

## TOW TRUCK HOLDING YARD REQUIREMENTS

1. Tow truck operators maintain premises which can provide safe and secure temporary storage of motor vehicles towed under the authority of a licence.
2. The *Tow Truck Industry Act 1998* (the Act) and *Tow Truck Industry Regulation 2020* (the Regulation) provides the requirements for all holding yards owned, managed, leased or in any manner utilised by tow truck operators for the provision of holding motor vehicles. An approved holding yard must:
  - a) Not be more than 10 kilometres from the licensee's place of business.
  - b) Not provide a public thoroughfare.
  - c) Have council approval to operate as a holding yard for the secure storage of towed motor vehicles.
  - d) Have a security fence that is at least two metres high with lockable gates\*. The fence must be maintained and, if damaged, must be repaired as soon as possible and within 21 days of becoming aware of the damage.
  - e) Have flood lighting installed\*.
  - f) Have a closed-circuit television system or a monitored security alarm system installed.
  - g) Be accessible to operators, drivers, police and authorised officers 24 hours a day 7 days per week.
  - h) Be accessible by all vehicles listed on the operators licence 24 hours a day 7 days per week.
  - i) Be open to the general public during normal business hours (at least 9am to 5pm Monday to Friday).
  - j) Be owned or leased by the licensee, who must provide documentary evidence to this effect.
  - k) Be capable of storing any motor vehicle and volume of motor vehicles towed under the authority of the licence.
  - l) Have a capacity to store at least four motor vehicles of a category other than motorcycles, per tow truck operated under the licence.
  - m) Not expose stored motor vehicles to likely damage or access by unauthorised persons.
  - n) Be accessible to the owner or their representative during normal business hours.

*\* The Secretary may, by notice in writing, exempt a licensee from this requirement. Such an exemption may be granted by the Director, Investigations, Compliance and Enforcement, subject to the condition that the licensee complies with a requirement specified in the notice or licence.*

3. Tow Truck Operators Licence is subject to the following conditions under Section 20 (2) of the Act in relation to a holding yard:
  - a) The licensee must take all reasonable precautions to prevent the loss of or from, or damage to any motor vehicle that is being held in the licensee's

holding yard or in a shared holding yard with another operator or business; and

- b) The licensee must not, in the course of carrying on business use a holding yard other than a holding yard specified in the licence.
- c) The licensee must allow the owner of any motor vehicle stored at any holding yard used by the licensee in the course of the licensee's business to have reasonable access to the motor vehicle, during business hours and at no charge to the owner, to collect items from the motor vehicle.

4. Clause 65 of the Regulation provides that a licensee is not entitled to charge the owner of a motor vehicle a fee for providing access outside business hours to a motor vehicle stored at a holding yard unless the licensee has first notified the person of the fees to be charged.
5. Where a licensee gains approval for a second holding yard, the licensee is not permitted to charge a fee for any movement of vehicles between the approved holding yards.
6. Where two or more licensees apply to use the same holding yard NSW Fair Trading will consider the following before granting authority;
  - a) Premises compliance with section two of this policy.
  - b) Whether an unrelated business to the licensees' is carried on at the premises.
  - c) The type of business activity/s carried at the premises.
  - d) Whether separate secure areas are provided for each licensee on the premises.
7. When a holding yard is shared with another licensee or business the licensee who towed the motor vehicle to the yard or who has a towing authorisation with the destination as the holding yard is responsible for the prevention of loss from, or damage to, any motor vehicle that is being held in the licensee's holding yard.
8. It is a condition of a licence that the licensee (clause 41 Regulation) must keep a register (the **holding yard register**) in the approved form and manner, and in accordance with this clause, in relation to a holding yard of the licensee.
9. The licensee must keep a separate holding yard register for each holding yard listed on a licence.
10. The following particulars are to be recorded in a holding yard register:
  - a) The time and date on which each motor vehicle is towed into and out of the holding yard.
  - b) The name of the tow truck driver who towed the motor vehicle to the holding yard.
  - c) The name and contact details of the person who authorised the release of the motor vehicle from the holding yard
  - d) A copy of a written authorisation for the release of the motor vehicle from the holding yard.
  - e) The particulars in paragraphs (a)–(d) that relate to the moving of a motor vehicle between approved holding yards of a licensee
  - f) The make, model, type and colour of the motor vehicle, and the following identification details:
    - I. the registration number of the motor vehicle,
    - II. if the vehicle does not have a registration number—the vehicle's VIN,

III. if the vehicle does not have a VIN—the chassis number or the engine number (if any) of the vehicle,

g) The serial number of the towing authorisation obtained in relation to the motor vehicle.

11. The licensee must update the holding yard register with the particulars under subclause (3) within 24 hours of each occasion on which a motor vehicle is towed into or out of the holding yard.
12. Please note that the approved form and manner for completing the holding yard register includes that;
  - a) Forms are number sequentially in date order.
  - b) Individual entries are entered in order of the actual date and time the vehicle is moved to or from the holding yard.
  - c) Holding yard register entries are made as soon as practicable after the vehicle is moved to or from the holding yard.
13. Vehicles towed to a holding yard with a towing authorisation must show the full holding yard address (Not just “holding yard”).
14. The holding yard register may be maintained electronically, however hard copies must be printed on a weekly basis and stored at the licensees’ place of business.

### **Certain operators not required to maintain a holding yard**

Under clause 42 of the Regulation, nothing in the Act requires the following tow truck operators to maintain a holding yard:

- A tow truck operator who **only** operates tow trucks with a gross combination mass of 20 tonnes or more,
- A tow truck operator who operates tow trucks only for towing motor vehicles for the purposes of metal recycling or vehicle demolishing or dismantling by a vehicle-wrecker.
- A tow truck operator who operates tow trucks only for purposes other than attending motor vehicle accidents.

Note: Although the Act exempts certain heavy tow truck operators from the requirement to have a holding yard on their licence, in order for a heavy tow truck operator to charge storage fees under the Act for a vehicle stored in their holding yard, the holding yard must be approved and on their licence.

### **Establishment of a holding yard further than 10 kilometres from your place of business**

An applicant that would like to establish a holding yard which is further than 10 kilometres from their place of business must make an application to the Manager Assessment Services. An application under this Policy will incur an application fee. Any reasonable costs associated with the investigation of the application are to be met by the applicant.

The Manager Assessment Services may approve an application having regard to:

- The distance from the place of business,
- The population density and distance from other population centres,
- The need for additional services in the area that is proposed to locate the additional holding yard, and
- Any other matters that the Manager considers appropriate.

The Manager Assessment Services will advise of the outcome in writing. If the determination is not to approve the application, reasons will be provided to the applicant.

An exemption from the requirement to operate a holding yard within 10 kilometres from a licensee's place of business may be granted subject to the condition that the licensee cannot charge any fees for excess kilometres that may apply under clause 46 or clause 47 of the Regulation.

If an operator has an additional holding yard which is further than 10 kilometres from the operator's place of business, it will be an automatic condition of the licence that the licensee must ensure that any vehicle that is to be towed to the licensee's holding yard is always towed to the nearest holding yard.

If for any reason other than at the express request of the registered owner or person in charge of the vehicle, the vehicle must be moved from one holding yard to another, the operator may not charge for that tow.

**July 2020**