

3 November 2015

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Essential Services Commission Victoria
Accident Towing Regulation
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Melbourne, VIC 3000

Accident Towing Regulation – Draft Report

Insurance Australia Group (IAG) welcomes the opportunity to make a submission to the Essential Services Commission (ESC) Accident Towing Regulation Draft report ('the Draft report').

IAG acknowledges the importance of towing as a service critical for Victorian motorists. Tow-truck operators are commonly one of the first to arrive at the scene of an accident. They play an important role in dealing with drivers experiencing stress, while also ensuring that the vehicle is quickly cleared so traffic can flow unimpeded.

IAG supports many of the recommendations made and appreciates the consumer focus the ESC has adopted for the Draft report.

Conflict of interest is almost always at the root of problems experienced. While the well documented and often public issue of multiple tow operators aggressively competing for work at accident sites has been addressed by current towing regulation, these schemes have not prevented other forms of consumer exploitation. This means that *some* elements of the industry are reliant upon unscrupulous methods to generate income. This is largely due to the increasingly competitive automotive sector.

Advances in technology, safety and globalisation mean that the repair, service, retail, insurance and recycling sectors of the Australian automotive industry are facing significant adjustment. A combination of increasingly sophisticated vehicle safety technologies and materials, along with the success of road safety initiatives, can be attributed to reducing the impact and number of collisions.

This means that some businesses are seeking alternative/auxiliary revenue streams to help support their bottom line and in doing so can be tempted to use methods that have detrimental impact on consumers. This is realised by charging consumers extras such as storage fees, towing fees and rental car fees. Other "services" are emerging as more unscrupulous agents collaborate with lawyers, debt-collectors and "specialist accident management companies", to tap into vulnerable consumers in order to extract supplementary income.

The ESC's draft recommendations go a long way influence more positive, legitimate and commercial exchanges occurring after an accident. However, there is an opportunity for the ESC to make public recommendations relating to the unregulated aspects of the tow-truck sector. Despite not having the regulatory power to act on its own, the ESC is well placed to offer recommendations to the State Government and other agencies that do have power to do more to protect consumers throughout the accident process.

With this context in mind, it is critical that regulation (and indeed legislation) remains current, and keeps pace with the changing environment. Improving the regulation for the accident towing sector should:

1. Support the objectives that underpin the Act;
2. Help to correct the asymmetric nature of the relationship between the consumer and the tow truck operators; and
3. Contribute to road safety while supporting the evolution of the automotive market.

It is therefore important that the bulk of the recommendations made by the Draft report are accepted, while at the same time policy makers and government are aware of the complex issues facing the industry.

Increasing consumer protection – reducing tactics akin to touting

Given the infrequency of accidents, motorists are ill-prepared to decide at the scene of an accident where their vehicle should be towed and ultimately where their vehicle is repaired. Unscrupulous tow operators can use this situation to ‘direct’ a consumer to a smash repairer aligned with (or owned by) their towing business. Rather than providing the support that motorists need at this difficult time, approaches that set out to circumvent insurance processes or restrict the ability of a consumer to make an informed choice can confuse the situation. This can add undue stress and more than double the costs associated with an accident. Ultimately most Victorian motorists bear these costs in their insurance premiums.

The scheme could be significantly improved if incentives were removed, by the separation of the towing service and the smash repair process.

IAG appreciates the focus that the ESC has placed on the consumer outcomes in the Draft report. The ESC’s draft recommendations certainly help the community, motorists and industry more carefully manage and move on after accidents.

To continue to improve consumer protection, and to break down the existing model which has served only to support financially driven affiliations or ownership of smash repair shops and flow on services such as hire cars, independent assessors and claims recovery services, we agree that existing anti-touting provisions can be strengthened. We support the extension of these provisions to:

- limit the locations to which an accident damaged vehicle can be towed
- prohibit the offering of an “authority to act” contract at the scene of an accident, or at a repairer or tow truck operators premises
- prevent unsolicited quotes for repair work once a vehicle has been towed to the accident towing operators premises
- limit the ability for operators/repairers to begin repair work without a separate agreement, and for that agreement not to be signed on the day of the accident
- allow consumers appropriate time in order to make informed decisions about the repair of their vehicle.

The Commission could consider taking the opportunity to make final recommendation to the State Government to amend the *Accident Towing Services Act 2007* in this regard.

Overall, IAG supports a holistic approach to consumer protection; this involves continuing to reduce opportunities for touting, extended fee regulation and implementation of a consumer education program with multiple touch points to create informed motorists.

Fee Regulation

To reduce the way in which consumers are exploited, accident towing fees should continue to be regulated in the controlled area and that this should be expanded to cover all areas of the State. This would provide a greater degree of protection to consumers from towing operators who direct work to affiliated smash repairers, and who from our considerable experience, charge unreasonably inflated repair fees.

Being unfamiliar with the towing industry and overwhelmed after an accident, consumers are then expected to negotiate the cost of towing services. The reality is that they rely on their insurer to meet these costs and it is left with the insurer to argue that the costs charged by the tow operator are unreasonable.

It is common practise for repairers to hold customers' vehicles ransom while demanding unreasonable costs for the towing service. In addition these towing operators typically add daily 'storage' fees to their demands in return for releasing the customer's vehicle. This routinely delays repairs and settlement of the claim for customers. (In these cases we may also need to initiate legal action, and involve other parties such as Vic Roads, adding to the stress for customers).

The only way to truly prevent the cycle of exploitation is to maintain fee regulation across the Melbourne controlled area, introduce it to the self-regulated area of Geelong, and expand it to the unregulated area of Victoria.

Conclusion

IAG would like to thank the ESC for the opportunity to comment on the Draft report. The recommendations if implemented will provide significant benefits to Victorian motorists as well as improving the efficiency of the industry generally.

Most importantly, the practices engaged in by some sections of the towing industry outlined in our initial submission, and in this subsequent paper, place significant pressure on the cost of insurance for all motorists. Such practices threaten the ongoing efforts of insurers to contain the cost of insurance for the vast majority of the population to ensure it remains affordable.

The table attached provides further feedback on the individual recommendations of the Draft report.

Response to Recommendations from the Essential Services Commission Draft Report.

Accident Towing Regulation.

Recommendation	IAG position
Accident Allocation:	
1. The accident allocation scheme should continue to operate in the controlled area.	Support.
2. In the controlled area, VicRoads should at least every three years analyse allocations and adjust the allocation zone boundaries to more closely match a proximity-based allocation scheme. The long term aim should be to allocate accident tows based on proximity – that is, the tow would be allocated to the depot nearest to the accident with a licensed tow truck ready for dispatch.	Support.
3. The requirement for VicRoads to approve depot relocations and movement of licences to different depots within the controlled, self-management and unregulated areas should be removed. The requirement to link a licence to a specific depot should also be removed.	Support.
4. Accident allocations in the unregulated area should continue to be unregulated.	Support. We have no compelling evidence to suggest accident allocation is required in unregulated parts of the State.
Consumer Protection:	
5. VicRoads should amend the authority to tow docket to include a new page of warnings that must be signed by the driver or vehicle owner before an accident tow is performed. VicRoads should also amend its 'Towing from an accident scene: your rights' factsheet to emphasise existing warnings and include a recommendation that the driver's or other party's insurer be contacted (if relevant).	Support. This will assist consumers in making informed decisions and draw greater attention to their rights. The factsheet amendments could hasten the claims process for consumers by reminding them to be in contact with their insurer. However, this tactic should be part of a

	broader community education program, rather than the only way consumers receive education.
6. VicRoads should work with insurers to encourage, and appropriately support, the development of an industry education campaign to educate drivers about what to do at an accident scene.	Support. IAG would take part in any opportunity to educate drivers what to do after an accident.
7. VicRoads should limit locations to which an accident-damaged vehicle can be towed. The authority to tow docket should list the following options for tow destinations: <ul style="list-style-type: none"> - a location instructed by the owner's insurer; - the owner's home (or the home of a friend or family member); - or storing the vehicle at the tow operator's licensed depot awaiting further instructions. 	Support.
Fee regulation	
8. The Minister for Roads should continue to set regular vehicle accident towing and storage fees in the controlled area.	Support. This process should also be followed if the unregulated area is to be regulated to ensure consistency in charges and protect consumers.
9. A fee notification regime applying to regular vehicle accident towing and storage fees should be implemented for the unregulated area. This regime should involve: <ul style="list-style-type: none"> • Operators having to notify VicRoads of their accident towing fees; • VicRoads publishing all notified fees on its website; • Operators permitted only to charge up to their published, notified fees and; • VicRoads publishing an annual report on notified fees. VicRoads should also consider collecting data on the overall towing fees charged by operators in the controlled, self-managed and unregulated areas.	Support. While this is welcome recommendation that would improve transparency, the problem of the unregulated area is not simply one of disclosure, but also of price. The excessively high fees charged in the unregulated area compared to that of the controlled area require redress for the benefit of consumers. Therefore, IAG is supportive of this recommendation, insofar as it is an interim measure until fees themselves are appropriately regulated.
Area Boundaries	

<p>10. VicRoads should establish the primary purpose of the controlled area boundary, namely, whether it is intended to reflect the underlying market for accident towing services (market based) or whether its purpose is to reflect a geographic area defining metropolitan Melbourne (geographic based). If market based, then VicRoads should begin collecting relevant data to inform future realignments of the boundary. If geographic based, VicRoads should establish its preferred means for defining and amending 'metropolitan Melbourne'.</p>	<p>Support.</p> <p>Due to the continued expansion of population growth, regular analysis should be conducted by VicRoads and analysed to promote improvements to towing services.</p>
<p>Fee regulation – self-management area</p>	
<p>12. The Minister for Roads should set accident towing and storage fees in the self-managed area.</p>	<p>Support.</p> <p>This would afford consumers in the self-managed area the same protection from excessive towing and storage costs as those in the controlled area.</p>
<p>Area boundaries – self-management area</p>	
<p>13. The self-management area boundary remains appropriate in terms of defining the region where the self-management area allocation scheme applies.</p> <p>VicRoads should consider reviewing and as necessary amending the boundary where it cuts through intersections.</p>	<p>Support.</p>
<p>Regulation of heavy vehicle accident towing</p>	
<p>14. Heavy vehicle accident towing and storage fees should continue to be subject to current "reasonableness" requirement of the <i>Accident Towing Services Act 2007</i> only.</p> <p>The allocation of heavy vehicle accident tows should continue to be unregulated.</p>	<p>Partly supported.</p> <p>The term "reasonableness" needs greater clarification.</p> <p>Allocation should continue to be unregulated</p>