Government response

to public submissions received on the
Regulatory Impact Statement on remaking the
Motor Vehicles (Accident Towing Roster Scheme)
Regulations 2000

August 2015
Introduction

The Motor Vehicles (Accident Towing Roster Scheme) Regulations 2000 (the Regulations), in conjunction with Part 3C of the Motor Vehicles Act 1959, regulate the removal of vehicles damaged in accidents in the greater metropolitan area of Adelaide (the declared area) by facilitating the operation of the Accident Towing Roster Scheme (the Scheme).

Features of the Scheme include that light vehicle towing and heavy vehicle towing are divided into zones, all accident towing jobs are allocated by SA Police from a roster of approved operators for a particular zone. There are currently 36 approved operators (tow truck businesses) for light vehicle towing and the price of a light vehicle tow is regulated under the Prices Act 1948. There are currently three operators holding the six heavy vehicle roster positions in the two zones. The Regulations will expire on 1 September 2015 unless they are re-made before that date.

The Regulations were amended most recently in October 2014 to remove the operation of the Accident Towing Roster Review Committee and many of the Committee’s powers were placed with the Registrar of Motor Vehicles. The Committee had not met for approximately 10 years and the change was part of a wider government initiative to abolish non essential Government boards and committees.

A Regulatory Impact Statement (RIS) on the future options for the Regulations was released publicly on 29 January 2015 and responses were due by 20 March 2015.

The RIS put forward 3 options for remaking the Regulations:

| Option 1 - Status Quo (Base case) | No additional government action – maintain the status quo with no changes (apart from a minor administrative change made in relation to roster zone boundaries to ensure the continued smooth operation of the Scheme). |
| Option 2 - Red tape reduction | Reduction of red tape – amendments designed to reduce the regulatory burden on roster holder businesses. The creation of a single heavy vehicle zone, the power to alter zone boundaries in the declared area being moved from the Minister to the Registrar and the objectives of the Scheme being reflected in the Regulations. |
| Option 3 - Opening the roster | Granting a roster position to any qualified candidate who applies to the Registrar and red tape reduction - includes all amendments in the above options (1 and 2) along with the proposal to make additional roster positions available to all applicants able to satisfy the qualification requirements. Modifications to Option 3 were also presented to allow for a more gradual opening of the Scheme. |

The Consultation Process

The RIS was placed on the Department of Planning, Transport and Infrastructure’s towing website (www.sa.gov.au/topics/transport-travel-and-motoring/transport-industry-services/tow-truck-operators/accident-towing-rosters) and was forwarded by either post or email to approximately 276 businesses/ agencies.
These included crash repair companies, tow truck companies (including all operators currently on the light and heavy vehicle towing rosters), SA Police (SAPOL), representative agencies such as the Tow Truck Owners and Operators Association of SA (TTOOA), Royal Automobile Association (RAA), Motor Trades Association (MTA) and the Insurance Council of Australia (ICA).

In addition, an advertisement informing the public of the release of the RIS was placed in the Advertiser newspaper on 14 February 2015.

**Feedback Received**

In total 6 submissions were received: SAPOL, MTA, TTOOA (on behalf of current operators), along with 3 submissions (2 from the same individual) from current and former proprietors of heavy vehicle tow truck companies (not currently on the list of approved operators for the Scheme).

The chief aspects of the responses to the proposed initiatives contained in the RIS are discussed below. These are grouped together into three main areas; changes relating to an operator’s premises; changes regarding operators’ staff and equipment needs and zone boundaries.

A summary of the comments received regarding the heavy vehicle towing roster are discussed under ‘Other issues’ below. The Government’s response to the submissions is also contained below.

**Which option is favoured for re-making the Regulations?**

The MTA, TTOOA and SAPOL submissions all expressed a preference for Option 2 - reducing red tape.

i. **Changes to requirements for Operators’ premises and reflecting Scheme Objectives:**

The RIS outlined a number of proposed changes to the Regulations in Option 2 with a view to reducing imposts on operators whilst maintaining effective, high quality towing services for consumers. These include removal of the requirement for a radio to be fitted in a tow truck; permitting use of storage areas at operators’ premises for purposes other than vehicle storage; Registrar no longer being required to authorise calls to be diverted from a registered premises; objectives of the Scheme to be reflected in the Regulations.

The MTA and TTOOA submissions both supported all of these proposals.

**Government response:** the Government intends to implement these red tape reduction measures and these initiatives should assist with the optimal running of operators’ businesses and reflect technological advancements.

ii. **The removal of requirements for signs near vehicle storage areas:**

The MTA supported this proposal. The TTOOA also supported the proposal but considered that signage requirements for a tow truck business entrance should also be changed to remove the regulated requirement for it to include the name of the person in charge of the business and its operating hours. The TTOOA considered that these requirements were to assist with compliance/ enforcement and that consumers can rely upon an Accident Towing Authority Form if such information is needed.
Government response: the Government intends to remove the requirement in the Regulations for signage to be present near vehicle storage areas at operators’ registered premises and for the details of the person in charge of the business to be included on entrance signage. However, in the interests of consumers (who may not always have their Form to hand), the entrance sign requirements will still include business operating hours and a contact telephone number. This assists if a consumer arrives at a business and finds that it is closed.

iii. Standards required for registered premises; simplifying the Regulations, adequacy test for premises rather than prescriptive requirements:

The MTA and TTOOA supported this change. The MTA requested that there be industry consultation on the revised standards.

Government response: the Government intends to amend the Regulations in line with the proposal to ensure that premises are adequate to prevent the entry of unauthorised persons and the unauthorised removal of vehicles or goods. Guidelines based on current requirements indicating what will be acceptable will complement this Regulation. DPTI will circulate the proposed guidelines to the MTA and TTOOA for comment.

iv. Allow separate places of storage for registered premises; 'lawful' requests:

The MTA supported this proposed change, commenting that a large number of towed vehicles are left with operators, at the operator’s expense, and it is not viable for an operator to recover its costs from an owner.

The TTOOA supported the proposal for operators to be able to store accident damaged vehicles at places separate to an operator’s main registered premises and proposed allowing the storage place to be located outside the particular zone (rather than within the towing zone). The TTOOA referred to existing cases where the exemption making power contained in the Regulations has enabled vehicles to be stored outside of a zone at no extra cost to a consumer.

Related to this issue, the TTOOA also requested that any amendments to the Regulations referring to requests for access to vehicles or the release of vehicles that are under the care of operators, stipulate that operators are only required to comply with ‘lawful’ requests.

Government response: the Government intends to amend the Regulations to enable approval for an operator’s registered premises to include storage premises that fall outside of an operator’s towing zone. Any changes will also stipulate that customers are not charged any additional amounts for towing vehicles from separate storage areas over the charges for towing in relation to an operator’s primary registered premises.

The Government confirms that the correct interpretation of “request” with respect to the Regulations refers to lawful requests only and operators are not required to comply with ‘unlawful’ requests making an amendment unnecessary.

Operator’s staff and equipment

i. Reduction in required numbers of employees for tow truck operator; allowing one tow truck per roster position (instead of two)

The MTA and the TTOOA generally supported the proposal to remove the requirement for a set number of employees working a certain number of hours in favour of having sufficient numbers of staff to respond in a timely manner to accident towing directions and to properly discharge all other duties imposed on a tow truck operator as required by the Motor Vehicles
Act and Regulations. It is intended that the DPTI guidelines will stipulate that a sufficient minimum would be the equivalent to two full time staff for the first position on the towing roster and an additional person for each additional roster position in that towing zone.

SAPOL supported the changes as long as the new requirements were sufficient to properly discharge towing duties and towing response times were not negatively impacted by any reductions in resources.

Both the MTA and TTOOA considered that there may be work, health and safety implications in reducing the number of staff at a business. The TTOOA submission indicated that by setting the changed requirements, the Registrar of Motor Vehicles may be held responsible for the activities of operators by application of chain of responsibility and fatigue management compliance law.

The TTOOA recommended that either the Regulations or guidelines (performance based criteria) include the need to comply with work, health and safety laws.

The TTOOA and MTA supported a reduction from requiring two tow trucks to one tow truck per roster position. The MTA qualified this by stating that there needed to be a focus on work, health and safety and driver fatigue management.

**Government response:** the Government intends to implement both of these changes. The reduction in the number of tow trucks will result in a large cost saving to business over time and regularizes the current situation reflecting that a number of exemptions have previously been granted excusing operators from the requirement to have two tow trucks.

The Regulations will set minimum requirements to be met by operators, to ensure that work, health and safety responsibilities are met and that consumer interests are also protected by ensuring that towing response times by operators to accident sites are appropriate.

The Government does not consider that the Registrar of Motor Vehicles would be responsible for operators staffing arrangements in a “chain of responsibility” scenario; the Registrar is administering the regulations and is not a party to the towing transaction. It is an operator’s responsibility to ensure that it has sufficient staff to meet requirements; operators will be required to make their own assessments as to what is required for their own business.

**ii. Change in requirement for displaying tow truck or temporary tow truck certificate upon a person**

The submissions supported the proposal to remove the requirement for the display of a tow truck certificate upon an operator’s clothing. However, SAPOL’s submission included that, in its place, there be a requirement for an operator to carry and produce certification on demand.

**Government response:** this initiative will require changes to the Motor Vehicles Act.

Requiring operators to hold certification is an important consumer protection component of the regulatory system in place, whilst work, health and safety considerations for operators must also be paramount. The government agrees with SAPOL’s suggestion that the amended legislation include the requirement for operators to carry and produce their certification on demand.

**Towing zones**

**i. Zone boundaries (change from Minister to the Registrar)**
The RIS included a proposal to move the power to change a towing zone boundary from the Minister responsible for the legislation to the Registrar of Motor Vehicles. This will involve amending the *Motor Vehicles Act 1961*.

This proposal generated comments with regard to the adequacy of the current towing zones. The TTOOA noted that changes to zone boundaries rely upon DPTI statistical analysis of towing data for particular areas. The MTA commented that there had been population growth to areas north and south of the city necessitating re-zoning or additional roster positions. The MTA also suggested consideration be given to extending the regulated area beyond the greater metropolitan area to the Mt Lofty Ranges region. The TTOOA stressed that it wished to be consulted on any zone boundary changes, along with the MTA and the Commissioner of Police and State Emergency Services.

**Government response**: there are no plans to extend the regulated “declared” area for operation of the Scheme. The Registrar is not aware of any alleged conduct involving the towing industry and impacting upon the public outside the declared area that would warrant regulation.

Whilst statistical data is the primary determinant for any changes to towing zones, the Government expects consultation with stakeholders will occur when making any towing zone changes.

   ii. *Creation of a single heavy vehicle zone*

The TTOOA supported the proposed change, as did the MTA stating that it appears correct on “statistical evidence.”

SAPOL supported the proposal in principle but noted that any accident involving a heavy vehicle was likely to cause traffic congestion or be a safety hazard, ‘probably requiring police management until it is cleared.’ With one zone, there may be concerns that towing response times may suffer as an operator could despatch a tow truck from bases in either of the current two heavy vehicle zones. SAPOL suggested that tows be directed “from the nearest facility” of an operator to an accident and as soon as available to minimise the tow truck response time. SAPOL noted that these accidents were few in number per annum and the costs of a heavy vehicle tow are not regulated. SAPOL noted there were cost considerations in moving to a single zone for the public; minimising the kilometres travelled from a towing base should be a factor, so that the public is not required to pay too much for a tow.

**Government response**: the Government intends to move from two to one heavy vehicle towing zones by publishing a Gazette notice when the new regulations come into operation. Taken overall, heavy vehicle accident tows total only 50 tows per annum on average and, given the specialist nature and equipment required for such a tow, towing prices are not regulated. At present, the operators do not maintain bases in both zones due to exemptions previously granted and so this change is not expected to adversely affect consumers. The change to a single zone will result in existing heavy vehicle operators holding one roster position each in the zone and this will reduce their business overheads associated with government fees for holding roster positions in two zones.

Once the zone change is in place, the Government intends to monitor the arrangement and ensure that the response times for tow trucks for a heavy vehicle tow do not increase.
Other Issues raised: representative forum and Option 3 for heavy vehicle accident towing

i. **Option 3 for heavy vehicle accident towing**

The three submissions received from past and current proprietors of heavy vehicle tow truck companies all expressed the desire for Option 3 to be adopted for the heavy vehicle accident towing roster; i.e. that the roster system be opened to any operator who meets the current criteria.

The need for a roster system in this area of towing was questioned in one responding submission; heavy vehicle towing had reportedly not been associated with the same industry behavioural issues as light vehicle towing in the past; the current system is a restriction on trade. The submission suggested opening the heavy vehicle roster would result in lower prices for consumers, assist in the faster removal of vehicles from accident sites, would allow fair trade and boost the development of the heavy vehicle towing industry generally.

One operator (not currently involved in the Scheme) suggested that heavy vehicle accident towing work be put out to tender.

**Government response:** generally the costs of meeting the regulatory requirements for a roster position need to be amortised across all tows received. Increasing the number of roster positions would make this more difficult, or result in higher towing prices.

Nevertheless, the Government acknowledges that with the change to a single heavy vehicle towing zone and not having a fixed towing price structure for these tows, it may be worthwhile for the Registrar of Motor Vehicles to consider inviting expressions of interest from interested towing companies with a view to expanding the list of heavy vehicle accident towing operators by ballot. It is intended that this would take place after the Regulations have been remade and once there has been some opportunity to monitor towing response times with the new single heavy vehicle zone in place and the Registrar expects to undertake this process within six months.

ii. **Representative forum**

The TTOOA, in light of the abolition of the Accident Towing Roster Review Committee, included in its RIS comments the request that a new representative forum (which includes the MTA) be convened with the Registrar of Motor Vehicles where issues relating to the Scheme can be discussed.

**Government response:** the Registrar of Motor Vehicles has already met with TTOOA, MTA, SAPOL and RAA representatives with a view to establishing a forum to meet as needed.

**Conclusion**

The Government intends to re-make the Motor Vehicles (Accident Towing Roster Scheme) Regulations 2000 with amendments that largely adopt the initiatives set out in Option 2. The Government suggests the Registrar of Motor Vehicles consider inviting expressions of interest for additional operators to work within the heavy vehicle accident towing zone once the remade Regulations are in place.