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PERIODIC REVIEW OF ACCIDENT TOWING AND STORAGE FEES

ISSUES PAPER

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GLOSSARY

Accident allocation scheme	A roster based system for allocating accident towing jobs between tow truck licence holders within designated zones of the Controlled Area. Under the Accident Allocation Scheme, an accident is allocated to the licensee that has received the least number of allocations in that particular month within that particular zone.
Accident towing	The towing and storage of damaged or disabled motor vehicles from road accident scenes. Accident towing is a regulated service in Victoria.
Allocation	A right provided to a tow truck operator through an accident allocation scheme to provide accident towing services at a particular accident scene. Tow truck drivers may only attend an accident scene in the Controlled Area after receiving an allocation.
Benchmarking	A process of comparing performance or processes between entities, e.g. to identify opportunities for improvement and or provide pressure to improve performance by reporting on the relative performance of the benchmarked entities.
Clearway towing	The towing of vehicles illegally parked in designated clearway zones during specified times, under contract with the responsible authority. Clearway towing is not a regulated service in Victoria.
Commission	The Essential Services Commission, Victoria's independent economic regulator of certain prescribed services as determined by the Victorian Government. The Commission advises the Minister on accident towing and storage fees.
Consumer price index (CPI)	A price index that is used to measure changes in the overall price level in Australia, by using the price of a representative basket of final goods and services. The Australian Bureau of Statistics calculates the index.

Controlled Area	The VicRoads declared area consisting of the Melbourne metropolitan area and the Mornington Peninsula. Fees are regulated and an accident allocation scheme operates in the Controlled Area.
Cost of service regulation	A form of economic regulation whereby the regulator reviews the costs of service provision in order to set a revenue requirement and prices. It has been applied to utility industries in Australia (e.g. electricity, gas, water) as well as transport (e.g. rail access, taxis).
Debris removal	The removal of any glass or debris caused by a road accident. Under the Accident Towing Services Regulations 2008, tow truck operators are required to perform this function at a road accident scene.
Depot	A premises from which accident tow trucks are operated. In metropolitan Melbourne, each depot is located in a designated zone within the Controlled Area. A single depot may be shared by multiple accident towing service businesses.
Dormant licence	A tow truck licence that is held by an operator but not assigned to a specific tow truck. A dormant licence still receives allocations through the Accident Allocation Scheme.
Driver	A person that drives a tow truck to accident scenes and performs an accident tow. Under the <i>Accident Towing Services Act 2007</i> , a driver must be accredited by VicRoads.
Heavy vehicle accident towing	The towing and storage of damaged or disabled vehicles with a gross vehicle mass of four tonnes or more from road accident scenes.
Operator	A person that owns or oversees the operation of a tow truck business. Under the <i>Accident Towing Services Act 2007</i> , an operator must be accredited by VicRoads.
Out of storage tow	Refers to the charging of a towing fee for the movement of a vehicle from its storage position within a depot to a location where it can be accessed by the owner or his/her insurer.

Preferred repairer schemes	The practice of insurers to have preferred smash repairers, to which they send their smash repair work.
Salvage	Services performed by a tow truck driver to move a damaged vehicle from its original position following a road accident to one from which it may be safely towed. Salvage may involve the use of additional tow trucks or equipment. Specific salvage fees are not regulated, however fees charged are required to be 'reasonable'.
Secondary tow	Occurs when an accident damaged vehicle is towed from the accident scene to the depot listed on the Authority to Tow docket (which is subject to a regulated fee), and then is subsequently towed to another depot or location (the secondary tow). Secondary tow fees are not regulated.
Self-Management Area	The VicRoads declared area of Geelong and surrounding districts where a self-managed scheme is in operation. Tow truck drivers may only attend an accident scene in the Area after receiving an allocation through the self-managed allocation scheme. Fees in the area are not regulated (beyond a 'reasonable' requirement).
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 towing to another location.
Trade towing	General towing and storage services that are not the immediate result of a road accident, and include towing jobs between depots. Trade towing is not a regulated service in Victoria.
VicRoads	The Victorian Government agency responsible for administering the <i>Accident Towing Services Act 2007</i> , i.e. the accident towing industry regulator.

This chapter outlines the purpose of the review and summarises the issues on which the Commission is seeking comment from stakeholders.

1.1 What is accident towing?

Accident towing is the towing of accident damaged vehicles by a tow truck from an accident scene. Accident towing does not involve trade towing (i.e. breakdown towing) which is not a regulated service in Victoria.

The provision of accident towing services is regulated in Victoria under the *Accident Towing Services Act 2007* (the Act), which provides that accident towing operators and drivers who are performing accident towing services must be licensed by the industry regulator, Vic Roads.

The accident towing and storage fees that licensed operators are permitted to charge for their services in the Controlled Area¹ are regulated by the Minister for Roads. However, section 212 of the Act requires that before making any fee determination, the Minister must receive a recommendation from the Essential Services Commission (the Commission).

1.2 Purpose of this review

Under the Act, the Commission is required to conduct a periodic review of accident towing charges every four years from the date that the last review commenced.² The purpose of this current review is to satisfy the periodic review requirement under section 212A of the Act.

The issues on which the Commission must review and make a recommendation to the Minister are set out in section 212A of the Act (see appendix A).

¹ The 'Controlled Area' consists of the Melbourne Metropolitan area and Mornington Peninsula. Prices for accident towing services are regulated within this area. Outside the Controlled Area prices for accident towing services are not regulated.

² The Commission's last periodic review commenced in 2009, with a final report provided to the Minister for Roads in June 2010. Some of the Commission's recommendations from 2010 have been implemented by the Government, as detailed on VicRoad's website – www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/News/ChangesToAccidentTowingLaws.htm.

In summary, the key issues that this review will consider are:

- review of the level of regulated fees and charges (section 212A (1)(a) of the Act)
- review of the annual fee variation methodology (section 212A (1)(c) of the Act)
- whether currently unregulated services (e.g. salvage services and secondary towing) should be subject to price regulation, and if so, the appropriate price (section 212A (1)(b) of the Act), and
- other matters including coverage of the base accident towing fee (i.e. what services are covered by the base fee and therefore required of an operator) and the treatment of uncommercial tows (section 212A (1)(a) of the Act).

1.3 What this review is not about?

The current accident towing legislation limits the Commission in what it can review and make recommendations upon. The current accident towing services legislation does not provide for the Commission to review heavy vehicle towing, boundary issues or allocation zones or whether charges in the Geelong area or self-managed areas should be price regulated. As a result, the focus of this review is on price matters associated with the Controlled Area.

1.4 Review process and key dates

The Commission intends to adopt the following process for the review. The first stage is the release of this issues paper, which includes background information to the review, information on the Victorian accident towing and storage industry, and discussion of key issues for the review, which the Commission invites submissions on from stakeholders.

Following receipt and consideration of submissions to this issues paper and meetings with 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 report with its final recommendations to the Minister.

Table 1.1 presents indicative timings for the review.

Table 1.1 **Review process**

<i>Activity</i>	<i>Timing</i>
Issues paper release	21 February 2013
Submissions to issues paper close	22 March 2013
Stakeholder consultations	25 February – April 2013
Draft report release	early May 2013
Stakeholder consultations	May 2013
Submissions to draft report close	late May* 2013
Final report to Minister	by 30 June 2013

* The draft report will include the specific date for close of submissions on it.

1.5 Structure of the issues paper

The remainder of this issues paper is structured as follows:

- Chapter 2 provides an overview of the Victorian accident towing industry and current regulatory arrangements applying to it.
- Chapter 3 presents a brief history of changes to accident towing fees and the current regulated accident towing and storage fees.
- Chapter 4 discusses the issues on which the Commission seeks comment from stakeholders.
- Appendix A sets out the legislative framework under which this review is being undertaken.
- Appendix B provides detail on the history of regulated accident towing fees and charges.

1.6 Summary of issues for stakeholder comment

The following summarises the issues and questions raised in this paper for comment by interested stakeholders. They are intended to assist stakeholders who wish to make a submission on the issues paper. However, the Commission invites stakeholders to raise any other issues that are directly related to the terms of the Commission's review (as outlined in section 212A of the Act — see appendix A).

Setting the level of fees and charges

Section 212A (1)(a) of the Act requires the Commission to undertake a periodic review of regulated accident towing and storage fees and charges. In doing so, the Commission must consider which methodology to apply in setting the relevant fees and charges.

Two methodologies the Commission can consider are: (i) cost of service regulation which would involve a survey of accident towing operators' costs, and (ii) benchmarking.

Each of these methodologies has relative advantages and disadvantages. The Commission's preliminary view is that a cost of service approach is unlikely to be the best approach at this time. This reflects the costs involved in undertaking the survey, uncertainty in the accuracy of the information, given it is not audited or verified, and the risk of poor survey response from industry (as occurred during the last review). Pending consideration of stakeholder views, the Commission intends to explore the application of benchmarking in assessing accident towing fees and charges. A key benefit of this approach is the ability to set fares based on benchmarks from competitive markets.

Question 1. How have the costs of accident towing operators changed since the last review? Have cost changes been markedly different to the CPI-X annual fee variation?

Question 2. Do current fees and charges need to be reset, or are they at an appropriate level? What indicators and information should the Commission consider in determining whether a reset is required, and the direction of that reset? Should accident towing fees decrease?

Question 3. Should a benchmarking approach be used by the Commission in resetting fees? If so, what services or industries should accident towing fees and charges be benchmarked against? How significant are differences between accident towing and these benchmarks?

Question 4. Are there other methodologies for resetting fees that the Commission should be considering?

The annual adjustment mechanism

Current fees are subject to an annual adjustment, as set out in section 212H of the Act. Section 212A (1)(c) of the Act requires the Commission to review the annual fee adjustment methodology and make recommendations on the appropriate productivity adjustment. The annual fee adjustment is intended to adjust the fees in line with cost movements as well as allow for productivity improvements via application of the 'X' factor. The current adjustment mechanism is based on movements in the Consumer Price Index (CPI) (Melbourne, Transport) and a productivity adjustment of 0.5 per cent is applied to adjust fees.

Question 5. Has the annual adjustment mechanism been effective? Should it also provide for price decreases so that consumers benefit from cost decreases?

Question 6. Is the current cost index (CPI – Melbourne, Transport) the appropriate cost index to use?

Question 7. What are the potential sources of productivity increases in the industry?

The regulation of salvage charges

Salvage refers to the movement of an accident damaged motor vehicle from its position to a place where it may be towed by a tow truck. Section 212A (1)(b) of the Act requires the Commission to review whether salvage services should be subject to a fee determination by the Minister, and if so, the recommended fee.

The same rationale for regulating towing fees applies to salvage charges. That is, given that tow truck operators have the exclusive right to attend an accident, there is the potential for excessive salvage charges or even the levy of a salvage charge when it is not required. For these reasons, the Commission recommended in its 2010 review that salvage charges be regulated and towing operators be required to take a minimum of two photographs of the salvage operations with the invoice including a detailed description of the salvage work undertaken.

In response to the Commission's 2010 review, while the Government did not implement the Commission's recommendation to regulate a price for salvage, it did implement the Commission's other recommendation regarding documentation. That is, the Government amended legislation such that salvage charges are now required to be 'reasonable' and subject to documentation requirements (two photographs of the salvage operation must be taken and a detailed description of the work undertaken must be included on the Authority to Tow).

Question 8. What rates for basic salvage have been applied by industry operators over recent years? Have these been reasonable? Is there sufficient evidence of appropriate charging under the new requirements?

Question 9. Should a fee for basic salvage be prescribed?

Question 10. If basic salvage charges are regulated, what is the appropriate charge or methodology for establishing the level of the charge?

Issues relating to secondary towing

In its 2010 review, the Commission noted issues surrounding unregulated charges for secondary towing. A secondary tow involves the towing of a vehicle from the depot listed on the Authority to Tow docket to another location (i.e. another depot). For example, a tow truck operator may tow a vehicle to a sub-depot, and then charge a secondary tow fee to tow the vehicle from the sub-depot to a final depot.

Question 11. What rates have been charged for secondary tows over recent years, and what was the nature of the secondary tow?

Question 12. Should a fee for secondary towing be prescribed? Alternatively, should secondary towing (or certain types of secondary towing) be included in the base towing fee, or are there non-price mechanisms to ensure reasonableness in secondary towing fees and practices?

'Out of storage' towing

Another related issue is the potential for insurers to be charged a towing fee for the towing of a vehicle from its storage position within a depot to a location where it can be accessed by the insurer (or owner). This location could be within the depot or just outside it (the Commission collectively refers to these as 'out of storage' towing).

The question that the Commission must consider is whether towing of this nature is a type of secondary towing, or is part of the service in providing accident towing (and therefore should be included as part of the base towing fee).

Question 13. To what extent and under what circumstances are out of storage fees being charged to vehicle owners or their insurers? What rates have been charged for out of storage tows over recent years?

Question 14. Should out of storage tows be part of the accident towing service (and therefore be covered by the existing base towing fee), or be considered secondary towing?

Question 15. Should a fee for out of storage towing be prescribed?

Other matters

Two additional issues have been raised with the Commission in relation to accident towing fees and charges. These are: what the base fee actually covers (coverage of the base fee) and the treatment of non-commercial tows.

Coverage of the base fee

In its 2010 review, the Commission recommended that the Act be amended to clearly specify what services the base towing fee covers. However, the Act has not been amended to include such a definition of what is included in the base towing fee. While the VicRoads website lists a definition, the Commission understands anecdotally that operators are charging additional fees for some of these services (e.g. for the cleaning product required to clean oil spills on a tow truck resulting from towing a vehicle).

Question 16. Should the Act be amended to clearly specify the services that are included in the base towing fee?

Treatment of non-commercial tows

Non-commercial (or unpaid) towing is an accident towing job for which a tow operator is not paid. This usually occurs where the owner of the vehicle abandons the damaged vehicle at the operator's storage facility (e.g. because the value of the damaged vehicle is less than the owed accident towing charges). Non-commercial tows may also occur (at the direction of police) for the towing of abandoned cars.

Question 17. To what extent are non-commercial tows undertaken by operators? To what extent are they undertaken because owners do not claim their vehicle from the depot, and to what extent are non-commercial tows of abandoned vehicles undertaken at the direction of police or other authorities?

Question 18. How should the costs of non-commercial towing be recovered?

Question 19. Does the cost of non-commercial tows fall evenly across all depots/operators?

1.7 Opportunities for innovation

At present, the approach to price regulation in accident towing (as well as some other regulated industries, e.g. taxis) has focussed on prescribing how operators are to meet regulatory objectives. Typically, this has led to regulatory arrangements that are based on the *activities* undertaken by regulated entities. This has restricted, to some extent, how these entities can choose to best meet regulatory objectives, thus limiting innovation and potentially adding to industry costs (which ultimately are passed onto consumers through higher prices).

An additional issue with prescriptive forms of regulation is that legislation and regulations can become increasingly lengthy and complex as legislators look to directly control the behaviour of the regulated entities.

Over recent years, there has been an increased interest and shift towards outcomes-based regulation. Outcomes-based regulation refers to regulatory policy and the instruments associated with implementing the policy. Rather than prescriptive regulation that focuses on inputs (and often involves very prescriptive specifications), outcomes-based regulation focuses on what the final result (or outcome) should be. This style of regulation provides scope for regulated entities to innovate around how to best and most efficiently deliver these outcomes while ensuring compliance with the regulatory framework. That is, by being more flexible, outcomes-based regulation provides for less costly responses, e.g. it allows

regulated entities to respond to changes in technology and incorporate productivity enhancing processes. Further, it can be less costly for government to administer over time, especially because legislation is less likely to require updating and change over time.

The Victorian Government's *Guide to Regulation* promotes less prescriptive regulation and highlights alternatives:

the Victorian Government encourages that – where appropriate and where permitted by the enabling legislation – prescriptive rules should be avoided, and consideration should instead be given to the use of:

- *performance-based standards (or principle-based regulation in cases where it is not feasible to set objective performance based-standards); and/or*
- *process-based regulation, where there are substantial risks that need to be managed simultaneously.*

Performance-based standards specify desired outcomes or objectives, but not the means by which these outcomes/objectives have to be met... **Principle-based** regulation [requires] the application of general objectives or principles, rather than specific outcomes... **Process-based** regulation is increasingly adopted when governments are seeking to manage substantial but diverse risks. It is generally best applied when: there are a number of substantial risks that need to be managed simultaneously; there are a range of management measures available; and individual firms within the regulated industry have sufficient capacity to effectively assess risks and develop tailored solutions to mitigate those risks under their control.³

The Commission also notes that the report by the Regulation Taskforce states that regulations that conform to best practice design principles are not unduly prescriptive, are performance and outcomes focussed, and are general rather than overly specific.⁴

As discussed in section 4.5 of this issues paper, there are currently some issues associated with towing operators charging for services that are meant to be covered by existing towing and storage fees. A potential remedy for this issue is to

³ Government of Victoria 2011, *Victorian guide to regulation*, Edition 2.1, Department of Treasury and Finance, Melbourne, August, p. 25.

⁴ Regulation Taskforce 2006, *Rethinking regulation*, Report of the Taskforce on Reducing Regulatory Burdens on Business, January.

prescribe in legislation what is covered by the regulated towing fees. An alternative is to consider a move to a more outcomes-based form of regulation.

For example, could accident towing be represented by three key outcomes, such as:

- restoring a road (and immediate surrounds) to safe usage after an accident
- providing safe storage of a vehicle, and
- making an accident damaged vehicle available to its owner (or representative, e.g. insurer) for repair.

Under this approach, it would need to be made clear that regulated fees cover the provision of these outcomes, and in doing so, cover all the activities of accident towing operators in meeting the outcomes. This approach would address some of the issues discussed later in this paper, including coverage of the base fee and issues associated with secondary towing.

Question 20. Is outcomes-based regulation an approach that should be considered for accident towing?

Question 21. If outcomes-based regulation is applied, what are the key outcomes that should be required of accident towing operators?

1.8 Invitation for submissions

The Commission invites interested parties to comment on the issues raised in this paper by sending a written submission or comments to the Commission by **22 March 2013**. Submissions should 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 37, 2 Lonsdale St
Melbourne VIC 3000

Any questions about this issues paper can be directed to the contact officer for this project, Nick Hague on 9032 1344 or Dominic L'Huillier, Senior Regulatory Manager of the Transport and Industry Sectors Branch on 9032 1365.

Publication of submissions

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, this should be clearly identified in the submission.

2 | THE VICTORIAN ACCIDENT TOWING AND STORAGE INDUSTRY

This chapter provides an overview of the accident towing industry, including the services provided by operators and the structure of the industry. A summary of the current regulatory arrangements that apply to the industry is also provided.

2.1 Current regulatory arrangements

This section sets out the current regulatory arrangements that apply to the accident towing industry.

Rationale for regulation

The objective of accident towing regulation in Victoria is to promote the safe, efficient and timely provision of accident towing and storage services.⁵ Prior to regulation, it was typical for multiple tow truck drivers to arrive at an accident scene and compete for a towing job. This would lead to increased stress and anxiety to the accident victim being put under pressure at the scene of an accident to decide which tow truck operator to use, and also increase congestion by delaying removal of the damaged vehicle from the road. There was also concern about the ability of an accident victim (often suffering from shock) to comprehend and make an informed choice between multiple tow truck drivers regarding price and service quality.

To address these shortcomings, the Victorian Government decided to establish accident towing and storage as a monopoly service. That is, accident towing operators are granted a monopoly entitlement to attend an accident scene within the Controlled Area through an accident allocation scheme.

In the absence of regulated fees (or some form of competitive process to set fees), monopoly entitlement of accident tow jobs would most likely result in accident towing operators charging excessive prices. Therefore, the Government decided to regulate fees to protect consumers from potential price gouging and to ensure that accident towing remains a profitable and viable industry.

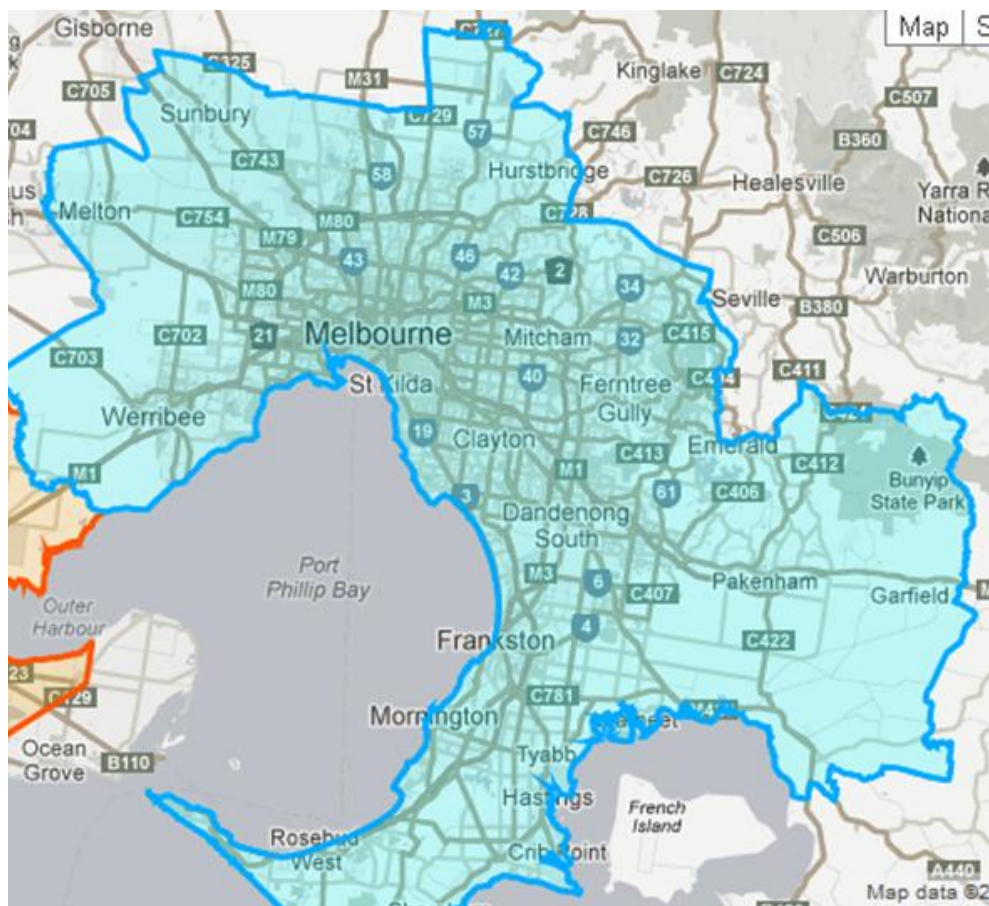
⁵ *Accident Towing Services Act 2007*, section 1 (a).

The Melbourne Controlled Area

The Controlled Area was first established in 1983, covering only the Melbourne metropolitan area. In 2002, the Area was extended to include additional suburbs due to growth in Melbourne’s urban fringe. The boundary has not changed since 2002, and covers all of metropolitan Melbourne and goes as far as Werribee and Melton in the west, Sunbury, Craigieburn and Whittlesea to the north, Lilydale and Pakenham to the east and the Mornington Peninsula to the south (figure 2.1). VicRoads has the responsibility of determining the boundaries of the Controlled Area.

Outside of the Controlled Area, Geelong and the rest of Victoria are subject to lighter forms of regulation.

Figure 2.1 Melbourne’s Controlled Area



Source: VicRoads 2013, Map of Controlled Area, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/AboutTheIndustry/Accidenttowingallocationmap.htm on 4 February 2013.

Accident allocations

An accident allocation scheme (the AAS) operates in the Controlled Area to allocate accident towing jobs to operators. For the purposes of accident allocations, the Controlled Area is separated into allocation zones and tow trucks cannot attend an accident scene without an accident allocation. The AAS and zones have been designed to ensure accidents are responded to within 30 minutes and that jobs are shared evenly between tow truck operators. The Royal Automobile Club of Victoria (RACV) operates this scheme under section 47 of the Act.

The scheme functions on a roster basis. A new job is allocated to the licence based in that zone that has received the least allocations in that month. The licensee may accept or refuse the allocation. If the job is accepted, the tow truck is required to attend the accident within 30 minutes. If refused, the business is placed at the end of the queue.

2.2 Accident towing services

The focus of this review is accident towing, that is, the towing and storage of vehicles damaged in a road accident. However, it should be noted that accident towing services are a subset of the broader towing industry. Other towing services include:

- trade towing — these are towing and storage services that have not arisen due to a road accident, e.g. they can include depot-to-depot tows and clearway tows for local councils⁶
- heavy vehicle accident towing — refers to accident towing and storage services for vehicles weighing over four tonnes.

Accident towing services themselves generally comprise three distinct services:

- towing — the immediate removal of a damaged vehicle from an accident scene and its transportation to a specified location. This service includes the cleaning of the accident scene (e.g. removal of glass and debris) as instructed by officials including Victorian Police or VicRoads officers
- storage — the storing of damaged vehicles at the accident towing operator's depot to await repair or secondary towing, and
- salvage — arises where the assistance of additional equipment or another vehicle is required to move the damaged vehicle into a position from where it can be safely towed.

⁶ Since January 2009, trade towing has been deregulated in Victoria. Prior to this, drivers and operators required a trade towing licence and plates, and an authority to tow, to undertake trade towing activities.

Both accident towing and vehicle storage are the subject of regulated fees. The fees for salvage work, however, are not regulated, and will vary according to the circumstances at the accident scene. Under the Act, salvage fees must be reasonable and operators are required to take two photographs of the accident scene that clearly show the condition and position of the vehicle and provide these to the customer upon request.

2.3 Structure of the industry

This section discusses how the industry is structured to supply accident towing services, covering the role of industry participants, the supply of accident towing licences and the links between accident towing and other industries.

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 and 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.

The latest figures available show 84 operators and 52 depots⁷ active in the Controlled Area of Melbourne. This compares to 267 operators and 222 depots for all of Victoria. There are 2,302 accredited accident towing drivers in Victoria.⁸

⁷ VicRoads 2013, *Tow Truck Accident Allocations – 2012*, accessed at www.vicroads.vic.gov.au/NR/rdonlyres/3A371A9A-A65B-4B0F-9A6FA169ADF26BDD/0/2012towTruckaccidentallocations2012.pdf on 8 February 2013.

Integration with other industries

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

- integration with other towing services, such as trade towing and heavy vehicle accident towing, and
- integration with other businesses, such as smash repair businesses.

Integration can improve the efficiency of a business or number of businesses, e.g. by facilitating cost sharing. The ability to share costs such as rent, vehicle purchase, maintenance and repairs, 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, 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).

Smash repairers

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.

Insurance companies

Insurance companies have for over a decade been providing work to preferred smash repairers. Insurance company payouts account for up to 75 per cent of smash repair industry revenue and preferred repairer schemes (whereby the insured person is restricted in their ability to choose their repairer) reduce the incentive for accident towing businesses to be integrated with smash repairers.⁹

⁸ VicRoads 2011, email correspondence, 17 October 2011.

⁹ IBISWorld 2008, *Smash Repairing in Australia*, Industry Report:G5323.

Accident towing licences

Each accident towing licence is linked to a specific vehicle, rather than a person. The licence is essentially a permit for a truck to tow a vehicle and this permit is tangible in the form of a specific number plate that must be used on the licence holder's accident towing vehicle. In the Controlled Area the towing licence also gives the operator a place in the Accident Allocation Scheme. Licences are also restricted to the area in which they are issued. Operators with licences issued in the Controlled Area are not allowed to accept accident towing jobs in the rest of the state.

VicRoads can only issue a new licence with authorisation from the Minister for Roads. There are currently 421 regular tow truck licences in the Controlled Area, compared to a total of 722 licences in the whole of Victoria.¹⁰

Data provided by VicRoads indicate stability in the number of accident towing jobs per licence in the Controlled Area (table 2.1) — the average number of jobs per licence has been relatively stable over the last three years.

Table 2.1 Average number of accident towing jobs per licence

	<i>2008</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
No. of tows	98.6	106.4	110.1	107.6

Source: VicRoads.

Table 2.2 illustrates the relative sizes (number of accident towing licences) of individual accident towing depots in the Controlled Area for 2004, 2008 and 2012. It indicates that the accident towing industry is characterised by a relatively large number of small depots. Over the past four years, the total number of licence holdings per depot has increased. While there is still a majority of depots holding fewer than ten licences, the number of large depots (holding in excess of ten licences) has increased from nine to 16 since 2008. This represents a consolidation of licences in some of the larger depots over recent years.

¹⁰ A 'regular' tow truck licence allows the truck to provide accident towing services to vehicles of any gross vehicle mass that the truck is capable of towing. A heavy tow truck licence limits the vehicle to providing towing services for vehicles of a gross mass of four tonnes or more. See VicRoads 2013, Accident Towing Licences, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/AboutTheIndustry/ on 31 January 2013.

Table 2.2 Licence holdings of Controlled Area depots

<i>Licences</i>	<i>2004</i>		<i>2008</i>		<i>2012</i>	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
5 or fewer	41	59.4	33	53.2	21	39.6
6 to 10	18	26.1	20	32.3	14	27.1
11 to 15	6	8.7	6	9.7	10	18.8
16 to 20	2	2.9	1	1.6	5	10.0
20 or more	2	2.9	2	3.2	2	4.0
Total	69	100	62	100	52	100
Minimum		1		1		1
Average		6.3		6.8		8.1
Maximum		39		39		39
Total licences		432		417		421

Source: VicRoads, 2012 figures based on VicRoads 2013, *2012 tow truck accident allocations*, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/AboutTheIndustry/2012Tow+Truck+Accident+Allocations.htm on 1 February 2013.

Licence values

In general, the value of the licence should represent the discounted present value of expected future profit streams associated with providing accident towing services. At least in part, this is influenced by government restrictions which limits their supply.

It follows that the value of an accident towing licence may be a potential indicator of the relative profitability of an accident towing business. For example, should the profitability of the business increase (e.g. because of increases in regulated fees or improvements in productivity), the value of its licence would also be expected to increase. By contrast, if profitability was expected to fall (e.g. due to a new licence being issued in the same area or fewer accidents, resulting in fewer tows per licence), the value of licences would be expected to decrease.

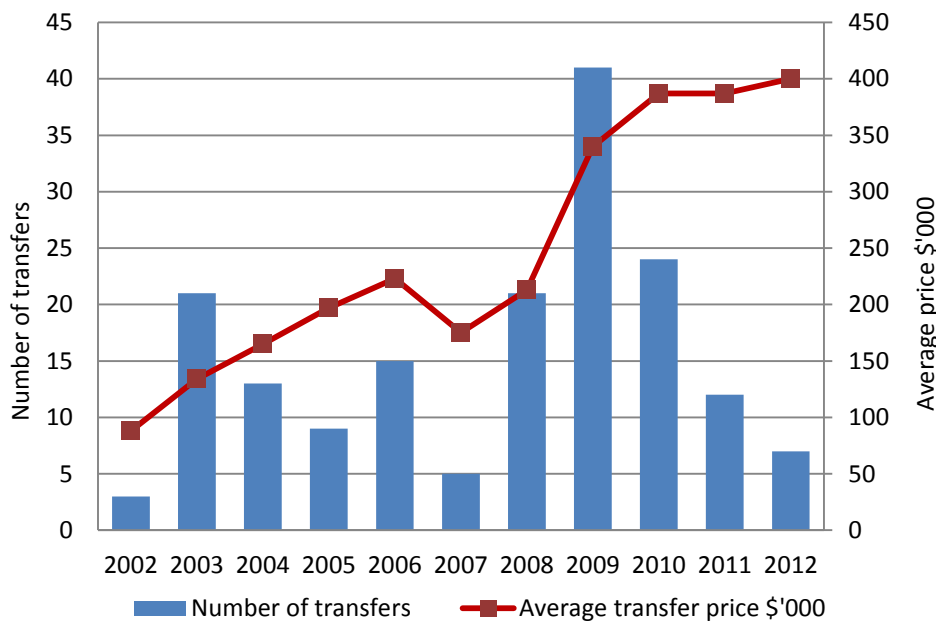
It is also important to note that future profit streams can depend on the area in which a tow truck licence holder operates. Different areas will have varying accident levels and number of other licences. Both of these factors can influence earnings. In the Controlled and Self-Management Areas, profitability is determined to an extent by the jobs attained through the allocation schemes. This differs to the unregulated areas that operate without allocations.

The exact value of an accident towing licence is difficult to assess due to the following issues:

- Liquidity — accident towing licences are not readily traded as they require VicRoads' approval in order to be transferred. In addition, the licences can only be traded between registered and accredited tow truck operators.
- 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 2.2 summarises data on accident towing licence transfers in the Controlled Area since 2002.

Figure 2.2 Licence transfers and average transfer price



Source: VicRoads.

Figure 2.2 suggests that in the past three calendar years, the number of transfers of tow truck licences has decreased, while at the same time the average transfer price has increased. Furthermore, table 2.3 (which contains the data that was used

to generate figure 2.2) demonstrates that while the maximum price has remained steady over recent years, the average and minimum prices for licence transfers have increased to their highest levels on record.

Table 2.3 Licence transfers within the Controlled Area

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Transfers (no.)	3	21	13	9	15	5	21	41	24	12	7
Max price (\$'000)	88	160	170	250	265	250	385	430	500	500	500
Min price (\$'000)	88	100	160	165	155	125	88	250	275	275	300
Av. price (\$'000)	88	134	165	197	223	175	213	340	387	387	400

Source: VicRoads.

As discussed earlier, given a fixed number of licences, changes in their value are associated with changes in demand. In turn, the demand for licences is largely driven by present and future profitability, and such increases in licence values will therefore suggest that future profit streams for licence holders are expected to increase.

Licensing and accreditation

The Act requires all accident towing operators to hold a licence to operate a tow truck. Accident towing licences are issued and administered by VicRoads. There are a limited number of licences, which are transferrable — this means that they may be purchased or leased from existing licence holders, subject to the transfer being approved by VicRoads.

The Act specifies that the Minister may only authorise the issue of a new licence 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, or
- the Minister considers that there are exceptional circumstances in the area that justify the further issue of regular tow truck licences for the area.

These requirements do not apply to the re-issue of licences, or the issue of new licences in substitution for cancelled or surrendered licences.

In practice, no new accident towing licences have been issued in the Controlled Area in recent years, and there are currently no plans to issue any new licences in Victoria.¹¹

Dormant licences

Dormant licences are those held by licensees that are not assigned to a particular truck, however retain the associated entitlement to accident allocations under the Accident Allocation Scheme. This reflects a practice amongst licence holders of, upon receiving an accident allocation for a particular licence, affixing that licence to whichever truck the licensee has available. Dormant licences allow an accident towing operator in the Controlled Area to reduce the number of trucks it operates and/or manage the usage of its trucks more efficiently (e.g. by maximising the use of the operator's most cost efficient trucks).

Area of operation

Since a tow truck licence applies only to the depot specified in the licence, this limits the area in which the licence holder can potentially conduct business. Only a licensed accident tow truck operating from a depot in the Controlled Area may attend an accident in the Controlled Area. In addition, the location of the specified depot determines a licence's allocation zone for the purposes of the Accident Allocation Scheme, and therefore restricts the licence holder to conduct business (using that licence) in that particular allocation zone.

VicRoads may vary the conditions of a licence, such as the specified depot, upon application by the licence holder. In this way it is possible for the depot location, and therefore the assigned allocation zone, of a particular licence to change.

Accreditation

The Act also includes an accreditation scheme, requiring all accident towing operators, depot managers and drivers to be accredited by VicRoads. Both individuals and corporations (with a nominated responsible person) may be accredited as a tow truck operator. An accredited operator may appoint a depot manager, who requires separate accreditation from VicRoads.

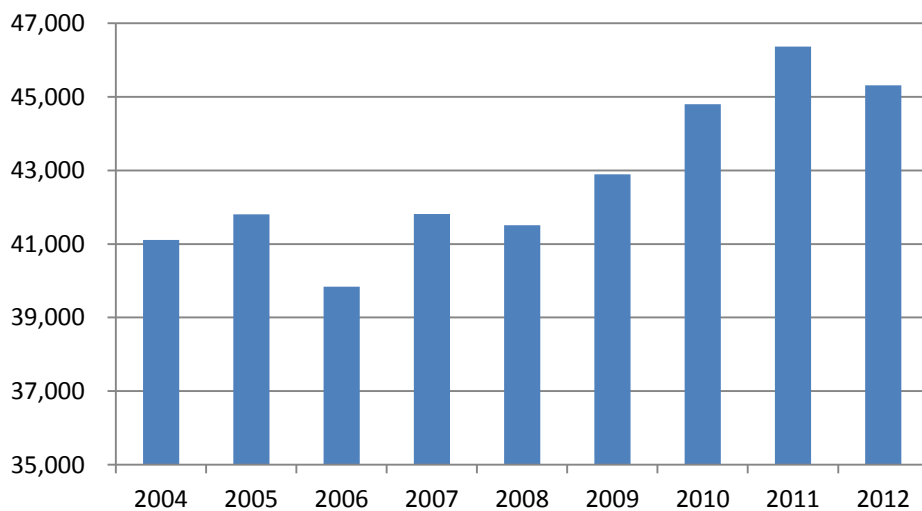
In order to operate a licensed accident tow truck, a driver must be accredited by VicRoads, or hold a trainee accident tow truck driver permit and be accompanied by an accredited tow truck driver.

¹¹ VicRoads 2013, *Tow truck licences*, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/OperatorsDepotManagersDrivers/TowTruckLicences.htm on 1 February 2013.

2.4 Demand for accident towing services

Figure 2.3 shows allocations of accident towing services in the Controlled Area. Allocations have trended upwards since 2004, with the number of registered vehicles in Victoria also growing steadily over this period. Apart from 2006, accident allocations have totalled over 41,000 per year. There were 45,312 accident towing allocations in 2012.

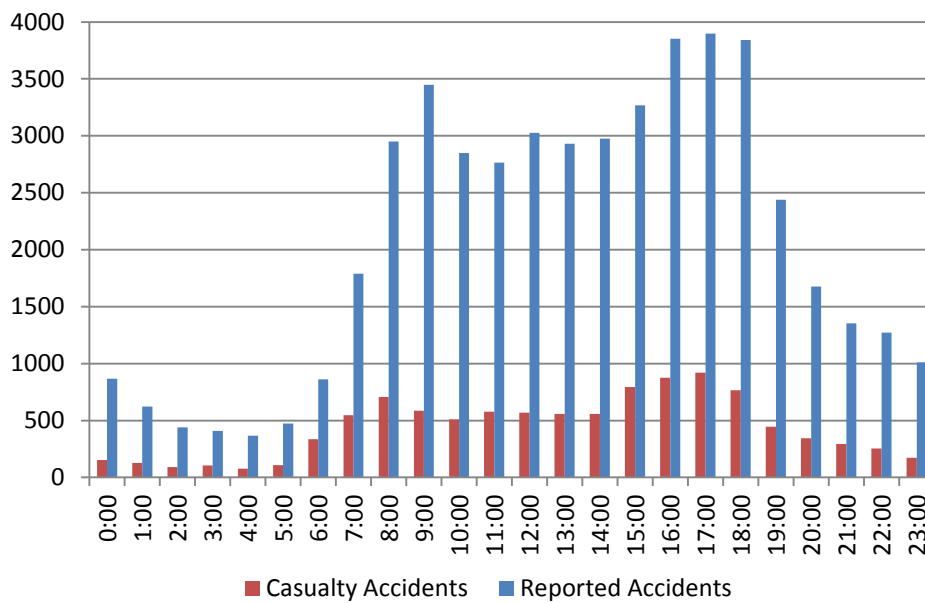
Figure 2.3 Controlled Area accident allocations



Source: VicRoads.

Figure 2.4 shows the number of accidents reported in the Controlled Area by the time of day, as well as the number of casualty accidents (accidents involving personal injury). Spikes in the number of accidents can be seen clearly at 8am to 10am and 4pm to 7pm, during the morning and afternoon traffic peaks. Approximately 36 per cent of both casualty accidents and all accidents reported in the Controlled Area occurred within these five hours.

Figure 2.4 Accidents in the Controlled Area (2012)

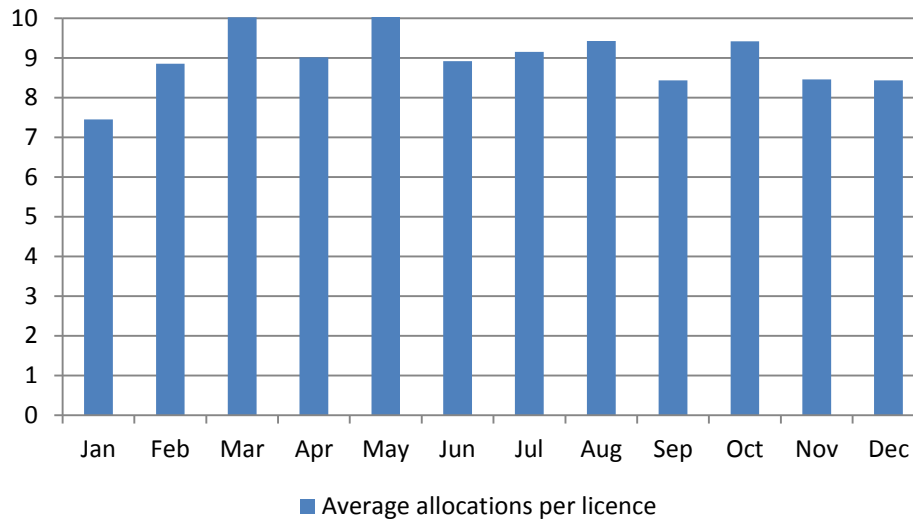


Note: * Casualty accidents are accidents involving personal injury (does not include accidents that involve property damage only). ** Each specific time entry covers one hour, e.g. entries for 10am cover the hour from 10am to 11am, and similarly the 11am entry covers the period from 11am to 12pm.

Source: VicRoads.

These accidents in the Controlled Area are distributed to licence holders via the Accident Allocation Scheme. On average, each licence received at least seven accident tow jobs per month, and in most months the number was at least eight. Overall, the average number of accident tows per month was nine (see figure 2.5).

Figure 2.5 Average allocations per licence (Controlled Area 2012)



Source: VicRoads 2013, *2012 tow truck allocations*, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/AboutTheIndustry/2012Tow+Truck+Accident+Allocations.htm on 31 January 2013.

3 ACCIDENT TOWING FEES AND CHARGES

This chapter provides a brief history on changes to accident towing fees, as well as presenting the current regulated accident towing and storage fees.

3.1 What fees are regulated?

Section 211 of the Act provides that fees for accident towing and storage in the Controlled Area are regulated and determined by the Minister for Roads. The purpose of regulating accident towing service fees is to:

- ensure that businesses generate sufficient revenue to recover the costs incurred in providing the service in order to maintain their viability into the future, and
- provide adequate incentives for businesses to improve efficiency, which can then be shared with consumers through reduced prices.

The first objective is important for the Government's policy of ensuring that towing businesses can respond to accident allocations within 30 minutes. Insufficient revenue could result in towing businesses leaving the market and so reducing the market's capacity to maintain an adequate response time. The second objective is an important element to cost minimisation, which can result in lower prices for consumers (i.e. drivers of vehicles involved in accidents, or their insurers who may directly pay for the accident towing services). In other regulated industries, this is often achieved through some prescribed productivity adjustment.

The 2012-13 fees and charges for accident towing and storage services are outlined in table 3.1.

Table 3.1 Accident towing fees and charges

<i>Fee or charge</i>	<i>\$</i>
Towing fees	
Base fee (including first 8km travel by tow truck)	196.90
Additional fee per kilometre beyond 8km	3.10
After hours surcharge	67.20
- 5pm to 8am Monday to Friday	
- 5pm Friday to 8am Monday	
- Midnight to midnight public holidays	
Storage fees (charge per day)	
Car – under cover	15.10
Car – in locked yard	10.10
Motorcycle – under cover	5.10
Motorcycle – in locked yard	3.20

Source: VicRoads 2013, *Fees and charges*, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/AboutTheIndustry/TowTruckFees.htm on 5 February 2013.

3.2 Explanation of accident towing fees

The current accident towing and storage fee schedule includes the following items:¹²

Towing fees

- Base fee — this covers the first eight kilometres of travel by the tow truck, the removal of all debris from the accident site, cleaning of the tow truck, waiting time at the accident scene, phone calls and administration such as photographs and documentation, as well as an allowance for the cost of uncommercial tows (unpaid accident towing work whereby damaged vehicles are abandoned by their owners).
- Additional per kilometre fee — beyond the first eight kilometres.
- After hours surcharge — applicable from 5pm to 8am Monday to Friday, weekends and public holidays.

Storage fees (per day)

Before a damaged vehicle is repaired or towed to another destination from the depot designated on the Authority to Tow, it must be stored in a secure area. This

¹² VicRoads 2013, *Fees and charges* accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/AboutTheIndustry/TowTruckFees.htm on 5 February 2013.

can occur under cover or in a locked yard. The following storage fee categories have been determined by the Minister:

- Car – under cover
- Car – in locked yard
- Motorcycle – under cover, and
- Motorcycle – in locked yard.

Annual fee variations

In its last review the Commission recommended an annual fee adjustment be applied according to a simple, transparent calculation that removes the need for a detailed appraisal of cost movements.

Annual fee adjustments allow firms to recover any general increase in costs that arise from providing towing and storage services. They also bring smooth and predictable price rises to consumers and avoid significant increases that may otherwise arise from less frequent price reviews. In its 2010 review, the Commission recommended the CPI (Melbourne, Transport) be applied less a productivity adjustment of 0.5 per cent (see section 4.2).

In response to the Commission's recommendations on annual price adjustments, the Government revised the Act to include the following annual adjustment formula (section 212H):

$$A \times (B/C - D)$$

where –

- 'A' is the amount of the fee item for the previous financial year,
- 'B' is the most recent CPI (Melbourne, Transport) (March quarter),
- 'C' is the CPI (Melbourne, Transport) for the previous year (March quarter), and
- 'D' is the productivity adjustment figure (X factor).

3.3 Unregulated services

There are a number of accident towing services that towing operators appear to be charging for but are currently not regulated in legislation. These are discussed below.

Salvage charges

The term salvage refers to the work needed to move a damaged vehicle into a position from where it can be safely towed and requires the assistance of additional equipment or another vehicle. An example of salvage work would be the righting of a car that had turned on its side or its roof in an accident.

At the time of the Commission's last review, salvage charges were not regulated. In response to some stakeholder concerns that salvage charges were being applied excessively, the Commission recommended in its last review that these be subject to a set hourly rate for basic salvage work (\$60.00 per hour with a 20 per cent after hour surcharge where applicable) and that more complex tasks, those requiring specialised equipment, be charged at a 'fair and reasonable' rate. The Commission also recommended that operators be required to take at least two photographs of the salvage operations and that drivers be provided with detail of the work undertaken on their bills.

In response to the Commission's 2010 recommendations, the Government chose not to regulate the price of salvage but rather legislate that any charge for salvage be 'reasonable'. However the Commission has been asked to look at the issues of salvage again as part of this review. The issue of salvage charges will be reconsidered by the Commission in this review.

Secondary towing

When assigned an accident towing job, tow truck operators are instructed to deliver the damaged vehicle in question to a certain depot. Secondary towing is the towing of a damaged vehicle from the depot at which it is being held to another location, usually for the purposes of smash repairs. This is to happen only at the request of the vehicle owner. The fees for these services are unregulated.

At the time of the last review, the Commission received reports that some tow truck operators may have been charging secondary towing fees improperly, for example for secondary towing from sub-depots to final depots. In its 2010 review, the Commission recommended that VicRoads collect data on the incidence and nature of secondary tows to enable it to monitor the nature of charges imposed and the incidence of those charges.¹³ The Commission understands that this recommendation was not adopted.

¹³ Essential Services Commission 2010, *Review of accident towing and storage fees*, Final report, vol. 1: overview of recommendations and findings, June, p. 3 (recommendation 6).

4 | ISSUES FOR COMMENT

This chapter sets out the issues on which the Commission is seeking comment from stakeholders.

Stakeholder comment is sought on the following key issues:

- the level of regulated fees and charges (section 212A (1)(a) of the Act)
- the annual fee variation methodology and productivity adjustment (section 212A (1)(c) of the Act)
- whether salvage services should be subject to price regulation, and if so, the appropriate price (section 212A (1)(b) of the Act)
- whether secondary towing services or ‘out of storage’ towing should be subject to price regulation, and if so, the appropriate price (section 212A (1)(b) of the Act).
- what is included in the base towing fee, and
- issues surrounding non-commercial tows.

4.1 Setting the level of fees and charges

The Act requires the Commission to conduct and complete a periodic review of accident towing charges and to make recommendations to the Minister. Hence, the Commission’s task is to determine and apply a methodology for setting the relevant fees and charges.

The Commission has identified two methodologies that may be utilised for reviewing regulated fees, namely:

- a cost of service approach — setting fees based on the estimated costs of providing the service (as used by the Commission in previous fee reviews), and
- a benchmarking approach — setting fees by comparison to like services in other jurisdictions and relevant competitive markets.

Cost of service approach

Under the cost of service approach, the regulator estimates each cost component of providing the regulated service (in this case accident towing) to determine an estimated cost of providing that service. The approach is a useful method for determining the initial base for regulated fees where accurate cost information is available.

The cost of service approach was used by the Commission in its previous accident towing fee review of 2010 whereby the Commission issued an industry wide survey to operators to collect information on costs and revenues regarding accident towing services. However, the Commission had significant difficulty in obtaining information on the costs and revenues associated with the various components of accident towing from the industry.¹⁴ This was due to:

- the unwillingness of the industry to provide relevant cost information and participate in the survey
- common cost issues associated with the integration of accident towing, trade towing and smash repair, and
- responses to the survey that the Commission did receive were self-reported and unaudited (and therefore potentially inaccurate)¹⁵, and not fully verifiable (due to the confidential nature of the survey).¹⁶

As a result, the Commission recommended that VicRoads collect information on costs and revenues from accident towing operators in advance of the next review. However, there are currently no requirements for towing businesses to report cost and revenue information or to maintain separate accounting records for their regulated accident towing and storage services from other competitive services such as trade towing and smash repair.

For the Commission to utilise a cost of service approach for the current review, it would be required to undertake another survey. Given the lack of response to the Commission's previous survey and issues about data accuracy (i.e. collecting cost data does not necessarily guarantee its accuracy), the Commission is of the view that the benefits of repeating this process may be outweighed by the costs, particularly when compared to other options.

Benchmarking

An alternative to the cost of service approach is benchmarking. Benchmarking involves comparing performance or processes between entities, e.g. to identify opportunities for improvement and or provide pressure to improve performance by reporting on the relative performance of the benchmarked entities. Fees in the Controlled Area could be compared against those charged for relevant and comparable services in other States or markets, with regulated fees being set based on these benchmarks.

¹⁴ Essential Services Commission 2010, *Review of accident towing and storage fees*, Final report, vol. 2: detailed reasons and methodology, June, p.17.

¹⁵ *ibid.*, p. 30.

¹⁶ *ibid.*, p. 28.

Benchmarking is particularly useful where the regulated service can be compared to a similar service that is subject to competition, since fees in the competitive market are likely to reflect efficient costs.

The benchmarking approach, while not as precise in reflecting the actual costs of providing a service, is much simpler than a cost of service approach and would not be subject to the same issues in obtaining accurate and robust data.

Potential fee benchmarks that accident towing charges could be compared against include:

- regulated fees in other States — for example in New South Wales, Queensland and South Australia
- trade towing fees — fees for the towing of non-accident vehicles negotiated under private contracts, and
- clearway towing fees — fees for towing of vehicles illegally parked in designated clearway zones during specified times.

Advantages and disadvantages

Both the cost of service and benchmarking approaches have their advantages and disadvantages. While the cost of service approach may more accurately reflect actual costs incurred by the industry, the approach requires significant information from industry operators and is most accurate when a large proportion of operators submit information. The previous Commission review indicated an unwillingness of operators to participate in a cost and revenue survey.

On the other hand, benchmarking relies less on receiving and verifying operator information, and can more easily allow for the setting of fees at levels consistent with a competitive and efficient market. Benchmarking a regulated service against a similar competitive service is potentially a useful and effective way of setting prices. In contrast, the cost of service approach would require the regulator to determine efficient cost levels.

Considering these advantages and disadvantages, the Commission's preliminary view is that a cost of service approach is unlikely to be the best approach at this time. Pending consideration of stakeholder views, the Commission intends to explore the application of benchmarking in assessing accident towing fees and charges.

As part of this assessment, the Commission also needs to consider the fundamental question of whether an increase (or decrease) in fees is warranted. For example, if the general profitability of the industry is high or has been increasing over recent years, then this could be an indication that an increase in

fees is not warranted.¹⁷ As part of this analysis, the Commission will consider the level and change in licence values over recent years. In addition, where information is available, a general analysis of costs and revenues, as well as an analysis of market entry and exit to ascertain industry viability will also be undertaken. For example, stability in the market and stable or increasing licence values may suggest the current level of regulated fees is sufficient and a fee reset is unnecessary. A continuing trend of increasing licence values may suggest that fees are too high and a decrease is appropriate.

Question 1. How have the costs of accident towing operators changed since the last review? Have cost changes been markedly different to the CPI-X annual fee variation?

Question 2. Do current fees and charges need to be reset, or are they at an appropriate level? What indicators and information should the Commission consider in determining whether a reset is required, and the direction of that reset? Should accident towing fees decrease?

Question 3. Should a benchmarking approach be used by the Commission in resetting fees? If so, what services or industries should accident towing fees and charges be benchmarked against? How significant are differences between accident towing and these benchmarks?

Question 4. Are there other methodologies for resetting fees that the Commission should be considering?

4.2 The annual adjustment mechanism

The annual adjustment mechanism consists of a:

- cost index (i.e. the CPI (Melbourne, Transport), and
- productivity adjustment factor currently set at 0.5.

Section 212A (1)(c) of the Act requires the Commission to review the annual fee adjustment methodology and make recommendations on the appropriate productivity adjustment.

¹⁷ For example, in the case of the taxi industry, the Taxi Industry Inquiry noted that returns in the taxi industry have been increasing steadily since the mid-1980s, and the Inquiry has recommended a reform path for the taxi and hire car markets which would result in reductions in existing licence values. See Taxi Industry Inquiry 2012, *Customers first: service, safety, choice*, Draft report, May, pp. 84–85, and Taxi Industry Inquiry 2012, *Customers first: service, safety, choice*, Final report, September.

Cost Index

In competitive markets, firms are able to raise the prices of their goods and services automatically as the price of their inputs increase. Failure to do so may result in losses of profitability. In regulated markets, such as accident towing, the regulator seeks to reflect how price adjusts in a competitive market for the regulated firm. In this sense, the cost index aims to reflect changes in input costs faced by accident towing business.

Issues relating to the cost index

The current annual fee adjustment formula uses the CPI (Melbourne, Transport) cost index to adjust prices. The Commission will consider whether the CPI (Melbourne, Transport) is still the most appropriate cost index for reflecting cost movements in the accident towing industry, or whether a different index or industry-specific cost index would more accurately track costs.

In its submission to the 2010 review, Pitcher Partners on behalf of the VACC suggested that the Commission develop an alternative escalation index that better tracks input costs of tow truck operators.¹⁸ In particular, it argued that, given 55 per cent of towing costs are labour based, a composite index should be developed comprising 55 per cent of the change in Average Weekly Earnings (AWE) and 45 per cent of the change in CPI.

The Commission chose not to recommend an industry specific index as proposed by Pitcher Partners, as it was concerned that accident towing labour costs may not move directly in line with AWE (as it would depend on the supply and demand of accident towing labour and the skills required). In addition, it may not be appropriate to adjust the storage and distance fees with a labour index. The Commission believed a simple and transparent approach using CPI (Melbourne, Transport) was preferable, noting that most regulators rely on some form of the CPI index to adjust prices for these reasons.¹⁹

Productivity adjustment – the 'X' factor

While firms in competitive markets expect to be able to pass on cost increases to consumers, they are also expected to make productivity improvements. In a competitive market, firms continually search for ways to improve their productivity such that they can use fewer resources to produce the same output and maintain profitability even in the face of rising input prices. In a competitive market, if a firm

¹⁸ Pitcher Partners 2010, *Submission response to review of accident towing and storage fees*, Draft report, April, p. 8

¹⁹ Essential Services Commission 2010, *Review of accident towing and storage fees*, Final report, vol. 2: detailed reasons and methodology, June, p. 39.

improves its productivity relative to its competitor it can lower prices and increase market share.

In regulated markets, such as accident towing, monopolists have weak incentives to improve productivity as they have no real competitors to threaten their survival. As a result, the regulator seeks to reflect the competitive market and ensure that the regulated industry has an incentive to improve productivity. It does this through the use of the 'X' factor, that is, by subtracting from any proposed price increase a productivity factor which aims to reflect efficiency gains that accident towing operators are capable of achieving.

Issues relating to the productivity adjustment

The issue that this review must consider is whether the industry is capable of improving its productivity. It is important to ensure that the adjustment factor reflects a reasonable view about the level of productivity improvement that is likely to be achievable by the industry. If the adjustment is set too high, then the financial viability of some industry participants may be threatened and firms may exit the market. If it is set too low, then consumers will pay more than necessary and will not receive a fair share of any efficiency gains.

The Commission noted in its 2010 review that accident towing operators had been able to make productivity improvements over recent years:

It is clear that in recent years accident towing operators have been able to achieve efficiency gains by, for example, consolidating depots, increasing the ratio of trucks per licence held (and hence the number of accident allocations per truck) and using their existing resources to engage in other (competitive) services such as trade towing.²⁰

A key question the Commission is seeking feedback on is what productivity improvements can be expected from the accident towing services industry.

In the absence of detailed accident towing cost information, the Commission may consider productivity adjustments set by it and other regulators (particularly those applying to transport industries), as well as published statistics on productivity achieved by Australian industries and perhaps the economy more generally.

Other matters relating to the adjustment mechanism

One issue with the adjustment mechanism is how it has been implemented by the Victorian Government. For example, following a negative result from the

²⁰ Essential Services Commission 2010, *Review of accident towing and storage fees*, Final report, vol. 2: detailed reasons and methodology, June, p. 40.

adjustment mechanism (and hence zero change to fees), when the adjustment mechanism next gives a positive result, fees will be increased. This can provide the industry with fee increases above estimated cost increases. However, this differs from the Commission's intention in its 2010 review, which stated that when the adjustment mechanism suggests fees should fall, fees should not be subsequently increased until costs have returned to the level they were prior to the imposition of the zero per cent change. This ensures that the industry receives a fee increase only when costs have actually increased.

A related issue is whether it is appropriate for fees to decrease. Currently fees cannot be adjusted down based on the annual adjustment mechanism. The Commission will reconsider whether this is reasonable (if fees are able to be adjusted down, this would remove the implementation issue discussed above).

Question 5. Has the annual adjustment mechanism been effective? Should it also provide for price decreases so that consumers benefit from cost decreases?

Question 6. Is the current cost index (CPI – Melbourne, Transport) the appropriate cost index to use?

Question 7. What are the potential sources of productivity increases in the industry?

4.3 The regulation of salvage charges

Salvage refers to the movement of a motor vehicle from its position to a place where it may be towed by a tow truck without assistance (i.e. where a damaged vehicle cannot be moved or towed without the assistance of another vehicle or the use of additional equipment). Section 212A (1)(b) of the Act requires the Commission to review whether salvage services should be subject to a fee determination by the Minister under section 211 of the Act, and if so, the recommended fee.

In its 2010 review, the Commission recommended basic salvage be price regulated at a flat charge of \$60 per hour (including GST) with a 20 per cent after hours surcharge. In making this recommendation, the Commission consulted with industry and the VACC in order to be able to recommend a quantum. However the industry was not forthcoming with any evidence or a basis upon which to set salvage fees. As a result, the Commission used a number of benchmarks to determine a basic salvage fee. These included the regulated salvage fee in New South Wales and typical salvage charges as advised by VicRoads and reported by tow truck operators to the Commission.

For more complex salvage operations, where a heavy tow truck or specialist equipment (like a mobile crane) is required, the Commission previously recommended that charges should be required to be 'fair and reasonable'.

Issues with salvage charges

The same rationale for regulating towing fees applies to salvage charges. That is, given that tow truck operators have the exclusive right to attend an accident via the allocation system, there is the potential that they may levy excessive salvage charges or even levy a salvage charge when it is not actually required. Furthermore, the ability of affected parties to 'negotiate' with a tow truck operator in the aftermath of an accident is likely to be limited given the circumstances. For these reasons, the Commission recommended in its 2010 review that salvage charges be regulated.

However the Government chose not to price regulate salvage and has asked the Commission to re-examine the issue as part of this review.²¹ While salvage is currently not price regulated, any salvage charged by operators is required to be 'reasonable' (under section 212I of the Act), and is subject to documentation requirements (two photographs of the salvage operation must be taken and made available to the customer, and a detailed description of the work undertaken must be included on the invoice).

An issue for the Commission to consider in this review is whether these new requirements for salvage services are sufficient, or whether regulation and a prescribed fee is required. In considering whether (basic) salvage charges should be regulated, there are a number of issues that the Commission will consider, including:

- Is the rationale for previously recommending the regulation of salvage charges still valid?
- Are the current requirements for salvage charges to be reasonable, along with the documentation requirements, sufficient for preventing excessive or inappropriate salvage charges? Given these recent law changes, has sufficient time passed for them to have effect?
- What level of salvage fees have been charged by operators over recent years?
- Is there evidence of inappropriate charging under the new requirements?

²¹ VicRoads 2012, *New regulations - 1 June 2012*, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/New+regulations.htm on 4 February 2013.

Question 8. What rates for basic salvage have been applied by industry operators over recent years? Have these been reasonable? Is there sufficient evidence of appropriate charging under the new requirements?

Question 9. Should a fee for basic salvage be prescribed?

Question 10. If basic salvage charges are regulated, what is the appropriate charge or methodology for establishing the level of the charge?

4.4 Issues relating to secondary towing

In its 2010 review, the Commission noted issues surrounding unregulated charges for secondary towing. A secondary tow involves the towing of a vehicle from the depot listed on the Authority to Tow docket to another location (i.e. another depot). For example, a tow truck operator may tow a vehicle to a sub-depot, and then charge a secondary tow fee to tow the vehicle from the sub-depot to a final depot. This secondary tow is not included in the regulated base towing fee, and is currently not regulated.

While the Authority to Tow docket must clearly identify the place to where a vehicle is to be towed, the vehicle owner may not know if that depot is the best location, or a location that will avoid a secondary tow charge. Therefore vehicle owners or their insurance companies may be subject to an unnecessary (and unregulated) secondary tow charge.

In its 2010 review, the Commission did not receive any submissions commenting on the extent and circumstances under which customers are being charged for secondary tows and the nature of any such charges. As a result, the Commission was unable to verify the extent to which this is a common practice. The Commission recommended that data on the incidence and nature of secondary towing charges be collected by VicRoads to enable it to monitor the nature of charges imposed as well as the incidence of those charges.²² However the Commission understands that there is no formal mechanism for the collection of data on secondary towing charges.

Issues with secondary towing

If there is evidence of unnecessary and unreasonable secondary towing charges, it may be appropriate for secondary towing charges to be regulated, given there is considerable scope for uninformed vehicle owners to be charged for secondary tows that are not (or should not be) required. If so, the Commission would be required to set a price for secondary towing. It would do this through benchmarking

²² Essential Services Commission 2010, *Review of accident towing and storage fees*, Final report, volume 2: detailed reasons and methodology, June, p. 50.

against like services (such as accident towing, trade towing and clearway towing) or charges in other jurisdictions.

Alternatively, it may be appropriate for secondary tows (or certain types of secondary tows) to be included as part of the base towing fee. This would minimise unnecessary secondary towing charges, as the accident towing businesses are most likely to be the best placed to know the most appropriate depot to tow a vehicle, and would be incentivised to minimise the number of tows required.

Question 11. What rates have been charged for secondary tows over recent years, and what was the nature of the secondary tow?

Question 12. Should a fee for secondary towing be prescribed? Alternatively, should secondary towing (or certain types of secondary towing) be included in the base towing fee, or are there non-price mechanisms to ensure reasonableness in secondary towing fees and practices?

'Out of storage' towing

Another related issue that has been brought to the attention of the Commission is the potential for insurers or other parties to be charged a fee for the towing of a vehicle from its storage position within a depot to a location where it can be accessed by the insurer (or owner) for collection or inspection. This location could be within the depot or just outside it (the Commission collectively refers to these as 'out of storage' towing).

The question that the Commission must consider is whether towing of this nature is a type of secondary towing, or is part of the service in providing accident towing (and therefore should be included as part of the base towing fee).

If out of storage towing is considered part of the accident towing service, it should be specifically included in the description of the base towing fee. Alternatively, these types of tows may need to be regulated as a separate service, with the Commission recommending a regulated fee for the service.

Question 13. To what extent and under what circumstances are out of storage fees being charged to vehicle owners or their insurers? What rates have been charged for out of storage tows over recent years?

Question 14. Should out of storage tows be part of the accident towing service (and therefore be covered by the existing base towing fee), or be considered secondary towing?

Question 15. Should a fee for out of storage towing be prescribed?

4.5 Other matters

Coverage of the base fee

In its 2010 review, the Commission recommended that the Act be amended to clearly specify the services that the base towing fee covers, as this was unclear. However, the Act has not been amended to include such a definition of what is included in the base towing fee.

The VicRoads website lists a definition of what services are covered in the base towing fee.²³ However, Vic Roads has advised the Commission that accident towing operators are charging additional fees for certain services, (e.g. cleaning product required to clean oil spills from a tow truck). Therefore it appears that it is still unclear what the base fee covers.

The Commission will look at options to clearly specify the services that the base towing fee includes.

Question 16. Should the Act be amended to clearly specify the services that are included in the base towing fee?

Non-commercial (unpaid) tows

Non-commercial (or unpaid) towing is an accident towing job for which a tow operator is not paid. This may occur where the owner of the vehicle refuses to pay for the service (e.g. because their vehicle is uninsured and/or the value of the damaged vehicle is less than the owed accident towing charges) and/or abandons the damaged vehicle at the operator's storage facility. The Commission understands that non-commercial tows may also occur at the direction of police, for the towing of abandoned cars.

While towing operators do sometimes undertake what turn out to be non-commercial tows, processes do exist for operators to dispose of abandoned vehicles and to keep the sale proceeds. In this way they can receive some compensation.

The problem of non-commercial tows arises because, under the current accident towing regulations, accident towing businesses are paid only after they have delivered the towing service and have invoiced the vehicle owner or their insurer,

²³ Currently: the first 8 kilometres travelled by the tow truck, removal of all debris (including any spills), cleaning the tow truck, waiting time at the scene, phone calls, unpaid tows and administration such as photos and documentation – VicRoads 2012, *New fees and charges from 2012-13*, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/News/NewFeesandChargesfrom20122013.htm on 6 February 2013.

and drivers are not allowed to request a deposit before performing a tow. Tow truck drivers are also prohibited from refusing a tow once they arrive at the accident scene unless the owner of the vehicle states that he or she is unable or unwilling to pay for the service.²⁴

The occurrence of non-commercial tows raises the issue of who should bear the costs of non-commercial tows.

The Commission considered the issue in its 2010 review. The Commission chose to treat non-commercial tows as a bad debt and included an amount in the cost base for regulated fees. An alternative for reducing the cost of unpaid towing fees may be to allow operators to dispose of vehicles if payment has not been received after a specified period of time, and keep all proceeds up to the amount owed.

The Commission will consider the options for the treatment of non-commercial tows for example, whether non-commercial tows should continue to be provided for as a bad debt or whether another means of cost recovery for non-commercial tows should be used and administered by VicRoads.

Question 17. To what extent are non-commercial tows undertaken by operators? To what extent are they undertaken because owners do not claim their vehicle from the depot, and to what extent are non-commercial tows of abandoned vehicles undertaken at the direction of police or other authorities?

Question 18. How should the costs of non-commercial towing be recovered?

Question 19. Does the cost of non-commercial tows fall evenly across all depots/operators?

²⁴ Clause 39, *Accident Towing Services Regulations 2008*.

The following sets out the legislative framework relevant to the Commission's role under the Accident Towing Services Act 2007.

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

The Minister may from time to time 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;
- (c) basic salvage services—

for the provision of those services.

Section 212 – Determinations of charges

- (1) The Minister must not make a determination under section 211 unless he or she—
 - (a) has received a recommendation from the Commission under Division 2 on the matter; and
 - (b) has received a report from VicRoads.
- (2) A determination of the Minister under section 211—
 - (a) may be of general or of specially limited application; and
 - (b) may differ according to differences in time, place or circumstance.
- (3) A determination under section 211 takes effect when it is published in the Government Gazette, or, if a later day is specified in the determination, on that day.
- (4) A determination under section 211 may be amended or revoked and the provisions of this section apply to any such amendment or revocation of a determination in the same manner as that in which they apply to the making of the determination.

Section 212A – Periodic review of charges

- (1) The Commission must, at the time specified in subsection (3), conduct and complete a review and make a recommendation to the Minister as to all of the following—
 - (a) whether or not any amount determined by the Minister under section 211 is appropriate;
 - (b) in relation to accident towing services, services relating to the storage of accident damaged vehicles and salvage services for which no amount has been determined under section 211—
 - (i) whether or not that service should be subject to a determination under that section; and
 - (ii) if the Commission considers that the service should be subject to a determination, what that determination should be;
 - (c) a figure for the productivity adjustment of those services that are or are to be subject to a determination under section 211;
 - (d) in relation to accident towing services, the storage of accident damaged motor vehicles or salvage, any matter on which the Committee may advise, conduct inquiries or make recommendations under section 10 of the Essential Services Commission Act 2001 that the Minister specifies in writing.
- (2) The Minister must consult with the Minister administering the Essential Services Commission Act 2001 before specifying a matter for review under subsection (1)(d).
- (3) The Commission must conduct and complete a review and make a recommendation to the Minister under this section—
 - (a) not later than 30 June 2014; and
 - (b) before the expiry of each subsequent period of 4 years commencing from the date that the last review commenced.

Section 212B – Additional review at Minister's direction

- (1) The Minister may at any time, by written direction, require the Commission to conduct and complete a review and make a recommendation to the Minister as to whether or not an amount determined under section 211 is appropriate.
- (2) The Minister must consult with the Minister administering the Essential Services Commission Act 2001 before requiring the Commission to conduct a review and make a recommendation under subsection (1).

- (3) A written direction under this section must specify terms of reference for the review.
- (4) The Minister may—
 - (a) specify a period within which a recommendation is to be made to the Minister under subsection (1);
 - (b) require the Commission to make a draft copy of the recommendation publicly available or available to specified persons or bodies during the review;
 - (c) require the Commission to consider specified matters;
 - (d) give the Commission specific directions in respect of the conduct of the review;
 - (e) specify objectives that the Commission is to have in performing its functions and exercising its powers in relation to the review.
- (5) If the Minister has directed a matter to the Commission for review under subsection (1), the Minister may, by written notice given to the Commission, withdraw or amend the direction at any time before the Minister has received the recommendation from the Commission.
- (6) The Minister must cause notice of a direction given to the Commission under this section to be published on an Internet site maintained by VicRoads.

Section 212C – Conduct of review

- (1) Subject to this Act and any directions under section 212B, the Commission may conduct a review under this Division in any manner the Commission considers appropriate.
- (2) In conducting a review, the Commission is not bound by the rules of evidence and may inform itself on any matter in any way it thinks fit.
- (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 a review, 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.

When regulated accident towing fees were first introduced in 1982, they were set at \$63.50 plus \$1.00 for each kilometre beyond eight kilometres. By 1989 the fees had been increased to \$84.00 and \$1.35 per kilometre.

Fees were increased again in 1991, 1992 and 1997. Fees were increased twice in 2000, once in July to account for the introduction of the GST and again in December following the release of a regulatory impact statement by the Department of Infrastructure. The second of these increases was intended to restore the real value of the fees to the level set in 1982. At that time, an after hours surcharge of \$54.00 was introduced for all tows allocated between 7pm and 7am.

The Commission has undertaken three reviews of accident towing and storage fees in the past eight years. The first two of these were at the request of the Minister for Transport in 2003 and then in 2005.²⁵

The 2003 review led to a 6.6 per cent increase in regulated fees.

In response to the 2005 review, the period over which the after hours surcharge applies was extended to include the period from 5pm to 8am on Monday to Friday, 5pm Friday to 8am Monday and midnight to midnight on public holidays. This change resulted in an estimated 7.5 per cent increase in industry revenue.

In November 2010, in response to the recommendations of the last Commission review, all fee items were raised by roughly 12.5 per cent. This resulted in a base fee of \$189.50, an additional kilometre charge of \$3.00 and an after hours charge of \$64.75. The items on the fee schedule have since been adjusted annually for inflation (minus a productivity factor). Fees rose by roughly 1.3 per cent in November 2011 and by roughly 2.6 per cent in July 2012.

Table B.1 lists the full history of regulated accident towing fees since their introduction in 1982. Both nominal and real figures (2012\$) are presented.

²⁵ 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 has been administered by VicRoads and the Minister for Roads.

Table B.1 History of regulated accident towing fees (nominal)

	<i>Base fee^a</i>	<i>Additional per kilometre charge</i>	<i>After hours surcharge</i>
1982	63.50	1.00	-
1989 ^b	84.00	1.35	-
1991	93.00	1.50	-
1992	95.00	1.55	-
1997	100.00	1.60	-
2000 (Jul)	109.45	1.70	-
2000 (Dec)	158.00	2.50	54.00
2003	168.45	2.65	57.55
2010 (Nov)	189.50	3.00	64.75
2011 (Nov)	194.40	3.10	66.40
2012 (Jul)	196.90	3.10	67.20

Regulated accident towing fees (real 2012\$^c)

	<i>Base fee^a</i>	<i>Additional per kilometre charge</i>	<i>After hours surcharge</i>
1982	199.85	3.15	-
1989 ^b	158.54	2.55	-
1991	158.50	2.56	-
1992	160.29	2.62	-
1997	151.12	2.42	-
2000 (Jul)	154.70	2.40	-
2000 (Dec)	223.32	3.53	76.33
2003	215.55	3.39	73.64
2010 (Nov)	199.21	3.15	68.07
2011 (Nov)	197.83	3.15	67.57
2012 (Jul)	196.90	3.10	67.20

Notes: All fees GST inclusive. The listed fees do not cover storage fees. ^a Base fee includes first 8 km of travel by tow truck. ^b Data on fee levels between 1983 and 1988 are not available. All fees GST inclusive. ^c Based on CPI (All Groups, Australia).