcharge should be a maximum of 25 percent.	To streamline fee structures to reflect peak accident times.
40E – Maximum fees for subsequent tows of light motor vehicles	54 – In the Sydney metropolitan area, an after-hours surcharge should apply to light vehicles outside the hours of 7am to 7pm on business days, and this surcharge should be a maximum of 25 percent.	To streamline fee structures to reflect peak accident times.
40F – Fee cannot be charged for complying with police directions	55 – The clause heading is updated to: “Fee must not be charged with complying with police directions”	Improves clarity.
40G – Fee cannot be charged for time spent waiting	56 – The clause heading is updated to: “Fee must not be charged for time spent waiting”	Improves clarity.

40H – Limitation on trucks that can charge for towing work involving heavy motor vehicles	57(b) – The reference to “manufacturer” is removed.	Changed to be consistent with section 4 of the <i>Road Transport Act 2013</i> .
40I – Maximum fees for accident towing work involving heavy vehicles	58(e) – Allows the charging of a fee of 0.6 units for each hour or part of an hour for cleaning glass or debris at the scene of an accident for heavy vehicle tow operators.	To remove red tape and streamline fee structures.
40L – Fee cannot be charged for complying with police directions	40L – This clause has been deleted as the proposed Regulation intends to allow heavy vehicle tow operators and light vehicle accidents in non-metro areas on roads with a speed limit greater than 80 km per hour, to charge a fee unit of 0.6 per hour or part of an hour for the clean-up of debris.	Removes inconsistency and unnecessary red tape.
40M – Fees cannot be charged for certain salvage	61 – The clause heading is updated to: “Fee must not be charged for certain salvage”	Improves clarity.
40N – Maximum fees for certain salvage of light motor vehicles	62 – A consistent fee should apply to both accident towing and stolen vehicles salvage as the type of work is similar.	To streamline fee structures.
40V – Fee cannot be charged for relocation of a motor vehicle	69 – The clause heading is updated to: “Fee must not be charged for relocation of a motor vehicle”	Improves clarity.
40X – Procedure required before storage fees can be charged	71 – The clause heading is updated to: “Procedure required before storage fees may be charged”	Improves clarity.
40ZC – Separate fee cannot be charged for fuel	76 – The clause heading is updated to: “Separate fee must not be charged for fuel”	Improves clarity.
New	77 – Separate fee must not be charged for moving vehicles between holding yards	Improve compliance and increase consumer protection.
40ZD – Services that cannot be charged for separately	78 – The clause heading is updated to: “Services that must not be charged for separately”	Improves clarity.
40ZD – Services that must not be charged for separately	78(a) – Allows for the charging of debris in certain circumstances.	To remove red tape and streamline fee structures.
40ZD – Services that must not be charged for separately	78(j) – Allows for the charging of fees about salvage in certain circumstances.	To remove inconsistency within the Regulation

43 – Lost or stolen etc licences and drivers certificates	82 – The clause heading is updated to: “Lost or stolen licences and drivers certificates.”	Improves clarity.
44 – Tow truck equipment	83 – Changes the tow truck equipment provisions to: <ul style="list-style-type: none"> – ensure warning lights and mounted lights are maintained in good working order – equipment and tools to enable the efficient removal of accident debris – a fire extinguisher that is maintained in serviceable condition – remove the definition of broom and shovel. 	To ensure tow trucks have the appropriate equipment in their tow truck for the clean up of debris at the scene of an accident.
45 – Particulars to be displayed on tow trucks	45 – This clause has been deleted.	To remove unnecessary red tape.
48 – Conduct and duties of tow truck drivers	86 – The clause heading is updated to: “Conduct and duties.”	Improves clarity.
48 – Conduct and duties of tow truck drivers	86 – A certified driver, licensee, an operator holding an exemption authority and a person employed by an operator holding an exemption authority must all comply with the conduct and duties.	To ensure consistency across the Regulation and increase consumer protection.
48 – Conduct and duties of tow truck drivers	86(2) – All persons to whom this clause applies to must behave in an orderly manner and with civility and propriety at any time in the conduct of towing work or towing operations.	To increase consumer protection.
48 – Conduct and duties of tow truck drivers	86(2)(c) – A person to whom this clause applies must also comply with any reasonable requirement made of the person by a member of staff of the Ambulance Service of NSW (within the meaning of section 67A of the <i>Health Services Act 1997</i>), who is attending the scene of an accident.	To update the provision and provide consistency with existing legislation.
49 – Licensee required to keep certain records of non-accident towing work	87(1)(c) (ii) – The licensee must also record the make, model and colour of the vehicle and if there is no registration number - the vehicles Vehicle Identification Number (VIN).	To improve compliance.
49 – Licensee required to keep certain records of non-accident towing work	87(5) – Change the term “on demand to “on request” to use a consistent term throughout the Regulation.	To use consistent terms within the Regulation.

51 – Invoices	89(4)(b) – Change the term “on demand to “on request” to use a consistent term throughout the Regulation.	To use consistent terms within the Regulation.
52 – Disposal of unclaimed motor vehicles	90(1)(a) – A vehicle can be disposed of according to the requirements of the clause if they have a value of less than “\$3,000.”	To reduce red tape while still maintaining strong consumer protection.
52 – Disposal of unclaimed motor vehicles	90(2) – The licensee may, after 14 days, begin the process of disposing of a vehicle with a value of less than \$3,000.	To reduce red tape while still maintaining strong consumer protection.
52 – Disposal of unclaimed motor vehicles	90(8) – A vehicle can be disposed of according to the requirements of the clause if they have a value of less than “\$3,000.”	To reduce red tape while still maintaining strong consumer protection.
New	<p>94 – Motor vehicles used to tow recreational vehicles are exempt from having to apply for a license when they transport vehicles to or from:</p> <ul style="list-style-type: none"> • trade shows • suppliers or manufacturers • business premises • specialist repairers. <p>Recreational vehicle includes motor homes, campervans, caravans, camper trailers and tent trailers.</p>	Updating relevant exemptions where they do not represent a risk to the consumer or industry.
New	<p>95 – A licensed mechanic is exempt from the tow truck requirements relating to drivers certificates:</p> <ul style="list-style-type: none"> • when inspecting or assessing a tow truck to determine the nature and extent of repair work • assessing a tow truck for safety purposes or road worthiness • within 5 kilometres of their licensed business premises (consistent with the <i>Motor Dealers and Repairers Act 2013</i>) • the licensed mechanic must not perform an inspection or assessment at the scene of an accident • must carry and produce their tradespersons certificate to an authorised officer on request. 	Updating relevant exemptions where they do not represent a risk to the consumer or industry.
New	96 – A certified driver is exempt from automatic revocation if their driver’s license is suspended due to medical reasons. Allows for the tow truck driver’s licence to be suspended until they are medically fit to drive.	Updating relevant exemptions where they do not represent a risk to the consumer or industry.

New	97 – A certified driver is exempt from automatic revocation due to the expiry of their drivers licence. This means the tow truck driver's licence is suspended until their licence has been renewed.	Updating relevant exemptions where they do not represent a risk to the consumer or industry.
Schedule 2 – Adjustment of fees for inflation	Schedule 2 – The base year calculation rate for Consumer Price Index (CPI) has been changed from March 2018 to March 2017.	To ensure consistency with the fee unit used across the Department of Customer Service portfolio.

Table 4: Summary of the proposed changes in the Regulation

Appendix5: List of stakeholders

The following key stakeholders have been provided with a copy of the proposed Regulation and this RIS:

- Allianz Australia Insurance Ltd (Allianz)
- Australian Automobile Association
- Combined Towing Service (NSW) Pty Ltd
- Caravan & Camping Industry Association NSW (CCIA)
- Choice
- Farronato Bros Pty Limited
- G. L. & R. Adams Pty Ltd t/as Adams Towing
- Hunt Holdings (NSW) Pty Ltd t/as GRS Towing
- Hire and Rental Industry Association
- Insurance Council of Australia
- Insurance Australia Group (IAG)
- Law Society of New South Wales
- LLH Investments Pty Ltd
- Local Government NSW
- Manusful Pty Ltd t/as Kevin Waters & Son
- Michael Schumak t/as Maroubra Smash Repair & Towing
- Motor Traders Association of NSW
- National Road Transport Association (NatRoad)
- National Transport Insurance
- Nationwide Towing & Transport Pty Ltd
- National Roads and Motorists' Association (NRMA)
- North Shore & City Towing Pty Ltd
- NSW Police
- Department of Justice
- Retriever Towing (Sydney) Pty Ltd
- Roads and Maritime Services
- Suncorp Insurance
- More than 3,000 tow truck drivers (this number is subject to change)
- More than 900 tow truck operators (this number is subject to change)

Appendix 6: Proposed penalty amendments

Tow Truck Industry Regulation 2008 Remake - penalties						
Old Clause	New Clause	Clause title	Current Offence provision	Current Penalty Units	Current PIN \$	Proposed change
Part 1 Preliminary						
N/A						
Part 2 Licenses and drivers certificates						
25	25	Requirement to notify Secretary	Yes	5	110	Increase PIN \$110 to \$440. Increase penalty unit from 5 to 20.
25A	26(3)	Exemption from requirement to hold a licence	Yes	25	None	New PIN \$550.
25A	26(4)	Exemption from requirement to hold a licence	Yes	25	None	New PIN \$550.
Part 3 Towing authorisations						
30(b)	41(b)	Completion of, and dealing with, towing authorisations	No			New PIN \$550. New penalty unit of 25.
31	42(1)	False information in towing authorisations	Yes	20	None	Increase penalty units from 20 to 50.
31	42(2) (new sub-clause)	False information in towing authorisations	No			New penalty unit of 50.
N/A.	43(4) (new sub-clause)	Other requirements relating to towing authorisations	No			New PIN \$1,100. New penalty unit of 50.

Tow Truck Industry Regulation 2008 Remake - penalties						
Old Clause	New Clause	Clause title	Current Offence provision	Current Penalty Units	Current PIN \$	Proposed change
N/A	43(6) (new sub-clause)	Other requirements relating to towing authorisations	No			New PIN \$1,100 New penalty unit of 50
34 (1)	45 (1)	Keeping and production of towing authorisations	Yes	5	\$110	Increase PIN \$110 to \$220 Increase penalty unit from 5 to 10.
Part 4 Holding yards						
36 (1) & (3)	46(1) & (3)	Security requirements	Yes	5	None	New PIN \$550. Increase penalty unit from 5 to 25.
Part 5 Fees for towing, salvage, storage and related services						
40W	70	Sign must warn customers about storage fees	Yes	10	None	New PIN \$220.
Part 6 Other offences and requirements						
43 (a)	82 (a)	Lost or stolen licences and drivers certificates	Yes	5	110	Increase PIN \$110 to \$220. Increase penalty unit from 5 to 10.
46 (7)	84 (7)	Inspection of tow trucks	Yes	10	220	Increase PIN \$220 to \$440. Increase penalty unit from 10 to 20.
47	85	Tow truck number-plates to be visible while towing	Yes	5	110	Increase PIN \$110 to \$220. Increase penalty unit from 5 to 10.

Tow Truck Industry Regulation 2008 Remake - penalties

Old Clause	New Clause	Clause title	Current Offence provision	Current Penalty Units	Current PIN \$	Proposed change
48 (1) (a)	86(1)(a)	Conduct and duties	Yes	25	550	Increase PIN \$550 to \$1,110. Increase penalty unit from 25 to 50.
48 (1) (b)	86 (1)(b)	Conduct and duties	Yes	50	550	Increase PIN \$550 to \$1110.
48 (1) (c)	86 (1)(c)	Conduct and duties	Yes	50	550	Increase PIN \$550 to \$1110.
48 (2)	86 (2) & (3)	Conduct and duties	Yes	10	None	New PIN \$550. Increase penalty unit from 10 to 25.
49	87	Licensee required to keep certain records of non-accident towing work	Yes	50	440	Increase PIN \$440 to \$1,110.
50 (3)	88 (3)	Records relating to charges	No			New PIN \$335. New penalty unit 15.
50 (4)	88 (4)	Records relating to charges	Yes	50	None	New PIN \$1,110.
51 (2)	89 (2)	Invoices	Yes	10		New PIN \$220.
51 (4)	89 (4)	Invoices	Yes	10		New PIN \$440. Increase penalty unit from 10 to 20.
52 (9)	90 (10)	Disposal of unclaimed motor vehicles	Yes	5	110	Increase PIN \$110 to \$220. Increase penalty unit from 5 to 10.

Tow Truck Industry Regulation 2008 Remake - penalties						
Old Clause	New Clause	Clause title	Current Offence provision	Current Penalty Units	Current PIN \$	Proposed change
Part 7 Miscellaneous provisions						
N/A.	95(2)(a)	Exemption from requirement to hold drivers certificate for mechanic in course of repairing a tow truck	No			New PIN \$1,100. New penalty unit of 50.
N/A.	95(2)(b)	Exemption from requirement to hold drivers certificate for mechanic in course of repairing a tow truck	No			New PIN \$335. New penalty unit of 15.

Table 5: Proposed penalty amendments to the Regulation

Appendix 6: IPART Recommendations – referenced in RIS

#	Recommendation
8	<p>Heavy vehicle tow truck operators should not be prohibited from charging reasonable fees for:</p> <ul style="list-style-type: none"> – cleaning up an accident vehicle’s load and debris – complying with directions from a police officer or authorised officer to move a vehicle, its load or its debris to the nearest place where it no longer causes an obstruction to traffic.
14	<p>For light vehicle accidents in non-metro areas on roads with a speed limit greater than 80 km per hour, light vehicle operators should be permitted to charge a fee of \$60 per hour for clean-up of debris and loads.</p>
15	<p>For light vehicle accidents in non-metro areas on roads with a speed limit less than or equal to 80 km per hour, light vehicle operators should not be permitted to charge a fee for clean-up of debris and loads.</p>
16	<p>For light vehicle accidents in all metro areas, light vehicle operators should not be permitted to charge a fee for clean-up of debris and loads.</p>
17	<p>In metropolitan areas, an after-hours surcharge should apply to light vehicles outside the hours of 7am to 7pm on business days, and this surcharge should be a maximum of 25%.</p>
18	<p>In non-metropolitan areas, an after-hours surcharge should apply to light vehicles outside the hours of 8am to 5pm on business days, and this surcharge should be a maximum of 20%.</p>
19	<p>The current requirement for operators to store light vehicles in holding yards that they own or lease and that can store a minimum of four cars should be removed.</p> <p>A new licence condition specified in the Act should require operators to:</p> <ul style="list-style-type: none"> – store vehicles in a location that is safe and secure, in accordance with a Storage Arrangements Policy issued by RMS (that will replace the current Holding Yard Policy) – take all reasonable precautions to prevent loss of or from, or damage to, any motor vehicle that is being towed or stored by, or on behalf of, the operator until such a time as it is returned to the owner or delivered to an agent authorised by the owner (e.g., insurer or designated smash repairer).
21	<p>The discretionary grounds for refusing a licence should have regard to an operator’s performance in storing vehicles.</p>
22	<p>Operators must specify their proposed storage locations as part of their operator’s licence application or renewal or notify RMS at any time if they change and are not permitted to store vehicles in any locations that have not been specified.</p>
23	<p>Metropolitan operators should be allowed to store light vehicles in any safe and secure location that is specified in their licence.</p>

69	<p><i>The Regulations should be amended so that an operator can lawfully dispose of an unclaimed vehicle that has a value of less than \$3,000 (at the time of disposal) 30 days after reasonable attempts have been made to notify the owner or an agent for the owner of the operator's intention to dispose of the vehicle.</i></p>
70	<p><i>A vehicle should be considered to be unclaimed, and the operator should be able to begin the process of disposing the unclaimed vehicle, when:</i></p> <ul style="list-style-type: none"> <i>– the vehicle has been held in storage by the operator for at least 14 days, and</i> <i>– the accrued storage fees have not been paid, and</i> <i>– the owner or an agent for the owner has not contacted the operator to arrange for delivery of the vehicle or for continued storage of the vehicle.</i>
88	<p><i>If a certified tow truck driver or assistant has his or her driver licence temporarily suspended, the driver's certificate or assistant's certificate should not be revoked unless the driver/assistant also does no longer meet the other requirements to hold the certificate.</i></p>
90	<p><i>When the driver licence suspension period ends, and if the person still meets all the requirements for the tow truck driver's certificate or assistant's certificate, the restrictions on the certificate should automatically be lifted, rather than requiring the person to re-apply for his/her certificate.</i></p>

Appendix 7: Discussion Questions

1. Do you think it is appropriate to exclude multi-deck car carriers from the definition of a tow truck?
2. Are there any other types of work that should be included or excluded from the definition of “tow” and “tow truck”?
3. Do you agree that an applicant must provide proof they have the relevant consent approval for the use of a holding yard? If so, why?
4. Do you agree that a tow truck drivers certificate should only be suspended and not revoked for medical reasons or for failure to renew a drivers licence? If so, why?
5. Do you think there are any other crimes that should prevent a licensee or driver certificate holder from holding a license? If so, why?
6. Are all of the offences listed in clauses 7 and 16 proportionate to the penalty of automatic revocation if convicted? If so, why?
7. Do you think any other information should be included in the towing authorisation form?
8. Are there any other rights of the owner/driver that should be included in the Regulation?
9. Is there anything else that should be included in the holding yard provisions to ensure the safety of vehicles?
10. Do you think a fee unit of 0.6 per hour is an appropriate amount for the clean-up of debris from a heavy vehicle accident or accidents in non-metropolitan areas? If so, why?
11. Do you think the tow truck equipment outlined in clause 83 is appropriate for the clean-up of debris? If so, why?
12. Do you think that scrap metal operators should be required to keep clean-up equipment in their tow truck? If so, why?
13. Do you think that the amount of \$3,000 is an appropriate amount for the disposal of unclaimed vehicles? If so, why?
14. Do you agree with the proposal to reduce the number of days from 28 days to 14 for the disposal of an unclaimed motor vehicle, after reasonable attempts have been made to locate the owner? If so, why?
15. Do you agree that those who tow recreational vehicles should be exempt from the requirement to be licensed under the Regulation? If so, why?
16. Do you agree that mechanics should be allowed to drive a tow truck under the circumstances outlined above? If so, why?
17. Do you agree with the proposal to add types of motor vehicles that are allowed to be towed without a licence or driver certificate? What type of equipment should be exempt and why?

18. Do you agree that the penalty should match the crime? Do you think a maximum a \$550 penalty amount is too low to act as a deterrent?
19. Do you think any of the penalties in the Regulation need to be changed? If so why?
20. Do you think it is appropriate to change the CPI fee to be consistent with other Regulation fee calculations in the Customer Service portfolio?
21. Do you have any other feedback on the proposed Regulation?