



ACCIDENT TOWING REGULATION

Draft report

September 2015



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MESSAGE FROM THE CHAIRPERSON

Accident towing is an important service delivered to individuals and the community as a whole. A tow truck operator will often be among the first people with whom a driver will speak after being involved in a road accident. These can be very stressful and confusing circumstances for drivers. At the same time, the community relies on vehicles to be cleared quickly so that traffic can flow unimpeded. This places a significant responsibility on tow truck operators to perform their duties efficiently while treating accident drivers respectfully. The broader regulatory framework under the *Accident Towing Services Act 2007* seeks to promote the safe, efficient and timely provision of accident towing services.

Our review does not encompass the entire regulatory framework governing the accident towing industry. Rather, the main focus of our work has been on the mechanism through which operators obtain accident towing work and whether accident towing fees should be regulated (though we have not been asked whether current fees need to be reset). We find that some aspects of these arrangements can be improved to better focus on more efficient service delivery and to improve outcomes for drivers involved in an accident.

Some of the main areas of interest in this draft report include our finding that:

- operators charge notably higher accident towing fees in the unregulated (regional) and self-management (Geelong) areas of the state
- there are significant opportunities to improve the efficiency with which accident towing jobs are allocated to accident towing operators in the regulated (Melbourne) and self-management (Geelong) areas of the state, and
- there are often close links between accident towing operators and smash repairers. These close links are often not transparent or well understood by drivers involved in an accident.

This draft report proposes a series of measures in response to these findings.

We are now interested in hearing from as many people as possible about their views on our draft findings and our proposed recommendations. Following receipt of written submissions (due by 30 October 2015) and further discussions with stakeholders, we will finalise our report and provide it to the Minister for Finance and the Minister for Roads in December.

Dr Ron Ben-David

Chairperson

GLOSSARY

Accident allocation scheme	A roster based system for allocating accident towing jobs between tow truck licence holders. Separate schemes operate in the controlled area and self-management area.
Accident towing	The towing and storage of accident-damaged motor vehicles from road accident scenes. Accident towing and storage fees are regulated within the controlled area.
Allocation	An exclusive 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 or self-management area after receiving an allocation.
Allocation zone	The controlled area is separated into allocation zones. The zones have been designed to ensure accidents can be attended to within 30 minutes of an allocation being made.
At-fault driver	A driver of a vehicle in an accident who is responsible for causing the accident (in part or in full).
Australian Statistical Geography Standard	The Australian Bureau of Statistics' geographical framework.

Authority to act

A contract to engage a lawyer or debt recovery agent to act on behalf of the driver to recover any costs associated with a repair agreement and accident tow. This may include instigating legal action on behalf of the driver to recover costs from the at-fault driver or their insurer.

Authority to tow (docket)

A tow truck driver must receive authorisation (the authority to tow) to perform an accident tow. The authority to tow is usually signed by the accident-damaged vehicle owner or driver.

Breakdown towing

The towing of vehicles as part of the road side assistance service offered by car insurance providers and car retailers. Breakdown towing fees are not regulated.

Clearway towing

The towing of vehicles illegally parked in designated clearway zones during specified times, under contract with the responsible authority. Clearway towing fees are not regulated.

Commission

The Essential Services Commission is Victoria's independent economic regulator of certain prescribed services as determined by the Victorian Government. The Commission has a role in advising the Minister on accident towing and storage fees.

Comprehensive insurance policy

Insurance covering loss or damage to: (a) a policy-holder's vehicle, and (b) the legal liability of a policy-holder for loss or damage to another person's vehicle and other property when there has been an incident.

Controlled area	A declared area consisting of the Melbourne metropolitan area and the Mornington Peninsula. Accident towing and storage fees are regulated within the controlled area.
Cooling-off period	A period following the signing of a contract within which the contract can be terminated due to change of mind.
Depot	Premises from which accident tow trucks operate. A single depot may be shared by multiple accident towing service businesses.
Depot manager	A person who manages accident towing services from a towing depot. Depot managers must be accredited by VicRoads. If no depot manager has been accredited, the operator of the licences at that depot will be responsible for depot manager duties.
Dormant licence	<i>See unattached licence.</i>
Driver	A person who drives a tow truck to accident scenes and performs the tow. Under the <i>Accident Towing Services Act 2007</i> drivers must be accredited by VicRoads.
Geelong self-management area	A declared area consisting of Geelong and surrounding areas.
Heavy vehicle accident towing	The towing and storage of accident-damaged motor vehicles with a gross vehicle mass of four tonnes or more from road accident scenes. Heavy vehicle accident towing and storage fees are not regulated in Victoria, but fees are required to be “reasonable”.

Impound towing	The towing of vehicles that are either abandoned, derelict or otherwise causing obstruction, as arranged by the local council. Impound towing fees are not regulated.
Not-at-fault driver	A driver of a vehicle in an accident who is not responsible for causing the accident.
Operator	A person who owns or operates a tow truck business. Under the <i>Accident Towing Services Act 2007</i> , operators must be accredited by VicRoads.
Out of storage tow	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 (e.g. to be towed to another location).
Preferred repairer schemes	The practice of insurers referring their smash repair work to preferred smash repairers.
Recovery agent	A debt recovery business.
Regular vehicle accident tow	The towing of accident-damaged motor vehicles with a gross vehicle mass of less than four tonnes from road accident scenes. Regular vehicle accident towing and storage fees are regulated in the controlled area.
Repair agreement	An agreement between a smash repair business and vehicle owner for the repair of the accident-damaged vehicle.

Salvage

Services performed by a tow truck driver to move a 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 are required to be “reasonable”.

Secondary tow

Occurs when an accident-damaged vehicle is towed from the accident scene and delivered to the destination listed on the authority to tow docket and then is subsequently towed to another destination (the secondary tow). Secondary tow fees are not regulated.

Self-management area

A declared area of Geelong and surrounding areas. 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 not regulated beyond a requirement to be “reasonable”.

Smash repair

Repair to a vehicle that has been damaged in an accident.

Smash repairer

A vehicle repairer that repairs a vehicle damaged in an accident.

Storage

Occurs when a 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.

Third party (property) insurance policy

Insurance covering only the legal liability of a policy-holder for loss or damage to another person's vehicle and other property when there has been an incident.

Third party repair network

Smash repairers, lawyers and recovery agents engaged by not-at-fault drivers for the repair of vehicles and recovery of costs from an at-fault driver's insurer.

Touting

Soliciting for business using a direct or persistent approach. In the context of accident towing, it relates to a tow truck driver or operator encouraging or pressuring an accident victim (particularly a not-at-fault driver) to agree to have their vehicle repaired by a smash repair business owned by or affiliated with the tow truck operator. Touting at the accident scene and before delivery of the vehicle to the tow destination is prohibited.

Tow destination

The location the accident-damaged vehicle must be towed by the tow truck driver. The tow destination is specified by the driver or vehicle owner in the authority to tow.

Trade towing

General towing and storage services that are not the immediate result of a road accident, including any tows following delivery of an accident-damaged vehicle to the location specified on the authority to tow docket. Examples include breakdown, clearway, impound and secondary tows. Trade towing fees are not regulated.

Unattached licence

A term used to describe a tow truck licence held by an operator but not assigned to a specific tow truck. Often referred to a dormant licence, this term is misleading, suggesting that the licence is not used by the operator. However these licences are used like any other licence to perform accident tows, e.g. a dormant licence receives allocations through the accident allocation schemes.

Unregulated area

For regular vehicle accident tows, refers to areas of Victoria excluding the controlled and self-management areas.

VicRoads

The Victorian Government agency responsible for administering the *Accident Towing Services Act 2007* i.e. the accident towing industry regulator.

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OVERVIEW AND DRAFT RECOMMENDATIONS

INTRODUCTION

On 31 January 2014, the Minister for Finance issued terms of reference under section 41 of the *Essential Services Commission Act 2001*, requesting that we review accident towing and storage economic regulation. The terms of reference specified that the review was to commence in August 2014 and be completed within 12 months. We subsequently sought, and were granted, an extension to December 2015.

This report presents for comment our draft conclusions and recommendations. As well as inviting submissions from stakeholders, we will hold public forums and meet with interested stakeholders. The following chapter, *Request for submissions*, provides details on the review process, how to make a submission, and the public forums.

THE INFLUENCE OF REGULATION

The regulation of accident towing significantly influences the structure of accident towing markets and the activities of accident towing operators. For example, the number of accident towing licences is fixed and no new licences have been issued for around 30 years. To enter the market, an accredited operator must buy an existing licence.

Those who provide accident towing services (operators, depot managers and drivers) must be accredited by the industry regulator (VicRoads). Accreditation aims to ensure that providers are fit and proper persons, who will perform their duties safely and

efficiently, and in accordance with the law. These requirements apply to both regular and heavy vehicle accident towing.¹ No other regulations apply to heavy vehicle towing. Heavy vehicle operators are able to set their own fees (the Act requires that fees set by all operators are “reasonable”) and can compete for heavy vehicle accident towing jobs.

Other regulations apply exclusively to regular vehicle accident towing. These vary between three areas:

- **Controlled area:** the Minister for Roads sets fees for towing and storage and VicRoads administers an accident allocation scheme.
- **Self-management area:** there is no fee regulation (operators set their own fees, required to be “reasonable”) and a self-managed allocation scheme applies.
- **Unregulated area:** we apply this term to all other parts of Victoria. In this area there is no fee regulation (except that fees must be “reasonable”) and no allocation schemes exist.

The catalyst for the allocation schemes in the controlled and self-management areas (in 1983 in the controlled area and in 1999 in the self-management area) was unruly operator behaviour to secure towing jobs, for example, racing to accident scenes, violence between operators at the accident scene and intimidation of drivers involved in an accident.

Regulation influences the allocation of regular vehicle accident towing services in the controlled and self-management areas, and sets the price of services in the controlled area. Regulation has also influenced the number and distribution of services across Victoria. Licence numbers are effectively fixed in the controlled and self-management areas — VicRoads has assessed that licences cannot be transferred into either of these areas. Operators can only perform an accident tow in the area to which their licence is attached.

¹ Regular vehicle accident towing relates to towing of accident-damaged vehicles with a gross mass of less than four tonnes. Heavy vehicle accident towing is the towing of vehicles with a gross mass of four or more tonnes.

OUR TASK AND APPROACH

Accident towing in Victoria is a mixture of regulated, partially regulated and unregulated (except for licensing and accreditation) markets. The intended purpose of regulating the accident towing industry, as outlined in the *Accident Towing Services Act 2007* (the Act), is to promote the safe, efficient and timely provision of accident towing services and other related services.

In this review, we are tasked with assessing the economic regulation of accident towing, which includes regulation of accident towing fees; the operation of allocation schemes; and the associated boundaries that define where fee regulation or allocation schemes apply.

We have assessed whether economic regulation of the controlled and self-management areas is achieving its intended purpose (efficient, safe and timely provision of accident towing services), and the advantages and disadvantages of alternatives.

For unregulated markets, we assessed that extent of competition and reviewed indicators of efficiency (e.g. whether higher costs justify the higher fees in the unregulated area). We have also sought data about the behaviour of participants and about customer satisfaction.

Consistent with the objective of the Act, our aim in reviewing existing regulations and assessing alternatives is to facilitate the provision of reasonably priced, responsive and fair services by accident towing operators to drivers involved in an accident.

LINKS TO OTHER MARKETS

Accident towing is linked to other markets such as trade towing, smash repair and motor vehicle insurance. These markets influence how accident towing markets work and the revenue available to accident towing operators. We have reviewed whether interactions between the accident towing, smash repair and insurance markets can harm customers' interests and we make recommendations to improve customer outcomes.

TRADE TOWING

Accident towing is the towing of an accident-damaged vehicle from an accident scene to the location requested by the driver (or owner) of the vehicle. All other towing (including any subsequent tow of an accident-damaged vehicle after it has been delivered to the requested location) is classified as trade towing and is unregulated. There are no accreditation requirements for operators or drivers providing trade towing services, tow trucks do not need a specific trade towing licence and fees are not regulated.

Our discussions with operators, industry associations and insurers indicate that most accident towing operators also perform trade tows. This provides an additional revenue source, allows operators to increase truck utilisation and can lower their average cost per tow.

SMASH REPAIR

Accident towing drivers are often the first people to have contact with drivers who have been involved in an accident. They have first access to accident-damaged vehicles and the opportunity to provide advice on smash repair options. It is therefore not surprising that many accident towing operators have links with smash repairers.

Most of the operators we have met have direct links with smash repairers; that is, they own and operate a smash repair business. It has been suggested that other operators receive commissions from smash repairers when an accident-damaged vehicle is delivered to them for repair.

Operators, the Victorian Automobile Chamber of Commerce (VACC), VicRoads and insurers all acknowledge the strong links between accident towing and smash repair. Some operators told us that accident towing licence values reflect these links.

Their links with smash repairers provide accident towing operators with an incentive to pursue smash repair work.

INSURANCE

Accident towing is also linked to the insurance market since many vehicles are covered by comprehensive insurance. When owners of accident-damaged vehicles have comprehensive vehicle insurance, the cost of the accident tow (and vehicle repairs) may be paid by their insurer (or if they are not-at-fault, by the at-fault driver's insurer).

Insurance companies also have preferred smash repairers, which may reduce opportunities for accident towing operators to channel business towards their affiliated repair businesses. Operators may instead focus on winning smash repair work in cases where repairers are able to commence repairs without insurer involvement.

OBSERVATIONS ON MARKET OUTCOMES AND PERFORMANCE

We explore how accident towing markets function and analyse market outcomes and performance. Customers for accident towing services are interested primarily in the fees they (or their insurers) have to pay, and in service quality. The value of licences is another indicator of how the market is performing. Our review of market outcomes has focussed on regular vehicle accident towing. There are fewer issues in heavy vehicle accident towing — for example, there is less regulation and heavy vehicle owners usually have specialised insurance, so drivers involved in an accident have to neither organise the tow nor negotiate a towing fee.

FEES

Fees set by operators are often higher than controlled area fees — three times as high in some cases. While cost data is limited, we are not convinced that the fees charged by some operators in the self-management and unregulated areas are explained by higher costs. Operators in the self-management area perform more tows per truck, which suggests that their average costs per tow are lower even though their fees are higher than the controlled area. Operators in the unregulated area perform fewer tows per truck, which could justify higher fees. However, operators are also involved in trade towing and smash repair, which makes it difficult to assess the extent to which fees need to be higher in the unregulated area.

We also note that a range of additional towing related fees are charged by some operators. These include waiting time, public holiday, cleaning and administration fees. These fees are more prevalent outside of the controlled area.

SERVICE QUALITY

The time between when an operator receives an accident allocation and arrives at the accident scene is the main service quality requirement for accident towing operators in the controlled and self-management areas — a 30 minute response time target applies in both areas. There are no response time requirements in the unregulated area, where there is no allocation scheme. The time from receipt of an accident allocation to when the accident scene has been cleared is also recorded in the controlled and self-management areas.

In both areas, service quality appears reasonable. While response times are not recorded in the controlled area (the requirement for operators to contact the allocation body is not enforced), clearance times are similar to those in the self-management area, at around 70 minutes. In the self-management area, around 87 per cent of accidents are responded to within 30 minutes and the average response time for all tows is 22 minutes.

LICENCE VALUES

An accident towing licence gives the holder the right to perform accident tows. In theory, licence values should reflect the values associated with operating accident towing businesses. These values will vary, based on the expected number of accident tows, variations in costs, and fees.

Based on the available information, the traded value of accident towing licences is above our estimates of licence value based on accident towing activity only. In some cases, particularly in the controlled area where fees are regulated, the difference between actual traded values and our estimates is significant. This may indicate:

- Revenues from related services and markets are supporting accident towing licence values — this could be explained by accident towing operators providing other related services, e.g. trade towing and smash repair (some stakeholders, including operators, commented that smash repair revenues are more important than accident towing revenues).

- Operators are earning excess profits from some fees — for example, all operators are able to set their own salvage fees and operators outside of the controlled area can set their towing fees (e.g. base, distance, after hours surcharge and storage fees).
- Other business assets may be included in some reported licence transactions, for example the tow truck or other equipment.

IMPROVING REGULATION OF ACCIDENT TOWING MARKETS

As noted, regulations influence significantly the structure and outcomes of accident towing markets — allocation schemes dictate when operators can perform an accident tow, and some operators' fees are set while others are not. Furthermore, links to other markets with less regulation affect the financial interests and business structures of regulated towing operators.

Regulation should support the objectives of the Act and work efficiently to the overall benefit of the community. With these aims in mind, we have reviewed key aspects of accident towing economic regulation and considered areas where outcomes could be improved.

ALLOCATION SCHEMES

There are opportunities to improve the efficiency of accident allocations. We consider approaches to allocations based on proximity, performance, insurer preference and competitive bidding. A proximity-based approach, whereby accident allocations go to the nearest depot able to dispatch a tow truck, may be a stepping stone to more competitive allocation processes.

Our analysis indicates that a proximity-based approach would cut accident towing distances travelled in half. This has multiple benefits: accidents would be responded to faster, clearance times would fall, congestion would be reduced, and operator costs (e.g. fuel, truck wear and tear) and fees paid could be reduced. However, phased introduction may reduce the disruption that could be caused by the sudden introduction of this approach.

LINKS TO SMASH REPAIR

Links between accident towing and smash repair markets can influence the commercial decisions of tow truck operators to win smash repair work from accidents they attend. This is particularly the case where the customer is a not-at-fault driver, because repair work can commence without the oversight of an insurer (or any other party).

Information from insurers indicates that repair and related costs (e.g. rental cars) from these smash repairers can be 100 to 400 per cent higher than insurer managed claims. These higher costs are intended to be recouped from the at-fault drivers' insurer. However, if costs are disputed, the not-at-fault driver may be liable for costs.

To address this risk and improve consumer outcomes, we recommend a combination of measures to improve consumer awareness and allow time for drivers involved in an accident to make an informed smash repair decision.

FEE REGULATION

We recommend that fees should continue to be set in the controlled area.

In the self-management and unregulated areas, operators are able to set their own fees. The only requirement is that fees are "reasonable". To consider whether fees should be regulated outside of the controlled area, we consider whether drivers involved in an accident are able to negotiate a reasonable fee and whether existing fees are reasonable.

- *Are accident towing fees subject to normal market discipline?*: drivers involved in an accident are in a poor position to negotiate a reasonable towing fee. Most drivers will rarely require an accident tow. In an accident situation, they are not able to compare the price / service offers of different operators (particularly where allocation schemes apply).
- *Are fees reasonable?*: fees are higher outside of the controlled area, sometimes significantly higher. As noted above, while the data about costs are limited, we are not convinced that the fees charged by some operators in the self-management and unregulated areas are explained by higher costs.

For the self-management area, we consider fee setting by the Minister for Roads to be an appropriate response to the higher fees we observe. Fees are generally higher in the area compared to the controlled area, even though average costs per tow are lower. The operation of an allocation scheme in the area, which significantly limits the ability for the consumer to negotiate a reasonable fee, also suggests fees should be set in the area.

For the unregulated area, we consider price notification to be an appropriate response to the higher fees we observe. A price notification regime would provide information to the public about the level of fees charged by operators in the unregulated area. The regime would require operators to notify their fees to VicRoads. This information would be published on VicRoads' website and operators would not be permitted to charge more than their notified fees. Operators would be able to change their fees by notifying VicRoads of the intended change. VicRoads should publish an annual report on accident towing fees. This report could highlight regions where fees are highest and where fees had increased the most.

OTHER ISSUES FOR CONSIDERATION

Licensing regulations in part contribute to accident towing licences having a material value. In a more open market, accreditation requirements could continue to apply but there would be no need for operators to have an accident towing licence (or alternatively the cost of a towing licence would not be material, instead representing a VicRoads administration fee).

The practice of licensing accident tow trucks and the resulting value given to licences has a number of consequences:

- It is likely to have suppressed market entry, since an operator currently has to buy an existing licence to enter the market or expand their existing business.
- It has encouraged operators to focus on maintaining and increasing licence values (attached and unattached licences).
- It has added to the administrative task of VicRoads and increased the cost of regulation.

- It can make industry reform difficult as even sensible industry reforms that have the effect of reducing licence values are likely to be strongly opposed by the industry.

The licensing regime can also affect operator behaviour. For example, we have heard that some operators in the unregulated area have moved their licences close to the controlled area boundary, in the hope that the boundary will be expanded and their licences will increase in value by being included in the controlled area. This incentive only exists as a result of limiting licence numbers, and may have perversely resulted in an inefficient distribution of services across the state.

The licensing regime effectively has government determining the optimum number of accident towing licences in Victoria. If government distribution of licences was efficient, licence values would be at or close to zero, which is not the case. The observed value in licences traded suggests current licence numbers are suppressed below efficient market levels, which has increased industry costs for consumers. It is unclear why government is better at determining this rather than the market.

DRAFT RECOMMENDATIONS

Accident allocations – the controlled area scheme (s. 3.4 of report)

1. The accident allocation scheme should continue to operate in the controlled area.

Accident allocations – improving the existing scheme (s. 3.6 of report)

2. In the controlled area, VicRoads should at least every three years analyse allocations and adjust 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.

Accident allocations – restrictions on licences (s. 3.6 of report)

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.

Accident allocations – the unregulated area (s. 3.8 of report)

4. Accident allocations in the unregulated area should continue to be unregulated.

Consumer protection – improving customer outcomes (authority to tow and factsheet) (s. 4.8 of report)

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).

Consumer protection – improving customer outcomes (education campaign) (s. 4.8 of report)

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.

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DRAFT RECOMMENDATIONS (CONTINUED)

Consumer protection – improving customer outcomes (towing destination) (s. 4.8 of report)

7. VicRoads should limit the locations to which an accident-damaged vehicle can be towed. The authority to tow docket should list the following options for tow destinations: a location instructed by the owner's insurer; a location instructed by the at-fault driver'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.

Fee regulation – controlled area (s. 5.4 of report)

8. The Minister for Roads should continue to set regular vehicle accident towing and storage fees in the controlled area.

Fee regulation – unregulated area (s. 5.9 of report)

9. A fee notification regime applying to regular vehicle accident towing and storage fees should be implemented for the unregulated area. The regime should involve:
 - 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-management and unregulated areas.

Area boundaries – controlled area (s. 6.5 of report)

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'.

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DRAFT RECOMMENDATIONS (CONTINUED)

Accident allocations – self-management area (s. 7.3 of report)

11. The accident allocation scheme should continue to operate in the self-management area.

VicRoads should require self-management area operators to identify and implement improvements to the scheme, with proximity-based allocations providing the benchmark for any improvements.

If operators are unable to achieve sufficient improvements, VicRoads should amend the terms and conditions applying to the self-management area to progressively move towards proximity-based allocations.

Fee regulation – self-management area (s. 7.5 of report)

12. The Minister for Roads should set accident towing and storage fees in the self-management area.

Area boundaries – self-management area (s. 7.7 of report)

13. The self-management area boundary remains appropriate in terms of defining the region where the self-management area allocation scheme applies.

VicRoads should consider reviewing and as necessary amending the boundary where it cuts through intersections.

Regulation of heavy vehicle accident towing (s. 8.3 of report)

14. Heavy vehicle accident towing and storage fees should continue to be subject to the current “reasonableness” requirement in the Accident Towing Services Act 2007 only.

The allocation of heavy vehicle accident tows should continue to be unregulated.

REQUEST FOR SUBMISSIONS

This chapter outlines the scope and purpose of the review, the review process and details on how to make a submission.

SCOPE AND PURPOSE OF REVIEW

The terms of reference require us to provide advice on the regulation of accident towing and storage in Victoria. The review covers both regular and heavy vehicle accident towing (a heavy vehicle has a gross vehicle mass of four tonnes or more).

Our task is to determine the need (if any) for regulation and, where regulation is required, to determine how it can be best applied. The terms of reference can be summarised as requiring us to consider three key matters:

- the regulation of fees
- the allocation of accident towing jobs (i.e. whether jobs are allocated or whether operators are free to compete for towing jobs), and
- the necessity for and location of boundaries which set up different regulatory approaches (e.g. the Melbourne controlled and Geelong self-management areas²).

The full terms of reference for the review are presented in appendix A.

² The controlled area consists of metropolitan Melbourne and the Mornington Peninsula. Similarly, a boundary establishes the Geelong self-management area, which consists of Geelong and surrounding areas, including parts of the Bellarine Peninsula. More detail on the controlled and self-management areas is presented in chapter 2.

WHAT THIS REVIEW IS NOT ABOUT

It is important to also note the matters this review is *not* covering.

This review will not be recommending fee levels for any accident towing or storage service. Nor is this a review of the licensing or accreditation requirements applying to the industry, or a more general review of the *Accident Towing Services Act 2007* (the Act).

REVIEW PROCESS AND KEY DATES

The Commission has conducted a public review process by releasing an issues paper, inviting submissions on that issues paper and holding meetings with stakeholders to listen to their views.

Through submissions to the issues paper and meetings across the state, we received feedback from tow truck operators, tow truck industry representatives and insurance companies. We have considered the information submitted to date by stakeholders and conducted our own research and analysis, resulting in the draft recommendations contained in this report.

We invite submissions from stakeholders on these recommendations by 30 October 2015 (see *How to make a submission* below).

Following receipt and consideration of submissions to this draft report and further meetings with stakeholders (including public forums), we will deliver a final report to the Minister for Finance and the Minister for Roads in December. Our final report will provide recommendations — the Victorian Government will decide whether to accept or reject our recommendations.

We will release publicly the report within 30 days of providing it to the Ministers.

If you would like to attend one of our forums and you have not previously provided us with your contact details, please email your interest to:

towtruckreview@esc.vic.gov.au

An indicative timeline for the review is presented in table 1.

Any questions about this draft report can be directed to Nick Hague on 03 9032 1344 or Dominic L’Huillier on 03 9032 1365.

TABLE 1 REVIEW PROCESS

Activity	Timing
Publication of notice of review	19 August 2014
Issues Paper release	24 October 2014
Consultations	October to November 2014
Submissions to Issues Paper close	28 November 2014
Consultations	February to September 2015
Draft Report release	30 September 2015
Public forums ^a	October 2015
Submissions to Draft Report close	30 October 2015
Consultations	October to November 2015
Final Report to Ministers	December 2015

^a We will notify stakeholders of the specific dates for public forums when these have been set.

HOW TO MAKE A SUBMISSION

Interested parties are invited to comment on the draft finding and recommendations presented in this report (see chapter 9 for a complete list of matters for comment), or any other relevant matters, by sending a written submission. As relevant, 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 to 03 9032 1303 or by mail marked:

Submission to the Tow Truck Review
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

Submissions are due by 30 October 2015.

PUBLICATION OF SUBMISSIONS

To promote an open and transparent review process, our normal practice is to make all submissions publicly available on our 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 specific information should be clearly identified in the submission.

STRUCTURE OF THIS DRAFT REPORT

The remainder of this draft report is structured as follows:

- chapter 1 provides an overview of services provided by the towing industry, current regulatory arrangements applying to the Victorian accident towing industry and statistics on the size of the industry
- chapter 2 provides an analysis of the structure, operation and outcomes of accident towing markets, and key linkages between accident towing and other closely related markets.
- chapter 3 discusses allocation schemes, including whether the controlled area allocation scheme should continue, how to improve the scheme, and whether an allocation scheme should apply in the unregulated area
- chapter 4 covers the topic of improving consumer outcomes, particularly as it relates to linkages between accident towing and smash repair
- chapter 5 addresses the question of whether accident towing fees should be regulated in the controlled area and unregulated area
- chapters 6 considers the appropriateness of the controlled area boundary, and approaches to amending the boundary
- chapter 7 discusses the regulation of accident towing in the self-management area, including whether the existing allocation scheme should continue, whether fees should be regulated, and the appropriateness of the boundary
- chapter 8 discusses the regulation of heavy vehicle accident towing, including whether an allocation scheme should apply, and whether fees should be regulated
- appendix A contains the terms of reference for the review

- appendix B provides copies of the authority to tow docket and VicRoads factsheet
- appendix C provides an analysis of licence ownership in the controlled area
- appendix D provides an analysis of allocation scheme options, and
- appendix E provides an overview of the insurance and smash repair oversight.

1 UNDERSTANDING THE TOWING INDUSTRY

This chapter provides an overview of the towing industry in Victoria. It describes the services it provides, the current regulatory arrangements including licensing and accreditation, and what happens at an accident scene. Statistics on the size of the industry are also presented.

1.1 ACCIDENT TOWING

Accident towing is the towing and storage of accident-damaged vehicles from road accident scenes. Accident towing is regulated in Victoria — operators, depot managers and drivers must be accredited by the industry regulator (VicRoads), and the operation of a tow truck must be authorised by a tow truck licence.

Accident towing includes three distinct services:

- **Towing:** towing an accident-damaged vehicle from a road accident scene to the location requested by the vehicle driver (or owner).
- **Storage:** storing an accident-damaged vehicle in a secure location at the tow truck operator's depot to await repair or towing to another location.
- **Salvage:** moving an accident-damaged vehicle, sometimes with the assistance of additional equipment or another vehicle, into a position where it can be safely towed.

For regulatory purposes, accident towing is further classified into regular vehicle accident towing and heavy vehicle accident towing. Regular vehicles have a gross vehicle mass less than four tonnes, while heavy vehicles have a gross vehicle mass of

four tonnes or more. Regulation varies between regular vehicle and heavy vehicle accident towing.

Further, regulation of regular vehicle accident towing varies between different areas of the state. A Melbourne controlled area and a Geelong self-management area have been established by the industry regulator for regulatory purposes. We refer to all other parts of Victoria as the “unregulated area”. Section 1.2.3 discusses how regulation varies across these areas.

TRADE TOWING

Trade towing is all other towing besides accident towing and includes:

- clearway towing: towing of vehicles illegally parked in designated clearway zones during specified times
- impound towing: towing of vehicles that have been abandoned, are derelict or are otherwise causing obstruction
- breakdown towing: towing of vehicles that have broken down. For example, breakdown towing can be provided as part of the road assistance service offered by car insurance providers and car retailers, and
- other general trade towing: for example, towing of vehicles after the initial accident tow (e.g. from an operator’s depot to a smash repairer), and towing of vehicles to auction houses etc.

Trade towing is not regulated in Victoria. Trade towing was deregulated under the *Accident Towing Services Act 2007* due to the competitive nature of the sector and the ability of consumers to make informed choices relating to trade towing services.³

³ Victoria Legislative Assembly 2007, *Parliamentary Debates*, 19 April, p. 1153 (Tim Pallas, Minister for Roads and Ports).

1.1.1 INDUSTRY PARTICIPANTS

A **depot** is a premise from which accident tow trucks operate. A single depot may be occupied by one operator, or could be shared by multiple accident towing businesses. In some cases, a single accident towing business may operate out of more than one depot, depending on the geographic restrictions on the licences it owns.

An **operator** is a person or corporation that owns or operates a tow truck business. A **depot manager** manages accident towing services from a depot. Some businesses have an accredited depot manager. If no depot manager has been accredited, the operator of the licences at that depot is responsible for depot manager duties. A **driver** is a person who drives a tow truck to the accident scene and performs the tow.

1.2 THE CURRENT REGULATORY FRAMEWORK

The objective of regulation is set out in section 4 of the *Accident Towing Services Act 2007* (the Act). The objectives of the Act are to:

- promote the safe, efficient and timely provision of accident towing and storage services, and
- ensure that persons who are providing accident towing services:
 - are of appropriate character and
 - are technically competent to provide the services, and
 - when providing the services, act with integrity and in a manner that is safe, timely, efficient, and law abiding, and in particular, that regard is had for vulnerable persons.⁴

The current regulatory framework for accident towing in Victoria includes a combination of licensing, accreditation, allocation and fee regulation.

⁴ See section 4, *Accident Towing Services Act 2007*.

While licensing and accreditation requirements apply across Victoria, allocation and fee regulation varies depending on the type of accident tow (regular vehicle or heavy vehicle) and the geographical location of the accident tow.

This section presents the current licensing and accreditation requirements applying to accident towing, and the economic regulation of the industry. A brief history of the evolution of accident towing regulation is also presented (box 1.1).

BOX 1.1 HISTORY OF ACCIDENT TOWING REGULATION

Controlled area

Prior to the introduction of an accident allocation scheme, it was typical for multiple tow trucks to arrive at an accident scene and compete for a towing job. This placed unnecessary stress on the accident victim and increased traffic congestion as it delayed clearing of the accident-damaged vehicle from the accident scene.⁵

To overcome this issue, in 1983 the Government introduced regulation of accident allocations and established accident towing and storage as a regulated service in the controlled area. Tow truck operators are granted an exclusive right to attend an accident scene through the accident allocation scheme.

In addition, the Government introduced fee regulation in the controlled area to prevent accident towing operators from charging excessive prices, and therefore protect consumers.

Continued next page

⁵ Victoria Legislative Assembly 2007, *Parliamentary Debates*, 19 April, p. 1151-52 (Tim Pallas, Minister for Roads and Ports).

BOX 1.1 (continued)

Self-management area

Similarly in the Geelong region, operators had previously competed for accident towing jobs (despite operators voluntarily introducing a roster scheme). The previous industry regulator, the Victorian Taxi and Tow Truck Directorate (VTTD), recognised that this prevented the timely and orderly clearance of accidents and required operators to implement a solution. The VTTD worked with operators to set up an effective allocation scheme and through this established the Geelong self-management area.

Licensing

Up to 1962, licences were issued 'as of right'; licences were free but operators were required to pay an annual licence fee. These licences allowed operators to perform accident tows within a specified radius.

Between 1962 and 1983, under the *Commercial Goods Vehicles (Tow Trucks) Act 1962*, licences were granted or refused at the discretion of the Transport Regulation Board; licences were still free, apart from the administrative annual licence fee. These licences allowed operators to perform accident tows within a specified radius.

Since 1983, (initially under the *Transport Act 1983* and now under the *Accident Towing Services Act 2007*), licences became the property of the licence holder, became tradeable, and the Government has been able to specify fees that are payable for new licences (these fees may be determined by tender or a fixed price).

The industry regulator, by establishing controlled and self-management areas, can limit regular vehicle towing licences to specific areas of operation.

1.2.1 LICENSING AND ACCREDITATION

Licensing and accreditation requirements apply to both regular vehicle and heavy vehicle accident towing.

LICENSING

All accident tow trucks are required to be licensed. Accident towing licences are issued and administered by VicRoads, under the direction of the Minister for Roads. A regular tow truck licence permits a person (or corporation) to provide accident towing services to vehicles of any gross mass that it is capable of towing. A heavy tow truck licence permits a person to provide accident towing services to vehicles of gross vehicle mass of four or more tonnes only.

Licences are transferable — that is, a licence can be purchased or leased from an existing licence holder, subject to approval by VicRoads.

New licences

Under sections 14 and 15 of the Act, the Minister for Roads can authorise the issue of a new regular tow truck licence or heavy tow truck licence, respectively. However, this is limited to the following specific circumstances:

- the Minister considers it to be in the public interest to do so, having regard to any increase in the need for tow trucks in the area
- the new licence 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 tow truck licences for the area.

ACCREDITATION

All accident towing operators, depot managers and drivers are required to be accredited by VicRoads. Individuals can apply for operator, depot manager or driver accreditation. Corporations can apply for operator accreditation, in which case the corporation must nominate a responsible person.

Driver accreditation

The Accident Tow Truck Driver Accreditation form sets out the eligibility requirements for a person to become accredited as an accident tow truck driver. Applicants are required to be technically competent, sufficiently fit and healthy, and of good character, to provide accident towing services in a safe, timely, efficient, responsible and law abiding manner. Applicants are also required to pass a criminal record check and potentially other record checks (i.e. records kept by Victoria Police, other police authorities and VicRoads).

Regulation 10 of the Accident Towing Services Regulations 2008 specifies that the holder of a tow truck driver accreditation must undergo training and testing as required by VicRoads (including medical examinations).

Operator accreditation

The Accident Towing Operator / Accident Towing Depot Manager form sets out the eligibility for a person (or corporation if applicable) to become accredited as an accident towing operator or depot manager. Applicants are required to be of appropriate character to provide accident towing services in a safe, timely, efficient, responsible and law abiding manner. Where the applicant is a corporation, the above requirements apply to the nominated responsible person. Applicants are also required to pass a criminal record check and potentially other record checks.

In addition to these eligibility requirements, regulation 8 specifies that the holder of a towing operator accreditation must:

- undergo training and testing as required by VicRoads
- ensure that licensed tow trucks and associated equipment are regularly inspected and maintained
- ensure that records related to inspection and maintenance of licensed tow trucks are kept for a period of two years, and
- ensure that records are made available to VicRoads within a reasonable time.

Operator record keeping

Regulation 14 specifies that a number of records relating to a specified licensed tow truck must be kept by an operator (i.e. licence holder):

- Copies of invoices of charges for accident towing and storage services.
- Authority to tow docket in chronological order.
- A record of the names, addresses, tow truck driver accreditation numbers and tow truck driver licence numbers of each person who drives the tow truck.
- A record of the name, address, operator accreditation number or depot manager accreditation number of the person who manages the accident towing business.
- Photographs of any salvage operations.

The records must be kept at the specified depot for the licensed tow truck for a period of at least one year. In addition, the records must be made available for inspection upon request by a police officer or authorised officer.

Additional details on the authority to tow docket and tow truck driver requirements at the accident scene are provided in box 1.2. A copy of the authority to tow docket and VicRoads factsheet is provided in appendix B.

BOX 1.2 TOW TRUCK DRIVER REQUIREMENTS AT THE ACCIDENT SCENE

Before a vehicle can be towed from an accident scene, the tow truck driver must: (i) take reasonable steps to explain to the vehicle driver their right to choose the towing destination; (ii) take reasonable steps to provide the vehicle driver with the VicRoads towing fact sheet; and (iii) obtain authorisation to tow the driver's vehicle and then provide a copy of the authority to tow docket to the person who provided the authorisation.

Towing destination — the vehicle driver can request any towing destination within 125 kilometres of the accident scene. Further, the vehicle driver can contact any person to seek advice relating to the towing destination and or choice of repairer.

Fact sheet — the fact sheet outlines the rights and responsibilities of the vehicle driver including those relating to the authority to tow docket, salvage, storage, seeking advice, choosing towing destination and making complaints. The tow truck driver must provide this fact sheet prior to the vehicle driver signing any documentation.

Authority to tow — an accident-damaged vehicle cannot be towed from an accident scene until the vehicle driver signs the authority to tow docket, which sets out the towing details that have been agreed upon with the tow truck driver. If the vehicle driver is unable to sign the form (e.g. if the driver is injured or refuses to sign the form), it may be signed by a police officer or VicRoads officer on behalf of the vehicle driver. From our discussions with operators, we are not aware of any circumstances where a vehicle driver has refused to sign the form.

The authority to tow form sets out:

- details of the tow truck operator and driver
- details of the vehicle to be towed
- address to where the vehicle is to be towed
- towing, storage and salvage services to be provided and associated charges, and
- details of the person authorising the tow and storage (if applicable).

Source: VicRoads website 2015, *Your rights when using a tow truck and Information for the towing industry*, accessible at www.vicroads.vic.gov.au.

The following section discusses additional requirements that apply specifically to regular vehicle accident towing.

1.2.2 ACCIDENT ALLOCATION AND FEE REGULATION

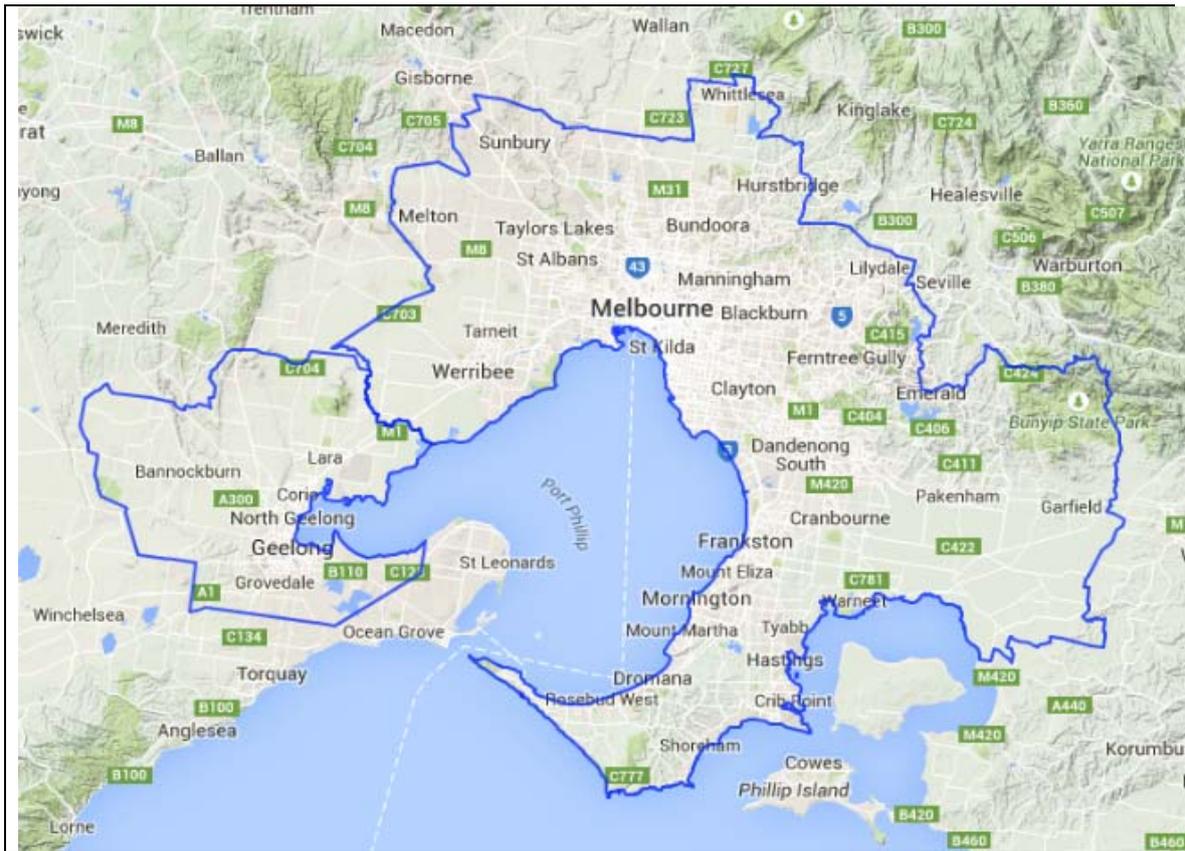
For the purposes of regular vehicle accident towing regulation, Victoria is divided into three defined geographical areas: the Melbourne controlled area (metropolitan Melbourne and the Mornington Peninsula), the Geelong self-management area (Geelong and surrounding areas), and the unregulated area (figure 1.1). Regulation of fees and allocation arrangements varies across these areas:

- Melbourne controlled area: accidents are assigned to tow truck drivers via an accident allocation scheme administered by VicRoads and accident towing and storage fees are regulated.
- Geelong self-management area: accidents are assigned to tow truck drivers via a self-managed scheme but fees are set by each operator (the Act — section 212I — requires fees to be “reasonable”).
- Unregulated area: there are no allocation schemes determining who may attend an accident scene and fees are set by each operator (again, the Act requires fees to be “reasonable”).

Given the establishment of the controlled and self-management areas, operators with regular vehicle accident towing licences are subject to geographical restrictions on where they can perform a regular vehicle accident tow. This restriction is achieved by linking each licence to a depot. An operator of a regular vehicle tow truck can only perform a regular vehicle accident tow in the area where its depot is located.

Further, the controlled area is divided into allocation zones, and each depot is located within an allocation zone. This further restricts where controlled area operators can perform an accident tow. In some cases an operator may receive an allocation outside of its allocation zone, e.g. because the operator in the allocation zone of the accident cannot attend the accident. If an operator wishes to relocate its licence to operate in a different allocation zone, the operator can apply to VicRoads for approval to relocate to a depot in its proposed allocation zone.

FIGURE 1.1 THE CONTROLLED AND SELF-MANAGEMENT AREAS



ALLOCATION REGULATION

Accident allocation is regulated in the controlled and self-management areas for regular vehicle accident tows only.

In the controlled area, the accident allocation scheme is the responsibility of the industry regulator, VicRoads. The day-to-day operation of the scheme (i.e. the running of the call centre that allocates tows to operators) is administered by the Royal Automobile Club of Victoria (RACV) under contract with VicRoads. The controlled area is divided into allocation zones. When an accident occurs, the accident tow job is allocated to the depot within the allocation zone of the accident and the operator of that depot (or depot manager) allocates the accident tow job to a specific licence. If there is more than one depot within an allocation zone, the accident tow job is allocated to the depot that has received the least allocations per licence in that month.

In the self-management area, the accident allocation scheme is operated by the Geelong Taxi Network. The allocation scheme is based on a simple queuing system. Each licence has a position in the queue.⁶ When an accident occurs, the job is allocated to the licence at the top of the queue.

In the unregulated area, regular vehicle tow trucks can perform a regular vehicle accident tow anywhere in the area without a formal allocation.

Heavy vehicle accident towing licences are not subject to geographical restrictions and heavy vehicle tow trucks can perform a heavy vehicle accident tow anywhere in Victoria without a formal allocation.

Box 1.3 provides a summary of how accident allocation works at an accident scene.

BOX 1.3 WHAT HAPPENS AT AN ACCIDENT SCENE?

Controlled and self-management areas — when a regular vehicle accident occurs in either of these areas, the tow must be allocated by the respective allocation centre. The centre may be contacted by the vehicle driver, the driver's insurer or attending police officer. The accident allocation centre will then allocate the job to the depot (in the controlled area) or licence (in the self-management area) which is at the top of the queue.

Unregulated areas and heavy vehicles — allocation schemes do not operate in the unregulated areas or for heavy vehicle tows. For such accidents, the vehicle driver or owner is responsible for organising an accident tow. An attending police officer may also organise the tow. For regular vehicle accidents, the vehicle driver may contact a towing operator directly or may contact their insurer, who will then arrange the tow. For heavy vehicle accidents, drivers will usually contact their employer or insurer following an accident. The business will usually have pre-existing arrangements with an insurer or tow truck operator.

Continued next page

⁶ Because the allocation scheme is self-managed, a monthly fee is charged to each licence holder to cover the reasonable costs of the allocation manager and allocation body. A licence can be removed from the queue if the licence holder is more than a month in arrears in paying the roster fee.

BOX 1.3 (CONTINUED)

Documentation — for all accidents, before the vehicle can be towed, the tow truck driver must provide the vehicle driver with VicRoads' accident towing fact sheet. Further, the tow truck driver and vehicle driver are required to complete and sign an authority to tow docket (see box 1.2 for further details on these requirements). For all accidents, including those in the controlled and self-management areas where tows are allocated, the vehicle driver may contact their insurer for advice on where to have the vehicle towed.

Services — accident towing services comprise towing, storage and salvage. Before towing a vehicle, the tow truck driver may have to move the vehicle from its original position into a position which allows it to be safely towed (referred to as salvage). If salvage is required, the vehicle owner will incur a salvage charge (unregulated).

In some cases, the tow truck driver may need to store the vehicle at their depot to await repair or towing to another destination. The vehicle will be stored either under cover or in a locked yard. If storage is required, the vehicle owner will incur a storage charge (regulated in the controlled area only).

Touting — tow truck drivers cannot tout for smash repair work at an accident scene, or at any time between when the vehicle is towed from an accident scene and when the vehicle is first stored at the address specified on the authority to tow docket. Touting is prohibited under section 147 of the Act.

FEE REGULATION

Accident towing and storage fees are regulated in the controlled area only. Under section 211 of the Act, the Minister for Roads is able to determine fees for accident towing, storage and salvage services in the controlled area. The Minister has only determined fees for accident towing and storage services. Fees for accident salvage services are unregulated, although they are required to be “reasonable” under section 212I of the Act. Under the Act, we conduct reviews of accident towing and storage fees in the controlled area every four years.

The regulated towing fee includes three components:

- The *base fee*, which includes the first eight kilometres of towing. It also includes removal of debris from the accident scene, cleaning of the tow truck, waiting time at the accident scene, phone calls, release of stored vehicle, administration (e.g. photographs and documentation), and an allowance for unpaid tows.
- The *additional kilometre fee*, which is applied to each additional kilometre of towing beyond the eight kilometres included in the base fee.
- The *after-hours surcharge*, which is applied to towing performed outside standard business hours (defined as 8am to 5pm Monday to Friday).

The storage fee varies according to whether the vehicle is a car or motorbike, and whether the vehicle is stored in a locked yard under cover, or simply in a locked yard. Table 1.1 summarises the current controlled area fees and charges.

TABLE 1.1 ACCIDENT TOWING AND STORAGE FEES 2015-16 (INC. GST)
Melbourne controlled area

Fees	\$
Towing fees	
Base fee (includes first 8km)	207.30
Additional km charge	3.30
After hours surcharge ^a	70.80
Storage fees	
Car — under cover	15.90
Car — locked yard	10.70
Motorcycle — under cover	5.30
Motorcycle — locked yard	3.40

^a 5pm to 8am Monday to Friday, 5pm Friday to 8am Monday and all day public holidays.

1.2.3 THE REGULATORS

There are a number of stakeholders involved in the regulation of towing in Victoria, including VicRoads, Consumer Affairs Victoria (CAV) and Victoria Police. The industry regulator, VicRoads, is responsible for accreditation, licensing and handling *accident towing* complaints. VicRoads is also responsible for enforcement of accident towing

legislation, including administering the demerit points system for offences, issuing improvement notices for contravention of a standard, condition or provision, and appointing authorised officers. Authorised officers are responsible for issuing infringement notices, and inspecting tow trucks, business premises and documents (e.g. invoices, authority to tow forms and accreditation details).

CAV is responsible for handling *trade towing* complaints. CAV has a broad role to protect and promote the interests of consumers, including consumers of trade towing services. CAV may assist in negotiating a resolution between a consumer and a trade towing operator where a complaint arises. While CAV handles trade towing matters, if a trade towing operator illegally did an accident tow, this would be a matter for VicRoads to investigate, as it would be a breach of the Act.

Victoria Police is responsible for a variety of accident towing roles. Police officers may complete an authority to tow form if the driver/owner of an accident-damaged vehicle is unable to sign the form. In the unregulated area, if a police officer was required to sign the authority to tow form, it may have also arranged for the accident tow. For these purposes, Victoria Police have their own informal roster of towing operators. Police officers may also undertake the duties of authorised officers, including issuing infringement notices, and inspecting tow truck, business premises and documents.

1.3 INDUSTRY STATISTICS

This section provides a snapshot of accident towing statistics, including the number of licences, operators, depots and accident allocations.

1.3.1 INDUSTRY PARTICIPANTS

Table 1.2 provides an overview of the number of depots, operators, drivers, and licences in the controlled, self-management and unregulated areas. The data shows:

- more resources (licences, operators, depots etc.) are associated with regular vehicle accident towing compared to heavy vehicle accident towing
- more resources are utilised in the controlled area compared to the self-management and unregulated areas

- there is a large number of unattached licences. In the controlled and self-management areas, 40 per cent and 72 per cent of licences respectively, are unattached. Unattached licences are not attached to a specific tow truck.⁷ Unattached licences receive a spot in the allocation queue in the controlled and self-management areas where allocation schemes operate
- there are more licences per operator in larger population centres (i.e. Melbourne and Geelong) compared to smaller regional centres, and
- in the unregulated area some operators operate out of more than one depot (i.e. there are 140 operators and 149 depots). While not shown in table 1.2, the same is also true for the controlled area.

TABLE 1.2 OVERVIEW OF ACCIDENT TOWING INDUSTRY (2014)

	Controlled area	Self-mgt area	Unregulated area	Victoria
Drivers	n/a	n/a	n/a	1473
Depot Managers	9	1	2	12
REGULAR				
Licences ^a	421	25	281	727
Unattached licences	169	18	40	227
Operators	105	5	140	250
Depots	46	5	149	200
HEAVY				
Licences	20	3	13	36
Unattached licences	3	0	2	5
Operators	5	1	11	17
Depots ^b	5	1	11	17

^a Licence numbers include unattached licences. ^b While the table presents the location of heavy vehicle towing depots by controlled, self-management and unregulated areas, it should be noted that heavy vehicle accident towing licences are not restricted by geographical area. Such tow trucks can perform an accident tow anywhere in the state; **n/a** not available.

Data source: VicRoads.

⁷ The term dormant licence is often used to describe a tow truck licence held by an operator but not assigned to a specific tow truck. The term is misleading, suggesting that the licence is not used by the operator. However these licences are used like any other licence to perform accident tows, e.g. a dormant licence still receives allocations through the accident allocation schemes.

DEPOTS

Regular vehicle accident towing

There are 200 regular vehicle accident towing depots in Victoria — 46 in the controlled area, five in the self-management area and 149 in the unregulated area.

The number of depots has been decreasing since 2008. With the number of licences unchanged, licences per depot have increased from 6.8 in 2008 to 9.2 in 2014 (table 1.3 and figure 1.2).⁸ This suggests that operators are consolidating their businesses into fewer depots.

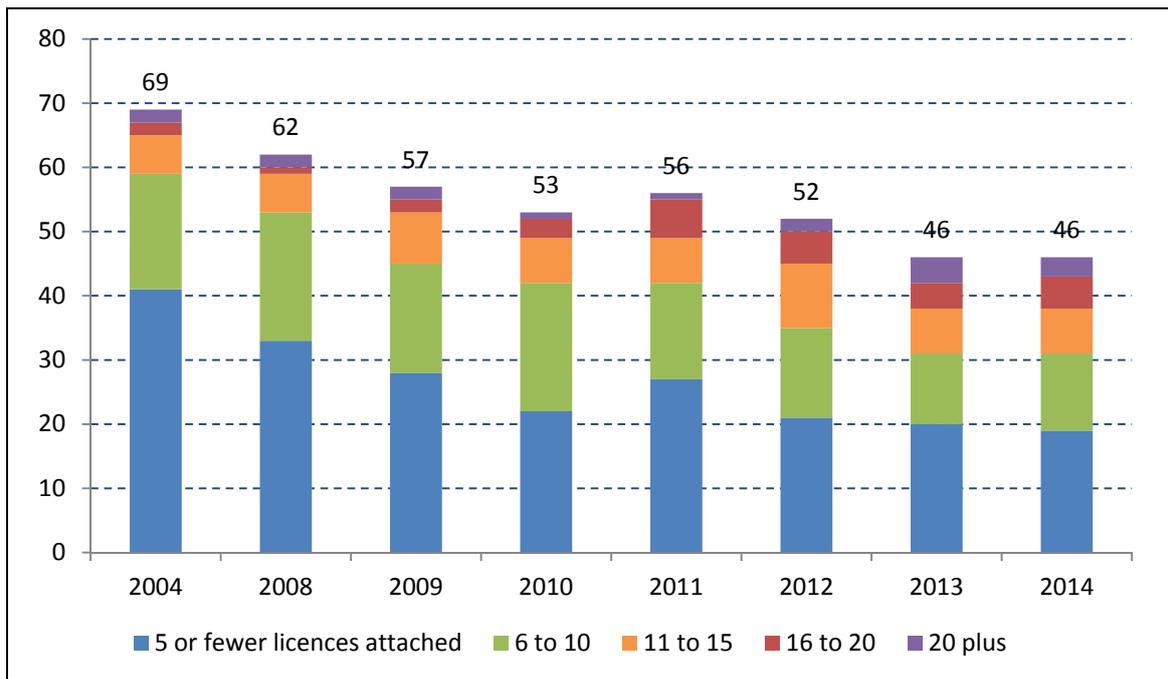
TABLE 1.3 LICENCES PER DEPOT IN THE CONTROLLED AREA
Regular vehicle accident towing

	2004	2008	2009	2010	2011	2012	2013	2014
<i>Licences</i>								
5 or fewer	41	33	28	22	27	21	20	19
6 to 10	18	20	17	20	15	14	11	12
11 to 15	6	6	8	7	7	10	7	7
16 to 20	2	1	2	3	6	5	4	5
20 plus	2	2	2	1	1	2	4	3
Total	69	62	57	53	56	52	46	46
Average	6.3	6.8	7.4	7.9	7.5	8.1	9.2	9.2

Data source: VicRoads.

⁸ Although the number of licences issued by VicRoads has remained constant since 2004 (421 licences), due to rounding errors, the total number of licences in table 2.2 fluctuates between 419 and 423.

FIGURE 1.2 LICENCES PER DEPOT IN THE CONTROLLED AREA



Data source: VicRoads.

Heavy vehicle accident towing

There are 17 heavy vehicle accident towing depots in Victoria — five in the controlled area, one in the self-management area and 11 in the unregulated area.

1.3.2 ACCIDENT TOWING STATISTICS

We do not have complete data on the number of accident tows performed in Victoria each year. We have been able to obtain data for regular vehicle accident tows in the controlled and self-management areas where allocation schemes operate. However, there is no data available for regular vehicle accident tows in the unregulated area, or heavy vehicle accident tows in all of Victoria.

We have collected data on regular vehicle accident tows from a number of sources:

- Controlled area: Accident Allocation Centre operated by the RACV.
- Self-management area: discussions with the Allocation Manager and hard copies of daily towing sheets for 2014.
- Unregulated area: an estimate was calculated based on available accident towing and crash statistics for the controlled, self-management and unregulated areas.

This information is presented in table 1.4.

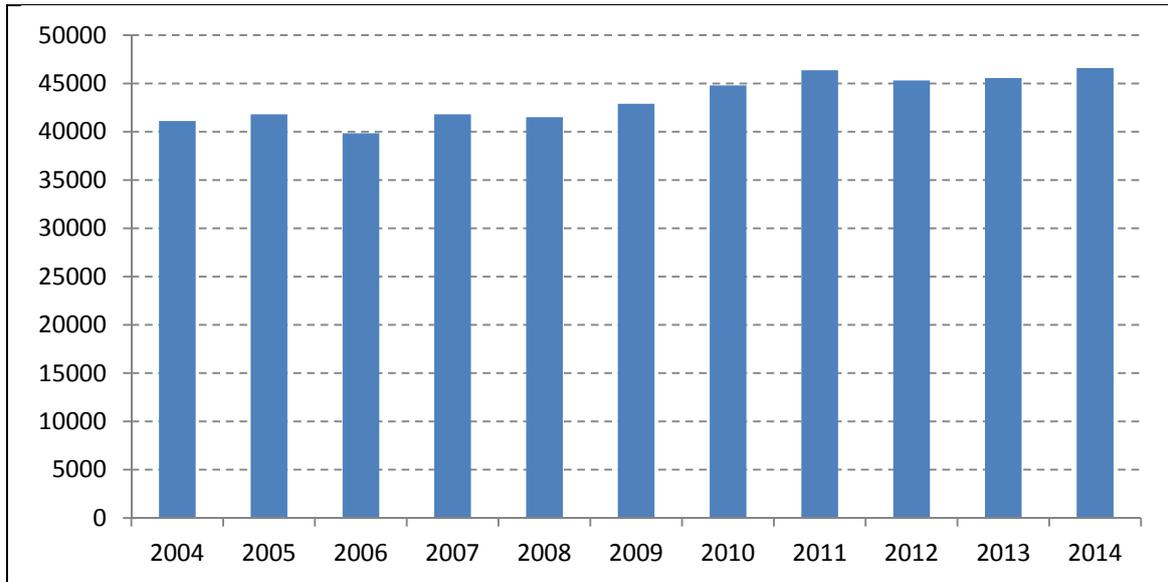
TABLE 1.4 REGULAR VEHICLE ACCIDENT TOWS (2014)

	Controlled	Self-mgt	Unregulated
Accident tows	46 596	1 753	≈14 100 ^a

^a For the controlled area, the ratio of accident tows to accidents involving injury is 5.85 (46 695 accident tows / 7963 injury accidents). For the self-management area the ratio is 5.02 (1753 accident tows / 349 injury accidents). For the unregulated area there were 2588 injury accidents. The estimate of 14 100 accident tows in the unregulated area applies the average of the ratios for the controlled and self-management areas ($5.44 = (5.85 + 5.02) / 2$) to the injury accident figure of 2588. Hence $2588 \times 5.44 = 14,100$ (rounded to nearest hundred).

Figure 1.3 provides an overview of changes in the total number of accident allocations per year in the controlled area over the period 2004 to 2014. Since 2004, total accident allocations in the controlled area have been between 40 000 and 45 000 per year. Licence numbers have not changed over this period, therefore accident allocations per licence per year have moved consistently with the change in the total number of accident allocations, and have increased from 99 in 2007 to 111 in 2014.

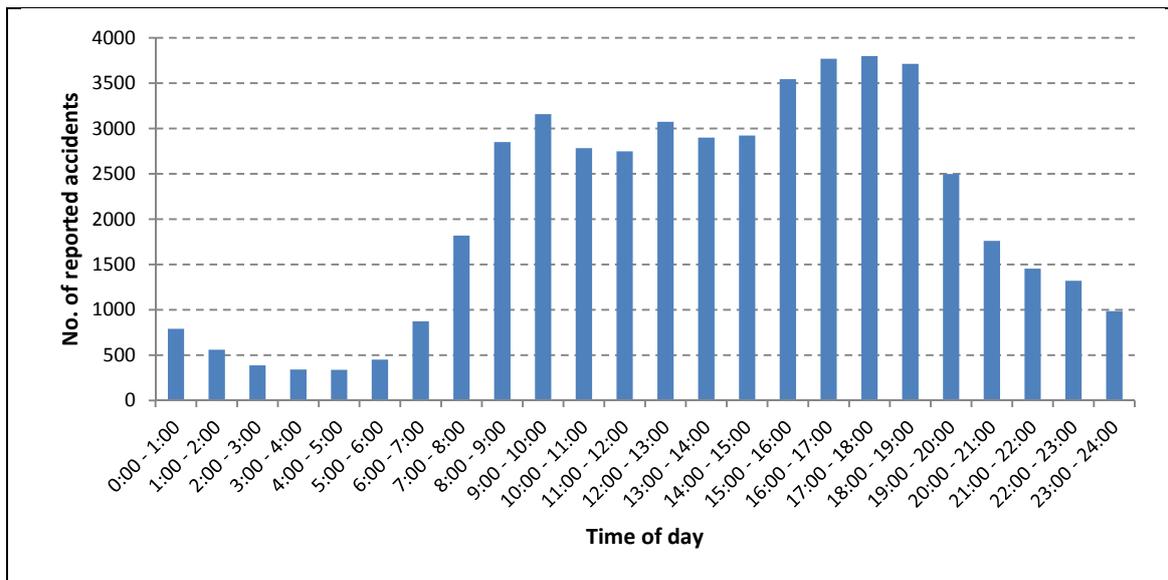
FIGURE 1.3 TOTAL ACCIDENT ALLOCATIONS IN THE CONTROLLED AREA
Regular vehicle accident towing



Data source: VicRoads / Accident Allocation Centre.

Figure 1.4 shows the number of accident tows in the controlled area by time of day in 2013. The majority of accident tows occur between 8am and 8pm, peaking between 3pm and 7pm during the afternoon traffic peak. Over 30 per cent of accident tows in the controlled area occurred within these four hours.

FIGURE 1.4 ACCIDENT TIMES IN THE CONTROLLED AREA
Regular vehicle accident towing (2013)



Data source: VicRoads / Accident Allocation Centre.

1.3.3 ACCIDENT STATISTICS

In addition to the accident allocation statistics, we have also considered road accident statistics. VicRoads maintains a database (CrashStats) which records the number of road accidents that have resulted in injuries, including fatalities. CrashStats provides data on regular vehicle and heavy vehicle accidents (table 1.5). The data are consistent with our earlier observations — there are significantly more regular vehicle accidents than heavy vehicle accidents.

CrashStats is not representative of the number of accident tows as many accident tows are performed for accidents where no injuries are reported. For comparative purposes, table 1.5 also includes regular vehicle accident tows in the controlled, self-management, and unregulated area. The data show that there are significantly more accident tows than road accidents involving injuries.

TABLE 1.5 ACCIDENT STATISTICS (2013)

	Controlled	Self-mgt	Unregulated	Victoria
Accidents (regular vehicles)	7 963	349	2 588	10 900
Accidents (heavy vehicles)	529	38	229	796
Accident tows (regular)	46 596	1 753	≈14 100 ^a	≈62 000

^a We have had to estimate the number of accident tows in the unregulated area. The value presented is therefore an approximation. Note: accidents refer to road accidents that have resulted in all types of injuries, including fatalities.

Data source: VicRoads road crash information system (CrashStats).

2 THE BROADER MARKET

This chapter analyses the structure, operation and outcomes of accident towing markets, and the key linkages between accident towing and other closely related markets such as trade towing, smash repair and motor vehicle insurance.

2.1 INTRODUCTION

Accident towing markets are linked to other related markets. This broader market context is important as it influences the structure and operation of accident towing markets and sources of revenue for accident towing operators.

This chapter provides an initial analysis of how accident towing markets operate and whether there are areas where they could work better. We need this understanding in order to make recommendations on improving economic regulation of these markets.

2.2 ACCIDENT TOWING MARKETS

Markets, including the market for accident towing services can be defined by a range of characteristics. For example, there is the actual product or service being provided. The boundary of the market looked at from this perspective depends on whether there are substitutes for the product or service.

Markets may also be defined by geography (i.e. there may be limits on the geographical area that a service provider can cover) and time (peak and off peak). We consider the product and geographic dimensions of accident towing markets.

2.2.1 PRODUCT

The product (or service) being provided by accident towing operators is largely defined in the *Accident Towing Services Act 2007* (the Act). Section 3 of the Act defines an accident towing service as the operation of a tow truck for the following purposes:

1. towing accident-damaged motor vehicles, where the towing of the accident-damaged motor vehicle takes place between the time when the road accident occurs and the time when the motor vehicle is first delivered to the place specified in the authority to tow, and
2. clearing road accident scenes.

There are, however, other services associated with accident towing. Section 211 provides for the Minister for Roads to determine charges for:

- accident towing services (as defined above)
- storage, and
- basic salvage.

Storage and salvage, for a given tow, may also form part of the service provided by an accident towing operator.

2.2.2 GEOGRAPHIC AREAS

Regulations separate the Victorian market for regular vehicle accident tows into three distinct geographical areas:

1. controlled area
2. self-management area, and
3. unregulated area.

CONTROLLED AREA

The controlled area covers metropolitan Melbourne and the Mornington Peninsula. It extends to Werribee and Melton (to the west), Sunbury, Craigieburn and Whittlesea (to the north), Lilydale and Pakenham (to the east), and the Mornington Peninsula (to the

south). However, it is not a single market. Operators licensed in the area are only able to perform an accident tow in limited parts of the area. This is because the controlled area is divided into allocation zones.

There are over 40 allocation zones in the controlled area. Each allocation zone is serviced by a depot (or depots) and every licence is attached to a depot. To attend an accident scene in a particular allocation zone, an accident towing operator must have a licence in that zone and must receive an allocation via the allocation scheme⁹.

SELF-MANAGEMENT AREA

The self-management area encompasses Geelong and surrounding areas. It extends to Bannockburn (to the west), Anakie and Lethbridge (to the north) and Moriac (to the south).

The self-management area operates as a single market. Unlike the controlled area, the self-management area is not divided into allocation zones. This means licence holders can perform an accident tow within any part of the self-management area (following receipt of an allocation via the self-managed allocation scheme).

UNREGULATED AREA

Like all accident towing licences, licences in the unregulated area are linked to a specific depot. Notwithstanding this link to a depot, an operator in the unregulated area can perform an accident tow anywhere in that area (similar to operators in the self-management area).

However, the unregulated area should be thought of as a series of smaller geographic markets. For example, it would be difficult for an operator in Bendigo to compete for accident tows in say Torquay. They would be at a competitive disadvantage because of higher costs (e.g. they have to travel further to attend an accident) and longer response times. As a result, operators focus their towing activity on the local areas surrounding their depot. The geographic size of these local areas could depend on a number of

⁹ In the controlled area a centrally administered allocation scheme applies. VicRoads has contracted the Royal Automobile Club of Victoria (the RACV) to operate the scheme on a day-to-day basis. That is, the RACV operates the call centre and allocates tows as required by the rules of the allocation scheme.

factors, including how widely the local population is dispersed, proximity to other towns and cities, and the location and number of other towing operators.

2.3 STRUCTURE OF ACCIDENT TOWING MARKETS

In this section we discuss how regulation, such as licensing, impacts on the structure of accident towing markets (section 2.3.1). In many cases, regulations act as barriers to entry.

Structure refers to the number and distribution of operators and licences across Victoria. We analyse the distribution of accident towing licences across Victoria and consider the market share of operators (section 2.3.2).

2.3.1 INDUSTRY REGULATIONS

In Victoria, there is no “as of right” entry into the accident towing market — that is, someone wanting to enter the market cannot simply buy a tow truck and start advertising their accident towing services. Rather, to perform an accident tow, an operator must be accredited and hold an accident towing licence. There are separate licences for regular and heavy vehicle accident towing.¹⁰ Table 2.1 sets out the number of accident towing licences in Victoria.

¹⁰ A regular tow truck licence may provide accident towing services to vehicles of any gross vehicle mass that the tow truck is capable of towing. A tow truck issued with a heavy tow truck licence can provide accident towing services to vehicles of a gross vehicle mass of 4 tonnes or more.

TABLE 2.1 ACCIDENT TOWING LICENCES IN VICTORIA
As at 30 June 2015

	Regular vehicles	Heavy vehicles ^a
Controlled area	421	20
Self-management area	25	3
Unregulated area	281	13
Victoria total	727	36

^a While the table presents the location of heavy vehicle towing depots by controlled, self-management and unregulated areas, it should be noted that heavy vehicle accident towing licences are not restricted by geographical area. Such tow trucks can perform an accident tow anywhere in the state.

ISSUE OF NEW LICENCES

It is the Minister for Roads (on advice of the industry regulator VicRoads) who can authorise the issuing of new accident tow truck licences.¹¹ However, no new accident towing licences have been issued in Victoria for over 30 years.¹² VicRoads has advised this is because they consider the demand for accident towing services is being met with the current stock of licences. As a consequence, the number of accident towing licences is fixed and the only way to enter the accident towing market is to buy an accident tow truck licence from an existing operator.

TRANSFER OF LICENCES

Licences may be transferred (sold) to other accident towing operators, subject to the approval of VicRoads. There is no regulated process for the actual selling of an accident towing licence. Rather, a licence holder may advertise their licence for sale and under section 30 of the Act the holder of the licence must apply to VicRoads for approval to transfer the licence to another person. A licence can only be sold to an accredited accident towing operator.

¹¹ Under section 14 of the Act, the Minister may authorise the issuing of regular tow truck licences for an area (section 15 applies for heavy vehicle licences). However, under the same section of the Act, certain criteria must be met before a new licence can be granted. In general, the Minister must not grant new licences unless: (i) the Minister considers it to be in the public interest to do so having regard to any increase in the need for tow trucks operating under regular tow truck licences in the area or (ii) the licences to be issued are to replace licences that have been cancelled for the area or (iii) the Minister considers that there are exceptional circumstances in the area that justify the further issue of regular tow truck licences for the area.

¹² VicRoads has not been able to confirm exactly when the last accident towing licence was issued, however, we understand that it was sometime in the early 1980s.

UNATTACHED LICENCES

While the legislation requires each accident towing licence to be attached to a tow truck, the legislation also provides an exemption to this requirement.¹³ We have termed such licences as *unattached licences*, as they are not attached to a specific tow truck. For example, an operator with four trucks might hold five licences — four of them attached to a separate truck each and one licence unattached.

We understand the practice of holding unattached licences is permitted to assist operators to reduce costs and improve efficiency. That is, holding unattached licences allows accident towing operators to reduce the number of trucks they need to purchase and maintain.

Unattached licences are sometimes referred to as dormant licences. However, this term is misleading because for operators in the controlled and self-management areas an unattached licence provides them with a spot in the respective allocation scheme.¹⁴ That is, the holder of an unattached licence is entitled to receive accident towing jobs for that licence similar to the holder of an attached licence.

Number of unattached licences

There are unattached licences for both regular vehicle and heavy vehicle accident towing (table 2.2):

- For regular vehicle towing licences, 40 per cent of licences in the controlled area are unattached, compared to 72 per cent in the self-management area and 14 per cent in the unregulated area.
- For heavy vehicle towing licences, there is only a small percentage of unattached licences and no unattached licences in the self-management area.

¹³ Section 27 of the Act allows VicRoads to exempt a licence holder from the requirement that a truck be specified in respect of the licence (an exempt tow truck licence).

¹⁴ Only in the areas with an allocation scheme does the number of unattached licences influence the number of accident tows an operator performs. Namely, in the controlled and self-management areas, unattached licences have a spot in the allocation scheme. In the unregulated areas, any licences owned in excess of the number of trucks held by an operator will not provide additional tows for the operator.

TABLE 2.2 UNATTACHED LICENCES
Regular and heavy vehicle towing licences, June 2015

	Controlled area	Self-mgt area	Unregulated area
Regular vehicles			
Licences (total) ^a	421	25	281
Unattached licences	169	18	40
% unattached	40%	72%	14%
Heavy vehicles^b			
Licences (total) ^a	20	3	13
Unattached licences	3	0	2
% unattached	15%	0%	15%

^a Licence numbers include unattached licences. ^b While the table presents the location of heavy vehicle towing licences by controlled, self-management and unregulated areas, it should be noted that heavy vehicle accident towing licences are not restricted by geographical area.

Data source: VicRoads.

IMPACT OF REGULATORY RESTRICTIONS ON OPERATION

Licensing regulations require that holders of accident towing licences must operate the tow truck from the depot specified in the licence. Further, in the case of regular vehicle towing, operators are also restricted to certain areas of operation — namely the controlled, self-management or unregulated areas — except in limited circumstances, such as when directed by police.

An operator can apply to VicRoads to relocate their licence to another depot or to relocate their depot (and associated licences).¹⁵ The application process is set out in section 13B of the Accident Towing Regulations 2008, which requires an operator to meet certain criteria and satisfy VicRoads regarding the merit of the proposed move.

VicRoads advised it has received one application in 8 years to move a licence into the controlled area, and none to move a licence into the self-management area. VicRoads'

¹⁵ In making an application to VicRoads to relocate a licence, an operator needs to address criteria in section 13B of the Accident Towing Regulations 2008. Section 13B requires the applicant to explain: how the present tow truck services (if any) at or near the proposed depot are inadequate to meet all reasonable public demand; the advantages of the change of depot to the public at or near the proposed depot; the impact that the services from the proposed depot would have on any existing accident towing services businesses near the proposed depot and the effect on the public at or near the current depot, if the proposed depot is approved.

view is that the limited number of applications indicates that the number of licences and operators in the regulated areas is sufficient given the number of accidents.

2.3.2 MARKET SHARE

To estimate the market share of each operator, we consider the number and size of regular vehicle accident towing operators in the controlled, self-management and unregulated areas.

CONTROLLED AREA

This section analyses the available information on controlled area regular accident towing licences, and considers how these licences are distributed among operators and depots within the area. Appendix C presents more detailed information.

We define an operator by using the licence holder's address as provided to VicRoads (rather than using business name). The licence holder address definition aggregates operators at the same address, and therefore aims to identify licences that may be owned by related parties.

Applying this definition, we present the distribution of licence ownership (table 2.3). Table 2.3 indicates that there are 78 operators and:

- slightly less than half of all operators have either one or two licences, and
- nine operators own eleven or more licences.

TABLE 2.3 CONTROLLED AREA
Distribution of regular accident towing licences, June 2015

Number of licences	Number of operators
1	23
2	13
3 to 5	15
6 to 10	18
11 to 20	6
> 20	3
Total	78

Data source: VicRoads.

Depot analysis

There are 46 depots in the controlled area. The number of licences at each depot ranges from one to 39 (table 2.4). Of the five depots with two or less licences, none operate close to the Melbourne CBD. The closest of these five depots is 14 kilometres and the furthest 75 kilometres from the city.

TABLE 2.4 DEPOT SIZE
Controlled area, as at June 2015

Number of licences	Number of depots
1 to 2	5
3 to 5	16
6 to 9	8
10 to 15	10
16 to 20	4
21 to 30	0
> 30	3
Total	46

Data source: VicRoads.

Given the prevalence of multiple licences at most depots, we consider two representations of depot market structure. First, we consider the distribution of operators across depots. Second, we consider the number of licences and operators per depot, in particular for the larger depots (those with 10 or more licences).

In general, operators in the controlled area with multiple licences operate out of a single depot. That is:

- 44 of the 55 operators with more than one licence base their licences at a single depot, and
- of the 11 operators that operate out of more than one depot:
 - 10 operators have their licences in two separate depots, while one operates out of three depots, and
 - licence ownership ranges from 5 to 39 licences.

The overall number of depots in the controlled area fell from 69 in 2004 to 46 in 2015. The number of depots with 5 or fewer licences fell from 41 in 2004 to 21 in 2015 and the average number of licences per depot has increased.

Currently, just under 40 per cent of all depots in the controlled area are larger depots (those with 10 or more licences) — the three largest depots at June 2015 have around 25 per cent of all licences.

- 13 out of 17 of the larger depots have more than one operator, and
- although the majority of depots have multiple operators, the share of licences in each depot is not evenly spread between operators, i.e. usually a single operator holds a large proportion of licences at each depot.

Market share of depots in the controlled area

In this section we consider the market share of the 17 largest depots in the controlled area, using data from 2014 (table 2.5). The data shows larger depots tend to have greater market share. In fact, the top 3 depots, in which about 23 per cent of licences are located, attended to over 20 per cent of accident towing jobs in 2014. The number of accident towing jobs per licence per depot varies between 6.5 and 14.6 jobs per month.

The data shows that there is not a one-to-one relationship between a depot's share of licences and its market share. This reflects a number of factors, including the random location of accidents, the number of licences within each depot, and the boundary of each allocation zone.

It should be noted that there have been some recent changes in licence ownership that are not captured in table 2.5.¹⁶ These changes are:

- the closure of a depot which had 28 licences,
- one depot which had 11 licences in 2014, now has 34 licences, and
- one depot which had 7 licences in 2014, now has 11 licences.

¹⁶ In table 2.5 we present 2014 data, not data updated for the changes in licence ownership (i.e. 2015 data), because market share data for 2015 is not currently available for the full year.

TABLE 2.5 CONTROLLED AREA — DEPOT SIZE AND MARKET SHARE
Depots with 10 or more licences, 2014

Depot	Licences	Operators	Avg. tows per licence per month	Share of licences (%)	Market share ^a (%)
Depot 1	39	3	7.2	9.3	7.3
Depot 2	30	5	8.8	7.1	6.8
Depot 3	28	2	8.9	6.7	6.4
Depot 4	19	2	6.5	4.5	3.2
Depot 5	16	4	9.1	3.8	3.8
Depot 6	16	3	14.6	3.8	6.0
Depot 7	16	3	7.3	3.8	3.0
Depot 8	16	2	7.4	3.8	3.0
Depot 9	14	2	10.8	3.3	3.9
Depot 10	13	1	10.4	3.1	3.5
Depot 11	12	5	10.7	2.9	3.3
Depot 12	12	4	6.8	2.9	2.1
Depot 13	12	2	9.7	2.9	3.0
Depot 14	11	4	9.1	2.6	2.6
Depot 15	11	1	8.9	2.6	2.5
Depot 16	10	2	8.1	2.4	2.1
Depot 17	10	1	9.9	2.4	2.5

^a Market share is calculated as accident tows performed by the depot divided by total accident tows in the controlled area.

Data source: VicRoads.

SELF-MANAGEMENT AREA

In the self-management area there are five depots, five licence holders and 25 regular accident towing licences. Of these 25 licences, 18 are unattached. That is, 25 licences are used to allocate towing jobs between seven vehicles (assuming that the number of trucks equals total licences less unattached licences). In 2014, approximately 1750 accident towing jobs were undertaken.

The structure of the self-management area market is simpler than in the controlled area. Table 2.6 shows that:

- operators do not share depots in the self-management area, and
- like the controlled area, there is a close relationship between the size of depots (measured by their share of licences) and market share.

TABLE 2.6 DISTRIBUTION OF ACCIDENT TOWING LICENCES
Self-management area, 2014

Depot	Licences	Operators	Share of licences (%)	Market share (%) ^a
Depot 1	8	1	32	28.1
Depot 2	6	1	24	23.4
Depot 3	6	1	24	26.1
Depot 4	4	1	16	17.9
Depot 5	1	1	4	4.5
Total	25	5	100	100

^a Market share is calculated as accident tows performed by the depot divided by total accident tows in the self-management area.

Data source: VicRoads.

There is some variance between a depot's share of licences and its market share in the self-management area. This is because if an operator knows they cannot accept accident allocations for some specific period in the future (e.g. because they will be on leave or their truck is being serviced), the operator can pre-arrange that their allocated tows go to another operator. The allocation body would be informed of this, and would re-allocate the tows as instructed.

UNREGULATED AREAS

In the unregulated area there are 281 licences, 132 operators and 151 depots.¹⁷ Table 2.7 shows the distribution of accident towing licences between operators in the unregulated area:

- the majority of operators (almost 80 per cent) own either one or two licences, and
- only one licence holder owns more than 10 licences. This licence owner has 20 licences.

¹⁷ Our estimate of the number of depots is lower than that implied by the data provided by VicRoads. This is because the VicRoads data identifies some separate depots, where it is likely that there is only a single depot. For example, two separate depots are identified in Apollo Bay, where one depot address is at 18 Oak Avenue and the other depot is located at 20 Oak Avenue.

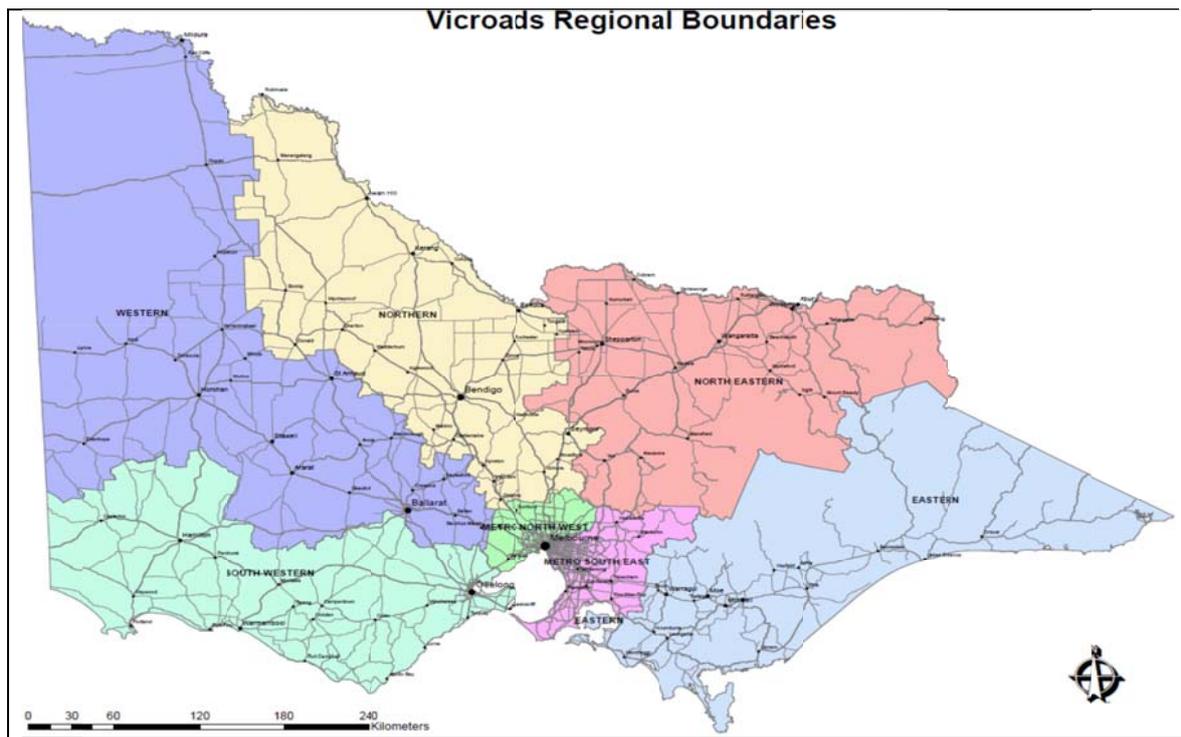
TABLE 2.7 DISTRIBUTION OF ACCIDENT TOWING LICENCES
Unregulated area, June 2015

Licences	Operators
1	70
2	34
3 to 5	20
6 to 10	7
> 10	1

Data source: VicRoads.

In considering the distribution of licences across Victoria, VicRoads divides the non-metropolitan area of the state into 5 regions (figure 2.1). We have used these same regions when considering the unregulated area market structure.

FIGURE 2.1 VICROADS ACCIDENT TOWING REGIONS
Unregulated area



Data source: VicRoads.

We have considered information on licences, operators, depots and the maximum and minimum number of licences owned by each operator by region (table 2.8). The information shows:

- the highest number of licences and operators are located in the North Eastern region
- the least number of licences and the smallest number of operators are located in the South Western region, and
- two operators have 10 or more licences. The operator with the most licences (20) is located in the eastern region.

TABLE 2.8 MARKET STRUCTURE STATISTICS
Unregulated area, as at 30 June 2015

Region	Licences	Operators	Depots	Range of licence ownership
Eastern	66	27	38	1 to 20
North Eastern	81	36	37	1 to 8
Northern	46	26	29	1 to 6
Western	56	26	24	1 to 9
South Western	29	22	22	1 to 3
Unassigned ^a	3	2	na	na
Total	281	139	149	1 to 20

^a Unassigned licences have not been attached to a specific depot.

Data source: VicRoads.

The next section examines the geographic distribution of licences held by the two largest operators in the unregulated area. The largest operator has 20 licences and the second largest operator has 10 licences. The third largest operator has 9 licences all located close to each other — at two depots, one in Ballarat (4) and the other in Sebastopol (5).

Largest licence holder

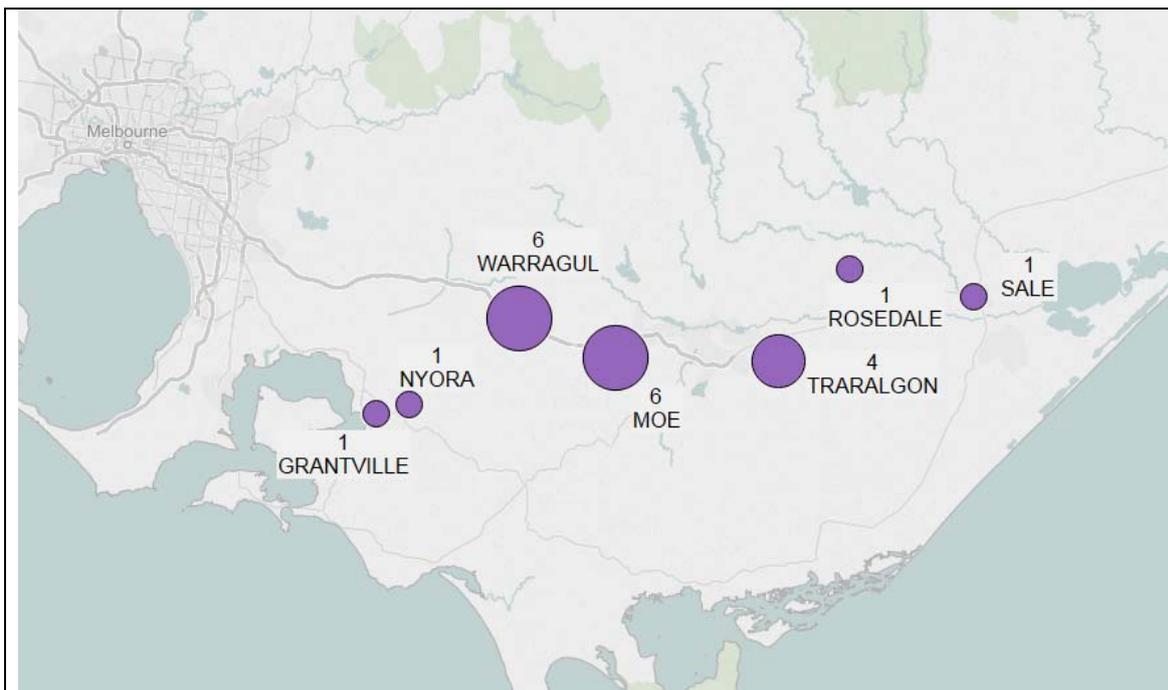
The 20 licences owned by an operator in the Eastern region are located across seven depots. Figure 2.2 shows the location of the depots and the number of licences located at each depot. The majority of this operator's licences are attached to depots in

Warragul (6 licences), Moe (6 licences) and Traralgon (4 licences). In each of these locations, this operator is the largest operator:

- in Warragul, there is no other accident towing operator, although an operator in nearby Drouin owns 1 licence
- in Moe, there is one other operator who owns 1 licence, and
- in Traralgon, there are no other accident towing operators, although there are three operators in nearby Morwell with a total of 6 licences.

The Warragul-Moe-Traralgon area is of particular interest because it has been raised by a number of stakeholders as an area where fees are significantly higher. This area is characterised by a relatively high number of licences and small number of operators. Fee regulation is discussed further in chapter 5.

FIGURE 2.2 LARGEST LICENCE HOLDER IN UNREGULATED AREA
Location of depots and number of licences



Data source: VicRoads.

Second largest licence holder

The second largest operator in the unregulated area has 10 licences, most of which are located in depots in the western region of Victoria (figure 2.3). The spread and concentration of licences is not as dominant as for the largest licence holder.

FIGURE 2.3 SECOND LARGEST LICENCE HOLDER IN UNREGULATED AREA
Location of depots and number of licences



Data source: VicRoads.

2.4 OPERATION OF ACCIDENT TOWING MARKETS

This section considers the decisions made by accident towing operators, namely:

- the fees operators charge
- how operators obtain accident tows, and
- how operators market their services.

2.4.1 FEES CHARGED BY OPERATORS

In the controlled area, accident towing fees are regulated and accident tows are allocated through an allocation scheme. A separate allocation scheme operates in the self-management area, where operators are able to set their own fees.

Based on our consultations with operators and data collected from insurers, we have found that fees charged by operators are usually higher outside of the controlled area.¹⁸ That is, with the flexibility to set their own fees, operators in the self-management and unregulated areas have set their fees at levels higher than the regulated controlled area fees.

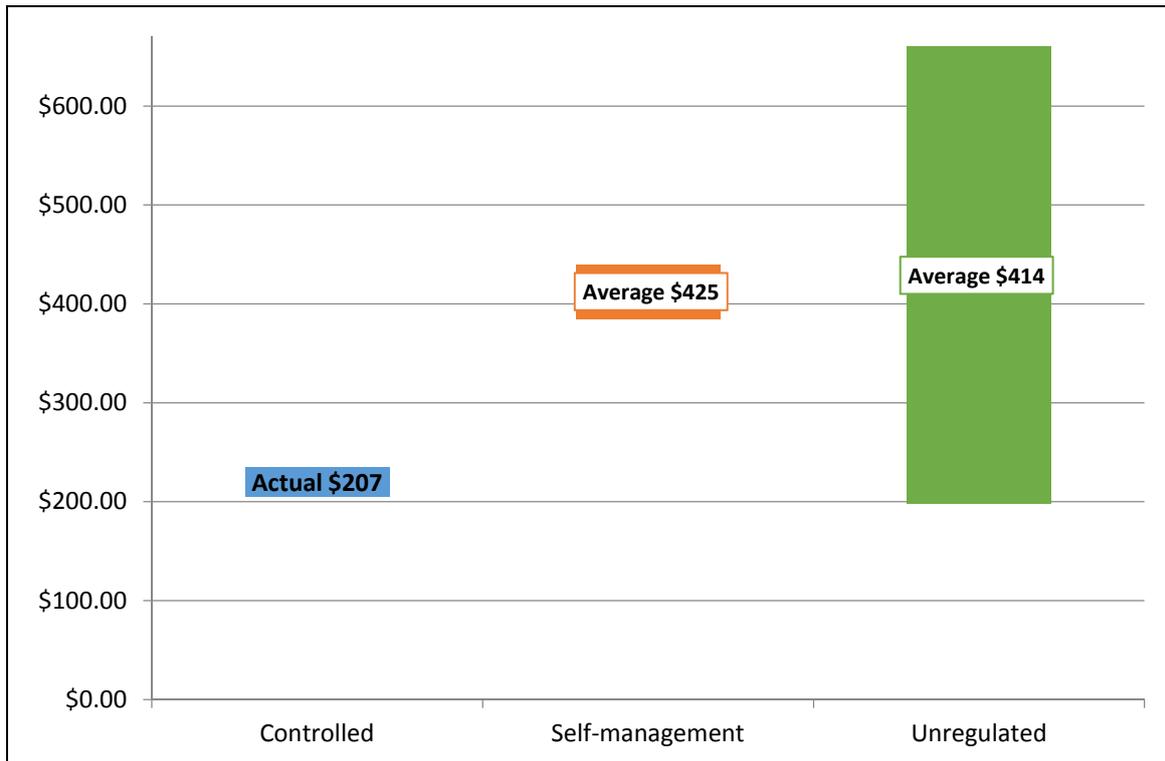
For example, notwithstanding marginal differences in what the **base fee**¹⁹ may include (e.g. number of included kilometres), the data indicates the average base fee is higher in the self-management (\$425) and unregulated areas (\$414) than in the controlled area (\$207) (figure 2.4). That is, the base fee is 105 per cent higher in the self-management area and 100 per cent higher in the unregulated area compared to the controlled area.

In the self-management area operators charge a similar base fee — the fee ranges from \$385 to \$440. The range is much wider in the unregulated area. The base fee ranges from \$200 to \$660.

¹⁸ Accident towing fee information is not routinely collected by VicRoads. For the controlled area we present the regulated fees. For the self-management area, fee information was provided to us by each operator in the area. For the unregulated area, we present fee information based on 1300 accident towing invoices provided to us by insurers. The data for the unregulated area represents a subset of accident tows in the area.

¹⁹ The total towing charge is made up of various fee components. Common fee components are the base fee and the distance fee. The base fee is a fixed charge, and usually constitutes the majority of the total towing charge. The controlled area base fee is \$207.30. The distance fee is a per kilometre charge reflecting the distance of the tow. The controlled area distance fee is \$3.30 per kilometre as measured from the operator's depot to the location where the accident-damaged vehicle is taken.

FIGURE 2.4 AVERAGE BASE FEE BY AREA (\$ inc GST)^a
2013-14



^a Since controlled area fees are regulated, for this area the figure shows only the regulated fee (\$207) — there is no range for this area. For each of the self-management and unregulated areas, the figure presents the base fee range charged by operators and the average fee.

Data source: Regulated fees, operator information and Commission analysis of IAG and Suncorp data.

The average **distance rate** is also higher in the self-management (\$4.40) and unregulated areas (\$3.82) than in the controlled area (\$3.30) (figure 2.5). That is, the distance rate is 33 per cent higher in the self-management area and 16 per cent higher in the unregulated area compared to the controlled area.

In the unregulated area the distance rate ranges from \$1.65 (i.e. less than the regulated rate in the controlled area) to \$7.04 per kilometre (more than double the controlled area rate).

FIGURE 2.5 AVERAGE DISTANCE RATE BY AREA (\$ per km inc GST)^a
2013-14



^a For both the controlled and self-management areas, the figure shows only the distance rate charged by operators, not a range. We do this because controlled area fees are regulated and in the self-management area all operators charge the same distance rate (so in both cases there is no range). For the unregulated area, the figure presents the distance rate range charged by operators and the average rate.

Data source: Regulated fees, operator information and Commission analysis of IAG and Suncorp data.

OTHER FEES

Other regulated fees in the controlled area include:

- an after-hours surcharge, which relates to the towing of the vehicle and is charged outside of normal business hours, and
- a storage rate, which covers the costs of storing a vehicle.

The average after hours surcharge and average storage rates are also higher outside the controlled area. The average after hours surcharge is 21 per cent higher in the self-management area and 42 per cent higher in the unregulated area. In the Latrobe

area (Moe, Morwell and Traralgon) and Warragul the average surcharge is over double that in the controlled area.

Of all the fee components, we have the least data on storage rates. Nonetheless, from the available data we estimate that compared to the controlled area, the average storage rate is 30 per cent higher in the self-management area and 7 per cent higher in the unregulated area.

UNREGULATED FEES

Operators also charge for a number of services that are unregulated, including salvage and “out of storage” tow fees.

Salvage

Based on consultations with operators, most operators across Victoria charge salvage fees of around \$110 per hour. However, two operators outside of the controlled area charge \$250 and \$450 per hour respectively. Based on the fee data from insurers, average total salvage charges are higher outside of the controlled area.²⁰ While this may reflect more complex salvage occurring outside of the controlled area (e.g. because of more high speed accidents), the observation that salvage charges are higher outside of the controlled area is consistent with the data on other fee components.

Salvage in the controlled area was considered by the Commission in its last fee review. We considered whether salvage fees should be regulated, and if so, a reasonable level for salvage fees. We recommended that basic salvage²¹ should be regulated, finding that drivers involved in an accident were in a weak position to negotiate a reasonable fee. We recommended a basic salvage fee of \$71 per hour. Additional salvage fees applied if an assistant or additional tow trucks were required, and during after hours. We considered existing salvage fees in the controlled area and fees in other

²⁰ From our consultations with operators we have some information on hourly rates for salvage. In addition, from analysis of accident towing dockets from insurers we have information on the *total* salvage fee charged for a particular tow. However, because we do not know the time taken to perform the salvage, caution needs to be taken in comparing these *total* salvage fees.

²¹ The Act defines basic salvage as the service of salvaging a motor vehicle using one or more tow trucks that are not heavy tow trucks and without using a mobile crane. Salvage is the moving of an accident-damaged vehicle to a position where it can be loaded onto the tow truck. For example, the vehicle may be on its roof — salvage is the act of righting the vehicle and positioning it so it can be loaded onto the tow truck.

jurisdictions in recommending the salvage fee.²² This recommendation has not been introduced by the Victorian Government.²³

“Out of storage” tows

The out of storage tow fee is applied by some operators when they are required to move a vehicle from its storage position within their depot to another position in the depot where it can be collected by the vehicle owner or their insurer’s tow operator.

The issue of out of storage tows was discussed by the Commission in its last controlled area fee review. The review found that legislation should be amended to indicate that out of storage tows are covered by regulated fees.²⁴ In 2014, the Minister clarified that costs associated with out of storage tows are included in regulated fees.²⁵

Other unregulated fees

Outside the controlled area, where towing fees are not set by the Minister, there is greater scope for operators to charge other fees beyond what may be considered the standard fees (the base fee, distance rate, storage rate, after hours surcharge and salvage). In these other areas there are examples of:

- waiting time fees, for waiting at the accident scene (in controlled area, regulated fees include any waiting time, that is, controlled area operators cannot charge a separate waiting time fee)
- public holiday fees, that is, fees for work on public holidays, which are separate to any after hours surcharge which may also be levied (in the controlled area, the after hours surcharge applies all day on public holidays — a public holiday fee cannot also be charged)
- cleaning fees, that is, fees for cleaning of oil spills on the tow truck (in the controlled area, regulated fees cover cleaning costs), and

²² Essential Services Commission 2013, *Periodic review of accident towing and storage fees*, Final report, July, pp. 41–57.

²³ Salvage fees are regulated under section 212(1)(b) of the Act, which requires fees set by operators to be “reasonable”.

²⁴ Essential Services Commission 2013, *Periodic review of accident towing and storage fees*, Final report, July, p. 85.

²⁵ For example, see Victorian Government Gazette 2014, *Accident Towing Services Act 2007: Determination of charges for the towing and storage of accident damaged motor vehicles under section 211*, No. S 406 Friday 31 October, available at www.gazette.vic.gov.au/gazette/Gazettes2014/GG2014S406.pdf#page=1.

- administration fees, for example, fees for faxing tow dockets to an insurer, making phone calls etc (in the controlled area, regulated fees cover administration fees).

While examples of these other fees are more prevalent outside of the controlled area, there are examples of some of these fees being charged by operators in the controlled area.

2.4.2 HOW OPERATORS OBTAIN ACCIDENT TOWS

How accident towing operators obtain towing jobs varies depending on their area of operation. For example, in the controlled and self-management areas, operators receive accident tow jobs via allocation schemes. In contrast, operators in the unregulated area of Victoria actively seek out accident towing jobs or otherwise wait to be contacted by a driver involved in an accident, an insurer or a Victoria Police officer when an accident tow is required.

In terms of how accident towing markets operate, a number of key themes emerged from our consultations with operators in the unregulated area. These include:

- competition between operators in the same town for accident towing work is limited and multiple tow trucks attending an accident scene is uncommon
- some operators have contracts with insurers for accident towing work
- a small number of operators pay spotters fees to obtain accident towing work, and
- accident towing is not a key part of the business, with operators noting other activities are more important:
 - six of the eight operators we consulted have a smash repair business
 - one of the eight has a car servicing / mechanical repairs business, and
 - operators do more trade tows than accident tows.

2.4.3 ACCIDENT TOWING AS A MARKETING FUNCTION

Accident tow truck drivers can also perform a marketing function for other services such as trade towing and smash repair. This is because the tow truck driver is often the first point of contact after an accident and may offer advice or suggestions regarding

where an accident-damaged vehicle can be repaired or stored. The marketing function performed by tow truck drivers applies across Victoria — from our consultations with operators in the controlled, self-management and unregulated areas, and other stakeholders, we know that the majority of operators undertake trade towing and have links to smash repair.

Related businesses, particularly smash repairers, may make arrangements with accident towing businesses, such as paying commissions to drivers who secure smash repair work. The marketing function is discussed further in section 2.6.2.

2.5 OUTCOMES IN ACCIDENT TOWING MARKETS

We consider three key aspects of accident towing market outcomes, namely: profit, service quality and complaints.

2.5.1 PROFIT AND LICENCE VALUES

Profit (revenue less costs) provides an indication of the financial viability and strength of the industry. For example, whether revenues are sufficient to enable operators to cover their costs and continue to invest in their business. The level of profits also provides an indication on the effectiveness of competition in the various accident towing markets. Persistent and excessive profits are not consistent with competitive markets and may indicate a problem requiring regulatory change.

Information on the revenue and costs of accident towing businesses is not collected by VicRoads. Therefore, as an indication of profitability of the industry, we have considered available information on licence values.²⁶

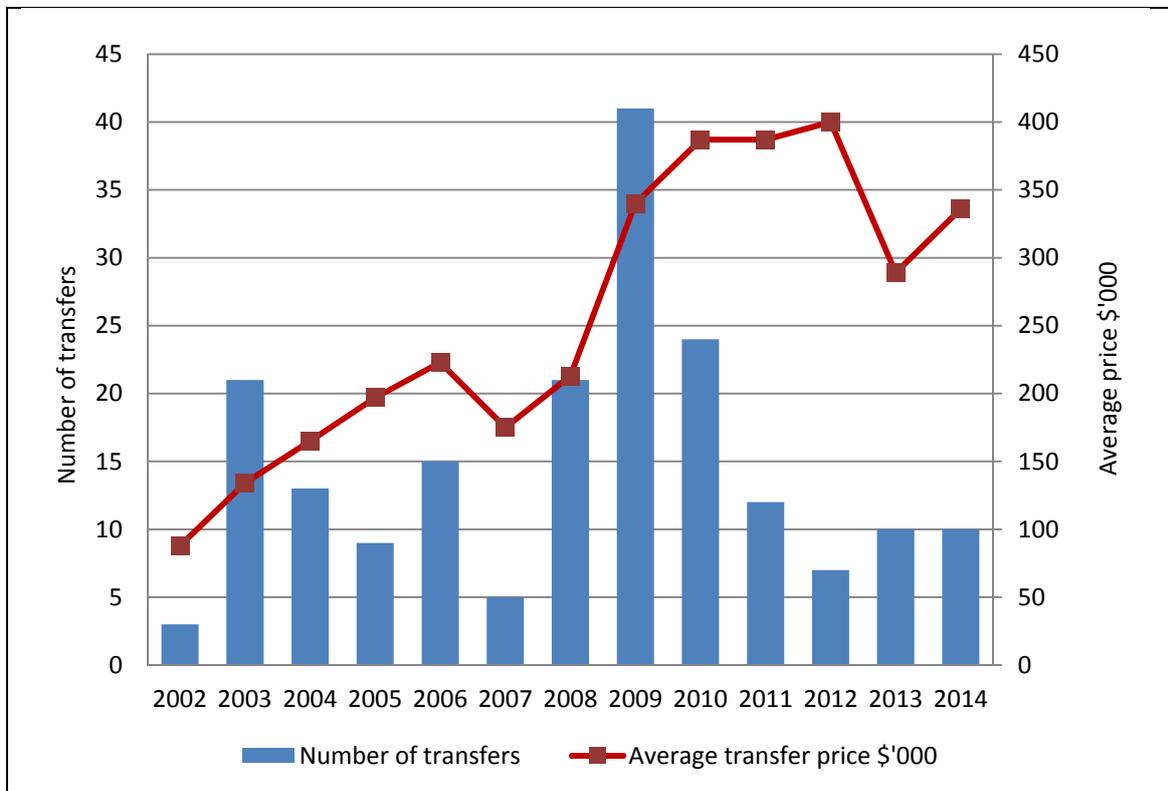
²⁶ We do not have a complete and accurate dataset of licence transfer values. This is because it is not compulsory for the seller to provide the actual sale price of the licence as part of the transfer process. There are also issues with the reliability of existing licence value information. For example, the information supplied to VicRoads is not verified and the reported transfer value may include other items such as the purchase of a towing business and equipment (not just the licence). Nonetheless, where possible, we have used the data available to draw a number of conclusions about the performance of accident towing market.

CONTROLLED AREA LICENCE VALUES

We have considered the available time series information on controlled area licence values (figure 2.6). The average transfer price and number of transfers (for which a transfer value is available) are shown.

The available data indicates that transfer values have trended upwards since 2002, peaking in 2012. Most recently in 2014, the average transfer value was \$336,000 and there were 10 trades (for which a transfer value was available). Transfer values ranged from \$250,000 to \$400,000 in 2014, and \$272,000 to \$350,000 in 2013 (table 2.9). To May 2015, traded values have ranged from \$150,000 to \$300,000.

FIGURE 2.6 CONTROLLED AREA LICENCE VALUES
Average price and number of transfers



Data source: VicRoads.

As an indication of the incompleteness of licence transfer information, VicRoads data indicates that there were 11 other trades in the controlled area in 2014 for which no

transfer value data is available. Up to May 2015, transfer values are only available for 4 of the 39 trades that had been completed. It is also unclear whether recorded values include assets other than the licence (e.g. vehicle or equipment). Differences in the assets included in the licence values may explain the very large range at which licences appear to be traded.

TABLE 2.9 CONTROLLED AREA LICENCE TRANSFERS
Values and number of transfers

	2013	2014	2015 ^a
Average value	\$289,000	\$336,000	\$245,000
Min. value	\$272,000	\$250,000	\$150,000
Max. value	\$350,000	\$400,000	\$300,000
Trades (value known)	10	10	4
Trades (value not known)	0	11	35

^a Data is to May 2015 only.

Data source: VicRoads.

UNREGULATED AREA LICENCE VALUES

We have also considered licence transfer information for the unregulated area from 2013 to May 2015 (there were no trades in the self-management area). Information on trades in the unregulated area is more complete than for the controlled area in terms of VicRoads having data on the value of most trades (table 2.10).

TABLE 2.10 UNREGULATED AREA LICENCE TRANSFERS
Values and number of transfers

	2013	2014	2015
Average value	\$68,700	\$48,000	\$67,500
Min. value	\$30,000	\$18,000	\$60,000
Max. value	\$121,000	\$100,000	\$75,000
Trades (value known)	15	4	2
Trades (value not known)	0	4	1

Data source: VicRoads.

The data indicates significant variability in licence values across the unregulated area, with maximum transfer values four to five times that of minimum values in 2013 and 2014. This variability probably reflects the different earning capacity of different regions in the unregulated area, as well as differences in the assets included in the licence values. It is also worth noting that the highest recorded traded value in the unregulated area is well below the lowest value in the controlled area for each year.

CALCULATING “FAIR VALUE” LICENCE VALUES

All things being equal, we would expect the value of an accident towing licence should represent the discounted net present value of expected future revenues (or put another way, the present value of future profits) from accident towing activity. However, in our previous reviews of controlled area fees, we noted that:

High licence values suggest that either regulated fees are currently too high or licence values reflect expected income from additional unregulated fees associated with performing an accident tow.²⁷

In addition to unregulated fees, our consultation for this review suggests that profits from smash repair may contribute significantly to licence values. Stakeholders including operators, insurers and VicRoads suggest that the real value in owning an accident towing licence is in securing the smash repair work from an accident, not accident towing.

To estimate the importance of these other revenue sources and whether they are influencing accident towing licence values, we first estimate the value of licences in the controlled, self-management and unregulated areas on the basis that only accident towing revenues contribute to their value. We then compare these values to actual traded licence values. We present our approach to estimating licence values and the assumptions which underpin the approach in box 2.1.

It is important to note that the analysis and figures presented are indicative only. The estimates of “fair value” licence values are not meant to be a precise estimate of

²⁷ Essential Services Commission 2013, *Periodic review of accident towing and storage fees*, Final report, May, p. 18.

profitability. Nonetheless, they do suggest that traded values for accident towing licences are influenced by more than just accident towing profits.

BOX 2.1 CALCULATING ACCIDENT TOWING LICENCE VALUES

We calculate licence values based on accident towing activity only. This is done separately for the controlled, self-management and unregulated areas. The estimates for licence value are based on calculating the present value of future profits (this is a common method for valuing assets and businesses). The calculations for each area involve the following steps:

1. Calculating annual revenue from accident towing: this calculation is based on estimates of accident tows per month and average fees per tow for each area. We apply a range for each of these values, therefore calculating a range for annual revenue.
2. Applying a profit margin assumption: to calculate annual profit we need to calculate annual costs. To do this, we assume a profit margin of 10 per cent.²⁸
3. Calculating annual profit: applying the profit margin assumption, we can calculate annual profit as $\text{profit} = \text{revenues} - (\text{revenues} / (1 + \text{profit margin}))$.
4. Calculating licence value: using the annual profit figure, the licence value is calculated as the present value of the profit figure in perpetuity. We apply a discount interest rate of 6 per cent.

Estimates of licence values will vary depending on the fees charged by an operator and the number of tows they perform. For each area, we estimate accident towing licence values for low, average and high values of fees and number of accident tows (table 2.11).

²⁸ An alternative approach is to estimate profits as accident towing revenues less operator costs but we have not progressed this approach as it would require significantly more cost information from operators which is not currently available.

We base the value of fees on *actual* accident towing fees charged by operators. This is the *total* accident towing fee information provided from insurers. These fees include the usual base (including after hours surcharge if applicable), distance and storage fees that operators charge. Also included are salvage fees, secondary tows and other unregulated fees (e.g. waiting time, cleaning, administration).

Since the fee figures capture all towing related fees, any difference in our estimates of licence values and actual traded values will reflect profits from these towing fees in excess of the 10 per cent margin we have assumed, revenues from other related services, or business assets being included in the traded value of licences. Based on stakeholder consultations, revenue from smash repair may be an important source of additional revenue for accident towing licence holders. Other sources include unregulated fees such as those discussed in section 2.4.

TABLE 2.11 ACCIDENT TOWING LICENCE VALUES
Commission estimates

	Controlled area	Self-mgt area	Unregulated area
Low ^a	\$51,000	\$36,000	\$22,000
Average ^b	\$58,000 – \$82,000	\$50,000 – \$76,000	\$59,000 – \$76,000
High ^c	\$127,000	\$118,000	\$138,000
Actual	\$150,000 – \$400,000	no trades	\$30,000 – \$121,000

^a Controlled area: average fee \$350, number of tows 8 per month. Self-management area: average fee \$500, number of tows 4 per month. Unregulated area: average fee \$400, number of tows 3 per month.

^b Controlled area: average fee \$400-\$450, number of tows 8 to 10 per month. Self-management area: average fee \$550-\$600, number of tows 5 to 7 per month. Unregulated area: average fee \$650-\$700, number of tows 5 to 6 per month. ^c Controlled area: average fee \$500, number of tows 14 per month. Self-management area: average fee \$650, number of tows 10 per month. Unregulated area: average fee \$950, number of tows 8 per month.

For the controlled area, we estimate that values of accident towing licences should range between \$58,000 and \$82,000 based on average fees and average number of tows in that area. This is significantly lower than actual traded values over recent years. The estimated value with high fees and high number of tows is still below recent traded values.

In contrast, estimated values in the unregulated area appear more consistent with actual traded values. One possible explanation is that actual licence values in the

controlled area include a significant component reflecting the volume of smash repair work. In the unregulated area, there may be less smash repair work because there are fewer accidents, lower levels of insurance, more single vehicle accidents²⁹ and fewer accidents requiring smash repair (i.e. because there are more accidents where the vehicle is written-off). While this argument is plausible, we reiterate that care needs to be taken in interpreting the licence value analysis. For example, in the case of the unregulated area the analysis is based on:

- limited information on traded licence values
- estimates of actual towing activity from less than 10 operators, and
- an incomplete dataset of actual accident towing fees.

The analysis involves averaging of information across all of the unregulated area, despite the variability in the size of towing operators in the area.

2.5.2 SERVICE QUALITY

Service quality measures tell us how well operators are providing accident towing services; for example, as measured against objectives in the Act. The key service quality measure for the allocation schemes in the controlled and self-management areas is attendance at the accident scene within 30 minutes.

In the controlled area, the requirement to attend an accident scene within 30 minutes is set out in the Accident Towing Services Regulations 2008, clause 32(1). For the self-management area, the terms and conditions specified by VicRoads when declaring the area state that a towing allocation may be cancelled if the operator is “*unable to attend the road accident scene within a reasonable period (generally 30 minutes from the time of allocation...*”.³⁰

²⁹ In a single vehicle accident, the tow truck operator and smash repairer will either be dealing with the vehicle owner or vehicle insurer. Both these parties have an incentive to scrutinise tow fees and repair costs. In the case of multiple vehicle accidents, there are financial interests for tow truck operators and smash repairers to sign-up the not-at-fault driver for vehicle repair, as repairs can commence without oversight. Chapter 4 discusses this issue in detail.

³⁰ See clause 19(a) of Victoria Government Gazette 2012, *Declaration of the self-management area of Geelong*, no. S 326, 28 September.

In the controlled area, the allocation scheme is centrally administered. It has been established and is administered by VicRoads. VicRoads has contracted the RACV to be the allocation body — the RACV receives requests for accident tows and allocates tows to licensed accident towing operators. The establishment of the self-management area required the appointment of an allocation body (amongst other things). A taxi company (the Geelong Taxi Network) performs the task of the allocation body. The Geelong Taxi Network is a 50:50 joint venture between Silver Top and Geelong Radio Cabs.

CONTROLLED AREA CLEARANCE TIMES

In our last review of controlled area fees (completed in 2013), we sought to consider accident response and clearance times.³¹ Although legal requirements exist for operators to provide response time data, this is not collected by VicRoads or the controlled area allocation body.

We have also found inaccuracies in clearance time data. Recording of clearance times is dependent on the tow truck driver contacting the allocation body to ‘close’ the allocation. However, the time when drivers contact the allocation body is inconsistent. For example, some drivers close the allocation when the vehicle is loaded, others when the driver returns to the depot, while some allocations have remained ‘open’ for weeks.³² To control for this, we have assumed a clearance time of 120 minutes for all allocations with a clearance time of 120 or more minutes. This has no effect on the percentage of accidents cleared within a given time period, but it does have the effect of reducing significantly the average clearance time (table 2.12).

The most recent data for 2014 shows improvements in clearance times, with clearances within 59 minutes increasing to 47 per cent of all accident tows. In addition the average clearance time is at its lowest level since 2009.³³

³¹ Response time is calculated as the time between the operator receiving an accident allocation and the operator arriving at the accident scene. Clearance time is calculated as the time between the operator receiving an accident allocation and the operator clearing (departing) the accident scene.

³² See ESC 2013, *Periodic review of accident towing and storage fees*, Final Report, July 2013, pp. 15-16.

³³ Note, if we had not capped clearance times at 120 minutes, average clearance times for each year from 2009 to 2013 would have been over 205 minutes, and 180 minutes in 2014.

TABLE 2.12 CONTROLLED AREA CLEARANCE TIMES

	2009	2010	2011	2012	2013	2014
0 – 59 mins	45.6%	44.1%	43.2%	43.2%	45.3%	47.0%
60 – 74 mins	16.8%	16.5%	16.6%	16.5%	17.2%	17.4%
75 – 89 mins	9.9%	9.9%	10.1%	10.4%	10.4%	10.5%
90 – 104 mins	5.9%	5.9%	6.3%	6.3%	6.3%	6.1%
105 – 119 mins	3.7%	3.8%	3.8%	3.9%	3.6%	3.7%
120+ mins	18.1%	19.8%	20.0%	19.7%	17.2%	15.2%
Average	71 mins	73 mins	73 mins	73 mins	71 mins	70 mins

Data source: VicRoads / Controlled area allocation body and Commission adjustments.

Notwithstanding concerns about the quality of the data, the clearance time data appears to suggest that a significant proportion of accident scenes are cleared within an hour. The high proportion of tows taking over two hours to clear probably indicates the unreliability of that part of the data.

SELF-MANAGEMENT AREA RESPONSE AND CLEARANCE TIMES

In the self-management area there is information on response and clearance times for 2014 (table 2.13). The self-management allocation manager is confident that the response time information is reasonably accurate. While noting that the recording of clearance times can suffer from similar shortcomings experienced in the controlled area, the manager states that the Geelong Taxi Network (the allocation body) routinely contacts the allocated tow truck operator if an accident tow has not been cleared after two hours. This process improves the accuracy of the self-management data compared to the controlled area.

Analysis of the self-management area response and clearance time data indicates strong performance relative to the 30 minute response time target. In 2014, 87.4 per cent of accident allocations were responded to within 30 minutes. Ninety-nine per cent of allocations were responded to within 59 minutes. Similarly, 2.3 and 47.5 per cent of accidents were cleared within 30 minutes and 59 minutes respectively. In the controlled area 47 per cent of accidents were cleared within an hour.

TABLE 2.13 RESPONSE AND CLEARANCE TIMES
Self-management area, 2014

	Response	Clearance
0 – 30 mins	87.4%	2.3%
31 – 59 mins	12.0%	45.2%
60 – 74 mins	0.2%	26.7%
75 – 89 mins	0.2%	13.6%
90 – 104 mins	0.1%	5.9%
105 – 119 mins	0.0%	2.6%
120+ mins	0.2%	3.6%
Average	22 mins	72 mins

Data source: Commission analysis of self-management area allocation body daily allocation sheets.

Overall for 2014, the average response time in the self-management area was 22 minutes and the average clearance time was 72 minutes (for the controlled area the (adjusted) average clearance time was 70 minutes). The similarity between the controlled area adjusted clearance time and self-management area clearance time is worth noting. Given the practices of the self-management area allocation body in measuring clearance times, its figures are likely to be reasonably accurate.

Quick response and clearance times limit the impact of accidents on other road users. Based on the available data, the existing allocation schemes perform well. They are making a contribution to efficient outcomes. However, they can be improved. This is discussed in chapter 3.

2.5.3 COMPLAINTS

Another source of information regarding service quality is the number and nature of complaints regarding accident towing services.

VicRoads, as industry regulator, handles complaints received about accident towing operators. Complaints can come from members of the public, insurers and industry participants (e.g. drivers and operators). Between 2011 and 2014, VicRoads received 80 to 108 complaints each year. This is a low rate of complaints given the number of accident tows performed each year (e.g. around 45,000 in the controlled area).

The complaints received by VicRoads can relate to all aspects of the legislation. VicRoads' officers indicate that the most common complaints relate to allegations of:

- refusing to tow to requested location
- overcharging (e.g. claiming unwarranted additional kilometres or charging salvage when not required)
- failing to release the accident-damaged vehicle (e.g. to an insurer's tow operator)
- failing to allow access to vehicles at depot (e.g. for vehicle owners to obtain personal items)
- false documents (e.g. drivers operating without accreditation)
- operators performing an accident tow without an allocation and double towing (i.e. towing two vehicles on the one tow truck)
- operators not operating their tow truck from their specified depot, and
- operators using unlicensed tow trucks.

2.6 OTHER MARKETS

The broader market context influences market structure, the operation of towing businesses and sources of revenue for accident towing. This section discusses the market dynamics of three industries that are closely related to accident towing, namely: trade towing, smash repair and motor vehicle insurance.

2.6.1 TRADE TOWING

One market providing similar services to accident towing is trade towing. Trade towing was deregulated in Victoria in 2007.³⁴

Trade towing is all other towing apart from the towing of an accident-damaged vehicle from the accident scene to the location requested by the driver involved in the accident.

³⁴ Pallas, T (Minister for Roads and Ports) 2007, Second reading, Accident towing services bill, 19 April, p.1153.

There are two key differences between accident towing and trade towing:

- Trade towing is less urgent — because accidents are more likely to impede traffic, there is greater urgency in performing accident tows. Trade towing is less time dependent. Even breakdown towing may be less time dependent because the vehicle can usually be pushed off the road.
- Trade towing is competitive — because trade towing is less urgent, consumers can shop around to find the best deal. In this way there is more opportunity for competition within trade towing.

Economies of scope

Many accident towing businesses also provide trade towing. This is because a tow truck used for accident towing can also be used for trade towing. By providing both towing services, operators can more efficiently utilise their tow trucks, taking advantage of economies of scope — the costs of purchasing the tow truck and other business costs can be recouped through both accident and trade towing.

Commission staff have met with operators in the controlled, self-management and unregulated areas, as well as VicRoads and the Victorian Automobile Chamber of Commerce (VACC) to gain an understanding of the extent to which accident towing operators also undertake trade towing. These discussions indicate that the majority of accident towing businesses also do trade towing.

We have also met with NSW operators and the Motor Traders' Association of NSW (the NSW equivalent of the VACC) and found that, like in Victoria, it is common for NSW towing operators to perform both accident and trade towing.

2.6.2 SMASH REPAIR

VicRoads, as well as the VACC and operators, indicate that the majority of accident towing operators also own a smash repair business, and that those that do not are typically affiliated with smash repairers through 'drop fees' (commissions for bringing in smash repair work).

Integration between the two industries provides for cost sharing opportunities, particularly if businesses share facilities or assets. For example, there may be an ability

to share costs such as rent and other property-related expenses in relation to depots as well as tow truck purchase and finance, maintenance and repair, and cleaning costs (where a smash repairer also offers trade towing).

This integration provides accident towing licence holders with additional revenue, either:

- directly, via common ownership of smash repair and accident towing businesses, or
- indirectly, via 'drop fees' made to accident towing operators in exchange for directing damaged vehicles to their affiliated smash repairers.

IAG suggests that while accident towing is the transportation of a damaged vehicle from the scene of an accident to another location, "*in reality, it is the allocation of valuable smash repair work rather than towing*".³⁵ This view has been supported by tow truck operators in discussions with Commission staff, who have indicated that the value of owning an accident towing licence is largely in the smash repair work that it brings in (rather than the accident towing work itself).

Marketing function of accident towing

Smash repair businesses use accident towing as a source for smash repair work. Allocation schemes in the controlled and self-management areas provide accident towing operators with the exclusive right to attend the accident scene, and access to the vehicle owner. As discussed in section 2.4.3, tow truck drivers are often the first point of contact for accident victims following an accident. This allows accident towing operators to promote their own or affiliated smash repair business.

This potential "first option" over smash repair work provides a strong financial interest for smash repairers to also undertake accident towing or to make financial arrangements with accident towing businesses.

Accident towing performs what the VACC has described as a 'marketing function' for smash repair businesses. While touting at the accident scene and before delivery of a vehicle to the location listed on the authority to tow is prohibited (section 147 of the

³⁵ IAG submission, 28 November 2014, p. 5.

Act), accident towing operators are not prohibited from providing advice or information, or responding to queries from accident victims about smash repairs.

An accident towing operator is also permitted to tout for smash repair business once the vehicle is delivered to their depot (which may be co-located with a smash repair business owned by the operator). By towing the vehicle to their depot, the operator has possession of the vehicle and continues to have access to the vehicle owner to tout for smash repair work.

Stakeholders submit that toutting by some operators continues to occur at the accident scene. Insurers submit that toutting remains a widespread practice, stating that this is linked to accident towing licence values being higher than what towing revenues would justify. In its submission to the issues paper, the Insurance Council of Australia states:

Although toutting business at the scene of an accident is prohibited, this is difficult to enforce in practice and toutting remains a common method of repairers capturing business – as demonstrated by the high resale value of towing licences.³⁶

Suncorp states a similar view:

[The value of a tow truck licence] is well above the earnings potential associated with one tow truck licence, and we consider is reflective of the practice of capturing not-at-fault consumers to bolster repair business profits or commissions. Although these practices are already prohibited by regulation, enforcement is challenging to implement at the scene of an accident.³⁷

IAG also states that toutting for smash repair work on behalf of smash repairers “remains a significant problem”.³⁸

³⁶ Insurance Council of Australia submission, 28 November 2014, p. 2.

³⁷ Suncorp submission, 28 November 2014, p. 4.

³⁸ IAG submission, 28 November 2014, p. 7.

The VACC agrees that most accident tow truck operators also operate a smash repair business and that smash repairs “*would, in most cases, provide the greatest turnover for the business*”.³⁹

The financial interests for accident towing operators to sign up drivers for repair work are particularly strong in relation to a not-at-fault driver’s vehicle. The consequences for these drivers are discussed in chapter 4.

Decline in smash repair revenues

The latest report by IBISWorld on the smash repair industry indicates a decline in industry revenue due to:

- reduced demand for repairs, due to safer new vehicles and more risk-averse drivers reducing the likelihood and severity of road accidents, and
- reduced prices, due to increased market power of motor vehicle insurers and preferred smash repairer arrangements.⁴⁰

As the IBISWorld report notes, the smash repair industry is heavily reliant on vehicle accidents to generate revenue.⁴¹ The declining revenue within the smash repair industry means that competition for smash repair work is intensifying. As the first ‘port of call’ for most drivers following an accident, tow truck operators have a unique opportunity to influence the decisions of drivers or vehicle owners regarding the repair of their vehicles.

2.6.3 INSURANCE

The main purchasers of smash repair work resulting from accidents are insurers, as most vehicle owners make claims to insurers to pay for vehicle repairs.⁴² Insurers account for approximately 77 per cent of smash repair industry revenue.⁴³

³⁹ VACC submission, 3 December 2014, p. 18.

⁴⁰ IBISWorld 2015, *Industry Report:S9412 Motor Vehicle Body, Paint and Interior Repair in Australia*, July, pp. 5 & 7-8.

⁴¹ IBISWorld 2015, *Industry Report:S9412*, July p. 5.

⁴² IBISWorld 2015, *Industry Report:S9412*, July, p. 7.

⁴³ IBISWorld 2015, *Industry Report:S9412*, July, p. 15.

There are over 110 general insurance businesses nationally. However, Australia's (and Victoria's) motor vehicle insurance market is dominated by three major insurance groups: IAG, Suncorp and Allianz. These groups market their insurance products through a variety of brands, to offer products and brands that suit the characteristics of different types of motorists.

Preferred smash repairer schemes

As the main purchasers of accident towing and smash repair services, insurers have incentives to manage accident towing and smash repair fees to reasonable levels. Given the market dominance of the three major insurers, they are able to apply pressure on the smash repair industry to reduce costs, usually through preferred smash repairer schemes.

Under these schemes, the insured person is restricted in their ability to choose their repairer, but rather has to have their vehicle repaired by one of their insurance company's preferred repairers. The majority of smash repair work goes to smash repairers that are a part of preferred repairer schemes: approximately 89 per cent of smash repair work from insurers, and 68 per cent of all smash repairs.⁴⁴

These preferred repairer agreements, in conjunction with growing market concentration in the smash repair industry, have reduced the ability for smash repairers to secure smash repair work through accident towing alone.

This may imply that there is increased motivation for operators and smash repairers to secure potential smash repair work (outside of these preferred repairer arrangements) through means such as touting. It is in this area of smash repair work, particularly in relation to the vehicles of not-at-fault drivers, that consumer protection concerns particularly arise. This is further discussed in chapter 4.

Implications for accident towing outside of the controlled area

The VACC submits that insurers are able to keep a check on accident towing fees outside of the controlled area due to links between accident towing and smash repair:

⁴⁴ IBISWorld 2015, *Industry Report:S9412*, July, p. 15.

Insurance companies are able to keep a check on accident towing fees as the smash repair division of the business would not jeopardise its smash repair revenue by charging unreasonable or exorbitant accident towing fees.⁴⁵

However, the accident towing fee information we have considered suggests otherwise — insurers appear ineffective at preventing high accident towing fees.

Possible explanations could include:

- given the relatively small number of accidents outside of the controlled area and the large geographic area of the combined self-management and unregulated areas, it may not be cost effective for insurers to negotiate contracts with specific accident towing operators
- in regions where there is limited competition between operators, there may be few incentives for operators to enter into contracts with an insurer, and
- avenues for insurers to challenge high towing fees may be ineffective or too costly. For example, complaints to VicRoads may not be investigated or the time required to investigate may be too long. Alternatively, challenging fees in the courts may be costly compared to any savings achieved through a successful challenge, and similarly may take too long.

2.7 OBSERVATIONS AND IMPLICATIONS FOR ANALYSIS

This chapter has explored the nature of accident towing markets and the links between accident towing and other markets. A number of important observations arise from this analysis and discussion.

- *Static markets ruled by regulation*: key features of accident towing markets are static and change is limited. They reflect the regulations that apply to them. For example, no new licences have been issued for over 30 years and operators cannot move licences into either the controlled or self-management areas. Further, the form of regulation applying to the industry has not changed for decades.

⁴⁵ VACC submission, 3 December 2014, p. 5.

The region with the largest licence holding in the unregulated area coincides with the region where accident towing fees are highest. In this case the operator has significant discretion to set high fees.

- *Accident towing is closely linked to other markets*: an accident towing licence allows an operator to perform an accident tow. However, it is also a link into other markets. One of these other markets is smash repair.

To test the importance of smash repair to the accident towing market, we estimate licence values on the basis that they reflect accident towing activity only. Actual traded values are in excess of our estimates. In the case of the controlled area, traded values are significantly above our estimates. This difference could indicate that accident towing licences reflect profits arising from links into smash repair work and the ability to charge unregulated fees. We have heard from many stakeholders that the accident towing market is “all about smash repair”.

- *The self-management area*: the area includes an allocation scheme, but fees are not regulated. The driver involved in the accident has no choice over their towing operator and therefore no power to negotiate the fee. That is, the fee they pay depends on which operator is allocated the tow.

Also, a high proportion of accident towing licences are unattached in the area (18 out of 25 licences). Effectively operators provide accident towing services in the area with significantly fewer trucks than licences. The licences simply act as a way to distribute tows between licence holders.

These observations, consistent with the terms of reference for this review, influence the analysis we have undertaken and which we present in the following chapters. There are four key issues analysed in the remainder of this report: accident allocations, improving customer outcomes, regulation of fees and the setting of area boundaries.

Accident allocations

Allocation schemes operate in both the controlled and self-management areas. These schemes directly influence the structure and operation of accident towing markets. For example, operators can only perform an accident tow if they receive an allocation. In the controlled area, the allocation scheme separates the area into allocation zones, further limiting where towing operators can perform a tow.

We consider the operation of allocation schemes in three chapters:

- Chapter 3: the controlled area scheme is assessed and options to improve allocations are analysed. Whether an allocation scheme (or schemes) should operate in the unregulated area is also analysed.
- Chapter 7: the self-management area scheme is assessed. The options in chapter 3 are also considered against the self-management area scheme.
- Chapter 8: we consider whether an accident allocation scheme should be introduced for heavy vehicle accidents.

Improving consumer outcomes

Drivers involved in an accident may be stressed and are unlikely to have much knowledge about the accident towing industry. Fee regulation (in the controlled area) and allocation schemes (in the controlled and self-management areas) provide some protections to these drivers.

There are also protections that recognise the links between accident towing markets and the smash repair market. In this case, regulatory interventions attempt to address potential implications from the commercial abutment of a regulated industry (accident towing) with an unregulated industry (smash repair). For example, touting for smash repair work is prohibited at the accident scene and before the accident-damaged vehicle has been delivered to the location requested by the driver involved in the accident.

However, it has been put to us by some stakeholders that links between accident towing and smash repair are leading to negative consumer outcomes. For example, these stakeholders submit that touting is a problem and high smash repair costs are being charged for repair of vehicles belonging to not-at-fault drivers.

Chapter 4 considers whether the existing protections in relation to links with smash repair are sufficient. That is, are they appropriate and effective given the financial interests that arise with links between accident towing operators and smash repair. We consider ways of improving consumer outcomes.

Regulation of accident towing fees

The operation and outcomes within accident towing markets are heavily influenced by government regulations. In regard to fees, regular vehicle accident towing fees are only set in the controlled area. Fees for regular vehicle accident tows in the self-management and unregulated areas, and heavy vehicle accident tows across all of Victoria, are unregulated — operators are able to set their own fees.

We consider the regulation of accident towing fees in three chapters:

- Chapter 5: we analyse arguments for the regulation of fees and present fee information for the controlled, self-management and unregulated areas. Options for the regulation of fees outside of the controlled area are considered.
- Chapter 7: the level of fees and fee regulation for the self-management area are presented. This discussion draws on analysis in chapter 5. Since an allocation scheme operates in the self-management area, giving accident towing operators an exclusive right to perform the accident tow and related services (e.g. salvage and storage), the question of fee regulation in this area requires particular attention.
- Chapter 8: the regulation of fees for heavy vehicle accident tows is considered.

Area boundaries

The regulation of regular vehicle accident towing has created separate regulatory areas in Victoria: the controlled area, the self-management area and by default, the unregulated area. These artificial boundaries limit the areas where licensed operators can perform an accident tow and have a direct impact on the structure and operation of accident towing markets.

The areas exist to define different regulatory regimes: an allocation scheme and fee setting in the controlled area, and an allocation scheme in the self-management area. We analyse whether the existing boundaries are appropriate and how VicRoads may wish to adjust the boundaries in the future.

- Chapter 6 considers the controlled area boundary and approaches to adjusting the area boundary.

- Chapter 7 considers the self-management area boundary. The discussion in chapter 6 on approaches to adjusting the controlled area boundary is also relevant to the self-management area boundary.

3 ACCIDENT ALLOCATIONS

This chapter considers the allocation of accident tows. Specifically, it assesses the existing allocation scheme in the controlled area and whether it should continue. It also considers options for how the scheme could be improved. Finally, this chapter assesses whether allocation schemes should operate in the unregulated area.

3.1 INTRODUCTION

Allocation schemes currently operate in the controlled and self-management areas, while no allocation scheme operates in the unregulated area. The terms of reference require us to consider “*the basis on which accident towing jobs are allocated in the Melbourne controlled area*” and “*the current form of economic regulation in the self-management area*”. More broadly, the terms of reference require us to consider existing regulation of the industry and alternative arrangements, including:

- whether the allocation scheme should continue to operate in the controlled area, and if so, how it could be improved, and
- whether an allocation scheme(s) should operate in the unregulated area.

The allocation scheme in the self-management area is discussed in chapter 7. Allocation of heavy vehicle accident tows is discussed in chapter 8.

OBJECTIVE OF ALLOCATION SCHEMES

A key objective of accident towing legislation in Victoria is to promote the safe, efficient and timely provision of accident towing services.⁴⁶ Our understanding is that the references to safety, efficiency and timeliness address concerns relating to:

- the cost to motorists from road congestion associated with accidents — the removal of accident-damaged vehicles from accident scenes restores traffic flows, providing benefits to other motorists and the general public, and
- reducing misconduct amongst tow truck drivers and operators rushing to accident scenes to secure jobs.⁴⁷

With these matters in mind, a key objective of allocation schemes can be said to be the orderly and timely clearance of accidents.

3.2 THE CONTROLLED AREA ALLOCATION SCHEME

Prior to the introduction of the allocation scheme in the controlled area, towing operators would compete for accident towing jobs. We were informed by towing operators and VicRoads that, in some instances, this involved some undesirable behaviours including:

- racing to accident scenes (which endangered other road users)
- confrontations with other operators at the accident scene
- aggressive behaviour towards accident victims to get their signature on the authority to tow, and
- payment of “spotter fees” to members of the public or emergency services that passed on information about accident scenes to provide the tow truck operator with an advantage in getting to an accident scene more quickly.

⁴⁶ Section 4(a) of the *Accident Towing Services Act 2007*.

⁴⁷ VicRoads and PwC 2008, *Regulatory Impact Statement: Accident towing services regulations 2008*, October, p. 20.

In response to these behavioural issues, the government introduced an allocation scheme in the Melbourne controlled area.⁴⁸

3.2.1 HOW THE SCHEME WORKS

The controlled area allocation scheme is designed to ensure that the tow truck allocated the accident tow responds within a reasonable time period, which has been assessed by VicRoads as 30 minutes.⁴⁹

To achieve the 30 minute response time, the controlled area is separated into allocation zones (figure 3.1). There are over 40 allocation zones in the controlled area. Each licence is attached to a specific depot, and each depot is situated within an allocation zone. As a result, each licence is restricted to operating within an allocation zone.⁵⁰

When an accident occurs, the controlled area allocation body⁵¹ identifies the allocation zone where the accident has occurred, and allocates the accident tow to the depot in that allocation zone. If there is more than one depot in the allocation zone, the accident tow will be allocated to the depot with fewer allocated accident tows per licence for the current month. Once allocated to a depot, the operator or depot manager at that depot allocates the accident tow to a specific licence.

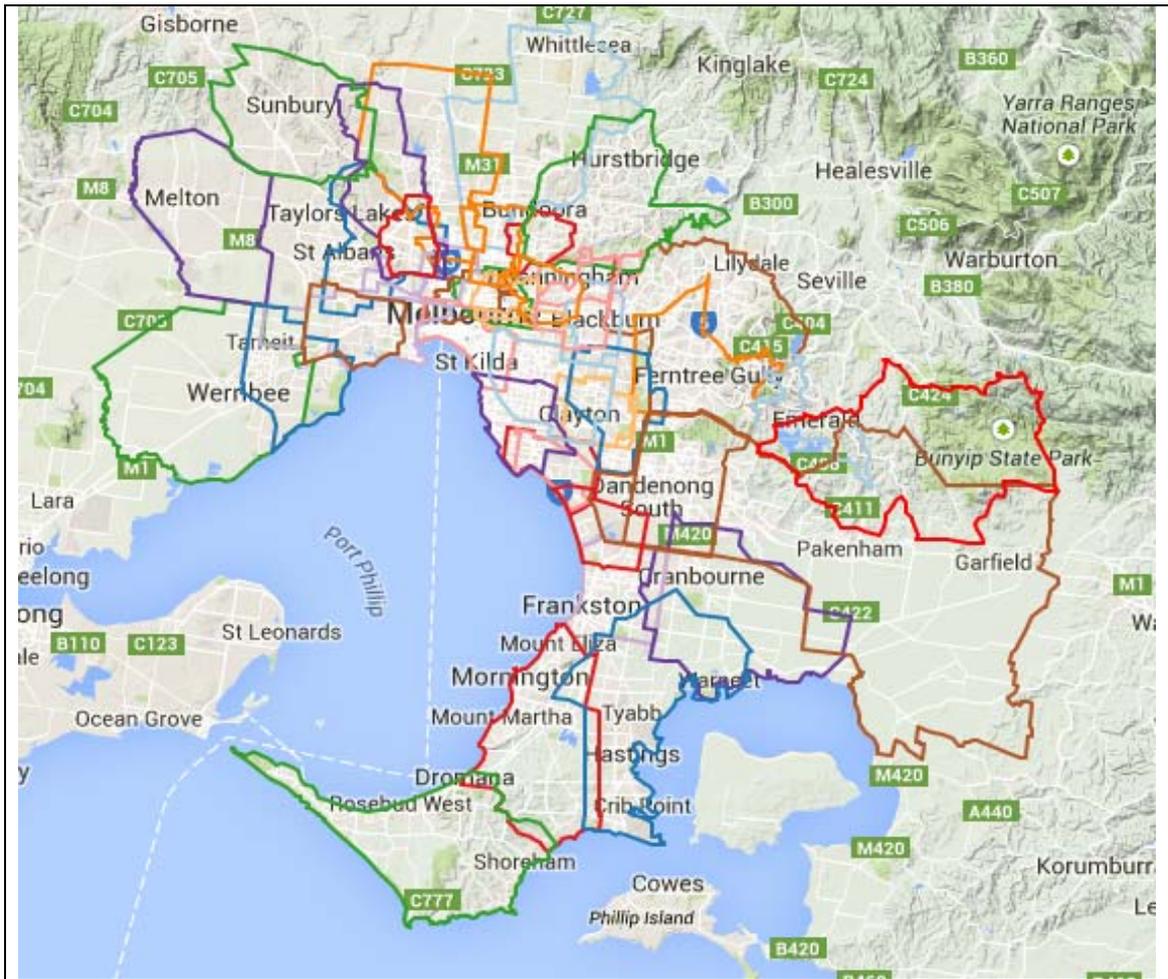
⁴⁸ The legislation, explanatory memorandum and second reading speech are silent as to the purpose of the controlled area allocation scheme. However, there is some reference in parliamentary debates that an allocation scheme ensures that there would be “*equitable distribution of towing allocations where there are competing tow trucks based within a 30-minute attendance time*”. These debates suggest that the allocation scheme was primarily based on protecting drivers of damaged vehicles, who are in a vulnerable state after an accident, from being approached by multiple tow truck drivers who are competing for their business. See www.parliament.vic.gov.au/downloadhansard/pdf/Assembly/Feb-Jun%202007/Assembly%20Dec%202006-Jun%202007%20Weekly%20Book%209.pdf

⁴⁹ Regulation 32(1) of the Accident Towing Services Regulations 2008 specifies the 30 minute response time requirement.

⁵⁰ Note that multiple depots and licences can exist in a single allocation zone. The zones may also overlap.

⁵¹ VicRoads has contracted with the RACV to administer the allocation scheme. That is, the RACV applies the allocation rules established by VicRoads and operates the call centre to allocate accident tows to depots in the controlled area. The RACV is the allocation body for the controlled area.

FIGURE 3.1 THE CONTROLLED AREA ALLOCATION ZONES



Source: VicRoads.

3.2.2 LICENCES AND ALLOCATION ENTITLEMENTS

Stakeholders raise the issue of whether licences include an entitlement to accident tows and whether accident allocations should be shared evenly between licences. The Victorian Automobile Chamber of Commerce (VACC) submits that each licence should receive an equal allocation of accident tows.⁵²

⁵² VACC submission, 3 December 2014, p. 9.

In assessing this issue, we reviewed the legislation and discussed with VicRoads whether an even sharing of accident allocations between licences is an objective or requirement of the controlled area allocation scheme. Box 3.1 sets out the relevant legislation (the Act and its Regulations) that refers to the operation of the controlled area scheme.

BOX 3.1 THE LEGISLATION AND ALLOCATION ENTITLEMENTS

Section 48 of the *Accident Towing Services Act 2007* states:

Each regular tow truck licence issued under this Part entitles the holder of the licence, subject to the regulations, to one entitlement to a place on the road accident scene roster for a controlled area, if the licence has a specified depot in that area.

The Act defines road accident scene roster as:

in relation to a controlled area, means the roster, that is kept by the allocation body for the area, of allocations of tow trucks to do the following—

- (a) to attend road accident scenes in the controlled area;*
- (b) to be used to tow accident damaged motor vehicles, with a gross vehicle mass of less than 4 tonnes, from road accident scenes in the controlled area.*

Further, regulation 31(2) of the *Accident Towing Services Regulations 2008* provides that where a request has been received by the allocation body (VicRoads) to remove a damaged vehicle in the controlled area, the licence holder with a place on the roster who is next entitled to an allocation is contacted and offered the authorisation. If that person refuses or is unable to accept the authorisation, then the authorisation is offered to the person whose place on the roster is next entitled to an allocation.

Source: *Accident Towing Services Act 2007*.

The Act and Regulations provide the following guidance on allocation of accident tows in the controlled area:

1. Each licence gets one entitlement on the allocation roster, and
2. An accident allocation is to be made to the licence holder with a place on the roster who is next entitled to an allocation.

Whether the controlled area allocation scheme requires an even sharing of accident allocations between licences rests on the definition of 'roster'; namely, how the roster (allocation scheme) operates (i.e. how entitlements are determined).

What is a roster?

The Act and Regulations do not define in detail how the allocation roster is to function. The common meaning for roster is "*a list or plan showing turns of duty or leave for individuals or groups in an organisation*" (Oxford Dictionary).

This *could* be taken to mean allocations are to be shared evenly across all licences in the controlled area but it could have other meanings. It may be intentional that how the roster will function is not defined in the Act or Regulations, with the aim of providing flexibility to the industry regulator to design (and adjust over time) an allocation scheme that is suitable to the characteristics of the controlled area.

The Act and Regulations do not define the form of the controlled area allocation scheme. Notwithstanding section 48 of the Act and regulation 31(2), the industry regulator has some flexibility in designing the scheme.

The existing scheme separates the controlled area into allocation zones. The effect of this is that a roster operates within each allocation zone. Where a zone has a single depot and does not overlap with other zones, the roster (allocations) within that zone can operate as a single queue, with even sharing between licences. For zones with multiple depots or which overlap other zones, the roster accounts for the number of tows previously received by each depot by allocating the accident tow to the depot next entitled to an allocation (as per regulation 31(2)) on the basis that it has had fewer allocated tows per licence during the current month.

So while the existing scheme does not result in all licences receiving an even share of accident tows, the allocation mechanism is nonetheless broadly consistent with the legislation (i.e. section 48 of the Act and regulation 31(2)).

Who should be receiving allocations?

The legislation states that allocations are made to licence holders. This is consistent with each licence having an entitlement.

However, the scheme allocates accidents not to a specific licence or licence holder, but to a depot. It is then up to the operator or depot manager to assign the tow to a specific licence. While there may be sound reasons to allocate tows to depots (e.g. allows the operator to assign the tow to an available licence), this appears to be inconsistent with the legislation.

VicRoads' approach to entitlements

Commission staff have met with VicRoads officers to discuss the operation of the controlled area allocation scheme and the extent to which allocations are intended to be evenly shared between licences. VicRoads' view is that:

- legislation does not explicitly provide for an even sharing of allocations between licences, and
- even sharing is an informal objective applied by VicRoads; however, it is not the expectation that all licences receive the same number of allocated tows. For example, it is not expected that a licence in inner Melbourne would receive the same number of tows as a licence close to the limits of the controlled area boundary. Rather, licences in the same allocation zone and neighbouring locations would be expected to receive a similar number of allocations.

Contrary to the position of the VACC, that each licence should receive an equal allocation of accident tows, VicRoads states that operators understand that not all licences across the controlled area are expected to receive the same number of accident allocations. VicRoads officers informed Commission staff that when the allocation scheme was introduced, the then industry regulator (the Victorian Taxi and Tow Truck Directorate) discussed with operators the extent to which allocations would be even between licences. The outcome of these discussions was that licences in neighbouring parts of the controlled area may be expected to receive a similar number

of accident allocations, but licences in different parts may receive differing numbers of allocated tows.

THE COMMISSION'S VIEW

We do not believe that an even sharing of accident allocations should be an objective of the allocation scheme, as even sharing would not be consistent with the objective of the Act (section 4(a)) to promote the safe, efficient and timely provision of accident towing services. That is, the scheme's purpose is to ensure accidents are cleared efficiently, while avoiding some undesirable behaviour that may be associated with competition for accident tows.

3.3 COMMISSION ANALYSIS — SHOULD THE CONTROLLED AREA ALLOCATION SCHEME CONTINUE?

To assess whether the controlled area allocation scheme should continue, we consider whether it meets the key objective of orderly and timely clearance of accidents. We consider accident response and clearance times under the allocation scheme, and its advantages and disadvantages. As part of this analysis we consider the efficiency of the scheme and take account of stakeholder views.

3.3.1 STAKEHOLDER COMMENTS

Most submitters consider that existing allocation schemes should continue. The Insurance Council of Australia, IAG and Suncorp each state that the schemes have removed undesirable behaviour associated with multiple operators arriving at an accident scene. Suncorp maintains that:

*The allocation system has been highly effective at managing tow truck attendance, reducing behavioural issues and improving accident clearance times.*⁵³

⁵³ Suncorp submission, 28 November 2014, p. 3.

Similarly, the VACC's view is that:

The accident allocation schemes would appear to have achieved their objective of reducing smash chasing and the associated problems to accident victims, tow truck drivers and the general motoring public.⁵⁴

3.3.2 ACCIDENT RESPONSE AND CLEARANCE TIMES

The primary service standard applying to accident towing operators in the controlled area is a response target of 30 minutes to arrive at the accident scene.⁵⁵

Clause 32(6) of the Regulations requires the tow truck driver, as soon as is practicable, to notify the allocation body when they arrive at the accident. VicRoads has not enforced this requirement, and does not collect data on response times.

VicRoads, however, does collect data on clearance times.⁵⁶ The available data show that a significant proportion of accidents are cleared within an hour (see chapter 2, section 2.5.2) and the average clearance time is 70 minutes. This is similar to the average clearance time in the self-management area of 72 minutes. Coupled with the views of stakeholders, this suggests that accidents are being cleared in an orderly and timely manner and the allocation scheme is meeting its key objective.

3.3.3 ADVANTAGES AND DISADVANTAGES OF THE CONTROLLED AREA ALLOCATION SCHEME

Advantages

There are a range of advantages associated with the allocation scheme. These include:

- *Orderly and timely clearance of accidents* — the allocation scheme has rules for allocating tows and requirements for reasonable response times, which encourages tow truck operators to respond to and clear an accident in a timely manner. Further,

⁵⁴ VACC submission, 3 December 2014, p. 9.

⁵⁵ Clause 32(1) of the *Accident Towing Regulations 2008*.

⁵⁶ The time from acceptance of an accident allocation to clearing of the accident scene.

the allocation scheme prevents multiple tow truck operators attending the accident scene. While previously tow truck drivers would speed to accident scenes, time would be lost clearing the scene while operators determined who would perform the tow.

- *Reduced congestion for road users* — accidents can lead to road congestion, depending on where and when they occur. This can be costly and inconvenient, particularly during peak hours on major roads. Congestion can also reduce the ability of emergency service workers to treat injured persons at an accident scene. By improving response and clearance times, the allocation scheme can restore traffic flows and reduce the impact of congestion.
- *Reduced behavioural issues at an accident scene* — the allocation scheme requires that a tow truck receives an allocation before attending an accident scene. This reduces behavioural issues associated with multiple tow trucks attending an accident scene including, but not limited to, tow trucks speeding to accidents (safety issues), violence and misconduct between operators, and harassment and intimidation of accident victims.
- *Reduced search costs* — the allocation scheme ensures that drivers involved in an accident do not have to arrange the tow of their accident-damaged vehicle, as this is centrally organised by the allocation body. This is important given the driver involved in the accident is in a stressful, unfamiliar situation and is unlikely to be able to make a rational, informed choice.
- *Enhanced efficiency and productivity* — the allocation scheme ensures only one tow truck attends an accident scene for each vehicle requiring a tow, and therefore eliminates dead running costs associated with multiple tow trucks attending an accident scene but not performing an accident tow.
- *Improved collection of accident statistics* — the allocation scheme provides an opportunity to collect and collate accident statistics (e.g. number of accidents, location of accidents and time of accidents). Accident statistics could be useful for government agencies to inform road planning, road user education campaigns and police activities to reduce road accidents.

Disadvantages

There are also disadvantages associated with the scheme. These include:

- *Administration costs* — VicRoads incurs costs in administering the allocation scheme. For example, VicRoads reviews allocation zone boundaries and requests by operators to move licences and depots within the controlled area. VicRoads also funds the day-to-day operational costs of the scheme, which are undertaken by the RACV. The RACV operates a call centre to allocate accident tows under rules developed by VicRoads.
- *Restrictions on competition* — the allocation scheme prevents operators from competing for towing jobs, removing their incentive to compete on service quality (operators cannot compete on price as towing and storage fees are regulated in the controlled area). This means that consumer choice cannot influence service quality and there will be administrative and compliance costs associated with regulation that aims to ensure that a minimum quality of service is provided at a regulated price.
- *Impacts on operator efficiency and performance* — the specific rules of the allocation scheme can impact operator efficiency; for example, by limiting operators to particular allocation zones. Also, operators must maintain separate depots if they have licences in different allocation zones. Further, there is minimal incentive for operators to improve their performance (e.g. improve response times, provide better customer service) as better performance does not increase their accident allocations. The result is that the scheme locks in the current structure of the industry, protects poor performers and overall industry costs might be higher than they need to be.

3.4 DRAFT RECOMMENDATION

In considering whether an allocation scheme should continue in the controlled area we have had regard to stakeholder views, assessed the advantages and disadvantages of the scheme and considered whether the scheme is meeting its objectives.

We have found that there is strong support among the accident towing industry and users of accident towing services for the continuation of the allocation scheme in the controlled area.

While we do not know what would have happened without an allocation scheme, our review of the available accident data indicates that the controlled area allocation scheme has limited the impacts of congestion on road users, with the majority of accidents being cleared in an orderly and timely manner. Importantly, the controlled area allocation scheme has been successful at addressing behavioural issues associated with multiple tow operators attending an accident scene.

While there are costs associated with the allocation scheme such as ongoing administration costs and restrictions on competition, we have not been made aware of quantitative or other evidence that these costs outweigh the advantages of the allocation scheme.

For these reasons we recommend that the controlled area allocation scheme continue to operate.

Draft recommendation 1: Accident allocations — the controlled area scheme

The accident allocation scheme should continue to operate in the controlled area.

The next section considers whether there is scope to improve the net benefits of the allocation scheme (for consumers and the community more broadly) and promote more competition in the market.

3.5 COMMISSION ANALYSIS — IMPROVING THE CONTROLLED AREA ALLOCATION SCHEME

Our analysis focuses on alternatives which increase the efficiency of allocations (i.e. alternatives which promote tow trucks attending accident scenes as quickly as possible and accidents being cleared in an orderly and timely manner). We look for alternatives

which maximise the net benefits for consumers and the community more broadly, and compare these alternatives to the existing allocation scheme.

3.5.1 STAKEHOLDER COMMENTS

Our issues paper asked for submissions how the existing allocations schemes could be improved. Some operators suggest allocations should go to the closest depot, rather than the current practice of attempting to share tows evenly amongst operators.

Squires Towing points out that:

In our area we are rarely allocated accident tows as close as 3 kilometres away in Devon Meadows. Instead a depot eighteen kilometres away in Somerville is sent. This results in longer response times and increased costs for excess kilometres. The system of allocating tows should take into consideration the proximity of the towing depots to the accident scenes instead of the current view of sharing the amount of accident tows between depots regardless of the distance the tow truck needs to travel.⁵⁷

Another operator also submits allocations should be based on depot proximity to the accident.⁵⁸

The VACC is concerned that licence holders in the controlled area are not receiving an even share of accident allocations:

Data analysis of allocations reveals inequitable distribution of allocations relative to licence entitlements. Each licence is entitled to an allocation of about 107 tow jobs or 8.97 per month. The allocation data analysis reveals that 19 or 36% of 52 licensees in 2012 received allocation jobs below the average allocation... Greater flexibility is required to provide a fair and equitable system that enables allocations that match licence entitlements...⁵⁹

⁵⁷ Squires Towing submission, 26 November 2014, pp. 1-2.

⁵⁸ Anonymous submission, 10 December 2014, p. 1.

⁵⁹ VACC submission, 3 December 2014, p. 9.

As a solution, the VACC suggests that a performance based system could operate to distribute accident allocations evenly between licences. It states that the system could allow operators to do tows outside of their allocation zone as long as they can attend within 30 minutes, or operators could be permitted to tow more than one vehicle at a multiple vehicle accident.

3.5.2 ALTERNATIVE WAYS TO ALLOCATE ACCIDENT TOWS

We consider four alternatives for allocating accident tows. These alternatives include options suggested by operators and a variation of the VACC's suggestion of performance based allocations.

- Proximity — accident tows would be allocated to the depot closest to the accident.
- Performance — this option operates as part of a broader scheme (e.g. performance based allocations operate as part of the existing scheme). Operators meeting performance requirements set by VicRoads would receive additional allocations. This could include tows in other zones if they can still meet the 30 minute response time requirement.
- Insurer preferred operators — this option operates as part of a broader scheme (e.g. insurer preferred allocations operate as part of the existing scheme). Insurers could nominate preferred operators. If a preferred operator could respond within 30 minutes, that operator would perform the accident tow rather than the operator at the top of the queue.
- Competition — competition could be introduced in a number of ways, e.g. (i) on a yearly basis, operators could bid for towing jobs by submitting their fees; or (ii) towing services in set areas could be tendered; or (iii) operators could bid for tows in real time.

Table 3.1 summarises the advantages and disadvantages of these alternatives, while appendix D provides a detailed analysis of the performance, insurer preferred and competition based alternatives. Our preferred option, proximity-based allocations, is discussed in detail in the following section.

The four options have been compared with the existing allocation scheme in the controlled area. Each option looks to promote the objective of orderly and timely

clearance of accidents. However, some options will be more costly to develop, implement and administer over time.

At this stage, we do not recommend competitive bidding (e.g. tendering of set service areas or real time bidding) because the costs of implementing it would exceed the benefits to consumers. In addition, the performance based and insurer preferred allocation schemes would be relatively costly to develop and implement, or would add complexity to the allocation process. Rather, our preferred approach is proximity-based allocations, as it is easy to implement and would improve the efficiency (timeliness) of accident allocations. We discuss how proximity-based allocations would work in section 3.5.3.

TABLE 3.1 ALTERNATIVE WAYS TO ALLOCATE ACCIDENT TOWS
Advantages and disadvantages

	Existing queue	Proximity	Performance	Insurer preferred	Competition
Advantages	Easily understood. Perceived fairness of even sharing of tows between operators (in reality this is not achieved).	Easy to understand. Simpler than current approach (no allocation zones). Frees VicRoads from admin of allocation zones. Accident victim and community is focus of allocation scheme. Improved response and clearance times. Minimise congestion. Lower tow fee for users. Depots relocate to where needed.	Good operators rewarded. Encourages operators to improve performance.	Good operators rewarded. Encourages operators to improve performance. Could help to address other service quality issues, e.g. demands for cash payments, delays in releasing vehicles.	Auction process can reveal efficient fee level. More efficient business(es) do more tows. Fee certainty. Could replace current fee regulation process.
Disadvantages	Nearest depot may not get tow. Implies on average: - longer response times - longer clearance times - higher congestion - higher tow fees for users. Admin of allocation zones and movement of licences between zones. i.e. in controlled area, queue accompanied by more complex allocation zones. Weak incentives to improve services.	Some areas (with lower number of accidents) underserved if operators relocate depots to areas with higher number of accidents. Transitional costs — depots relocating.	Likely to be complex / harder to understand. Development and admin of performance regime. Creates incentives for operators to misreport (i.e. to meet performance targets). Some 'good' operators could lose tows if nearby operators are better. Nearest depot may not do the tow. Not a short term option. Costs of existing scheme.	More complex for allocation body and operators. Process to inform allocation body of each insurer's preferred operators. Less timely clearance — requires allocation body to be informed of driver's insurer. Costs of existing scheme.	Designing and administering auction / tender process. Identification of auction / tender zones. Smaller operators unable to compete due to lack of scale to service larger area. Development and admin of performance regime.

Note: each of the alternative approaches is explained in more detail in appendix D.

3.5.3 PROXIMITY-BASED ALLOCATIONS

Under proximity-based allocations there would be no allocation zones. Rather an accident tow would be allocated to the depot located nearest to the accident. If the depot could not accept the allocation, the accident tow would be allocated to the next nearest depot. We consider that proximity-based allocations better promote the interests of consumers rather than the existing scheme.

Advantages of proximity-based allocations

Allocating accident tows based on proximity improves the efficiency of allocations compared to the existing allocation scheme, since the nearest depot with a tow truck available for dispatch performs the tow.

Proximity-based allocations also have the following advantages:

- Scheme appropriately focussed — a proximity-based scheme focusses directly on timely provision of towing services to the benefit of the driver involved in an accident and community more generally.
- Simplicity — allocations based on proximity are easy to understand and implement. Allocation zones would no longer be necessary in the controlled area, as accident tows would simply be allocated to the nearest depot.
- Low administration costs — VicRoads resources currently used in setting and amending allocation zone boundaries, and in assessing applications for transfer of licences between depots in different allocation zones, could be used for other responsibilities.
- Transparency — the existing basis for adjusting allocation zones is not clear, with consideration of changes often in response to operator complaints about the number of allocations they are receiving. Proximity-based allocations remove the need for allocation zones in the controlled area.
- Lower operator costs and lower fees — by decreasing the distance travelled to attend accidents, operator costs will be reduced (e.g. lower fuel costs, less wear and tear on tow trucks). Lower tow distances can also reduce fees for users of accident towing services.

Disadvantages of proximity-based allocations

There are two key disadvantages that may arise under proximity-based allocations. First, some operators may choose to relocate their depots closer to areas with more accidents (e.g. Melbourne CBD and inner suburbs), resulting in longer response times in outer suburbs. This may increase clearance times and road congestion costs in these areas.⁶⁰

Second, there may be some other transitional costs associated with operators who relocate their depots. These transitional costs include: finding a new depot location, undertaking any works to make the new location suitable for their purposes, gaining approvals from VicRoads for the new depot and transfer of licences, and undertaking the transfer of equipment to the new depot.

Transitional issues are discussed in the next section.

3.5.4 TRANSITIONAL ISSUES

Implementing proximity-based allocations would involve some transitional costs, including development and implementation of the scheme, and costs associated with depot relocation.

Development and implementation

Introducing a proximity-based scheme would require the controlled area allocation body to amend the current computer system for allocating accident tows. Therefore, costs would be incurred in amending the system, testing and validating the system, and training staff. Given the simplicity of proximity-based allocations, these costs are not expected to be high.

VicRoads would also have to communicate to tow truck operators and other industry participants how the proximity-based allocation scheme operates.

⁶⁰ Response time is calculated as the time between the operator receiving an accident allocation and the operator arriving at the accident scene. Clearance time is calculated as the time between the operator receiving an accident allocation and the operator clearing (departing) the accident scene. It follows that an allocation scheme that improves response time will also improve overall clearance time (holding all else constant).

Required regulatory changes

Proximity-based allocations would produce improvements by allocating accident tows to the nearest depot.

However, over time there will be changes in the location of population centres and traffic flows in the controlled area. This can alter the dispersion of accidents within the area. Response times would be minimised if operators can react to these changes by moving their depots to more appropriate locations. Related to this, the requirement for an operator to assign a licence to a specific depot should be removed, as this would provide greater flexibility for operators to move their licence to more appropriate locations.

For the self-management and unregulated areas, it would also be reasonable to remove the requirement for an operator to assign a licence to a specific depot. This would more freely allow operators to structure their business and locate their licences in locations where they believe accident towing services are most required. That is, the market would more freely determine the location of licences.

These changes are consistent with a progressive move to proximity-based allocations.

3.5.5 IMPACT OF A PROXIMITY SCHEME ON ACCIDENT ALLOCATIONS

The controlled area allocation scheme separates the area into allocation zones. By setting allocation zones to achieve 30 minute response times, the scheme to some degree allocates tows based on proximity. However, given the location of depots and shape of allocation zones, the existing scheme may not allocate an accident tow to the nearest depot.

We have assessed how well the existing scheme performs relative to a proximity-based scheme which allocates tows to the nearest depot.

For 2014, it is possible to compare the actual number of tows performed by each depot to the number of tows based on proximity-based allocations. The number of 'saved' kilometres can also be calculated.

The analysis is 'static' in that it is based on the current location of depots. It also assumes that the nearest depot has a tow truck available for dispatch when an accident allocation is received. Further, the analysis is *based on the location of accidents in 2014*. To the extent that the locations of accidents change, the results of the proximity analysis will also change. So the analysis can only be taken as showing the impact of proximity-based allocations for 2014 and current depot locations. It cannot be taken to show the impact for future years.

RESULTS — PROXIMITY-BASED ALLOCATIONS

The proximity analysis is presented in table 3.2. As well as presenting the total number of depots that experience a given change in allocations (e.g. ± 10 per cent, ± 11 to 20 per cent, etc), we present the number of depots that experience an increase (+) or decrease (-) in allocations.

TABLE 3.2 CHANGE IN ALLOCATIONS — PROXIMITY-BASED SCHEME
Impact on controlled area depots, 2014

	No. of depots (total)	No. of depots (+)	No. of depots (-)
$\pm 10\%$	10	4	6
$\pm 11 - 20\%$	5	2	3
$\pm 21 - 30\%$	2	2	0
$\pm 31 - 40\%$	7	2	5
$\pm 41 - 50\%$	5	1	4
$\pm 51 - 100\%$	8	4	4
$\pm 101 - 150\%$	6	6	0
$\pm 151\%$	3	3	0
Total	46	24	22

A move to proximity-based allocations will have redistributive impacts on operators, and in some cases these impacts are significant. Overall, 52 per cent of depots would have received a higher number of accident allocations under a proximity-based allocation scheme compared to the existing allocation scheme, while the remaining 48 per cent of depots would have received fewer accident allocations.

Around two-thirds of depots experience a change in allocations of less than 50 per cent. Of those depots that receive fewer allocations, 41 per cent experience a reduction of less than 20 per cent, and only four depots experience a reduction of greater than 50 per cent.

For those depots that would have received a higher number of allocations, the increase in allocations ranges from 9 to 1628. Similarly, for those depots that would have received a lower number of allocations, the decrease in allocations ranges from 5 to 2480.

For some of the depots, the decrease in allocations and accident towing revenue is large. The 2480 fewer allocations received by one depot translates to reduced accident towing revenue of \$1.1 million (or a 79 per cent reduction), at an average towing fee of \$431.⁶¹ Of those depots that would receive fewer allocations, the median reduction is 365 accident tows. This translates to reduced accident towing revenue of \$157,000. If accident towing also provides access to smash repair work, the impact will be greater.

Conversely, some depots would have gained allocations and accident towing revenue. One depot would have received an additional 1628 allocations, which translates to \$702,000. The median increase in allocations would have been 321, which translates to \$138,000.

The change to a proximity-based allocation scheme has a significant impact on the distance of tows. The analysis indicates that total distance of accident tow falls from 801,786 kilometres to 481,145 kilometres, while the average tow distance falls from 18 kilometres to 11 kilometres. This is a fall of 40 per cent and translates into improvements in response and clearance times, and reduced congestion for other road users. Further, operators would experience lower costs (e.g. fuel, wear and tear on tow truck) and fees would be reduced for accident victims. In addition, some operators may require fewer tow trucks to perform their allocated accident tows.

⁶¹ This depot has 30 licences, so on average each licence is receiving 82.7 fewer accident allocations per year.

THE ALLOCATION ZONES AND PROXIMITY

The results of the proximity analysis indicate that the existing allocation scheme and its design of allocation zones is a second-best alternative to proximity-based allocations. If the existing scheme were an efficient proxy, there would not be material changes to accident allocations under a proximity-based scheme.

This indicates that VicRoads could be doing more in ensuring the regulations affecting accident towing are efficient. It could be more systematically analysing towing data to improve the allocation scheme. Such a periodic process would, over time, move the outcomes of the existing allocation scheme to those of proximity-based allocations.

3.6 DRAFT RECOMMENDATION

Overall, we conclude that proximity-based allocations would improve the efficiency (timeliness) of accident allocations. Further, its implementation would not impede any future move to more competitive allocation processes. By improving accident clearance, proximity-based allocations provide better incentives for industry participants (e.g. depot and licence location) and imposes lower development, implementation and administration costs.

A proximity-based allocation scheme recognises that the accident victim and the community more broadly should be the focus of the accident towing service. Such a scheme serves other road users by reducing congestion associated with clearing an accident. By reducing the distance of accident tows, such a scheme would reduce fees for the consumer when these are passed through in fee setting regulations.

However, we note that an immediate move to proximity-based allocations has the potential to be disruptive to some operators. In particular, some operators may lose a large number of accident allocations. We therefore take a cautious approach to amending the controlled area allocation scheme.

VicRoads should more systematically analyse accident towing allocations in order to amend allocation zones' boundaries. The objective should be to match more closely the allocation outcomes of a proximity-based scheme. That is, when VicRoads analyses accident allocations with a view to amending zone boundaries, outcomes

under a proximity-based scheme would provide the benchmark on which to base adjustments of allocation zone boundaries. The long term aim should be to allocate tows based on proximity.

To complement the move towards proximity-based allocations, restrictions imposed by VicRoads on relocating depots and assigning licences to a specific depot should be removed.

In response to this draft report, we are interested in hearing from operators in regard to implementation issues associated with proximity-based allocations.

Draft recommendation 2: Accident allocations — improving the existing scheme

In the controlled area, VicRoads should at least every three years analyse allocations and adjust 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.

Draft recommendation 3: Accident allocations — restrictions on licences

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.

3.7 COMMISSION ANALYSIS — THE UNREGULATED AREA

There are no allocation schemes in the unregulated area. In this area towing operators compete for accident towing jobs. Operators may also receive accident towing jobs from the accident victim, the driver's insurer, a police officer or a member of the public (who witnesses an accident). Some operators we have met state they listen to emergency service communications or pay spotter fees to get more accident towing jobs.

3.7.1 STAKEHOLDER COMMENTS

Stakeholder responses on the question of whether allocation schemes should be introduced to the unregulated area was mixed. IAG states “*We have no evidence to suggest accident allocation is required in unregulated parts of the state*”.⁶² The VACC submits:

*... the key drivers for the establishment of an accident allocation scheme is high volumes of accidents and an over-supply of tow truck operators competing for work... These key drivers do not exist for most of the State and hence should remain unregulated.*⁶³

Wallan Towing states “*I do not believe that there are any issues with the current system for accident towing outside of the ‘controlled and self-managed’ areas*”.⁶⁴

Two regional operators with whom we spoke support the introduction of allocation schemes in their local area. One suggests this would provide greater certainty to operators.

3.7.2 IS ACCIDENT CLEARANCE ORDERLY AND TIMELY?

If accidents are cleared in an orderly and timely manner in the unregulated area, there is no reason to introduce an allocation scheme in the area. We consider whether this is the case.

STAKEHOLDER VIEWS

The majority of stakeholders who made submissions and with whom we met do not support the introduction of allocation schemes in the unregulated area. For example, insurers and the VACC support the current unregulated approach. We have also spoken to VicRoads, which notes that there are few complaints relating to the clearing of accidents in the unregulated area.

⁶² IAG submission, 28 November 2014, p. 3.

⁶³ VACC submission, 3 December 2014, p. 10.

⁶⁴ Wallan Towing submission, 21 November 2014, p. 2.

COMPETITION BETWEEN OPERATORS

While there are multiple operators in many parts of the unregulated area (table 3.3), stakeholders have not raised concerns in regard to aggressive behaviour between operators to win accident towing jobs.

TABLE 3.3 OPERATOR AND LICENCE NUMBERS (REGULAR TOWING)
Comparison of unregulated, controlled and self-management areas

	Ballarat	Bendigo	Latrobe ^a	Mildura	Warragul	Controlled	Self-mgt
Operators	6	5	7	3	1	105	5
Licences ^b	15	6	19	5	7	421	25

^a Moe, Morwell and Traralgon. ^b Includes attached and unattached licences,

Consultation with unregulated area operators indicates that most operators consider accident towing a side business. They receive more revenues from their trade towing or smash repair business. This may in part explain why issues of aggressive operator behaviour have not arisen in the unregulated area — that is, because most operators do not actively pursue accident towing work. Further, despite a small number of operators stating they actively look for accident towing jobs (including payment of spotter fees), this has not translated into aggressive behaviour between operators.

NUMBER OF ACCIDENTS

The number of accidents in an area (city or town) will influence the costs imposed on other road users and the net benefits of implementing an allocation scheme.

In the controlled area, there are around 45,000 accident tows per year. In the self-management area, which includes Victoria's second largest city, there are around 1,700 accident tows per year. Across the unregulated area, we estimate there are around 14,100 accident tows. From meetings with operators in the unregulated area, it appears that most regional and country towns have less than 1,000 accident tows per year.

The smaller number of accident tows in the unregulated area, coupled with smaller populations, means that fewer road users will be impacted by accidents compared to the controlled and self-management areas. In this environment, it is difficult to see how the benefits of implementing an allocation scheme would outweigh the costs.

3.8 DRAFT RECOMMENDATION

In the unregulated area, stakeholders have not raised any concerns in regard to the timeliness of responding to and clearing accidents. Further, there is little support for introduction of allocation schemes in any part of the unregulated area. We find that there are no strong arguments to support introduction of an allocation scheme or schemes in parts of the unregulated area — the benefits of implementing an allocation scheme (or schemes) would be outweighed by its implementation and ongoing costs.

Draft recommendation 4: Accident allocations — the unregulated area

Accident allocations in the unregulated area should continue to be unregulated.

4 IMPROVING CONSUMER OUTCOMES

This chapter examines the suitability of the existing consumer protection framework that applies to accident towing. Links between accident towing and smash repair are considered, including the influence of these links on performance in markets for accident towing and smash repair services.

4.1 THE ISSUE

Existing regulation provides some protections for purchasers of accident towing services. This includes regulations that require the provision of information to purchasers about their rights and obligations, and regulations that prevent accident towing operators from 'touting' for smash repair work at the scene of an accident.

Despite these protections, stakeholders have reported concerns with the behaviour of some accident towing operators in relation to their own or affiliated smash repair services. Supplying accident tows provides opportunities for accident towing operators to influence drivers' choice of smash repairer. There is evidence to suggest that current regulations are not always providing appropriate protections, and this may potentially facilitate excessive charging for smash repair through a lack of scrutiny and oversight of repair costs.

It is difficult to gauge the extent of the problem. Evidence supplied by insurers and other market participants suggests that the costs of excessive charging are not immaterial. A key challenge is to ensure that any policy response is proportionate to the problem identified.

Further, we note that the issue arises due to the interface between two related but separate industries that abut each other in relation to accident-damaged vehicles — namely the regulated accident towing industry and the unregulated smash repair industry. There is a limit to which the accident towing regulatory framework can extend into smash repairers, and our review is limited to the former only. We have identified an issue from a consumer perspective at the interface between these two industries, but it is not within the scope of our role to review the performance of the smash repair industry as part of this review.

This chapter describes existing regulations which provide protections for drivers in their dealings with accident towing operators and smash repairers. It also provides some background to the links between accident towing and smash repair, including the nature of the potential problems as they have been described to us. We analyse, on the basis of the material presented to us, why the reported problems are emerging and their materiality. We also examine the effectiveness of consumer protections under the existing *Accident Towing Services Act 2007* (the Act). We propose some options for reform and draft recommendations to address these issues.

4.2 CONSUMER PROTECTION AT THE ACCIDENT SCENE

The Act governs an accident towing operator's conduct at the scene of an accident. It provides a number of specific consumer protections, while other general protections for consumers of towing services exist in the Australian Consumer Law and in common law.

The Act has provisions to protect drivers from accident towing operators touting for smash repair work and engaging in other behaviours, such as towing a vehicle to a place other than the place specified in the authority to tow, or commencing repair work without approval of the owner.

These key protections are summarised in box 4.1.

We note that the consumer protection provisions under the Act are enforceable only by VicRoads or the police, and not by drivers. Drivers can make a complaint to these

authorities in relation to a breach of the Act but drivers do not have a direct cause of action under the Act.

BOX 4.1 KEY PROTECTIONS FOR DRIVERS

- The *Accident Towing Services Act 2007* (the Act) prohibits an accident-damaged vehicle from being towed without an authority to tow signed by the owner or driver of the vehicle (or an authorised person), and requires the vehicle to be taken to the place specified in the authority to tow (sections 142 and 146 of the Act).
- It is an offence to tout at the scene of an accident; to offer, obtain or attempt to obtain an authority or agreement to repair a vehicle; and to offer, obtain or attempt to obtain a quote for repairs (sections 147 of the Act).
- No repair work can be carried out on an accident-damaged vehicle without the written approval of the owner (section 153 of the Act).
- A 3-day cooling-off period applies where a vehicle owner signs an agreement to repair the vehicle (section 154 of the Act). The vehicle owner may terminate the repair agreement within 3 days of signing.
- Key protections for drivers within the Australian Consumer Law include provisions that prohibit unconscionable conduct, misleading or deceptive conduct, unfair contract terms and harassment and coercion (sections 21(1), 18(1), 23 and 50 of the Australian Consumer Law).
- If an accident towing operator engages in harassment, intimidation, or coercion, any contract between them and a driver can be voided for duress under common law. It is also possible that an agreement entered into as a result of a breach of the Act, or any other statute, could be vitiated or unenforceable due to illegality under common law.

4.3 ACCIDENT LIABILITY AND SCRUTINISING THE COST OF REPAIRS

A driver in an accident can be:

- at-fault (responsible for causing the accident — fully, or in part where fault is shared), or
- not-at-fault (another driver is responsible for causing the accident).

Fault may be admitted by a driver at the accident scene, or it may be determined after the fact, through negotiation or legal action. In many cases fault in the accident may not be clear, and we note that many insurers instruct their policy-holders not to admit fault and to leave it to the insurer to settle fault with the other party.

Our focus in this chapter is on accidents where fault is admitted by the at-fault driver, or where a driver believes, or is convinced by an accident towing operator, that they are not-at-fault. It is in these situations in particular that the issue arises.

This distinction between at-fault and not-at-fault drivers is important in understanding the incentives facing accident towing operators and smash repairers. Whether the driver is at-fault or not-at-fault imposes different liabilities. For example, an at-fault driver is liable to pay the repair and associated costs for the not-at-fault driver. The costs of the at-fault driver and not-at-fault driver are usually paid by the at-fault driver's insurer.⁶⁵ If the at-fault driver does not hold insurance for damage to property⁶⁶, the at-fault driver will be personally liable. See appendix E for more detailed discussion on how comprehensive and third party insurance policies work in practice.

⁶⁵ 'Comprehensive' policies cover loss or damage to (a) a policy-holder's vehicle and (b) the legal liability of a policy-holder for loss or damage to another person's vehicle and other property when there has been an incident.

Third party property policies cover only the legal liability of a policy-holder for loss or damage to another person's vehicle and other property when there has been an incident.

⁶⁶ It is not compulsory for a driver to hold insurance that provides cover for damage to property (i.e. comprehensive insurance or third party property insurance). Compulsory third party insurance (which is required by all drivers and is included in the cost of vehicle registration) provides cover for personal injuries caused due to an accident involving a vehicle, but does not protect a driver against damage to any property.

4.3.1 AT-FAULT AND NOT-AT-FAULT DRIVERS

The particular issue that has arisen in the course of our review relates to the links between accident tows and smash repair for *not-at-fault drivers*.

At-fault drivers

Accident tows for at-fault drivers appear to work relatively smoothly:

- If the at-fault driver is *insured*, the at-fault driver has the incentive to notify their insurer and to claim the costs of the repair under their insurance policy. Insurers arrange and pay for the repairs of the at-fault driver's vehicle, and are motivated to keep the costs of the repair down. This appears to limit ability for accident towing operators to direct business towards their own or affiliated smash repair businesses.
- If the at-fault driver is *uninsured*, the driver has strong motivation to oversee the cost of the tow and repairs directly to minimise such costs.⁶⁷

Not-at-fault drivers

The situation is somewhat different for repairs for not-at-fault drivers. The not-at-fault driver faces limited incentives to scrutinise or minimise the costs of the repair. This is because of a disconnection between the organisation of repairs and the payment for those repairs. That is, while the at-fault driver is liable to pay for repairs, it is usually the not-at-fault driver who organises the repairs to their own vehicle.

This disconnection provides opportunities for a smash repairer to undertake repairs with minimal oversight, resulting in the ability to charge unreasonable repair costs. These unreasonable repair costs are levied on either the at-fault driver or on the not-at-fault driver (if successfully contested by the at-fault driver or their insurer). Although the reasonableness of repair costs can be tested in court if litigation is commenced by the repairer for unpaid fees or by the vehicle owner for recovery of the

⁶⁷ The uninsured at-fault driver will have to pay the costs of repair, and therefore has a financial incentive to scrutinise repair quotes and minimise costs. However, an uninsured driver may not have experience with the accident towing and smash repair industries, and may therefore face repair costs that are higher than they would be if the driver was fully informed.

vehicle, legal proceedings are costly and the size of repair bills can be difficult to challenge after the repair has occurred.⁶⁸

Appendix E provides more detail on the repair process and the roles and incentives of the drivers and insurers in relation to the oversight of smash repair costs.

4.3.2 INTERACTION WITH INSURERS

Many insurance policies have a requirement for drivers (whether at-fault or not-at-fault) to notify their insurer of any incident.⁶⁹ In this section, we discuss the implications for the scrutiny of repair costs of the not-at-fault driver choosing to either contact or not contact their insurer after an accident.

Contacting the insurer

If the not-at-fault driver contacts their insurer, the insurer may manage both the repairs of the not-at-fault driver's vehicle and the recovery of costs from the at-fault driver and their insurer. The insurer will scrutinise the costs of repair.

Not contacting the insurer

Not-at-fault drivers may choose not to contact their insurer when an at-fault driver has admitted fault. This occurs even though notification may be required by the terms of their insurance policy and failure to notify may be relied upon by an insurer in seeking to prevent the driver from making a claim against their own policy.

There may be a number of reasons why not-at-fault drivers do not contact their insurer after an accident. For example, the not-at-fault driver may not be aware of such a requirement, or they may believe they can claim against the at-fault driver's insurer and avoid contacting their own insurer out of concern that a claim will increase their future

⁶⁸ For example, it may be difficult to prove if the work undertaken was necessary.

⁶⁹ Insurance policies often require the insured to notify the insurer of any incident involving the vehicle, regardless of whether or not the insured is at fault. Where neither driver admits fault in an accident, both drivers have an incentive to notify their insurer (if insured). This is because they may be found to be at-fault, and would be liable for the repair costs. The insurers will manage the claim on behalf of the drivers, and the claim will be paid out by the insurer of the driver found to be at-fault.

insurance premiums.⁷⁰ Not-at-fault drivers may also wish to avoid paying an excess upfront — it is a general practice of insurers to request payment of the excess as a condition of a claim proceeding even though this will be reimbursed if it is found that the driver is not at fault.

Our stakeholder consultations indicate that consumer protection issues appear most evident where not-at-fault drivers do not contact their insurer. Accident towing operators may have incentives (a financial interest) to direct repair work towards affiliated smash repairers if they can earn a share of inflated repair costs.

As discussed in the following section, it has been put to us that this is encouraging misrepresentations or misinformation about the ultimate liability for repair costs for not-at-fault drivers.

4.4 STAKEHOLDER COMMENTS

In response to the Commission's issues paper, a number of stakeholders submit that touting for smash repair work at accident scenes remains a problem despite existing regulations. As discussed above, this appears to be driven by accident towing drivers' desire to secure smash repair work from not-at-fault drivers.

Suncorp contends that accident towing operators with affiliated smash repairers will:

*... target not-at-fault consumers after an accident because they are third parties to the contract between the insurer and the at-fault consumer, and as a result are not governed by the at-fault consumer's insurance policy processes and terms.*⁷¹

⁷⁰ While not-at-fault claims usually result in excess charges being refunded (if the at-fault driver is identified), and typically do not affect the policy-holder's eligibility for any no claim bonus entitlements, a not-at-fault claim can impact the calculation of the policy-holder's insurance premium. In its review of no-claims discount schemes, the Australian Securities and Investments Commission found that a not-at-fault claim can have an effect on a policy-holder's underlying insurance premium, even where there is no effect on the policy-holder's no claim bonus rating (see Australian Securities and Investment Commission 2015, *Report 424: Review of no-claims discount schemes*, February, p. 19). Our review of selected comprehensive policies found that none of the policies were definitive on whether a not-at-fault claim would affect a driver's insurance premium.

⁷¹ Suncorp submission, 28 November 2014, p. 4.

Suncorp further contends that accident towing is the entry point to a broader network of affiliated businesses, stating that:

... repairers typically work within a broader network of affiliated organisations including towing operators, lawyers, recovery agents and hire car companies. Relationships between these businesses can be used to funnel customers through an expensive repair process to maximise the financial return of a repair beyond the ordinary expectation of the wider repair industry.⁷²

IAG suggests that while accident towing is the transportation of a damaged vehicle from the scene of an accident to another location, *“in reality, it is the allocation of valuable smash repair work rather than towing”*.⁷³ In discussions with Commission staff, accident towing operators indicate that the value of owning an accident towing licence is largely in the value of smash repair work to which it provides access, rather than the accident towing work itself.

Both IAG and Suncorp state that not-at-fault drivers are being persuaded or pressured into signing repair agreements. This allows the smash repair business to commence repair work without the scrutiny and oversight of an insurer.⁷⁴ If the not-at-fault driver also signs an “authority to act” agreement,⁷⁵ this can lead to legal action being taken on behalf of the not-at-fault driver, for recovery of these repair and associated costs.⁷⁶ Suncorp also submits that not-at-fault drivers are often *“unaware legal action is being taken on their behalf”*.⁷⁷

Insurers also emphasised that it was not just the bills for repair work which were inflated, but also for associated services. This included storage fees; while the car is in possession of the repairer the repairer may also charge storage fees. While fees for storage charged by an accident towing operator in relation to an accident tow are

⁷² Suncorp supplementary submission, 5 May 2015, p. 1.

⁷³ IAG submission, 28 November 2014, p. 5.

⁷⁴ IAG submission, 28 November 2014, p. 8; Suncorp submission, 28 November 2014, p. 4.

⁷⁵ An “authority to act” is a contract to engage a lawyer or debt recovery agent to act on behalf of the driver to recover any costs associated with a repair agreement and the accident tow. This may include instigating legal action on behalf of the driver to recover costs from the at-fault driver or their insurer.

⁷⁶ IAG submission, 28 November 2014, pp. 9–10; Suncorp submission, 28 November 2014, pp. 4–5.

⁷⁷ Suncorp supplementary submission, 5 May 2015, p. 2.

regulated, storage charges for an affiliated smash repairer are not regulated. The costs may also be increased by fees for any rental car provided to the driver while the car is with the repairer. While the rental car is notionally provided to the not-at-fault driver for 'free', in reality the vehicle is charged at an inflated cost.⁷⁸ As IAG summarises:

*The consumer often has no understanding or comprehension of the process they are involved in, and they believe the services they are being provided with are 'free of charge' and has their interests at heart.*⁷⁹

Similar submissions were received from consumer legal centres. These centres, which have represented both not-at-fault drivers and at-fault drivers named in legal proceedings to recover unreasonable costs, have expressed concerns about the practice of misleading or pressuring not-at-fault drivers.⁸⁰

The Consumer Action Law Centre stated in correspondence with Commission staff that:

*... some consumers who are 'not at fault' [are] being asked to have their vehicle towed by tow-truck drivers. At the accident scene, they are asked to sign paperwork to facilitate this. Unbeknownst to them, this paperwork may be providing a repairer with authority to store and repair a vehicle, and also an authority to a lawyer to seek recovery of costs from an 'at fault' driver. The driver may be told that the repairer is quick or cheap, or that it has a free hire car. In other cases, we've heard that drivers are told that this is a better option than involving insurance companies, because claiming may impact no-claim bonuses.*⁸¹

⁷⁸ IAG suggests these rental car companies can charge \$150 per day for a rental car, compared to \$50 per day from regular car hire businesses — IAG consultation meeting with Commission staff (February 2015).

⁷⁹ IAG submission, 28 November 2014, p. 10.

⁸⁰ Footscray Legal Service and Consumer Action Law Centre consultation meeting with Commission staff (January 2015).

⁸¹ Consumer Action Law Centre correspondence with Commission staff (May 2015).

On the extent of the problem, Suncorp notes that “*third party repair networks*”⁸² which take advantage of drivers “*are a small subset of the broader smash repair industry*”. Nevertheless, it argues that the “*repairers and towing operators engaging in this practice are introducing significant costs and risks to Victorian consumers*”.⁸³

4.5 COMMISSION ANALYSIS

In the preceding sections, we have highlighted concerns that the regulatory framework which regulates transactions between accident towing operators and drivers — particularly those considered not-at-fault — is not working effectively at the point of interface between accident towing services and smash repairs.

The financial interests for accident towing operators to direct repair work towards affiliated smash repairers is directly related to the ability of repairers to charge unreasonably high fees.

The potential for repairers to charge unreasonably high repair costs occurs where the repairer faces limited scrutiny from the party that is liable to pay the repair bill (the at-fault driver or their insurer).⁸⁴ If the car has already been repaired, the at-fault driver or their insurer has limited ability to determine the original extent of the damage and reasonable repair costs.

Through submissions and further discussions with stakeholders, we have sought to better understand the materiality of this problem.

⁸² The broader network of affiliated or associated businesses relating to smash repair, including: accident towing operators, smash repairers, hire care business and debt recovery agents / lawyers.

⁸³ Suncorp supplementary submission, 5 May 2015, p. 1.

⁸⁴ We note that it is not the not-at-fault user’s choice of repairer that is directly of concern. There may be a number of legitimate reasons why they would want to choose a smash repairer. For example, they wish to use their regular repairer or a repairer approved by their vehicle’s manufacturer. The concern arises where the choice of repairer is strongly influenced by the accident towing operator which has financial interests to direct work to a particular repairer.

4.5.1 MAGNITUDE OF THE PROBLEM

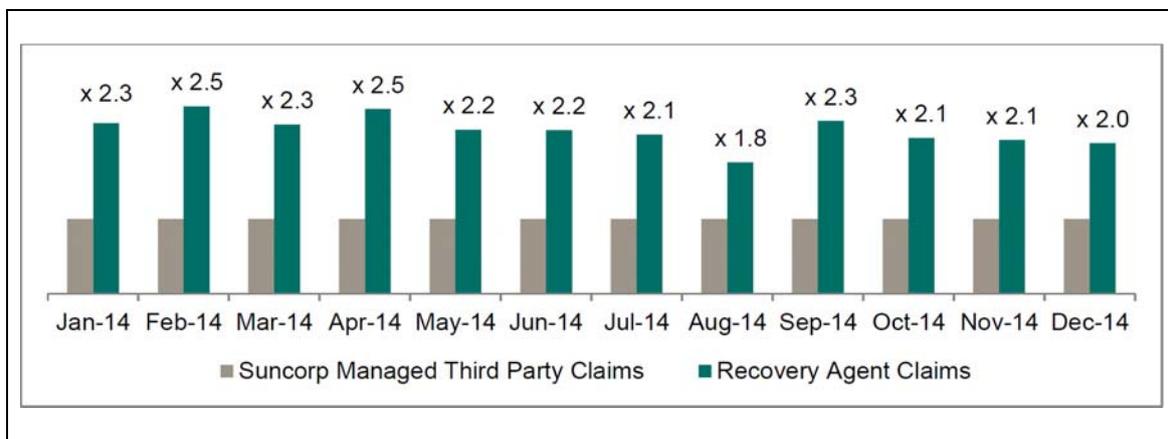
NOT-AT-FAULT CLAIMS

To support its contention that the costs to consumers are material, Suncorp provided an analysis of repair claims from four Victorian repairers affiliated with accident towing businesses. This analysis indicates:

- repair costs were 96 to 283 per cent higher than the average claim, and
- total claims costs (including additional services such as rental cars) were 201 to 431 per cent higher than the average claim.⁸⁵

Suncorp also provided a further comparison between the repair costs of claims that are managed by Suncorp and those that are handled by “*third party repair networks*”, where non-insurer lawyers or “*recovery agents*”⁸⁶ make the claims on behalf of drivers. Figure 4.1 illustrates that repair costs are approximately doubled when handled by these third party networks. Suncorp states that this represents tens of millions of dollars in claims per year.⁸⁷

FIGURE 4.1 COST OF NOT-AT-FAULT REPAIR CLAIMS IN VICTORIA



Data source: Suncorp supplementary submission, 5 May 2015, p. 2.

⁸⁵ Suncorp supplementary submission, 5 May 2015, p. 1.

⁸⁶ Debt recovery businesses.

⁸⁷ Suncorp supplementary submission, 5 May 2015, p. 2..

Suncorp states that while these higher costs are initially covered by insurance policies, they are eventually passed through to consumers as higher insurance premiums.⁸⁸

The other major motor vehicle insurer in Victoria, IAG, estimates that the average claim cost for repairs not managed or approved by an insurer was more than 40 per cent higher than what it defined as the “fair market rate”.⁸⁹

RISK OF LIABILITY FOR THE NOT-AT-FAULT DRIVER

The information and submissions provided to the Commission regarding repair claims highlights potential gaps in the overall consumer protection regime in relation to accident towing. Of no less concern are individual instances of significant costs borne by not-at-fault drivers.

These costs arise because in some instances the at-fault driver or their insurer successfully challenges the claims for repairs and other related costs, leaving the not-at-fault driver liable for the large claims. Where the not-at-fault driver has failed to notify their own insurer, the not-at-fault driver’s insurer may also refuse a claim for these costs.⁹⁰

We were also presented with examples of where legal action to recover a large repair bill was instigated by a lawyer or recovery agent in the name of the not-at-fault driver, without that driver’s knowledge. Suncorp submits that not-at-fault drivers are often “*unaware legal action is being taken on their behalf*”.⁹¹ Where the legal proceedings to recover the costs on behalf of the not-at-fault driver are unsuccessful, the not-at-fault driver becomes liable for the costs.

One case study illustrates the situation of a driver who was pressured by a smash repairer into accepting a rental car from the smash repairer, and subsequently received an \$18 000 bill for the car rental.⁹² The driver was pressured by multiple people

⁸⁸ In discussions with the Commission, both Suncorp and IAG have indicated that they challenge unreasonable repair costs where possible, but note that the ability to challenge unreasonable repair costs is limited to extreme cases. As the vehicles have been repaired before the claim is made, it is difficult for the insurers to determine or prove what the reasonable repair costs would have been.

⁸⁹ IAG submission, 28 November 2014, p. 8.

⁹⁰ See appendix E.

⁹¹ Suncorp supplementary submission, 5 May 2015, p. 2.

⁹² IAG submission, 28 November 2014, pp. 11–12.

(including the smash repairer and a car claims solicitor) to take legal action to recover this cost, under threat that they would be liable for this cost if it could not be recovered from the at-fault driver or their insurer.

CONSUMER OUTCOMES

The consumer detriment arising from steering work towards affiliated smash repairers results from repair, storage and rental car costs being inflated above reasonable levels.

The detriment passes through to consumers in one of two ways:

1. In the first instance, the smash repairer will seek recovery of costs from the at-fault driver or their insurer. Where successfully recovered, the costs are borne by the at-fault driver or their insurer (and in the latter case these costs are then ultimately passed onto all policy-holders through higher insurance premiums).⁹³
2. Where these costs are not successfully recovered from the at-fault driver or their insurer, the not-at-fault driver is liable for all costs, including any costs from unsuccessful legal proceedings that have been undertaken on their behalf.

The effect of unreasonable repair costs is not only the direct impact of higher costs on insurers and consumers, but also the stress and anxiety to both at-fault and not-at-fault drivers named in legal proceedings that result from these costs being challenged. The Consumer Action Law Centre (CALC) notes that legal proceedings for the recovery of smash repair costs causes:

*...stress and anxiety, not to mention the effect of the judgment, including potential enforcement action and impact for [a party's] credit report.*⁹⁴

Community organisations such as CALC and Legal Aid often become involved when a not-at-fault repair arrangement is litigated. For example, Footscray Legal Service states it handles one such case per week.⁹⁵

⁹³ Suncorp supplementary submission, 5 May 2015, p. 2.

⁹⁴ Consumer Action Law Centre correspondence with Commission staff (May 2015).

⁹⁵ Footscray Legal Service consultation meeting with Commission staff (January 2015).

4.6 THE EFFECTIVENESS OF CURRENT CONSUMER LAWS

4.6.1 CONSUMER PROTECTIONS UNDER THE ACT

The Act provides two key consumer protections:

- the prohibition on touting at the accident scene and before the accident-damaged vehicle is delivered to the location specified in the authority to tow, and
- a cooling-off period applying to repair agreements.

We now consider how effective these provisions are in achieving their objectives.

EFFECTIVENESS OF TOUTING PROVISIONS

Section 147 of the Act prohibits touting for smash repair work, and obtaining an agreement for repair or quotation, before delivery of the vehicle to the address specified in the authority to tow. Further, accident towing drivers are required to provide the driver with VicRoads' accident towing factsheet at the accident scene.⁹⁶ This factsheet states that touting for smash repair work at the accident scene is prohibited.

Some stakeholders suggest that the anti-touting provision under the Act is difficult to enforce.⁹⁷ Enforcement difficulties stem from a lack of awareness by drivers that touting is prohibited and the difficulty in proving after the fact that touting occurred before the delivery of the vehicle to the repairer.

Drivers' lack of awareness does not appear to be remedied by the provision of the Vic Road's fact sheet. This may be because the warning is not clearly emphasised, or may not be completely understood by a driver under stress following an accident.

Further, there are other gaps in the consumer protections provided by the Act. Notably, the Act does not directly prohibit:

- touting of repair or car hire services *after* a vehicle has been delivered from the scene of an accident to the location specified in the authority to tow

⁹⁶ VicRoads 2013, 'Towing from an accident scene: your rights', July.

⁹⁷ See: ICA submission, 28 November 2014, p. 2; Suncorp submission, 28 November 2014, p. 4.

- the offering or provision of an “authority to act” contract (in addition to the authority to tow)⁹⁸ at the scene of a car accident⁹⁹, or
- unsolicited quotes being provided for repair work once a vehicle has been towed to the accident towing operator’s depot.

These gaps would appear to reduce the effectiveness of the anti-touting provisions of the Act.

EFFECTIVENESS OF COOLING-OFF PERIOD

The cooling-off period provided by section 154 of the Act provides that repair agreements can be terminated up to three working days after signing.

The general intention of cooling-off periods is to reduce consumer detriment by changing the environment in which drivers make decisions.¹⁰⁰ It does so in this case by giving drivers more time to consider their choice or gather information on whether the agreement they entered into is in their best interests.

There are some reasons to believe that the cooling-off period may not be having its desired effect. These include:

- An agreement signed between a repairer and a driver will not fully specify the nature and cost of the repairs. By the time that the driver appreciates the cost of repairs, the cooling-off period provided by the Act will have expired (assuming the repairs have taken more than three days).
- The cooling-off period offers little protection to the at-fault driver (or their insurer), as the not-at-fault driver will arrange the repair but the at-fault driver (or their

⁹⁸ An “authority to act” contract is different from an authority to tow. An authority to act is a contract to engage a lawyer or debt recovery agent to act on behalf of the driver to recover any costs associated with a repair agreement and the accident tow. The authority to tow docket is the signed authorisation for the accident towing driver to perform the accident tow.

⁹⁹ Section 147 of the Act prohibits an accident towing operator from touting for smash repair work and offering, obtaining or attempting to obtain any form of authority or agreement in relation to the repairing of the vehicle (i.e. a repair agreement). However, it does not prohibit an operator from offering to recover costs associated with a repair agreement on behalf of the driver and offering, obtaining or attempting to obtain an authority to act relating to the recovery of costs.

¹⁰⁰ Consumer Affairs Victoria 2009, *Cooling off periods*, January, p. 3, accessible from www.consumer.vic.gov.au/library/publications/resources-and-education/research/cooling-off-periods-in-victoria-their-use-nature-cost-and-implications-2009.pdf, accessed at 4 September 2015.

insurer) will pay for the repairs. The at-fault driver or their insurer are only in a position to challenge the claim after the vehicle is repaired and cooling-off period has expired. Further, if a challenge by the at-fault driver is successful, it may also then leave the not-at-fault driver with the burden of paying unreasonable repair costs.

- Termination of the repair or other agreement involves having a difficult, confrontational conversation. In circumstances where the not-at-fault driver has been assured that they will not be liable for any costs, they are unlikely to be motivated to terminate even if they are aware that repair costs are likely to be inflated.

There also appears to be a lack of driver awareness of the cooling-off periods. The Consumer Action Law Centre comments that “*many consumers have little understanding about their rights and obligations when involved in collisions*”.¹⁰¹ Suncorp further submits that not-at-fault drivers are often “*confused by the repair process they have entered into*”.¹⁰²

4.6.2 VOIDING OF CONTRACTS UNDER AUSTRALIA CONSUMER LAW AND COMMON LAW

If a driver has signed a contract for repairs where a towing operator or smash repairer has behaved improperly, it is possible that the contract could be voided (vitiating) or unenforceable under the Australian Consumer Law or common law. This could be on the basis of unconscionable conduct, misleading and deceptive conduct, common law duress or illegality. A particular term in a contract could also be voided as an unfair term. Each of these options is discussed in box 4.2.

¹⁰¹ Consumer Action Law Centre correspondence with Commission staff (May 2015).

¹⁰² Suncorp supplementary submission, 5 May 2015, p. 2.

BOX 4.2 VITIATING A CONTRACT

Unconscionable conduct (section 21(1) of the Australian Consumer Law)

A contract may be made void if an operator has acted unconscionably, e.g. by placing undue pressure on the driver. In circumstances where a driver signed an “authority to act”, the authority could be void where it can be shown that the operator or solicitor has acted unconscionably in failing to properly explain the nature of the authority.

Representations that a not-at-fault driver should not notify their insurer of the accident or should sign an authority to act may also be unconscionable, particularly where such representations were made in circumstances of high stress and where there is a clear disparity between the knowledge and experience of the driver and the operator.

Misleading or deceptive Conduct (section 18(1) of the Australian Consumer Law)

Conduct that is misleading or deceptive, or likely to mislead or deceive, will infringe section 18(1) of the Australian Consumer Law. This provision may assist where an operator or repairer has made a false or misleading representation to a driver about the cost of or requirement for a repair, or about their relationship with an insurer.

Duress (common law)

A contract can be declared void by a court where a person was coerced, extorted or forced into signing a contract. Duress could be a remedy if an operator engaged in intimidation, coercion, or aggressive behaviour towards the driver.

Illegality (common law)

If an operator acted in breach of the *Accident Towing Services Act 2007* (or other statute) in causing a driver to enter into a contract, the contract may be vitiated for illegality. A contract can be void for illegality where it is prohibited by a statute, particularly where the statute prohibits the type of conduct that gave rise to the formation of the contract.

Unfair contract terms (section 23 of the Australian Consumer Law)

A driver might seek to avoid a term of a standard form contract with an operator or repairer if the term was “unfair”. Relevantly, a court is permitted to take the specific characteristics of the parties to the transaction in assessing whether a contractual term is unfair (section 27(2) of the Australian Consumer Law).

While the not-at-fault driver may be able to challenge any legal action taken against them for recovery of unreasonable costs in the above cases, the vitiation of contracts may not be effective in protecting these drivers. Relying on legal action to challenge the recovery of unreasonable costs is likely to impose further costs in terms of time, money and stress upon the driver following the accident. In some cases, drivers may choose to avoid legal action by paying the demanded costs.

In addition, the vitiation of contracts does not solve concerns that accident towing operators and smash repairers may seek unreasonable repair costs from the at-fault driver and their insurer. A vitiation of a contract by the not-at-fault driver is only likely to be pursued if such costs cannot be recovered from the at-fault driver and their insurer. To the extent that repair costs are difficult to challenge after the repair, the practice of charging unreasonable fees for repair is likely to persist and this cost will ultimately be passed on to all insured drivers.

4.7 OPTIONS TO IMPROVE CONSUMER OUTCOMES

This section looks at options to improve the functioning of the accident towing market. We examine measures that might assist in helping consumers and insurers avoid adverse outcomes following an accident. In particular, we consider the role that insurers could play in educating their insured drivers, the role of the regulator and potential regulatory measures.

4.7.1 THE ROLE OF INSURERS

We have previously noted the important role that insurers play in providing scrutiny of repair costs. The evidence presented to us suggests that in some cases drivers who are not-at-fault in an accident are either being misled, or do not understand the outcomes from making decisions at the scene of the accident in relation to:

- authorising a repair from a smash repairer affiliated with the accident towing operator, and/or
- not contacting their insurer (assuming they are insured).

Insurers can only assist the process of scrutiny of repair costs if the not-at-fault driver is insured and the driver notifies the insurer promptly. We have discussed in section 4.3.2 why it may be that not-at-fault drivers do not engage with their insurers.

It is in the interests of both not-at-fault drivers as well as insurers that the driver contacts an insurer to seek advice on how to handle an accident repair and claim process, as well as an appropriate tow destination for the damaged vehicle.¹⁰³

Insurers could be more proactive in educating their customers on what to do after an accident. For example, insurers could actively educate drivers to contact *either* driver's insurer for instructions following an accident, and about the risks of failing to do so.

4.7.2 THE ROLE OF THE REGULATOR

Enforcement is an important part of any regulatory regime — regulations must be enforceable, and penalties applied appropriately. It is important that the accident towing industry regulator (VicRoads) is appropriately resourced to investigate offences and impose penalties on accident towing operators that breach regulations.

A number of stakeholders have raised concerns about VicRoads' resourcing. For example, the Insurance Council of Australia submits that its members "*have expressed concern about the capacity of VicRoads to deal with the high number of complaints about towing operators, given their limited resources and competing priorities*".¹⁰⁴ Similarly, several regional towing operators noted in discussions with Commission staff that VicRoads has fewer resources and reduced enforcement activity compared to the former Taxi and Tow Truck Directorate.

The Insurance Council of Australia suggests "*that VicRoads could be better resourced to address insurer and consumer complaints*".¹⁰⁵ Further, Suncorp notes that:

¹⁰³ We note insurers of at-fault drivers do attempt to contact not-at-fault drivers. Accident towing operators told the Commission that insurers of the at-fault driver often request to speak to the not-at-fault driver at the accident scene in order to manage the not-at-fault drivers claim. Suncorp also states that it "proactively contacts not-at-fault consumers as soon as their contact information is available to us" — see Suncorp supplementary submission, 5 May 2015, p. 4.

¹⁰⁴ Insurance Council of Australia submission, 28 November 2014, p. 3.

¹⁰⁵ Insurance Council of Australia submission, 28 November 2014, p. 3.

... dedicated enforcement resources would reduce the need to rely on legal action for simple or low cost breaches and improve overall regulatory efficiency for the industry and consumers. Importantly, both insurers and the tow truck industry would benefit from reduced litigation which will ultimately also benefit consumers through lower prices and better towing experiences.¹⁰⁶

The complex nature of consumer protection issues in relation to accident towing suggest that there may be some merit in either better resourcing VicRoads to respond and address these concerns or transferring some regulatory functions to a body with greater experience in dealing with these types of consumer issues.

If the consumer protection function were transferred, this would leave VicRoads with the more technical aspects of industry regulation, such as licensing, zoning and boundaries. We seek feedback from stakeholders on whether there would be material benefits or costs from such a change in regulatory functions.

4.8 DRAFT RECOMMENDATION

As discussed, the existing consumer protection provisions, such as prohibiting touting at accident scenes and a cooling-off period for repair agreements, do not appear to be effective at eliminating touting or allowing drivers and insurers to more effectively scrutinise the cost of repairs (particular for not-at-fault drivers).

To address these concerns, additional regulatory measures could provide drivers involved in an accident with more time or opportunity to consider or be advised on their repair options, or to reduce the ability for accident towing operators and smash repairers to pressure drivers for repair work.

One option could include introducing new laws to:

- prohibit the signing of repair agreements on the day of the accident
- invalidate any contracts signed on the day of the accident, or

¹⁰⁶ Suncorp submission, 28 November 2014, p. 3.

- prohibit the signing of repair agreements without notification and approval from any relevant insurer.

These measures would require legislative amendment beyond the accident towing legislation, as they pertain to contracts in a related but separate industry outside of the accident towing industry. They would also be likely to impose costs on drivers, by delaying vehicle repair.

In the absence of clear evidence about the extent of the problem caused by towing and the lack of scrutiny for smash repair costs, our recommendations focus on informing and educating drivers and improving existing measures, rather than introducing new laws and regulations.

We consider below measures aimed at improving driver awareness and assisting drivers to make informed choices, and for insurers to provide better information to drivers about these situations.

A NEW AUTHORITY TO TOW 'WARNING PAGE' AND SIGNOFF

One way to provide better information to drivers is to require drivers involved in an accident to read and sign a document that provides warnings against agreeing to repair of their vehicle without considering their options, including contacting an insurer. This 'warning page' could be included as the front page of the authority to tow docket. Pursuant to section 144 of the Act, a copy of the authority to tow must be given to the person who has given the authority.

The existing authority to tow docket could also be amended to require the driver or vehicle owner to acknowledge that they have read and signed the warning page before the authority to tow is signed. The accident towing operator would be prohibited from towing the vehicle until both the warning page and existing authority to tow docket were signed.

An example of how the new warning page could be worded is set out in box 4.3 (this example incorporates the suggested change to tow destinations in draft recommendation 7 — see *Limiting tow destinations*.)

BOX 4.3 EXAMPLE OF AUTHORITY TO TOW WARNING PAGE

WARNING: READ THIS ADVICE BEFORE AGREEING TO THE REPAIR OF YOUR VEHICLE

Smash repairs can be VERY EXPENSIVE.

Regardless of who is at fault, it is STRONGLY RECOMMENDED that you contact your insurer (or the at-fault driver's insurer, if another driver has admitted fault) for advice on where to have your vehicle towed **BEFORE** agreeing to the repair of your vehicle.

The tow truck driver can only store your vehicle at his or her depot. Alternatively, you may have it towed to your home (or the home of a friend or family member) or to a location instructed by an insurer.

YOU COULD BE OUT OF POCKET for repair work to your vehicle if the other driver is not insured, or if you agree to repairs and the repair costs are DISPUTED or REFUSED by the other driver's insurer.

If you choose not to notify YOUR OWN INSURER before agreeing to repair of your vehicle, you could be in BREACH of your insurance policy. If you become liable for the repair costs, for example because the other driver is not insured or their insurer does not pay, your insurer may REFUSE TO PAY due to your breach of the policy.

If you decide to have your car towed to a smash repairer without notifying your insurer, it is STRONGLY RECOMMENDED that you obtain a WRITTEN QUOTE **BEFORE** you agree to any repair work. You may have to pay for the work even if you are not at fault.

Do you wish to contact your insurer (or the other driver's insurer) for advice on where to have your vehicle towed **BEFORE** the tow truck driver delivers your vehicle to a smash repairer? Yes / No

Have you notified your insurer (or the at-fault driver's insurer, if another driver admits fault)? Yes / No

[Driver's signature and contact details; and insurer's details if provided]

The costs of implementing this measure are limited to the cost of updating the schedule of the Accident Towing Regulations 2008 that contains the authority to tow to include the warning page and additional acknowledgement, and printing the new authority to tow forms.

WARNINGS IN VICROADS' FACTSHEET

To reinforce the warnings provided in the proposed 'warning page', further warnings could be emphasised in VicRoads' existing accident towing factsheet.

Accident towing operators are required to give this factsheet to the driver of the damaged vehicle at the accident scene. This factsheet already states that touting for smash repair work at the accident scene is illegal, but could emphasise this warning more strongly (for example, with bold and underlined font) and provide additional information to drivers involved in an accident.

The factsheet could include an instruction to the driver only to sign the authority to tow docket (including the proposed 'warning page'), and not a repair agreement. It could also recommend that they contact their insurer (if relevant), or the at-fault driver's insurer, to determine where their vehicle should be towed.

The instruction could also make it clear that if a driver signs an agreement to repair the vehicle without first contacting their insurer, this may be a breach of their insurance policy entitling the insurer not to pay a claim. It could also include warnings relating to inducements such as 'free' rental car services.

The costs of implementing this measure would be minimal — just the cost of producing an updated factsheet.

Draft recommendation 5: Improving customer outcomes (authority to tow and factsheet)

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).

EDUCATION CAMPAIGN

An education campaign may be helpful to educate drivers about:

- what to do after an accident, and
- their rights and responsibilities.

Given drivers are rarely involved in a road accident, a broad-based public education campaign is probably not the most effective way to educate accident towing customers.

Insurers could deliver a more effective and targeted education campaign as part of their annual policy renewal documentation, providing information about what to do and who to call in the event of accident. In particular, this information could advise drivers to contact their insurer about the tow destination, whether they believe they are at-fault or not-at-fault, or alternatively to contact the at-fault driver's insurer for instruction. It should also warn against signing any repair agreement at the accident scene.

Drivers are more likely to read this information in the annual insurance renewal letter and in a sticker to attach to the vehicle, rather than if it is part of a product disclosure statement.

The costs to insurers of implementing this option should not be substantial; given the education campaign could be integrated with existing distributions of policy renewal documents. These costs should be minimal in comparison to the potential savings for insurers through avoiding unreasonable repair claims.

Draft recommendation 6: Improving customer outcomes (education campaign)

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.

LIMITING TOW DESTINATIONS

A further possible regulatory action would be to limit the locations to which a vehicle could be towed. This would limit the ability for accident towing operators to direct vehicles to affiliated smash repairers, except under the instructions of an insurer. It would also increase the likelihood the driver will consider their alternatives before consenting to their vehicle being towed to an affiliated repairer.

For example, the destinations listed on the tow docket could be limited to:

- a location instructed by the vehicle owner's insurer
- a location instructed by the at-fault driver's insurer
- the owner's home, or the home of a friend or family member (important for uninsured vehicles), or
- storing the vehicle at the tow operator's licensed depot and awaiting further instructions from the owner, their insurer or the at-fault driver's insurer.

This measure would still allow for vehicles to be delivered to a tow operator's own smash repair business if it is co-located at the operator's depot. A warning could be included beside this option that the vehicle owner should contact their insurer, or the at-fault driver's insurer, for instructions before agreeing to and signing any further contract for provision of smash repairs or a rental car. This would reinforce the warnings in the proposed warning page and VicRoads factsheet, and may assist the owner in properly considering their options.

The costs of implementing this measure are the cost of amending the schedule in the Accident Towing Regulations 2008 that contains the authority to tow and producing an updated authority to tow docket, which can be done in conjunction with the proposed 'warning page'. For vehicle owners who have their own preferred repairer, there may

be additional cost from a secondary tow to their preferred smash repairer. Finally, there may also be increased enforcement costs.

Draft recommendation 7: Improving consumer outcomes (towing destination)

VicRoads should limit the locations to which an accident-damaged vehicle can be towed. The authority to tow docket should list the following options for tow destinations: a location instructed by the owner's insurer; a location instructed by the at-fault driver'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.

FURTHER MEASURES

We recommend that the Government monitor the impact and effectiveness of the proposed new measures that it chooses to implement, over a two year timeframe.

If concerns are still arising then the Victorian Government could consider additional legislative measures such as:

- prohibiting the signing of repair agreements on the day of the accident
- invalidating any contracts signed on the day of the accident, or
- prohibiting the signing of repair agreements without notification and approval from any relevant insurer.

Such measures may cause some delay in the repair of vehicles, but will inform the vehicle owner and other parties of the potential costs of repair and provide them with more opportunity to properly consider their repair options.

4.9 SUMMARY

Based on the evidence we have collected and presented in this section, we consider the current regulatory framework should be amended to:

- reduce the ability of accident towing operators to direct smash repair work to affiliated smash repairers at the accident scene
- make clearer the driver's rights and responsibilities at the accident scene, and
- ensure drivers have adequate time to make an informed decision on repair of their vehicle.

Specifically, we recommend a combination of measures to prevent drivers, in particular those who believe they are not-at-fault, from being pressured into signing repair agreements. These measures include introducing a warning page for signoff as part of the authority to tow, amending the VicRoads accident towing factsheet, educating drivers about what to do when they have an accident and limiting the locations a vehicle can be towed to and stored after an accident.

If these measures are not effective in addressing the issue of unreasonable repair costs, we recommend that further measures be considered by the Victorian Government. These measures would pertain specifically to smash repairers (that is, rather than accident towing operators).

5 SHOULD FEES BE REGULATED?

This chapter considers whether fees should continue to be regulated in the controlled area and whether fee regulation should be introduced in the unregulated area.

5.1 THE ISSUE

The Minister for Roads sets accident towing fees in the controlled area. Outside the controlled area operators set their own fees.

Under section 212I (1)(b) of the *Accident Towing Services Act 2007* (the Act), all fees set by operators are required to be “reasonable”. This includes accident towing fees in the controlled area for services for which the Minister has not specified a regulated fee. For example, controlled area operators are able to set their own salvage fees, which are required to be “reasonable”. The Act does not define “reasonable”, but it does give guidance on factors a court can consider in determining whether a fee is reasonable (box 5.1).¹⁰⁷

Stakeholders disagreed about whether fees outside the controlled area should be set by the Minister for Roads. Stakeholder views are discussed in the next section.

¹⁰⁷ While the Act refers to “the court” taking into account these factors, given VicRoads’ role in responding to accident towing complaints, including complaints about unreasonable fees, it is reasonable to assume that VicRoads would also consider these factors.

BOX 5.1 DETERMINING WHETHER A FEE IS REASONABLE

Section 212I (2) of the *Accident Towing Services Act 2007* states:

Without limiting the factors the court may consider in determining what is a reasonable charge for the provision of an accident towing service for the purposes of subsection (1)(b), the court must consider those of the following factors that are relevant —

- a. the nature of the service provided
- b. the day on which the service is provided
- c. the time at which the service is provided
- d. any administration costs incurred in the provision of the service
- e. the amount that would be charged for the provision of a similar service that is not an accident towing service and
- f. the amount that would be charged for the same or similar service by any other person providing accident towing services in the same or similar area.

Source: *Accident Towing Services Act 2007*.

5.2 STAKEHOLDER COMMENTS

Stakeholders support continued fee regulation in the controlled area. This support comes from both accident towing industry representatives and users of accident towing services. For example, the VACC states:

*The VACC strongly supports the continuation of the current price regulation regime that operates in the Melbourne Controlled area and the less prescriptive price regulation of 'reasonable' accident towing fees for other parts of Victoria.*¹⁰⁸

¹⁰⁸ VACC submission, 3 December 2014, p. 12.

Stakeholders are split on the issue of extending fee setting beyond the controlled area:

- accident towing operators — who submit that there is no need to extend fee setting beyond the controlled area, and
- insurers — who submit that fees should be set across all of Victoria.

On behalf of accident towing operators, the VACC presents two arguments in favour of not extending fee setting. First, it argues that links between accident towing and smash repairs means that insurers are able to keep a check on towing fees, “*as the smash repair division of the business would not jeopardise its smash repair revenues by charging unreasonable or exorbitant accident towing fees*”. That is, towing operators would not charge unreasonable towing fees to insurers as this would discourage the insurers from having the vehicle repaired at the towing operator’s smash repair business. Second, the VACC argues that a form of fee regulation already applies across the state via the “reasonable” requirement.¹⁰⁹

One operator, Wallan Towing, argues that it would not be viable for controlled area fees to be applied to country areas and suggests that all operators could have printed charges on their dockets, thereby giving the customer a guaranteed price prior to towing.¹¹⁰ Some operators suggest that accident towing services may not be provided if regulated fees are set too low.

In contrast, some insurers submit that fee setting should remain in the controlled area and be introduced across Victoria. Suncorp states fee regulation “*should occur by imposing metropolitan fee regulation in all areas where allocation occurs [controlled and self-management areas], and applying a pricing cap in regional areas*”.¹¹¹

¹⁰⁹ VACC submission, 3 December 2014, pp. 5 and 14. Under section 212I (1)(b) of the Act, fees set by operators in the unregulated and self-management areas are required to be “reasonable”.

¹¹⁰ Wallan Towing submission, 21 November 2014, p. 1.

¹¹¹ Suncorp submission, 28 November 2014, p. 2. IAG submission, 28 November 2014, p. 3.

IAG submits that “we strongly believe that accident towing fees should continue to be regulated in the controlled area. We recommend that fee regulation be expanded to cover all other areas of the state”.¹¹²

Similarly, the Insurance Council of Australia states:

*Regulation of towing fees within the Melbourne controlled area has been successful and should continue. The Geelong self-management area and the unregulated portion of the State should also be subject to fee regulation... Our members are aware of exploitative pricing practices in Geelong and unregulated areas.*¹¹³

Some operators located outside the controlled area do support fee regulation. One operator supports a base fee of \$350 including the first 10 kilometres.¹¹⁴ Another suggests a base fee of \$250 would be reasonable. Squires Towing submits that government should “regulate accident towing prices throughout the state of Victoria. Metropolitan country and heavy towing”.¹¹⁵

5.3 COMMISSION ANALYSIS — CONTROLLED AREA FEE REGULATION

In standard market settings, consumers can rely on the forces of competition to hold suppliers’ prices down to reasonable levels. Consumers can compare offers between competing suppliers, be well informed about product characteristics through regular purchasing or research, and choose the best product that meets their needs for quality and price. Where negotiations over price occur, they occur in the context of consumers being able to negotiate with other suppliers or to hold out for a better price.

In contrast, markets for accident towing services do not exhibit the characteristics of competitive markets. In the controlled and self-management areas allocation schemes

¹¹² IAG submission, 28 November 2014, p. 3.

¹¹³ Insurance Council of Australia submission, 28 November 2014, p. 1.

¹¹⁴ Anonymous submission, 10 December 2014, p. 1.

¹¹⁵ Squires Towing submission, 26 November 2014, p. 2.

operate — consumers of accident towing services in these areas are prevented from choosing an alternative supplier. In the unregulated area, there are no allocation schemes and so there is the opportunity (in theory) for competition. However, competition may be limited in those parts of the unregulated area where there is a limited choice of operators. To assess whether fees should continue to be set in the controlled area we consider four matters:

1. The ability of people involved in an accident to negotiate a reasonable towing fee.
2. The impacts of delaying accident clearance through fee negotiation.
3. Stakeholder views (presented in section 5.2).
4. The advantages and disadvantages of fee regulation.

5.3.1 NEGOTIATING A REASONABLE TOWING FEE

There are three reasons why drivers of regular vehicles involved in an accident may be in a weak position to negotiate a reasonable towing fee:

- Accidents are likely to be an infrequent event and most people have no previous experience with accident towing markets. The process of arranging and paying for a tow is likely to be new to the driver involved in the accident, and they will have no benchmark for what may be a reasonable fee.
- Accidents are likely to be stressful. The driver involved in the accident may not be in a suitable state to negotiate a reasonable fee.
- If the accident is impeding traffic, there is likely to be some urgency to clear the accident scene. This may add to the stress of the accident and limit the time available to negotiate a reasonable fee.

Others have made similar observations. The Victorian Government, when initially imposing an accident allocation scheme in Melbourne, chose to regulate fees to protect consumers from unreasonable fees. New South Wales' independent economic regulator, the Independent Pricing and Regulatory Tribunal (IPART), in its recent review of tow truck fees and licensing in NSW, noted that:

... after an accident, drivers are vulnerable, as they are often in shock or distressed. They are also likely to have limited access to information to

*make informed decisions because they have not conducted prior research into accident towing fees and regulations. We consider that this means the likelihood of detriment is high.*¹¹⁶

IPART also notes that drivers involved in an accident need protection from excessive fees before the event, rather than having to rely on remedies through general law (i.e. seeking to later challenge unreasonable fees through a court):

*... we consider that the context in which accident-related towing services are provided strengthens the need for government action. As discussed above, drivers at an accident scene are often distressed or in shock which may make them more vulnerable than usual. This may increase the need for government action to protect them from excessive charges, rather than require them to pursue remedies under general law.*¹¹⁷

IPART recommends that maximum fees for regular vehicle accident tows continue to be regulated throughout NSW.¹¹⁸ Stakeholder submissions to our review comment on the issue of fee regulation. The VACC states:

*Price regulation exists in most jurisdictions and exists to address the vulnerability of motorists involved in an accident and the fact that they are often traumatised or distressed [and] have a poor knowledge of towing services...*¹¹⁹

IAG similarly state that accident victims are in a vulnerable situation after an accident:

*Being unfamiliar with the towing industry and often overwhelmed consumers are easily exploited. It is often left to the insurer to argue that the costs charged by the tow operator are unreasonable.*¹²⁰

¹¹⁶ IPART, 2014, *Review of tow truck fees and licensing in NSW*, Transport — Draft Report, October, pp. 37. IPART provided a final report to the NSW Government in December 2014; this has not been made public yet.

¹¹⁷ IPART 2014, p. 38.

¹¹⁸ IPART 2014, p. 6.

¹¹⁹ VACC submission, 3 December 2014, p. 4.

¹²⁰ IAG submission, 28 November 2014, p. 3.

For the reasons detailed above, it is reasonable to conclude that drivers involved in an accident are in a weak negotiating position.

The accident allocation scheme

Another factor that may lead to unreasonable fees in the absence of regulation is the existence of allocation schemes, which gives towing operators an exclusive right to perform the accident tow and related services (e.g. salvage). The accident victim cannot choose another operator to do the tow. Allocation schemes weaken the negotiating position of drivers involved in an accident by removing any opportunity to 'shop around' for a lower fee. In effect this means that tow truck operators can charge fees at a level higher than what would be feasible in a more competitive market. Consequently, the allocation scheme in the controlled area is accompanied by fee setting by the Minister for Roads.

5.3.2 THE IMPACTS OF NEGOTIATING A FEE

For the reasons cited above, consumers would have difficulty negotiating a reasonable fee in the controlled area if fees were not regulated. Even if negotiating a fee were possible, it would add to the time taken to clear the accident scene.

Additional time to clear an accident can impact on other road users. This impact could be significant in the controlled area given:

- the number of accidents in the area (approximately 46,000 per year), and
- the large number of road users who would be affected, particularly during peak periods.

The impacts on other road users may be larger in the controlled area, where roads are typically more congested.

5.3.3 THE ADVANTAGES AND DISADVANTAGES OF FEE REGULATION

The advantages of regulating fees need to be compared to its disadvantages. The main disadvantages are regulatory costs (e.g. the costs of the Commission undertaking fee reviews and providing advice to the Minister for Roads) and costs imposed on operators (e.g. the costs of participating in the regulatory process). There would also

be costs if the regulator sets fees at the wrong level, for example, too low, and this discouraged service provision.

We consider that the advantages of fee setting in the controlled area outweigh the disadvantages. Given there are about 45,000 accident tows each year in the area and that many accidents occur on busy roads, the benefits from limiting the impacts of accidents on road congestion, and from assisting drivers who are in a weak bargaining position are likely to be significant. While there are costs to the Commission in conducting fee reviews, such reviews only take place every four years under current arrangements.

5.4 DRAFT RECOMMENDATION

We support the current form of fee regulation (i.e. fee setting) in the controlled area. Drivers involved in an accident are in a weak position to negotiate a reasonable fee and the time needed to “shop around” for the best fee offer could negatively impact other road users (congestion costs). An alternative to fee setting is notification. Fee notification, whereby operators are required to publish (notify) their fees, is a lighter-handed option. While this approach publishes information about fees, it may not prevent operators from charging excessive fees in the controlled area, where the allocation scheme effectively removes competition.

Draft recommendation 8: Fee regulation — controlled area

The Minister for Roads should continue to set regular vehicle accident towing and storage fees in the controlled area.

5.5 COMMISSION ANALYSIS — ARE FEES REASONABLE IN THE UNREGULATED AREA?

To assess whether fees charged in the unregulated area (those areas other than the controlled and self-management areas) are unreasonable, we obtained information on towing fees charged across Victoria. We obtained this information from two sources:

- accident towing operators — who provided us with their fee schedules, and
- insurance companies — who provided us with accident towing fee invoices.

5.5.1 FEE INFORMATION PROVIDED BY ACCIDENT TOWING OPERATORS

We met with operators across various areas in Victoria, including Geelong, the Bellarine Peninsula, Bendigo, Ballarat, Castlemaine and Mildura. These operators provided us with details of their fee schedules. Table 5.1 compares the fee schedules in these areas to the regulated fees in the controlled area.

TABLE 5.1 ACCIDENT TOWING FEES (inc GST)
Controlled area and selected regions

	Controlled	Geelong / Bellarine	Goldfields ^a	Mildura
Base fee ^b	\$207.30	\$380 – \$550	\$330 – \$435	\$330
After hours surcharge	\$70.80	\$45 – \$110	\$110	\$110
Distance fee (per km)	\$3.30	\$4.40 – \$4.50	\$3.30	\$2.20 – \$4.40
Storage (per day)	\$15.90	\$22 – \$28	\$17	\$17
Waiting time (per hr) ^c	–	up to \$110	–	–

^a Ballarat, Bendigo and Castlemaine. ^b Across different regions and operators, there may be differences in inclusions in the base fee. For example, in the controlled area the base fee includes the first 8 kilometres of travel (measured from the depot). Some, but not all operators, outside of the controlled area also provide for the first 8 kilometres in the base fee. ^c The base fee in the controlled area includes any waiting time at the accident scene — a separate waiting time fee cannot be charged. Outside of the controlled area fees are not regulated, so operators are free to set their own fee structure.

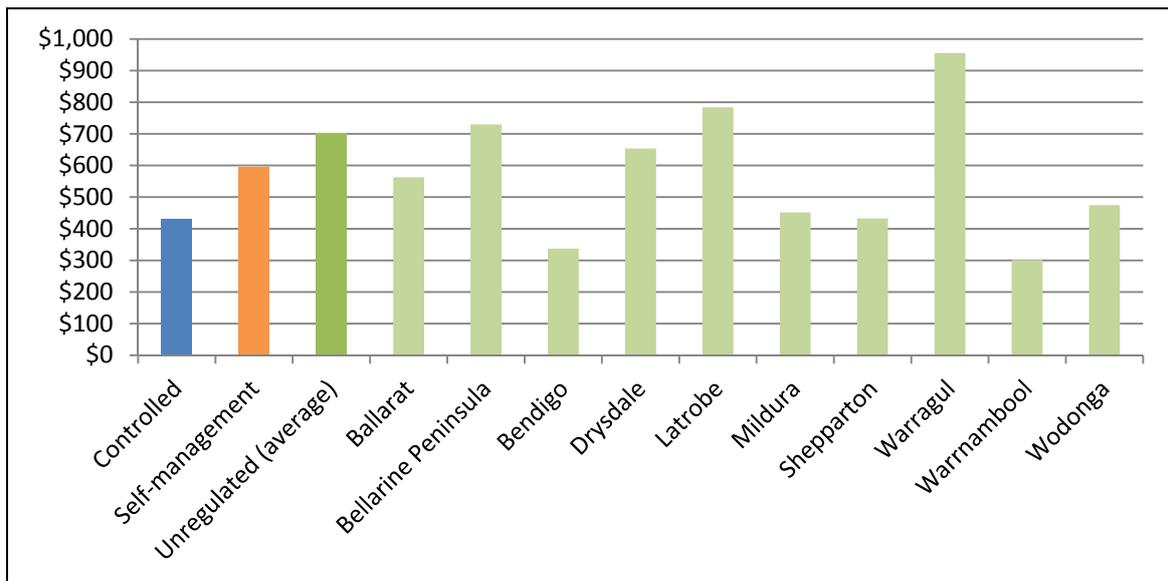
Based on our consultations with operators to date and the information presented in table 5.1, we make the following observations:

- Fees are often higher in areas where operators set their own fees compared to the controlled area.
- Base fee — there is significant variation in the level of the base fee, and also variation in what it includes, i.e. many operators include the first 8 kilometres in the base fee, while for some there are no included kilometres. On average, the base fee is at least 50 per cent higher in areas outside of the controlled area.
- After hours surcharge — almost all operators we met outside of the controlled area charge a surcharge of \$110.
- Storage — while many operators in the unregulated area provided a storage fee, many note they rarely charge for storage.

5.5.2 FEE INFORMATION PROVIDED BY INSURANCE COMPANIES

The first set of insurance information we consider relates to a sample of approximately 18,500 accident tows throughout Victoria over the period 2013-2014 (figure 5.1). For this sample we have been provided with the *total* towing cost (i.e. the total of towing, storage, salvage and any other related fees). Second, we consider a smaller set of accident towing invoices (approximately 1300 accident tows). These invoices provide the various components of the total fee (e.g. base fee, after hours surcharge, distance charge, waiting time and salvage).

FIGURE 5.1 AVERAGE TOTAL TOWING CHARGES (INC GST)



Data source: Commission analysis of IAG and Suncorp data (18,500 accident tows throughout Victoria).

Figure 5.1 shows that average accident towing charges are often higher outside of the controlled area. There are some limitations of this data. For example, the data reflects the total towing fee, which could include other non-towing charges. However, it is still useful for comparing broad relativities between different areas of Victoria and identifying potential issues for further investigation.

The data shows that there is significant variation in accident towing charges for seemingly similar accident towing services. Average accident towing charges are highest in the Latrobe Valley and Warragul, while the lowest fees are in the controlled area, and Bendigo, Shepparton and Wodonga in the unregulated area. Average fees in Warragul are twice that of the controlled area, Bendigo, Shepparton and Wodonga.

One factor contributing to higher charges is the longer towing distance in the unregulated area. From the smaller set of towing invoices, we estimate that the median accident tow is around 16 kilometres in the controlled area, 22 kilometres in the self-management area, and 42 kilometres in the unregulated area. Given this difference, it is more relevant to consider the unit rates of each fee component to assess the extent to which fees vary across Victoria.

The disaggregated fee information from IAG and Suncorp covers the period January 2013 to January 2015. The following sections compare key fee components across the controlled, self-management and unregulated areas.

It is important to note that the data represents a subset of accident tows. Apart from the controlled area where fees are regulated and the self-management area where we received the fee schedule from all operators, the averages for each fee component do not represent an average of *all* tows or of *all* operators within a region.¹²¹

5.5.3 FEE COMPONENTS

The second source of insurance data we consider disaggregates the total towing charge into the various components of the total fee (e.g. base fee, after hours surcharge, distance charge, waiting time and salvage). The sample is based on approximately 1300 accident towing dockets. From this data, we analyse the base fee and distance rate in detail by comparing average fees across Victoria.¹²²

BASE FEE

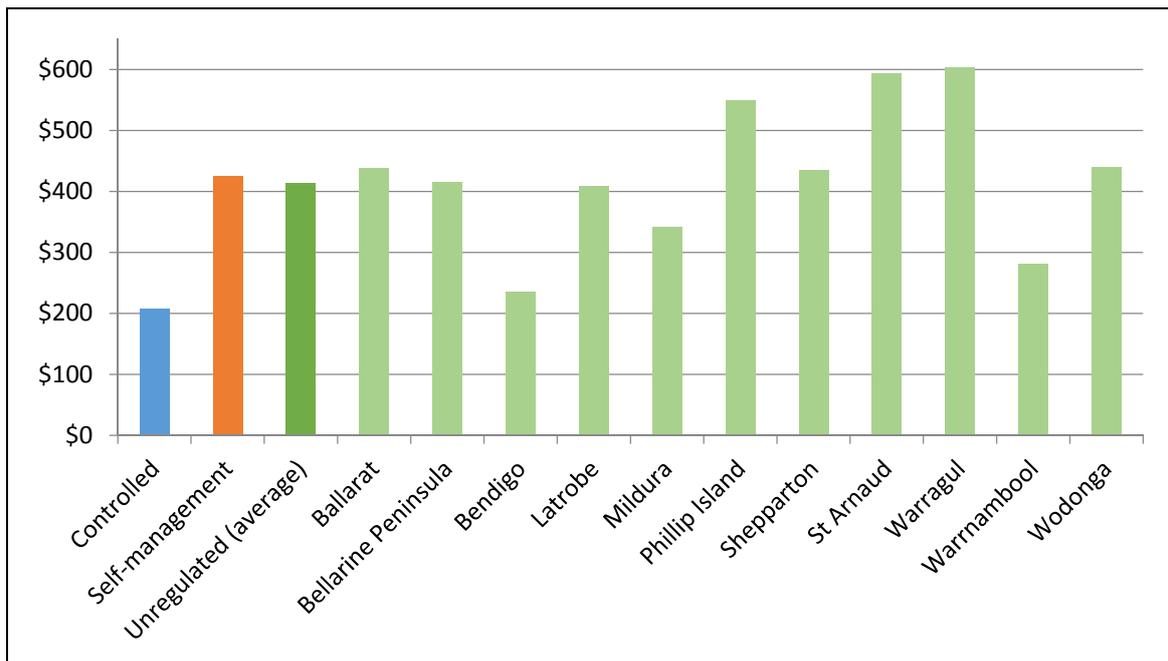
Figure 5.2 illustrates that there is significant variability in the base fee charged by operators. It is clear that in a majority of regions operators charge at least double the controlled area base fee, with the exception of Bendigo where the base fee is only 14 per cent higher, Warrnambool (35 per cent higher) and Mildura (64 per cent higher).

In the unregulated area we found examples of higher base fees for tows in Warragul (\$603.68), St Arnaud (\$592.90), Phillip Island (\$550) and Wonthaggi (\$550). The lowest base fees were found in Bendigo (\$235.62) and Warrnambool (\$281.68).

¹²¹ While having additional fee data would improve the accuracy of the analysis, having considered various pieces of information (e.g. operator provided information, and total towing costs and towing invoices from insurers), we are satisfied that the conclusions we make from the data are robust and reasonable as consistent conclusions can be made from each dataset.

¹²² Average base and distance fees for the controlled, self-management and unregulated areas were presented in chapter 2 (figures 2.3 and 2.4). These figures show that the average base fee outside the controlled area is at least double the regulated fee, while the average distance rate is 33 per cent higher in the self-management area and 16 per cent higher in the unregulated area compared to the controlled area.

FIGURE 5.2 AVERAGE BASE FEE BY REGION (\$ inc GST)



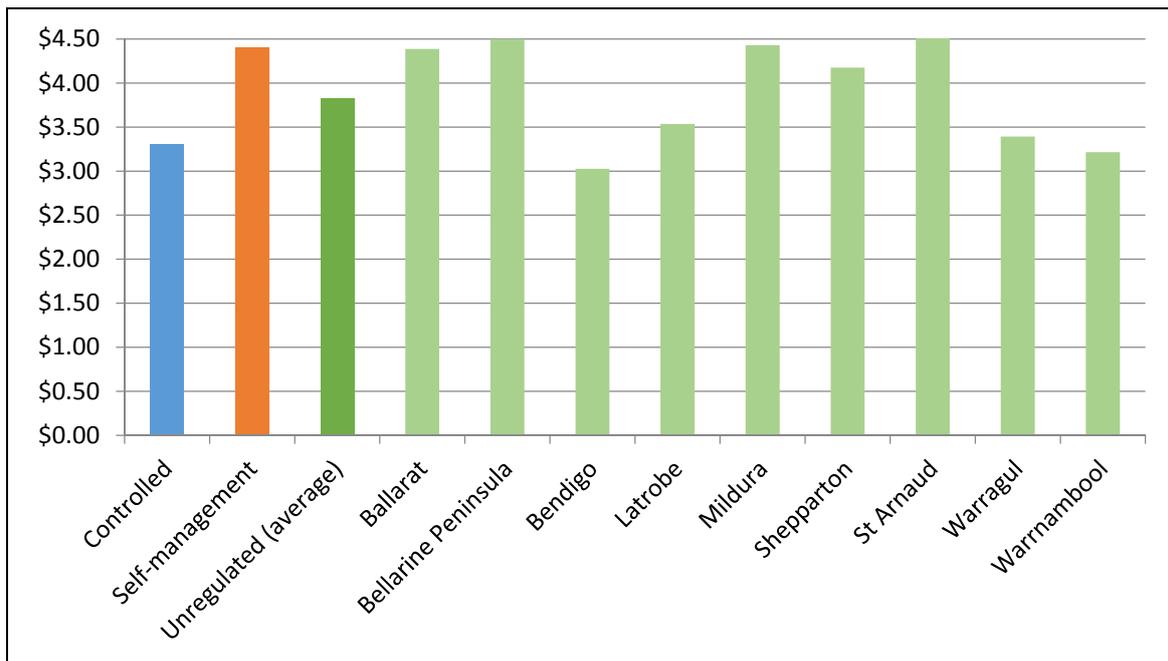
Data source: Regulated fees, operator information and Commission analysis of IAG and Suncorp data.

DISTANCE RATE

Similar to the base fee, the average distance rate is generally higher outside of the controlled area. Although as a percentage of the controlled area price, the distance rate mark-up is less than the mark-up on the average base fee. There is also less variability in the distance rate charged by operators outside of the controlled area (figure 5.3).

Within the unregulated area, the average distance rate is highest in St Arnaud (\$5.45), the Bellarine Peninsula (\$4.50), Mildura (\$4.43) and Ballarat (\$4.39). The lowest rates were found in Bendigo (\$3.03) and Warrnambool (\$3.22).

FIGURE 5.3 AVERAGE DISTANCE RATE BY REGION (\$ PER km inc GST)



Data source: Regulated fees, operator information and Commission analysis of IAG and Suncorp data.

OTHER FEE COMPONENTS

We also analyse the after hours surcharge and storage rates charged by operators outside the controlled area.

- After hours surcharge
 - The surcharge is on average \$71 in the controlled area and \$101 in the unregulated area (42 per cent higher than the controlled area).
 - The highest surcharges were found in Warragul and Latrobe. Surcharges in these regions are 133 per cent and 115 per cent higher respectively than the controlled area.

- Storage rates
 - Storage rates are on average \$16 in the controlled area and \$17 in the unregulated area (7 per cent higher than the controlled area).
 - The highest storage rates were found in the self-management area and Bellarine Peninsula. Surcharges in these regions are 30 per cent and 21 per cent higher respectively than the controlled area.

5.5.4 CONCLUSIONS ON FEE DATA

The available data indicates fees are generally higher outside of the controlled area. This is true for each of the main fee components: the base fee, the distance rate, the after hours surcharge and the storage fee.

The extent of this fee differential is greatest for the base fee, with the average base fee in the unregulated area at least double that of the controlled area. In some regions the base fee is two and a half to three times that of the controlled area fee.

A key question is whether there are higher costs of providing accident towing services in the unregulated area which may justify these higher fees.

5.6 COMMISSION ANALYSIS — ASSESSMENT OF COSTS IN THE UNREGULATED AREA

There may be reasons for higher fees outside the controlled area. In this section we assess whether the size and scope of businesses impact on the level of fees charged.

5.6.1 SIZE AND SCOPE OF ACCIDENT TOWING BUSINESSES

Factors that influence the costs of an accident towing business include:

- the number of tows performed (size), and
- the range of activities undertaken (scope).

Accident towing businesses of larger size or broader scope will generally have lower average costs per tow, and can charge lower average fees and still recover costs. For

example, businesses that perform more tows can recover their fixed costs¹²³ over a larger number of tows.¹²⁴ Similarly, accident towing businesses that are involved in more activities (e.g. trade towing, smash repair) can recover common costs¹²⁵ across a broader range of activities. Where businesses are not of a sufficient size and or scope, they may need to charge higher fees to recover their costs.

A key issue in analysing fees outside of the controlled area is whether differences in size and scope provide a justification for higher fees.

5.6.2 SIZE OF ACCIDENT TOWING BUSINESSES

Industry statistics and discussions with accident towing operators across Victoria provide some insights into the size of accident towing businesses. Table 5.3 presents a snapshot on size for the controlled, self-management and unregulated areas. Three measures of size are presented: tows per truck, tows per operator, and tows per licence.

- Tows per truck — we consider accident tows per truck (per period) to be the most relevant measure of business size. The tow truck is the main asset in performing accident tows. Further, most of the costs of the tow truck are fixed with respect to the number of tows undertaken, so tows per truck is an important determinant of the average costs of a tow.
- Tows per operator — tows per operator measures the number of tows performed by each operator. Tows per operator may be different to tows per truck, as an operator can own more than one tow truck. It is for this reason that tows per truck is a better indicator.
- Tows per licence — is frequently used by operators when discussing the size of their towing business (attached and unattached licences are included in the calculation). Since an accident towing licence simply represents an *administrative*

¹²³ Those costs that do not vary with the number of tows. The most significant fixed cost is the tow truck.

¹²⁴ This is not to say that tow truck operators will set their prices at average cost. If there is spare capacity and the market is competitive, for example, competition could force prices down to cover only variable costs, while if there is a shortage of capacity, prices may rise for a time to a level that is needed to encourage new investment.

¹²⁵ Those costs that must be incurred to provide accident towing services but would also be incurred to provide other services. For example, a tow truck is required to provide either accident towing or trade towing, and so the recovery of this common cost can be shared across both services.

approval to perform accident tows, we consider it a less relevant measure of business size compared to tows per truck.

TABLE 5.3 ACCIDENT TOWING BUSINESSES — OBSERVATIONS ON SIZE 2014

	Controlled area	Unregulated area ^a	Self-mgt area
Accident tows	46,596	≈14,100	1,753
Accident tows per truck ^b	184.9	≈59.2	250.4
Accident tows per operator	443.8	≈100.7	350.6
Accident tows per licence ^c	110.7	≈50.7	70.1

^a We have had to estimate the number of accident tows in the unregulated area. All values presented are therefore approximations. ^b Number of trucks is estimated as the number of licences (attached and unattached) less the number of dormant licences. ^c Includes attached and unattached licences.

Table 5.3 shows that:

- Tows per truck — is highest for operators in the self-management area (250.4 per year), compared to 184.9 and 59.2 in the controlled and unregulated areas respectively.
- Tows per operator — is highest for operators in the controlled area (443.8 per year), compared to 350.6 and 100.7 in the self-management and unregulated areas respectively.
- Tows per licence — is highest in the controlled area (110.7 per year), compared to 70.1 and 50.7¹²⁶ in the self-management and unregulated areas, respectively. This outcome, in comparison to tows per truck, is partly explained by the high proportion (72 per cent) of unattached licences in the self-management area — of the 25 regular towing licences in the area, 18 are unattached. This compares to 40 per cent and 14 per cent in the controlled and unregulated areas respectively.

¹²⁶ The estimate for the unregulated area (50.7 tows per licence per year or 4.2 tows per licence per month) needs to be treated with some caution. It is based on an estimate of the number of accident tows in the area. While a best estimate given the available information, the estimates of 50.7 tows per year and 4.2 tows per month is inconsistent with feedback from operators in the area on the number of accident tows they perform.

Conclusions on business size

The most relevant measure of business size is accident tows per truck. On this measure, operators in the unregulated area are smaller than controlled area operators. The larger size of controlled area operators allows them to spread their costs over more accident tows, so that they have lower average costs per tow compared to unregulated area operators. This suggests that unregulated area operators may have higher average costs per tow and may need to charge higher fees to remain viable.

5.6.3 SCOPE OF ACCIDENT TOWING BUSINESSES

Accident towing fees may be lower when an operator undertakes other related businesses because the operator may be able to recover some shared costs from these other businesses. In a stand-alone accident towing business an operator can only recoup its costs from providing accident towing services. If an operator's business covers more than accident towing, some of the costs of accident towing (e.g. costs shared across the businesses different activities) can be recouped through the other activities of the business. This can lower an operator's average cost per accident tow.

We have met with operators in the controlled, self-management and unregulated areas, the VACC and insurers. Submissions have been received from some of these stakeholders. We have also previously conducted fee reviews for the controlled area. Through these interactions, stakeholders have provided information about the scope of towing businesses. The consistent message from stakeholders is that very few businesses are only involved in accident towing. For example, we have heard from operators that:

- accident towing is a side business for them
- businesses limited to accident towing are not viable
- existing accident towing licence values are supported by related activities, e.g. smash repair, and
- there are more trade tows than accident tows.

Almost all of the operators we have met do trade towing. Given a tow truck can be used for accident towing and trade towing, it is understandable that operators may be involved in both forms of towing.

While towing and smash repair are more distinct activities, they are closely linked. Vehicles involved in an accident may require smash repair services and accident towing operators have first and direct contact with drivers involved in an accident. Operators, industry associations and VicRoads all suggest that the vast majority of accident towing operators either own a smash repair business or have an indirect link to smash repair (e.g. they may have commission arrangements with smash repair businesses). (Submissions from IAG and Suncorp comment on links between towing operators and smash repair, see chapter 4.)

Four of the five operators in the self-management area have a smash repair business, and of the eight operators we have met in the unregulated area, seven also run a smash repair business.

The industry acknowledges that accident towing is only part of an operator's business. The VACC states in its submission:

Most accident tow truck operators also operate a smash repair business and it is the latter business that would, in most cases, provide the greatest turnover for the business.¹²⁷

Wallan Towing submits that its main income is trade towing, not accident towing.¹²⁸

Conclusions on scope

While business size (number of tows) is an important driver of average accident towing costs, its relevance and importance diminishes to the extent that the business does more than just accident towing. The high (nearly universal) overlap between trade towing and accident towing, and the high degree of integration between towing and smash repair, complicates the assessment and comparison of average cost per accident tow across the controlled, self-management and unregulated areas.

¹²⁷ VACC submission, 3 December 2014, p. 5.

¹²⁸ Wallan Towing submission, 21 November 2014, p 1.

5.6.4 COMPARISON WITH OTHER JURISDICTIONS

We have also reviewed fees in other jurisdictions to get a sense of whether accident towing costs and fees outside of metropolitan areas are generally higher.

Accident towing fees are regulated across NSW. The current maximum towing and storage fees applying in NSW are presented in table 5.4. In NSW, there are two separate fee schedules for accident towing: one for metropolitan Sydney and one for other parts of the state.

Most fees are set at the same level across all of NSW. The only difference in Sydney and other area fees relates to the distance fee. Outside of Sydney, the distance fee is half that of the metropolitan fee (\$3.12 per kilometre compared to \$6.23), and can only be charged for tows in excess of 20 kilometres (as measured from the operator's depot). In Sydney, the distance fee applies for tows in excess of 10 kilometres, as measured from the accident scene.

The key point to note is that fees are not higher outside of the Sydney metropolitan area.

TABLE 5.4 NSW ACCIDENT TOWING AND STORAGE FEES (EXC GST)
Light vehicles, 2015-16

	Sydney	Other areas
Base fee (\$) ^a	\$257	\$257
Distance fee (\$/km) ^b	\$6.23	\$3.12
Storage (\$/day) ^c	\$19.50	\$19.50
Salvage	\$61	\$61
Secondary tow	\$90	\$90
After hours surcharge (%) ^d	20%	20%

^a Includes the first 3 days of storage. ^b For Sydney tows, the distance rate only applies after the first 10 kilometres of the tow, as measured from the accident scene to the requested destination. For tows in other areas, the distance rate only applies after the first 20 kilometres, as measured from the operator's depot. ^c Only payable from the fourth day of storage. ^d Applies to towing and salvage fees, not storage.

In its review of towing in NSW, IPART surveyed towing operators and drivers, and estimated the hourly cost of towing activities in metropolitan and country areas. It found that hourly costs of towing are similar across NSW:

- \$88-\$113 for metropolitan areas, and
- \$96-\$122 for country areas.

While on average, hourly costs may be slightly higher in country areas, IPART found that the time taken to complete a tow in country areas is less than in metropolitan areas. In its final report, IPART recommended changes to the fee structure and levels. Under the recommended structure:

- IPART maintains the existing fee structure, with fees in Sydney and other areas being the same except for the distance fee, which is lower in country areas.

IPART also recommends a narrowing of the gap in the Sydney and other areas distance fees, achieved by decreasing the Sydney fee and increasing the fee in other areas from their existing rates, and

- storage fees differentiate between inner metropolitan, outer metropolitan and country areas. Lower fees apply in outer metropolitan and country areas.

Operators in the self-management and unregulated areas told Commission staff that their fees need to be higher than those in the controlled area because they do fewer tows and their costs are higher. The NSW experience, where fees are lower in non-metropolitan areas, suggests that if there are higher costs from fewer tows in these areas, they are either not materially higher or are offset by other cost advantages (e.g. lower building lease costs, council rates and congestion costs).

Accident towing fees are also regulated in South Australia (SA) and Queensland. In SA, fees are regulated in metropolitan Adelaide, and in Queensland a single fee schedule applies in selected cities and regional areas.

The application of fee regulation in NSW and Queensland is particularly relevant to our consideration of whether fees need to be higher outside of the controlled area. In both cases, government has assessed what it believes to be reasonable fees and both have set fees in metropolitan *and* non-metropolitan areas. In NSW, fees are lower outside of Sydney. And in Queensland, fees are the same across selected cities and regional areas.

Arguments from Victorian operators that it is reasonable for fees to be higher than the regulated controlled area fees should be considered carefully.

5.7 IS FEE REGULATION REQUIRED IN THE UNREGULATED AREA?

Higher fees in the unregulated area could potentially be justified if operators' size and scope were of insufficient scale, implying the average costs of providing accident towing services in this area are higher. We have found that tows per truck are lowest in the unregulated area, suggesting higher average costs per tow.

It is also the case that the vast majority of accident towing businesses operate in related markets, namely trade towing and smash repair. This broad scope of activity provides an opportunity for operators to recoup some of their common costs from these other activities. This can lower average costs per accident tow.

Our findings in relation to business size and scope are inconclusive in terms of the extent to which fees need to be higher in the unregulated area. But we do have some concerns with the level of fees in some parts of the area — that is, we are not convinced that all operators are charging reasonable fees. In some cases, for example, fees are three times the level in the controlled area. This suggests some operators may have market power to charge high fees.

This leaves the Commission with three options:

- To leave the current arrangements as they are.
- To regulate in a 'light handed' manner using price notification, including seeking the collection of information to make a more informed assessment of whether fees in the self-management and uncontrolled areas are reasonable.
- To regulate the setting of fees in the unregulated area.

Our draft conclusion is that there is sufficient cause to support the introduction of price notification, to better inform government and stakeholders of the pricing behaviour in the self-management and unregulated areas.

A well designed price notification regime will provide useful information for VicRoads and industry participants more generally, and could place some pressure on those operators charging high fees to moderate their level of fees. Further, it would be a lower cost regulatory option compared to government setting of fees. In the next section, we discuss how price notification could be implemented.

5.8 IMPLEMENTING FEE NOTIFICATION

Fee notification fits more towards the 'light handed' end of economic regulation. It involves no direct control of prices, it still allows operators to set their own fees but is intended to provide a discipline on prices charged by a business. This discipline comes from:

- promoting increased transparency and scrutiny of fees by consumers and by government, and
- reducing the potential for opportunistic pricing behaviour.

In our view, a fee notification regime could place pressure on those operators charging unreasonably high fees to moderate their level of fees. It is also a markedly lower-cost regulatory option compared to direct fee setting (i.e. where the government sets the regulated fees that operators can charge). In the next section, we discuss how fee notification would work.

5.8.1 HOW FEE NOTIFICATION WOULD WORK

Under fee notification, operators in the unregulated area would continue to set their own fees. However, there would be an obligation on accident towing operators to notify VicRoads of their accident towing fees. Accident towing fees to be notified would include all accident towing and storage related fees (excluding salvage) that the accident towing operator may charge. Operators would be permitted to charge up to their published, notified fees. Operators would however be able to provide a discount off their notified fees as and when they saw fit. Box 5.2 sets out further detail on the proposed approach to fee notification.

A fee notification regime will provide the market with information for each fee component which makes up the total accident towing charge (e.g. base fee, distance and storage fees). It will permit all stakeholders to compare the fees of operators across the unregulated area. This will significantly add to VicRoads' knowledge of accident towing markets across Victoria. It will also add to its information set when investigating complaints about unreasonable fees.

A similar notification scheme applies to the taxi industry in the unregulated country and regional areas of Victoria. This scheme requires taxi operators and networks to notify the industry regulator (the Taxi Services Commission) of intended changes to fares. This information is publicly available on the Taxi Services Commission's website.

BOX 5.2 FEE NOTIFICATION FOR THE AND UNREGULATED AREA

Fee notification for the unregulated area should involve:

- Operators notifying VicRoads of their accident towing fees. Fees would cover *all* accident towing and storage related fees (excluding salvage) that the operator may charge.
 - Operators would be permitted to only charge up to their published, notified fees. They would be able to provide a discount off the notified fees as and when they saw fit.
 - In implementing the notification regime, VicRoads could specify the type of fees that operators are permitted to charge (e.g. it could specify the fee components that operators are allowed to charge, thereby setting a consistent fee schedule across all operators). For example, this schedule could be as applied in the controlled area, i.e. a base fee, an after hours surcharge, a distance fee and storage fees.
- VicRoads publishing accident towing fees of all operators in the unregulated area on its website.
- There would be no limit on how frequently operators could alter their fees. Operators could only charge their new fees after they had notified their fees to VicRoads, and VicRoads has published the new fees on its website.
 - In implementing the notification regime, VicRoads will need to determine the process and timelines for fee notification. For example, VicRoads could require operators to notify a change in fees at least 2 weeks before they are to be implemented, and VicRoads would publish the notified fees within 5 business days of receipt.

Continued next page

BOX 5.2 (CONTINUED)

- VicRoads publishing an annual report on notified fees to better inform stakeholders on fee outcomes.¹²⁹
 - An important part of VicRoads' analysis will be reviewing the data to see if the notification regime is having the perverse effect of increasing fees, and more specifically to identify whether over time fees are converging at higher levels.

5.8.2 ADVANTAGES AND DISADVANTAGES OF FEE NOTIFICATION

It is important that the fee notification scheme be proportionate to the issues we have identified. We assess this by considering the advantages and disadvantages of fee notification.

ADVANTAGES

The advantages of a fee notification scheme derive from the scheme's ability to hold prices to reasonable levels. Primarily, we see this discipline coming from increased transparency.

We envisage that fee information would be collated and reported on a regular basis by VicRoads. This should facilitate a closer scrutiny of fees (and fee changes) by consumers and government. In turn, this can apply pressure on accident towing businesses to avoid attracting attention by charging fees that exceed the norm. Higher fees may prompt the Minister to start an investigation into whether they are reasonable, particularly where numerous complaints are made about them. Further, if VicRoads (or ourselves if we had the role of reporting annually on towing fees) observed that over time towing fees were converging to higher levels, this would present a *prima facie* case for investigating the setting of fees for the unregulated area.

¹²⁹ Alternatively, we could be given the task of publishing an annual report. We have such a role in regard to taxi fares in regional and country zones in Victoria.

DISADVANTAGES

The disadvantages of the scheme primarily relate to regulatory and compliance costs.

Regulatory costs for VicRoads include the costs of operating a website on which fees are published as well as enforcement of the notification regime. Neither of these costs is expected to be significant. VicRoads already maintains a website and publishes information on accident towing, including detailed accident allocation information for the controlled area. In regard to enforcement, we would not expect VicRoads' enforcement officers to be running field investigations into whether operators were abiding by their notified fees. Instead, VicRoads would need to be ready to investigate any complaints from drivers involved in an accident or insurers of alleged over-charging. Further, compliance with notified maximum fees could be a licence obligation for each operator.

Compliance costs are those costs incurred by industry in complying with the particular requirements; these are likely to be higher the more prescriptive the approach is to notification and where it requires information that would not normally be collated or produced by the tow truck operator. Fee information would be readily known and therefore low cost to produce.

We do not envisage the fee notification scheme will be onerous for accident towing operators, particularly as it would not require accident towing fee changes to be approved or 'signed off' by a regulator.¹³⁰ The regime simply requires accident towing operators to advise VicRoads of their accident towing fee schedule.

There may also be a cost if the regime has the unintended consequence of increasing average fee levels in the unregulated area. There is some possibility that better awareness of what other tow truck operators charge (due to the notification scheme) may lead to prices rising rather than falling. This is because an operator may become aware that it is an outlier on the 'low side'. This highlights the importance of the

¹³⁰ This is an important difference compared to price notification as specific to the *Prices Surveillance Act 1983*, which referred to the requirement that nominated businesses notify the regulator of proposed price increases. The regulator examined these proposals and issued determinations stating whether the price increases were acceptable or not. The regulator also had the power to collect relevant data from nominated businesses and other parties. Compliance with the regulator's determinations was voluntary. See Productivity Commission 2001, *Review of the Prices Surveillance Act 1983*, Report no. 14, AusInfo, Canberra.

notification regime including annual analysis and reporting of changes in fees, as well as investigations where fees appear unreasonable. As already noted, converging of fees at higher levels may suggest a need to set fees in the unregulated area.

5.8.3 CONCLUSIONS

No accident towing fee or cost information is routinely collected in Victoria. This has made our consideration of fee regulation difficult. While we have been able to get some information on fees from operators and insurers, we do not have a complete dataset of towing fees.

We are mindful of reaching conclusions based on incomplete data. But we do consider that there are strong reasons to be concerned about the reasonableness of fees in parts of the unregulated area. This is based on:

- the level of some unregulated area fees compared to controlled area fees
- the scope of accident towing businesses (covering accident towing, trade towing and smash repair) limiting the extent to which fees need to be higher in the unregulated area, and
- evidence from NSW and Queensland where reviews have previously found that costs in non-metropolitan areas are not sufficiently higher to justify higher fees than in metropolitan areas.

Lack of fee data and information on operator costs makes it difficult to recommend fee setting. We favour notification of accident towing fees. Fee notification will for the first time provide all stakeholders with information on fees charged outside of the controlled area.

5.9 DRAFT RECOMMENDATION

We recommend the introduction of accident towing fee notification for the unregulated area.

Draft recommendation 9: Fee regulation — unregulated area

A fee notification regime applying to regular vehicle accident towing and storage fees should be implemented for the unregulated area. The regime should involve:

- 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-management and unregulated areas.

6 CONTROLLED AREA BOUNDARY

This chapter considers the appropriateness of the controlled area boundary and approaches to amending the boundary.

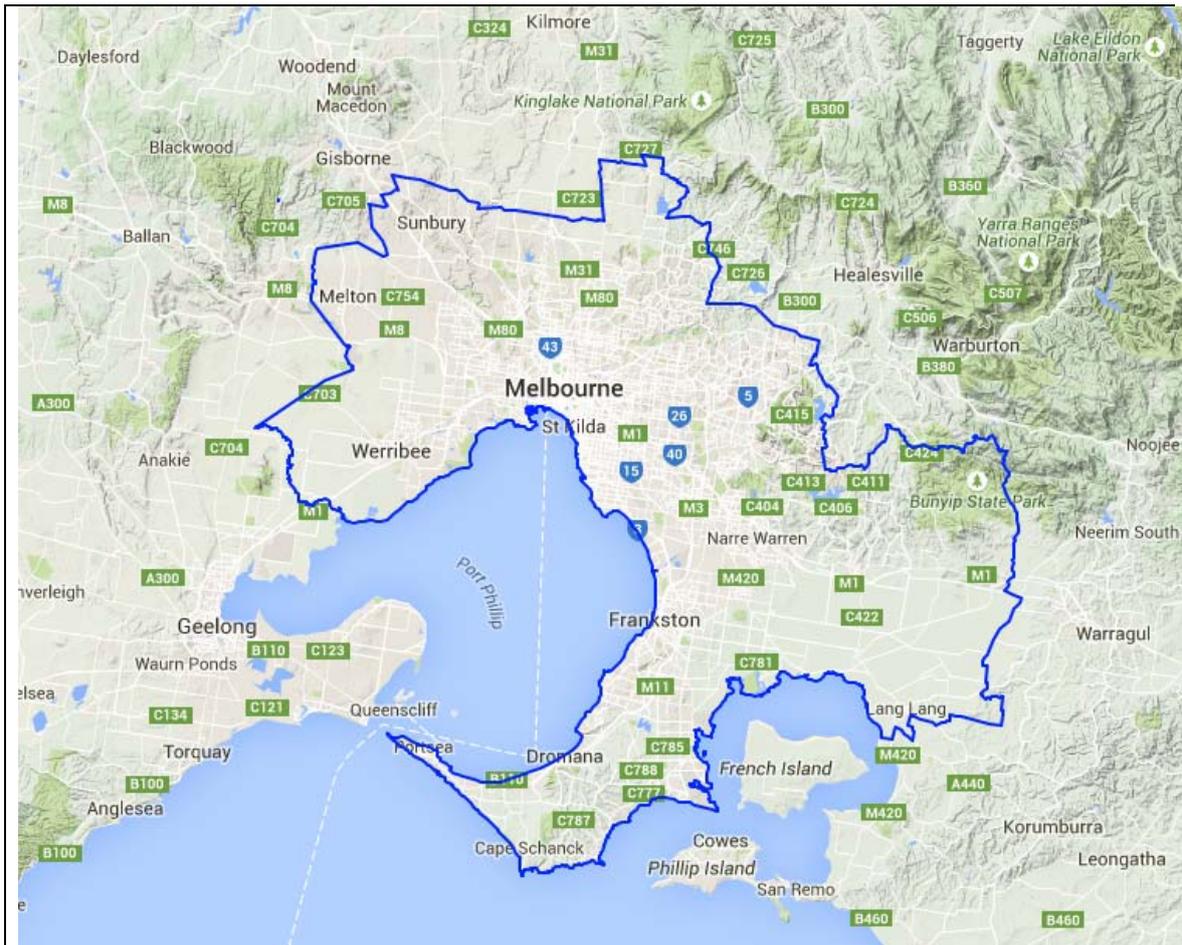
6.1 THE ISSUE

The terms of reference for this review ask us to examine the appropriateness of the controlled area boundary.

VicRoads is responsible for declaring controlled areas. Currently, there is one controlled area and it covers Melbourne and the Mornington Peninsula, extending to Werribee and Melton (to the west), Sunbury, Craigieburn and Whittlesea (to the north), Lilydale and Pakenham (to the east), and the Mornington Peninsula (to the south) (figure 6.1).

The controlled area was established in 1983 and defines a geographic submarket for regulatory purposes. The boundary was introduced to define the area where an allocation scheme applies and where accident towing and storage fees are regulated. As well as defining a regulatory area, historically, the controlled area was intended to capture metropolitan Melbourne. The boundary was last amended in 2002.

FIGURE 6.1 CONTROLLED AREA BOUNDARY



Data source: VicRoads

6.2 STAKEHOLDER COMMENTS

We asked stakeholders if the current controlled area boundary is reasonable and what process and criteria should be applied in setting boundaries. Most stakeholders comment that the boundary needs to account for Melbourne’s population growth and urban expansion.

Wallan Towing states that changes to area boundaries should be based solely on population growth into fringe areas and should include consultation with operators who would be affected by the proposed changes.¹³¹

The VACC support criteria such as population density, traffic flow information and the number of accident to set boundaries.¹³²

The Insurance Council supports reviewing allocation boundaries as metropolitan Melbourne expands.¹³³ Similarly, IAG believes that the existing allocation boundaries are reasonable but will need to be reconsidered to account for continued urban expansion of Melbourne.¹³⁴

Suncorp considers allocation boundaries should be periodically reviewed as part of the Commission's three year review and take into account population growth, traffic accident statistics and any behavioural issues experienced on zone boundaries.¹³⁵

6.3 COMMISSION ANALYSIS — IS THE CURRENT BOUNDARY APPROPRIATE?

Before examining whether the controlled area boundary is appropriate, it is useful to understand why the controlled area is needed. The controlled area boundary defines where the accident allocation scheme works and it defines the area where accident towing fees are set.

¹³¹ Wallan Towing submission, 18 November 2014, p. 1.

¹³² VACC submission, 28 November 2014, p. 6.

¹³³ Insurance Council of Australia submission, 28 September 2014, p. 2.

¹³⁴ IAG submission, 28 November 2014, p. 3.

¹³⁵ Suncorp submission, 18 November 2014, p. 3.

6.3.1 SHIFTING THE CONTROLLED AREA BOUNDARY

The current controlled area boundary could shift inwards, outwards or remain as is.

To make a case to amend the boundary inward, evidence is needed that areas within the current controlled area no longer need regulation. That is, certain areas within the boundary would not be disadvantaged without an accident allocation scheme or fee setting. For example, evidence would be needed that in those areas to be removed from the current controlled area:

- accident scenes would continue to be cleared in an orderly and timely manner without an allocation scheme,
- costs associated with increased congestion if accidents were cleared more slowly in the absence of regulation are negligible. This might occur, for example, because of decreasing population and accident towing jobs, and
- accident towing fees would be reasonable in the absence of fee setting.

At the extreme, the controlled area could be deregulated, that is, the boundary could be removed. However, there are strong arguments for accident tows to be allocated and for fees to be set (see chapters 3 and 5 respectively).

A shift outward would require a case to be made that, for example, an accident allocation scheme and fee setting are needed outside the current controlled area boundary. This would require evidence that outside the boundary:

- accident scenes are not being cleared in an orderly and timely manner, that is, multiple tow trucks are attending an accident scene and delaying the clearing of an accident
- congestion is imposing high costs on other road users, and
- accident towing fees are unreasonably high.

Further, the evidence would need to show that all of these issues would be improved by extending the boundary.

Detailed data about these issues would be required to justify boundary changes.

IMPACT OF A BOUNDARY CHANGE

Any changes made to the controlled area boundary will affect not only the controlled area but the unregulated area as well. For example, if the controlled area boundary shifts outwards, this will increase the number of operators and depots captured by the controlled area while conversely decreasing the number of operators and depots in the unregulated areas. For new operators in the controlled area, they will be part of the accident towing allocation scheme and will be required to charge the regulated accident towing fees.

These new operators will no longer be able to actively seek accident towing work. Instead, they will be allocated tows through the allocation scheme. This could lower their cost structures, as these operators would no longer have to spend resources seeking accident towing work. The requirement to only charge regulated fees may also encourage operators to identify cost savings (since regulated controlled area fees are generally lower than fees charged by operators in the unregulated area).

There is the potential that inclusion in the controlled area could provide operators with a “windfall gain” through an increase in their accident towing licence value. The available data on traded licence values suggests that controlled area licences have a higher value than unregulated area licences.

For accident towing customers, a broadening of the existing controlled area boundary means drivers would no longer have to organise a tow truck or negotiate a towing fee following an accident. Accident clearance may be more orderly and timely, since the allocation scheme will allocate tows to a specific operator.

Overall, the impact of any boundary change on accident towing customers and operators will depend on the size of the boundary change and the number of affected parties. The benefits of any boundary shift would need to be weighed against the costs of the shift.

IS A BOUNDARY SHIFT REQUIRED NOW?

We do not have the required data to inform us on whether a shift in the boundary is warranted. However, it is clear that Melbourne has grown since the last boundary change. For example, since 2004 the population of Melbourne has grown by over 20 per cent.¹³⁶ If this growth had predominantly occurred in areas around the fringe of the boundary, then the possibility of extending the boundary would have to be closely considered.

We note that the most recent statistics from the ABS indicate that of the five largest population growth areas in Australia, four of them are in Melbourne (the areas are South Morang, Point Cook, Craigieburn-Mickleham and Tarneit).¹³⁷ While Melbourne's population has been growing, these identified growth areas are all comfortably within the existing controlled area boundary.

As well as population growth, other factors that influence demand for accident towing services are increasing. The total number of registered motor vehicles per 1000 people has been steadily increasing.¹³⁸

We also note that the expansion of Melbourne has been formalised by other agencies:

- The Australian Bureau of Statistics (ABS) in its 2001 Census identified metropolitan Melbourne as occupying an area of 7694 square kilometres. This contrasts with the most recent 2011 Census where metropolitan Melbourne occupies 9991 square kilometres.
- Currently, the most widely used definition of metropolitan Melbourne by Victorian government agencies comes from the *2014 Plan Melbourne — Metropolitan Plan Melbourne* report.¹³⁹ Compared to the previous Plan Melbourne report, this definition has expanded the Melbourne metropolitan boundary to the east.

¹³⁶ Australian Bureau of Statistics 2015, *Regional Population Growth, Australia, 2013-14*, table 2 Estimated residential population, statistical areas level 2, Victoria.

¹³⁷ Australian Bureau of Statistics 2015, *Regional Population Growth, Australia, 2013-14*, accessed at www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/3218.0Main+Features12013-14?OpenDocument on 13 August 2015. These areas have been measured at the ABS statistical area level 2 (SA2s). SA2s aim to represent communities that interact together socially and economically.

¹³⁸ Australian Bureau of Statistics 2015, *National Regional Profile, Greater Melbourne, 2007-11*.

¹³⁹ This report is a strategy document designed to guide Melbourne's housing, commercial and industrial development through to 2050.

Although Melbourne has grown in area since the last boundary change, stakeholders have not submitted that any particular areas around the fringe should move into the controlled area. Nor have stakeholders identified any areas within the current controlled area that should be subject to no regulation.

6.3.2 DRAFT FINDING

We currently do not have sufficient information or data to inform us on whether a change to the controlled area boundary is required.

Draft finding 1: Area boundaries — controlled area

At this point in time, there is insufficient market-based evidence (data) to support a shift of the controlled area boundary.

6.4 COMMISSION ANALYSIS — A FUTURE PROCESS FOR AMENDING THE CONTROLLED AREA BOUNDARY

While we are not recommending a change to the controlled area boundary at this time, it is possible that the boundary will need to be amended in the future. In order to make an informed (and market-based) decision in the future, specific and detailed data will need to be collected. In table 6.1 we provide examples of the type of data that VicRoads should consider collecting to inform future boundary changes.

TABLE 6.1 USEFUL DATA TO INFORM FUTURE BOUNDARY CHANGES

Data	Description
Accident towing fees	Would fees remain reasonable if the boundary were shifted in; or are fees outside of the area unreasonable and require fee setting?
Accident clearance	Would accident clearance remain orderly and timely if the boundary were shifted in; or is clearance outside of the area not orderly or timely, thereby requiring the controlled area allocation scheme to be applied?
Number of accidents	This is related to accident clearance — the number of car accidents could suggest the allocation scheme is not required in an existing part of the controlled area, or alternatively that it needs to be extended to a new area outside the boundary.
Population and population growth	As per 'number of accidents — population may influence the number of accidents.

We recognise that this approach requires the industry regulator to collect and analyse a significant amount of information. In the absence of such detailed information another option available to VicRoads would be to define the controlled area using other area definitions of metropolitan Melbourne. These definitions could, for example, include metropolitan Melbourne definitions from the Victorian government or the ABS (see box 6.1). VicRoads would amend the controlled area to reflect the definition it applied. We note that this approach would be consistent with the initial intention of the controlled area, that is, it reflects metropolitan Melbourne.

BOX 6.1 THE AUSTRALIAN STATISTICAL GEOGRAPHY STANDARD

The Australian Bureau of Statistics (ABS) administers the Australian Statistical Geography Standard (ASGS). The ASGS sets out the ABS geography framework. The ASGS was developed for the collection and dissemination of geographically classified statistics. It is broadly based on the concept of a functional area. The functional area is the area from which people come to access services from a centre, such as a rural town, regional city, an urban commercial hub or a capital city.

Within the ASGS there is a Greater Capital City Statistical Areas (GCCSAs) area. GCCSAs are geographic areas that are designed to represent the functional extent of each of the eight state and territory capital cities. GCCSAs are designed to reflect the labour market of each city. The labour market is sometimes used as a de-facto measure of the functional extent of a city since it contains the majority of the commuting population. The design of GCCSAs also take into account the likely directions in urban planning over the next 20 years.

Source: Australian Bureau of Statistics 2011, *Australian Statistical Geography Standard: Volume 1 — Main structure and greater capital city statistical areas 1270.0.55.001*, July, p. 2..

6.5 DRAFT RECOMMENDATION

Adjustments to the controlled area boundary may be informed by specific market data on indicators relevant to accident towing. Alternatively, a boundary set to define metropolitan Melbourne which has been set by another agency could be applied. The ABS's Greater Capital City Statistical Area for Melbourne could be applied.

Draft recommendation 10: Area boundaries — controlled area

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'.

7 THE SELF-MANAGEMENT AREA

This chapter discusses regulation of accident towing in the self-management area. This includes discussion of fee regulation and accident allocations, which repeats some material from earlier chapters.

7.1 INTRODUCTION

The terms of reference require us to consider the appropriateness of the existing boundaries and the current form of economic regulation in the self-management area.

The self-management area covers Geelong and surrounding areas. A self-managed allocation scheme operates in the area giving operators an exclusive right to accident tows that are allocated to them. Operators are able to set their own fees, which are required to be “reasonable” under the *Accident Towing Services Act 2007* (the Act).

7.2 ACCIDENT ALLOCATIONS

VicRoads must set terms and conditions when establishing a self-management area. In the case of the Geelong self-management area, the terms and conditions largely relate to the establishment and operation of the area’s allocation scheme.¹⁴⁰

Given its small size relative to the controlled area, the self-management area is not separated into allocation zones. Rather, licensed operators in the area are able to perform accident tows in any part of the self-management area. A simple queue

¹⁴⁰ Victoria Government Gazette 2012, *Declaration of the self-management area of Geelong*, Special, No S 326, 28 September. See www.gazette.vic.gov.au/gazette/Gazettes2012/GG2012S326.pdf#page=1.

system exists in the self-management area for allocating accident tows among licence holders. Each of the 25 licences in the self-management area has a spot in the queue. The licence at the top of the queue is allocated the next accident tow. Once a licence holder completes its allocated accident tow job that licence moves to the end of the queue.¹⁴¹

7.2.1 STAKEHOLDER COMMENTS

Stakeholder comments on the controlled area and self-management allocation schemes were presented in chapter 3, section 3.3. In summary, insurers, the VACC and operators suggest that the allocation scheme in the self-management area is working effectively and support the continuation of the scheme.

7.2.2 COMMISSION ANALYSIS

The operation of the self-management allocation scheme is designed to allocate accident tows evenly amongst licences. As presented in section 3.3, the objective of an allocation scheme is the safe, efficient and timely provision of accident towing services (as outlined in section 4(a) of the Act).

We analysed the controlled area allocation scheme and considered whether allocations should continue, and whether the current arrangements are better than alternative approaches to accident allocations (proximity, performance, insurer preferred and competition based approaches; see chapter 3 and appendix D). That discussion and analysis is equally relevant to the self-management area scheme.

In the case of the self-management area, we find that:

- Response and clearance times show that a significant proportion of accidents are attended to and cleared within a reasonable time (discussed in section 2.5.2).
- The advantages of the allocation scheme (e.g. orderly and timely clearance, reduced congestion, reduced behavioural issues associated with multiple operators

¹⁴¹ For the self-management area, the terms and conditions specified by VicRoads when declaring the area state that a towing allocation may be cancelled if the operator is “unable to attend the road accident scene within a reasonable period (generally 30 minutes from the time of allocation...)” (see clause 19(a) of Victoria Government Gazette 2012, *Declaration of the self-management area of Geelong*, no. S 326, 28 September).

attending an accident scene) outweigh its costs (e.g. impacts on operator performance and administration costs) (discussed in section 3.3.3 in the context of the controlled area scheme).

Given the above, we find that an accident allocation scheme should continue to operate in the self-management area.

As with the controlled area scheme, improvements can be made to the self-management area allocation scheme. Proximity-based allocations (by allocating the accident tow to the nearest depot) can improve the efficiency of the allocation scheme by improving response and clearance times. This benefits the driver involved in the accident, other road users and the tow operator. We analyse the impact of proximity-based allocations in the self-management area below.

Self-management area — impact of proximity-based allocations

For operators in the existing self-management area, the impact of moving to a proximity-based allocation scheme is presented in table 7.1. The analysis compares accident allocations to *depots*, not licences. While currently the self-management allocation scheme allocates tows to licences, under a proximity-based scheme allocations are made to the depot closest to the accident scene, rather than the licence at the top of the queue.

TABLE 7.1 IMPACT OF PROXIMITY-BASED ALLOCATIONS^a
Self-management area, tows per licence 2014

	Depot 1	Depot 2	Depot 3	Depot 4	Depot 5
Current	57.5	72.0	69.2	71.0	63.0
Proximity	26.0	115.8	74.8	151.0	56.8
Change	-31.5	43.8	5.7	80.0	-6.2
Change (%)	-54.8%	60.8%	8.2%	112.7%	-9.8%

^a While there were 1753 accident tows in the self-management area in 2014, only 1612 are included in the analysis. Accidents where it was not possible to identify clearly the accident location were excluded.

The analysis shows that based on the location of accidents in 2014, proximity-based allocations would have resulted in two depots receiving a lower number of allocations. For one depot of these depots, accident tows would fall by more than 50 per cent,

reducing accident towing revenue by \$149,000 (assuming an average fee of \$593). Of those depots that would have received an increase in allocations, one receives an increase in accident tows of more than 100 per cent.¹⁴²

Significant benefits from proximity allocations

A change to proximity-based allocations would have a significant impact on the distance of accident tows. Our analysis suggests that, based on 2014 data, total accident towing kilometres would fall from 33,941 kilometres to 17,340 kilometres and the average tow distance falls from 21 to 10 kilometres.

The significant reduction in kilometres travelled and towed translates to lower fees for consumers of accident towing services, and conversely lower revenues for accident towing operators. Given the reduction in towing distances travelled, tow truck operators would benefit from lower costs; for example, lower fuel costs and truck wear and tear.

Based on our analysis, proximity-based allocations have the potential to produce significant benefits in terms of improving response and clearance times, reducing congestion and towing fees and operator costs.

Implementing proximity-based allocations

The self-management operators played a role in implementing the area's allocation scheme. At the request of the then industry regulator (the Victorian Taxi and Tow Truck Directorate), Geelong-based operators were asked to develop a solution to the problem of multiple operators attending an accident scene. The establishment of the Geelong accident allocation scheme and self-management area was the outcome.

In considering how proximity-based allocations may be implemented, operators should consider the significant improvements and benefits that would accrue under such a scheme. Operators should be encouraged to explore ways of adjusting their current allocation scheme towards one that is more proximity-based. The outcomes of proximity-based allocations provide a benchmark for solutions considered.

¹⁴² While this depot's (depot 4 in table 7.1) accident tows per licence would have doubled under proximity-based allocations in 2014, it does not receive the highest *absolute* increase in accident tows. Depot 2 receives the highest absolute increase in accident tows (175).

If operators are unwilling to consider improvements to the allocation scheme, the alternative is for VicRoads to amend the terms and conditions applying to the self-management area to implement proximity-based allocations. It would do this by publishing new terms and conditions in the Government Gazette.

7.3 DRAFT RECOMMENDATION

The self-managed allocation scheme should continue to operate. However, we recommend that improvements to its operation are made.

In response to this draft report, we are interested in hearing from operators in regard to implementation issues associated with proximity-based allocations.

Draft recommendation 11: Accident allocations — the self-management area

The accident allocation scheme should continue to operate in the self-management area.

VicRoads should require self-management area operators to identify and implement improvements to the scheme, with proximity-based allocations providing the benchmark for any improvements.

If operators are unable to achieve sufficient improvements, VicRoads should amend the terms and conditions applying to the self-management area to progressively move towards proximity-based allocations.

7.4 FEE REGULATION IN THE SELF-MANAGEMENT AREA

Operators in the self-management area are able to set their own accident towing fees. The Act requires these fees to be “reasonable”. Continued setting of controlled area fees and assessment of fees in unregulated areas was presented in chapter 5. Similar issues and analysis are considered in this section in relation to self-management area fees.

7.4.1 STAKEHOLDER COMMENTS

Stakeholders disagree about whether fees in the self-management area should be regulated. The VACC and self-management area operators do not support fee setting by the Minister for Roads. The VACC states fees are already regulated under the “reasonable” requirement and operators would not charge unreasonable fees as this would jeopardise their chances of winning smash repair work.¹⁴³

Insurers, as significant users of accident towing services, support the extension of fee setting across the state. For example, IAG submits that “*we strongly believe that accident towing fees should continue to be regulated in the controlled area. We recommend that fee regulation be expanded to cover all other areas of the state*”.¹⁴⁴

7.4.2 COMMISSION ANALYSIS

In considering the regulation of accident towing fees in the self-management area, we consider:

- the advantages and disadvantages of fee regulation
- the level of fees charged by self-management area operators, and
- the size and scope of accident towing businesses in the controlled area.

ADVANTAGES AND DISADVANTAGES OF FEE REGULATION

Chapter 5 discussed in detail the advantages and disadvantages of fee regulation. In summary, the key advantages of fee regulation relate to assisting drivers who have been involved in an accident and clearing accidents in a timely and orderly way.

Disadvantages include regulatory costs (e.g. the costs incurred by regulators undertaking fee reviews) and costs imposed on operators (e.g. costs of participating in the regulatory process). There are also costs if the regulator sets fees at the wrong level.

¹⁴³ VACC submission, 3 December 2014, pp. 5 and 14.

¹⁴⁴ IAG submission, 28 November 2014, p. 3.

FEES IN THE SELF-MANAGEMENT AREA

In assessing fees charged by self-management area operators we consider fee information from two sources:

- accident towing operators — who provided us with their fee schedules, and
- insurance companies — who provided us with accident towing fee invoices.

Information from our consultations with operators is presented in table 7.2. Fees in the self-management area are similar to those in the unregulated area (Goldfields and Mildura). Self-management areas fees tend to be higher than the regulated controlled area. In particular, self-management area operators charge a base fee which is 86 to 112 per cent higher than the controlled area, and also charge a separate waiting time fee.

TABLE 7.2 ACCIDENT TOWING FEES (inc GST)
Controlled area and selected regions

	Controlled	Self-mgt	Goldfields ^a	Mildura
Base fee ^b	\$207.30	\$385 – \$440	\$330 – \$435	\$330
After hours surcharge	\$70.80	\$44 – \$110	\$110	\$110
Distance fee (per km)	\$3.30	\$4.40	\$3.30	\$2.20 – \$4.40
Storage (per day)	\$15.90	\$22 – \$28	\$17	\$17
Waiting time (per hr) ^c	–	\$110 – \$132	–	–

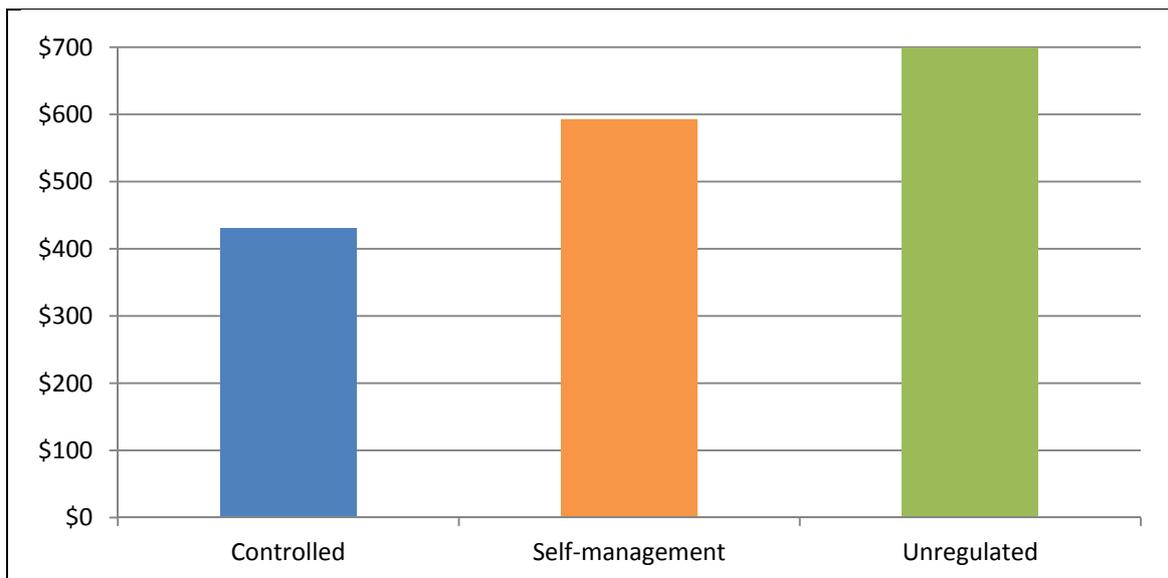
^a Ballarat, Bendigo and Castlemaine. ^b Across different regions and operators, there may be differences in inclusions in the base fee. For example, in the controlled area the base fee includes the first 8 kilometres of travel (measured from the depot). Some, but not all operators, outside of the controlled area also provide for the first 8 kilometres in the base fee. ^c The base fee in the controlled area includes any waiting time at the accident scene — a separate waiting time fee cannot be charged. Outside of the controlled area fees are not regulated, so operators are free to set their own fee structure.

Fee information provided by insurers

We consider two sets of accident towing fee information from insurers. The first relates to a sample of approximately 18,500 accident tows over the period 2013-2014 (figure 7.1).¹⁴⁵ For this sample we have been provided with the *total* towing charge (i.e. the total of towing, storage, salvage and any other related fees).

The data shows that the average towing charge in the self-management area (\$593) is higher than in the controlled area (\$431), but lower than in the unregulated area (\$701). Some of this difference is explained by different average tow distances in each area.¹⁴⁶ After adjusting the controlled area average towing charge for differences in tow distance, the self-management area average charge of \$593 remains higher than the adjusted controlled area charge (\$451) — that is, the self-management area average charge is 31 per cent higher after accounting for differences in tow distance.

FIGURE 7.1 AVERAGE TOTAL TOWING CHARGE (INC GST)



Data source: Commission analysis of IAG and Suncorp data (18,500 accident tows throughout Victoria).

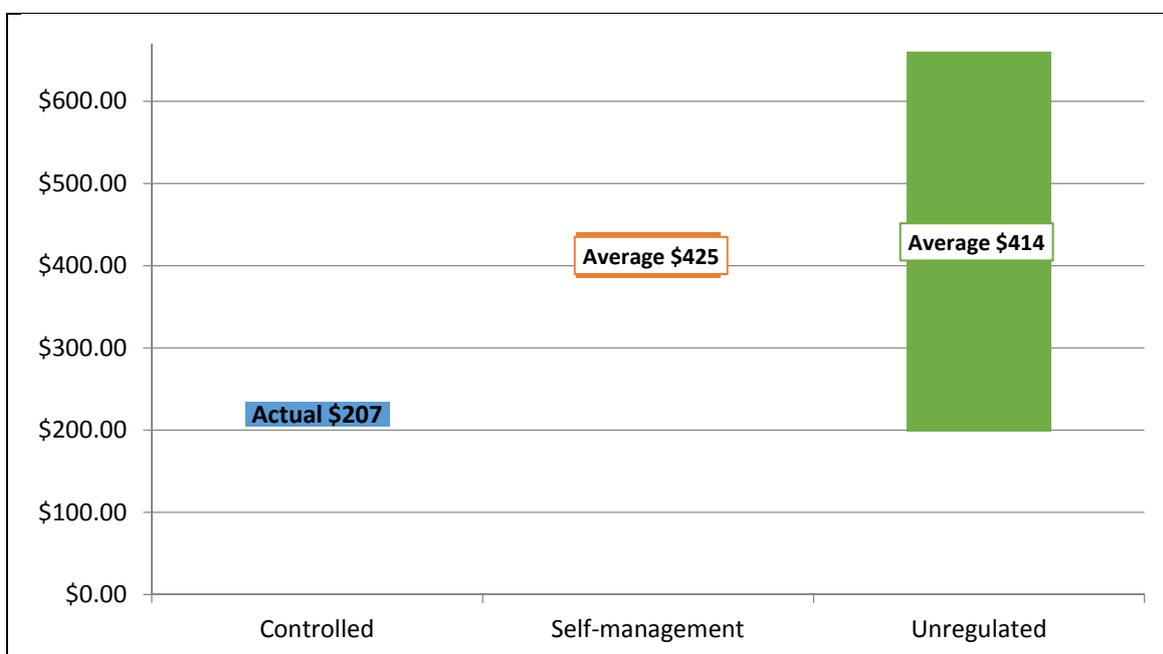
¹⁴⁵ The sample of 18,500 accident tows covers approximately a third of accident tows for each of the controlled and self-management areas, and for the unregulated area, the sample covers around 20 per cent of accident tows.

¹⁴⁶ we estimate that the median accident tow is around 16 kilometres in the controlled area, 22 kilometres in the self-management area and 42 kilometres in the unregulated area.

The second set of insurer data is a smaller set of accident towing invoices (approximately 1300 accident tows). These invoices provide the various components of the total accident towing cost (e.g. base fee, after hours surcharge, distance charge, waiting time and salvage). We present data on the base and distance fees.

The **base fee** data indicates the average base fee in the self-management area (\$425) is higher than both controlled area (\$207) and unregulated area (\$414) (figure 7.2). That is, the self-management area base fee is 105 per cent higher than the controlled area fee. Also, in the self-management area, different operators charge a similar base fee — the fee ranges from \$385 to \$440. The base fee range charged by operators in the unregulated area is much wider (\$200 to \$660).

FIGURE 7.2 AVERAGE BASE FEE BY AREA (\$ inc GST)^a
2013-14



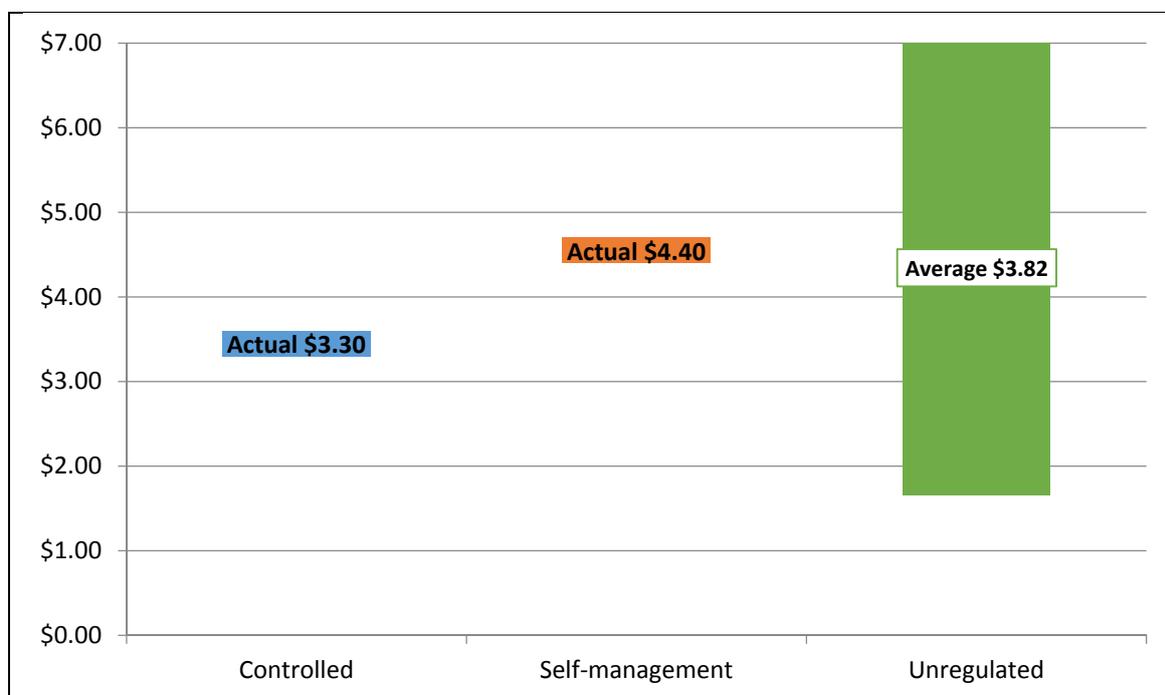
^a Since controlled area fees are regulated, for this area the figure shows only the regulated fee (\$207) — there is no range for this area. For each of the self-management and unregulated areas, the figure presents the base fee range charged by operators and the average fee.

Data source: Regulated fees, operator information and Commission analysis of IAG and Suncorp data.

The average **distance rate** is also highest in the self-management area (\$4.40) compared to the controlled (\$3.30) and unregulated areas (\$3.82) (figure 7.3). All

operators in the self-management area charge the same distance rate. In the unregulated area the distance rate ranges from \$1.65 (i.e. less than the rate in the controlled area) to \$7.04 per kilometre (more than double the controlled area rate).

FIGURE 7.3 AVERAGE DISTANCE RATE BY AREA (\$ per km inc GST)^a
2013-14



^a For both the controlled and self-management areas, the figure shows only the distance rate charged by operators, not a range. We do this because controlled area fees are regulated and in the self-management area all operators charge the same distance rate (so in both cases there is no range). For the unregulated area, the figure presents the distance rate range charged by operators and the average rate.

Data source: Regulated fees, operator information and Commission analysis of IAG and Suncorp data.

SIZE AND SCOPE OF BUSINESSES

The fee data indicates that accident towing fees in the self-management area are usually higher than controlled area fees. Higher fees may be justified if costs in the self-management area are also higher. To assess whether this is the case, we consider the size and scope of towing businesses — businesses of lower size and scope will have higher average costs per tow, and may need to charge higher fees to recover costs.

Size of towing businesses

The most relevant measure of business size is accident tows per truck. Data for the controlled, self-management and unregulated areas are presented in table 7.3. The data indicates that operators in the self-management area benefit from larger size compared to the other areas. In 2014, accident tows per truck was 250.4 in the self-management area; this is 35 per cent higher than the controlled area (184.9 tows per truck) and 323 per cent higher than the unregulated area (59.2 tows per truck). This larger scale in the self-management area, other things being equal, is inconsistent with self-management area fees being higher than controlled area fees.

TABLE 7.3 ACCIDENT TOWING BUSINESSES — OBSERVATIONS ON SIZE
2014

	Self-mgt area	Controlled area	Unregulated area ^a
Accident tows per truck ^b	250.4	184.9	≈59.2

^a We have had to estimate the number of accident tows in the unregulated area. The value presented is therefore an approximation. ^b Number of trucks is estimated as the number of licences (attached and unattached) less the number of dormant licences.

This greater business size allows self-management operators to spread their costs over more accident tows. Specifically, since their fixed costs can be recouped over more accident tows, these operators have lower average costs per tow compared to controlled and unregulated area operators.

With their level of activity and an average accident towing fee of \$593, operators in the self-management area are earning revenue of around \$150,000 per year from each truck. The corresponding figures for the controlled and unregulated areas are \$79,000 and \$41,000 per year from each truck, respectively.

Scope of towing businesses

The scope of a business relates to the range of markets it operates in. Two markets linked to accident towing are trade towing and smash repair.

We have met with operators across Victoria, the VACC and insurers. Submissions have been received from some of these stakeholders. The consistent message from

stakeholders is that very few businesses are only involved in accident towing. For example, we have heard from operators that:

- accident towing is a side business for them
- businesses limited to accident towing are not viable, and
- existing accident towing licence values are supported by related activities.

Almost all of the operators we have met do trade towing. While towing and smash repair are more distinct activities, they are closely linked. Vehicles involved in an accident may require smash repair services and accident towing operators have first and direct contact with drivers involved in an accident. Four of the five operators in the self-management area have a smash repair business.

The high (nearly universal) overlap between trade towing and accident towing, and the high degree of integration between towing and smash repair, complicates the assessment and comparison of average costs per accident tow across the controlled, self-management and unregulated areas. In the case of self-management area operators, the combination of their larger scale and links into other markets raises questions in regard to the level of their fees.

7.4.3 IS FEE REGULATION REQUIRED IN THE SELF-MANAGEMENT AREA?

Based on the information available to us, we have a number of reasons to be concerned about the reasonableness of fees in the self-management area. These are:

- Fees are generally higher in the self-management area. For example, the base fee is twice that of the controlled area.
- The evidence for higher costs in the self-management area (which could justify higher fees) is not strong. In particular, self-management area operators enjoy significant size (accident tows per truck) compared to controlled area operators. This suggests that operator costs are lower in the self-management area.
- The scope of accident towing businesses (covering accident towing, trade towing and smash repair) limits the extent to which fees need to be higher than the controlled area.

- Evidence from reviews in NSW and Queensland have previously found that costs in non-metropolitan areas are not sufficiently higher to justify higher fees than in metropolitan areas.

In addition, the self-management area includes an allocation scheme. The scheme gives an operator the exclusive right to perform an accident tow and provide related towing services (e.g. salvage and storage). The scheme also significantly weakens the ability of the driver involved in the accident to negotiate a fee. Under an allocation scheme, drivers are in a poor position to negotiate a fee since the option of using another operator is not available. In the controlled area, the potential for charging unreasonable fees is addressed by regulating (i.e. setting) accident towing fees.

Related to the existence of the allocation scheme, we are also concerned about the arbitrariness of fees faced by users of accident towing services in the self-management area. The fee faced by a driver involved in an accident will depend on which operator is allocated the tow. The driver may be lucky and get an operator who charges relatively low fees for the area, or the driver may be unlucky and get the operator who charges the highest fees in the area.

One solution to the issue of varying fees in the self-management area is for operators to set the same fees. In other service industries where individual business are dispatched through a queuing system (e.g. taxis), co-operatives or networks have formed which have then sought authorisation to charge the same fees. Since separate operators agreeing to charge the same fee (price) is collusion, authorisation is required from the relevant competition regulator. A recent example of this is the setting of taxi fares in regional and country areas of Victoria (box 7.1).

An alternative solution is to remove the allocation scheme; this would allow drivers involved in an accident to “shop around” to find the best towing offer. However as previously discussed, drivers involved in an accident are in a poor position to negotiate a fee (e.g. they may be stressed and unfamiliar with the towing industry), removal of the allocation scheme may encourage multiple operators to race to accident scenes to win towing jobs, and other road users would suffer from delays in clearing accidents. We have recommended an allocation scheme continue to operate in the self-management area.

BOX 7.1 REGIONAL AND COUNTRY TAXI FARES

The Victorian Government has deregulated taxi fares in regional and country zones. In these zones, some taxi operators participate in co-operative networks whereby taxi work is centrally dispatched and operators charge the same fares. That is, there is no fare competition between operators.

In response to fare deregulation, the Victorian Taxi Association (VTA) lodged an application (on behalf of taxi operators) to the Australian Competition and Consumer Commission (ACCC) for authorisation to allow regional and country zone co-operative members to agree on fares for booked and contract work. The VTA argued that co-operative members cannot operate with fare competition as it would compromise network operations and service efficiency and quality.

In making its decision, the ACCC considered the net public benefit tests set out in subsections 90(5A), 90(5B), 90(6) and 90(7) of the *Competition and Consumer Act 2010* (the CCA Act). These tests specify that an authorisation cannot be given unless:

- the provision would result, is likely to result or has resulted in a benefit to the public, and
- the benefit would outweigh or outweighs the detriment to the public from a lessening of competition that would result, is likely to result or has resulted from giving effect to the provision.

Subsection 90(5A) and 90(5B) specifically refer to a provision of a proposed contract, arrangement or understanding that is or may be a *cartel* provision.

The ACCC considered that the benefits of the proposed arrangements would outweigh the likely detriments and granted authorisation until 31 December 2017. The authorisation applies to 19 co-operative networks operating in 17 locations and protects operators within co-operative networks from legal action for conduct that may otherwise breach the competition provisions of the CCA Act, that is, operators agreeing to a consistent maximum fare. The authorisation does not prevent individual operators from offering discounts off the maximum fare.

Source: Source: Australian Competition and Consumer Commission 2014, *The Victorian Taxi Association – Authorisation – A91428*, Final Determination, 9 October.

7.5 DRAFT RECOMMENDATION

We recommend fee regulation in the self-management area.

With the allocation scheme giving operators an exclusive right to perform an accident tow and removing the ability for drivers involved in an accident to “shop around”, we consider fee setting is an appropriate regulatory response.

Draft recommendation 12: Fee regulation — self-management area

The Minister for Roads should set accident towing and storage fees in the self-management area.

7.6 THE SELF-MANAGEMENT AREA BOUNDARY

The boundaries for the Geelong self-management area were gazetted in 2012 and cover Bannockburn (to the west), Anakie and Lethbridge (to the north) and Moriac (to the south). Figure 7.1 illustrates the boundary for the self-management area.

To assess the appropriateness of the self-management area boundary we apply a similar approach to that used to assess the appropriateness of the controlled area boundary. In this case we only consider whether other areas near the boundary experience poor accident response and clearance times.

We do not consider the reasonableness of fees in regions near the self-management area boundary because fees in the self-management area are not regulated (in contrast to the controlled area where we can compare fees outside the boundary with the regulated fees inside the boundary). Further, whereas in the case of the controlled area we were able to refer to a Government statement that the controlled area is intended to capture “metropolitan Melbourne”, there is no similar basis for the setting of the self-management area boundary.

Commission staff met with operators in the self-management area and surrounding areas. During these meetings, self-management area operators indicated a preference to maintain the existing self-management area boundary, stating that if it were any bigger, they would struggle to get to an accident in 30 minutes. Another stakeholder believes operators would still be able to respond to accident towing jobs within 30 minutes and considers the Bellarine Peninsula (including Torquay) should be part of the self-management area.

Some operators we met suggest the location of the boundary in some areas needs review. For example, the boundary splits the town of Drysdale. This means for some accidents, the operator in Drysdale is unable to tow an accident that is just around the corner from his depot because the accident is in the self-management area. Instead, a self-management area operator, whose depot is 20 kilometres away, is called to perform the tow.

7.6.2 COMMISSION ANALYSIS — IS THE CURRENT BOUNDARY APPROPRIATE?

The self-management area boundary serves one purpose — the boundary defines where the self-management accident allocation scheme operates. On this basis the boundary can be considered appropriate if the areas around the fringe of the boundary do not require an allocation scheme.

We have considered the clearance of accidents in the unregulated area and requirements for an allocation scheme in that area (chapter 3). No stakeholders raised concerns about the clearance of accidents and the majority of stakeholders we met support the current arrangements; that is, no allocation schemes operating in the unregulated area. Further, we received no comment that the existing self-management area boundary should be expanded. We therefore conclude that the self-management area boundary does not need to be extended, and that the existing boundary is appropriate.

Potential boundary adjustments

While we recommend that the self-management area boundary does not need to be extended, we nonetheless consider in detail the location of the boundary. We observe that the self-management area boundary cuts at the following intersections:

- High Street, Clifton Springs Road, Collins Street and Murradoc Road in Drysdale (this is the intersection which splits the town of Drysdale, as noted in the preceding section).
- Mount Duneed Road, Lower Duneed Road, Barwon Heads Road and Bluestone School Road.
- Mount Duneed Road, Lower Duneed Road, Barwon Heads Road and Surf Coast Highway.
- Mount Duneed Road, Lower Duneed Road, Barwon Heads Road and Anglesea Road.

With an area boundary in place, there will always be issues at the margin of the boundary (i.e. one part of a street being within the boundary and an adjoining part being outside the boundary). Where the boundary is situated at an intersection, these issues may be exacerbated, with consequent impacts for drivers involved in an accident, other road users and accident towing operators.

In such cases, it is more likely that operators from both within and outside the bounded area may attend an accident scene. There could then be delays in clearing the accident while the towing operators argued over the tow. We are unaware of the number of accidents or the number of people affected at these four intersections so we do not know the extent to which the boundary cutting through these intersections is an issue. Nonetheless, it would be sensible and far simpler to ensure an area boundary does not cut through intersections.

VicRoads should consider whether the self-management area boundary should be adjusted to either wholly include the intersections in the self-management area, or wholly exclude the intersections from the area.

7.7 DRAFT RECOMMENDATION

The self-management area boundary was introduced to define the geographical region where the area's allocation scheme applied. We have found no evidence to suggest that the boundary should be expanded to include nearby parts of the unregulated area. In this regard the boundary remains appropriate. There are however some issues with the boundary, in particular where it passes through intersections.

Draft recommendation 13: Area boundaries — the self-management area

The self-management area boundary remains appropriate in terms of defining the region where the self-management area allocation scheme applies.

VicRoads should consider reviewing and as necessary amending the boundary where it cuts through intersections.

8 HEAVY VEHICLE ACCIDENT TOWING

This chapter discusses the regulation of heavy vehicle accident towing.

8.1 INTRODUCTION

The terms of reference require us to review the current form of economic regulation applying to heavy vehicle accident towing. Similar to regular vehicle towing, heavy vehicle accident towing drivers and operators are required to be licensed and accredited. However, there is no fee regulation, apart from the Act's requirement for fees to be "reasonable", and no allocation schemes apply to heavy vehicle accident tows.

The heavy vehicle accident towing market in Victoria is significantly smaller than regular vehicle towing. For example, there are 36 heavy vehicle accident towing licences in Victoria, compared to 724 regular vehicle licences. Like regular vehicle accident towing, the majority of the heavy vehicle licences are attached to a depot in the controlled area (table 8.1).¹⁴⁸

¹⁴⁸ While we refer to heavy vehicle towing licences being located in depots in controlled, self-management and unregulated areas, it should be noted that heavy vehicle accident towing licences are not restricted by geographical area. Such tow trucks can perform an accident tow anywhere in the state.

There are 20 licences in the controlled area, 3 in Geelong and 13 in the unregulated area. In the unregulated area:

- there is one licence in each of Baranduda (Wodonga), Bendigo, Castlemaine, Colac West, Kilmore, Mildura, Morwell, Seymour and Wangaratta, and
- there are two licences in each of Benalla and Horsham.

TABLE 8.1 OVERVIEW OF HEAVY VEHICLE ACCIDENT TOWING INDUSTRY 2014

	Controlled area	Self-mgt area	Unregulated area	Victoria
Licences ^a	20	3	13	36
Unattached licences	3	0	2	5
Operators	5	1	11	17
Depots ^b	5	1	11	17
Accidents ^c	529	38	229	796

^a Licence numbers include unattached licences. ^b While the table presents the location of heavy vehicle towing depots by controlled, self-management and unregulated areas, it should be noted that heavy vehicle accident towing licences are not restricted by geographical area. Such tow trucks can perform an accident tow anywhere in the state. ^c Based on VicRoads CrashStats data which records the number of road accidents involving heavy vehicles that have resulted in injuries, including fatalities. Data source: VicRoads.

8.2 FEE REGULATION AND ACCIDENT ALLOCATIONS

In the event of an accident, drivers of heavy vehicles are likely to be in a similar position to regular vehicle drivers in that:

- accidents are likely to be infrequent and stressful
- if the accident is impeding traffic, there is likely to be some urgency to clear the accident scene, and
- many drivers will have no previous (or recent) experience with the towing industry.

Further, there is no scheme for allocating tows to heavy vehicle accidents.

A key difference between regular and heavy vehicles is that the owners of heavy vehicles are able to negotiate reasonable fee levels for a heavy vehicle tow. The reasons for this are discussed below.

8.2.1 STAKEHOLDER COMMENTS

For heavy vehicle accident towing, most stakeholders comment that fees do not need to be regulated. The VACC states:

*In view of the different characteristics of the heavy vehicle accident towing market and in particular the commercial arrangements that currently exist between operators and freight transport/insurance companies, the VACC strongly recommends the current requirement that operators charge reasonable fees remain.*¹⁴⁹

Similar views were put by the Insurance Council of Australia:

*The ICA submits that heavy vehicle accident towing fees should continue to be unregulated. Our members operating in this sector report that fair and reasonable costs are negotiated with heavy vehicle towing operators, and are not aware of any negative feedback from repairers or assessors to suggest excessive towing fees are being charged.*¹⁵⁰

Stakeholders also support heavy vehicle accident tow allocations remaining unregulated. Our consultations indicated that heavy vehicle accident towing does not experience the same problems that regular vehicle accident towing experienced before allocation schemes were introduced. That is, operators, insurers and VicRoads advise that multiple licensed heavy vehicle accident towing operators are not racing to an accident scene, and not engaging in unruly behaviour at the scene.

The Insurance Council of Australia submits that “*there have not been any reports of poor behaviour by [heavy vehicle] towing operators at accident sites in the last three years and any delay in clearing an accident is not due to lack of an allocation scheme*”, and “*heavy vehicle accident allocations should also continue to be unregulated*”.¹⁵¹

¹⁴⁹ VACC submission, 3 December 2014, p. 5.

¹⁵⁰ Insurance Council of Australia submission, 28 November 2014, p. 3.

¹⁵¹ Insurance Council of Australia submission, 28 November 2014, p. 3.

Further, towing operators with whom we spoke note that heavy vehicle owners have a commercial relationship with, and preference for, a particular operator. Squires Towing states:

*The allocating of heavy accident towing would be difficult. Owners of many trucks have a preference for which towing company they wish to use. Different levels of towing equipment and the loads the damaged vehicles may carry could have an influence over which towing operator would be more suitable for the job.*¹⁵²

It is also the view of stakeholders that accidents are being cleared in an orderly and timely manner, and that an allocation scheme is not needed.

8.2.2 COMMISSION ANALYSIS

Owners of heavy vehicles can negotiate fees

Heavy vehicle drivers are likely to be less vulnerable than regular vehicle drivers at an accident scene. In its inquiry, IPART noted that “*heavy vehicle drivers are more likely to be professional drivers. This means they are less vulnerable at the scene of an accident than, for example, a 17-year old provisional driver*”.¹⁵³ Similarly, the VACC states that “*the problems associated with motorist vulnerability at the scene of the accident are unlikely to occur with heavy accidents*” and “*in most cases, heavy vehicle tow truck operators are not dealing with the driver at the scene of the accident but with the transport or insurance company*”.¹⁵⁴

Also, heavy vehicles (e.g. trucks, buses and coaches, large vans, etc) are usually used for business purposes, and their owners normally have pre-arranged contracts for accident towing.

¹⁵² Squires Towing submission, 26 November 2014, p. 2.

¹⁵³ IPART 2014, *Review of tow truck fees and licensing in NSW*, Draft Report, October, p. 41.

¹⁵⁴ VACC submission, 3 December 2014, p. 5.

Specialised insurance and towing arrangements

Contracts for heavy vehicle accident towing are generally pre-arranged with specialist insurance providers, who in turn contract with heavy vehicle accident towing operators. For example, we met with National Transport Insurance (NTI), a leading insurer of heavy vehicles. NTI contracts with heavy vehicle towing operators across Australia, including in Victoria. NTI goes through a detailed process in contracting with a heavy vehicle towing operator. This process includes estimation of reasonable costs given the towing operator's size and negotiation of fees and key performance indicators. When an accident occurs including a vehicle insured with NTI, the driver or business will contact NTI and NTI will then allocate the tow to the nearest contracted operator.

Pre-arranged contracts mean heavy vehicle accident towing has features that differ from those in the regular vehicle accident towing market. This conclusion is supported by submissions to our issues paper, including by the VACC which considers that:

The heavy vehicle towing market is different to the light vehicle towing market. The problems associated with motorist vulnerability... are unlikely to occur with heavy vehicle accidents. In most cases, freight transport companies and major insurance companies such as National Transport Insurance have contractual arrangements with licensed accident towing businesses... In most cases, heavy vehicle tow truck operators are not dealing with the driver at the scene of the accident but with the transport or insurance company.¹⁵⁵

Similarly, a recent inquiry in NSW also notes the towing arrangements that owners of heavy vehicles have in place. In its draft report, IPART suggests that:

... in heavy vehicle accident towing, tow truck operators are not dealing with stressed individuals but rather with transport companies that have procedures in place for the recovery of vehicle loads in the event of mishaps. As part of good business practice, heavy vehicle transport operators should have these arrangements in place.¹⁵⁶

¹⁵⁵ VACC submission, 3 December 2014, p. 5.

¹⁵⁶ IPART 2014, *Review of tow truck fees and licensing in NSW*, Draft Report, October, p. 42.

Specialised insurance companies are best placed to organise an accident tow in the event of a heavy vehicle accident. We observe these arrangements in practice in Victoria. There is no evidence to suggest that such arrangements are not working to ensure accidents are cleared in an orderly and timely manner. Hence, there is no need to introduce an allocation scheme for heavy vehicle accident towing. In fact, an allocation scheme may infringe on the commercial arrangements made by heavy vehicle owners.

8.3 DRAFT RECOMMENDATION

Heavy vehicle accident towing differs in important respects from regular vehicle towing. In particular, owners of heavy vehicles will have specialised insurance coverage for their vehicles — therefore, heavy vehicle drivers involved in an accident do not have to negotiate fees in a stressful, unfamiliar situation in the way regular vehicle drivers do. The existing regulatory requirement that fees be “reasonable” should continue to apply to heavy vehicle accident towing.

Similarly, multiple licensed operators racing to an accident scene to win the tow is not a problem in heavy towing and heavy vehicle drivers do not have to organise the towing of the vehicle. Instead, heavy vehicle owners usually have appropriate insurance arrangements or contracts directly with towing operators.

Given this environment, an allocation scheme for heavy vehicle accident tows is not needed.

Draft recommendation 14: Regulation of heavy vehicle accident towing

Heavy vehicle accident towing and storage fees should continue to be subject to the current reasonableness requirement in the *Accident Towing Services Act 2007* only.

The allocation of heavy vehicle accident tows should continue to be unregulated.

9 MATTERS FOR COMMENT AND FINALISING THE REPORT

This chapter presents matters for stakeholder comment and outlines how to make a submission on this draft report and our process for finalising the report.

9.1 MATTERS FOR STAKEHOLDER COMMENT

We have made one draft finding and 14 draft recommendations in this report. We also present 2 observations for stakeholder input. We invite stakeholders to respond to these matters.

Draft finding

Area boundaries — controlled area

1. At this point in time, there is insufficient market-based evidence (data) to support a shift of the controlled area boundary.

Draft recommendations

Accident allocations – the controlled area scheme (s. 3.4 of report)

1. The accident allocation scheme should continue to operate in the controlled area.

Accident allocations – improving existing scheme (s. 3.6 of report)

2. In the controlled area, VicRoads should at least every three years analyse allocations and adjust 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.

Accident allocations – restrictions on licences (s. 3.6 of report)

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.

Accident allocations – the unregulated area (s. 3.8 of report)

4. Accident allocations in the unregulated area should continue to be unregulated.

Consumer protection – improving customer outcomes (authority to tow and factsheet) (s. 4.8 of report)

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).

Consumer protection – improving customer outcomes (education campaign) (s. 4.8 of report)

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.

Continued next page

Draft recommendations (continued)

Consumer protection – improving customer outcomes (towing destination) (s. 4.8 of report)

7. VicRoads should limit the locations to which an accident-damaged vehicle can be towed. The authority to tow docket should list the following options for tow destinations: a location instructed by the owner's insurer; a location instructed by the at-fault driver'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.

Fee regulation – controlled area (s. 5.4 of report)

8. The Minister for Roads should continue to set regular vehicle accident towing and storage fees in the controlled area.

Fee regulation – unregulated area (s. 5.9 of report)

9. A fee notification regime applying to regular vehicle accident towing and storage fees should be implemented for the unregulated area. The regime should involve:
 - 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-management and unregulated areas.

Area boundaries – controlled area (s. 6.5 of report)

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'.

Continued next page

Draft recommendations (continued)

Accident allocations – self-management area (s. 7.3 of report)

- 11.** The accident allocation scheme should continue to operate in the self-management area.

VicRoads should require self-management area operators to identify and implement improvements to the scheme, with proximity-based allocations providing the benchmark for any improvements.

If operators are unable to achieve sufficient improvements, VicRoads should amend the terms and conditions applying to the self-management area to progressively move towards proximity-based allocations.

Fee regulation – self-management area (s. 7.5 of report)

- 12.** The Minister for Roads should set accident towing and storage fees in the self-management area.

Area boundaries – self-management area (s. 7.7 of report)

- 13.** The self-management area boundary remains appropriate in terms of defining the region where the self-management area allocation scheme applies.

VicRoads should consider reviewing and as necessary amending the boundary where it cuts through intersections.

Regulation of heavy vehicle accident towing (s. 8.3 of report)

- 14.** Heavy vehicle accident towing and storage fees should continue to be subject to the current “reasonableness” requirement in the Accident Towing Services Act 2007 only.

The allocation of heavy vehicle accident tows should continue to be unregulated.

Other observations for comment

Improving consumer outcomes – the role of the regulator (s. 4.7.2 of report)

1. We have identified that there may be some merit in either better resourcing VicRoads to respond and address consumer protection issues, or transferring some regulatory functions to a body with greater experience in dealing with these types of consumer issues (leaving VicRoads with the more technical aspects of industry regulation, such as licensing, zoning and boundaries). We seek feedback from stakeholders on this matter, and whether there would be material benefits or costs from such a change in regulatory functions.

Accident allocations – controlled and self-management areas (s. 3.6 and 7.3 of report)

2. We recommend separate processes to move operation of the controlled area and self-management area allocation schemes closer to proximity-based allocations. We are interested in hearing from operators in regard to implementation issues associated with such a move.

9.2 MAKING A SUBMISSION

Interested parties are invited to comment on the draft finding and recommendations presented in this report, or any other relevant matters, by sending a written submission. As relevant, 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 to 03 9032 1303 or by mail marked:

Submission to the Tow Truck Review
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

Submissions are due by 30 October 2015.

PUBLICATION OF SUBMISSIONS

To promote an open and transparent review process, our normal practice is to make all submissions publicly available on our 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 specific information should be clearly identified in the submission.

9.3 OUR PROCESS TO FINALISE THE REPORT

Table 9.1 presents our review process. With the release of this draft report, the process to finalising the report will involve:

- public forums: we will be scheduling at least two public forums to be held during October. We will present our draft findings and recommendations at these forums, and answer questions from stakeholders. We will also invite other stakeholders to present at these forums
- stakeholder submissions: we invite submissions on the draft report from interested stakeholders
- other stakeholder consultations: as necessary, we will meet with selected stakeholders to discuss issues specific to their operations
- consideration of new information: from these consultations, we will consider stakeholder comments and new information, which will feed into our final report, and
- finalisation of our report to Government: a final report will be provided to the Minister for Finance and Minister for Roads by the end of 2015. We will release this report publicly within 30 days of receipt by the Ministers.

TABLE 9.1 REVIEW PROCESS

Activity	Timing
Publication of notice of review	19 August 2014
Issues Paper release	24 October 2014
Consultations	October to November 2014
Submissions to Issues Paper close	28 November 2014
Consultations	February to September 2015
Draft Report release	30 September 2015
Public forums ^a	October 2015
Submissions to Draft Report close	30 October 2015
Consultations	October to November 2015
Final Report to Ministers	December 2015

^a We will notify stakeholders of the specific dates for public forums when these have been set.

If you would like to attend one of our forums and you have not previously provided us with your contact details, please email your interest to:

towtruckreview@esc.vic.gov.au

We will subsequently contact you with details of our public forums.

APPENDIX A: TERMS OF REFERENCE



Minister for Finance



Level 26, 121 Exhibition Street
GPO Box 4509
Melbourne Victoria 3001
Telephone: (03) 8684 1101
Facsimile: (03) 8684 1100
DX 210759

Dr Ben-David
Chairperson
Essential Services Commission
Level 37/2 Lonsdale Street
MELBOURNE VIC 3000

Dear Dr Ben-David

ESSENTIAL SERVICES COMMISSION REVIEW OF VICTORIA'S ACCIDENT TOWING SERVICES

In accordance with my powers under section 41 of the *Essential Services Commission Act 2001*, I refer to the Essential Services Commission the attached Terms of Reference for an inquiry and report on tow truck services.

If you have any queries on this matter please contact Narelle Hardiman, Assistant Director, Economic Policy Group in the Department of Treasury and Finance on 9651 2463.

Yours sincerely

ROBERT CLARK MP
Minister for Finance

31/1/14

Broad Review of Accident Towing and Storage Economic Regulation

Terms of Reference

Background

Accident towing services are regulated in Victoria to ensure that services are provided in a safe, efficient and timely manner through the licensing of tow trucks, and the accreditation of drivers, operators and depots. However, some aspects of the operation of accident towing services vary by location.

- In the Melbourne metropolitan 'controlled area', assignment of accidents to tow truck operators and accident towing and storage fees are regulated.
- In the Greater Geelong 'self managed area', assignment of accidents is via a self-managed scheme, but Fees are unregulated but are required to be reasonable.
- In all other areas of Victoria, while there are no formal allocation schemes determining who may attend an accident scene (and there are sometimes very few operators to choose from), the Victoria Police may assume this responsibility in some areas (Ballarat, Bendigo and Gippsland region). The Victoria Police are seeking to expand this responsibility to other areas of rural Victoria through the use of the emergency communication system (ESTA). The fees in all these areas are unregulated but are required to be reasonable.

The current 'Melbourne controlled area' was created in 2002 to ensure, where possible, accidents are attended within 30 minutes and that there is a fair distribution of accident towing jobs per licence within the area. Similarly, the 'self managed area' of Geelong was created to ensure a fair distribution of accident towing jobs per licence.

A broad review of the accident towing and storage industry in Victoria, including options for Government intervention (i.e. covering the varying arrangements in the controlled, self managed and other areas of Victoria), has not been undertaken recently. Operations in the controlled area were last considered by VicRoads when it assumed responsibility for the industry in late 2007. The Essential Services Commission (the Commission) as previously been required to review and recommend fees in the controlled area, but not in areas outside the controlled area.

Terms of Reference

Pursuant to section 41 of the *Essential Services Commission Act 2001* (the ESC Act), as Minister responsible for administering the ESC Act, I ask the Commission to undertake a review of, and make recommendations in relation, to the following:

1. The accident towing industry in Victoria, including an analysis of the role of Government and an analysis of the industry's competitiveness.
2. Regulation of the accident towing and storage industry, including an identification and assessment of the benefits and costs.
3. Possible alternative arrangements for accident towing services that the Commission considers may be appropriate, including an identification and assessment of the benefits and costs.
4. The appropriateness of the existing boundary and zones in the Melbourne controlled area.
5. The basis on which accident towing jobs are allocated in the Melbourne controlled area having regard to the safe and efficient service without impacting quality and timeliness of the service to customers.

6. The appropriateness of the existing boundaries and the current form of economic regulation in the self-management area of Geelong.
7. The current form of regulation applying to heavy vehicle accident towing services.

In performing its functions and exercising its powers, the objective of the Commission is to promote the long term interests of Victorian consumers. In seeking to achieve this objective, the Commission will have regard to matters outlined in section 8(A) of the *Essential Services Commission Act 2001* to the extent that they are relevant.

Process for the Review

The Commission is to conduct the review in a manner as described in section 43 of the *Essential Services Commission Act 2001*.

Information gathering powers

The Commission may use the powers set out in section 37 of the ESC Act to assist it in obtaining specific information the Commission is seeking.

VicRoads will assist the Commission, where possible, in relation to any information and/or data requests regarding the Victorian towing industry.

Consultation

The Commission should consult with stakeholders in undertaking this review, including by inviting written submissions.

Final Report

The final report is due no later than twelve months after commencement of the review in August 2014. The Commission will provide a copy of the final report to the Minister for Roads at the same time as the final report is provided to the Minister for Finance.



ROBERT CLARK MP
Minster for Finance

Date: 31/1/14

APPENDIX B: AUTHORITY TO TOW AND VICROADS FACT SHEET

For the authorisation of towing accident damaged motor vehicles only.

Tow truck

Name of the licence holder of the tow truck			
Depot address		Postcode	
Depot number	Phone number	Tow truck licence number	
Name of the tow truck driver		Driver accreditation number	

Vehicle to be towed

Name of vehicle owner		Registration number	
Address of vehicle owner		Postcode	
Location (street(s), suburb) of the vehicle to be removed			
Make of the vehicle to be towed		Allocated job number (if applicable)	
Address where vehicle is to be towed		Postcode	

Did the vehicle require salvaging? No Yes (please complete the salvage section below)

Salvage

Refer to information pamphlet for a description of what salvage means

<p>The location of the salvaged vehicle:</p> <p><input type="checkbox"/> Road <input type="checkbox"/> Up or down an embankment</p> <p><input type="checkbox"/> Road related area (curb, nature strip, footpath, traffic island) <input checked="" type="checkbox"/> Photo evidence taken</p> <p><input type="checkbox"/> Other Please specify</p>	<p>Where the vehicle was embedded in an object, what was the object?</p> <p><input type="checkbox"/> Building (house, shop front etc) <input type="checkbox"/> Pole, pillar, pylon, tree</p> <p><input type="checkbox"/> Fence, guardrail, safety barrier <input type="checkbox"/> Motor vehicle</p> <p><input checked="" type="checkbox"/> Photo evidence taken</p> <p><input type="checkbox"/> Other Please specify</p>
<p>The position of the salvaged vehicle:</p> <p><input type="checkbox"/> Upright <input type="checkbox"/> On its side</p> <p><input type="checkbox"/> Upside down <input checked="" type="checkbox"/> Photo evidence taken</p> <p><input type="checkbox"/> Other Please specify</p>	<p>The equipment used to salvage the vehicle:</p> <p><input type="checkbox"/> Tow truck winch <input type="checkbox"/> Tow truck crane</p> <p><input type="checkbox"/> Mobile crane <input type="checkbox"/> Heavy tow truck</p> <p><input type="checkbox"/> Other Please specify</p>
Time taken to salvage the vehicle	Min/hrs

Applicable rate – Tax Invoice

The applicable rates of towing, vehicle storage and other related services. Please mark "N/A" if an item is not applicable.

Towing Service	Total Price, incl GST
Towing fee: First 8 Km	
Additional Km (please specify)	
Salvage: Basic	
Complex	
After-hours towing surcharge	
Storage fee	
Other charges (please specify)	
Total charge, incl GST	
Payment received by <input type="checkbox"/> Debit card <input type="checkbox"/> Credit card <input checked="" type="checkbox"/> Cash	

Information pamphlet (for driver/owner only)

Confirm receipt of VicRoads information pamphlet (please tick and sign)

Signature

Person authorising the tow

Owner of the vehicle or agent of owner Driver of the vehicle

Police officer/authorised officer

Name

Address

Postcode

Phone number (optional)

Signature

D D M M Y Y Y Y

Authority to tow form completed

Tow truck driver signature

Time

D D M M Y Y Y Y

Person authorising storage

Please ensure all personal belongings are removed from the vehicle before it is stored

Name

Address

Postcode

Signature

D D M M Y Y Y Y

Towing from an accident scene

Your rights

Your rights and responsibilities

This leaflet outlines your rights when your vehicle needs to be towed after an accident. The tow truck driver must give you this leaflet prior to you signing any documentation.

An accident damaged vehicle must be moved so that it does not cause a hazard. If your vehicle cannot be driven from the accident scene, you must arrange for the vehicle to be towed and pay for this service. In metropolitan Melbourne, the fees for accident towing are set (see VicRoads' website) and the tow truck driver is not permitted to charge any more than this fee.

If the accident happens in metropolitan Melbourne, the Mornington Peninsula or Geelong, a tow truck will be allocated by an accident allocation centre and the tow truck driver issued with an allocation number. In other areas, depending on the severity of the accident, the police may allocate a tow truck or you may need to choose an accident towing service.

Accident tow truck

Only certain tow trucks are permitted to tow a vehicle involved in an accident. These trucks will have 'TOW' or 'HTT' (heavy vehicles only) number plates.

Signing the 'Authority to Tow'

Your vehicle cannot be towed until you, as the owner or driver, have signed the 'Authority to Tow'. The Authority to Tow sets out the towing and salvage services provided, including costs.

If you are unable to sign the Authority to Tow, a police or VicRoads officer will sign on your behalf. You will still be required to pay for the service.

Salvage

Salvage is when your vehicle needs to be moved on to the road or road related area (nature strip, footpath), or into an upright position, or both so that it can be towed by the tow truck.

The Authority to Tow will detail the salvage work undertaken. The driver is also required to take photos of the salvage operation. Copies of the photos can be obtained from the tow truck operator free of charge.

Seeking advice

You have the right to contact whomever you choose to help you decide:

- where to have your vehicle towed; and
- where to have your vehicle repaired.

Choose where your vehicle is towed

You can choose to have your vehicle towed to any destination that is less than 125 km away. The tow truck driver must tow your vehicle there, provided you pay at the time of the tow. You have the right to pay by cash, credit card or debit card. If the tow truck driver does not have the facilities to accept your credit or debit card, the driver must still tow your vehicle to your chosen destination. You must agree to pay later.

If you do not have the money to pay the applicable fee, then the tow truck driver may refuse to tow the vehicle or tow it to their depot until payment is received.

Touting for repairs is prohibited

Laws are in place to prohibit a tow truck driver or any other person from touting for repair work at the accident scene. You do not need to decide where to have your vehicle repaired at the time of the tow.

Storage of your vehicle

If your vehicle is towed to a tow truck depot, it must be stored in a secure area at all times. You can check whether the storage is undercover or outside, and ask the cost of each option.

Before your vehicle is towed into storage, you should ensure that all your personal belongings have been removed from the vehicle.

Your rights at the depot

If there are no outstanding charges, the depot must release your vehicle during standard business hours, 9am to 5pm, Monday to Friday.

Where there are outstanding charges, the depot must allow you to pay for these charges by cash, credit card or debit card.

In rural Victoria, some depots are exempt from standard business hours. However, these depots are required to be contactable by mobile phone and provide an appropriate level of service.

Complaints

If you have a complaint about the accident towing service you should first try to resolve the matter with the tow truck operator. If this is not possible, please contact VicRoads on (03) 99542808.

Further information

For general enquiries and further information about accident towing in Victoria email accidenttowing@roads.vic.gov.au or visit vicroads.vic.gov.au

APPENDIX C: ANALYSIS OF CONTROLLED AREA LICENCE OWNERSHIP

This appendix presents analysis of towing licences in the controlled area.

In the controlled area there are 421 accident towing licences. We consider how these licences are dispersed across different operators.

Table C.1 defines an operator in two ways by:

- using the licence holders' business name, or
- using the licence holders' address as provided to VicRoads. In most cases this address is the home address of the licence holder. However in some cases the depot address has been provided to VicRoads.

The first definition uses the licence holders' business name as reported to VicRoads.

The second definition, which aggregates operators at the same address, aims to identify licences that are owned by related parties. For example, an individual may have separate business names for each licence, or licences may be split between family members at the same address. While the licences are separated into different business names, it is possible that they are controlled by the same individual or group of individuals.

Table C.1 indicates that the number of controlled area operators varies between 78 and 95 depending on the definition of operator used. Regardless of the definition used:

- around half of all operators have either one or two licences and
- eight operators own eleven or more licences.

TABLE C.1 CONTROLLED AREA
Distribution of accident towing licences, June 2015

Number of licences	Number of operators	
	By licence holder address	By licence holder name
1	23	34
2	13	15
3 to 5	15	21
6 to 10	18	16
11 to 20	6	8
> 20	3	1
Total	78	95

Data source: VicRoads.

For the purposes of subsequent analysis we have adopted the licence holders' address to define an operator as we consider this more accurately captures operator control of licences.

DEPOTS

In the controlled area there are 46 depots. The number of licences at each depot ranges from one to 39. Half of all depots have between three to nine licences and there are three depots that have 31 or more (table C.2).

Given multiple licences exist at most depots, this may indicate that operators have determined that more than one licence is required to gain sufficient scale to operate profitably. Of the depots with two or less licences, none operate close to the Melbourne CBD — the closest depot is 14 kilometres and the furthest 75 kilometres from the city.

TABLE C.2 DEPOT SIZE
Controlled area, June 2015

Number of licences	Number of depots
1 to 2	5
3 to 5	16
6 to 9	8
10 to 15	10
16 to 20	4
21 to 30	0
> 30	3
Total	46

Data source: VicRoads.

Given the prevalence of operators and depots with multiple licences, we consider two representations of depot market structure. First, we consider whether operators have licences at more than one depot. Second, for the larger depots (those with more than 10 licences), we consider the number of operators and the number of licences each operator holds within a given depot.

We find that most operators have their licences located at only one depot (table C.3). Of the 55 operators that have two or more licenses, only 11 have licenses at more than one depot. Operating out of multiple depots adds to the costs of an operator. Key amongst these costs is the cost of a tow truck. There would also be costs of maintaining multiple depots (e.g. electricity, water, rent, etc). For these reasons, it is perhaps not surprising that most operators with multiple licences operate from the one depot. Of the 11 operators that operate out of more than one depot, licence ownership ranges from 5 to 39.

TABLE C.3 SPREAD OF LICENSES ACROSS DEPOTS
Operators with 2 or more licenses, June 2015

Number of depots	Operators
1	44
2	10
3	1

Data source: VicRoads.

For the larger depots we consider their location, the number of operators and licences at each depot, and the size of the operators within each depot (table C.4). There are 17 depots with 10 or more licences (table C.2).

Table C.4 shows that:

- The top three depots have around 25 per cent of all licences.
- The majority of depots have more than one operator. There are only four depots with one operator.
- Although the majority of depots have multiple operators, in general the share of licences in each depot is not evenly spread between operators, i.e. for those depots with multiple operators, there is usually a single operator which holds a large proportion of licences at that depot.

TABLE C.4 CONTROLLED AREA: DEPOTS
Size, number of operators and share of licences, June 2015

	Licences	Operators	Min/max of licence ownership	Share of licences (%)
Depot 1	39	3	1, 25	9.3
Depot 2	34	1	34	8.0
Depot 3	31	5	1, 21	7.4
Depot 4	19	2	1, 18	4.5
Depot 5	16	2	1, 15	3.8
Depot 6	16	3	3, 10	3.8
Depot 7	16	4	2, 6	3.8
Depot 8	14	2	6, 8	3.3
Depot 9	13	1	13	3.1
Depot 10	13	5	2, 4	3.1
Depot 11	13	5	1, 8	3.1
Depot 12	12	4	1, 4	2.9
Depot 13	12	2	1, 11	2.9
Depot 14	11	1	11	2.6
Depot 15	11	4	1, 7	2.6
Depot 16	10	3	1, 8	2.4
Depot 17	10	1	10	2.4

Data source: VicRoads.

MARKET SHARE OF DEPOTS

In this section we consider the market share of the largest depots in the controlled area. For this comparison the most recent information available is from 2014 (table C.5). The data shows that there is a positive relationship between the size of a depot (measured by per cent of licences) and market share (per cent of towing jobs). That is, larger depots tend to have greater market share. In fact, the top 3 depots attend to over 20 per cent of accident towing jobs. The number of accident towing jobs per licence per depot varies between 6.5 and 14.6 jobs per month.

The data shows that there is not a one-to-one relationship between a depot's share of licences and its market share. This reflects a number of factors, including the random location of accidents, the number of licences within each depot, and the boundary of each allocation zone.

It should be noted that there have been some recent changes in licence ownership which are not captured in table C.5.¹⁵⁷ These changes are:

- the closure of a depot which had 28 licences, and
- one depot which had 11 licences in 2014, now has 34 licences, and
- one depot which had 7 licences in 2014, now has 7 licences.

¹⁵⁷ In table C.5 we present 2014 data, not data updated for the changes in licence ownership (i.e. 2015 data), because market share data for 2015 is not currently available for the full year.

TABLE C.5 CONTROLLED AREA: DEPOT SIZE AND MARKET SHARE
Depots with 10 or more licences, 2014^a

	Licences	Operators	Avg. tows per licence per month	Share of licences (%)	Market share (%) ^b
Depot 1	39	3	7.2	9.3	7.3
Depot 2	30	5	8.8	7.1	6.8
Depot 3	28	2	8.9	6.7	6.4
Depot 4	19	2	6.5	4.5	3.2
Depot 5	16	4	9.1	3.8	3.8
Depot 6	16	3	14.6	3.8	6.0
Depot 7	16	3	7.3	3.8	3.0
Depot 8	16	2	7.4	3.8	3.0
Depot 9	14	2	10.8	3.3	3.9
Depot 10	13	1	10.4	3.1	3.5
Depot 11	12	5	10.7	2.9	3.3
Depot 12	12	4	6.8	2.9	2.1
Depot 13	12	2	9.7	2.9	3.0
Depot 14	11	4	9.1	2.6	2.6
Depot 15	11	1	8.9	2.6	2.5
Depot 16	10	2	8.1	2.4	2.1
Depot 17	10	1	9.9	2.4	2.5

^a Depot numbers in this table may not be comparable to the depot numbers in table C.4. ^b Market share is calculated as accident tows performed by the depot divided by total accident tows in the controlled area.

Data source: VicRoads.

APPENDIX D: ANALYSIS OF ALLOCATION OPTIONS

This appendix analyses alternative approaches to allocating accident tows.

D.1 INTRODUCTION

This appendix analyse a number of alternatives for allocating accident tows. These include:

- Performance — this option operates as part of a broader scheme (e.g. existing scheme). Operators meeting performance requirements set by VicRoads would receive additional allocations. This could include tows in other zones if they can still meet the 30 minute response time requirement.
- Insurer preferred operators — this option operates as part of a broader scheme (e.g. existing scheme). Insurers could nominate preferred operators. If a preferred operator could respond within 30 minutes, that operator would perform the accident tow rather than the operator at the top of the queue.
- Competition — competition could be introduced in a number of ways, e.g. (i) on a yearly basis, operators could bid for towing jobs by submitting their fees; or (ii) towing services in set areas could be tendered; or (iii) operators could bid for tows in real time.

Each of these alternatives and their advantages and disadvantages are discussed in turn below.

D.2 PERFORMANCE BASED ALLOCATIONS

Under performance based allocations, some accident tows would be allocated based on operator performance. The scheme would form part of a broader allocation scheme. For example, it could be incorporated into the existing controlled area scheme by giving high performing operators additional spots in the allocation scheme.

A performance based allocation process nudges the market closer to more competitive outcomes. That is, better operators (for example, those that attend and clear accidents quicker and provide better customer service) would gain market share.

To implement performance based allocations, the performance measure (or measures) would need to be identified and measured. This would be a task for the industry regulator, VicRoads. Performance measures may include response time, clearance time, number of complaints to VicRoads, and feedback from significant users of services (e.g. insurers).

ADVANTAGES OF PERFORMANCE BASED ALLOCATIONS

The key advantage of performance based allocations is its movement towards outcomes more consistent with a competitive market. The allocation scheme rewards high performing operators with additional accident allocations. This provides an incentive for operators to continually improve their performance relative to others — an incentive that exists in competitive markets.

DISADVANTAGES OF PERFORMANCE BASED ALLOCATIONS

There is a range of disadvantages associated with performance based allocations. The main disadvantages relate to mixed impacts on efficiency, its complexity and additional costs on the industry regulator.

Impact on efficiency

If response times were a performance measure under the scheme, all operators may focus more on attending accident scenes as quickly as possible leading to improved response and clearance times, and minimising road congestion costs. However, accidents tows would not necessarily be allocated to the nearest depot. Some accident tows would be allocated to operators that are further from the accident scene as these

operators have been assessed as better performers. This could lead to higher response and clearance times, higher congestion costs and higher fees for consumers for those specific tows. Therefore, the overall efficiency impact is mixed.

Performance based schemes are more complex

Performance based allocations are likely to be complex. Accident allocations will be based on accident location *and* the relative performance of operators. It may be difficult to clearly explain how the allocation scheme operates and why some operators are receiving additional tows while others are receiving fewer allocations.

Similarly, it may be difficult for operators to predict future allocations. For example, it could be the case that an operator who is performing adequately (e.g. meeting the 30 minute response time target) but whose neighbouring operators are performing better could lose tows to these better performing operators. While it would be possible to explain such an outcome to an affected operator given the rules of the allocation scheme, it may be confusing given the inherent complexity of the scheme.

For operators to understand how allocations are determined, assessments of each operator's performance and or decisions on additional allocations would need to be publicly available.

Impacts on the industry regulator

To implement performance based allocations, the industry regulator would need to develop, implement and administer the performance regime. It would have to identify the performance measures, set up processes to accurately record these, and determine performance targets beyond which an operator would receive additional accident allocations. This would not be a straightforward task.

For example, currently the key performance requirement in the controlled area is the 30 minute response time target. If this were applied as the performance measure, VicRoads would have to:

- determine how performance against this target would be converted into additional accident allocations
- develop processes to capture operator performance, and continually collect and assess response time data, and

- verify the performance information and or implement a process that ensures the accuracy of response time data.

Each of these requirements is discussed below.

Determine the performance target and allocation rules — VicRoads would have to determine what level of performance is required for an operator to receive additional allocations and set the performance target. For example, the target could be “an average response time of less than 20 minutes” or “95 per cent of accident tows responded to within 20 minutes”. In theory, targets expressed in this way could result in all operators meeting the target. The detailed rules of the allocation scheme would need to specify what happens in this event.

VicRoads would also have to define how additional accident allocations are given to operators who meet the target, including how many allocations and when the allocations would be used.

VicRoads would also have to define what would happen in the event that all operators meet the target. It wouldn't make sense for all operators to receive additional accident allocations therefore VicRoads would have to determine whether no operators receive additional accident allocations or whether alternative arrangements would apply. To avoid this issue, the performance target could be used to rank operators. VicRoads would then have to determine how many operators would receive additional allocations, and how many allocations they would each receive.

Develop processes to capture operator performance, and collect and assess performance data — VicRoads would have to enforce the 30 minute response time target requirement specified in the Act. VicRoads would have to continually collect and assess response time data. Applying the detailed rules of the allocation scheme, VicRoads would have to update performance assessments and issue additional accident allocations to operators newly assessed as high performers.

Verify the performance information and or implement a process that ensures the accuracy of response time data — it would not be enough to simply start enforcing the requirement to report response times. VicRoads would also need to ensure the accuracy of the reported data (as noted in section 2.5.2, current controlled area clearance time data is inaccurate because different operators and drivers notify the

allocation body at different times, and some tows may remain 'open' for days or weeks).

Adding to the importance of verifying the accuracy of response time data, a performance based allocation scheme would create incentives to misreport performance. For example, if the 30 minute response time requirement was the performance measure, there would be incentives for operators to report quick response times as this would increase their chances of being assessed as meeting the performance target and therefore receiving additional allocations.

Given these incentives, VicRoads may have to implement an alternative process to relying on the tow truck driver ringing the allocation body to report the response time. One such option is the use of GPS technology. Tow trucks could be fitted with GPS technology and their position could be known by the allocation body. The driver could use the GPS unit to report their arrival at the accident scene and this could be automatically verified by the allocation body.

While such technology is available and is being used for similar purposes (e.g. booking a taxi, transport and delivery companies tracking the location of their vehicles), there would be costs in developing and implementing the GPS technology.

Other costs

A performance based allocation scheme is essentially an add-on to a primary allocation scheme. For example, it could be applied to the existing scheme in the controlled area. While there would be benefits associated with the addition of performance based allocations, the costs associated with the existing scheme would remain. These costs include costs associated with accidents tows not going to the nearest depot, leading to higher response and clearance times, and higher congestion costs for other road users. There are also costs for VicRoads to adjust allocation zone boundaries and assess applications to relocate licences within the controlled area.

D.3 INSURER PREFERRED BASED ALLOCATIONS

Under an insurer preferred allocation scheme, insurers would identify preferred accident towing operators. Where a preferred operator could attend the accident scene

within a reasonable time, that operator would be allocated the accident tow in place of the operator who would have otherwise been allocated the tow. Similar to performance based allocations, an insurer preferred scheme sits within a broader allocation process so only some accident allocations would be based on insurer preference. Insurer preferred allocations also nudge the industry closer to competitive outcomes — better operators (those preferred by insurers) would receive more accident allocations.

To implement insurer preferred allocations:

- insurers who wish to participate have to identify preferred accident towing operators
- the allocation body (e.g. the RACV in the controlled area) has to be notified of insurers' preferred towing operators and
- as part of the allocation body's processes, it would need to ask for the vehicle insurer (assuming it is the vehicle driver or owner who contacts the allocation body requesting the tow).

BENEFITS OF INSURER PREFERRED ALLOCATIONS

The key benefit of insurer preferred allocations is its movement towards outcomes more consistent with a competitive market. The allocation scheme rewards better performing operators (as selected by insurers). This provides an incentive for operators to continually improve their performance relative to others — an incentive that exists in competitive markets.

COSTS OF INSURER PREFERRED BASED ALLOCATIONS

The main costs of insurer preferred allocations are efficiency implications and complexity. There would also be costs associated with the broader allocation scheme within which the insurer preferred allocation process sits.

While accident tows would only be allocated to an insurer preferred operator when that operator could attend the accident scene within a reasonable time, this could result in accident tows being allocated to operators who are not nearest to the accident. This has efficiency implications: response and clearance times are likely to be higher, leading to higher congestion costs for other road users. Users may also face higher towing fees due to increased tow distance.

An insurer preferred allocation scheme is more complex than the existing scheme — more accurately, since it sits within a broader allocation scheme, it adds to the complexity of the broader scheme. Much of the additional complexity is directed at the allocation body. The allocation body, whenever it receives a request for an accident tow, will have to first enquire if the vehicle owner is insured, and who that insurer is. If insured, it would then have to identify the insurer's preferred towing operators, identify which of those operators is nearest the accident, and then see if that operator is near enough to respond within a reasonable time. If so, it could then allocate the accident tow to that operator. If that operator could not accept the allocation, the accident would then be allocated to the next closest insurer preferred operator. If no insurer preferred operator could attend the accident, the tow would be allocated as per the broader allocation scheme.

Finally, the costs associated with the broader (existing) scheme would remain. These costs include costs associated with accidents tows not going to the nearest depot and costs on VicRoads to adjust allocation zone boundaries and assess applications to relocate licences within the controlled area.

D.4 BIDDING PROCESSES — INTRODUCING COMPETITION

In competitive markets service providers get business based on the price (fee) and quality of their services. The performance and insurer preferred allocation schemes nudge the market towards competitive outcomes. However they do not involve operators revealing their fee to perform the accident tow. Building on these options we have looked for approaches that involve operators bidding for accident towing work, thereby introducing competition more significantly. Bidding processes encourage operators to reveal their costs of operation, and the information could be used to set regulated fees or successful operators could be required to set their fees as per their bid. The assumption is that operators will bid competitively.

Approaches for introducing competition will vary depending on the timeframe over which bids apply and the area over which successful bidders will provide towing services. To illustrate how competitive approaches could be designed, three examples are briefly discussed: annual bidding to form the allocation queue, tendering of towing services for set areas, and real-time bidding for towing allocations.

ANNUAL BIDDING TO FORM THE ALLOCATION QUEUE

Under this approach, operators annually bid their fees for accident towing services. A queue could be formed based on operator bids. Accident tows would then be allocated to the operator with the lowest bid who could respond to the accident within a reasonable time.

The bidding information could be used to set regulated fees. For example, fees could be set based on the lower quartile of operator bids. This would encourage other operators to improve their efficiency and lower their costs. Alternatively, an operator who is allocated an accident tow could be required to charge the fee that they bid.

TENDERING OF ACCIDENT TOWING SERVICES

The right to provide accident towing services in defined areas could be auctioned. For example, the current controlled area could be separated into five zones: CBD and inner city; west; north; east and south east, and the right to provide accident towing services in each zone for a set period (e.g. five years) could be auctioned.

As part of the bidding process, bidders would have to demonstrate that they have sufficient resources to service the zone.

REAL-TIME BIDDING FOR ACCIDENT TOWING ALLOCATIONS

The first two competition options do not involve operators making real-time bids, i.e. bids are not made at the time an accident needs to be allocated, instead a prior bidding process is used to establish a queue or tender off a service area. This final example of introducing competition involves operators making bids in real-time.

A real-time bidding process would involve the allocation body:

- being contacted to arrange an accident tow (as currently occurs)
- requesting an accident towing bid from operators who are within a reasonable distance of the accident scene (the bid could separately identify the base, distance and daily storage fees), and
- allocating the accident tow to the operator / depot with the lowest bid.

Real-time bidding processes would lead to efficiency improvements, with low cost operators driving improvement across the industry. By introducing real-time bidding, government could be freed from setting towing and storage fees. Instead the competitive bidding process could be used to set fees — the successful bidder would charge the fee it bid. As a safety net, government could set maximum fees. This may be a prudent approach if real-time bidding were introduced as it ensures fees are not above a reasonable level; consumers would be protected from excessive fees.

To implement real-time bidding would require the introduction of new processes and potentially new technologies. Such technologies are already being applied in other transport industries to introduce competition and better link service providers and consumers. A current example is Uber's entry into the taxi and hire car markets.¹⁵⁸ More simply, the request for bids could be sent via SMS and operators could reply with their bids.

BENEFITS OF INTRODUCING COMPETITION

The key benefit of introducing competition relates to improvements in efficiency.

Competitive processes drive producers of goods and services to operate efficiently, to manage costs, to innovate and respond to consumer demand. Those that cannot respond to competition will be replaced with other producers (operators) who have lower costs, better services, and who better meet the needs of the market. In this way consumers get the goods and services that they require, and they get them at an efficient price. In the case of accident towing, the competitive process will lead to more efficient operators doing more accident tows.

Introducing competition into accident towing through bidding processes would encourage operators to reveal their actual costs. Correctly implemented, competitive processes would move fees towards efficient levels. The alternative, which currently applies in the controlled area, is government directly setting fees. This requires the Commission to undertake periodic reviews and provide advice to government on accident towing and storage fees. It similarly requires VicRoads to report to the Minister

¹⁵⁸ Notwithstanding debates that some of Uber's services may be inconsistent with current taxi regulations, the technology associated with Uber shows the potential for real-time matching of service providers with users of the service.

for Roads on fees. This is a second best outcome compared to processes that introduce competition.

COSTS OF INTRODUCING COMPETITION

The key costs of competition are the implementation and ongoing administration costs of the bidding process. For example, if separate zones are tendered for towing services, government will have to identify the zones and develop and administer the tender process. It will then have to monitor service delivery against the tender contract. Alternatively real-time bidding processes may involve fewer ongoing costs to government. A request for bids could be sent to operators via mobile phone SMS and operators could SMS their bids back to the allocation body. This may be a low cost option of introducing competition.

Competition could impact smaller operators in terms of their ability to compete with larger operators. The extent of this impact may vary depending on how competition is introduced. For example, smaller operators may find it difficult to compete if set accident towing zones were tendered. They simply may not have the scale to service the area; however, smaller operators could team together and put in a joint bid. This compares with real-time bidding for a single tow — smaller operators would be able to individually participate in such processes.

APPENDIX E: INSURANCE AND SMASH REPAIR OVERSIGHT

This appendix discusses aspects of vehicle insurance and oversight of smash repairs.

E.1 LIABILITY AND INSURANCE

In an accident, the driver who is found to be at-fault of causing the accident (in full or in part) is the at-fault driver. At-fault drivers are liable for the property damage to any vehicles (or other property) resulting from an accident, and for towing and storage costs, to the extent of their culpability. (This is in addition to any personal injuries, which are covered by compulsory third party insurance.)¹⁵⁹

This liability for property damage is generally covered by the at-fault driver's insurer if they make a claim under their insurance policy or by the at-fault driver if they are uninsured against property damage.

Comprehensive policies cover loss or damage to a policy-holder's vehicle and the legal liability of a policy-holder for loss or damage to another person's vehicle and other property when there has been an incident.

Third party policies cover only the legal liability of a policy-holder for loss or damage to another person's vehicle and other property when there has been an incident.

¹⁵⁹ Compulsory third party car insurance is included in the cost of vehicle registration. This compulsory third party insurance provides cover for personal injuries caused due to an accident involving a vehicle, but does not protect a driver against damage to any property.

E.2 HOW DO INSURANCE POLICIES WORK?

An insurer will typically pay for the reasonable costs for towing and storing a damaged vehicle to a nearby location.

If a policy-holder is not-at-fault, they generally make a claim against the at-fault driver's insurer. Once an at-fault driver's insurer is notified of a claim against the policy-holder, they will take over the management of the claim and interact with the other party's insurer. If necessary, the insurer will argue on behalf of the policy-holder in determining fault in the accident.

Generally, a holder of an insurance policy will be required to pay an excess when making a claim against their insurance policy. A driver found to be not-at-fault will subsequently be reimbursed.

If a policy-holder breaches their policy, for example by authorising repairs to their car without getting insurer approval, the insurer may seek to rely upon an exclusion in the policy to deny indemnity.

E.3 WHAT HAPPENS IN AN ACCIDENT?

The following table classifies the repair process for an individual driver's vehicle following an accident. It does this by the fault and the insurance coverage of that driver. In each of these situations, the roles and incentives of the drivers and insurers will be different, which will influence their level of oversight of smash repair costs.

TABLE E.1 ACCIDENT TAXONOMY AND SMASH REPAIR OVERSIGHT

Driver fault	Insured?	Role of driver / insurer	Oversight of smash repair costs
Driver is at-fault	Insured	Driver claims repair of own vehicle on insurance.	Insurer manages and oversees repair.
Driver is at-fault	Uninsured	Driver pays for repair of own vehicle.	Driver manages and oversees repair.
Driver is not-at-fault	Insured	Driver claims repair of own vehicle from at-fault driver or at-fault driver's insurer.	<p>If driver contacts their insurer (or at-fault driver's insurer), insurer manages and oversees repair.</p> <p>If driver does not contact their insurer (or at-fault driver's insurer), driver appoints repairer. No oversight by either driver or insurer.</p>
Driver is not-at-fault	Uninsured	Driver claims repair of own vehicle from at-fault driver or at-fault driver's insurer.	<p>If driver contacts at-fault driver's insurer, insurer manages and oversees repair.</p> <p>If driver does not contact at-fault driver's insurer, driver appoints repairer. No oversight by either driver or insurer.</p>
Neither driver admits fault	Insured	Driver notifies insurer to defend claim of fault against other driver, and / or claim repair of own vehicle on insurance.	Insurer manages and oversees repair.
Neither driver admits fault	Uninsured	Driver may be liable for repair of own vehicle.	Driver manages and oversees repair.