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REVIEW OF ACCIDENT TOWING
AND STORAGE FEES
ISSUES PAPER

OCTOBER 2009

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PREFACE

Accident towing and storage, that is, the towing of damaged or disabled vehicles from the scene of an accident, is a regulated service in Victoria.

Within certain geographical boundaries, tow truck drivers are only allowed to attend an accident scene once they have been allocated a towing job from an accident allocation centre. Under the *Accident Towing Services Act (Vic) 2007* (the Act), it is an offence for tow truck drivers to attend an accident scene without an allocation job.

The Act regulates both the conduct of tow truck business operators and drivers as well as the fees that operators can charge consumers for accident towing services.

The Minister for Roads and Ports (the Minister) sets the fees for accident towing services. The fees consist of various components including a call out fee plus a per kilometre charge as well as an after hours surcharge. However, before making a decision regarding fees, the Minister is required to direct the Commission to review the fees and any other matters identified by the Minister.

On the 10 September, the Minister requested the Commission to undertake a review of accident towing and storage charges. The Commission has a tight timeframe within which to conduct the review as it is required to report back to the Minister by 22 February 2010.

The review will investigate and report on the appropriateness of the level of each component within the current regulated fee structure; whether the components should be varied; a potential process for dealing with future fee variations; the treatment of towing jobs for which an operator is not paid; and whether the boundaries for the accident allocation zones are still applicable.

The Commission has been asked to have regard to a number of factors in undertaking the review including the impact on Victorian business, the community and the tow truck industry, the benefits of timely accident scene clearances and other State and Territory approaches to accident towing charging.

This Issues Paper identifies the key issues and questions that the Commission is seeking feedback on. Interested parties are encouraged to provide submissions and comments relevant to the accident towing industry in Victoria. Submissions are due by 16 November.

Dr Ron-Ben David
Chairperson

This chapter considers the terms of reference for the review and explains the role of the Essential Services Commission and the process for conducting the review including its key dates and outlines the purpose of this paper.

1.1 Background and Context

Accident towing is the towing of accident damaged vehicles by a tow truck from an accident scene. The provision of accident towing services is regulated in Victoria. That is, the *Accident Towing Services Act 2007 (Vic)* (the Act) provides that tow truck business operators and tow truck drivers who are performing accident towing services and related services such as the storage of damaged/disabled vehicles, must be licensed by the industry regulator, Vic Roads.

The fees that licensed accident towing operators are permitted to charge for their services are also regulated. The Minister for Roads and Ports is responsible for setting the accident towing and storage fees. However, before doing so he must direct the Essential Services Commission (the Commission) to undertake a review of the fees and any other matters identified by the Minister.

1.2 The Commission's role and legislative framework

The Commission is Victoria's independent economic regulator of prescribed utility services supplied in the electricity, gas, ports, grain handling and rail freight industries. The Minister for Finance administers the *Essential Services Commission Act 2001* (the ESC Act) which establishes the Commission and sets out its functions, role and responsibilities. The Commission's primary objective is to promote the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services.

The Commission also has a role in undertaking reviews/investigations as requested by relevant Ministers under industry specific legislation, such as in the case of the current review.

The Act empowers the Minister for Ports and Roads to refer to the Commission an investigation into accident towing and storage charges and any other matters identified by the Minister. Box 1.1 sets out the industry specific legislation relevant to this review in more detail.

Box 1.1 Commission's role under industry legislation

Accident Towing Services Act 2007

Section 211 - Minister to determine charges for accident towing services and other services

The Minister may determine the amounts that may be charged by the providers of the following —

- (a) accident towing services;
- (b) the service of storing accident damaged motor vehicles —
for the provision of these services.

Section 212 - Determination of charges

The Minister must not make a determination under section 211 unless he or she —

- (a) has referred the matter to the Commission for investigation under Division 9 of Part VI of the Transport Act 1983 and has received the Commission's report on the investigation; and
- (b) has received a report from VicRoads.

Transport Act 1983, Division 9, Part VI — Commission Investigation

Section 186 of the Transport Act provides that:

- (1) The Commission must conduct an investigation into any matter relating to:
 - (a) licence fees for hire car licences or special purpose vehicle licences; or
 - (b) taxi-cab fares or hiring rates; or
 - (c) charges determined under section 211 of the *Accident Towing Services Act 2007*— that the Minister by written notice refers to the Commission for investigation under this Division.
- (2) The Minister must consult with the Minister administering the Essential Services Commission Act 2001 before referring a matter to the Commission.
- (3) The written notice must specify the terms of reference for the investigation
- (4) The Minister referring a matter —
 - (a) may specify a period within which a report is to be submitted to the Minister;
 - (b) may require the Commission to make a draft report publicly available or available to specified persons or bodies during the investigation;
 - (c) may require the Commission to consider specified matters;
 - (d) may give the Commission specific directions in respect of the conduct of the investigation;
 - (e) may specify objectives that the Commission is to have in performing its functions and exercising its powers in relation to the investigation.

Source: *Accident Towing Services Act 2007* and *Transport Act 1983*.

1.3 Terms of Reference for the Review

On the 15th September 2009, the Commission received a terms of reference for a review of accident towing and storage fees from the Minister for Roads and Ports, the Hon. Tim Pallas MP (the Minister). Appendix A sets out the letter from the Minister and full terms of reference.

The terms of reference require that the Commission undertake a comprehensive analysis of Victorian towing industry cost structures and storage fees, and investigate and report on:

- *the appropriateness of the level of each component within the current regulated fee structure*
- *whether the components should be varied and the magnitude of such variations*
- *a potential process for dealing with future fee variations including timing of future reviews*
- *whether the charges for clearing a road accident scene should be regulated*
- *towing jobs for which a tow operator is not paid and*
- *whether the boundaries for the accident allocation zones are still applicable given the recent urban fringe growth of Melbourne and where the boundaries should be.*

The terms of reference indicate that the Commission should have regard to the following factors in undertaking its review:

- *the impact on Victorian business and the community, including the impact of any proposed variations to consumers*
- *the impact on the tow truck industry State-wide, including all stakeholders*
- *the benefits of the timely clearance of accident scenes*
- *the previous Commission reports on towing and*
- *other State and Territory approaches to charging for accident towing services.*

In his reference, the Minister indicated that in carrying out the review, the Commission may have regard to the objectives set out in section 8 and 8A of the ESC Act. Box 1.2 sets out these sections of the ESC Act.

Box 1.2 Sections 8 and 8A of the ESC Act

Section 8 – Objective of the Commission

(1) In performing its functions and exercising its powers, the objective of the Commission is to promote the long term interests of Victorian consumers.

(2) Without derogating from subsection (1), in performing its functions and exercising its powers in relation to essential services, the Commission must in seeking to achieve the objective specified in subsection (1) have regard to the price, quality and reliability of essential services

Section 8A – Matters which the Commission must have regard to

(1) in seeking to achieve these general objectives, the Commission must have regard to the following matters to the extent that they are relevant in any particular case —

(a) efficiency in the industry and incentives for long-term investment;

(b) the financial viability of the industry;

(c) the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;

(d) the relevant health, safety, environmental and social legislation applying to the industry;

(e) the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for –

(i) consumers and users of products or services (including low income and vulnerable consumers); and

(ii) regulated entities.

(f) consistency in regulation between States and on a national basis;

(g) any matters specified in the empowering instrument.

Source: ESC Act 2001.

1.4 Previous Commission reviews

This review is the third to be undertaken by the Commission in relation to accident towing and storage fees. The Commission undertook its first review of accident towing and storage fees at the request of the Minister for Transport in 2003. In 2005, the Commission undertook its second review of accident towing and storage fees.¹

¹ At the time of the 2003 and 2005 reviews, the regulation of the Victorian towing industry was administered by the Victorian Taxi and Tow Truck Directorate (VTTD), which was part of the Department of Transport. Since September 2007, the regulation of tow trucks is administered by VicRoads and the Minister for Roads and Ports. The 2003 and 2005 reviews are available on the Commission's website.

In undertaking its second review, the Commission was specifically asked to report on the extension of the after hours towing surcharge, as well as the merits of providing for automatic increases in fees in line with upwards movements in the consumer price index (CPI). The Commission's Final Report recommended that:

- base towing fees, distance rates and storage fees should be increased in line with the CPI in 2006-07 and 2007-08
- a substantially enhanced set of data on the accident towing industry should be collected by the Department as soon as possible
- the Department request the Commission to undertake a comprehensive analysis of towing industry cost structures and fees by 30 June 2008
- the period over which the after hours surcharge for accident towing should be extended to 5pm to 8am from Monday to Friday and all day on weekends and public holidays.²

1.5 Review Process and Key Dates

The Minister's terms of reference require the Commission to conduct its review in a manner as described in section 187 of the *Transport Act 1983* (see Box 1.3). In summary, section 187 of the *Transport Act 1983* provides that the Commission: may conduct an investigation into any manner it deems appropriate, may receive written submissions or statements, may hold public hearings and may consult with any person that it considers appropriate.

As a result, the Commission intends to adopt the following process for the review. The first stage is the preparation of this Issues Paper, which includes background information to the review, information about the Victorian accident towing and storage industry and details of the Commission's analytical approach to addressing the terms of reference.

Following receipt and consideration of submissions to this Issues Paper and meetings with key stakeholders, the Commission will release a Draft Report (including draft recommendations) for further public consultation. The Commission will then consider submissions to the Draft Report and prepare its final recommendations for inclusion in its Final Report to the Minister.

Indicative dates for the review are as follows:

- release Issues Paper - 19 October 2009
- closing date for receipt of submissions on Issues Paper – 16 November 2009
- release of Draft Report – December 2010
- submissions to Draft Report by – January 2010
- delivery of Final Report to Minister – 22 February 2010

² The extension of the after hours surcharge was the only recommendation adopted by the then Government.

Box 1.3 Process for the Review

Section 187 of Transport Act 1983 — Conduct of investigation

(1) Subject to this Act and any directions under section 186(4)(d), the Commission may conduct an investigation under this Division in any manner the Commission considers appropriate.

(2) In conducting an investigation, the Commission is not bound by rules or practices as to evidence but may inform itself in relation to any matter in any manner the Commission considers appropriate.

(3) The Commission may receive written submissions or statements.

(4) If the Commission holds a public hearing—

(a) the Commission has a discretion as to whether any person may appear before the Commission in person or be represented by another person;

(b) the Commission may determine that the hearing, or part of the hearing, be held in private if it is satisfied that—

(i) it would be in the public interest; or

(ii) the evidence is of a confidential or commercially sensitive nature.

(5) In conducting an investigation, the Commission—

(a) may consult with any person that it considers appropriate;

(b) may hold public seminars and hold workshops;

(c) may establish working groups and task forces.

Source: Transport Act 1983.

1.6 Purpose of Issues Paper

As required by the terms of reference, the key issues for consideration by the Commission relate to two separate areas:

- pricing – including the level and structure of regulated fees, the treatment of towing jobs for which an operator is not paid, and the process for dealing with future changes to fees.
- matters of regulatory coverage – including whether charges for clearing a road accident scene should be regulated, and the boundaries of the accident allocation zones.

This Issues Paper outlines a series of questions that are intended to assist interested parties with the preparation of submissions to this review. The Commission encourages respondents to consider the issues discussed in this paper but also to raise any other issues that are directly related to the terms of reference. It should be noted that the availability of information and the period of

time granted by the Minister will determine the extent of the Commission's consideration of the terms of reference.

1.6.1 Survey on costs and revenues

The Commission has identified that there is limited information on towing operators' costs and revenues and is keen to work with tow truck operators to obtain more information with which to inform its work. As a result, the Commission has engaged a consultant, PricewaterhouseCoopers (PWC), to develop a survey to assist in gathering this information. The Commission encourages operators to complete this survey as it will assist the Commission to form recommendations to the Minister regarding the current level of fees. The results of this survey will be reflected in the Commission's Draft Report.

1.7 Responding to this Issues Paper

Interested parties can comment on the issues raised in this paper by sending a written submission or comments to the Commission by **16 November 2009**. Submissions should, where possible, contain supporting evidence for any claims made.

Submissions should be emailed to: **towtruckreview@esc.vic.gov.au**.

You can also send comments by fax (03) 9651 3688 or by mail, marked

Submission to the Tow Truck Review:
Essential Services Commission
Level 2, 35 Spring St
Melbourne VIC 3000

The Commission's normal practice is to make all submissions publicly available on its website. If there is information that you do not wish to be disclosed publicly on the basis that it is confidential or commercially sensitive, you should discuss the matter first with Commission staff.

For further information about this Issues Paper, please contact Mr Dominic L'Huillier, Regulatory Manager — Industry Reviews and Special References, on (03) 9651 3782.

1.8 Structure of the Issues Paper

The structure of this issues paper is as follows:

- Chapter 2 provides an overview of the Victorian towing industry.
- Chapter 3 describes the current regulatory environment in which accident towing operates.
- Chapter 4 sets out the current regulated fees and charges and discusses costs and revenues associated with accident towing.
- Chapter 5 discusses issues relevant to the review.
- Chapter 6 provides a summary of questions/issues the Commission is seeking submissions on.

2 | VICTORIAN ACCIDENT TOWING AND STORAGE INDUSTRY

This chapter provides an overview of the Victorian accident towing and storage industry. It summarises the nature of the services provided, their demand and supply, the structure of the industry and its participants, and the relationship between the towing industry and other related industries. While this chapter touches on some of the regulatory issues (such as licensing arrangements) these matters are explored in more detail in Chapter 3.

2.1 The Victorian towing industry

The Victorian accident towing services industry is a subset of the broader towing services industry, which comprises:

- accident towing – towing and storage services including clearing and removing accident damaged vehicles from a road accident scene
- trade towing – day-to-day towing and storage services that are not the immediate result of a road accident. These services include depot-to-depot tows and clearway tows for local councils³
- heavy vehicle accident towing – towing and storage services of accident damaged vehicles including vehicles weighing in excess of four tonnes.

While the Commission's terms of reference relate only to accident towing and storage, it should be noted there are significant linkages and inter-relationships between each of the above industries (see section 2.6).

2.2 Accident towing services

Accident towing services generally encompass three distinct products namely accident towing, vehicle storage and salvage.

- accident towing — is the immediate removal of accident damaged vehicles from an accident site and transportation to a specified location. Under section 37 of the *Accident Towing Service Regulations 2008* (the Regulations) this service includes the removal of any glass or debris from the accident scene and other tasks, as instructed by officials such as police officers or VicRoads officers.

³ Prior to 2009, drivers and operators engaged in trade towing activities were required to have a trade towing licence, trade towing registration plates (TT) and an authority to tow. However, since January 2009 trade towing has been deregulated. The Victorian Government determined that the market for trade towing services is sufficiently competitive providing consumers with adequate choice and service quality.

- storage — occurs in the event the damaged vehicle is transported to the tow truck operator's depot and stored in a secure location to await repair or secondary towing.
- salvage — refers to services provided by a tow truck where a damaged vehicle cannot be moved or towed without the assistance of another vehicle or the use of additional equipment. Specifically, it refers to the work performed by a tow truck driver to move the damaged vehicle from its original position to one from which it may be safely towed. It might, for example, include recovery from a roadside ditch or some other location near a roadway. VicRoads suggests that salvage is reasonably common.

Both accident towing and vehicle storage are the subject of regulated fees whereas the fees for salvage are not regulated and will vary according to the circumstances at the accident scene.

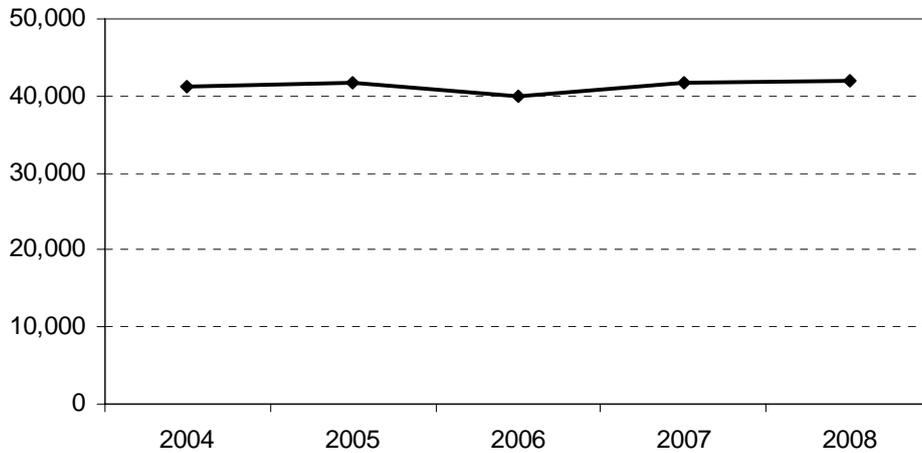
2.3 Demand for accident towing services

The number of accidents on Victoria's roads, and so the demand for accident towing services is influenced by a number of factors, such as:

- the number of registered vehicles
- traffic management policies, including education campaigns
- motor vehicle design and safety technology.

While the number of registered motor vehicles in Victoria has grown steadily since 2001, increasing between 2 per cent and 3 per cent each year, this has not been reflected in the number of accident tows. Accident data shows that the number of accident tows in metropolitan Melbourne including the Mornington region has remained relatively constant over the last five years (see figure 2.1).

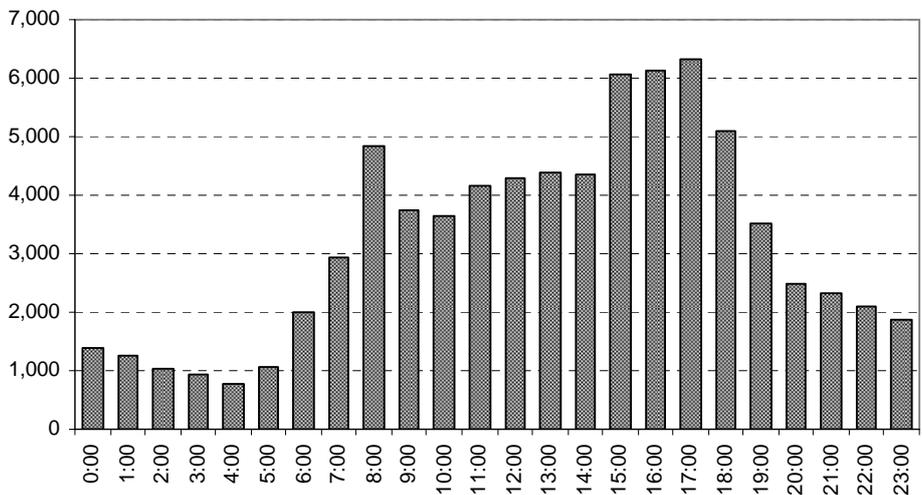
Figure 2.1 Number of accident tows in Melbourne



Data source: VicRoads

VicRoads' CrashStats⁴ also provides information concerning the time of day at which accidents are occurring. This data is shown in Figure 2.2.

Figure 2.2 Victorian road accidents (2007) by time of day



Data source: VicRoads CrashStats

⁴ CrashStats is located on the VicRoads website at:
<http://www.vicroads.vic.gov.au/Home/RoadSafety/StatisticsAndResearch/>

Figure 2.2 demonstrates certain peak transit hours account for a substantial proportion of the accidents that occur on Victorian roads. The periods from 8am to 9am and 3pm to 7pm account for close to 40 per cent of accidents. While this is clearly due to the higher number of vehicles on the road during these periods, it illustrates the importance of timely clearance and the restoration of traffic flows at these times.

2.4 Supply of accident towing services

The supply of towing services is determined by the number of licences on offer. Currently, there are 727 accident towing licences in Victoria made up of 417 in the metropolitan area and 310 in regional Victoria. Licence numbers are fixed until the Minister chooses to distribute more licences. While a licence is required to perform accident towing, tow truck operators also engage in a number of other business activities from the same business premise such as trade towing, storage services and crash repair. Given that trade towing and accident towing are substitutable forms of revenue, it is up to the operator to decide how many accident tow trucks they leave available in case they are allocated a job.

Operators will typically have a fleet of trucks, the majority of which are used for trade towing, whilst the remaining trucks are left for allocated accident work. The overcapacity of accident tow trucks is to account for the potential revenue to be gained from associated crash repair work, storage and secondary tows. By allowing at least one truck in their fleet to be available for an accident allocation leads to a loss of trade towing revenue, but this can be potentially accounted for by the revenue from accident towing, storage and crash repair.

2.5 Structure of the Industry

The tow truck industry is currently operating under a central allocation scheme that attempts to distribute the number of jobs (accidents) evenly among licence holders. The allocation of tow truck services for accidents on Victorian roads is separated into two specific areas:

- The Controlled Area
- Self Managed Area of Geelong

The Controlled Area consists of the Melbourne metropolitan region and the Mornington Peninsula. Tow trucks in this area are allowed to attend an accident scene to remove damaged vehicles with a gross vehicle mass of less than four tonnes after receiving the job from the Accident Allocation Centre, which is operated by the Royal Automobile Club of Victoria (RACV) under contract to VicRoads.

The allocation system is designed to delegate the job to the licensed depot in the immediate region who has the least number of allocations in the given month. This effectively attempts to distribute the number of accident towing jobs relative to the number of licences. However, variations in allocations across individual operators do exist, largely due to the random nature of vehicle accidents over such an expansive area.

The Geelong Accident Allocation Area consists of the City of Greater Geelong and operates on a self-managed accident allocation roster system.

When an accident occurs outside of these two regions, any licensed tow truck driver or operator can attend an accident scene without the need to be allocated to the job through an allocation scheme. The accident allocation scheme is discussed in more detail in chapter 3.

2.5.1 Industry Participants

Businesses are structured in a number of ways and there is no typical business or business arrangement in the Victorian accident towing industry. However business arrangements usually consist of the following three participants: depots, operators and drivers.

Depots

Towing businesses operate out of depots. In metropolitan Melbourne each depot is located in a designated zone in the Controlled Area. A recent trend appears to be for a number of different businesses to aggregate their operations in a single depot, thereby sharing costs such as rent and other overheads.

In other situations, a single business may operate out of more than one depot, depending on the geographic restrictions on the licences it owns.

Operators & Drivers

An individual business may consist of an operator (who oversees and/or owns the business) and a driver or number of drivers, who hold the necessary licence to drive a tow truck (a Driver Accreditation). A business may also employ a depot manager, depending on its individual characteristics. A larger business that also performs other functions might have both an operator and depot manager. In other cases, the operator may also be the depot manager or a group of businesses operating out of a single depot may employ a depot manager.

There is no formal mechanism by which data or information about the characteristics of businesses holding accident towing licences is collected. This includes information about costs and revenues, as well as matters such as the degree of integration with other industries.

2.5.2 Number of accident towing licences

Service providers in the accident towing industry are businesses that own a licence to perform accident towing work. As discussed earlier, a towing licence entitles the holder to a place on a roster for the allocation of accident towing jobs in certain areas.

Table 1 demonstrates the relative sizes (number of accident towing licences) of individual accident towing depots in the 2004 and 2008 calendar years. It indicates that the accident towing industry is characterised by a relatively large number of small depots. While the largest accident towing business in the Controlled Area

holds 39 licences, the average depot holds just 6.8 licences. More than 85 per cent of depots hold 10 or fewer licences, with more than half holding five or fewer.⁵

<i>Licences</i>	<i>2004</i>		<i>2008</i>	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
5 or fewer	41	59.4	33	53.2
6 to 10	18	26.1	20	32.3
11 to 15	6	8.7	6	9.7
15 to 20	2	2.9	1	1.6
More than 20	2	2.9	2	3.2
Total	69	100	62	100
Minimum	1		1	
Average	6.3		6.8	
Maximum	39		39	
Total licences	432		417	

Table 2.1 Licence holdings of accident towing depots in metropolitan Melbourne

Data Source: VicRoads

Table 2.1 also reveals some limited consolidation in the accident towing industry. The average number of licences per depot has increased from 6.3 to 6.8, and the total number of depots has fallen from 69 to 62. These observations appear to be largely driven by the reduction in small depots (those with five or fewer licences).

The extent to which consolidation in the accident towing market is possible is constrained by the existing licensing and accident allocation regimes (discussed in chapter 3). In particular, restraints on consolidation may arise due to:

- the licence issue and transfer approval process
- the geographical zoning of licences and the Government's and VicRoads' preference to maintain a 30 minute response time for all accidents within the Controlled Area.

2.6 Integration with other industries

Integration with other industries is common in the Victorian accident towing industry, and VicRoads and the Victorian Automobile Chamber of Commerce (VACC) suggest that standalone accident towing businesses are increasingly rare. This integration typically occurs in respect of:

⁵ Individual businesses may own more than one depot.

- integration with other towing services, such as trade towing and heavy vehicle accident towing
- integration with other businesses, such as smash repair businesses and the influence of insurance companies.

Arrangements differ across the accident towing industry, ranging from common ownership through to implied or informal agreements. An individual business may concentrate solely on towing and salvage activities. Others may perform accident and trade towing, in addition to crash repair. Other arrangements might involve commissions or other payments to the accident towing business by a crash repair business to which a damaged vehicle is towed.

Integration can improve the efficiency of a business or number of businesses by generating economies of scope or facilitating cost sharing. The ability to share costs such as rent, tow truck purchase, maintenance and repairs, cleaning, insurance and other overheads such as office and administration costs reduces the per-unit cost of each accident towing business and can improve overall efficiency.

In addition to the above, synergies between towing activities can allow businesses to employ their resources more efficiently. For example, scheduling and dispatch systems can allow towing businesses to conduct trade towing work – which is not usually time-critical and can be scheduled to suit business capacity – around accident towing work. That is, businesses can perform trade towing work, which may use the same trucks and staff, during ‘down time’ in accident or other towing work and reduce the extent of under-utilisation of resources (trucks and drivers).⁶

2.6.1 Accident towing and smash repairs

Accident towing can also perform what the VACC has described as a ‘marketing function’ for trade towing and smash repair businesses. Historically, this has provided a strong incentive for related businesses, particularly smash repairers, to undertake accident towing or to make arrangements with accident towing businesses. The tow truck driver is often the first point of contact after an accident. While the Act prohibits drivers from touting for repair work at an accident scene, drivers are not prevented from providing advice or information, or responding to queries.

Estimates of the extent of integration between accident towing and smash repairs and how it has changed over time have varied. However it is likely that between 30 and 45 per cent of the accident towing licences are currently held by businesses that also provide smash repair or panel beating services.⁷ This estimate may however understate the relationship between the two industries as formal or informal affiliations may exist between the remaining accident towing companies and smash repairers.

⁶ It should be noted that, notwithstanding the benefits of scheduling, some degree of vehicle underutilisation or ‘down time’ will necessarily occur by virtue of accident towing operators being obliged to maintain the ability to respond to an accident in 30 minutes.

⁷ Based on a review of publically available information relating to businesses identified in accident allocation data available on VicRoads’ website.

2.6.2 Accident towing and insurance

Recent developments in the smash repair industry, including growing market concentration under a common brand or chain, and the current practices of insurance providers are understood to have reduced the likelihood of smash repair work being secured through accident towing. Insurance providers account for up to 75 per cent of smash repair industry revenue⁸ and preferred repairer schemes – whereby the insured person is restricted in their ability to choose their repairer – reduces the incentive for accident towing businesses to be integrated with smash repairers.

Motor vehicle insurance accounts for almost 30 per cent of the general insurance industry⁹ and can be categorised as follows:

- personal: that is the purchase of comprehensive car insurance (own car and third party) by individuals and households
- commercial: refers to corporate and institutional purchasers of insurance for business or fleet vehicles
- compulsory third party (CTP): CTP is a regulatory requirement in all Australian States and is underwritten either by a State government or private insurers under Government supervision.

Despite there being 140 general insurers nationally, Australia's (and Victoria's) motor vehicle insurance market is dominated by three major insurance groups; identified, with their respective brands (see Table 2.2).

Table 2.2 indicates that the national motor vehicle insurance market is heavily concentrated. Despite this, insurance products continue to be marketed through a variety of brands as identified in Table 2.2.¹⁰ Multiple branding enables large insurers to offer products and brands that suit the characteristics of different types of motorists. For example, Suncorp maintains several brands targeted at different consumer groups including:

- 'main-stream' insurance customers (AAMI, GIO)
- '50 years or older' customers (APIA)¹¹
- young motorists (Just Car Insurance, Bingle) and
- motoring 'enthusiasts' (Shannons).

⁸ IBISWorld, *Industry Report:G5323 Smash Repairing in Australia*, 2008.

⁹ General insurance covers all insurance other than health and life insurance. There are in excess of 140 general insurance providers nationally however the following four businesses dominate the insurance industry in terms of market share: Suncorp-Metway Limited (Suncorp); Insurance Australia Group Limited (IAG); Allianz Australia Limited (Allianz); and QBA Insurance Group Limited (QBE). Collectively, these businesses account for approximately 54 per cent of the general insurance market (commercial and personal) and over 80 per cent of the personal insurance market (IBIS World (2008).

¹⁰ Recently, some financial institutions such as ING, the Commonwealth Bank and ANZ have started to offer their own car insurance products while others such as the NAB and Westpac distribute insurance products underwritten by major insurers.

¹¹ See <http://www.apia.com.au/apia/about-apia>

Table 2.2: Motor Vehicle Insurance Providers in Australia

<i>Insurer</i>	<i>Major Brands</i>		<i>Market Share</i>
IAG	<ul style="list-style-type: none"> • SGIO • NRMA • IMA (joint venture with RACV) 	<ul style="list-style-type: none"> • CGU • Swann Insurance 	50%
Suncorp	<ul style="list-style-type: none"> • Promina • Vero • AAMI • GIO • APIA 	<ul style="list-style-type: none"> • Shannons • Just Car Insurance • InsureMyRide • Bingle 	42%
Allianz	<ul style="list-style-type: none"> • Allianz 		
Others	<ul style="list-style-type: none"> • QBE • Youi 	<ul style="list-style-type: none"> • Budget Direct • Banks 	1%

Data Source: IBIS World (2008).

Around 25 per cent or more of smash repair work is not purchased by motor vehicle insurance companies. As a result, smash repairers may retain a certain proportion of the smash repair work associated with accidents for which they provide accident towing services on the basis that they are a member of the relevant insurer's preferred repairer network.

In this respect, integration with an accident towing business could provide a competitive advantage to that repairer as against other preferred repairers in the area. They may also have a small cost advantage, as a secondary tow will not be required if they perform the smash repair work. The Commission's 2005 Final Report suggested that the proportion of accident towing jobs that a business retains for repaid work ranged from 14 per cent to 20 per cent.

3 | CURRENT REGULATORY ENVIRONMENT

This chapter provides an overview of the various regulatory arrangements applying to the Victorian accident towing and storage industry. It also provides a brief overview of interstate arrangements.

3.1 Background and rationale for regulation

Accident towing is the primary regulated sector of the towing services industry. Prior to regulation of the sector, accident victims were under pressure at the scene of an accident to decide which tow truck operator to use as an accident would attract a large number of tow trucks all competing for the same job, leading to increased stress and anxiety to the accident victim.

There was also concern about the scope of the accident victim to engage in sufficient price discovery between multiple tow truck drivers and make an informed choice regarding service quality regarding a tow truck service provider. In addition, it was recognised that many of the benefits that accident towing provides (i.e. timely road clearing resulting in less traffic congestion) was likely to benefit the wider community.

To address these shortcomings, the Victorian Government decided to establish accident towing and storage as a monopoly service. The Minister, via legislation, would act on behalf of the consumer to ensure price and service quality were in line with a competitive outcome while the introduction of an accident allocation scheme would promote a fair allocation of towing jobs and timely clearance of road accidents.

The next sections outline the current regulatory framework governing accident towing and storage in Victoria.

3.2 The Accident Towing Services Act 2007 (the Act) and the regulatory environment

Since the Commission's 2005 review, there have been a number of changes to the regulatory and administrative arrangements which apply to the Victorian tow truck industry. These have been brought about via the passage of the Act and the accompanying *Accident Towing Service Regulations 2008* (the Regulations).

The Act replaced the provisions relating to accident towing in the Transport Act and, amongst other things:

- removed provisions relating to price regulation and licensing requirements for trade towing¹² services
- introduced accreditation requirements for operators, depot managers and tow truck drivers.

3.3 Current regulatory arrangements

At the time of the Commission's 2005 Review, the regulation of the towing industry was administered by the Victorian Taxi and Tow Truck Directorate (VTTD), which was part of the Public Transport Division of the Department of Transport (DOT). As of 3 September 2007, the regulation of the towing industry is administered by VicRoads, the State's roads authority.

The Act and the accompanying *Accident Towing Service Regulations 2008* govern the Victorian accident towing and storage industry and together ensure that the industry is highly regulated. This regulation takes the form of:

- a central accident allocation scheme for towing work within defined boundaries
- a licensing regime for tow truck operators
- accreditation requirements for operators, depot managers and drivers
- restrictions on conduct and
- price regulation of certain services.

Together, these regulatory constraints have significant implications for the revenue earning capacity and cost structure of accident towing businesses. Each of the above regulatory mechanisms is explained in turn below.

3.4 Central accident allocation scheme

A key element of the accident towing industry is the accident allocation scheme. Under the Act it is an offence for tow trucks to attend accident scenes without an allocation in the Controlled Area or another declared allocation area, the only one of which at present is the Geelong Accident Allocation Area. Tow trucks may however provide salvage services where necessary, without an allocation.¹³

The accident allocation scheme was introduced in 1983 in response to concerns that aggressive competition for accident towing work was leading to a number of undesirable practices by tow truck drivers and jeopardising the timely clearance of accident scenes.

Under the accident allocation scheme, accidents occurring within a particular zone are allocated to licensees whose depots are within that zone on a roster basis; that is, once the allocation centre receives notification of an accident requiring towing services, the accident is allocated to the licensee within that particular zone that has received the least number of allocations in that particular month. However,

¹² The difference between trade towing and accident towing is discussed in chapter 2.

¹³ See sections 42 and section 43 of the 2007 Act.

variations in allocations across individual operators do exist, largely due to the random nature of vehicle accidents over such an expansive area.

The zone-based roster system serves two purposes. Firstly, it is intended to ensure the depot to which the accident is allocated can dispatch a truck to attend the accident scene within 30 minutes. This is a prime objective of VicRoads' role as administrator of the regulatory framework.

The system gives incentive for geographic dispersion of tow truck depots. That is, if a zone contained too few tow trucks, licences in that zone will receive excess allocations relative to other zones. Tow truck operators might then seek to transfer a licence into the busier zone, gaining additional revenue, or sell a licence to an operator within that particular zone. Geographical dispersion is considered important in order to ensure timely attendance at accident scenes.

Secondly, the system also attempts to import some notion of fairness into the distribution of accident towing work through the roster system. The central allocation of services is also designed to increase the effectiveness of market transactions when negotiating at an accident scene.

The benefits of the central allocation system therefore are:

- reduced pressure on accident victims to make a decision
- timely clearance of the damaged vehicle
- improved safety on surrounding roads as tow truck drivers do not have to speed to the accident scene.

The AAS applies to the Controlled Area and is administered by the Royal Automobile Club of Victoria (RACV), under appointment by VicRoads. Allocation in the Geelong Accident Allocation Area is administered by the service providers themselves and outsourced to a local taxi company. It is operated on a much smaller scale than that in the Controlled Area and the administrators do not publish data or statistics by which to assess its performance.

When an accident occurs outside of these two regions, any licensed tow truck driver or operator can attend an accident scene without the need to be allocated to the job through an allocation scheme.

3.4.1 Boundaries of the declared allocation areas

The allocation of tow truck services for accidents on Victorian roads is separated into two specific zones:

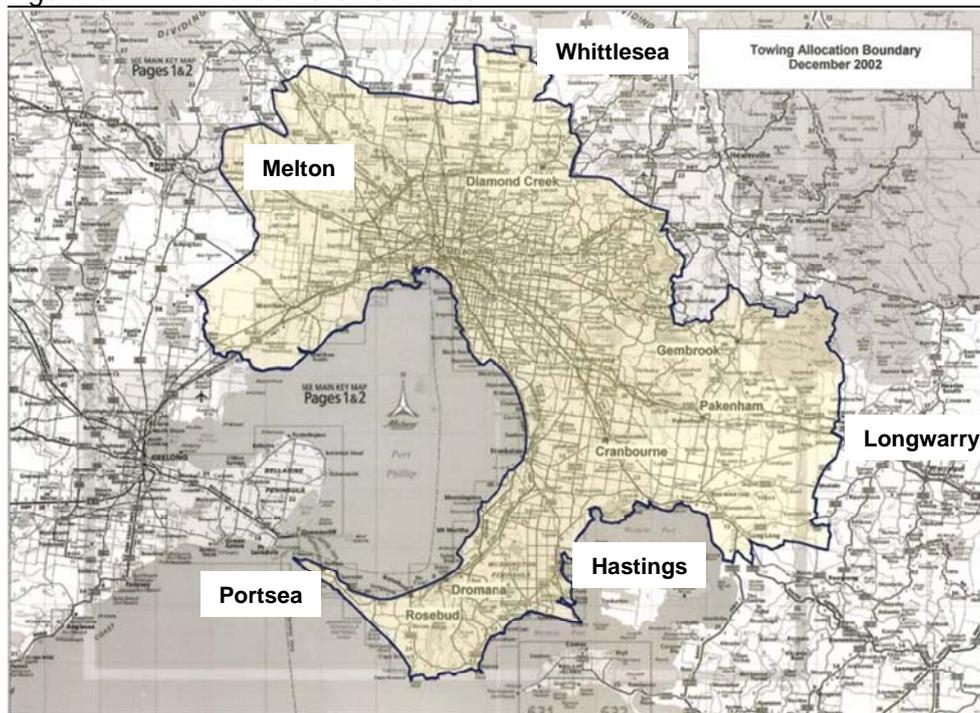
- The Controlled Area
- The Geelong Accident Allocation Area

The Controlled Area (see figure 3.1) consists of the Melbourne metropolitan region and the Mornington Peninsula. The boundary includes the Werribee region, northward to Melton, north east to Sunbury and then eastward to Craigieburn and Whittlesea. From Whittlesea the boundary extends eastward to Hurstbridge, Diamond Creek, Lilydale and southward to Belgrave. From Belgrave it extends to

Gembrook, and Bunyip State Park, then southward to Lang Lang. From Lang Lang it goes westward to include the whole of the Mornington Peninsula.

Tow trucks in controlled area are allowed to attend an accident scene to remove damaged vehicles with a gross vehicle mass of less than four tonnes after receiving the job from the Accident Allocation Centre.

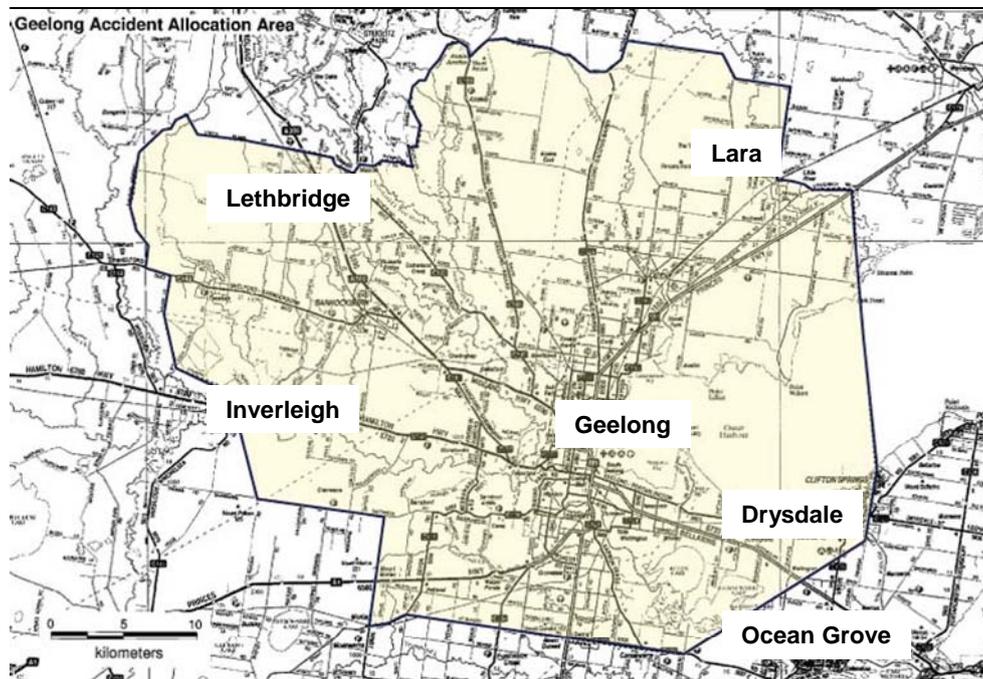
Figure 3.1 **The Controlled Area**



Data source: VicRoads

The Geelong accident allocation boundary is illustrated in figure 3.2. It begins at Little River, then heads southwards across the Corio Bay to Drysdale. From Drysdale it goes south west to Connewarre and westward to Moriac. After Moriac it heads north Gnarwarre, then north west to Inverleigh. From Inverleigh it goes to Teesdale and Lethbridge, then westward around Maude, Anakie and back to Little River.

Figure 3.2 The Geelong Accident Allocation Area



Data source: VicRoads

Given the existence of an accident allocation scheme, tow truck drivers could potentially charge what they liked for their towing services at an accident scene. As a result, prices for accident towing and storage are regulated (see chapter 4).

3.5 Licensing

The legislation requires all accident towing businesses to hold a tow truck licence. In addition, the licence holder can only conduct business from the depot specified in the licence. VicRoads is required to keep a register of all accident towing licences.

The issue (and re-issue) of accident towing licences is the responsibility of VicRoads. However, VicRoads can only issue a new licence with authorisation from the relevant Minister. The Act specifies that the Minister may only issue a new licence for the Controlled Area if:

- the Minister considers it to be in the public interest to do so, having regard to any increase in the need for regular tow trucks in the area
- the licence to be issued is to replace a licence that has been cancelled for the area
- the Minister considers that there are exceptional circumstances in the area that justify the further issue of regular tow truck licences for the area.

No such requirements exist for the re-issue of licences, or the issue of new licences in substitution for licences that have been cancelled or surrendered.

In practice, VicRoads suggests that no new accident towing licences have been issued in the Controlled Area for up to 20 years. In addition, as discussed in chapter 2 (see table 2.1), the total number of licences on issue has fallen over the last four years by 15, suggesting that new licences have not been issued in substitution for all cancelled or surrendered licences.

3.5.1 Licence transfers

The holder of a licence may apply to have the licence transferred to another person. VicRoads may approve the transfer, so long as that person has the relevant accreditation and is the registered operator of the relevant vehicle. However, there is no guidance in the Act as to the factors VicRoads ought to consider in deciding whether or not to approve the relevant application. While VicRoads has produced standard applications for transfers and variations of conditions (available on its website), it has not produced guidance or assessment criteria; individual applications are assessed on a case-by-case basis. In practice, VicRoads will typically approve all applications so long as the transferee possesses all relevant accreditation and registration.

The legislation also allows a licence holder to hold a 'dormant' licence'. Dormant licences are those held by licensees that are not assigned to a particular truck. Rather, they are held solely for the purpose of accessing the associated entitlement to accident allocations under the accident allocation scheme. The Commission understands that these provisions were enacted to accommodate existing practice amongst licence holders. That is, licensees, upon receiving an accident allocation for a particular licence, would simply affix that licence to whichever truck the licensee had available.

Holding dormant licences allows accident towing operators to reduce the number of trucks it holds and more effectively schedule other work, such as trade towing, the operator may also be engaged in. Both reduce the 'down time' associated with accident towing, reduce over costs and improve efficiency. Meanwhile, the requirement that the licensees to whom an accident is allocated must attend the accident scene within 30 minutes provides sufficient incentive for operators to maintain sufficient spare capacity in order to respond to accidents

Holders of accident towing licences must operate the tow truck from the depot specified in the licence. The location of this depot determines the licence's allocation zone for the purposes of the accident allocation scheme. However, VicRoads may vary the conditions of the licence, such as the specified depot, upon application by the licence holder. In this way it is possible for the location of a particular licence to change. VicRoads will have regard to the likely impact on response times when assessing an application to relocate a licence. It will have regard to factors such as the number of licences that remain in the zone, the number of licences in the zone to which the applicant is seeking to relocate and the typical number of accident tows in each zone.

VicRoads also provides incumbent licensees in the area, and any other party, to lodge objections to a license transfer. A decision whether or not to approve the

application is made, weighing up competing arguments. Decisions are able to be challenged at the Victorian Civil and Administrative Tribunal (VCAT).

3.6 Accreditation for Operators, Depot Managers and Drivers

The Act introduced an accreditation scheme for accident towing operators, drivers and depot managers. The objective of accreditation is to ensure that accident towing services are provided safely, reliably and efficiently, and that persons providing the services are of appropriate character and act with integrity and in a manner that is safe, timely, efficient and law-abiding.

The accreditation regime is outlined in Parts 4 and 5 of the Act and mandates two forms of accreditation:

- industry accreditation, necessary for accident towing operators and depot managers
- driver accreditation, necessary for accident tow truck drivers.

Operator and Depot Manager Accreditation

In order for an operator or depot manager to gain accreditation, VicRoads must be satisfied that:

- the applicant is suitable to be accredited
- the applicant has complied with the application requirements
- the issuing of accreditation is appropriate considering the objectives of industry accreditation.

Driver Accreditation

The objective of driver accreditation is to ensure that accident tow truck drivers provide safe and convenient services, are technically competent and of appropriate character, and act with integrity and in a safe, timely, efficient and law-abiding manner.

In order to grant industry accreditation, VicRoads must be satisfied that:

- the applicant has complied with the application requirements
- the applicant is technically competent and sufficiently fit and healthy
- the issuing of accreditation is appropriate considering the objectives of industry accreditation.

Neither the Act nor the regulations are prescriptive about how an applicant may demonstrate technical competence and suitability. An applicant may do this by citing formal training, on-the-job training or experience in another jurisdiction.

The accreditation scheme is relatively new and it will take some time before the true impact of the scheme (including costs) on industry participants and standards of service is apparent.

3.7 Restrictions on conduct

The Act and the Regulations place a number of restrictions and requirements concerning the behaviour of accident towing service providers. These include:

- requiring that care is taken in driving or operating a tow truck
- prohibiting leaving a tow truck standing at an accident scene beyond that necessary to clear the accident
- prohibiting drivers from allowing persons to travel in a vehicle being towed
- prohibiting the towing of more than one vehicle in relation to a particular accident allocation
- prohibiting seeking or soliciting towing, storage or crash repair work at an accident scene
- prohibiting any payments in respect to obtaining work relating to accidents
- other related administrative requirements.

3.8 Price regulation

The Act provides that fees for accident towing and storage may be determined by the Minister for Roads and Ports. However, section 212 of the Act provides that the Minister must not make a determination unless the matter has been referred to the Essential Services Commission for investigation under Division 9 of Part VI of the Transport Act 1983 and the Minister has received the Commission's report on the investigation.

The current regulated fees are discussed in chapter 4 (see section 4.1).

3.9 Interstate regulation of tow trucks

Other Australian jurisdictions demonstrate a variety of regulatory frameworks concerning accident towing services specifically, and the towing industry more broadly.

Typically, the operation of an accident towing business in these jurisdictions requires a licence. In addition, most jurisdictions also require drivers to possess a specific licence for operating tow trucks. Broadly speaking, restrictions on obtaining a licence are character-related or administrative in nature.

Accident allocation schemes are present in South Australia and the ACT. The ACT system is administered by local police and is subject only to limited restrictions on entry (e.g. vehicles being roadworthy). Allocation schemes have been considered (and trialled) in NSW, and are provided for in the relevant legislation, however no allocation system is currently in operation.

Fee regulation applies in some other jurisdictions, including NSW, Queensland and South Australia. Accident towing operators are not permitted to charge fees in excess of the determined maximum amount. Broadly, the services subject to regulated fees are similar to those in Victoria, namely accident towing and storage services. NSW however regulates salvage services; including defining what

activities constitute salvage, as compared to ordinary towing services, and the level of fees that may be charged (on a per hour basis). As with Victoria, trade towing fees are not regulated in NSW or South Australia.

4 FEES, CHARGES, COSTS AND REVENUES

This Chapter discusses the current regulated fees and charges for accident towing and storage services. It also discusses the costs and revenues associated with providing accident towing and storage services and value of accident towing licences.

4.1 Current regulated fees and charges

The current regulated charges for accident towing services are outlined in Table 4.1. These fees have not changed since 2005 when an extension of the after hours surcharge times which occurred. There is also no automatic escalation or adjustment of fees. Rather, amendments to the fees are at the discretion of the Minister.

Table 4.1 **Regulated fees and charges**
As at 1 January 2009

<i>Fee or charge</i>	<i>\$</i>
Towing fees	
Base fee (including first 8km travel by tow truck)	168.45
Additional per kilometre charge beyond 8km	2.65
After hours surcharge	
- 5pm to 8am Monday to Friday	57.55
- 5pm Friday to 8am Monday	
- Midnight to midnight on public holidays	
Storage Fees (charge per day)	
Car – under cover	12.90
Car – in locked yard	8.60
Motorcycle – under cover	4.35
Motorcycle – in locked yard	2.80

Source: VicRoads.

The base fee is intended to implicitly capture the regulatory obligations on tow truck drivers at accident scenes, namely:

- an obligation to clear residual glass and debris
- an obligation to inform the relevant authorities of any hazard of which they are aware

- an obligation to inform vehicle owners of the tow truck drivers' regulatory obligations at an accident scene.

These regulated fees (and any unregulated fees) are borne entirely by the owner of the vehicle, or their insurer. In the event the vehicle is comprehensively insured, the owner has little reason to be concerned with the level of fees charged. Moreover, the timely clearance of an accident does not benefit the accident victim but rather other motorists, who benefit from the restoration of traffic flows.

The Commission is not aware of any information that exists regarding the average total fee per accident tow.

As mentioned above, salvage¹⁴ and secondary towing fees are not regulated.

4.2 Costs and revenues

Given the relatively small size of the accident towing industry and the typical business that participates in the industry, there is limited publicly available information concerning industry costs and revenues. It has never been formally collected as part of previous fee reviews. This contrasts with other regulated industries, where regulators can rely on formal data collection powers.

4.2.1 Industry costs

As part of its 2005 review, the Commission engaged a consultant to prepare an estimate of the costs faced by accident tow truck operators. This work was based on a small sample size, and is likely to have suffered from the usual limitations associated with such cost surveys. Nevertheless, the consultant's report represents one of the few attempts to estimate the major cost items for accident towing businesses.

The consultants estimated that the annual costs of operating an accident tow truck were \$36,761 compared to revenue of \$29,252. (This revenue excludes revenue from other services that could be provided by the tow truck, including salvage, trade towing and heavy vehicle towing).

It is possible to update the 2005 cost estimates by:

- applying specific indices to individual cost components (e.g. applying the 'automotive fuel' component of the ABS CPI to fuel costs) or
- applying the CPI to total costs.

4.3 Industry revenues

The main change to per truck revenue from accident towing services since the 2005 review is likely to be as a result of the extension of the after hours surcharge, which the Commission estimated in 2005 would increase average revenue from towing charges by 7.5 per cent. Data available to the Commission suggests that

¹⁴ VicRoads has suggested the relevant salvage fee charged may be in the order of \$100.

the number of accident call-outs per truck, and hence per-truck revenue, is unlikely to have changed significantly since this time.

Obtaining and analysing accurate and up-to-date information on industry costs and revenue will be an important part of the Commission's review process. The Commission has developed a survey in order to gather this information.

4.3.1 The value of towing licenses

Licences are tradable and their value derives from the entitlement to receive accident towing work through the accident allocation scheme. As such, their value should represent the present value of future profit streams to which the holder will be entitled. Therefore, the value of an accident towing licence is a potential indicator of the relative profitability of an accident towing business. Should the profitability of the business increase, the value of accident towing licences would also be expected to increase. By contrast, if accident towing was not relatively profitable, the value of accident towing licences would be expected to be lower.

The value of a licence may reflect more than the expectations of the total stream of revenue associated with regulated fees. It may also reflect matters such as the potential revenue from other towing services – such as salvage – as well as other revenue streams – such as from smash repairs. It does not follow that an increase in licence values necessarily reflects higher net revenues from accident towing services.

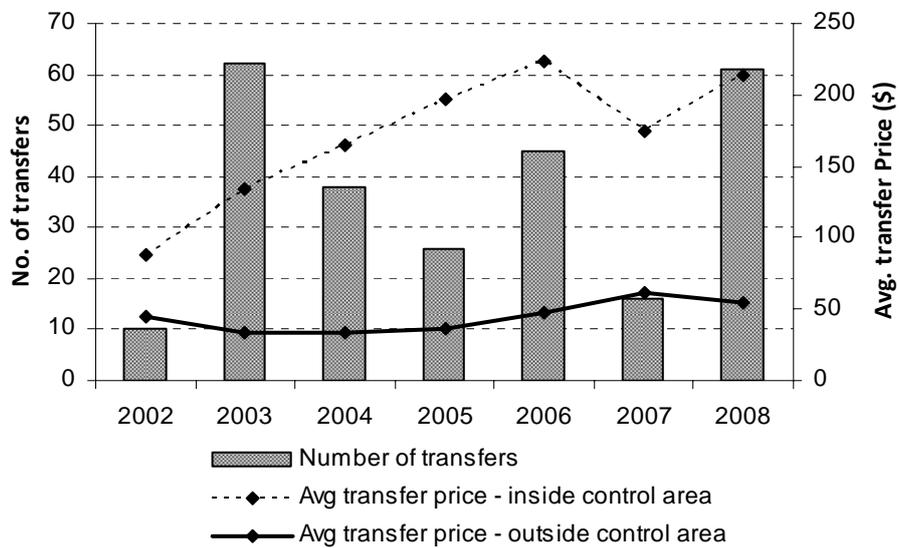
The value of an accident towing licence is difficult to assess, for reasons including:

- liquidity – accident towing licences are not readily traded as they require VicRoads approval in order to be effectively transferred. In addition, the licences can only be traded between registered and accredited tow truck operators. These restrictions and costs call into question the extent to which the price represents the true value of the licence.
- fungibility – each accident towing licence is unique and associated with a particular geographical zone. Different geographical locations may be associated with a different number of expected allocations and, hence, different levels of future profit streams
- reliability of price information – while applications for transfer of licences generally contain details of the price paid for the licence, VicRoads does not verify this data and it is unclear whether the reported amount includes other items. Values quoted may also include amounts representing the value of the vehicles, goodwill or other assets included in the purchase. The Commission also understands a number of transfers have no disclosed transfer price.

Figure 4.1 summarises the available data with respect to accident towing licence transfers (i.e. sales of licences) in Victoria, both inside and outside the Controlled Area, since 2002. It should be interpreted with the above caveats in mind.

Figure 4.1 Licence transfers and transfer prices

subtitle



Data source: VicRoads

The figure suggests:

- a much higher value for licences inside the Controlled Area compared to those outside the Controlled Area
- some appreciation in licence values from 2002 to 2006, but limited evidence of increases since that time.

5 | APPROACH AND ISSUES FOR REVIEW

This chapter discusses the key issues for this review and highlights matters upon which the Commission is seeking comment and/or information. It also discusses the approach by which the Commission will undertake to address the terms of reference and identifies some factors which the Commission will have regard to.

5.1 Overview

The terms of reference require that the Commission undertake a comprehensive analysis of the Victorian towing industry's regulated cost structures and fees. In particular the Commission is required to investigate and report on:

- the appropriateness of the level of each component within the current regulated fee structure
- whether the components should be varied and the magnitude of such variations
- a potential process for dealing with future fee variations including timing of future reviews
- whether the charges for clearing a road accident scene should be regulated
- towing jobs for which a tow operator is not paid
- whether the boundaries for the accident allocation zones are still applicable given the recent urban fringe growth of Melbourne and where the boundaries should be.

While this chapter sets out the key issues for the review from the Commission's perspective, its main purpose is to provide the context for addressing the terms of reference, identify any information gaps and to seek information and views from interested parties. As a result, this chapter includes a number of specific questions for interested parties to consider and respond to in their submissions to the review. Responses to this paper will assist the Commission with its analysis and inform the development of its final recommendations to the Minister.

Importantly, interested parties should not restrict themselves to the issues that are specifically considered in this chapter. Rather, submissions should include information and data that relate to any issue that submitters believe is relevant to the terms of reference.

5.2 Level of regulated charges

The Commission is required to review the appropriateness of the level of each component of the current regulated fee structure, including whether the components should be varied and the magnitude of any variations.

A starting point for determining the appropriateness of regulated fees is to consider them in relation to operating costs and revenue for the accident towing and storage industry. A fee structure that fails to adequately recover overall operating costs would be expected to threaten the viability of the industry and jeopardise the ongoing provision of accident towing and storage services.

In the previous chapter, the Commission noted that tow truck operators providing accident towing services may be reliant on cross subsidies from other activities.

Therefore, in addressing this term of reference the Commission intends to consider:

- the cost structure of industry service providers
- an estimate of the level of 'efficient' costs, possibly with reference to comparable industries or jurisdictions
- the revenue streams of industry service providers, including revenue from non-regulated sources such as smash repairs
- the longer term profitability and sustainability of the industry.

Undertaking these tasks will require the Commission to obtain a detailed understanding of matters including:

- the nature and magnitude of particular cost items
- the extent of shared costs with other businesses
- the nature and extent of cost reduction measures (such as holding licences dormant)
- the magnitude of revenue streams associated solely with accident towing and storage
- the nature and magnitude of additional revenue from other business activities (secondary tows, smash repair).

In terms of the components of the fee structure, it is good regulatory practice for the structure and level of particular fee components to reflect the marginal cost of providing the service to which the fee component relates. In this way businesses have an incentive to provide an appropriate level of service.

For example, the per-kilometre charge should be related to the actual cost incurred (wages, fuel) by a tow truck in travelling to an accident scene. If the charge is substantially higher than the cost, then drivers may have an incentive to take a longer route than is necessary. If the charge is substantially lower than the cost then drivers, to the extent they are able, may favour more proximate jobs compared to those where they need to travel a long distance.

Depending on the availability of costs and revenue data, the Commission will examine how the various fee components relate to costs, and whether there is a

case for changing the structure of regulated charges. For example, it may be more efficient to have a separate charge for clearing an accident scene which is based on the time required to provide the service.

5.2.1 Survey of costs and revenues

As noted earlier, there is limited data available regarding to the Victorian towing industry's cost structures and revenue streams. As a result, the Commission has engaged consultants PricewaterhouseCoopers (PwC) to conduct a survey of the costs that accident towing businesses incur and the revenues they receive in performing accident-related tows. The results of this survey will assist the Commission in forming its recommendations.

Level, structure and components of regulated charges

1. What are stakeholder's views on the current level and structure of the charges?
2. What factors should the Commission take into account when determining the appropriateness of current accident towing and storage charges and whether they should be varied?
3. What are the key costs facing tow truck operators? What are the key cost pressures (if any) facing the accident towing industry?
4. How should the cost of servicing an accident towing licence or the return on investment in a licence be accounted for, if at all?
5. How have operating costs changed since the last increase in accident towing and storage fees? What other factors are driving changes in costs?
6. What has been the impact of the new legislation (i.e. the Act)?
7. Are there specific examples of cost efficiencies or inefficiencies in the provision of accident towing services?
8. Do current charges allow accident towing operators to recover the cost of providing all the services?
9. Is there evidence of incumbent operators exiting the industry?

10. How strong are the links (and cross-subsidies) between the accident towing industry and other industries? What proportion of businesses that provide accident towing services also undertake trade towing? What proportion of businesses is affiliated with crash repair businesses?
11. How have relationships between accident towing and trade towing/crash repair providers changed over the past few years? What changes are likely to occur in the future, and how will this influence accident towing operating costs?
12. Is it appropriate to treat the accident towing industry on a stand-alone basis, such that it should be able to generate sufficient revenue to cover costs without a dependence on revenue from other sources?
13. How should joint or common costs be allocated between accident towing and unregulated towing services?
14. Can meaningful conclusions be drawn between the price of accident towing licences and the financial viability of the accident towing industry?
15. The average number of accidents allocated to each towing licence appears to have been relatively stable in recent years. Is this correct? Do stakeholders expect this to continue?
16. How much revenue is currently earned per licence or tow truck from accident towing services?
17. What has been the trend in accident towing revenue and what are the major drivers for changes in revenue from accident towing?

5.3 Process for future fee variations including timing of reviews

In the past the process for adjusting regulated fees in the accident towing industry has been somewhat ad-hoc with no clear mechanism for regular and predictable reviews. The Act does not provide for a regular review of charges, rather it is at the discretion of the Minister as to when he refers a review to the Commission.

As noted in chapter 4 there has been no change to the level of fees since 2005.

Good regulatory practice, regardless of the industry to which it applies, should be open, transparent, predictable and accountable. A fee adjustment process that incorporates these elements and provides for gradual and orderly changes over time will minimise regulatory risks and provide a stable environment for industry participants. It would also provide greater transparency and certainty for users, which is likely to be valued by the community. As a general principle, uncertainty about regulatory processes and expected revenue has the potential to discourage investment and innovation. A potential consequence of this is a reduction in the quality of service for consumers.

Many other regulated industries have formal multi-year fee reviews, typically every three to five years. Defined arrangements exist for price changes in intervening years, with movements typically related to the CPI and a pre-defined 'X' factor (that is CPI minus X). This X factor may have regard to estimates of industry productivity, which provides a surrogate for the competitive dynamic that operates in unregulated sectors and allows consumers of that good or service to share the

benefits of efficiency gains in the form of prices that are lower than would otherwise have been the case.

For the purposes of this review, the Commission will consider approaches to accident towing and storage fee adjustment and whether there are specific features of the industry that should be taken into account. For example, if accident tow trucks are usually operated as part of a larger business that also performs trade towing and crash repair, it may be that the manner in which charges are adjusted will have limited incentive effects.

Process for future fee variations

18. Do stakeholders agree that a systematic and predictable approach to fee adjustment benefits the accident towing industry and users of its services?
19. What is the appropriate process for the future adjustment of regulated fees?
20. To the extent that regular major reviews of fees are desirable, how often should they occur?
21. Are there merits in defining certain events which might trigger a price review?
22. What are the benefits of adjusting charges between major reviews in line with a price index?
23. What cost components should explicitly be included in any proposed price index?
24. Should each fee component be adjusted on the same basis?
25. Should a formal reporting mechanism relating to accident towing operations be introduced?
26. What data should such provided in such a reporting mechanism?

5.4 Whether charges for clearing a road accident scene should be regulated

The Commission has been asked to review whether charges for clearing a road accident scene should be regulated. The Commission has interpreted this as requiring it to review both:

- whether road clearing should be included in the regulatory regime and
- whether there should be a prescribed fee for road clearing such as salvage.

Section 37 of the Regulations requires that before a tow truck leaves an accident scene the driver must clear the scene by removing all debris and glass attributable to the accident. Reimbursement for performance of this service is effectively provided through the base fee, although the requirements on the driver will differ

according to the accident scene. In some circumstances road accident clearing will not be required; in others it will be a relatively costly and time-consuming job.

There are a number of regulatory approaches that can be adopted in respect of the road clearing service. These include:

- retaining the status quo – i.e. that road clearing is a mandatory regulated service for which a prescribed charge is provided (implicitly, through the base fee) in all cases
- retaining road clearing as a mandatory regulated service with a prescribed charge, but separating the fee from the general base fee. This separate road clearing fee could be a fixed amount, but could also be variable based on the nature of the service required – for example a per hour charge
- not requiring the road clearing service to be undertaken by the tow truck driver and leaving it open for competition to develop, perhaps between the tow truck industry and other specialist businesses.

Each of these options will require careful consideration: for example, while a time-based fee structure might permit tow truck drivers to be paid proportionate to the effort and cost of clearing an individual accident site, it may provide incentives not to clear the site as fast as possible.

It is also possible that opening road clearing up to competition could result in similar undesirable practices as the towing industry experienced prior to the introduction of the AAS.

Whether charges for clearing a road accident should be regulated

27. What is involved in the typical road clearing service? How much time, on average, does it take? How much does the cost of clearing a road scene vary between jobs?
28. Should a separate regulated fee be set for road clearing? If so, should it be a fixed fee or should it be set on an alternative basis? If so, what?
29. What are the implications of retaining road clearing as a mandatory regulated service, but not setting a regulated charge?
30. Is it feasible to introduce competition in road clearing services?
31. Should the provision of road clearing services be completely unregulated?

5.5 Towing jobs for which an operator is not paid

The terms of reference require that the Commission investigate and report on towing jobs for which a tow operator is not paid.

Tow truck operators will not get paid for towing in circumstances where a vehicle is subsequently abandoned by its owner. These tows have been referred to as 'public service' or 'non-commercial' tows. They are more likely to occur where

damage to a vehicle is substantial and the vehicle is not insured. However, tow truck drivers have little capacity to assess the probability of receiving payment and in any event, cannot refuse to tow a damaged vehicle once they have arrived at an accident scene.

Clearly, the performance of non-commercial tows represents an important public service and it is important that accident scenes be cleared regardless of whether the cost of the tow is ultimately paid by the vehicle owner.

In the event of these 'non-commercial tows', tow truck operators will usually receive some revenue on disposal of the abandoned vehicle. This revenue may cover the full cost of the tow, costs associated with storage, or the cost of disposal, and indeed this was the assumption made by PricewaterhouseCoopers when preparing a cost index for the Commission as part of its 2005 review.

However, the cost impacts of non-commercial tows on individual operators may be substantial and the Commission would be pleased to receive accurate information on the incidence and net costs associated with such tows.

To the extent that the incidence and net costs of such tows are material, there are a number of options that could be used to ensure that tow truck operators are reimbursed for non-commercial tows. These include:

- ensuring that fees include a cost component that reflects the average cost associated with non-commercial tows, and the average incidence of such tows
- establishing a specific fund (perhaps from a levy on commercial tows) from which individual operators are paid in the event of each non-commercial tow. This approach may be attractive if there are particular zones or tow truck operators that experience higher or lower than average numbers of non-commercial tows.

Non-commercial tows

32. What is the incidence of non-commercial tows?

33. What are the average costs associated with a non-commercial tow, including vehicle disposal costs?

34. What is the average revenue from disposal of an abandoned vehicle?

35. Does the incidence and cost of non-commercial tows differ across zones?

36. How should tow truck operators be reimbursed for the cost of non-commercial tows?

5.6 Boundaries for the accident allocation zones

The boundaries of the Controlled Area and Geelong Accident Allocation Area are shown in chapter 3. Within each Controlled Area licences are ascribed to certain zones, and accidents within a zone are centrally allocated to licensees within that same zone. The current zone boundaries were defined to ensure that all accidents are responded to within 30 minutes.

The Commission understands that the boundaries of the Controlled Area have been in place for some time. As a consequence of population growth and traffic density in Melbourne's outer suburbs it is unclear whether the current zone boundaries will ensure that accidents are responded to within 30 minutes.

This means there might be a need for the Controlled Area to be extended to include new areas on Melbourne's fringe. The main impacts may be to:

- provide that accidents in these areas become subject to the accident allocation scheme thus eliminating direct tow truck competition for jobs
- apply the 30 minute target maximum time for tow trucks to attend an accident scene.

However it is unclear whether there would be an impact on regulated fees and charges, or the requirements for licensing, driver accreditation and conduct standards to be met, as these apply uniformly across the State.

Any amendments to the boundaries of the Controlled Area will necessitate a review of the zones within the Controlled Area. However, independent of any changes to the boundary of the Controlled Area there may be a case for reviewing the internal zone boundaries. For example, increasing traffic congestion or incidence of accidents in some zones relative to others may mean that the average time taken to attend accidents is higher in some areas than others. While licences may be transferred across zones, this process takes time and requires VicRoads approval.

Zone boundaries may also need to be reviewed in light of changes to technology. For example, boundaries may become less relevant in the event that the administrator of the accident allocation scheme moved to a system where global positioning system technology is used to identify the closest vehicle to an accident scene and allocate jobs on that basis.

Boundaries for the accident allocation zones

37. Does the response time to accidents differ outside the Controlled Area compared to that inside the Controlled Area?
38. Are tow truck driver behaviour and standards of service different outside the Controlled Area compared to inside the Controlled Area?
39. Should the boundaries of the Controlled Area be amended? For what reason? What amendments should be made?
40. Should the boundaries of the zones within the Controlled Area be amended? For what reason? What amendments should be made?
41. How might future technology affect the relevance of zone boundaries?

5.7 Other issues

In addressing the terms of reference the Commission has been asked to have regard to factors including:

- the impact on Victorian businesses and the community, including the impact of any proposed variations to consumers
- the impact on the tow truck industry State-wide, including all stakeholders
- the benefits of timely clearance of accident scenes
- other State and Territory approaches to charging for accident towing services.

5.7.1 Impact on stakeholders

As with all of its investigations, the Commission will carefully consider the impact of any recommendations on consumers as well as other stakeholders in the tow-truck industry. While comprehensive insurance arrangements mean that many consumers are not directly exposed to accident towing and storage fees, any change in fees will feed through to insurance premiums. Motorists without comprehensive insurance arrangements will be directly exposed to such changes.

The Commission will be aided in its deliberations by submissions from industry participants on the potential impact of various courses of action, particularly in response to its Draft Report.

5.7.2 Benefits of timely clearance of accident scenes

The benefits of timely clearance of accident scenes are relatively easy to describe in qualitative terms, and include:

- reduced traffic congestion - traffic congestion has a number of costs including increased travel times and variability, higher operating costs and reduced productivity, increased driver stress, increased vehicle emissions, reduced efficiency of some forms of public transport and reductions in urban amenity
- reduced threat to the safety of other road users and pedestrians.

These benefits will vary according to the nature of the accident. The benefits of a 30 minute reduction in clearance time for a minor weekend accident on a local road may be minimal: a 30 minute reduction in clearance times on a major arterial road during peak hour will realise significant gains. Quantifying these benefits is difficult however the Council of Australian Governments (COAG) has offered the following estimates of the amount of traffic congestion due to accidents:¹⁵

- approximately 20 per cent in relation to freeways, based on a study by ARRB consulting
- between 14 and 25 per cent in relation to all traffic in OECD countries, based on a study by Maunsell Aecom.

¹⁵ Council of Australian Governments 2006, *Review of Urban Congestion: Trends, Impacts and Solutions*.

5.7.3 Approaches in other States and Territories

A brief summary of approaches in other States and Territories to charging for accident towing services is provided in chapter 3. The Commission will include further detail regarding interstate arrangements in its Draft Report, but encourages submissions from industry participants on the operation of interstate regimes compared to the Victorian arrangements.

Other issues

42. Who are the stakeholders in the Victorian tow truck industry? What factors should be taken into account when considering the impact of a possible change to regulated charges and an extension of the surcharge period?
43. Does the current level of regulated fees provide the appropriate consumer protection for people who are involved in motor vehicle accidents and require towing and storage services?
44. To what extent are accident victims directly exposed to towing and storage charges?
45. What are the implications for the Commission's methodology and analysis if their exposure is limited?
46. What other factors should be taken into account when considering the impact on Victorian business and the community?
47. What is the likely impact of changes to regulated towing and storage charges on the motor vehicle insurance industry?
48. What is the likely impact of changes to regulated towing and storage charges on motor vehicle insurance premiums?
49. What are industry participants' experiences with regulation and charging for accident towing services in other States and Territories? What are the relative advantages and disadvantages of these schemes?
50. What quantitative and qualitative information is available on the benefits of timely clearance of accident scenes?

6.1 Level, structure and components of regulated charges

1. What are stakeholder's views on the current level and structure of the charges?
2. What factors should the Commission take into account when determining the appropriateness of current accident towing and storage charges and whether they should be varied?
3. What are the key costs facing tow truck operators? What are the key cost pressures (if any) facing the accident towing industry?
4. How should the cost of servicing an accident towing licence or the return on investment in a licence be accounted for, if at all?
5. How have operating costs changed since the last increase in accident towing and storage fees? What other factors are driving changes in costs?
6. What has been the impact of the new legislation (i.e. the Act)?
7. Are there specific examples of cost efficiencies or inefficiencies in the provision of accident towing services?
8. Do current charges allow accident towing operators to recover the cost of providing all the services?
9. Is there evidence of incumbent operators exiting the industry?
10. How strong are the links (and cross-subsidies) between the accident towing industry and other industries? What proportion of businesses that provide accident towing services also undertake trade towing? What proportion of businesses is affiliated with crash repair businesses?
11. How have relationships between accident towing and trade towing/crash repair providers changed over the past few years? What changes are likely to occur in the future, and how will this influence accident towing operating costs?
12. Is it appropriate to treat the accident towing industry on a stand-alone basis, such that it should be able to generate sufficient revenue to cover costs without a dependence on revenue from other sources?
13. How should joint or common costs be allocated between accident towing and unregulated towing services?
14. Can meaningful conclusions be drawn between the price of accident towing licences and the financial viability of the accident towing industry?

15. The average number of accidents allocated to each towing licence appears to have been relatively stable in recent years. Is this correct? Do stakeholders expect this to continue?
16. How much revenue is currently earned per licence or tow truck from accident towing services?
17. What has been the trend in accident towing revenue and what are the major drivers for changes in revenue from accident towing?

6.2 Process for future fee variations

18. Do stakeholders agree that a systematic and predictable approach to fee adjustment benefits the accident towing industry and users of its services?
19. What is the appropriate process for the future adjustment of regulated fees?
20. To the extent that regular major reviews of fees are desirable, how often should they occur?
21. Are there merits in defining certain events which might trigger a price review?
22. What are the benefits of adjusting charges between major reviews in line with a price index?
23. What cost components should explicitly be included in any proposed price index?
24. Should each fee component be adjusted on the same basis?
25. Should a formal reporting mechanism relating to accident towing operations be introduced?
26. What data should such provided in such a reporting mechanism?

6.3 Whether charges for clearing a road accident should be regulated

27. What is involved in the typical road clearing service? How much time, on average, does it take? How much does the cost of clearing a road scene vary between jobs?
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6.4 Non-commercial tows

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6.6 Other issues

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47. What is the likely impact of changes to regulated towing and storage charges on the motor vehicle insurance industry?
48. What is the likely impact of changes to regulated towing and storage charges on motor vehicle insurance premiums?

49. What are industry participants' experiences with regulation and charging for accident towing services in other States and Territories? What are the relative advantages and disadvantages of these schemes?
50. What quantitative and qualitative information is available on the benefits of timely clearance of accident scenes?

APPENDIX A – TERMS OF REFERENCE

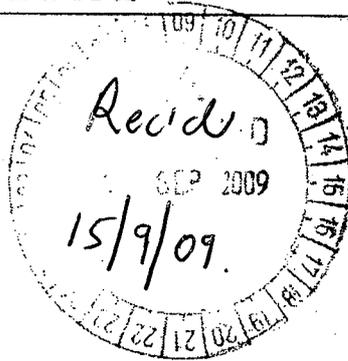


Minister for Roads and Ports

10 SEP 2009

VRMBN000596
(File No.: BN000727)

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Our Ref:

C/09/23919

Dear Dr Ben-David

Ron,

ESC REVIEW OF ACCIDENT TOWING AND STORAGE CHARGES

In my capacity as the Minister for Roads and Ports, I am authorised to determine charges for accident towing and other services under section 211 of the *Accident Towing Services Act 2007*. Before making a determination, I am required to refer the matter to the Essential Services Commission for investigation under Division 9 of Part VI of the Transport Act 1983.

The Transport Act 1983 also requires that I first consult with the Minister administering the Essential Services Act 2001 before referring a matter to the Commission. In a letter dated 7 August 2009 (copy attached), the Minister for Finance has indicated his support for the review of the accident towing and storage charges, including the Terms of Reference.

Accordingly, I now request that the Commission undertake the review in accordance with the attached Terms of Reference.

Should your staff have any further enquiries regarding this matter, Mr Don Hogben, VicRoads' Director – Vehicle Management and Safety (Tel: 9854 2901), would be pleased to assist.

Yours sincerely

Tim Pallas MP
Minister for Roads and Ports

Encl.

Review of Accident Towing and Storage Charges

Terms of Reference

That the Essential Services Commission undertake a comprehensive analysis of Victorian towing industry cost structures and towing and storage fees and investigate and report on:

- The appropriateness of the level of each component within the current regulated fee structure;
- Whether the components should be varied and the magnitude of such variations;
- A potential process for dealing with future fee variations including timing of future reviews;
- Whether the charges for clearing a road accident scene should be regulated;
- Towing jobs for which a tow operator is not paid; and
- Whether the boundaries for the accident allocation zones are still applicable given the recent urban fringe growth of Melbourne and where the boundaries should be.

The Commission should have regard to the following factors in undertaking its review:

- i. The impact on Victorian business and the community, including the impact of any proposed variations to consumers;
- ii. The impact on the tow truck industry State-wide, including all stakeholders;
- iii. The benefits of the timely clearance of accident scenes;
- iv. The previous ESC reports on towing; and
- v. Other State and Territory approaches to charging for accident towing services.

The following directions are given under section 186(4) of the Transport Act 1983:

- In conducting the investigation, the Commission may have regard to the objectives in Sections 8 and 8A of the *Essential Services Commission Act 2001*, where relevant;
- Except as otherwise directed by the terms of reference, the Commission is to conduct the investigation in a manner as described in Section 187 of the Transport Act 1983. The Commission is to submit its report to the Minister for Roads and Ports by 22 February 2010.

If Vic Roads can be of assistance to the Commission during this review, please contact Mr Don Hogben, Director - Vehicle Management and Safety (Tel: 9854 2901).



Minister for Finance



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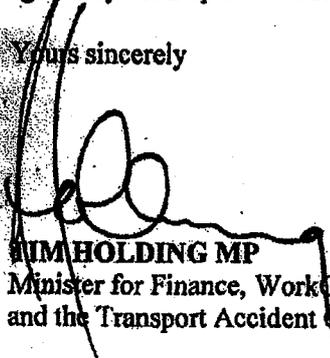
Dear Minister

**ESSENTIAL SERVICES COMMISSION REVIEW OF ACCIDENT TOWING
AND STORAGE CHARGES**

Thank you for your letter, which I received on 24 June 2009, in which you propose a review of accident towing and storage charges by the Essential Services Commission (ESC).

I support the review and I have requested that the ESC conduct the review of accident towing and storage charges in accordance with the revised terms of reference as agreed by the Department of Treasury and Finance and VicRoads.

Yours sincerely



TIM HOLDING MP
Minister for Finance, Work Cover
and the Transport Accident Commission

