

# GAUTENG PROVINCIAL GOVERNMENT



**DRAFT**

**TOW TRUCK POLICY FOR GAUTENG PROVINCE**

**2011**

## INVITATION FOR PUBLIC COMMENTS

The public is invited to respond to the Draft White Paper on Tow Truck Industry Policy for Gauteng. Written responses should reach the Gauteng Department of Roads and Transport at the address below not later than\_\_\_\_\_ .

Written comments on the Draft White Paper should be sent to:

Attention: Mr Mohlomphegi Thulare  
Gauteng Department of Roads and Transport  
5<sup>th</sup> Floor, South Tower  
41 Sage Life Building  
Corner Simmonds and Pritchard Street  
Johannesburg  
2001

Fax (011) 355-7007

E-mail [mohlomphegi.thulare@gauteng.gov.za](mailto:mohlomphegi.thulare@gauteng.gov.za)

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## Glossary of Terms

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

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

## **1 EXECUTIVE SUMMARY**

- 1.1 Gauteng has the highest number of licensed vehicles and subsequently heavily congested roads. Thus, the risk for road accidents and mechanical breakdowns has increased. Consequently, the need for quick removal of vehicles as a result of accidental damage and or mechanical breakdowns has given rise to a highly competitive but unregulated tow truck industry.
- 1.2 Due to the nature of the business and services provided, tow truck operators often arrive at the accident scene first and therefore can provide much needed assistance to people who have been injured. They also assist road traffic authorities to clear the roads faster by removing damaged cars to curb traffic congestions and provide safety and security to accident victims in the absence of law enforcement officers or any other security personnel.
- 1.3 In the absence of an effective regulatory framework and system, allegations of corruption have increased. Those allegations include but are not limited to the following: bribing police officers to get first notification on an accident occurrence; recommending panel beaters who pay commission, even putting oil on roads particularly at sharp corners, reckless driving and excessive towing charges. Service provision has subsequently become unprofessional leaving some roads users victimized, abused and totally dissatisfied.
- 1.4 The Tow Truck industry has two associations namely: the South African Towing and Recovery Association (SATRA) and the United Towing Association of South Africa (UTASA), who have both agreed during a consultation process that was conducted by the Department, that the industry must be regulated in order to ensure the safety of the public and improve quality of service and standards. They also accept that their business operations occur on public roads and therefore operators should adhere to public road use regulations and any proposed regulatory system.

- 1.5 It is in the above context that the Department of Roads and Transport (DRT) has undertaken to develop a policy and establish a regulatory framework for the tow truck industry. This policy should lead to the development of a tow truck bill, which should be applicable to individual and business enterprises which provide towing services and storage of damaged vehicles.
- 1.6 The objective of the policy is to ensure services are improved in terms of safety, affordability, accessibility and are reliable. In addition, the policy aims to ensure the transformation of the industry in a manner that promotes and support developing or emerging tow truck operators in line with the Broad Based Black Economic Empowerment strategies of the province.
- 1.7 The implementation of this white paper will be the responsibility of both the provincial and local governments and its success thereof will depend on effective and supportive cooperation from identified stakeholders including insurance companies.
- 1.8 This document outlines the policy objectives and principles on how to regulate the tow truck industry. It will also form the basis for communication to the public and the different spheres of government on what the proposed parameters for regulating the tow truck industry are.

## **2 PURPOSE**

The purpose of the document is to outline the policy vision, goals, objectives and principles to govern the tow truck industry in a manner that promotes professional business practices and contribute towards transformation of the industry in Gauteng Province.

## **3 OBJECTIVES**

The objective of this Draft White Paper is to:

- Encourage fair competition based on transparent rules applied consistently across the transport system;

- Improve infrastructure system and service levels where appropriate, based on customer needs;
- Ensure a clean environment and the accessibility of service in all areas;
- Promote the transformation, productiveness and sustainability of the tow truck industry;
- Establish institutional arrangements and a regulatory framework that is responsive to good governance in the tow truck industry; and
- Ensure safe, affordable, cost effective and efficient towing service management and operations.

#### **4 RATIONALE FOR THE TOW TRUCK INDUSTRY POLICY**

The tow truck industry is currently operating in an unregulated environment and has subsequently led to several problems viz:

- Tow truck operators racing to an accident scene in order to be the first operator to arrive on the accident scene therefore compromising the safety of other road users;
- Unnecessary congestion at accident scenes caused by more than one tow truck operator attending to the same accident scene than required which may lead to secondary accidents;
- Violent behavior amongst tow truck operators and other road users at accident scenes;
- Intimidation and harassment of accident victims;
- Tampering with the evidence necessary for both evidential and prosecutorial purposes;
- Diminished capacity for informed choice by vehicle owners (which may be compounded by any accident related trauma);
- Emerging micro and medium entrepreneurs unable to enter the industry;
- Allegations of theft of vehicle or vehicle parts;
- In some instances, absence of or inadequate vehicle storage area and relative distance; and

- Non regulation of the industry.

It is against the above background that the Department deemed it necessary to develop this policy.

## **5 SCOPE OF THE TOW TRUCK INDUSTRY POLICY**

The policy is aimed at implementing GPG's priority of intensifying good governance and therefore the fight against crime and corruption. The scope of the White Paper covers:

- 5.1 Basic principles that integrate provincial and local tow truck industry needs, which will be implemented through the enactment of tow truck industry regulations.
- 5.4 Issues of capacity of municipalities, law enforcement agencies, insurance institutions and the tow truck industry in responding to the policy requirements.
- 5.5 The development of a framework within which all stakeholders will be involved.

## **6 POLICY & LEGISLATIVE CONTEXT**

- 6.1 This white paper has been developed based on the principles, policies and regulations relating to good business practices and consumer protection at both a national and provincial level. To date government has published sector policies, strategies and laws that support the principle of good governance and good business practices.
- 6.4 The policy reflects government's transport priorities in the context of its broad social and economic policies. It therefore recognizes that the tow truck industry is a critical and forms an integral part of the transport system.
- 6.2 This section describes the legislative mandates underpinning the formulation of this provincial policy on the Tow Truck Industry. This policy has to be consistent

with, and complement the government's developmental, strategic, economic and social objectives.

- Constitution of the Republic of South Africa

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

- White Paper on National Transport Policy

The white paper has identified *inter alia* road safety as a focal area which is concerned with the quality of road vehicles (including motorised and non-motorised 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.

- National Road Traffic Act, 1996( Act No.93 of 1996)

The National Road Traffic Act aims to provide for road matters that apply uniformly across South Africa and also give guidance on the regulation of road traffic matters generally. There are specific sections that are aimed at protecting the interests of all road users. Among those sections is the one listing 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.

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

The act aims to provide 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. With this in mind, the co-ordination of road traffic law enforcement in respect of tow truck operation on the road cannot be underestimated.

- Consumer Protection Act, 2008 (Act 68 of 2008)

The act provides the right of consumers to choose and select their own suppliers without any undue pressure from any supplier of goods or services. In the context of towing services, the most common complaint is that, motorists in distress are often forced by tow truck operators to enter into other binding agreements other than just towing their vehicles

- Competition Act, 1998 (Act No.89 of 1998)

The act prohibits associations from price fixing and the allocation of territories or specific types of goods or services or cartels being established to fix prices.

- National Land Transport, 2009 (Act No. 5 of 2009)

The National Land Transport Act 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 are provided for, for this purpose.

- Skills Development Act, 1998 (Act No. 97 of 1998)

The act provides an institutional framework to devise and implement national, sector and workplace strategies to develop and improve the skills of the South African work force. This act should be viewed in the context of the desire to make the tow truck operations as professional as possible.

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

The act aims to encourage compliance with the national and provincial laws as well as municipal by-laws in so far as road traffic management is concerned and also promotes road safety. It has a provision 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 cancellation of driving licenses, professional driving permits and operator cards. This act therefore calls on the tow truck operators to obey the road traffic laws and regulations in order not to have their licenses suspended or withdrawn.

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

The act outlines the functions, powers and responsibilities of the SANRAL in so far as national roads management are concerned. Of note is the provision for SANRAL to remove a disused vehicle or 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. This act presupposes that a discussion will have to be entered into with SANRAL regarding the implementation of this policy.

- Municipal by-laws

Municipalities also have the constitutional right to enact laws where applicable, taking into account the limitations as set out in Schedule 4 and 5 of the Constitution. In Gauteng only the West Rand District Municipality has so far enacted its own municipal by-law regulating towing services.

The West Rand District Municipality has in terms of *Section 13 of the Local Government Municipal System Act, 2000 (Act No. 32 of 2000) (LGMSA) enacted and published what is known as the “Street and Miscellaneous By-laws”*.

These provides for an express prohibition of anybody to operate a breakdown or towing vehicle in the course of providing a vehicle recovery, 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.

Other municipalities in Gauteng have opted to establish policies in place that will assist in guiding the conduct of tow truck operators and drivers. In the light of this White Paper, greater consultation with municipalities will have to be undertaken to ensure the constitutionality of any towing services.

- 6.3 In the absence of an integrated Tow truck legislation in the Province, the prescripts as alluded to above remain useful legal remedies. These prescripts viewed collectively seek to bring order in how the industry is managed, how members of the public as clients or consumers of this service are treated, how the interests of other role-players are protected when doing business with the tow truck operators and also to protect and safeguard the interest of other road users because this industry is by definition a road based business.
- 6.4 The list of Laws and Policies mentioned above are by no means exhaustive but a summation of legal instruments currently available and utilised by Government as authority to regulate this industry.

## **7 SOCIO-ECONOMIC CONTEXT**

- 7.1 Tow truck operators provide an essential service to motorists in distress and also assists in clearing accident scene(s) to avoid secondary accidents and reduce congestion. However, the lack of specific regulatory framework and oversight mechanism for the towing industry has led to some signs of deterioration of social and economic order within the industry. The perceived self-regulatory nature of the industry has had a minimal impact and may even be perceived as a source of conflict and other anti-social behaviours from operators and drivers.
- 7.2 The conflict in the industry has caused fierce battles and contestations that have led to allegations of corruption, price fixing, emergence of cartels, collusion deliberately enabling motor vehicle accidents, harassment, bullying, theft of vehicle parts.
- 7.3 The insurance companies have a critical role to play in terms of the tow truck industry especially in so far as liaising with their clients during accidents. However, the insurance industry has not effectively engaged in terms of a code of conduct which is currently 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.
- 7.4 The Towing Industry has a negative reputation with motorists and in the absence of a regulatory mechanism, motorists continue to feel vulnerable. In order to improve the industry, GDRT conducted a research survey to determine the root causes of the problems that have been identified. The key findings indicate that, the overwhelming majority of the stakeholders representing motorists and the Towing Industry are of the opinion that the industry needs to be regulated.
- 7.5 Following the transition to democracy in South Africa, the tow truck industry has largely been left unchanged and therefore still has stringent business entry requirements. This has led to allegations of exclusion by smaller operators and

even racism. The proposed regulatory framework will certainly assist in ensuring that the tow truck industry is transformed.

- 7.6 The document seeks to re-instate the socio-economic order through the formulation of policy and regulations that would seek to govern the manner in which the towing industry conducts its business and thereby give comfort to the motorists.

## **8. TOW TRUCK WHITE PAPER VISION & POLICY STATEMENTS**

- 8.1 The National Transport Policy outlines the vision for transport system operations in South Africa and articulates the following in terms of the provision of transport services:

Services provided should be “safe, reliable, effective, efficient, and fully integrated transport operations and infrastructure which will best meet the needs of freight and passenger customers at improving levels of service and cost in a manner that supports government strategies for social and economic development whilst being environmentally and economically sustainable.”

- 8.2 The Draft Gauteng White Paper on Tow Truck Policy must conform to the broad parameters of the National Transport Policy, but on specific issues may not necessarily be limited by national policy where there is a need for provincial solutions for optimal benefit to its communities.

- 8.3 The necessity for a well regulated tow truck industry is premised on the following **Vision:-**

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

## 8.4. Goals

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

- Improvement of safety, security, reliability, quality and efficiency of tow truck operations and services;
- Enabling towing services users to access the towing industry in the most efficient way possible; and
- Transformation of the industry to allow for the emerging Tow Truck Operators

## 9. POLICY FRAMEWORK

The policy is based on the following high level principles which are in line with broad government policies:

### 9.1 Policy Principles

- Provincial needs, strategies and compliance requirements on existing regulations and law;
- Consideration of services provided to customers and impact on other stakeholder needs and views;
- The provincial government will retain its regulatory role to ensure the unbiased regulation of safety and quality in accordance with international, regional, national and provincial standards;
- Regulations should be kept to a minimum, but without compromising provincial and local expectations and standards;
- Participants in the market should be treated equally and fairly; and
- Cost effective towing services.

## 9.2 Policy Statements

9.2.1 Tow trucks will have to comply with the minimum requirements that are provided for in the National Road Traffic Act and Regulations and the SANS before being permitted to operate as tow trucks.

9.2.2 The South African Bureau of Standards will, in consultation with stakeholders draft the standards and specifications to be promulgated by national government.

9.2.3 The Operator Card currently being used and being issued by Registering Authorities shall have the following, in addition to the required information:

9.2.3.1 The trade name.

9.2.3.2 Type of business.

9.2.3.3 Postal Address.

9.2.3.4 Street Address.

9.2.3.5 Telephone number.

9.2.3.6 Fax number.

9.2.3.7 E-mail address, if any.

9.2.3.8 Income Tax Registration number (An original Tax Clearance Certificate shall be attached).

9.2.3.9 Particulars of juristic person which shall include:

i. Surname.

ii. First names.

iii. Identity number.

iv. Type of identification.

v. Telephone number.

vi. Cell phone number.

The above information shall assist in the development of a database of Tow Truck Operators and ensure that unscrupulous or illegitimate operators are not allowed to operate. Tow Truck operators will be expected to display visible numbered tags/ identification plates.

9.2.4 All vehicles removed from an accident scene must have pre-authorization by the owner, driver, operator 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.

- 9.2.5 Government shall publish maximum allowable fees for towing, storage and any other related activities in order to protect the consumers who are sometimes charged exorbitant fees. In formulating the allowable fees, economists, consumers and the industry shall be consulted. In addition, Government may request the Competition Commission for advisory opinion.
- 9.2.6 The Tow Truck operators and Insurance companies shall ensure that local and emerging entrepreneurs in terms of broad based economic empowerment are supported and promoted. This approach will ensure that emerging entrepreneurs are able to operate within the market.
- 9.2.7 Government shall formulate a code of conduct applicable in the industry. The Department responsible for roads and transport as well as other government agencies shall ensure that the code is complied with.
- 9.2.8 A consultative forum comprising the relevant stakeholders shall be established to ensure transparency, transformation and flow of information. Government shall set criterion for recognition of stakeholders.

## **10 INSTITUTIONAL ARRANGEMENTS AND GOVERNANCE**

One of the fundamental limitations in establishing a policy and regulatory framework is often the absence of an institutional design that will achieve the implementation of the policy and regulations. Appropriate governance structures should be established to ensure proper consultation, coordination, infrastructure provision, and oversight and enforcement of the envisaged policy.

- 10.1 The MEC responsible for roads and transport has the responsibility of ensuring that efficient and effective Tow Truck operator system is achieved in the interest of the province. This responsibility is achieved by:

- Developing and maintaining a Tow Truck Industry Policy;
- Developing and maintaining the tow truck industry legislative and regulatory framework
- Establishing a Provincial Tow Truck Industry Forum to advise the MEC responsible for transport on provincial tow truck industry policy matters; and
- Exercising an oversight and monitoring role.

10.2 The MECs for roads & transport and community safety shall facilitate the implementation of this policy through the provision of law enforcement and shall work jointly in fulfilling the regulatory oversight function for the Tow Truck Industry.

10.3 Municipalities as Law Enforcement Resources should adopt and/ or implement an integrated approach to Tow Truck services. Municipalities and the Provincial Departments shall jointly implement the Tow Truck policy and the regulatory framework. It is important that an integrated approach is followed with regard to the industry. This policy will be represented at the MEC-MMC Transport Committee and will remain as a formal agenda item for discussion and implementation.

10.4 The DRT shall take responsibility for the co-ordination and consultation of all affected government and parastatals. This includes the DCS, Department of Justice and Constitutional Development, NPA, Municipalities, SARS, SAPS and other relevant institutions so as to advance the implementation of this policy.

## **11. RECOMMENDATION & THE WAY AHEAD**

11.1 The GDRT will develop a communication strategy to create awareness of the policy and to also distribute to the public and relevant stakeholders to review and obtain comments;

11.2 Based on the approved policy, regulation would be formulated to govern the tow truck industry and its affiliates.