



GAUTENG PROVINCE

Department: Roads and Transport
REPUBLIC OF SOUTH AFRICA

**POLICY ON REGULATING
THE TOW TRUCK
INDUSTRY IN GAUTENG**

Department of Roads and Transport

Policy on Regulating the Tow Truck Industry

Call for public comments

The Member of the Executive Council responsible for roads and transport intends to make the policy as set out hereunder.

Interested persons and organisations are invited to submit written comments on the policy, within 30 days from the 1st October 2013. Written comments must be forwarded to Mr. M.M. Rabothata at: 0867203199 or tow.truck@gauteng.gov.za .

Glossary of Terms

Definitions of words and acronyms used in this document reflect as defined below:

AARTO	Administrative Adjudication of Road Traffic Offences Act (No. 46 of 1998)
BBBEE	Broad-Based Black Economic Empowerment
CPA	Consumer Protection Act (No.68 of 2008)
DCS	Gauteng Department of Community Safety
DRT	Department of Roads and Transport
GPG	Gauteng Province Government
MEC	Member of the Executive Committee
MMC	Member of the Mayoral Committee
NLTA	National Land Transport Act (No.5 of 2009)
NPA	National Prosecuting Authority
NRTA	National Road Traffic Act (No.93 of 1996)
NRTR	National Road Traffic Regulations
RTMC	Road Traffic Management Corporation
SABS	South African Bureau of Standards
SANRAL	South African National Roads Agency Limited
SANS	South African National Standards
SAPS	South African Police Service
SARS	South African Revenue Services
WRDM	West Rand District Municipality

FOREWORD

Gauteng's vehicle population has increased substantially over the years and the province has the highest number of licensed vehicles nationally. Hence, the risk of accidents and mechanical breakdowns on our roads has increased considerably in recent years. The need for quick removal of vehicles damaged in accidents and/or mechanical breakdowns has given rise to a highly competitive, but unregulated tow truck industry.

Due to the very nature of the tow truck industry and the services provided, tow truck operators often arrive at the accident scene first and provide much needed assistance to people in distress. They also assist road traffic authorities to clear the roads by removing damaged cars; reduce traffic congestion and provide safety and security to accident victims.

However, in the absence of an effective regulatory system, allegations of misconduct against tow truck operators have increased. These allegations include, *inter alia*, the bribing of police officers to get first notification on an accident occurrence; recommending panel beaters who pay commission; spilling oil on roads, particularly at sharp bends; reckless driving, and charging excessive towing charges. In some instances, service provision has consequently become unprofessional, leaving some road users victimised and dissatisfied.

The tow truck industry associations have been consulted on this policy and are broadly in agreement that the industry should be regulated in order to ensure the safety of the public; to improve quality of services and standards, and to promote a conducive, competitive environment among the various tow truck operators. The industry acknowledges that as their business operations occur on public roads, tow truck operators should adhere to all existing road traffic regulations.

The policy aims to ensure that towing services are improved in terms of safety, affordability, accessibility and reliability. In addition, it intends to promote the transformation of the industry and to support emerging tow truck operators in line with the Broad Based Black Economic Empowerment (BBBEE) goals of the provincial government.

I trust that the approved policy will stimulate the growth and development of the tow truck industry and result in enhanced and improved services to the public.

ISMAIL VADI

MEC for Roads and Transport

POLICY ON REGULATING THE TOW TRUCK INDUSTRY IN GAUTENG

1. PURPOSE

This policy outlines the goals, objectives and principles to govern the tow truck industry in Gauteng.

2. GOAL

To regulate, promote professional business practices and contribute towards the transformation of the tow truck industry in Gauteng.

3. OBJECTIVES

The objectives of the policy are to:

- 3.1 encourage the tow truck industry to continue with and improve on the delivery of a valuable service which assists passengers and drivers involved in break-downs and vehicle accidents;
- 3.2 encourage competition based on transparent rules applied consistently across the tow truck industry;
- 3.3 improve tow truck service levels based on customer needs;
- 3.4 ensure a clean environment and the accessibility of tow truck services in all areas in Gauteng;
- 3.5 promote the transformation, productiveness and sustainability of the tow truck industry;
- 3.6 establish institutional arrangements and a regulatory framework that is responsive to good governance in the tow truck industry; and
- 3.7 to ensure safe, affordable, cost effective and efficient towing service.

4. RATIONALE FOR THE TOW TRUCK POLICY

The tow truck industry is currently operating in an unregulated environment. Consequently, the industry has come under increasing criticism from the public, who believes that it is not receiving value for money. The following are the common criticisms, *inter alia*, relating to the tow truck industry:

- 4.1 Tow truck operators racing to a road accident in order to be the first operator to arrive on the scene, thereby compromising the safety of other road users;
- 4.2 Unnecessary congestion at road accident scenes caused by more than one tow truck operator attending to the accident, which may lead to secondary accidents;
- 4.3 Violent behaviour amongst tow truck operators and other road users at accident scenes;
- 4.4 Intimidation and harassment by tow truck operators of accident victims;
- 4.5 Tampering with the evidence necessary for both evidential and prosecutorial purposes;
- 4.6 Allegations of theft of vehicle or vehicle parts by tow truck operators;
- 4.7 Absence of adequate vehicle storage facilities and relative distances of these facilities from the scene of the accident; and
- 4.8 Non regulation of the industry.

Hence, it is necessary to develop policy and to regulate the tow truck industry in the mutual interests of all stakeholders, namely, motorists and tow truck operators.

5. POLICY AND LEGISLATIVE CONTEXT

This policy is based on the principles, policies and regulations relating to good business practices and consumer protection at both national and provincial government levels. It reflects the priorities of the Gauteng Department of Roads and Transport (DRT) aimed at promoting economic growth; job creation; social development, and the creation of an integrated transport system in the province. It recognizes that the tow truck industry forms an integral part of the broader transport system.

The policy is premised on the following legislative framework:

5.1 Constitution of the Republic of South Africa

Schedule 4 of the Constitution provides for functional areas of concurrent national, provincial and municipal legislative competence. Among those is a function of road traffic regulation, which encompasses tow truck operations.

5.2 White Paper on National Transport Policy

The White Paper on National Transport Policy has identified, *inter alia*, road safety as a focal area, which is concerned with the quality of road vehicles; drivers of vehicles; operators of vehicles; pedestrians; road traffic operations; the road environment; and interaction in the traffic network, including the mutual interaction between road users and the interaction between road users, the road infrastructure and the road environment. The concept "road traffic quality" encompasses traffic safety; traffic discipline; the protection of the road infrastructure and the environment; administrative order in road traffic, and economic order in road traffic. Tow truck operations are not immune from this provision.

5.3 National Road Traffic Act (No.93 of 1996)

The National Road Traffic Act (No.93 of 1996) aims to provide for road matters that apply uniformly across South Africa. It provides guidance on the regulation of road traffic matters generally. Specific sections protect the interests of all road users, including categories of vehicles that may be exempted from the general speed limit on the road. The Act also outlines who can authorise the removal of a vehicle from an accident scene.

5.4 Road Traffic Management Corporation Act (No.20 of 1999)

The Road Traffic Management Corporation Act (No.20 of 1999) provides for the co-ordination of strategic planning, regulation, facilitation and law enforcement in respect of road traffic matters by the national, provincial and local spheres of

government. It states that there is a need to regulate and maximize the constructive role of provincial authorities and local government bodies in support of an enhanced road traffic service provision and in particular road traffic law enforcement. The Act also provides for the movement and removal of vehicles involved in road accidents.

5.5 Consumer Protection Act (No.68 of 2008)

The Consumer Protection Act (No.68 of 2008) provides the right of consumers to choose and to select their own suppliers without any undue pressure from any supplier of goods or services. In the context of towing services, the most common public complaint is that motorists in distress are often forced by tow truck operators to enter into binding agreements other than the actual towing of their vehicles.

5.6 Competition Act (No.89 of 1998)

The Competition Act (No.89 of 1998) prohibits associations from price fixing; the allocation of territories for the provision of specific types of goods or services, or cartels being established to fix prices.

5.7 National Land Transport Act (No.5 of 2009)

The National Land Transport Act (No.5 of 2009) provides the regulatory framework for public transport across the country. Of particular interest is the issuance of permits or operating licenses for public transport operators. Regulatory entities, such as the Gauteng Provincial Regulatory Entity, are to be established for this purpose.

5.8 Skills Development Act (No.97 of 1998)

The Skills Development Act (No.97 of 1998) provides an institutional framework to devise and implement national, sector and workplace strategies to develop and improve the skills of the work force. This Act should be viewed in the context of the desire to make tow truck operations as professional as possible.

5.9 Administrative Adjudication of Road Traffic Offences Act (No.46 of 1998)

The Administrative Adjudication of Road Traffic Offences Act (No.46 of 1998) encourages compliance with national and provincial laws as well as municipal by-laws in so far as road traffic management is concerned. It also promotes road safety. It provides for penalizing drivers and operators who are guilty of infringements or offences through the imposition of demerit points, which can ultimately lead to the suspension and/or cancellation of driving licenses, professional driving permits and operator cards. Tow truck operators and drivers are subject to the provisions of the Act.

5.10 The South African National Roads Agency Limited Act (No.7 of 1998)

The The South African National Roads Agency Limited Act (No.7 of 1998) outlines the functions, powers and responsibilities of SANRAL as it relates to national roads management. Of note is the provision for SANRAL to remove a disused vehicle; machine or a disused part of a vehicle or machine found on a national road. The Act further provides that SANRAL may recover the costs of the removal from the person who deposited or left the disused vehicle, machine or part thereof.

5.11 Municipal by-laws

Municipalities have the constitutional right to enact by-laws where applicable, taking into account the limitations as set out in Schedules 4 and 5 of the Constitution. For example, in Gauteng, the West Rand District Municipality has enacted its own municipal by-laws regulating towing services, entitled the “Street and Miscellaneous By-laws”.

These provide for a prohibition on any person/body to operate a breakdown or towing vehicle in the course of providing a vehicle recovery or towing service without being registered first with the relevant towing association operating in the West Rand District Municipality. In addition, the municipality has an approved Code of Conduct for tow truck operators.

6. SOCIO-ECONOMIC CONTEXT

- 6.1 Tow truck operators provide an essential service to motorists in distress; assist in clearing accident scenes to avoid secondary accidents, and reduce congestion. However, the lack of a specific regulatory framework and oversight mechanism for the towing industry has led to a deterioration of the quality of services provided to the public at large. The perceived self-regulatory nature of the industry has had a minimal impact on improving the quality of services rendered and may even be seen as a source of conflict among operators themselves.
- 6.2 Conflict and business rivalry in the industry has led to fierce turf battles resulting in allegations of corruption; price fixing; emergence of cartels; collusion; deliberately enabling motor vehicle accidents; harassment; bullying, and theft of vehicle parts.
- 6.3 The insurance industry has a critical role to play in relation to the tow truck industry, especially in so far as liaising with their clients during accidents. However, the industry has not engaged effectively in implementing a tow truck Code of Conduct, which is largely left to the tow truck associations to manage. Furthermore, it also excludes a large section of motorists who do not have insurance and may find themselves at the mercy of tow truck operators.
- 6.4 Since 1994, the tow truck industry has not been fully transformed and there still are stringent business entry requirements for historically disadvantaged operators. This has led to allegations of exclusion by smaller operators and of racism.

7. POLICY STATEMENTS

- 7.1. A well regulated tow truck industry is premised on the vision indicated hereunder.

A viable, independent, reliable, sustainable, transformed and well regulated tow truck industry that plays a pivotal role through effective and efficient services provided by tow operators to the general public.

7.2. In order to deliver on this vision a number of broad goals need to be pursued. These are listed below.

7.2.1 Improvement of safety, security, reliability, quality and efficiency of tow truck operations and services in Gauteng.

7.2.2 Enabling towing services users to access the towing industry in the most efficient way possible.

7.2.3 Transformation of the industry to allow for the further growth and development of emerging tow truck operators.

7.3. The policy is premised on the principles outlined below.

7.3.1 Tow truck operators must adhere to and comply with existing legislation and regulations relating to road traffic management safety;

7.3.2 the provision of good quality services to the public should be the overriding objective of the tow truck industry;

7.3.3 the provincial government will retain its regulatory role to ensure the unbiased regulation of road safety in accordance with national and provincial standards;

7.3.4 regulations should be kept to a minimum, without compromising provincial and municipal standards;

7.3.5 participants in the market should be fair and transparent; and

7.3.6 towing services should be cost effective and based on the “value for money” principle.

8. REGULATORY FRAMEWORK

8.1 Tow truck operators will have to comply with the minimum requirements that are provided for in the National Road Traffic Act (no. 93 of 1996) and related Regulations, and those set

by the South African National Standards (SANS) which apply to modified vehicles such as tow trucks before being permitted to operate as tow trucks.

8.2 In addition to the required information, the Tow Truck Operator Card issued by Registering Authorities shall have the following information:

- 8.2.1 The trade name;
- 8.2.2 Type of business;
- 8.2.3 Postal Address;
- 8.2.4 Street Address;
- 8.2.5 Telephone number;
- 8.2.6 Fax number;
- 8.2.7 E-mail address, if any; and
- 8.2.8 An original Tax Clearance Certificate shall be attached.

Also, the following particulars of the tow truck operator and the driver, as applicable, must be printed on the Tow Truck Operator Card:

- 8.2.9 Surname
- 8.2.10 First name/s
- 8.2.11 Identity number
- 8.2.12 Photograph of the person
- 8.2.13 Type of identification
- 8.2.14 Telephone number
- 8.2.15 Cell phone number.

8.3 The above information shall assist in the development of a database of legally registered tow truck operators and ensure that unregistered operators are not allowed to operate. This will further ensure that a database of registered operators is available in the event that a member of the public or a company may require this for any enquiries they may have.

8.4 Tow truck operators shall display visible numbered tags/identification plates on their towing vehicles.

- 8.5 All vehicles removed from an accident scene must have pre-authorization by the owner and/or the driver or operator of the said vehicle, or a person who may lawfully take possession of such, except when there is a need to sufficiently allow the passage of traffic. A standard form to be applicable in the industry shall be used.
- 8.6 The Department shall formulate a Code of Conduct applicable to the tow truck industry.
- 8.7 A Gauteng Tow Truck Industry Forum comprising the relevant stakeholders shall be established by the Department for the mutual benefit of the Department and the tow truck industry, and to advise the Gauteng Member of the Executive Council (MEC) for Roads and Transport on tow truck industry matters.
- 8.8 Appropriate governance structures shall be established by the MEC for Roads and Transport to ensure proper consultation; co-ordination; infrastructure provision; oversight, and enforcement of the policy.
- 8.9 Based on the approved policy, Regulations shall be formulated to regulate the registration and operations of tow truck operators.

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