



GUIDELINE FOR TOWING SERVICES IN FIJI

A Framework for Self-Regulation



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“To Create a Dynamic and Competitive Market in Fiji”

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1. Introduction

Like many economic activities that are intensive in infrastructures, the transport sector is an important component of the economy impacting on development and the welfare of the Fijians. Transportation or the means of travel has evolved significantly over the years without-board and in-board vessels replacing canoes in the sea, automobiles of various sizes and construct replacing horses and foot travel. As such, movement from places to places for economic activities and other purposes has been made faster and more convenient to the general travelers, thus creating positive multiplier effects such as improved markets accessibility, employment and additional investments.

With the introduction of new travelling means comes new infrastructures like roads, ports, jetties— etc, to assist the travelers and the vehicles used for travelling. The road system of travel has developed significantly in terms of complexity and convenience. It has also brought into existence regulations developed specifically to cater for the smooth and safe flow of travelling by roads. In municipal areas, streets designated parking areas and sidewalks become features of this new development with regulations also created and enforced to cater for such activities.

With an increase in the volume of traffic on our roads, travelers are likely to encounter accidents and the problems of parking whilst moving from place to place. The problems could be accidents due to mechanical fault of vehicles or careless and recklessness of drivers and the travelling public. It can also be due to parking in restricted areas within a municipality which leads to traffic congestion. Parking offences and accidents affect the management of traffic on our roads.

Currently, there are authorities established in Fiji to enforce road codes and regulations that included Municipal Councils, Land Transport Authority (LTA) and Police. These authorities are provided with relevant legal powers under their own legislations to enforce road regulation and codes on travelers and the public in Fiji. One of the powers under their legislation is that of towing of vehicles from restricted parking areas within a municipal boundary, from accident sites and vehicles not meeting standard requirements. In the recent years, the traffic management has seen the emergence of a market for towing.

The towing market in Fiji is a factor market that is not competitive given that the number of players in the industry depends on the number of licences issued amongst other things. In most cases it has been established that the relevant authorities have unilateral powers in engaging the services of their preferred towing operator for the purpose of towing of vehicles which are illegally parked or from accident sites.

Given the above, the towing operators function in a market that gives them Substantial Market Power (“SMP”) which may lead to the towing operators abusing their market power in terms of charging exorbitant rates without any justifications and the way in which towing services are conducted. This has resulted in asymmetry of information and creating an imbalance between consumers and business expectations, requirements and responsibilities.

The current practices governing towing services have displayed their inadequacies in dealing with issues of unfair rates and consumer inconvenience, for the conduct of towing services. Much of the existing conduct of towing lessens or restricts the rights of consumers to choice and in certain instances amounts to abuse of market and enforcement powers. If not captured now, Fiji could be deemed as breaching its obligations under international conventions on consumer rights of freedom of choice and interests.

The conduct of unilaterally engaging the services of towing operators and billing of consumer without providing any choice and justification is a cause of concern for the Fijian Competition and Consumer Commission (FCCC) and is likely to be in contravention of consumer protection and unfair trading provisions under the Fijian Competition and Consumer Commission Act 2010 (FCCC Act 2010). This could have negative impact such as hardship to consumers as well as traders, general breakdown of trust and social capital.

Based on these concerns, the FCCC has spearheaded the development of this Self-Regulating Guideline to provide an opportunity for the towing market to operate in a competitive and fair way that will ultimately reduce FCCC's intervention by encouraging the stakeholders to move towards self-regulation. The self-regulating guideline on towing services in Fiji ("SRG Towing") can be utilised to minimise and eliminate the existing irregularities, abuse of SMP and unfair trade practices.

The guideline provided herewith is intended to assist the towing operators, relevant authorities and the consumers to conduct the transactions in a fair and reasonable manner. An infringement of the guideline does not constitute a breach; however, non-compliance to provisions of the guideline may result possible contravention of provisions of the FCCC Act 2010, which will be considered an offence.

2. Scope

The SRG Towing will apply virtually to towing operators, municipal councils, and the general public concerning towing services and to further ensure safe and efficient removal, impound and safekeeping of all vehicles being towed by and placed into the custody of the relevant authorities. The SRG Towing has been developed to ensure consumer protection and fair-trade practices in Fiji in the conduct of towing services. This self-regulating guideline will enable the following:

- 2.1.** Establish operational practices for towing operators to clarify the rights of consumers in respect of services provided and to promote fair trading practices.
- 2.2.** Ensure the interests of consumers are protected and remain predominant in respect of the practice amongst towing operators.
- 2.3.** Encourage and develop high levels of professional conduct and service to the public.

3. Relevant Laws

The SRG Towing has been developed in recognition of the principles and in conjunction with the following legislations and any other amendments thereafter:

- 3.1. Land Transport Act 1998.
- 3.2. Land Transport Regulation (LN No. 98 of 2009).
- 3.3. Consumer Council of Fiji Act 1976.
- 3.4. Fijian Competition and Consumer Commission Act 2010.

4. Definitions

- 4.1 Authorisation** To allow a party to do or enter into a contract that has an exclusionary provision because the benefits outweigh the detriment.

- 4.2 Consent tow** Any tow of a motor vehicle in which the tow truck is summoned by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include an incident management tow or a private property tow.

- 4.3 Council** Means the municipal council of a city, town or district constituted under the Local Government Act, or any other council, association, authority or body designated by the Minister.

- 4.4 Drive** Means a driver of a vehicle, and includes the rider in control of a motor cycle, powered cycle or bicycle, or a person in control of a motor vehicle which is being towed, and where a separate person acts as steersman of a motor vehicle includes that person as well as any other person engaged in the driving of that vehicle; and 'drive' has a corresponding meaning; (stipulated in the *Land Transport Act*)

- 4.5 Motor Vehicle** Means any automobile, motor car, motor carriage, motor cycle, traction engine, tractor, or other carriage or vehicle propelled or capable of being propelled by means of an engine powered wholly or partly by any volatile spirit, steam, oil, gas, or electricity, or by any means other than human or animal power, but does not include –
 - a) A bicycle propelled or capable of being propelled by means of an internal combustion engine that is fitted to but detachable from the bicycle, being an engine the generating capacity of which does not exceed 20 watts; or
 - b) A wheelchair to be driven by an invalid.

- 4.6 Parking** Means the act by which a vehicle is stopped for a purpose other than-
- a) Picking up waiting persons or setting down passengers, regardless of whether the driver leaves the vehicle unattended;
 - b) Loading or unloading goods; or
 - c) Stopping in compliance with the provisions of the Land Transport Act.
- 4.7 Parking Offence** An offence arising by reason of a vehicle being placed, left, or allowed to remain in a stationary position in any public street contrary to the Land Transport Act.
- 4.8 Parking Place** Any place set aside for the parking of vehicles and includes a bus stand, taxi stand or other place set aside for the parking of a particular class of vehicle.
- 4.9 Private Property** Is the ownership of property by non-governmental legal entities, unless privately owned by the government as an institution.
- 4.10 Tow Vehicle** A vehicle or truck, equipped with a boom or booms, winches, slings, tilt beds or similar equipment designed for the towing or recovery of motor vehicles.
- 4.11 Towing** The moving or removing from public or private property or roads or from a impound facility by a motor vehicle of a consumers motor vehicle that is damaged as a result of an accident or otherwise disabled, is recovered after being stolen, or is parked illegally or otherwise without authorisation, parked during a time at which such parking is not permitted, or otherwise parked without authorisation, or the immobilisation of or preparation for moving or removing of such motor vehicle, for which a service charge is made, either directly or indirectly.
- 4.12 Unconscionable** Serious misconduct or something clearly unfair or unreasonable; conduct which shows no regard for conscience; conduct which is irreconcilable with what is right or reasonable.
- 4.13 Vehicle** Includes any description of vehicle designed to move or to be moved on one or more wheels or revolving runners, or any truck, barrow, carriage or similar vehicle but does not include a vehicle excluded by regulations.
- 4.14 Vehicle Winching** A stationary motorized machine, hosted in the tow vehicle, used for hoisting or hauling or winching or pulling Motor vehicles.

5. Principles

The SRG Towing is intended to encourage the towing companies to comply with FCCC Act 2010 and other relevant laws of Fiji to ensure consumer protection and fair-trade practices. The guideline is developed in recognition of the following principles:

- 5.1. All consumers should be treated equitably, honestly and fairly at all stages of their relationship with the service providers.
- 5.2. Service providers and authorised agents should provide consumers with appropriate and relevant information that informs the consumers of the fundamental benefits, risks and terms of the product or services.
- 5.3. Consumers should have access to adequate complaints handling and redress mechanisms.
- 5.4. Competitive markets should be promoted in order to provide consumers with greater choice among services and create competitive pressure on providers to offer competitive prices and services, enhance innovation and maintain high service quality.
- 5.5. Promote consumer protection and fair-trade practices.
- 5.6. Encourage stakeholders to move towards self-regulation.

The SRG Towing is formulated as illustrated in figure 1 on the following page:

Figure 1: SRG Towing Guideline Flow



6. Towing during Parking Offence

6.1. Information Display/Disclosure

- 6.1.1.** The following information/details must be displayed in a prominent position legibly and conspicuously at all public places from where vehicles are subject to towing:
- a)** The purpose or purposes for which parking is authorised and the times during which such parking is permitted.
 - b)** That unauthorised parking is prohibited and any unauthorised motor vehicles found will be towed at the owner's expense.
 - c)** List of contact details which is available at all times to redeem the vehicle.
 - d)** Schedule of fees and charges.
 - e)** Address of the impounded vehicles facilities.
 - f)** The maximum rate charged per 24-hour period or part thereof, for the storage of the towed vehicle.

Note: All the winching charges should be made known to the consumer by the towing operator or company, prior to engagement. The full disclosure of fees and charges should be made by the towing operator.

6.2. Authorization

- 6.2.1.** A towing authorization shall only be issued if:
- a)** Criteria in 2.1 (Information Display/Disclosure) are met; and
 - b)** The Authorisation Officer has visited the site and confirmed the parking offence.
- 6.2.2.** A towing authorisation form must contain clear advice to the consumer about the existence of, and the complaints procedures provided.
- 6.2.3.** The Authorisation Officer must complete and sign the towing authorisation form by fully and accurately entering in all the required particulars with documentary evidence of the offence (such as photographs).
- 6.2.4.** The towing company and the authorising officer must take photographs that shows the location and text of any sign posted at the facility restricting parking of vehicles.
- 6.2.5.** The Authorisation Officer must provide three copies of the towing authorisation form: one copy for the towing officer; one copy for the towing operator; and one which is to be kept at the impound facility and made available to the parking offender prior to the release of the vehicle.
- 6.2.6.** The Authorisation Officer shall not authorise for towing of motor vehicle for which the parking fee has expired. Instead a parking fine shall be issued to the parking offender.

6.3. Conduct

- 6.3.1.** No towing operator shall tow away any vehicle without proper authorisation.
- 6.3.2.** A towing operator must immediately release the towed vehicle free of charge if the vehicle was subject to unauthorised towing.
- 6.3.3.** No towing operator shall tow an illegally or improperly parked vehicle if the parking offender reaches the vehicle before it has been towed away and is prepared to pay the 'non-towing' charges. This clause does not restrict the authorising party to exercise its laws such as issuing of traffic infringement notices.
- 6.3.4.** The towing operator must not give any benefit or advantage, including a financial benefit, to any person for providing information on parking offenders.
- 6.3.5.** A towing operator must NOT monitor, patrol, or otherwise through surveillance for the purposes of identifying parking offences.
- 6.3.6.** The towing operator must be able to produce a copy of the towing authorisation form to the relevant authority/parking offender prior to or during the course of the towing process.
- 6.3.7.** A towing operator who has obtained a towing authorisation must remove the motor vehicle specified in the authorisation form in accordance with the terms of the authorisation, by the shortest route practicable.
- 6.3.8.** The towing business shall take all precautions necessary to protect persons or property against injury or damage, and shall provide personnel sufficiently trained and capable personnel's to perform towing in accordance with the vehicle manufacturer's directions for towing a particular vehicle.
- 6.3.9.** For parking meter offences, fines as per the municipal council is to be imposed. No vehicles should be subject to towing for parking meter offences.
- 6.3.10.** Any loss or damage sustained to a vehicle as the result of a public tow by a towing operator shall be the sole and entire responsibility of the towing operator. The towing operator shall assume all liability for the vehicle and the property inside the vehicle, from the point of hook-up until the vehicle is released to its owner or authorised representative.
- 6.3.11.** The damage of the vehicle needs to be assessed by an independent party. Once the cost of repair is known, the towing operator must compensate for the damages done to the vehicle and any loss to fittings and accessories.
- 6.3.12.** No repair work shall be done on any vehicle unless the owner of the vehicle or the owner's authorised agent specifically authorises repair work in writing.
- 6.3.13.** The Municipal Council must not falsify:
 - a)** The duration of parking.
 - b)** The performance of the pay meter.
 - c)** The place where vehicle is parked (white/yellow line, pedestrian Crossing, over a fire hydrant, over a drive way or road entrance).
 - d)** The distance for which the vehicle was towed.
 - e)** Information about parking perimeters e.g. reserved/unreserved parking and information on how tickets must be displayed.

- 6.3.14.** No towing operator shall tow any vehicle parked from a private property without the authorisation of the property owner or any other law enforcement agency.
- 6.3.15.** If a tow truck responds to a dispatch to carry out the public tow and the vehicle owner or an authorised offer reaches the area before the towing services has been done, non-towing charges shall apply.
- 6.3.16.** If a tow truck has applied chains, a dolly, a winch, or other towing device to prepare a vehicle for public tow, and the owner or operator of the vehicle appears and asks that the tow be discontinued, the tow truck operator shall comply, upon payment by the vehicle owner or operator of the non-towing fees and charges.
- 6.3.17.** Before commencing a private tow (except in the case of fatalities), the tow truck operator shall furnish to the owner or operator of the vehicle to be towed a signed and itemised estimate of charges for the towing and other services to be rendered. The owner or operator of the vehicle shall sign the form before commencement of the tow.
- 6.3.18.** The towing operator must ensure that the truck used for the towing services is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines.
- 6.3.19.** The towing operator must carrying out the towing services using equipment that meets the manufacturer's minimum specifications for the towing of a specified vehicle.

7. Towing During Accident

- 7.1.** The authorisation officer must consider the choice of the owner or person in charge of a motor vehicle to arrange for towing services to remove the vehicle to a place where the driver has recommended keeping the vehicle, except in cases where regulation requires otherwise or in case of fatalities and serious accidents.
- 7.2.** The vehicle owner shall be given reasonable time to arrange for towing services. The reasonable time shall be the amount of time that the authorisation officer would generally take to arrange for towing services.
- 7.3.** When a vehicle is involved in an accident and in cases of fatalities, a public tow of the vehicle shall be ordered if necessary in the judgment of the governmental authority at the scene of the accident.
- 7.4.** The authorisation officer must ensure:
 - 7.4.1.** That the towing operator charge the fees as per the schedule.
 - 7.4.2.** That the reasonable fee should be charged.
 - 7.4.3.** That the checklist attached is properly filled and handed to the owner/authorised personal of the accident vehicle (except in case of fatalities).

8. Impound of the Towed Vehicle

- 8.1.** A towing operator must not keep a towed vehicle at a place other than the destination stated in the towing authorisation form.
- 8.2.** A towing operator is allowed to tow and keep the vehicle without owner's consent only after it gets written authorisation from the law enforcement unit or from the owner of the property where the car is parked. A towing company cannot on its own decide to tow and keep a vehicle and then charge the fees.
- 8.3.** The impound facility provider must 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 damage(s).
- 8.4.** To maintain the safety and security of the towed vehicle, the following reasonable measures should be adhered to:
 - 8.4.1.** Providing a fence or adequate security measures where the vehicle is kept.
 - 8.4.2.** Must equip all gates, doors and other openings facilities with locks and keeping all gates, doors and other openings closed and secured at all times except during authorised entry with exit.
 - 8.4.3.** When door keys are available, lock the vehicle doors and must protect the keys from unauthorised access.
 - 8.4.4.** Keeping the vehicle window closed and readily available of sunroofs.
 - 8.4.5.** Using a tarp to protect vehicle with broken windows or an un-closeable sunroof.
 - 8.4.6.** The Vehicle must remain parked and not be used.

9. Release of the Impound Motor Vehicle

- 9.1.** Before an impound vehicle is released to the owner or authorised person (in writing), a duly completed authorisation form with the following particulars must be provided:
 - 9.1.1.** The vehicle registration number.
 - 9.1.2.** The time of the tow.
 - 9.1.3.** The total towing distance.
 - 9.1.4.** The total fees charged to release the vehicle.
 - 9.1.5.** Any damaged done to the vehicle during towing.
 - 9.1.6.** The location from which the vehicle was towed.
 - 9.1.7.** The name and location of the vehicle impound facility where the vehicle was stored.
 - 9.1.8.** The date the vehicle was accepted for impound.
 - 9.1.9.** The first day for which a impound fee is assessed.
 - 9.1.10.** The daily impound rate.
 - 9.1.11.** The type and amount of any other charge to be paid when the vehicle is claimed.
 - 9.1.12.** The full name, street address, and telephone number of the vehicle impound facility.
 - 9.1.13.** The full name, street address, and telephone number of the towing company.

- 9.2. A towing operator who has possession or control of a towed motor vehicle must release the vehicle to the owner or to a person acting on the owner's behalf upon immediate contact and payment or tender of payment of all amounts as stipulated in the authorisation form.
- 9.3. Where there is dispute for fees and charges or the manner in which the vehicle was towed, FCCC needs to be consulted immediately. The authorised FCCC Officer will attend to the dispute urgently and will facilitate the process of dispute and resolution. In case where geographical location prohibits the urgent presence of the FCCC Officer, the matter would be at the discretion of the Authorisation officer.

10. Fees and Charges

- 10.1. A towing operator must not charge a fee that may be deemed unreasonable and unfair under Section 76 of FCCC Act 2010.
- 10.2. Towing charges as per schedule 2 and 3 of this guideline shall apply.
- 10.3. From the authorised towing fees of \$51.00 in Schedule 2, for every towing \$10.00 must be paid to the Municipal Councils as part of the contribution for the Capital projects by the Municipal Councils. That is \$10.00 for every completed towing as per schedule 2 must be paid by the towing operators to the Municipal Councils.
- 10.4. Each towing operator must issue a detailed invoice of the actual amount paid by the owner of the vehicle immediately after the acceptance of payment.
- 10.5. The fees and charges should be legibly and conspicuously displayed in a prominent place where the vehicle is impounded.
- 10.6. Any fees and charges levied to the consumer under pressure or through unfair tactics or circumstances under which the customer could have acquired identical or equivalent service from a person other than the supplier would be deemed to be a violation of Section 76 of FCCC Act 2010.
- 10.7. The towing operator must display the fees and charges on the towing vehicles. The winching charges per hours must also be clearly displayed.

11. Availability of Records

- 11.1. Every towing operator shall keep records and make available for inspection: Invoices, job orders; and logs of claims for reimbursement and other documentation relating to all towing services performed and rates charged for the services for a period of seven years.
- 11.2. Every towing operator shall keep to the satisfaction of FCCC such records and accounts as are customary and proper in the type of business conducted by towing company.
- 11.3. No towing company shall, without the consent of FCCC, destroy any document whatever relating wholly or in part to any business performed by him or to any goods or services until a period of seven (7) years has elapsed since the documents originated.

Providing false and misleading information to the consumer is an offence under FCCC Act 2010 and it is prudent for the Towing Company to fill the check list attached below.

12. Commencement Date

12.1. The Self –Regulating Guideline for Towing came into effect from 1st February 2014.

12.2. Municipal Councils, Towing Companies and other relevant stakeholders who are not in compliance with the requirements under SRG-Towing, will not be allowed to tow vehicles after 1st February 2014.

Annexure 1: Towing Checklist for Parking Infringements

TOWING AUTHORISATION FORM – PARKING INFRINGEMENTS	
Infringement Details	Motor Vehicle Details
Date _____ Time _____ Infringement Details: _____ _____ _____ _____	Registration Number _____ Make and Model _____ Vehicle Type <input type="checkbox"/> <3001kg <input type="checkbox"/> >3001kg
Towing Operator Details	Authorisation
Towing Operator Name: _____ Driver Name: _____ Driving License Number: _____ Type of Tow _____	Officer Name: _____ Evidence of damage prior to towing <input type="checkbox"/> exhibit available <input type="checkbox"/> not gathered <input type="checkbox"/> No damages Towing Destination _____ Authorisation Officer Signature _____ Date and Time _____
Towing Fee \$ _____ Storage Fee \$ _____	
Vehicle Owner/Drivers Signature _____ Date _____	

Annexure 2: Towing Checklist for Towing During Accident and Others

TOWING AUTHORISATION FORM – ACCIDENTS AND OTHERS	
Towing Details	Motor Vehicle Details
Date _____	Registration Number _____
Time _____	Make and Model _____
Infringement Details: _____	Vehicle Type <input type="checkbox"/> <3001kg <input type="checkbox"/> >3001kg
_____	Authorisation
_____	Officer Name: _____
_____	Officer Batch No. _____
Towing Operator Details	Towing Destination _____
Towing Operator Name: _____	Authorisation Officer Signature _____
Driver Name: _____	Date and Time _____
Driving License Number: _____	
Type of Tow _____	
Towing Fee \$ _____ Storage Fee \$ _____	
Vehicle Owner/Drivers Signature _____ Date _____	

Annexure 3: Schedule 1- Towing Fees and Charges for Parking Offences

Parking Offence Towing Fees	Towing Charge (VIP)	Non Towing Service Charge*
Vehicle gross weight does not exceed 3000kgs (3 Ton)		
Between the hours of 0700 and 1700 Monday to Saturday (other than Sunday or public holidays) up to 5km.	\$51.00*	\$18.00
Any other time.	\$55.00	\$32.00
Fee for additional kilometers towed in excess of 5 kilometers (per every 5km or part thereof).	\$10.90	\$5.90
Vehicle gross weight exceeds 3000kgs (3 ton)		
Between the hours of 0700 and 1700 Monday to Saturday (other than Sunday or public holidays) up to 5km.	\$137.80	\$37.70
Any other time.	\$151.80	\$51.70
Fee for additional kilometers towed in excess of 5 kilometers (per every 5km or part thereof).	\$16.20	\$11.80

****\$10.00 for every towing must be paid to the Municipal Councils by the Towing Operators***

Note: The above rates have been independently computed by FCCC and deemed to be reasonable and fair.

***Non-Towing service charge** may be applicable if:

1. The owner or the operator of the vehicle reaches the vehicle before it has been towed away and is prepared to pay the tow charges; and
2. If a tow truck has applied chains, a dolly, a winch, or other towing device to prepare a vehicle for public tow, and the owner or operator of the vehicle appears and asks that the tow be discontinued, the tow truck operator shall comply, upon payment by the vehicle owner or operator of the non-towing fees and charges.

Annexure 4: Schedule 2- Towing Fees and Charges during Accident

Accident Towing Fees	Towing Charge (VIP)
Vehicle gross weight does not exceed 3000kgs (3 Ton)	
Between the hours of 0700 and 1700 Monday to Saturday (Sunday or public holidays) up to 5km.	\$70.00
Any other time.	\$84.00
Fee for additional kilometers towed in excess of 5 kilometers (per every 5km or part thereof).	\$13.40
Vehicle gross weight exceeds 3000kgs (3 ton)	
Between the hours of 0700 and 1700 Monday to Saturday (other than Sunday or public holidays) up to 5km.	\$166.80
Any other time.	\$180.80
Fee for additional kilometers towed in excess of 5 kilometers (per every 5km or part thereof).	\$23.70

Note: All the winching charges should be made known to the consumer by the towing operator or company, prior to engagement.

Contact Details of FCCC:

Head Office
42 Gorrie Street
Suva.

Lautoka Office
1st Floor
Shah Investment Building
Office 2, 5 Tukani Street
Lautoka.

Labasa Office
Lot 3
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