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Towing in NSW

As a result of suggestions made at a QHMC general meeting that it is illegal to pick up a car in New South Wales and tow it to another State unless it is on a licensed tow truck, we have contacted NSW RMS for clarification.

The following information has been provided by the Senior Investigations Officer, Tow Truck Investigation Unit NSW RMS. Similar information has also been provided to DTMR in response to the same enquiry. **Applicable legislation**

New South Wales Tow Truck Act 1998

<http://www.legislation.nsw.gov.au/inforce/9d112ba4-74ba-cbfc-d684-e0d408e12ead/1998-111.pdf>

New South Wales Tow Truck Regulation 2008

<http://www.legislation.nsw.gov.au/regulations/2008-366.pdf>

This legislation only applies to the towing industry and those that should be registered as commercial towing operators under this legislation. It does not apply to private people moving their own vehicles, or for example, assisting a friend move a car for no charge.

To prosecute under this legislation, RMS needs to prove all of the following.

- it is a tow by the NSW definition
- it is a tow truck by the NSW definition
- it is a motor vehicle by the NSW definition
- the tow is for business

Definitions

- it is a tow. Under the Act **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.

- it is a tow truck

- **4 Meaning of “tow truck”**

(1) In this Act, a 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), *see 2 below*

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.

(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. (This is from the Regulation)

- it is a motor vehicle by NSW definition (this refers to the vehicle being towed)

- **motor vehicle** means a motor vehicle (other than a light rail vehicle) or trailer within the meaning of the Road Transport (General) Act 2005. -

- The Road Transport (General) Act 2005 says that a **motor vehicle** means a vehicle that is built to be propelled by a motor that forms part of the vehicle.

Explanation provided: A vehicle is considered a vehicle even if it doesn't have an engine fitted. But a vehicle that has the roof cut off for instance would be regarded as parts, not a motor vehicle.

- the tow is for business (examples for interpretive purposes)

A mechanical repairer has a trailer that is used to move customer's vehicles to his workshop. This would be regarded as a business.

A private person could own a tow truck to move his own vehicles but as it is not a business the tow truck licencing rules don't apply to them. (*see further explanation of this point below*)

Other questions / examples

A private person picking up a car in NSW that he's bought ? No problem

Someone hires a trailer to collect a car from NSW? No problem

Taking a car into NSW and then returning it home? No problem

A person is taking a car to another State or Territory and needs to travel through NSW. No problem

Someone who owns a truck (could be a tow truck) that is used only to transport his own cars. No problem. However if the person was a wrecker or dealer etc. and uses the truck as part of a business operation to move vehicles he's acquired, this would be an issue.

Someone picking up a car in NSW for someone else. How would this be regarded? If it's just a mate picking up a car for someone and the person is paying for petrol for example it would be no problem.

Could an out of State person be stopped and questioned about towing another vehicle in NSW? Yes. NSW Police and RMS inspectors have the authority to do this. They have a series of questions they use to determine if someone should be operating under a towing licence. These would include where the person is coming from and where the load is being taken. This is simply to determine if the person is operating an un-licensed towing business.