

NORTHERN TERRITORY OF AUSTRALIA

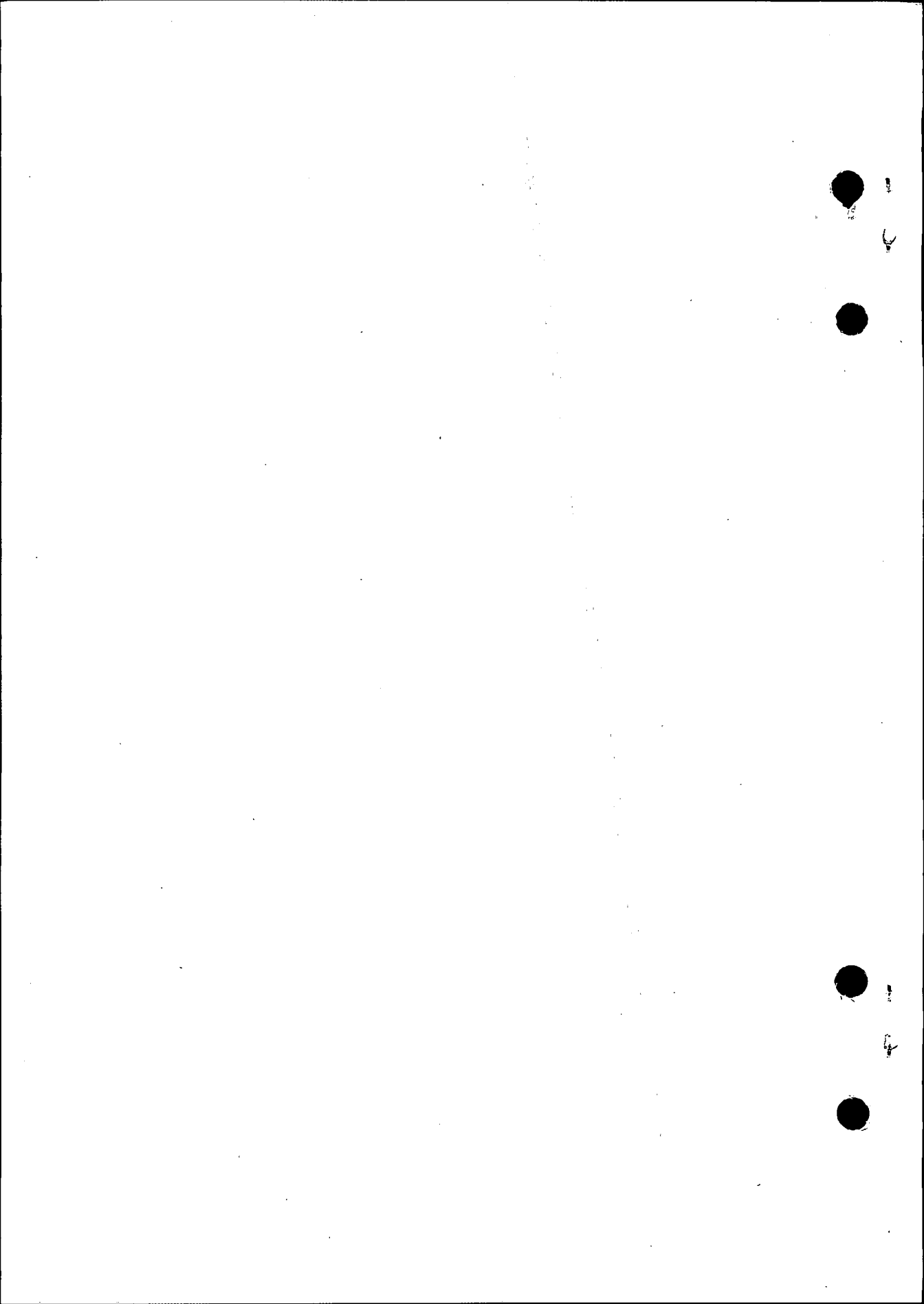
CONSUMER AFFAIRS AND FAIR TRADING
(TOW TRUCK OPERATORS CODE OF PRACTICE)
REGULATIONS

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NORTHERN TERRITORY OF AUSTRALIA

Regulations 1996, No. 5*

Regulations under the *Consumer Affairs
and Fair Trading Act*

I, KEITH JOHN AUSTIN ASCHE, the Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, hereby make the following Regulations under the *Consumer Affairs and Fair Trading Act*.

Dated 31 January 1996.

K.J.A. ASCHE
Administrator

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

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 227 of the Act, is prescribed for the purposes of the Act.

* Notified in the *Northern Territory Government Gazette* on 14 February 1996.

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SCHEDULE

Regulation 2

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

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1 Objectives of the Code

The Objectives of the Code are:

- 1.1 to ensure that persons involved in a motor vehicle **accident** are not subjected to distressing, manipulative or unfair competition at the time of the **accident**;
- 1.2 to establish operational practices that -
 - (i) clarify the respective rights and obligations of **clients** and **tow truck operators** in respect of services provided under this code and by doing so promote fair trading practices and public order;
 - (ii) ensure the material and emotional interests of **clients** are protected and remain predominant in respect of competition between operators;
 - (iii) encourage and develop high levels of professional conduct and service to the public; and
 - (iv) establish appropriate mechanisms to deal with complaints against tow truck operators alleging breaches of the code from **clients**, the Northern Territory Police or other operators.

2 Guiding obligations

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

- 2.1 the safety of members of the public in the vicinity of the vehicle to be towed or being towed is paramount;
- 2.2 the safety and security of the **client's** vehicle and any other property of the **client** being towed or stored shall be assured at all times;
- 2.3 there is compliance at all times with all laws and regulations which have application to the business of a **tow truck operator** including the activities of his or her employees and a familiarity with their responsibilities under this code;
- 2.4 they do not engage in any practice or conduct that may bring discredit upon the industry; and
- 2.5 the code is to be applied in spirit as well as in the letter, so that fair trading practices are followed by all members of the **tow truck industry**.

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SCHEME OF ADMINISTRATION

3 Responsibility for the administration of this Code

3.1 An *Administering Authority* is to be formed under this Code with its members appointed by the Attorney-General and the *Administering Authority* is to be responsible for the effective and efficient administration and operation of this Code.

3.2 The responsibilities of the *Administering Authority* shall include -

- * establishing rosters;
- * receiving and inquiring into complaints against tow truck operators;
- * monitoring compliance with the Code;
- * arranging any publicity regarding the operation of the Code;
- * making provision for raising consumer and business awareness as to the existence and operation of the Code; and
- * reviewing and reporting on the operation of the Code.

4 Establishment, compilation and operation of roster(s)

4.1 Where there are two or more *tow truck operators* in competition in any particular area of the Northern Territory the *Administering Authority* may establish and maintain a roster for the provision of services at *Police controlled accident sites* that distributes the work on an equitable basis amongst all *tow truck operators* who are operating in that area and wish to participate in the operation of a roster.

4.2 The *Administering Authority* shall meet at least on a quarterly basis and will establish and periodically review procedures and protocols which will ensure that all *tow truck operators* are treated fairly in the allocation of work and an efficient service is provided to the Police and the general community.

4.3 A person who -

- (i) carries on a vehicle rental business;
- (ii) owns in excess of fifty vehicles operational within a *declared area* for that purpose; and

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- (iii) has a formal contract for service with another party for the towing and storage of his or her vehicles where they might be involved in an **accident**; or
- (iv) is a private owner of a vehicle insured by an insurer who has a formal contract for service with another party for the towing and storage of that vehicle where it might be involved in an **accident**,

is not subject to the operation of the roster scheme.

- 4.5 A person referred to in clause 4.3 must ensure that his or her vehicles are appropriately and easily identifiable by the Police as being the subject of a specific towing contract.

5 Complaint handling and disciplinary procedure

- 5.1 A complaint in writing against a person for a contravention of the Code, specifying the nature of the alleged contravention and accompanied by any supporting evidence, may be lodged by a **client** or other member of the public, or member of the NT Police or another **tow truck operator** with the **Administering Authority**.

- 5.2 Upon receipt of a complaint the Chairman of the **Administering Authority** shall write to the person complained of and may refer to him or her a copy of the complaint and shall provide the person with an opportunity to respond to the complaint, either in person, or in writing, or both.

- 5.3 Where, after investigation, the **Administering Authority** is satisfied the complaint is unfounded, the complainant and respondent shall be notified by the Chairman in writing accordingly.

- 5.4 Where, after investigation, the **Administering Authority** determines the complaint to be justified and a contravention of the code has occurred, the Chairman shall -

- (i) issue and record a formal warning to the respondent in the case of what the **Administering Authority** considers a minor contravention of the code; or
- (ii) in the case of what the **Administering Authority** considers to be a serious contravention or a repeated breach of any aspect of the code, request the Commissioner of Consumer Affairs to seek a formal undertaking under Section 228 of the Consumer Affairs and Fair Trading Act.

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5.5 Nothing in this Code affects a persons rights to lodge a complaint before another authority or seek redress before another forum.

6 Review of Code

6.1 The *Administering Authority* shall keep under critical examination the operation of the Code through its quarterly meetings and its annual review and report to the Attorney-General.

6.2 The *Administering Authority* shall each year, as soon as possible after 30 June, make inquiry with interested parties to include the Insurance Council of Australia, Territory Insurance Office, NT Police, Consumer Affairs Council and the AANT, as to the operation of the Code for the previous 12 months and the Chairman shall report on its effectiveness to the Attorney-General.

6.3 Should the need for amendment of the Code become evident then all interested parties and the general public shall be invited to comment on any proposed amendment.

6.4 This code shall expire on the day five (5) years after the day of commencement.

7 Standards

7.1 A tow truck operator shall ensure the premises where vehicles are stored _

- (i) comprise an area or areas each of which is enclosed by a boundary fence or wall and lockable gates or doors being
 - of sound structure;
 - securely fastened at ground level;
 - not less than 2.1 metres in height from the ground; and
 - deemed by the *Administering Authority* to be adequate to prevent the entry of unauthorised persons and to prevent the unauthorised removal of *clients* vehicles or goods;
- (ii) have a telephone service operable at all times;
- (iii) include a secure office area;
- (iv) are equipped with an operative communication system suitable for the deployment of mobile units;

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- (v) include within the boundary fences or walls an area for the storage of vehicles which are towed to those premises in compliance with an **accident** towing direction and such area -
 - is at ground level;
 - is large enough to store not less than five passenger vehicles for each position on a roster;
 - is constructed and located in such a way that a vehicle can be released from the storage area within a period of thirty minutes of any request being made for such release;
 - is designated "storage area" by clearly visible signs;
- (vi) bears a sign near to the main entrance of the premises in a position clearly visible from the road which displays by legible letters and numerals -
 - the trading name of the business;
 - the hours of business; and,
 - the telephone number for the business.

8 Duties of tow truck operators

- 8.1 A tow truck operator shall not use a tow truck or cause or permit a tow truck to be used for recovery or towing of any vehicle unless:**
- (i) it has the legal capacity to **tow** the vehicle that is to be towed;
 - (ii) it complies with the provisions of the Motor Vehicle Act and Traffic Act and the regulations thereunder.
 - (iii) it is fitted with and carries radio equipment which is capable of receiving messages transmitted from the registered premises of the **tow truck operator** who owns it.
- 8.2 A tow truck operator shall maintain in force at all times a policy of insurance with a recognised insurer in respect of all legal liability that may be incurred by him or her in respect of any loss, theft or damage to any vehicle, vehicle accessory or any chattels in or about any vehicle which is being towed or has been towed in compliance with an **accident** towing direction.**

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- 9 Procedure for attending a police controlled accident site**
- 9.1 Subject to clause 2.3, a tow truck operator shall not attend an accident site in an area for which a roster is maintained under this code, unless called to do so in accordance with this code.
- 9.2 A tow truck operator must act pursuant to an accident towing direction given by a member of the NT Police.
- 9.3 A tow truck operator having received an accident towing direction must attend the accident site as expeditiously and as safely as possible.
- 10 Conduct at police controlled accident sites and towing of vehicles at or from police controlled accident sites**
- 10.1 A tow truck operator must not tow or otherwise remove a motor vehicle damaged in an accident at or from a police controlled accident site unless he or she has personally obtained from the owner or person in charge of the vehicle or member of the police force an authorisation to remove the vehicle in the form of a valid Authority to tow signed and completed in duplicate and provides the original of the authority to the person authorising the tow.
- 10.2 A tow truck operator shall before presenting any document to any person for signature fully and accurately enter in the document the particulars required by the document.
- 10.3 A tow truck operator who has obtained an Authority to tow authorising him or her to remove a vehicle from an accident site must remove the vehicle in accordance with the terms of the authority to the address specified in the authority by the shortest route practicable and leave the vehicle at that address until it is lawfully removed.
- 10.4 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.
- 10.5 A tow truck driver must not solicit from the owner or person in charge of the vehicle authorisation to remove the vehicle to a place of his or her choosing.
- 11 Authority to tow**
- 11.1 A tow truck operator shall only use the form approved by the Administering Authority as the Authority to tow and that form shall contain clear advice to any client as to existence of this Code

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and the means by which they can complain of any dissatisfaction regarding the conduct of the tow truck operator.

11.2 A **tow truck operator** shall complete all the material and particular parts of the form before submitting it for approval by the **owner** of the vehicle or person in charge of that vehicle.

12 Storage of vehicles

12.1 A **tow truck operator** shall not store **clients** vehicles at a place other than the destination stated in the **Authority to tow** or the **tow truck operator's** registered premises.

12.2 A **tow truck operator** in storing **clients** vehicles at his or her place of premises must -

- (i) store the vehicle at those premises in accordance with the code until it is lawfully removed from the premises; and
- (ii) take all reasonable steps possible to ensure the safety and security of the vehicle, its accessories and any other possessions of the **owner's** to include protecting against weather damage by rain and sun.

13 Removal of vehicles

13.1 Where a motor vehicle has been removed from an **accident** site to the place specified in an **Authority to tow** given in relation to that vehicle, a **tow truck operator** must not, for or in expectation of a fee, reward or benefit any kind, or in the course of a business, remove the vehicle from that place except pursuant to a direction from the **owner** of the vehicle or a person duly authorised to act on the **owner's** behalf.

14 Duty to surrender vehicle

14.1 A **tow truck operator** who has possession or control of a motor vehicle that has been damaged in an **accident** and removed from the **accident** site by a **tow truck** must, at the request of the **owner** of the vehicle or a person acting on the **owner's** behalf, and upon payment or tender of payment of all amounts lawfully claimed from the **owner** in relation to -

- (a) removal of the vehicle from the **accident** site;
- (b) storage of the vehicle;

deliver up the vehicle to the **owner** or person acting on the **owner's** behalf.

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15 Accident spotting

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

16 Off the hook transactions

16.1 A person must not directly or indirectly give or agree or offer to give, or receive, 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 -

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

17 Fees

17.1 A **tow truck operator** shall always make known the costs of any services to be provided before a person who wishes to secure such services engages the services of that **tow truck operator**.

17.2 A **tow truck operator** shall in negotiating fees with **clients**, have regard to any fee schedule that is, from time to time, prescribed by the **Administering Authority** for the provision of rostered towing services.

17.3 Where a **client** is not in a position to negotiate a fee, the applicable fee shall be determined having regard to -

- (i) any recommended fee schedule issued by the **Administering Authority**; and
- (ii) in the case of disputes, the views of the **Administering Authority**.

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18 Definitions

In this Code, unless some other meaning is clearly intended -

18.1 "Accident"

includes a collision or impact by a motor vehicle (whether caused accidentally or on purpose) resulting in damage to one or more motor vehicles;

18.2 "Accident Towing Direction"

under this code means a direction given to a tow truck operator or his or her agent on a towing roster, to tow a motor vehicle from a police controlled accident site given to the tow truck operator or his or her agent by or on behalf of the NT Police;

18.3 "Administering Authority"

for this code means a board of people representing the interest of consumers, business and industry appointed by the Attorney-General responsible for the efficient operation of this code comprising representatives of the Commissioner of Consumer Affairs, the President of the Motor Trades Association, the Chairman of the Consumer Affairs Council and representatives from the Insurance Council of Australia, the Automobile Association of the NT and the NT Police;

18.4 "Authority to Tow"

in relation to a damaged motor vehicle, means authorisation in writing, in the form approved by the *Administering Authority*, to remove a motor vehicle given by the *owner* or person in charge of the vehicle or a member of the NT Police;

18.5 "Client"

means a person or corporation who receives a service from a tow truck operator or his or her agent;

18.6 "Declared Area"

is an area defined and declared by the *Administering Authority* under this code within which a towing roster is established and maintained for Police controlled "accident" sites;

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18.7 "Owner"

includes a person who takes a motor vehicle on hire;

18.8 "Police Controlled Accident Site"

includes any accident site which the Police have attended, are in attendance or have been requested to attend;

18.9 "Tow"

in relation to a motor vehicle, means a tow, partially lift and tow, lift and carry or carry a motor vehicle by means of another motor vehicle;

18.10 "Tow Truck"

means a motor vehicle (including a trailer attached to a motor vehicle) designed to, adapted or intended to lift and carry or partially lift and tow a motor vehicle that cannot, because of damage or malfunction, be operated properly under its own motive power;

18.11 "Tow Truck Operator"

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