

NORTHERN TERRITORY OF AUSTRALIA

CONSUMER AFFAIRS AND FAIR TRADING (TOW TRUCK OPERATORS CODE OF PRACTICE) REGULATIONS

As in force at 8 May 2002

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 8 May 2002

CONSUMER AFFAIRS AND FAIR TRADING (TOW TRUCK OPERATORS CODE OF PRACTICE) REGULATIONS

Regulations under the *Consumer Affairs and Fair Trading Act*

1 Citation

These Regulations may be cited as the *Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations*.

2 Prescription of code of practice

The code of practice in the Schedule, which has been submitted to, and approved by, the Minister in accordance with section 238 of the Act, is prescribed for the purposes of the Act.

3 Authorisation for purposes of Part IV of *Trade Practices Act*

- (1) If a person does an act or engages in conduct that is specified in and authorised by the code of practice in the Schedule, that act or conduct is to be disregarded under section 51(1) of the *Trade Practices Act 1974* of the Commonwealth in deciding whether the person has contravened Part IV of that Act.
- (2) Subregulation (1) does not apply in relation to an act done or conduct engaged in later than 2 years after this regulation comes into operation.

Schedule

NORTHERN TERRITORY OF AUSTRALIA TOW TRUCK OPERATORS CODE OF PRACTICE TABLE OF PROVISIONS

Mandatory Code of Practice for Tow Truck Operators Under Part XII of the *Consumer Affairs and Fair Trading Act*

Clause

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Part 1 Preliminary

1 Objectives of Code

The objectives of this Code are:

- (a) to ensure that persons involved in a motor vehicle accident are not subjected to distressing or manipulative conduct or unfair competition by tow truck operators at the site of the accident;
- (b) to provide for the establishment and operation of rosters of tow truck operators to provide services at police controlled accident sites;
- (c) to establish operational practices for tow truck operators that:
 - (i) clarify the rights of consumers and the obligations of tow truck operators in respect of services provided under this Code and so promote fair trading practices and public order;
 - (ii) ensure the material and emotional interests of consumers are protected and remain predominant in respect of competition between tow truck operators; and
 - (iii) encourage and develop high levels of professional conduct and service to the public; and
- (d) to establish appropriate procedures to deal with complaints alleging breaches of this Code by tow truck operators.

2 Guiding obligations

Tow truck operators must, themselves and through their employees and agents, ensure that:

- (a) the safety of members of the public in the vicinity of a motor vehicle to be towed or being towed is paramount;
- (b) the safety and security of the consumer's motor vehicle and any other property of the consumer being towed or stored is assured;
- (c) there is compliance with all laws that apply to the business of a tow truck operator, including the activities of his or her employees and their familiarity with their responsibilities under this Code;
- (d) they do not engage in any practice or conduct that may discredit the industry; and
- (e) this Code is applied in spirit as well as in the letter, so that fair trading practices are followed by all members of the tow truck industry.

3 Definitions

In this Code, unless another meaning is clearly intended:

accident means an accident caused by a collision or an impact involving a motor vehicle (whether caused accidentally or intentionally) resulting in damage to one or more motor vehicles.

Authority means the Tow Truck Operators Code of Practice Administering Authority established under clause 5.

consumer means a natural person or a corporation who acquires services from a tow truck operator.

declared area means an area referred to in clause 8(1)(a).

owner includes a person who takes a motor vehicle on hire.

police controlled accident site means an accident site which a member of the Police Force has attended, is in attendance or has been requested to attend.

storage premises means the business premises of a tow truck operator where motor vehicles are or may be stored.

tow includes drag, partially lift and tow, lift and carry and carry a motor vehicle by means of another motor vehicle.

tow truck means a motor vehicle designed, adapted or intended to tow a motor vehicle that cannot, because of damage or malfunction, be operated properly under its own motive power, but does not include a trailer attached to a motor vehicle.

tow truck operator means a person who carries on the business of towing motor vehicles or a business that includes the towing of motor vehicles and includes all agents and employees of the person or business.

towing authorisation means an authorisation referred to in clause 15.

towing direction means a direction referred to in clause 14.

4 Duration of Code

This Code ceases to have effect at the end of 2 years after the date on which this Code comes into operation.

Part 2 Administration

5 Establishment and structure of Authority

- (1) The Tow Truck Operators Code of Practice Administering Authority, representing the interests of consumers, business and industry, is to be established for the effective administration of this Code.
- (2) The Authority comprises the following members, appointed by the Minister:
 - (a) the Commissioner of Consumer Affairs;
 - (b) the Chairman of the Consumer Affairs Council;
 - (c) a representative of the Motor Trades Association (N.T.) Incorporated, the Insurance Council of Australia Ltd, the A.A.N.T. and the Police Force.
- (3) The Chairperson of the Authority is the Commissioner of Consumer Affairs.
- (4) The Minister may appoint a person to be the alternate member for a member (including the Chairperson) of the Authority.

- (5) If during any period a member of the Authority is unable to perform his or her duties as a member, the person appointed as the alternate member for him or her may perform those duties and is entitled to be counted towards a quorum at a meeting.

6 Functions of Authority

- (1) The functions of the Authority include the following:
 - (a) reviewing and reporting on the operation of this Code;
 - (b) monitoring compliance with this Code;
 - (c) declaring areas where rosters of tow truck operators may operate and establishing rosters for those areas;
 - (d) approving forms for the purposes of this Code;
 - (e) considering the need for, and if necessary issuing, schedules of recommended fees for services provided by tow truck operators in respect of police controlled accident sites;
 - (f) receiving and inquiring into complaints against tow truck operators;
 - (g) determining disputes about fees for services;
 - (h) arranging any publicity regarding the operation of this Code;
 - (i) making provision for raising consumer and business awareness about the operation of this Code.
- (2) The Authority must hold at least two meetings in each year to facilitate the performance of its functions.
- (3) At a meeting of the Authority:
 - (a) the quorum is constituted by 4 members including the Commissioner of Consumer Affairs, a representative of the President of the Motor Trades Association and a representative of the Police Force;
 - (b) decisions are made by a majority of votes of the members present and voting; and
 - (c) the Chairperson has a deliberative vote and, if there is an equality of votes, the casting vote.
- (4) Subject to this Code, the Authority may determine the procedures to be followed in relation to the calling and conduct of meetings and the performance of any of its functions under this Code.

7 Review of Code

- (1) At its meetings, the Authority must critically examine the operation of this Code.
- (2) In each year, as soon as possible after 30 June:
 - (a) the Authority must make inquiries of interested parties including the Insurance Council of Australia Ltd, the Territory Insurance Office, the Police Force, the Consumer Affairs Council, the Motor Trades Association (N.T.) Incorporated and the A.A.N.T. in respect of the operation of this Code for the previous 12 months; and
 - (b) the Chairperson of the Authority must report to the Minister on the effectiveness of this Code.

Part 3 Roster of tow truck operators

8 Establishment and operation of roster

- (1) If there are 2 or more tow truck operators in competition in a particular area of the Territory, the Authority may:
 - (a) declare that area to be an area where a roster of tow truck operators may operate to provide services at police controlled accident sites; and
 - (b) establish such a roster for the declared area.
- (2) A roster established for a declared area is to be operated so as to distribute work on an equitable basis amongst all the tow truck operators on the roster.
- (3) A tow truck operator who operates in a declared area may request the Authority to include him or her on the roster established for that area.
- (4) Before including a tow truck operator on a roster, the Authority must be satisfied that the operator uses storage premises and trucks, and maintains a policy of insurance, in compliance with clauses 11, 12 and 13 and for that purpose may require the operator to provide the Authority with relevant information and documents.
- (5) The Authority may remove a tow truck operator from a roster if the Authority is satisfied that the operator has failed to comply with any of the requirements of Part 4.

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- (6) The Authority must establish and periodically review procedures and protocols to ensure that all tow truck operators included on a roster are treated fairly in the allocation of work and that an efficient service is provided to the Police Force and the general community.

9 Operation of roster in relation to vehicle subject to towing contract

- (1) For the purposes of this clause, a motor vehicle is the subject of a towing contract if:
- (a) the owner of the motor vehicle:
 - (i) carries on a motor vehicle rental business; and
 - (ii) owns in excess of fifty rental motor vehicles operational in a declared area and has a contract with a tow truck operator for the towing and storage of those vehicles should they be involved in an accident; or
 - (b) the owner of the motor vehicle holds a current insurance policy in respect of the vehicle with an insurer who has a contract with a tow truck operator for the towing and storage of the vehicle should it be involved in an accident.
- (2) Subject to clause 10, tow truck operators on a roster established under clause 8 are not to be directed to provide services at a police controlled accident site in relation to a motor vehicle that is the subject of a towing contract unless a member of the Police Force:
- (a) is unable to easily identify that vehicle as the subject of that towing contract; or
 - (b) in the absence of the tow truck operator who is a party to that towing contract, considers that in the interests of safety a tow truck operator on a roster established under clause 8 should provide services in relation to that vehicle.
- (3) For the purposes of subclause (2)(a), it is the responsibility of the owner of a motor vehicle the subject of a towing contract to ensure that the person in control of that vehicle is able to provide to a member of the Police Force the details of the tow truck operator who is a party to that contract.
- (4) It is the responsibility of the owner or the person in control of a motor vehicle the subject of a towing contract to contact the tow truck operator who is a party to that contract in order to acquire his or her services at a police controlled accident site.

10 Power of Police to give directions not affected

Nothing in this Part prevents a member of the Police Force from directing a tow truck operator (whether or not he or she is on a roster established under clause 8) to tow a motor vehicle from a police controlled accident site in the interests of safety or as otherwise authorised by law.

Part 4 Obligations and conduct of tow truck operators

11 Standards for storage premises

A tow truck operator on a roster established under clause 8 must use storage premises that:

- (a) comprise an area or areas each of which is enclosed by a boundary fence or wall and lockable gates or doors that are:
 - (i) of sound structure;
 - (ii) securely fastened at ground level;
 - (iii) not less than 2.1 metres in height from the ground; and
 - (iv) adequate to prevent the entry of unauthorised persons and to prevent the unauthorised removal of consumers' motor vehicles or goods;
- (b) include within the boundary fences or walls an area for the storage of motor vehicles that are towed to those premises in pursuance of a towing direction and that the area:
 - (i) is at ground level;
 - (ii) is large enough to store at least 5 passenger motor vehicles for each tow truck operator included on the roster who is using those premises;
 - (iii) is constructed and located in such a way that a motor vehicle can be released from the storage area within a period of thirty minutes of a request being made for its release; and
 - (iv) is designated "storage area" by clearly visible signage;
- (c) include a secure office area;

- (d) bears a sign near to the main entrance of the storage premises in a position clearly visible from the road that displays by legible letters and numerals:
 - (i) the trading name of the business;
 - (ii) the hours of business; and
 - (iii) the telephone number for the business;
- (e) have a telephone service operable at all times; and
- (f) are equipped with an operative communication system suitable for the deployment of tow trucks.

12 Use of tow trucks

A tow truck operator must not use a tow truck, or cause or permit a tow truck to be used, for the towing of a motor vehicle unless:

- (a) it has the legal capacity to tow that vehicle;
- (b) it complies with the provisions of the *Motor Vehicle Act* and *Traffic Act* and the regulations made under those Acts; and
- (c) it is fitted with a communication system that is capable of receiving messages transmitted from the storage premises of the tow truck operator.

13 Maintenance of insurance policy

A tow truck operator must maintain in force a policy of insurance with a recognised insurer to cover all legal liability that may be incurred by the tow truck operator in respect of the loss or theft of or damage to a motor vehicle that is being towed or has been towed in pursuance of a towing direction and motor vehicle accessories or property in or on such a vehicle.

14 Attendance at police controlled accident site

- (1) Subject to subclause (3), a tow truck operator must not attend a police controlled accident site unless he or she is given a towing direction by or on behalf of a member of the Police Force.
- (2) A tow truck operator given a towing direction must:
 - (a) attend the police controlled accident site as expeditiously and as safely as possible; and
 - (b) act in accordance with the towing direction.

- (3) This clause does not apply in relation to a tow truck operator whose services at a police controlled accident site are acquired in accordance with clause 9(4).

15 Removal of vehicles from police controlled accident sites

- (1) A tow truck operator must not tow a motor vehicle from a police controlled accident site unless he or she has obtained from the owner or person in charge of the vehicle, or a member of the Police Force, a towing authorisation in accordance with this clause.
- (2) A towing authorisation is to be in a form approved by the Authority and is to contain clear advice to the consumer about the existence of, and the complaints procedure provided by, this Code.
- (3) The tow truck operator must complete the towing authorisation by fully and accurately entering in it all the required particulars and submitting it for the approval and signature of the owner, the person in charge of the motor vehicle, or a member of the Police Force (as applicable).
- (4) A towing authorisation is to be completed and signed in duplicate and the original is to be provided to the person who signed the form.
- (5) A tow truck operator who has obtained a towing authorisation must:
 - (a) remove the motor vehicle specified in the authorisation to the address specified in the authorisation, in accordance with the terms of the authorisation, by the shortest route practicable; and
 - (b) leave the motor vehicle at the address specified in the authorisation until the vehicle is lawfully removed.
- (6) A tow truck driver must not solicit from the owner or person in charge of a motor vehicle authorisation to remove the vehicle to a place of the tow truck operator's choosing.

16 Conduct at police controlled accident sites

- (1) A tow truck operator must not prevent, by intimidation or force, any other tow truck operator from carrying out his or her duties under this Code at a police controlled accident site.
- (2) Before presenting a document to a person for signature at a police controlled accident site, a tow truck operator must fully and accurately enter in the document the required particulars.

17 Storage of vehicles

- (1) A tow truck operator must not store a consumer's motor vehicle at a place other than the destination stated in the towing authorisation.
- (2) A tow truck operator who stores a consumer's motor vehicle at the tow truck operator's storage premises must:
 - (a) store the motor vehicle at those premises in accordance with this Code until it is lawfully removed from there; and
 - (b) take all reasonable steps to ensure the safety and security of the motor vehicle, its accessories and any other property of the owner including protecting them against weather damage caused by rain or sun.

18 No further removal of vehicles without direction of owner

When a motor vehicle has been removed to the place specified in a towing authorisation, the tow truck operator must not, for or in expectation of a fee, reward or benefit any kind, or in the course of business, remove the vehicle from that place except in pursuance of a direction of the owner of the vehicle or a person authorised to act on the owner's behalf.

19 Surrender of vehicle

A tow truck operator who has possession or control of a motor vehicle towed from an accident site must surrender the vehicle to the owner or to a person acting on the owner's behalf:

- (a) at the request of the owner or that person; and
- (b) upon payment or tender of payment of all amounts lawfully claimed from the owner in relation to services provided by the tow truck operator.

20 No accident spotting

A tow truck operator must not enter into an agreement or arrangement with a person by which information relating to the occurrence of an accident or the location of a motor vehicle damaged in an accident is, for a fee, reward or benefit of any kind, given to or by that person for any purpose relating to the towing of a motor vehicle.

21 No off the hook transactions

A person must not directly or indirectly give or agree or offer to give, or receive or agree to receive, or solicit, a fee, reward or benefit of any kind for or in expectation of obtaining for himself or herself or another person:

- (a) the work of repairing or wrecking a damaged motor vehicle;
- (b) permission to prepare or give a quotation for the repair of a damaged motor vehicle;
- (c) permission to place a damaged motor vehicle in storage; or
- (d) possession or control of a damaged motor vehicle for any purpose related to the storage, repair or wrecking of the vehicle.

22 Fees for services

- (1) Before a consumer acquires the services of a tow truck operator, the operator must inform the consumer of the fee payable for those services.
- (2) In negotiating with a consumer the fee payable for his or her services, a tow truck operator must have regard to any schedule of recommended fees issued by the Authority.
- (3) If a consumer is not in a position to negotiate a fee for the services of a tow truck operator, the operator must determine the fee having regard to any schedule of recommended fee issued by the Authority.
- (4) If there is a dispute at a police controlled accident site between a tow truck operator and a consumer about a fee payable, the consumer or operator may refer the dispute to the Authority for determination.

Part 5 Complaints and disciplinary procedure

23 Complaints and disciplinary procedure

- (1) A complaint in writing against a tow truck operator for a contravention of this Code may be lodged with the Authority by:
 - (a) a consumer or other member of the public;
 - (b) a member of the Police Force; or

- (c) another tow truck operator.
- (2) A complaint lodged under subsection (1) is to specify the nature of the alleged contravention and include or be accompanied by supporting evidence.
- (3) On receipt of a complaint, the Chairperson of the Authority:
 - (a) must inform the tow truck operator in writing of the complaint and may give him or her a copy of the complaint; and
 - (b) must provide the tow truck operator with an opportunity to respond to the complaint in writing, in person, or both in writing and in person.
- (4) If, after investigation, the Authority is satisfied the complaint is unfounded, the Chairperson must notify the complainant and the tow truck operator accordingly.
- (5) If, after investigation, the Authority determines that the tow truck operator has contravened this Code, the Chairperson must:
 - (a) if the Authority considers the contravention to be minor – issue a written warning to the tow truck operator and record that warning; or
 - (b) if the Authority considers the contravention to be serious or a repeated breach of a provision of this Code – request the Commissioner of Consumer Affairs to seek a formal undertaking under section 240 of the *Consumer Affairs and Fair Trading Act*.

24 Other methods of complaint not affected

Nothing in this Code affects a person's right to lodge a complaint or seek a remedy, in relation to a contravention of this Code, by a method other than as provided by this Part.

ENDNOTES

1

KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2

LIST OF LEGISLATION

Consumer Affairs and Fair Trading (Tow Truck Code of Practice) Regulations (SL No. 5, 1996)

| | |
|-----------|------------------|
| Notified | 14 February 1996 |
| Commenced | 14 February 1996 |

Amendments of Consumer Affairs and Fair Trading (Tow Truck Code of Practice) Regulations (SL No. 11, 2002)

| | |
|-----------|------------|
| Notified | 8 May 2002 |
| Commenced | 8 May 2002 |

3

LIST OF AMENDMENTS

| | |
|-----|-----------------------|
| r 2 | amd No. 11, 2002, r 4 |
| r 3 | ins No. 11, 2002, r 2 |
| sch | sub No. 11, 2002, r 3 |