



**MOTOR TRADERS'
ASSOCIATION OF NSW**



Tow Truck Industry Regulation 2019

Submission

Motor Traders' Association of NSW

The Motor Traders' Association of NSW (MTA NSW) is one of the largest state-based industry associations in Australia.

MTA NSW is widely known for addressing issues affecting Association Members through a multitude of initiatives, including lobbying at Local, State and Federal Government levels.

Founded in 1910, the MTA NSW represents the interests of over 3,100 owners and business principals and 40,000 employees in the automotive industry throughout NSW and ACT. The Association provides extensive industry information to its membership base through a number of forums and media.

MTA NSW is held in high regard by industry stakeholders due to the longevity of its establishment, where it has been representing the automotive industry in NSW for more than 100 years. MTA offers members great value for their membership subscription with a range of services and products supplementing its traditional core services.

MTA's advertising and promotional activities over many years has developed a public recognition of the MTA NSW logo and catch phrase 'Look for the sign and deal with someone you can trust.' Both in NSW and the ACT, MTA NSW is strongly placed to represent the interests of Members. The MTA NSW is a registered Organisation under the Fair Work (Registered Organisations) Act 2009. The MTA NSW, in addition is a Registered Training Organisation (RTO) and delivers on-site training at business premises, to apprentices in the motor trade industry.

MTA NSW is in continual contact with politicians and Government officials and regularly provides advice to them on matters affecting the motor industry. The Association is the principal consultative party and a leader in employment relations issues impacting the Retail Motor Industry in the State.

MTA NSW is a founding member of the Motor Trades Association of Australia (MTAA), which is the National Body that draws together MTA's sister organisations from other States and Territories to represent the industry at Federal level.

Member and industry suppliers' support is most appreciated and adds greatly to the success of the Association and the activities it undertakes.

As a peak body, the MTA NSW represents the interests of the following automotive industry participants:

Auto Dismantlers; Auto Electrical Specialists; Auto and Marine Trimmers; Auto Mechanical Repairers; Auto Transmission and Rebuilders; Automobile Dealers – New and Used; Australian Heavy Vehicle Repairers; Body Repairers; Brake Repair Specialists; Caravan Industry; Commercial Vehicle Industry; Engine Reconditioners; Exhaust System; Farm Machinery Dealers; General Trades; Hire Car and Chauffeur Driven Limousines; Motor Bus; Motor Cycle Industry; Motor Vehicle Assessor and Inspector; Parts and Accessories; Radiator Specialists; Rental Vehicles; Rustproofing Specialists; Service Stations; Steering and Suspension Specialists; Tow Truck Operators; Tyre Dealers and Retreaders.

It is to be recognised and acknowledged that a strong and mutual working relationship has been developed with NSW Fair Trading and the MTA NSW, with a number of issues jointly addressed for the betterment of the industry.

The Motor Traders' Association of NSW appreciates the opportunity to provide a submission to NSW Fair Trading in regards to the proposed **Tow Truck Industry Regulation 2019 and Regulatory Impact Statement**.

In order to provide an appropriate balance between Regulation and our members' requirements, MTA NSW makes the following recommendations and comments in relation to the proposed **Tow Truck Industry Regulation 2019 and RIS**.

Recommendations

Public Consultation Draft – Tow Truck Industry Regulation 2019 under the Tow Truck Industry Act 1998

After review of the Regulatory Impact Statement for the Proposed Tow Truck Industry Regulation 2019, the Motor Traders' Association of NSW agree with the Conclusion as outlined in the Regulatory Impact Statement regarding Option 2, which would involve making the proposed Regulation.

The Motor Traders' Association of NSW agrees that this option would facilitate the operation of the Tow Truck Industry Act 1998 and provide the most benefit to the community, industry and the Government.

Specific Questions and Answers Contained within the Regulatory Impact Statement

In this section, the MTA NSW would like to submit specific commentary in reply to each question as raised in the Regulatory Impact Statement.

Part 1 Preliminary

Question 1

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

The MTA NSW would support this exclusion of multi-deck car carriers from the definition provided there was no winching or mechanical devices fitted to said vehicles to enable the loading or unloading of vehicles onto the decks of said car carriers. This would be whether or not the winching mechanism was a permanent or non-permanent fixture of these specific types of vehicles.

Question 2

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

The MTA NSW would support the inclusion of Car Trailers fitted with winch mechanisms under the definition of Tow Truck. This would also include the provision that these types of vehicles are covered or carry the required necessary insurance arrangements including “on-hook” and “public liability”. The inclusion of these types of trailers within the definition, in MTA’s opinion will reduce if not eliminate the current “Cash” market of these Operators who have no regard to safety or the possessions of the unsuspecting customer or member of the public. These types of Operators are surviving as they can undertake work at a fraction of the cost compared to legitimate tilt tray or Tow Truck Operators who comply with the current regime of legislation.

Part 2 Licences and drivers certificates

Question 3

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

MTA NSW agrees that Operators must provide proof of consent for holding yards, however they need to be physically inspected by the Department of Fair Trading/Tow Truck Authority Compliance Unit and simply not rely upon supplied images. MTA NSW also strongly feels that recorded camera footage (CCTV) be stored and available for retrieval for a period of no shorter than one (1) month. Recorded images must include all areas, except restroom facilities. These systems must also be installed by licensed installers for this type of equipment.

Question 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?

MTA NSW agrees with the proposed changes and that drivers should not be penalised or have to reapply in the event these situations arise. This would also reduce the delay in gaining future employment, once these conditions have been rectified (i.e. medical clearance obtained, drivers licence renewed).

Question 5

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

MTA NSW is of the opinion that the current listing contained within the draft Tow Truck Industry Regulation 2019 is sufficient and does not need any inclusion of additional crimes.

Question 6

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

The Association feels that some of the offences listed need to be reviewed on a case by case basis and determination for a revocation of licence based upon the circumstances relating to the offence. The main contentious listed crime would be assault of any kind against a person. If the offence is of a serious nature, then the Association would have no objection to revocation of licence.

Part 3 Towing Authorisations

Question 7

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

The Association is of the opinion that the Towing Authorisation Form needs adjustment to include the quoted amount to be included on the Towing Authorisation to ensure consumers are fully aware of applicable costs involved in the tow and storage of their vehicle.

This will then ensure that the quoted amount is included on all copies of the Towing Authorisation.

The Association would also recommend that any amendments to the original Towing Authorisation also require amendment to all copies of said authorisation.

Question 8

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

During peak hours (7AM to 7PM) operators should be allowed to undertake any Accident Tow work from an accident scene and not allow Insurers to “dictate” the use of contracted Tow Operators who may not be able to attend the accident scene for an extended period of time. This will ensure the safety of all at the accident scene and not create situations where vehicle owner/drivers are waiting for the towing vehicle to arrive, in what may be unsafe situations and will also ensure minimal disruption to the flow of traffic.

Part 4 Holding Yards

Question 9

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

The Association would like to see the provisions for requirements of Closed Circuit Television (CCTV) Systems to be broadened to include requirements that installed systems must be capable of storing at least the previous 30 days of images, also to be installed by an approved licenced installer, and stored video footage to be provided upon request from the Authority and or under Court Order.

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

Question 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 in non-metropolitan areas? If so, why?

The Association agrees that the fee unit of 0.6 per hour is an appropriate amount for clean-up. However, should not be restricted to heavy vehicle accidents in non-metropolitan areas. All Operators are required under Section 65 of the Act to remove any debris caused by, or relating to, the motor vehicle unless otherwise directed by a Police Officer and therefore should be compensated accordingly for undertaking this required work. The Association does not agree with restricting this fee to rural areas with a road speed limit of greater than 80km per hour. There is debris associated with most accident scenes.

Part 6 Other offences and requirements

Question 11

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

The Association agrees with the simplification of the clause in relation to Tow Truck Equipment. Specifying unnecessary equipment that in some cases may have created dangerous situations at accident scenes where people involved in the accident could trip over long handled equipment etc when there is undo pressure put on Operators to “quickly clean” up accident scenes. Putting the responsibility onto the Operator/Driver of the Tow Truck to have equipment and tools necessary to ensure the efficient removal of accident debris is much more conducive to smart business operations.

Question 12

Do you think that Scrap Metal Operators should be required to keep clean-up equipment in their tow truck? If so, why?

Scrap Metal Operators should also have clean-up facilities, including spill kits as they also pick up end of life vehicles that tend to leave debris behind, including fluid waste. All trucks should

carry this type of equipment to reduce the requirement for a call out of a fire brigade service to clean up liquid spills.

Question 13

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

The Association is in total agreement with the proposed changes to unclaimed vehicles clause of the Regulation. The current arrangements definitely need modernising as is proposed in the changes. This will also ensure that Tow Truck Operators are able to recover costs incurred in a timelier manner and not being left with holding yards full of unclaimed motor vehicles that are basically worthless.

Question 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?

The Association also agrees with the reduction in the amount of days required before disposal of unclaimed motor vehicles in conjunction with the increase in the dollar value from \$500 to \$3,000. The costs incurred to Operators in storing unclaimed motor vehicles can be quite expensive, when taking into account rents payable, business insurance premiums, etc. Reducing the amount of days, will allow operators to make better use of available land space within holding yards and possibly negating the need for secondary holding yards.

Part 7 Miscellaneous provisions and Schedule 1 Penalty notice offences

Question 15

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

The Association partially agrees with the recommendations as outlined in the Regulation.

The Association agrees with the commentary in the Regulatory Impact Statement in that "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 system.

The Association does **not** agree with the inclusion of towing of the above mentioned units to and from repairers. The only way these vehicles should be transported to and from repairers is by a registered and licenced Tow Truck Operator.

Question 16

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

MTA NSW has been lobbying Government for some time now to allow mechanics the ability to test drive Tow Trucks as part of their duties in relation to undertaking repair work. Mechanics need the ability to test drive vehicles pre and post repair work to ensure the safety and driveability of the vehicle. Not being able to conduct this part of their work due to the current requirements has inhibited mechanics from doing one of their core functions of repair work. The exemption of mechanics from Driver Authorities with the application of restrictions as outlined will alleviate this situation and ensure the improvement of repair work facilities for tow trucks.

Question 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?

The Association believes the current listing of certain motor vehicles as outlined in section 6A of the Tow Truck Industry Act 1998 is sufficient and does not need amending. The Association believes that if a vehicle is capable of being registered under the Road Transport Act 2013, then it should only be allowed to be transported by a licenced Tow Truck Operator.

Question 18

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

The Association agrees that the increase in the maximum amount of \$1,100 is warranted to further deter non-compliance where the previous maximum amount was \$550.

Question 19

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

The Association is of the view that the penalties currently stated in the Act and the Regulation are sufficient. The Association would also suggest a system is investigated and implemented for repeat offenders of any breaches of the Act and or Regulation i.e. applying a multiplication factor for repeat offenders.

Question 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?

The Association agrees with changing the CPI Fee to be consistent with others, within the Customer Service Portfolio.

Question 21

Do you have any other feedback on the proposed Regulation?

The Association believes there needs to be tighter control over the Advertising Regulations for Tow Truck Operators. The Association believes that Operators should:

- Only be allowed to advertise their registered business name as per the Operators certificates
- Only be allowed to advertise their registered business location
- Include certain detail on their advertising, including Operators Licence Number etc. Apply uniformity with advertising across the various businesses controlled and regulated by Fair Trading.

Objection to Increase in Business Hours

The Association is in total disagreement with the Departments increase in Business Hours being changed from 8 am to 5 pm (9hrs) to 7 am to 7 pm (12hrs), as stated in Clauses 52, 53 and 54 of the Tow Truck Industry Regulation 2019.

This is basically decreasing the earnings of Tow Truck Operators by the loading amounts they would normally be allowed to charge for working what is considered in industry as after hours. The inability to charge the additional previous loading amounts would be detrimental to the industry and the Association states that it will “restrict” operations due to Operators not willing to undertake after hours work, without the ability to charge accordingly. The loading amounts were and are used to offset additional costs involved, including employment costs for operating tow vehicles outside “normal” operating hours.

The Association is at a loss as to the reasoning of this decision, irrespective of recommendations from IPART or the Centre for Road Safety.

This increase does not in the view of the Association offer any increase in efficient tow operations during this time. Operators have and are operating during these times currently, but also have the ability to charge a loading for providing a service. This is no different to a “call out fee” or the rates charged by tradespeople that are called out “after hours”. Therefore, why should this be any different for Tow Truck Operators?

Other Commentary

The Association would also like the opportunity of discussing with the Tow Truck Authority / NSW Fair Trading, other issues which our Members feel would better the operations of the Tow Truck Industry within NSW. These include:

- The installation of approved Fire Fighting apparatus within the holding yards of Tow Truck Operators
- Tow Truck holding yards to have suitable methods for the capturing/storage and disposal of hazardous materials
- The allowance of Registered Holding Yard Operators to charge for clean-up of above mentioned Hazardous Materials at agreed rates

- Requirement of Tow Truck Operators to clean tray backs of trucks taking into account Environmental regulations and the allowance to charge clean up fees for doing so
- The inclusion of call out fees for release of vehicles to another Tow Operator arranged by the owner or insurance company, where these fees were not included in the charges for the original 1st tow

Summary

The recommendations of MTA NSW on behalf of our members going forward, would be to see the appropriate balance between the proposed Regulations, our member's business requirements and the staff employed in these businesses.

The Motor Traders' Association of NSW appreciates the opportunity provided by NSW Fair Trading in providing feedback and looks forward to further dialogue regarding the feedback provided. MTA NSW also offers its services to participate in an education program with our members, as appropriate.

Yours faithfully

Stavros Yallouridis
Chief Executive Officer