



# ACCIDENT TOWING REGULATION

Final report

December 2015



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# MESSAGE FROM THE CHAIRPERSON

This final report brings to an end a year's work involving dozens of interactions with tow truck operators and drivers, industry and consumer organisations, insurance companies and other interested parties. Many of the issues raised throughout our review sit in the broader context within which accident towing operates but do not necessarily relate directly to the regulation of accident towing.

While accident towing is, and should continue to be, regulated as a standalone service, it does not operate as a standalone industry. This became increasingly clear the further we progressed with our inquiry into the economic regulation of accident towing.

Accident towing is a subset of a larger towing industry consisting of breakdown and clearway tows (or 'trade towing'). Tow truck operators typically perform trade tows as well as accident tows. Many tow truck operators who provide accident tows also have a close commercial relationship with independent smash repairers, including through co-ownership. In turn, smash repairers are part of a larger body repair service for damaged vehicles. Insurers become involved in the broader industry through the motor vehicle policies they offer to vehicle owners. This involvement has intensified as insurers have vertically integrated in order to provide their customers with end-to-end assistance. In recent years, the insurance industry has become increasingly concentrated, with three insurers now dominating the provision of motor vehicle insurance policies.

Different regulatory arrangements apply to each of these elements. Trade towing is deregulated in Victoria, while accident towing remains regulated. The smash repair industry is regulated under general consumer laws and insurers are subject to industry-specific Commonwealth regulation.

For most drivers, accidents are a rare event. It is therefore not surprising that drivers are often unfamiliar with their rights and choices regarding the tow and repair of their

vehicle. Where drivers are insured, they may not be familiar with their rights, obligations and options under their insurance policies. Furthermore, drivers who believe they are not-at-fault may lack sufficient information about whether another party is likely to cover their tow and repair costs (for example, the other driver, the other driver's insurer, or their own insurer).

Being in an accident can be a stressful and potentially distressing experience for drivers. Clearly, these are not ideal circumstances for making an informed and considered decision regarding the tow and repair of a damaged vehicle. It is not surprising then, that from time to time 'things go wrong' for vehicle owners caught-up in the aftermath of an accident.

It is against this backdrop of complicated relationships and circumstances that we sought to conduct our review into the regulation of accident towing. It has proven difficult, and sometimes impossible, to disentangle accident towing and its regulation from the broader environment in which it operates. Despite the interwoven array of interests described above, the terms of reference for our inquiry limit us to reviewing only the economic regulatory arrangements for accident towing. We have not been commissioned to undertake an end-to-end review assessing the effectiveness and efficiency of the regulatory arrangements involving all elements of the post-accident treatment of vehicles and drivers.

Further complicating our task has been the absence of relevant and reliable data, largely because it is not collected. The best an inquiry such as this one can do under these circumstances is to return to first principles of good regulation when undertaking its analysis and making its recommendations. This is the approach we have adopted in many places in this final report.

This final report remains true to our terms of reference and we have limited our recommendations accordingly. However, since the release of our draft report, we have substantially revised our chapter on consumer protection (chapter 4) and also added an appendix (appendix F) that highlights many of the issues raised with us regarding the broader environment within which accident towing operates. We raise these matters for policy makers' further consideration.

On behalf of the Commission and its staff, I extend my appreciation to the many individuals and organisations that met with us or made written submissions to this inquiry. We are very grateful for your contributions and the generosity you have shown us with your time.

Dr Ron Ben-David

**Chairperson**



# GLOSSARY

|  |   |
|--|---|
| <b>Accident allocation scheme</b>                | 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.  |
| <b>Accident towing</b>                           | The towing and storage of accident-damaged motor vehicles from road accident scenes. Accident towing and storage fees are regulated within the controlled area.   |
| <b>Allocation</b>                                | 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. |
| <b>Allocation zone</b>                           | 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.  |
| <b>At-fault driver</b>                           | A driver of a vehicle in an accident who is responsible for causing the accident (in part or in full).  |
| <b>Australian Statistical Geography Standard</b> | 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.

|                                      |   |
|--------------------------------------|---|
| <b>Controlled area</b>               | A declared area consisting of the Melbourne metropolitan area and the Mornington Peninsula. Accident towing and storage fees are regulated within the controlled area.  |
| <b>Cooling-off period</b>            | A period following the signing of a contract within which the contract can be terminated due to change of mind.   |
| <b>Depot</b>                         | Premises from which accident tow trucks operate. A single depot may be shared by multiple accident towing service businesses.   |
| <b>Depot manager</b>                 | 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.           |
| <b>Dormant licence</b>               | <i>See unattached licence.</i>  |
| <b>Driver</b>                        | 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.   |
| <b>Geelong self-management area</b>  | A declared area consisting of Geelong and surrounding areas.  |
| <b>Heavy vehicle accident towing</b> | 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”. |

|                                     |  |
|-------------------------------------|--|
| <b>Impound towing</b>               | 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.  |
| <b>Not-at-fault driver</b>          | A driver of a vehicle in an accident who is not responsible for causing the accident.  |
| <b>Operator</b>                     | 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.   |
| <b>Out of storage tow</b>           | 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).                                      |
| <b>Preferred repairer schemes</b>   | The practice of insurers referring their smash repair work to preferred smash repairers.   |
| <b>Recovery agent</b>               | A debt recovery business.  |
| <b>Regular vehicle accident tow</b> | 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. |
| <b>Repair agreement</b>             | 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.



# CONTENTS

|  |               |
|--|---------------|
| <b>MESSAGE FROM THE CHAIRPERSON</b>            | <b>I</b>      |
| <b>GLOSSARY</b>                                | <b>V</b>      |
| <b>OVERVIEW AND FINAL RECOMMENDATIONS</b>      | <b>XVII</b>   |
| <b>ABOUT THIS REVIEW</b>                       | <b>XXXIII</b> |
| <b>1 UNDERSTANDING THE TOWING INDUSTRY</b>     | <b>1</b>      |
| 1.1 ACCIDENT TOWING                            | 1             |
| 1.2 THE CURRENT REGULATORY FRAMEWORK           | 3             |
| 1.3 INDUSTRY STATISTICS                        | 15            |
| <b>2 THE BROADER MARKET</b>                    | <b>23</b>     |
| 2.1 INTRODUCTION                               | 23            |
| 2.2 ACCIDENT TOWING MARKETS                    | 23            |
| 2.3 STRUCTURE OF ACCIDENT TOWING MARKETS       | 26            |
| 2.4 OPERATION OF ACCIDENT TOWING MARKETS       | 39            |
| 2.5 OUTCOMES IN ACCIDENT TOWING MARKETS        | 46            |
| 2.6 OTHER MARKETS                              | 57            |
| 2.7 OBSERVATIONS AND IMPLICATIONS FOR ANALYSIS | 62            |

|          |   |            |
|----------|---|------------|
| <b>3</b> | <b>ACCIDENT ALLOCATIONS</b>                                       | <b>64</b>  |
| 3.1      | INTRODUCTION  | 64         |
| 3.2      | THE EXISTING OPERATION OF THE CONTROLLED AREA ALLOCATION SCHEME   | 65         |
| 3.3      | IMPROVING THE CONTROLLED AREA ALLOCATION SCHEME                   | 77         |
| 3.4      | STAKEHOLDER COMMENTS ON DRAFT RECOMMENDATIONS 2 AND 3             | 87         |
| 3.5      | FINAL COMMISSION ANALYSIS   | 91         |
| 3.6      | THE UNREGULATED AREA  | 98         |
| <b>4</b> | <b>IMPROVING CONSUMER OUTCOMES</b>                                | <b>103</b> |
| 4.1      | INTRODUCTION  | 103        |
| 4.2      | OVERVIEW OF CONSUMER PROTECTION AT THE ACCIDENT SCENE             | 104        |
| 4.3      | INITIAL STAKEHOLDER COMMENTS                                      | 106        |
| 4.4      | THE COMMISSION'S DRAFT ANALYSIS                                   | 106        |
| 4.5      | STAKEHOLDER COMMENTS IN RESPONSE TO THE DRAFT RECOMMENDATIONS 5-7 | 112        |
| 4.6      | THE COMMISSION'S FINAL ANALYSIS                                   | 118        |
| 4.7      | FINAL RECOMMENDATIONS   | 122        |
| 4.8      | FURTHER OBSERVATIONS  | 127        |
| <b>5</b> | <b>SHOULD FEES BE REGULATED?</b>                                  | <b>129</b> |
| 5.1      | INTRODUCTION  | 129        |
| 5.2      | INITIAL STAKEHOLDER COMMENTS                                      | 130        |
| 5.3      | CONTROLLED AREA FEE REGULATION                                    | 132        |
| 5.4      | FEES IN THE UNREGULATED AREA                                      | 138        |

|          |   |            |
|----------|---|------------|
| <b>6</b> | <b>CONTROLLED AREA BOUNDARY</b>   | <b>165</b> |
| 6.1      | INTRODUCTION  | 165        |
| 6.2      | INITIAL STAKEHOLDER COMMENTS  | 166        |
| 6.3      | COMMISSION’S DRAFT ANALYSIS — IS THE CURRENT BOUNDARY APPROPRIATE?                              | 167        |
| 6.4      | COMMISSION’S DRAFT REPORT ANALYSIS — A FUTURE PROCESS FOR AMENDING THE CONTROLLED AREA BOUNDARY | 171        |
| 6.5      | STAKEHOLDER COMMENTS ON DRAFT RECOMMENDATION 10   | 174        |
| 6.6      | COMMISSION’S ANALYSIS   | 176        |
| 6.7      | FINAL RECOMMENDATION  | 177        |
| <b>7</b> | <b>THE SELF-MANAGEMENT AREA</b>   | <b>179</b> |
| 7.1      | INTRODUCTION  | 179        |
| 7.2      | ACCIDENT ALLOCATIONS  | 179        |
| 7.3      | FEE REGULATION IN THE SELF MANAGEMENT AREA  | 186        |
| 7.4      | THE SELF-MANAGEMENT AREA BOUNDARY   | 200        |
| <b>8</b> | <b>HEAVY VEHICLE ACCIDENT TOWING</b>  | <b>205</b> |
| 8.1      | INTRODUCTION  | 205        |
| 8.2      | FEE REGULATION AND ACCIDENT ALLOCATIONS   | 206        |
| 8.3      | FINAL RECOMMENDATION  | 212        |

|  |            |
|--|------------|
| <b>APPENDIX A: TERMS OF REFERENCE</b>                            | <b>213</b> |
| <b>APPENDIX B: AUTHORITY TO TOW AND VICROADS FACT SHEET</b>      | <b>217</b> |
| <b>APPENDIX C: ANALYSIS OF CONTROLLED AREA LICENCE OWNERSHIP</b> | <b>221</b> |
| <b>APPENDIX D: ANALYSIS OF ALLOCATION OPTIONS</b>                | <b>227</b> |
| <b>APPENDIX E: INSURANCE AND SMASH REPAIR OVERSIGHT</b>          | <b>237</b> |
| <b>APPENDIX F: SMASH REPAIR</b>                                  | <b>240</b> |

# OVERVIEW AND FINAL RECOMMENDATIONS

## INTRODUCTION

This report presents our recommendations in relation to our review of the economic regulation of accident towing.

We have made 19 recommendations and identified three matters for further government consideration. These are detailed in table 1 below.

## OVERVIEW OF THE FINAL RECOMMENDATIONS

Our recommendations are aimed at three broad areas:

- improving the processes by which accident tows are allocated to tow truck operators where such allocation schemes exist, so as to best promote consumers' interests
- ensuring that fees for accident towing services are fair and reasonable for consumers, regardless of whether accidents occur in the controlled area, self-managed area or in the rest of Victoria, and
- ensuring that consumers are appropriately informed of their rights and responsibilities once in an accident.

## IMPROVING ACCIDENT TOWING ALLOCATION PROCESSES

In our draft report, we concluded that an accident towing allocation scheme was necessary in the controlled area, but that it could deliver better consumer outcomes by taking proximity to an accident scene more directly into account.

A key change from the draft to final report is the acknowledgement that the proximity analysis presented in the draft report may overstate the gains from a proximity-based allocation mechanism. This is because our analysis assumed vehicles were dispatched from depots. However, actual industry practice is that a substantial proportion of accident towing vehicles are garaged at the residences of their drivers (and not at a depot).<sup>1</sup>

Notwithstanding, the Commission considers that there are benefits from using the proximity allocation scheme as a *benchmark*. For example, if distances travelled to accidents under the current scheme grow over time relative to the benchmark, this may indicate zone boundaries need to be reviewed. As a result, the Commission has amended its final report recommendation to emphasise that VicRoads should benchmark the efficiency of the current allocation scheme by measuring its performance against a proximity-based benchmark. Such benchmarking will enable future decisions regarding the allocation scheme to be better informed by potential benefits; recognising that account will also need to be taken of the costs of changes.

In the self-management area, we recommend the self-managed allocation scheme should continue to operate but recommend improvements to its operation. The relevant benchmark against which such improvements should be measured is the outcomes under a proximity-based allocation scheme.

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<sup>1</sup> This is especially the case outside business hours. See Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), November 2015, p.34.

## IMPROVEMENTS TO RESPONSE AND CLEARANCE TIMES AND ZONE CHANGES

We make three new recommendations to improve response and clearance times for accidents, and one new recommendation to improve the process for altering zone boundaries within the controlled area.

### ***A truck-based allocation scheme***

The information provided by industry about the actual practice of where tow trucks are garaged suggests that there is no certainty that a depot-based proximity scheme would deliver material benefits. The full benefits of a proximity-based scheme would only be delivered through a scheme that used the location of the trucks themselves (using GPS technology), rather than the location of their depots. We have recommended that the feasibility of such a scheme be investigated by VicRoads, taking account of the benefits available and the transitional costs.

### ***Queuing process and double tows***

In its response to the draft recommendations, the Victorian Automobile Chamber of Commerce (VACC) raised two potential process improvements that it believes will facilitate improved response and clearance times. The first was to improve the transparency of the queuing process for tow truck operators. The second, which was also proposed by members of the accident towing industry (ATI)<sup>2</sup>, was to allow for multiple or 'double tows'. This involves the practice of a single tow truck taking more than one vehicle from the accident scene.

On the transparency of queuing, we agree that under the current depot-based allocation scheme there would be benefits from allowing tow truck operators to know their position in the allocation queue. Making such information available to operators will allow operators to better coordinate and manage their assets in order to deliver towing services. The information is already collected and the costs of designing a web-based (online) portal to access the information should not be significant.

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<sup>2</sup> Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), November 2015.

Secondly, allowing for double tows on the same truck could lead to faster response and clearance times, given that it potentially removes the requirement for accident vehicle owners to wait for multiple tow trucks to respond when a single respondent would be sufficient. We recommend that VicRoads give further consideration to facilitating greater use of double tows.

### ***Depot and licence relocations***

Despite submissions to the contrary, the Commission remains of the view that there is no compelling evidence that there are net benefits from requiring VicRoads to approve depot relocations and movement of licences to different depots within the controlled, self-management and unregulated areas. In our view, the requirements on VicRoads to approve relocations and movements add to regulatory ‘red tape’ and create barriers to the efficient movement of resources, while adding little to the efficient operation of the industry. As a result we have retained recommendation 3 from the draft report.

In response to draft recommendation 3 (remove VicRoads approval of depot relocations), some stakeholders argued it was effectively impossible to establish towing depots in large parts of the controlled area due to local planning provision and the planning policies of local councils. This is a matter that clearly affects the efficient establishment of depots and impinges on the industry’s ability to clear accident scenes in an orderly and timely manner. However, it is not obvious that the continuation of VicRoads approval of depot locations will have any influence on the establishment of depots in these areas.

### ***Increasing the transparency of zone boundaries***

While the Commission does not support VicRoads having oversight of depot relocation, we agree with stakeholders that the transparency associated with decisions regarding the definition of boundaries for the allocation zones should be improved. These zoning decisions can have significant implications for operators. Using the information from proximity benchmarking would allow VicRoads to make more evidence-based and transparent re-zoning decisions. Further, consultation is critical to effective regulation and should form part of VicRoads’ decision-making process. The Commission recommends VicRoads consult on and publish rules and processes for reviewing allocation zones.

## FEE REGULATION

### ***Regulation of fees in the controlled and unregulated areas***

There is little dispute that fees should remain regulated in the controlled area. This is because of the existence of an allocation scheme which grants an exclusive right to towing operators to attend an accident scene. The allocation scheme has also reduced the impact of congestion on motorists and has been successful at addressing behavioural issues associated with multiple tow operators attending an accident scene.

However, we are concerned about the reasonableness of fees in parts of the unregulated area. We remain of the view expressed in our draft report that fee notification in the unregulated area will produce more benefits than the costs of implementation and compliance.

We have recommended a fee notification scheme that has low implementation costs for the industry — a similar low-cost notification scheme applies to the taxi industry in the unregulated country and regional areas of Victoria.

We propose that fee notification data be treated in confidence by VicRoads and that VicRoads report annually on aggregated and anonymised information relating to accident towing fees in the unregulated area.

### ***Regulation of fees in the self-managed area***

The Commission believes that the existence of an allocation scheme in the self-management area creates an environment where competition between operators, and choice for consumers, is restricted. This could in turn result in fees that are excessive.

Evidence gathered by the Commission suggests that revenues per truck in the self-management areas are higher than in the controlled area. However, the Commission accepts that the difference in revenues between areas may possibly be explained by operators in the self-management area facing higher costs than operators in other areas. Unfortunately, as part of the present review process, we have been unable to obtain sufficiently reliable information to undertake a proper assessment of the cost structure of operators in the self-management area.

In our view, better evidence is required on the revenues and costs of operators in different areas. As a result, we recommend that the Commission undertake a comprehensive study that examines the revenues and costs of operators in the self-management area.

Such a study should take account of the circumstances of operators in the self-management area, because those circumstances may differ from the circumstances faced by operators in other areas.

## CONSUMER PROTECTION AT ACCIDENT SCENES

We acknowledge that 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. Given this, we examine the effectiveness of consumer protections in relation to accident towing services and propose a small number of targeted recommendations, which have changed from our draft recommendations

### ***Removal of limiting tow destination recommendation***

We have decided not to proceed with our draft recommendation 7 (limiting tow destinations) on the basis that it may not be an efficient way to deal with problems that might be emerging downstream in the smash repair industry. The potential problem is that consumers are not fully considering their options about smash repair. This issue is discussed in the matters for government consideration.

### ***Secondary tows***

Related to recommendation 7, some stakeholders have called for a written authority to remove the vehicle from its first place of storage to the next address.<sup>3</sup> The concern appears to be that secondary tows occur without the knowledge of the vehicle owner or without documentation indicating where the vehicle has been taken. Without information on the potential inconvenience this would cause to owners and the size of the existing problem, we are hesitant to propose such a recommendation.

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<sup>3</sup> VACC submission to the Draft Report, 17 November, 2015, p.15 and Patten Robins (ATI) p.16

A better solution may be to amend the regulations to require the secondary tower to provide the initial depot with an authority to tow. Like the initial authority to tow, this would include the destination and who has authorised the tow, but may be authorised by the secondary tower rather than the owner directly. This may alleviate some of the concern without imposing material costs on any party.

### ***A proposed 'information' page***

Our focus is to inform and educate drivers regarding what to do after an accident, rather than introducing new laws or regulations.

The Commission considers that the accident scene is the most effective place to make available this information. Consequently, the Commission has recommended drivers involved in an accident be provided with targeted information to reduce the risk of agreeing to repairs without considering their options.

We propose that an 'information' page be included on the reverse side of the Authority to Tow docket (a copy of which is currently required to be provided by the tow truck driver to the driver of the vehicle).

The Commission agrees that any messages or warnings should be simple and clear. Consequently, we have revised our draft report example of how the messages could be worded. This wording should be subject to refinement in consultation with stakeholders.

To reinforce and elaborate on the information provided in the proposed 'information' page, some amendments could also be made to VicRoads' existing accident towing factsheet. The benefit of the factsheet is that it provides takeaway information to the driver after the accident. This factsheet already provides considerable detail, but it could provide additional information to better complement the new information page.

### ***Education Campaign***

In the draft report, the Commission recommended that an education campaign may be helpful to educate drivers about what to do after an accident, and their rights and responsibilities.

A key theme raised in submissions was who should conduct this campaign. Our draft recommendation focused on the role of insurers; however, we accept that greater benefits would be derived if this campaign were led or coordinated by a government body such as Consumer Affairs Victoria (CAV), VicRoads or the Australian Competition and Consumer Commission (ACCC), and involving all relevant stakeholders (including the industry and its peak bodies).

We have recommended VicRoads should coordinate with other relevant agencies and stakeholders to support the education of consumers. In addition, we have also recommended that VicRoads and/or CAV should develop a readily accessible website with information on “*What to do if you’ve been in a car accident*”.

## MATTERS FOR GOVERNMENT CONSIDERATION

A key change from the draft to the final report has been a reconsideration of the consumer protection issues relating to smash repair. We note that existing regulation provides some protections for users of accident towing services. This includes regulations that require the provision of information to users about their rights and obligations, and regulations that prevent accident towing operators from ‘touting’ for smash repair work at the scene of an accident.

These consumer protections reflect that, while the accident towing and smash repair functions are separate, they can also be related through ownership or other linkages. Indeed *the Accident Towing Services Act 2007* itself imposes obligations on the behaviour of smash repairers when dealing with accident damaged vehicles.

### ***Matters for Government consideration***

While stakeholders have identified consumer issues between these two industries, as discussed above, it is not within the scope of our role to review the performance of the smash repair industry or the related insurance industry as part of this review. In Appendix F to this final report, we describe some of these issues without making any further recommendations – instead we highlight three matters for Government consideration.

First, we suggest that the Victorian Government could consider the matters raised through our review and whether this indicates a need to undertake an inquiry into aspects of the wider smash repair market.

Second, we suggest that the Victorian Government should consider the proposal from the VACC that consumers requiring smash repair services following an accident receive full and frank disclosure of the risks and potential financial obligations involved in entering into a smash repair agreement and any related agreements (such as an authority to act).

Finally, in chapter 4, we note that given the complex nature of consumer protection issues in relation to accident towing, there is merit in better resourcing VicRoads to address these concerns. Alternatively, the consumer protection aspects of regulation could be transferred to a body with greater experience in dealing with these types of consumer issues, leaving VicRoads with the more technical aspects of accident towing industry regulation, such as licensing, zoning and boundaries.

**TABLE 1 FINAL RECOMMENDATIONS – (A COMPARISON TO THE DRAFT REPORT)**

| Draft recommendation   | Final recommendation  |
|--|---|
| <b><i>Accident allocations – the controlled area scheme</i></b>  |   |
| <p><b>Draft recommendation 1: (continue allocation scheme)</b><br/>The accident allocation scheme should continue to operate in the controlled area.</p>   | <p><b>Final recommendation 1: (continue allocation scheme)</b></p> <ul style="list-style-type: none"> <li>No change.</li> </ul>   |
| <b><i>Accident allocations – improving the existing scheme</i></b>   |   |
| <p><b>Draft recommendation 2: (proximity)</b><br/>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.</p> <p>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.</p> | <p><b>Final recommendation 2: (proximity)</b><br/>Draft recommendation 2 maintained, but amended to emphasise that VicRoads should benchmark the efficiency of the current allocation scheme by measuring its performance against a proximity-based benchmark.</p> <p><b>Final recommendation 2A: (transparency of queuing)</b><br/>New recommendation that VicRoads develop a real-time web-based (online) queuing portal to provide operators in the controlled area with information on their position in the allocation queue.</p> <p><b>Final recommendation 2B: (double tows)</b><br/>New recommendation that VicRoads investigate options or rules to facilitate double or multiple tows where it can produce more efficient outcomes for accident drivers and road clearance.</p> <p><b>Final recommendation 2C: (truck-based allocation)</b><br/>New recommendation that VicRoads develop a business case for the establishment of a new proximity-based allocation scheme for the controlled area based on allocation to the nearest truck. VicRoads should review regulation 16 (a) &amp; (b) relating to where a tow truck is garaged to ascertain whether this regulation is still needed.</p> |

Continued next page

**TABLE 1 (CONTINUED)**

| Draft recommendation   | Final recommendation   |
|--|--|
| <b><i>Accident allocations – restrictions on licences</i></b>  |  |
| <p><b>Draft recommendation 3:<br/>(removal of depot requirements)</b><br/>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.</p> <p>The requirement to link a licence to a specific depot should also be removed.</p>  | <p><b>Final recommendation 3:<br/>(removal of depot requirements)</b></p> <ul style="list-style-type: none"> <li>• No change.</li> </ul> <p><b>Final recommendation 3A:<br/>(increasing transparency of allocation zones)</b><br/>New recommendation that VicRoads should consult on and publish the processes and rules for reviewing allocation zones.</p>   |
| <b><i>Accident allocations – the unregulated area</i></b>  |  |
| <p><b>Draft recommendation 4:<br/>(no allocation)</b><br/>Accident allocations in the unregulated area should continue to be unregulated.</p>  | <p><b>Final recommendation 4:<br/>(no allocation)</b></p> <ul style="list-style-type: none"> <li>• No change.</li> </ul>   |
| <b><i>Consumer protection – improving customer outcomes</i></b>  |  |
| <p><b>Draft recommendation 5:<br/>(authority to tow and factsheet)</b><br/>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.</p> <p>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).</p> | <p><b>Final recommendation 5:<br/>(authority to tow and factsheet)</b><br/>Draft recommendation 5 amended to recommend the authority to tow docket includes a (simple) page of important information that must be signed by the driver or vehicle owner before an accident tow is performed and that VicRoads should amend its 'Towing from an accident scene: Your rights' factsheet to better complement the important information page.</p> |

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**TABLE 1 (CONTINUED)**

| Draft recommendation   | Final recommendation   |
|--|--|
| <p><b>Draft recommendation 6: (education campaign)</b><br/>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.</p>   | <p><b>Final recommendation 6A: (education campaign)</b><br/>Draft recommendation 6 maintained, but amended to recommend VicRoads coordinate with other relevant agencies (e.g. Consumer Affairs Victoria, Australian Competition and Consumer Commission) and stakeholders (including the industry and its peak bodies, driver representative organisations and insurers) to support the education of drivers about their rights, obligations and options in the event of an accident.</p> <p><b>Final recommendation 6B: (education campaign – website)</b><br/>New recommendation that VicRoads and / or CAV develop a readily accessible website with information for consumers on ‘What to do if you’ve been in a car accident’. The VicRoads Fact Sheet should also include a statement like the following: ‘Before agreeing to the repair of your vehicle, please consider visiting the government’s information website [address]’.</p> |
| <p><b>Draft recommendation 7: (limiting towing destination)</b><br/>VicRoads should limit the locations to which an accident damaged vehicle can be towed.</p> <p>The authority to tow docket should list the following options for tow destinations:</p> <ul style="list-style-type: none"> <li>• a location instructed by the owner’s insurer</li> <li>• a location instructed by the at fault driver’s insurer</li> <li>• the owner’s home (or the home of a friend or family member), or</li> <li>• storing the vehicle at the tow operator’s licensed depot awaiting further instructions.</li> </ul> | <p><b>Final recommendation 7: (secondary tow)</b><br/>Draft recommendation 7 removed.</p> <p><b>Final recommendation 7A</b><br/>New recommendation that VicRoads consider amending the regulations (or developing a self-regulatory solution) to ensure that tows subsequent to the initial tow from the accident scene also require an authority to tow which identifies who has authorised the tow and where the vehicle is to be taken.</p>   |

Continued next page

**TABLE 1 (CONTINUED)**

| Draft recommendation   | Final recommendation   |
|--|--|
| <b><i>Fee regulation – controlled area</i></b>   |  |
| <p><b>Draft recommendation 8:<br/>(continue fee regulation)</b><br/>The Minister for Roads should continue to set regular vehicle accident towing and storage fees in the controlled area.</p>   | <p><b>Final recommendation 8:<br/>(continue fee regulation)</b></p> <ul style="list-style-type: none"> <li>• No change.</li> </ul>   |
| <b><i>Fee regulation – unregulated area</i></b>  |  |
| <p><b>Draft recommendation 9:<br/>(fee notification)</b><br/>A fee notification regime applying to regular vehicle accident towing and storage fees should be implemented for the unregulated area. The regime should involve:</p> <ul style="list-style-type: none"> <li>• operators having to notify VicRoads of their accident towing fees</li> <li>• VicRoads publishing all notified fees on its website</li> <li>• operators permitted only to charge up to their published, notified fees and</li> <li>• VicRoads publishing an annual report on notified fees.</li> </ul> <p>VicRoads should also consider collecting data on the overall towing fees charged by operators in the controlled, self-management and unregulated areas.</p> | <p><b>Final recommendation 9:<br/>(fee notification)</b><br/>Draft recommendation 9 maintained, but amended to clarify that fees should be kept by VicRoads on a confidential internal database and VicRoads should publish only aggregated and anonymised information on accident towing fees in the unregulated area in its annual report to better inform stakeholders on fee outcomes. The annual report should also include information on any investigations and complaints relating to unreasonable fees being charged.</p> <p>Recommendation also amended to state that compliance with notified maximum fees should be made a licence obligation for each operator.</p> |

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**TABLE 1 (CONTINUED)**

| Draft recommendation   | Final recommendation  |
|--|---|
| <p><b><i>Area boundaries – controlled area</i></b></p>   |   |
| <p><b>Draft recommendation 10:<br/>(purpose of boundary)</b><br/>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).</p> <p>If market based, then VicRoads should begin collecting relevant data to inform future realignments of the boundary. If geographic based, VicRoads should establish its preferred means for defining and amending 'metropolitan Melbourne'.</p> | <p><b>Final recommendation 10:<br/>(purpose of boundary)</b></p> <ul style="list-style-type: none"> <li>• No change.</li> </ul>   |
| <p><b><i>Accident allocations – self-management area</i></b></p>   |   |
| <p><b>Draft recommendation 11:<br/>(allocation improvements)</b><br/>The accident allocation scheme should continue to operate in the self-management area.</p> <p>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.</p> <p>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.</p>   | <p><b>Final recommendation 11:<br/>(allocation improvements)</b><br/>Draft recommendation 11 maintained, but amended to clarify that current arrangements should be reviewed to assess whether an alternative allocation scheme would provide more efficient outcomes for drivers involved in an accident.</p> <p>This could include moving to a proximity-based allocation scheme or a zoned allocation scheme or a truck-based allocation scheme.</p> |

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**TABLE 1 (CONTINUED)**

| <b>Draft recommendation</b>   | <b>Final recommendation</b>   |
|---|---|
| <b><i>Fee regulation – self-management area</i></b>   |   |
| <b>Draft recommendation 12:<br/>(fee regulation)</b><br>The Minister for Roads should set accident towing and storage fees in the self-management area.   | <b>Final recommendation 12:<br/>(review of fees)</b><br>Draft recommendation 12 amended to recommend the Government request the Commission undertake a review to assess whether accident and towing fees in the self-management area are fair and reasonable. |
| <b><i>Area boundaries – self-management area</i></b>  |   |
| <b>Draft recommendation 13:<br/>(review of boundary)</b><br>The self-management area boundary remains appropriate in terms of defining the region where the self-management area allocation scheme applies.<br><br>VicRoads should consider reviewing and as necessary amending the boundary where it cuts through intersections. | <b>Final recommendation 13:<br/>(review of boundary)</b><br>Draft recommendation 13 maintained, but noting that VicRoads should publish guidelines on when and how it will review the boundary in future (as per recommendation 3A).                          |
| <b><i>Regulation of heavy vehicle accident towing</i></b>   |   |
| <b>Draft recommendation 14:<br/>(no regulation)</b><br>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.                   | <b>Final recommendation 14:<br/>(no regulation)</b> <ul style="list-style-type: none"><li>• No change.</li></ul>  |

## TABLE 2: MATTERS FOR GOVERNMENT CONSIDERATION

### Matters for consideration

#### **Matter 1: Improving consumer outcomes – the role of the regulator**

We suggest there is merit in better resourcing VicRoads to respond to 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).

#### **Matter 2: Inquiry into the smash repair**

We suggest the Government could consider the matters raised through our review and whether this indicates a need to undertake an inquiry into aspects of the wider smash repair market.

#### **Matter 3: Full disclosure**

We suggest that the Government consider the proposal from the VACC that a mechanism be established to ensure full disclosure of the risks and potential financial obligations involved in entering into a repair agreement and any related agreements (such as an authority to act).

# ABOUT THIS REVIEW

*This chapter outlines the purpose of the review and what happens following this review.*

## PURPOSE OF THE REVIEW

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.

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). 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 areas<sup>4</sup>).

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

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<sup>4</sup> 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.

It is important to note the matters this review is *not* covering. This review has not been an accident towing fee review, nor has it been about reviewing industry regulation; for example, licensing or accreditation requirements applying to the industry, or a more general review of the *Accident Towing Services Act 2007* (the Act).

## SUMMARY OF REVIEW PROCESS

The Commission has conducted a public review process by releasing an issues paper, inviting submissions on that issues paper, releasing a draft report with draft recommendations and seeking feedback and submissions on that draft report.

We have consulted widely as part this review by meeting with numerous accident towing operators and tow truck drivers, insurance companies, consumer groups, VicRoads, and industry representatives such as the Victorian Automobile Chamber of Commerce. We received 9 written submissions to our Issues Paper and 13 written submissions to our draft report. We also held a public forum with the industry to discuss the draft recommendations and undertook extensive consultation with stakeholders following the draft report to listen to their views.

Table 1 provide a summary of the timelines for this review.

**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                                 | 5 November 2015            |
| Consultations                                 | October to November 2015   |
| Submissions to Draft Report close             | 30 October 2015            |
| Request for extension to date for submissions | 13 November 2015           |
| Final Report to Minister                      | 15 December 2015           |

## WHAT HAPPENS FOLLOWING THIS REVIEW

This report sets out the Commission's recommendations and will be provided to the Minister for Finance.

### PUBLICATION OF FINAL REPORT

We will publicly release the report (on our website) 30 days after having provided it to the Minister for Finance and the Minister for Roads.<sup>5</sup>

Any questions about this report can be directed to Dominic L'Huillier, A/Director of the Transport and Reviews Branch, on 03 9032 1365.

## STRUCTURE OF THIS FINAL REPORT

The remainder of this final 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 accident towing

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<sup>5</sup> Specifically, section 45(7) of the ESC states that once having received a copy of the report and if Parliament is sitting, the Minister for Finance (the Minister) must cause a copy of the Final Report to be laid before each House of Parliament within seven sitting days after receiving the Final Report. The Minister must also ensure that a copy of the Final Report is available for public inspection after the Final Report has been laid before each House of Parliament. If Parliament is not sitting, the report must be made public within 30 days after receiving the Final Report.

- 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.
- appendix F provides a summary of matters raised with us relating to third party repair agreements.

# 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.<sup>6</sup>

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<sup>6</sup> 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.<sup>7</sup>

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

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<sup>7</sup> 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.<sup>8</sup>

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.

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<sup>8</sup> 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 CURRENT 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](http://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

### GEOGRAPHIC AREAS

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’).

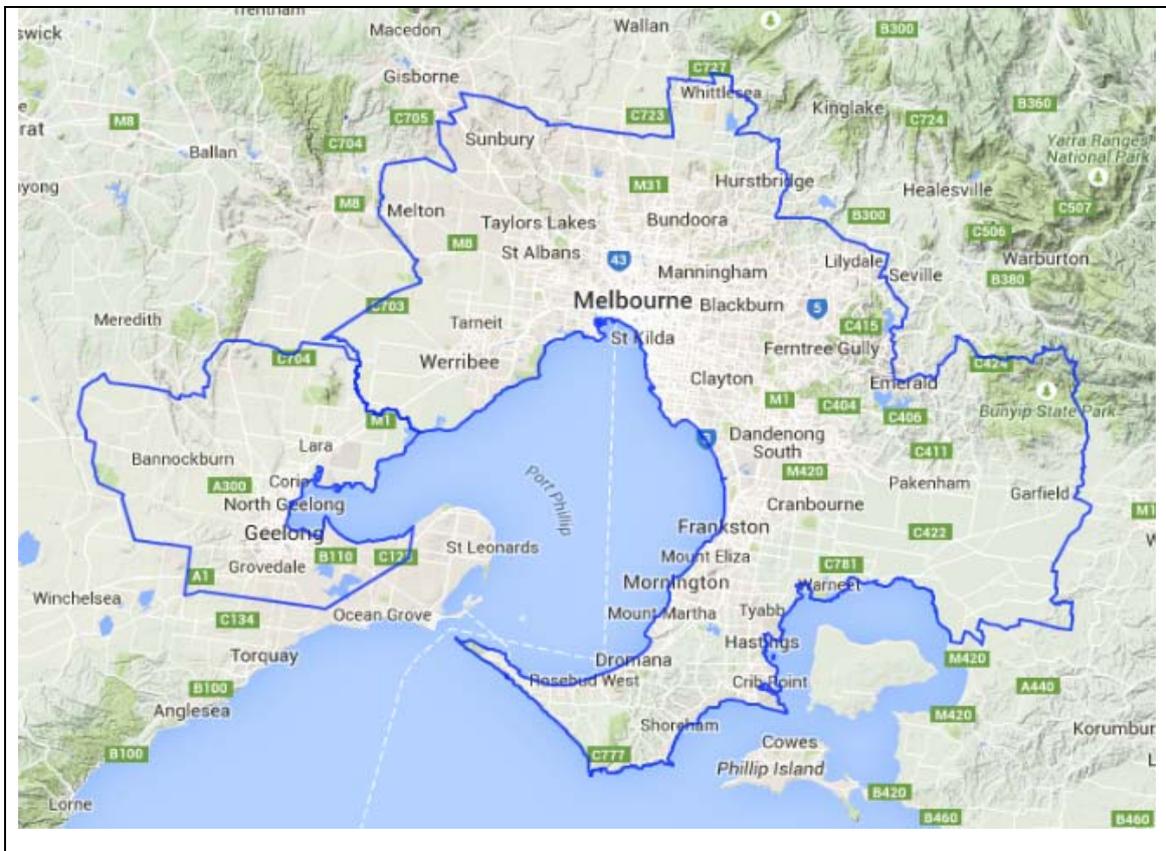
Given the establishment of the controlled and self-management areas, operators with regular vehicle accident towing licences are subject to geographical restrictions on where they can perform a regular vehicle accident tow. This restriction is achieved by linking each licence to a depot. An operator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

### ALLOCATION ZONES

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.<sup>9</sup> 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.

Continued next page

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<sup>9</sup> 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)

**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.

**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                               | \$     |
|------------------------------------|--------|
| <b>Towing fees</b>                 |        |
| Base fee (includes first 8km)      | 207.30 |
| Additional km charge               | 3.30   |
| After hours surcharge <sup>a</sup> | 70.80  |
| <b>Storage fees</b>                |        |
| Car — under cover                  | 15.90  |
| Car — locked yard                  | 10.70  |
| Motorcycle — under cover           | 5.30   |
| Motorcycle — locked yard           | 3.40   |

<sup>a</sup> 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).

Consumer Affairs Victoria (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.<sup>10</sup> 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.

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<sup>10</sup> 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.

**TABLE 1.2 OVERVIEW OF ACCIDENT TOWING INDUSTRY (2014)**

|                       | Controlled area | Self-mgt area | Unregulated area | Victoria |
|-----------------------|-----------------|---------------|------------------|----------|
| Drivers               | n/a             | n/a           | n/a              | 1 473    |
| Depot Managers        | 9               | 1             | 2                | 12       |
| <b>REGULAR</b>        |                 |               |                  |          |
| Licences <sup>a</sup> | 421             | 25            | 281              | 727      |
| Unattached licences   | 169             | 16            | 40               | 227      |
| Operators             | 105             | 5             | 140              | 250      |
| Depots                | 46              | 5             | 149              | 200      |
| <b>HEAVY</b>          |                 |               |                  |          |
| Licences              | 20              | 3             | 13               | 36       |
| Unattached licences   | 3               | 0             | 2                | 5        |
| Operators             | 5               | 1             | 11               | 17       |
| Depots <sup>b</sup>   | 5               | 1             | 11               | 17       |

<sup>a</sup> Licence numbers include unattached licences. <sup>b</sup> 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.

## 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).<sup>11</sup> This suggests that operators are consolidating their businesses into fewer depots.

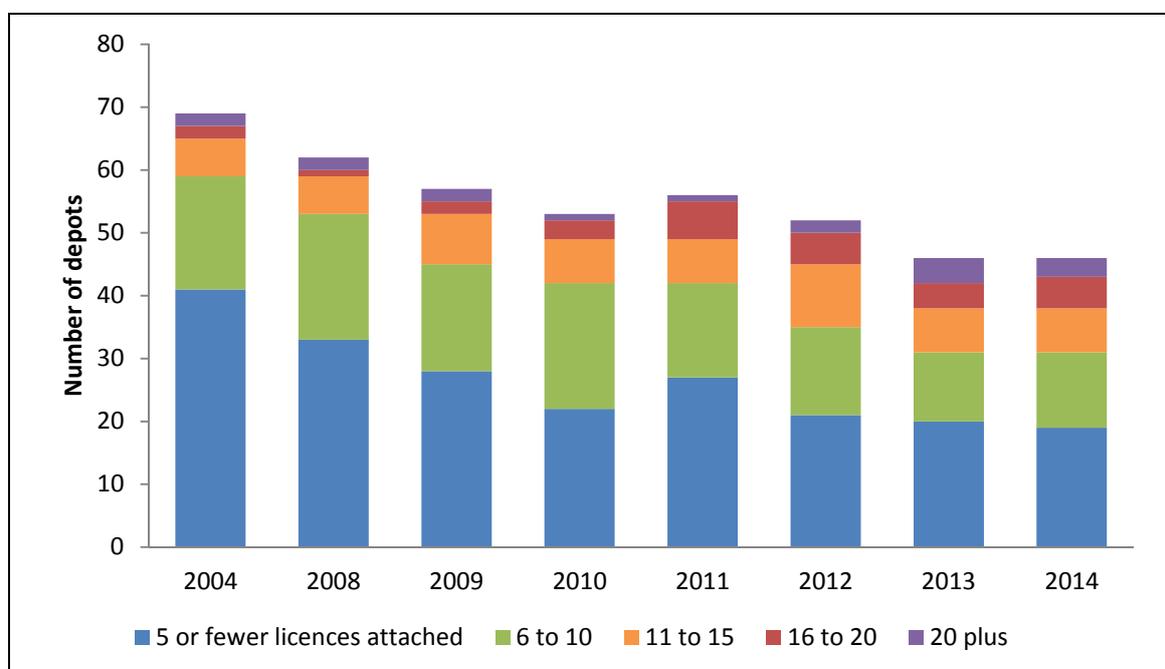
<sup>11</sup> Although the number of licences issued by VicRoads has remained constant since 2004 (421 licences), due to rounding errors, the total number of licences in table 2.2 fluctuates between 419 and 423.

**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          |
| <b>Total</b>    | <b>69</b>  | <b>62</b>  | <b>57</b>  | <b>53</b>  | <b>56</b>  | <b>52</b>  | <b>46</b>  | <b>46</b>  |
| <b>Average</b>  | <b>6.3</b> | <b>6.8</b> | <b>7.4</b> | <b>7.9</b> | <b>7.5</b> | <b>8.1</b> | <b>9.2</b> | <b>9.2</b> |

Data source: VicRoads.

**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.

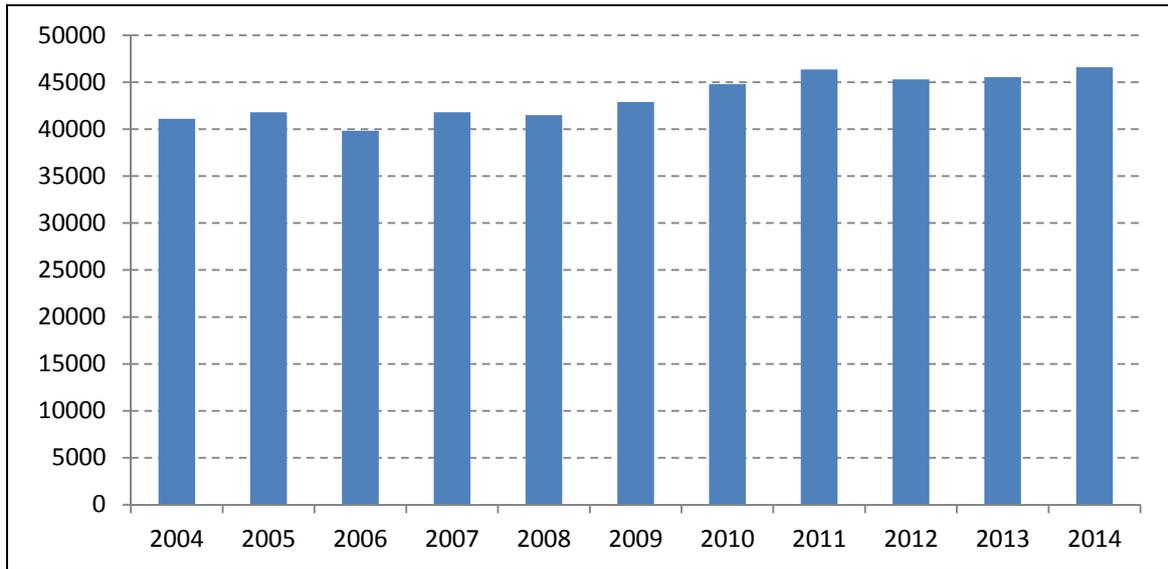
**TABLE 1.4 REGULAR VEHICLE ACCIDENT TOWS (2014)**

|               | Controlled | Self-mgt | Unregulated          |
|---------------|------------|----------|----------------------|
| Accident tows | 46 596     | 1 753    | ≈14 100 <sup>a</sup> |

<sup>a</sup> 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.

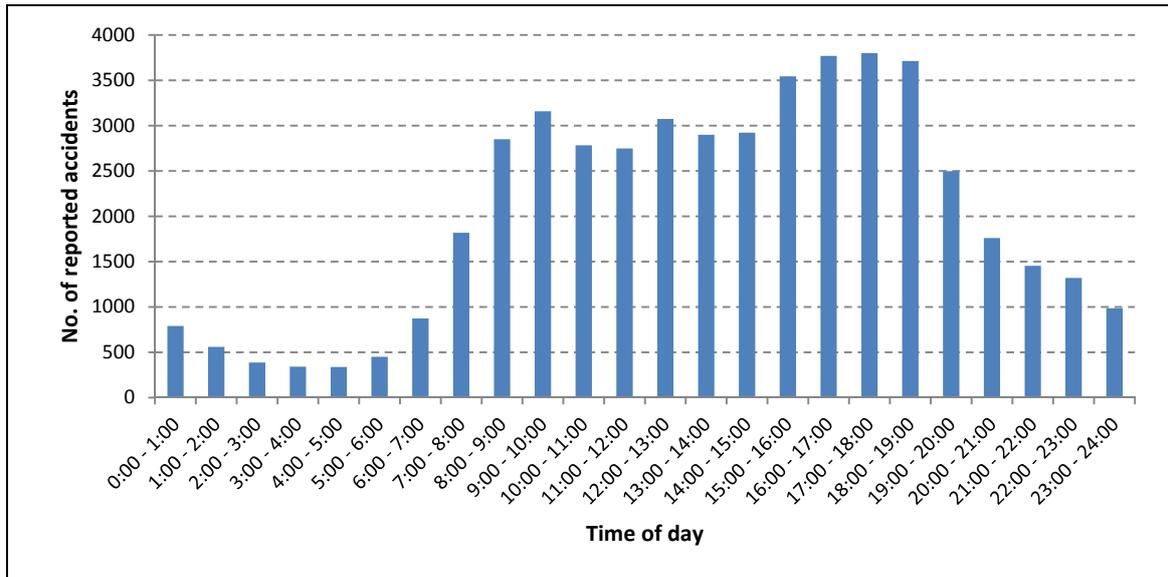
**FIGURE 1.3 TOTAL ACCIDENT ALLOCATIONS IN THE CONTROLLED AREA**  
Regular vehicle accident towing



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)**

|                              | <b>Controlled</b> | <b>Self-mgt</b> | <b>Unregulated</b>   | <b>Victoria</b> |
|------------------------------|-------------------|-----------------|----------------------|-----------------|
| 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 <sup>a</sup> | ≈62 000         |

<sup>a</sup> 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 scheme.<sup>12</sup>

## **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

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<sup>12</sup> 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.<sup>13</sup> Table 2.1 sets out the number of accident towing licences in Victoria.

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<sup>13</sup> 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 <sup>a</sup> |
|-----------------------|------------------|-----------------------------|
| Controlled area       | 421              | 20                          |
| Self-management area  | 25               | 3                           |
| Unregulated area      | 281              | 13                          |
| <b>Victoria total</b> | <b>727</b>       | <b>36</b>                   |

<sup>a</sup> 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.<sup>14</sup> However, no new accident towing licences have been issued in Victoria for over 30 years.<sup>15</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> 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.

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<sup>16</sup> 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).

<sup>17</sup> 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 |
|------------------------------------|-----------------|---------------|------------------|
| <b>Regular vehicles</b>            |                 |               |                  |
| Licences (total) <sup>a</sup>      | 421             | 25            | 281              |
| Unattached licences                | 169             | 16            | 40               |
| % Unattached                       | 40%             | 72%           | 14%              |
| <b>Heavy vehicles <sup>b</sup></b> |                 |               |                  |
| Licences (total) <sup>a</sup>      | 20              | 3             | 13               |
| Unattached licences                | 3               | 0             | 2                |
| % Unattached                       | 15%             | 0%            | 15%              |

<sup>a</sup> Licence numbers include unattached licences. <sup>b</sup> 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).<sup>18</sup> 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'

<sup>18</sup> 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.<sup>19</sup>

### 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.

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<sup>19</sup> One operator, Pitstop Tilt Tray Transport states they have had difficulty in entering the market and raises a concern that currently an operator has to buy an existing licence to enter the market. (Pitstop Tilt Tray Transport submission, 27 October 2015, p. 1.)

**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                   |
| <b>Total</b>       | <b>78</b>           |

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                |
| <b>Total</b>       | <b>46</b>        |

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, that is, 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 three 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.<sup>20</sup> 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.

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

| Depot    | Licences | Operators | Avg. tows per licence per month | Share of licences (%) | Market share <sup>a</sup> (%) |
|----------|----------|-----------|---------------------------------|-----------------------|-------------------------------|
| 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                           |

<sup>a</sup> Market share is calculated as accident tows performed by the depot divided by total accident tows in the controlled area.

Data source: VicRoads.

<sup>20</sup> 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.

## 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 (%) <sup>a</sup> |
|--------------|-----------|-----------|-----------------------|-------------------------------|
| 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                           |
| <b>Total</b> | <b>25</b> | <b>5</b>  | <b>100</b>            | <b>100</b>                    |

<sup>a</sup> 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.<sup>21</sup>

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 ten licences. This licence owner has 20 licences.

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

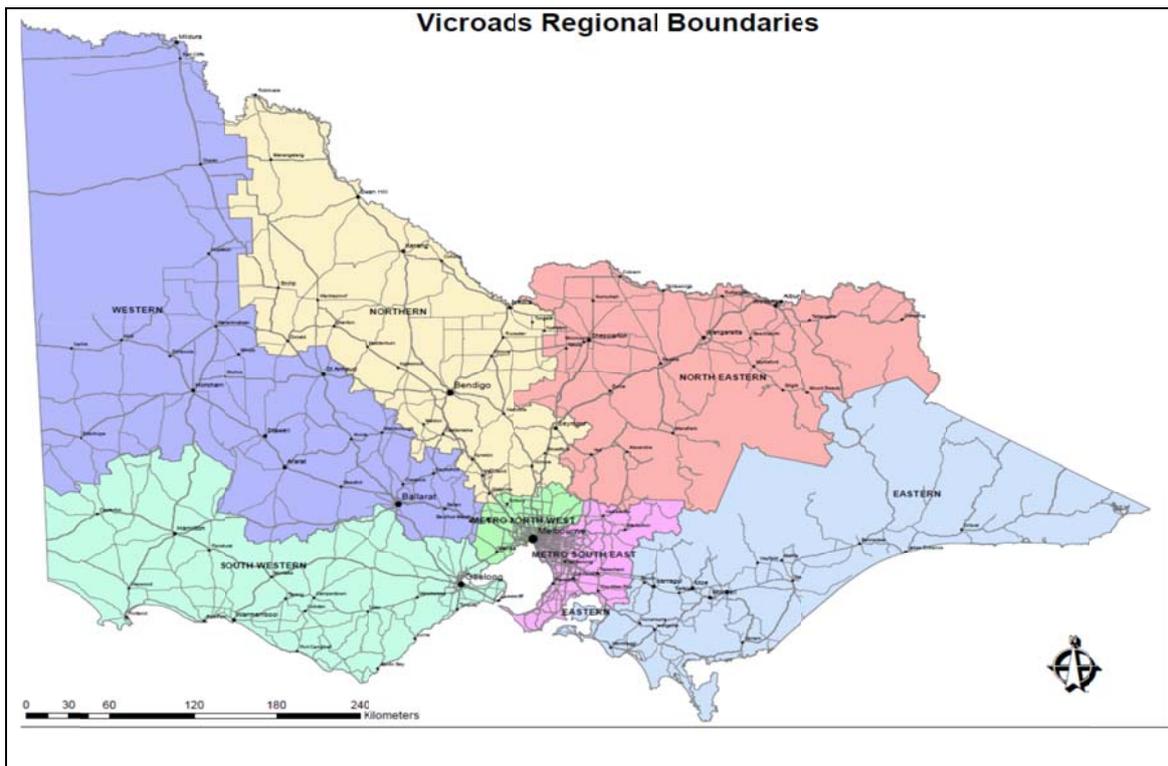
| Licences     | Operators  |
|--------------|------------|
| 1            | 70         |
| 2            | 34         |
| 3 to 5       | 20         |
| 6 to 10      | 7          |
| > 10         | 1          |
| <b>Total</b> | <b>132</b> |

Data source: VicRoads.

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

<sup>21</sup> 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.

**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 ten 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 <sup>a</sup> | 3          | 2          | na         | na                         |
| <b>Total</b>            | <b>281</b> | <b>139</b> | <b>149</b> | <b>1 to 20</b>             |

<sup>a</sup> 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 ten licences. The third largest operator has nine licences all located close to each other — at two depots, one in Ballarat (with four) and the other in Sebastopol (with five).

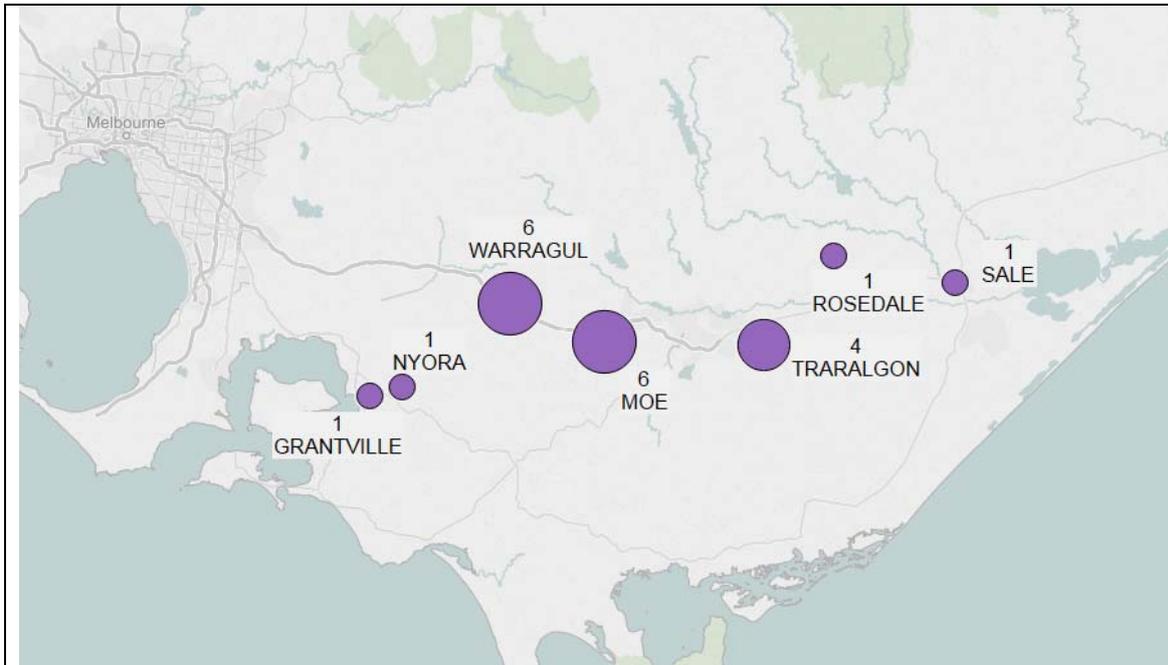
### Largest licence holder

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 (six licences), Moe (six licences) and Traralgon (four 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 one licence
- in Moe, there is one other operator who owns one licence, and
- in Traralgon, there are no other accident towing operators, although there are three operators in nearby Morwell with a total of six 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

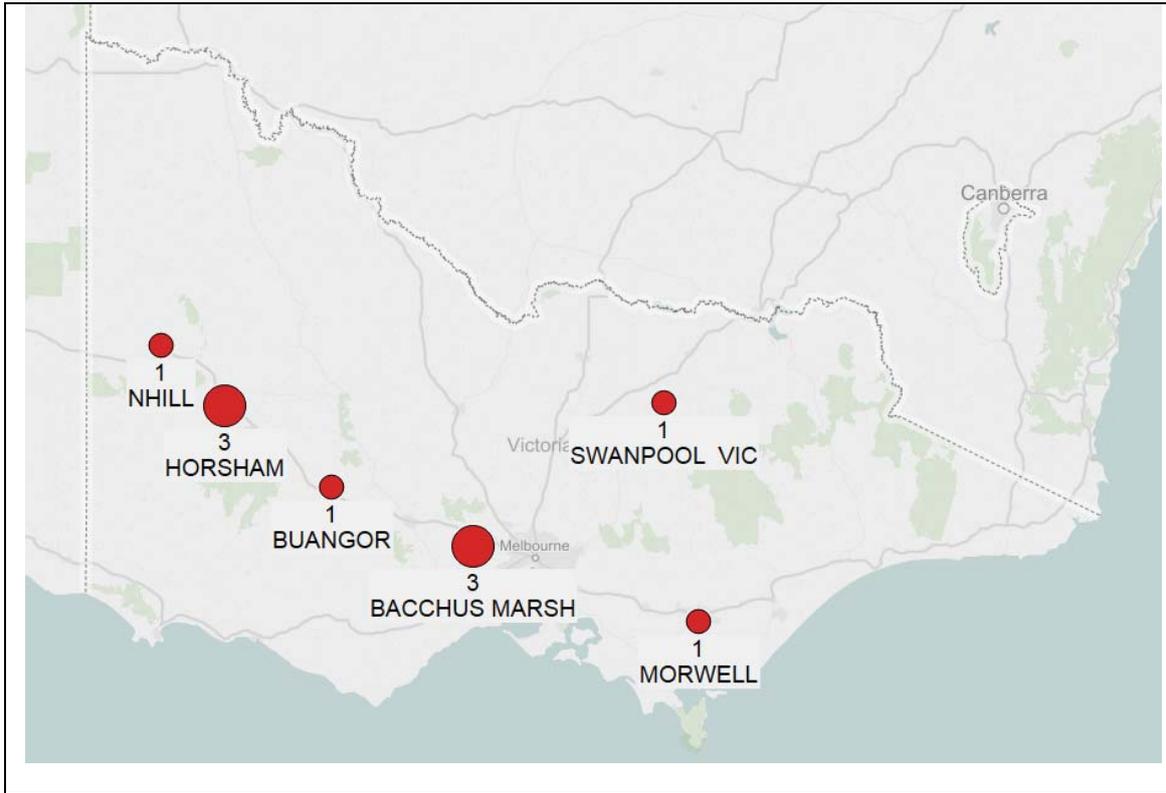


Data source: VicRoads.

### Second largest licence holder

The second largest operator in the unregulated area has ten 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.<sup>22</sup> 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<sup>23</sup> 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.

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<sup>22</sup> 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.

<sup>23</sup> 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)<sup>a</sup>**  
2013-14



<sup>a</sup> 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)<sup>a</sup>**  
2013-14



<sup>a</sup> For both the controlled and self-management areas, the figure shows only the distance rate charged by operators, not a range. We show 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.<sup>24</sup> 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 salvage<sup>25</sup> 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

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<sup>24</sup> 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.

<sup>25</sup> 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.<sup>26</sup> This recommendation has not been introduced by the Victorian Government.<sup>27</sup>

### *'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.<sup>28</sup> In 2014, the Minister clarified that costs associated with out of storage tows are included in regulated fees.<sup>29</sup>

### *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

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<sup>26</sup> Essential Services Commission 2013, *Periodic review of accident towing and storage fees*, Final report, July, pp. 41–57.

<sup>27</sup> Salvage fees are regulated under section 212I (1)(b) of the Act, which requires fees set by operators to be "reasonable".

<sup>28</sup> Essential Services Commission 2013, *Periodic review of accident towing and storage fees*, Final report, July, p. 85.

<sup>29</sup> 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](http://www.gazette.vic.gov.au/gazette/Gazettes2014/GG2014S406.pdf#page=1).

- administration fees, for example, fees for faxing tow docket 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 a key 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.<sup>30</sup>

## 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.

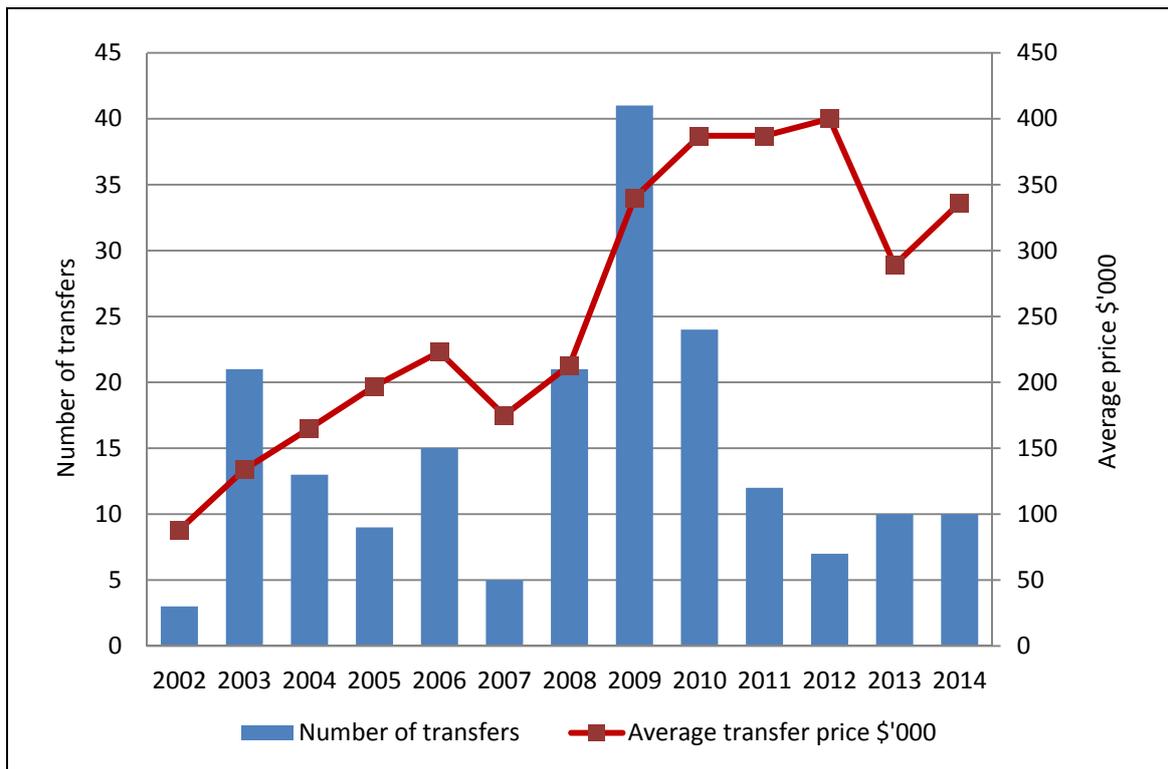
The available data indicates that transfer values have trended upwards since 2002, peaking in 2012 followed by a decline in 2013. It is apparent that there were large increases in licence values between 2009 and 2012.<sup>31</sup> Most recently in 2014, the average transfer value was \$336,000 and there were ten 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.

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<sup>30</sup> 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.

<sup>31</sup> The Patten Robins submission to the draft report suggests that this period coincided with the onset of the global financial crisis and reduction in official interest rates and that expected rates of return on relatively low risk assets fell substantially. Patten Robins suggests that given the broadly stable nature of expected revenue streams from an accident towing licence, it is not surprising that the price of the licence was bid up over this period. That is, given the lower interest rate environment, investors were willing to pay a higher price for the given revenue stream associated with the licence. Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), November 2015 p.22).

**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 four 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 <sup>a</sup> |
|--------------------------|-----------|-----------|-------------------|
| 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                |

<sup>a</sup> 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.<sup>32</sup>*

In addition to unregulated fees, our consultation for this review suggests that profits from smash repair may contribute 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 this 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 profitability. Nonetheless, they do suggest that traded values for accident towing licences are influenced by more than just accident towing profits.

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<sup>32</sup> Essential Services Commission 2013, *Periodic review of accident towing and storage fees*, Final report, May, p. 18.

## 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.
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).

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 <sup>a</sup>     | \$51,000              | \$36,000            | \$22,000             |
| Average <sup>b</sup> | \$58,000 – \$82,000   | \$50,000 – \$76,000 | \$59,000 – \$76,000  |
| High <sup>c</sup>    | \$127,000             | \$118,000           | \$138,000            |
| <b>Actual</b>        | \$150,000 – \$400,000 | no trades           | \$30,000 – \$121,000 |

<sup>a</sup> 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.

<sup>b</sup> 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. <sup>c</sup> 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 accidents<sup>33</sup> and fewer

<sup>33</sup> 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.

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 ten 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...*'<sup>34</sup>

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

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<sup>34</sup> See clause 19(a) of Victoria Government Gazette 2012, *Declaration of the self-management area of Geelong*, no. S 326, 28 September.

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.<sup>35</sup> 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.<sup>36</sup> 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 significantly reducing 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.<sup>37</sup>

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<sup>35</sup> 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.

<sup>36</sup> See ESC 2013, *Periodic review of accident towing and storage fees*, Final Report, July 2013, pp. 15-16.

<sup>37</sup> 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%          |
| <b>Average</b> | <b>71 mins</b> | <b>73 mins</b> | <b>73 mins</b> | <b>73 mins</b> | <b>71 mins</b> | <b>70 mins</b> |

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%           |
| <b>Average</b> | <b>22 mins</b> | <b>72 mins</b> |

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 (around 45,000 in the controlled area).

The complaints received by VicRoads can relate to all aspects of the Act and its Regulations. 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.<sup>38</sup>

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.

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<sup>38</sup> 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). A submission by Patten Robins on behalf of accident towing

industry operators does not dispute the linkage between accident towing and accident repair, but argues that the extent of this linkage is smaller than is often suggested.<sup>39</sup>

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'*.<sup>40</sup> 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**

Accident towing can perform 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 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 promote a 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).

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<sup>39</sup> Pattens Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), November 2015, p.20.

<sup>40</sup> IAG submission, 28 November 2014, p. 5.

Stakeholders submit that touting by some operators continues to occur at the accident scene. Insurers submit that touting 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 touting business at the scene of an accident is prohibited, this is difficult to enforce in practice and touting remains a common method of repairers capturing business – as demonstrated by the high resale value of towing licences.<sup>41</sup>*

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.<sup>42</sup>*

IAG also states that touting for smash repair work on behalf of smash repairers ‘remains a significant problem’.<sup>43</sup>

The VACC notes 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’.<sup>44</sup>

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<sup>41</sup> Insurance Council of Australia submission, 28 November 2014, p. 2.

<sup>42</sup> Suncorp submission, 28 November 2014, p. 4.

<sup>43</sup> IAG submission, 28 November 2014, p. 7.

<sup>44</sup> VACC submission, 3 December 2014, p. 18.

## 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.<sup>45</sup>

As the IBISWorld report notes, the smash repair industry is heavily reliant on vehicle accidents to generate revenue.<sup>46</sup> 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.<sup>47</sup> Insurers account for approximately 77 per cent of smash repair industry revenue.<sup>48</sup>

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.

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<sup>45</sup> IBISWorld 2015, *Industry Report:S9412 Motor Vehicle Body, Paint and Interior Repair in Australia*, July, pp. 5 & 7-8.

<sup>46</sup> IBISWorld 2015, *Industry Report:S9412*, July p. 5.

<sup>47</sup> IBISWorld 2015, *Industry Report:S9412*, July, p. 7.

<sup>48</sup> IBISWorld 2015, *Industry Report:S9412*, July, p. 15.

## 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 in a strong position to negotiate with 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.<sup>49</sup>

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.

## 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.

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.

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<sup>49</sup> IBISWorld 2015, *Industry Report:S9412*, July, p. 15.

- Accident towing is closely linked to other markets: as submissions to our draft report note, there is a link between accident towing and accident repair industries.

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.

- 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. 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, provide important context for the analysis we have undertaken in the following chapters.

# 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.<sup>50</sup> 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.<sup>51</sup>

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 EXISTING OPERATION OF 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 based on their speed of attendance to accident scenes. 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.

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<sup>50</sup> Section 4(a) of the *Accident Towing Services Act 2007*.

<sup>51</sup> 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.<sup>52</sup>

### 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<sup>53</sup> within a reasonable time period, which has been assessed by VicRoads as 30 minutes.<sup>54</sup>

To achieve the 30 minute response time, the controlled area is separated into allocation zones (figure 3.1). There are over 40 allocation zones within 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.<sup>55</sup>

When an accident occurs, the controlled area allocation body<sup>56</sup> 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.

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<sup>52</sup> 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](http://www.parliament.vic.gov.au/downloadhansard/pdf/Assembly/feb-Jun%202007/Assembly%20Dec%202006-Jun%202007%20Weekly%20Book%209.pdf)

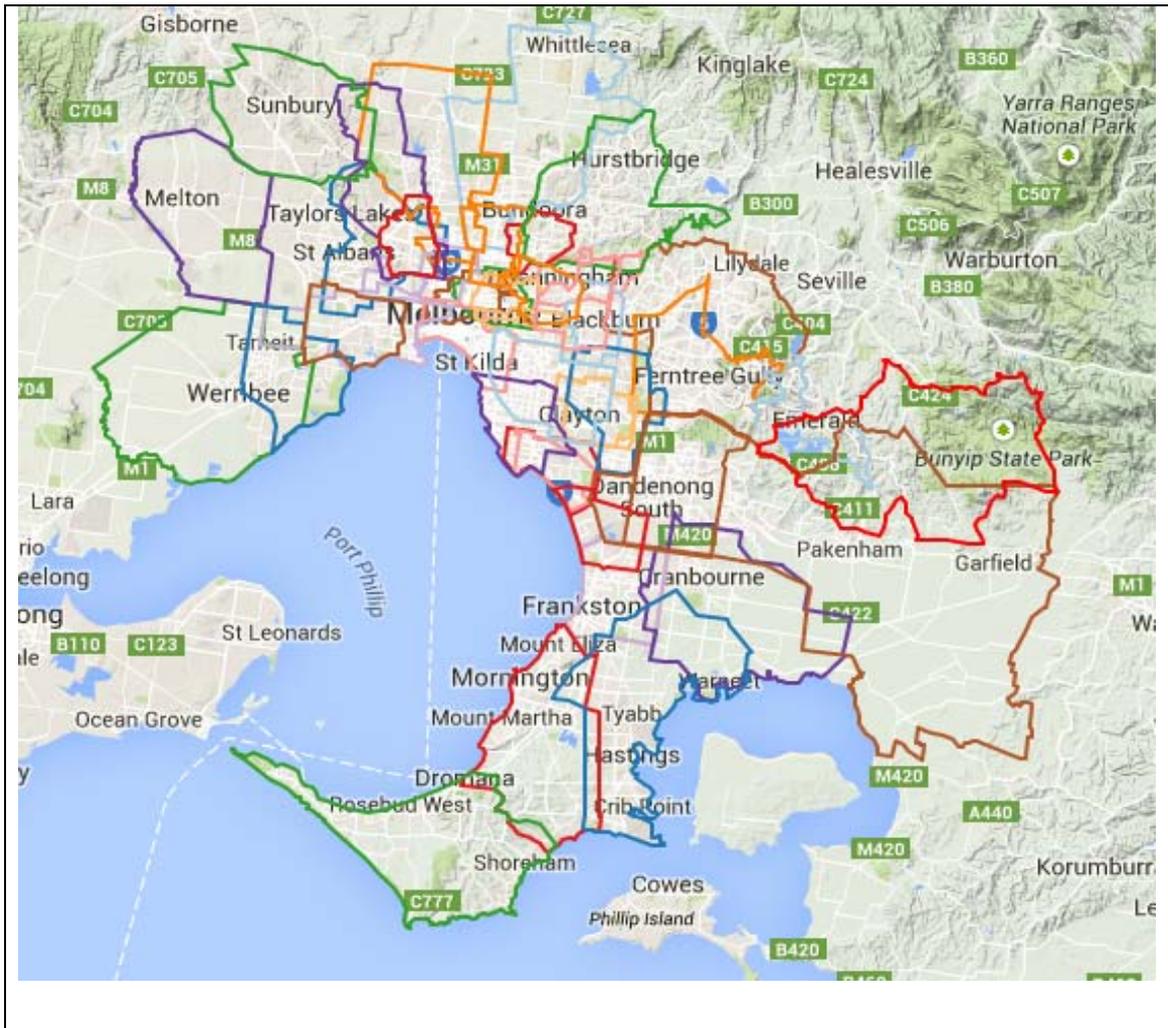
<sup>53</sup> That is, arrives at the accident scene.

<sup>54</sup> Regulation 32(1) of the Accident Towing Services Regulations 2008 specifies the 30 minute response time requirement.

<sup>55</sup> Note that multiple depots and licences can exist in a single allocation zone. The zones may also overlap.

<sup>56</sup> 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

In response to the Commission's Issues Paper, stakeholders questioned 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.<sup>57</sup>

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.

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<sup>57</sup> VACC submission to the Issues Paper, 3 December 2014, p. 9.

### 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.

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.

### 3.2.3 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.

### 3.2.4 INITIAL STAKEHOLDER COMMENTS

Initial feedback from stakeholders indicated that most considered that existing allocation schemes should continue. The Insurance Council of Australia, IAG and Suncorp each stated that the schemes have removed undesirable behaviour associated with multiple operators arriving at an accident scene. Suncorp maintained that:

*The allocation system has been highly effective at managing tow truck attendance, reducing behavioural issues and improving accident clearance times.<sup>58</sup>*

Similarly, the VACC's view was 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.<sup>59</sup>*

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<sup>58</sup> Suncorp submission, 28 November 2014, p. 3.

<sup>59</sup> VACC submission, 3 December 2014, p. 9.

### 3.2.5 ACCIDENT RESPONSE AND CLEARANCE TIMES— COMMISSION'S DRAFT REPORT ANALYSIS

The *Accident Towing Regulations 2008* (Regulations) determine a service standard for attendance to an accident scene as “within 30 minutes”.<sup>60</sup>

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.<sup>61</sup> 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.

#### ***Advantages of the controlled area allocation scheme***

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, 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.

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<sup>60</sup> Clause 32(1) of the *Accident Towing Regulations 2008* states “...the driver of a rostered tow truck must take reasonable steps to ensure that after a rostered tow truck is authorised under regulation 31(2) to attend a road accident scene the rostered tow truck attends the road accident scene within 30 minutes of being given the authorisation.”

<sup>61</sup> The time from acceptance of an accident allocation to clearing of the accident scene.

- *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 from 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 of the controlled area allocation scheme***

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.

### 3.2.6 STAKEHOLDER COMMENTS ON DRAFT RECOMMENDATION 1 (ACCIDENT ALLOCATIONS — THE CONTROLLED AREA)

In considering whether an allocation scheme should continue in the controlled area, we had regard to stakeholder views, assessed the advantages and disadvantages of the scheme, and considered whether the scheme was meeting its objectives. We found that there was 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 indicated that the controlled area allocation scheme had minimised 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 had been successful at addressing behavioural issues associated with multiple tow operators attending an accident scene.

While there were costs associated with the allocation scheme such as ongoing administration costs and restrictions on competition, we were not able to identify any quantitative or other evidence that these costs outweigh the advantages of the allocation scheme. For these reasons, we recommended in our draft report that the controlled area allocation scheme continue.

The Commission's draft recommendation was broadly supported by stakeholders. The VACC stated:

*The existing boundary and zones in the Melbourne controlled areas are appropriate and should be maintained. There is a lack of sufficient supporting evidence for alternative arrangements to be considered by the ESC in their draft report.*<sup>62</sup>

Similar responses were provided across a number of submissions, including:

*Suncorp supports the continued operation of the accident allocation scheme. The allocation scheme has been highly effective at managing tow truck attendance at the scene of an accident, reducing behavioural issues and improving accident clearance times.*<sup>63</sup>

*The ICA agrees that the current allocation system has helped address behavioural issues associated with multiple tow operators attending accident scenes.*<sup>64</sup>

### 3.2.7 FINAL COMMISSION ANALYSIS

For the reasons stated in our draft report, and after consideration of the widespread support for the recommendation evident in stakeholders' submissions, we recommended that the controlled area allocation scheme continue to operate.

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<sup>62</sup> VACC submission to Draft Report, November, 2015, p.11.

<sup>63</sup> Suncorp submission to Draft Report, October 2015, p.5.

<sup>64</sup> Insurance Council of Australia submission to Draft Report, November 2015, p.3.

### 3.2.8 FINAL RECOMMENDATION

#### Final recommendation 1: Accident allocations — the controlled area

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.

### 3.3 IMPROVING THE CONTROLLED AREA ALLOCATION SCHEME

Given we have accepted the case for some form of allocation scheme, we now assess whether alternative schemes could increase the efficiency of allocations (i.e. which promote faster attendance while still clearing scenes 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.

#### 3.3.1 INITIAL STAKEHOLDER COMMENTS

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

Squires Towing pointed 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.*<sup>65</sup>

Another operator also submitted that allocations should be based on depot proximity to the accident.<sup>66</sup>

The VACC was concerned that licence holders in the controlled area were 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...*<sup>67</sup>

As a solution, the VACC suggested that a performance-based scheme could operate to distribute accident allocations evenly between licences. It stated that the scheme 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.

### **3.3.2 ALLOCATING ACCIDENT TOWS — COMMISSION'S DRAFT REPORT ANALYSIS**

The analysis underlying the Commission's draft recommendations considered 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.

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<sup>65</sup> Squires Towing submission, 26 November 2014, pp. 1-2.

<sup>66</sup> Anonymous submission, 10 December 2014, p. 1.

<sup>67</sup> VACC submission, 3 December 2014, p. 9.

- 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 could 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.

In the draft report, we did 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 was proximity-based allocations, as it would be easy to implement and should improve the efficiency (timeliness) of accident allocations.

**TABLE 3.1 ALTERNATIVE WAYS TO ALLOCATE ACCIDENT TOWS**  
Advantages and disadvantages

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

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

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 considered that proximity-based allocations would better promote the interests of consumers rather than the existing scheme.

### ***Advantages of proximity-based allocations***

The Commission argued that allocating accident tows based on proximity should improve 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 would also have the following advantages:

- Scheme appropriately focussed — a proximity-based scheme would focus 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 would be 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 would be reduced (e.g. lower fuel costs, less wear and tear on tow trucks). Reduced tow distances would also reduce fees for users of accident towing services.

### ***Disadvantages of proximity-based allocations***

In the draft report, we noted two potential disadvantages of 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.<sup>68</sup>

Second, there may be some transitional costs for operators who relocate to other depots or move the depot itself. 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.

### **Development and implementation**

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

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.

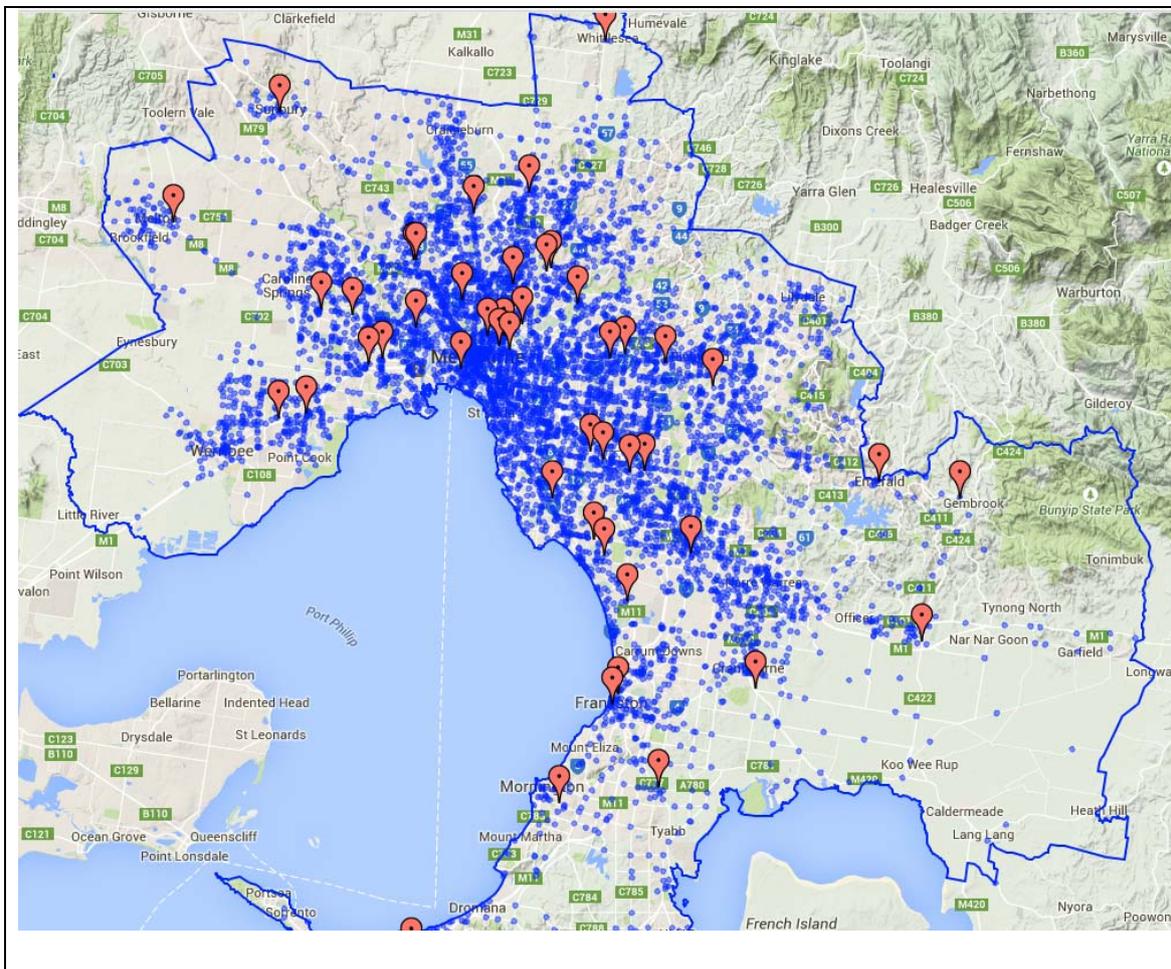
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<sup>68</sup> Response time is calculated as the time between the operator receiving an accident allocation and the operator arriving at the accident scene. Clearance time is calculated as the time between the operator receiving an accident allocation 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).

## Depot relocation

Currently, operators can apply to VicRoads to relocate their depot. Over time, operators have tended to locate more depots where there are more accidents (e.g. Melbourne CBD and inner suburbs) (figure 3.2). Notably, accident tows per licence are lower for some depots in these areas — while there are more accidents in these areas, there are also more depots and more licences. This suggests that the transitional costs (associated with depot relocation) of introducing proximity-based allocations may be low.

**FIGURE 3.2 LOCATION OF DEPOTS AND ACCIDENTS**  
Controlled area, 2014



Data source: VicRoads and RACV (controlled area allocation body).

## **Required regulatory changes**

In our draft report, we noted that proximity-based allocations should produce improvements by allocating accident tows to the nearest depot and so lowering response times.

However, over time there would be changes in the location of population centres and traffic flows in the controlled area. This would alter the dispersion of accidents within the area. Response times would be minimised if operators could react to these changes by moving their depots to more appropriate locations. Related to this, the Commission suggested 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 would be consistent with a progressive move to proximity-based allocations.

## **Impact of a proximity-based scheme on accident allocations**

The controlled area allocation scheme separates the area into allocation zones. By setting allocation zones to achieve response times within 30 minutes, 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 therefore attempted to quantify how well the existing scheme performed against a proximity-based scheme which allocated tows to the nearest depot.

For 2014, it was 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 was also calculated, based on the assumption that trucks were dispatched from the depot.

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

## RESULTS — PROXIMITY-BASED ALLOCATIONS

The proximity analysis (as developed for the draft report) is presented in table 3.2. We presented the total number of depots that experience a given change in allocations (e.g.  $\pm 10$  per cent,  $\pm 11$  to 20 per cent, etc.), and 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                 |
| <b>Total</b>      | <b>46</b>             | <b>24</b>         | <b>22</b>         |

It was evident that a move to proximity-based allocations would have redistributive impacts on operators, and in some cases these impacts would be 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 would have experienced a change in allocations of less than 50 per cent. Of those depots that received fewer allocations, 41 per cent would experience a reduction of less than 20 per cent, and only four depots would 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.<sup>69</sup> 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.

Based on the assumptions made about the location of tow trucks, the analysis indicated that the change to a proximity-based allocation scheme would have a significant impact on the distance of tows. The analysis indicated that total distance of accident tows would fall from 801,786 kilometres to 481,145 kilometres, while the average tow distance would fall from 18 kilometres to 11 kilometres. This is a fall of 40 per cent and would translate 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 drivers involved in an accident. In addition, some operators may require fewer tow trucks to perform their allocated accident tows.

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<sup>69</sup> 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 Commission argued in the draft report that proximity analysis indicated that the existing allocation scheme and its design of allocation zones was a second-best alternative to proximity-based allocations. If the existing scheme was a good proxy for an efficient scheme, there would not be material changes to accident allocations under a proximity-based scheme.

The Commission view was that this analysis indicated 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.

### 3.4 STAKEHOLDER COMMENTS ON DRAFT RECOMMENDATIONS 2 AND 3

In our draft report, we acknowledged that proximity-based allocations would improve the efficiency (timeliness) of accident allocations. However, we also noted that an immediate move to proximity-based allocations had the potential to be disruptive to some operators. We therefore took a cautious approach to amending the controlled area allocation scheme and made the following draft recommendation.

- Draft recommendation 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.

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

- Draft recommendation 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.

In response to our draft recommendations, insurers generally supported the Commission's recommendations. IAG made a statement in support for recommendation 2 and 3<sup>70</sup>, while Suncorp agreed with the broad commitment to undertake periodic reviews of allocation zone boundaries:

*Suncorp agrees that it is important to periodically review the allocation boundaries. These reviews should take into account: the need to expand zones in response to population growth, traffic accidents statistics and any behavioural issues experienced on zone boundaries; and the number of tow operators in a particular area.*<sup>71</sup>

Industry stakeholders generally did not support recommendations 2 or 3.

In response to draft recommendation 2, the VACC submitted that it did not support the recommendation on the basis that tow trucks do not normally depart from the depot upon receiving an allocation. The VACC stated that the Commission's draft analysis in identifying improvements to responses and clearance times and reduced congestion from a depot-based proximity allocation scheme was predicated on an assumption that does not reflect industry practice.<sup>72</sup> As an alternative, the VACC raised two issues that it contended would improve response and clearance times, namely:

*The first issue is to ensure that tow truck operators know their position in the allocation queue. The benefits of knowing their position enables tow*

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<sup>70</sup> IAG Submission to the Draft Report, November 2015, p.4

<sup>71</sup> Suncorp Submission to the Draft report, October 2015, p.5

<sup>72</sup> VACC Submission to Draft Report, November 2015, p.9 &10

*truck operators to plan and schedule other towing work, improving the utilisation of their tow trucks and reducing their operating costs.<sup>73</sup>*

*The second issue is to permit (with appropriate rules) the use of multiple tows with a single tow truck. The RACV Accident Allocation Centre currently makes discretionary decisions to allocate multiple tows to a single tow truck (mostly in the early hours of the morning) when there is no other tow operator available and/or cannot meet the 30 minute response time.<sup>74</sup>*

Other industry stakeholders such as the ATI<sup>75</sup> also opposed recommendations 2 and 3.

*The ATI opposes these recommendations on two grounds. First, even if adopted successfully, with market responses to the regulatory change that were broadly in line with the ESC expectations set out in the draft report, these changes would give rise to significant costs which have not been identified or weighed. As a result, there would be a strong possibility that implementing the recommendations would yield net economic costs, rather than the net economic benefits suggested. Second, the discussion of the expected impact of adopting these recommendations takes no account of the substantial impediments to depot relocation that arise from urban planning processes.<sup>76</sup>*

In response to draft recommendation 3, the VACC stated that it did not support the recommendation on the grounds that Government approval was necessary to maintain the service standard of response times within 30 minutes.

*With a limited number of licensed tow truck operators in the Melbourne controlled and self-management areas, there is really no alternative for Government other than to ensure the size and the boundaries of allocation zones and the location of depots within these allocation zones serves the entire area and the community. Allowing licensed tow truck operators to move depots and licences without VicRoads approval will*

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<sup>73</sup> VACC Submission to Draft Report, November 2015, p.11

<sup>74</sup> VACC Submission to Draft Report, November 2015, p.11

<sup>75</sup> Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), November 2015, p.29

<sup>76</sup> Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), November 2015, p.29

*lead to over-service in areas with higher volumes of accidents and under-servicing in areas with lower volumes of accidents.*<sup>77</sup>

As an alternative, the VACC suggested:

*A better approach would be for VicRoads to publish the requirements and criteria approval for the relocation of depots and methodology it uses to define the boundaries for the allocation zones. The requirements, criteria approval and methodologies should be drafted for public comment prior to a final decision. The publication of these matters would ensure the community across the Melbourne controlled area continues to receive an efficient accident towing services and also provide certainty to tow truck operators seeking to mover depots and or licences to other allocation zones.*<sup>78</sup>

In relation to draft recommendation 3, the ATI noted that the Commission did not appear to be cognisant of the role played in practice by local councils in limiting opportunities for depot relocations through their local planning provisions:

*The application of local planning provision has been a major contributor to the fact that few, if any, new depot locations have been established in recent years. ATI members indicate that it is effectively impossible to establish towing depots in large parts of the Controlled Area, including the City of Stonnington and City of Port Phillip as a result of the operation of council planning schemes.*<sup>79</sup>

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<sup>77</sup> VACC Submission to the Draft Report, November 2015, p.10

<sup>78</sup> VACC Submission to the Draft Report, November 2015, p.12

<sup>79</sup> Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), November 2015 p. 42.

## 3.5 FINAL COMMISSION ANALYSIS

### 3.5.1 PROXIMITY-BASED ALLOCATIONS

The Commission's draft report analysis indicated that proximity-based allocations would improve the efficiency of accident allocations. As noted, this analysis was questioned by the VACC and the ATI on that basis that the Commission's calculations were based on vehicles being located at depots, when in practice, the vehicles would be attending to trade tows or be located elsewhere such as the accident towing driver's residence. Consequently, the VACC suggested the Commission's analysis is flawed.

Accident towing regulations require an accident towing licence holder to ensure that the licensed tow truck *operates from the specified depot* and is usually *garaged and otherwise based at the specific depot*.<sup>80</sup> The industry has advised us that actual industry practice is that a substantial proportion of accident towing vehicles are garaged at the residence of their drivers (and not at a depot), and that the regulation is not enforced.<sup>81</sup>

The Commission is unaware of the rationale for the regulation relating to tow truck garaging, but, given that it is not enforced, it is possible that this regulation is no longer needed. The Commission has recommended that this regulation be reviewed, bearing in mind that enforcing this regulation may increase the costs of providing tow truck services.

If a review were to lead to the removal of this regulation, it would then seem possible, as the industry suggests, that the benefits of moving to a proximity-based approach (where the nearest depot is allocated the tow) would be less than the Commission suggested in its draft report. For example, if a depot's existing practice was to allocate tows to the nearest truck attached to that depot, and that truck was nearer to the accident scene than the depot, it could potentially reduce the perceived benefit of allocating to the nearest depot.

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<sup>80</sup> See *Accident Towing Services Regulations 2008* regulation 16(5)(a) and (b) which states that licence holder must ensure that the licensed tow truck (a) operates from the specified depot; and (b) is usually garaged and otherwise based at the specified depot.

<sup>81</sup> This is especially the case outside business hours. See Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), November 2015, p.34

The Commission remains of the view that a proximity-based allocation scheme is likely to deliver benefits. Benefits will accrue if the proximity-based allocation scheme reduces the average distance between the tow truck and the accident scene. The allocation would be to the nearest depot, rather than the nearest truck. Consequently, there will be a benefit so long as the depot closest to an accident allocates a truck that is, on average, closer than a truck from a depot that is located further away from the accident scene.

The ATI submission also suggested that, in aggregate, the Commission's proximity analysis suggested "quite small, but not insignificant" benefits. This was on the basis of a 7 kilometre reduction in average towing distance and an eight minute reduction in clearance times. The ATI submission did not, however, note the further benefits that more rapid clearing of accidents has on related traffic congestion, which could also be material.<sup>82</sup>

Having said that, the concerns raised by the stakeholders regarding the ability of the analysis to fully capture the costs associated with transitioning and operating under a proximity-based allocation scheme are legitimate and deserve further contemplation before changes are recommended.

The Commission's preferred approach remains benchmarking the current allocation scheme against a proximity-based scheme. While this may overstate the potential gains from the proximity-based scheme, it will remain a useful benchmark in comparing scheme performance over time. For example, if the gap in distances travelled to accidents between the current allocation scheme and the proximity-based scheme grows over time, it indicates that the zone boundaries may need to be reviewed. Additionally, benchmarking could provide information about whether a change in zones would move the allocation scheme closer to proximity-based allocation.

The Commission therefore recommends VicRoads benchmark the efficiency of the current allocation scheme by measuring its performance against a proximity-based benchmark and continue to do so to inform decisions on changes to allocation zones.

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<sup>82</sup> As an illustrative example, if a driver or passenger's time is valued at \$20 per hour and accident scene congestion affects 100 people then a saving of 8 minutes in congestion time (caused by a faster clearance time) would equate to a saving of \$266 per accident.

This final recommendation reflects the potential benefits that may result from a proximity-based scheme and is consistent with a cautious approach to amending the controlled area allocation scheme that we adopted for the draft recommendation.

### **Final recommendation 2: Accident allocations — improving the existing scheme (proximity)**

The Commission recommends that in the controlled area, VicRoads should benchmark the efficiency of the current allocation scheme by measuring its performance against a proximity-based benchmark.

## **3.5.2 RECOMMENDATIONS TO IMPROVE RESPONSE AND CLEARANCE TIMES**

We also make two new recommendations to improve response and clearance times regarding accidents.

### **QUEUING PROCESS AND DOUBLE TOWS**

In its response to the draft recommendations, the VACC raised two issues that it believes will facilitate improved response and clearance times. The first was to improve the transparency of the queuing process for tow truck operators. The second was to allow for multiple or ‘double tows’, which is the practice of a single tow truck taking more than one vehicle from the accident scene.<sup>83</sup> Both of these suggestions are worthy of further consideration. In particular:

- We agree there would be benefits from providing tow-truck operators with their position in the allocation queue. Making such information available to operators will allow them to better coordinate and manage their assets in order to deliver towing services. Information on the queue position could readily be provided by VicRoads (under its contract with RACV, which administers the controlled area allocation scheme) by using an online portal, which operators could access using a

<sup>83</sup> The issue of double tows was also raised in the ATI submission, p. 39.

smartphone or internet enabled device. We expect that the costs of developing the portal would be small, as the information is already produced and continuously updated by RACV.

- Allowing for multiple tows on the same truck could lead to faster response and clearance times, given that it potentially removes the requirement for accident vehicle owners to wait for multiple tow trucks to respond when a single respondent would be sufficient. Cost savings arise from fewer dispatched vehicles, faster clearance times and fewer kilometres travelled, and may also deliver benefits from the faster delivery of the vehicle to the place instructed by the driver. We recommend that VicRoads give further consideration to facilitating greater use of double tows.

**Final recommendation 2A: Accident allocations — improving the existing scheme (transparency of queuing)**

The Commission recommends that in the controlled area VicRoads should develop an online real-time queuing portal to provide operators with information on their position in the allocation queue.

**Final recommendation 2B: Accident allocations — improving the existing scheme (double tows)**

The Commission recommends VicRoads investigate the options or rules necessary to facilitate double or multiple tows where such tows can produce more efficient outcomes for drivers involved in an accident and road clearance.

### 3.5.3 BROADER OPPORTUNITY TO REFORM THE ALLOCATION SCHEME

#### GPS TRUCK-BASED SCHEME

As discussed in the previous section, the Commission's consideration of a depot-based proximity scheme was motivated by the potential inefficiencies in a scheme that allocated towing jobs to vehicles that were not the closest to an accident scene. Through industry feedback, it has become apparent that a move to a depot-based proximity allocation scheme may not fully deliver the expected benefits. This is because there is no guarantee that vehicles will be located at the nearest depot to the accident scene, but may instead may be being used for trade tows, or be housed at the owner's residence.

Consequently, the Commission acknowledges that a depot-based proximity allocation scheme may not be able to realise the full benefit of an optimal proximity-based allocation scheme. Depending on the outcome of the proposed review of the regulatory requirement to garage tow trucks at depots, an optimal proximity-based allocation scheme would use the location of the tow trucks themselves, rather than their depots.

We recommend that the feasibility of such a scheme be investigated by VicRoads. The technology required for such a scheme seems widely available, with GPS devices ubiquitous and affordable. However, before implementing such a scheme, VicRoads would need to consider the size of the benefits available, the costs associated with investment in the necessary infrastructure and transitional costs that might be experienced due to repositioning of vehicles or depots, and any efficiency impacts relating to the number of vehicles performing services.

#### **Final recommendation 2 C: Accident allocations — reforming improving the allocation existing scheme (truck-based allocation)**

The Commission recommends VicRoads develop a business case for the establishment of a new proximity-based allocation scheme for the controlled area based on allocation to the nearest truck. VicRoads should review Accident Towing Services Regulation 16 (a) & (b) relating to where a tow truck is garaged to ascertain whether this regulation is still needed.

### 3.5.4 DEPOT AND LICENCE RELOCATIONS

The Commission's view is that there is no compelling evidence that there are net benefits from requiring VicRoads to approve depot relocations and movement of licences to different depots within the controlled, self-management and unregulated areas.

We note that the VACC and the ATI have both stated that tow trucks do not normally depart from the depot upon receiving an accident allocation. The implication of this is that the location of depots is less relevant than was assumed in the draft report. We do not agree with the VACC's submission that removing the requirement for VicRoads to approve depot relocation will lead to over-servicing in some areas and under-servicing in others. Ultimately it is vehicle location that matters to the level of servicing.

In response to draft recommendation 3 (remove VicRoads approval of depot relocations), the ATI argued it was effectively impossible to establish towing depots in large parts of the controlled area due to local planning provision and the planning policies of local councils. This is a matter that clearly affects the efficient establishment of depots and impinges on the industry's ability to clear accident scenes in an orderly and timely manner. However, it is not obvious that the continuation of VicRoads approval of depot locations will have any influence on the establishment of depots in these areas.

In our view, the requirements on VicRoads to approve relocations and movements add to regulatory 'red tape' and creates barriers to the efficient movement of resources, while adding little to the efficient operation of the industry.

**Final recommendation 3: Accident allocations — restrictions of movement of licences and depots (removal of depot requirements)**

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.

**INCREASING TRANSPARENCY ON ZONE BOUNDARIES**

The VACC suggested that VicRoads publish the requirements and criteria approval for the relocation of depots and methodology it uses to define the boundaries for the allocation zones.

While the Commission does not support VicRoads having oversight of depot relocation, we concur that the transparency associated with decisions regarding the definition of boundaries for the allocation zones should be improved. These zoning decisions can have significant implications for operators. As discussed, the proximity benchmarking analysis would allow VicRoads to be more evidence-based and transparent about its decisions on reviewing and amending allocation zone boundaries. Further consultation is critical to effective regulation and should form part of VicRoads decision-making process. The Commission recommends VicRoads publish and consult on the processes and rules for reviewing allocation zones.

**Final recommendation 3A: Accident allocations (increasing transparency of allocation zones)**

The Commission recommends VicRoads consult on and publish the processes and rules for reviewing allocation zones.

## 3.6 THE UNREGULATED AREA

There are no allocation schemes in the unregulated area. In this area towing operators may compete for accident towing jobs. Operators may also receive accident towing jobs from the driver involved in the accident, 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.

### 3.6.1 INITIAL STAKEHOLDER COMMENTS

Stakeholder responses on the question of whether allocation schemes should be introduced to the unregulated area were mixed. IAG stated "*We have no evidence to suggest accident allocation is required in unregulated parts of the state*".<sup>84</sup> The VACC submitted:

*... 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.*<sup>85</sup>

Wallan Towing stated "*I do not believe that there are any issues with the current system for accident towing outside of the 'controlled and self-managed' areas*".<sup>86</sup>

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

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<sup>84</sup> IAG submission, 28 November 2014, p. 3.

<sup>85</sup> VACC submission, 3 December 2014, p. 10.

<sup>86</sup> Wallan Towing submission, 21 November 2014, p. 2.

### 3.6.2 IS ACCIDENT CLEARANCE ORDERLY AND TIMELY? — COMMISSION'S DRAFT REPORT ANALYSIS

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 considered whether this was the case in our draft report.

#### STAKEHOLDER VIEWS

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

#### COMPETITION BETWEEN OPERATORS

While there are multiple operators in many parts of the unregulated area (table 3.3), stakeholders have not raised concerns with 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 <sup>a</sup> | Mildura | Warragul | Controlled | Self-mgt |
|-----------------------|----------|---------|----------------------|---------|----------|------------|----------|
| Operators             | 6        | 5       | 7                    | 3       | 1        | 105        | 5        |
| Licences <sup>b</sup> | 15       | 6       | 19                   | 5       | 7        | 421        | 25       |

<sup>a</sup> Moe, Morwell and Traralgon. <sup>b</sup> Includes attached and unattached licences,

Consultation with unregulated area operators indicates that most operators consider accident towing a side business. They receive more revenue 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.

### 3.6.3 STAKEHOLDER'S COMMENTS ON DRAFT RECOMMENDATION 4

The Commission invited responses to our draft recommendation 4 that accident allocations in the unregulated area should continue to be unregulated.

We noted in the draft report that, in the unregulated area, stakeholders had 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 found that there are no strong arguments to support introduction of an allocation scheme or schemes in parts of the unregulated area. This suggests the benefits of implementing an allocation scheme (or schemes) would be outweighed by its implementation and ongoing costs.

The majority of responses to the draft report supported draft recommendation 4. No response objected to the draft recommendation or provided evidence that the recommendation was not appropriate.

### 3.6.4 FINAL COMMISSION ANALYSIS

For the reasons stated in our draft report and after consideration of the widespread support for the recommendation evident in stakeholder submissions we maintain our draft recommendation.

### 3.6.5 FINAL RECOMMENDATION

**Final recommendation 4: Accident allocations — the unregulated area**

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



# 4 IMPROVING CONSUMER OUTCOMES

*In this chapter, we describe existing regulations which provide protections for drivers in their dealings with accident towing operators. We also examine the effectiveness of consumer protections under the existing Accident Towing Services Act 2007 (the Act) and consider whether these protections need any enhancement. We propose a small number of targeted recommendations which have changed from our draft recommendations.*

## 4.1 INTRODUCTION

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.<sup>87</sup>

These consumer protections reflect that while the accident towing and smash repair functions are separate, they can also be related through ownership or other linkages. 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 a limit to which the accident towing regulatory framework can extend into the smash repairer industry, and our review is limited to the former only. So, while

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<sup>87</sup> See Box 4.1.

stakeholders have identified consumer issues between these two industries, it is not within the scope of our role to review the performance of the smash repair industry (or the related insurance industry) as part of this review. In Appendix F, we describe some of these issues without making any further recommendations, although we raise some matters for Government to consider.

In this chapter, we describe existing regulations which provide protections for drivers in their dealings with accident towing operators. We also examine the effectiveness of consumer protections under the existing Accident Towing Services Act 2007 (the Act) and consider whether these protections need any enhancement. We propose a small number of targeted recommendations, which have changed from our draft recommendations.

## 4.2 OVERVIEW OF CONSUMER PROTECTION AT THE ACCIDENT SCENE

The *Accident Towing Services Act 2007* (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 working days of signing. We note that the 3 day cooling-off period may be truncated if a vehicle owner signs a written waiver to waive their right to terminate the agreement (section 154(2) of the Act); the minimum time before the right to terminate can be waived is 1 working day after the signing of the agreement.
- 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 INITIAL STAKEHOLDER COMMENTS

In response to the Commission's issues paper, a number of stakeholders submitted that touting for smash repair work at accident scenes remains a problem despite existing regulations. Touting was said to be an issue due to the relationships between accident towers and smash repair businesses, and the opportunities for unreasonable repair fees to be charged in some circumstances.

We described these submissions in our draft report. In summary:

- Consumer legal centres expressed concerns about the practice of misleading or pressuring not-at-fault drivers.<sup>88</sup>
- Major insurers such as Suncorp and IAG drew a link between accident towers and affiliated businesses, including smash repairers, lawyers and hire car companies, pointing to accident towing as the 'entry point' to these businesses.<sup>89</sup>

No initial submissions to our issues paper were received from the accident towing industry in relation to the issue of touting.

### 4.4 THE COMMISSION'S DRAFT ANALYSIS

The Commission's draft analysis focused on two elements of concern with the regulatory framework which regulates transactions between accident towers and drivers:

- The incentives for accident towers to direct repair work towards affiliated smash repairers
- The potential for affiliated smash repairers to then charge unreasonably high repair costs.

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<sup>88</sup> For example, Consumer Action Law Centre correspondence with Commission staff (May 2015).

<sup>89</sup> For example, Suncorp supplementary submission, 5 May 2015, p. 1.

As the Commission has already indicated, the issue of adverse customer outcomes involving smash repairers is not the direct focus of our terms of reference. However, the Act does provide some protections for consumers at accident scenes which relate to smash repair – such as anti-touting provisions and a ‘cooling off’ period for agreements signed with repairers.

As such, we briefly re-visit the Commission’s draft analysis of the particular consumer protections under the Act with a focus on how they affect behaviour at the accident scene. We then consider the comments raised in response to this draft analysis.

#### 4.4.1 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 consider how effective these provisions are in achieving their objectives, as well as the role of the regulator.

#### 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.<sup>90</sup> 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.<sup>91</sup> 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.

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<sup>90</sup> VicRoads 2013, ‘*Towing from an accident scene: your rights*’, July.

<sup>91</sup> See: ICA submission, 28 November 2014, p. 2; Suncorp submission, 28 November 2014, p. 4.

Drivers' **lack of awareness** does not appear to be remedied by the provision of the VicRoads' "*Towing from an accident scene: Your rights*" pamphlet (referred to in this report as the Fact Sheet – see appendix B for a copy). 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
- the offering or provision of an "authority to act" contract (in addition to the authority to tow)<sup>92</sup> at the scene of a car accident<sup>93</sup>, 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.<sup>94</sup>

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<sup>92</sup> 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.

<sup>93</sup> 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.

<sup>94</sup> Section 154 states that subject to subsection (2), if— (a) the owner of an accident damaged motor vehicle signs an agreement to repair the vehicle; and (b) the accident damaged motor vehicle has been towed to the place specified in the authority to tow; and (c) at the time of the signing of the agreement to repair, the vehicle is still in or near that place— the owner of the motor vehicle may, within 3 working days after the signing of the agreement to repair, terminate the agreement to repair by giving written notice to the person to whom the agreement has been given or to an employee of that person. Section 154 (2) states the owner of a vehicle is not entitled to terminate an agreement to repair the vehicle under this section if, following the period of one working day after the signing of the agreement, the owner signs a written waiver of the right to terminate the agreement.

The general intention of cooling-off periods is to reduce consumer detriment by changing the environment in which consumers make decisions.<sup>95</sup> It does so in this case by giving drivers more time to consider their choice or gather information on whether the smash repair agreement they have entered into is in their best interests. Such a cooling off period can be justified due to the difficulty of making an informed judgement at an accident scene. We also note that the driver may waive their right to terminate an agreement, thereby allowing the repairer to commence repairing the vehicle, following a period of one working day from signing the agreement.

The cooling off period also acts as a complementary provision to the anti-touting provisions, as this provision provides that contracts entered into at an accident scene do not have legal force for a period of time and so reduce incentives to coerce owners of vehicles in accidents.

In the draft report, the Commission noted there were 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 is less likely to be useful for repair agreements signed by not-at-fault drivers because they expect that the repairs will be paid for by the at-fault driver.

The Commission also noted that there appeared 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*”.<sup>96</sup> Some stakeholders further submit that not-at-fault drivers are often “*confused by the repair process they have entered into*”.<sup>97</sup>

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<sup>95</sup> 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](http://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.

<sup>96</sup> Consumer Action Law Centre correspondence with Commission staff (May 2015).

<sup>97</sup> Suncorp supplementary submission, 5 May 2015, p. 2.

## ROLE OF VICROADS

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*”.<sup>98</sup> 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*”.<sup>99</sup> Further, Suncorp notes that:

*... 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.*<sup>100</sup>

The complex nature of consumer protection issues in relation to accident towing suggest that there is merit in 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 raise the option of transferring some regulatory functions to a body

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<sup>98</sup> Insurance Council of Australia submission, 28 November 2014, p. 3.

<sup>99</sup> Insurance Council of Australia submission, 28 November 2014, p. 3.

<sup>100</sup> Suncorp submission, 28 November 2014, p. 3.

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) as a matter for Government consideration.

#### **Matter for Government consideration 1: Improving consumer outcomes – the role of the regulator**

There is merit in 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).

### **4.4.2 THE COMMISSION'S DRAFT RECOMMENDATIONS**

The Commission made three draft recommendations to improve consumer outcomes:

#### **Draft recommendation 5: (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).

#### **Draft recommendation 6: (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.

#### **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.

## 4.5 STAKEHOLDER COMMENTS IN RESPONSE TO THE DRAFT RECOMMENDATIONS 5-7

The Commission received a number of submissions from industry stakeholders on the consumer protection issues raised in the draft report.

### 4.5.1 GENERAL COMMENTS FROM STAKEHOLDERS

A strong theme emerging from these submissions was that the Commission had seemingly broadened its inquiry focus from that signalled in its issues paper. For example, the ATI suggested:

*The analysis contained in the draft report extends well beyond the issues identified in the Commission's issue paper as forming the scope of the inquiry...the issues paper...solely addressed matters relating to the Accident Towing Industry per se.<sup>101</sup>*

Submissions also argued that remedies to the problems observed in the Commission's draft report should be better targeted at the source of the problem – at the smash repairers. The ATI stated:

*The principles of good regulation clearly indicate that policy responses should address identified issues directly, rather than indirectly. This implies that approaches that address the accident repair industry directly should be adopted in preference to those entailed in Recommendations 2 and 7 in particular. The case for action in this area requires separate consideration by government.<sup>102</sup>*

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<sup>101</sup> Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), November 2015, p. 4.

<sup>102</sup> Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), November 2015, p. 48.

The VACC argued that:

*[the] VACC believes that the accident scene, and the towing that needs to be undertaken, needs to be separated from the body repair issues that the ESC is attempting to resolve...In this case, the ESC recommendations will not be relevant to 99 per cent of tow operators, other emergency service personnel and motorists involved in an accident. Yet they will be subject to red tape and delays at the accident scene as a result of these recommendations.<sup>103</sup>*

#### 4.5.2 SPECIFIC COMMENTS ON DRAFT RECOMMENDATION 5

Some parties including the VACC objected to recommendation 5, on the basis that the proposed warnings and requirements to answer questions prior to signing were impractical. This was because the accident scene is (often) a “crisis situation”, with drivers mostly in shock, distressed and/or injured:

*VACC argues strongly that any additional delays imposed at an accident scene will be largely detrimental to individuals involved in an accident, to road users and to Victoria’s essential service providers... VACC recommends that any additional advisory material provided to drivers should not be provided at the accident scene, as this has the capacity to compromise the decision making of the driver and would further slowdown the removal of the vehicle to a depot or another place directed by the driver. It should also be fair and balanced without the unnecessarily negative language...<sup>104</sup>*

The ATI submission suggested that recommendations 5 and 6 were complementary, and that both were substitutes for recommendation 7. That is:

*The draft report appears to envisage the adoption of Recommendations 5 and 6 as complements to Recommendation 7, in that they are oriented toward the achievement of the same consumer protection objectives. However, these two recommendations can should instead be seen as alternative and less interventionist means of achieving the identified*

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<sup>103</sup> VACC submission to the Draft Report, 17 November, 2015 p. 26 and p. 15.

<sup>104</sup> VACC submission to the Draft Report, 17 November, 2015 p. 6 and p. 13.

*objectives....The ATI generally supports recommendations 5 and 6....The inclusion of a page of warnings with the Authority to Tow and modification of the existing accident fact sheet constitutes a proportionate approach...*<sup>105</sup>

However, the ATI also suggested that in its current form the proposed Authority to Tow had the potential to delay the clearance of the accident scene, as it was lengthy and addressed a number of issues of potential legal liability. The ATI provided some suggestions about the content of the warning page, which are discussed further below.

Insurers were generally supportive of recommendation 5. Suncorp stated:

*Suncorp agrees that it is important to provide additional information to individuals at the scene of an accident, to assist them in making informed decisions at a stressful time. In particular, we support the inclusion of a recommendation that individuals contact an insurer prior to signing agreements authorising towing, repairs or a rental car.*<sup>106</sup>

In our discussions with the parties following the release of the draft report, it became apparent that their objections were strongest in relation to the proposed *content* of the warning sheet — rather than the provision of a warning or further information per se.

#### 4.5.3 SPECIFIC COMMENTS ON DRAFT RECOMMENDATION 6

All submissions received by the Commission were in agreement that there was a role for the education of consumers about what to do at accident scenes (at least as a complement to information being provided at the accident scene). However, there were differences of opinion about the appropriate party or parties to conduct this campaign.

For example, the VACC were of the view that Consumer Affairs Victoria, together with the insurance and tow truck industries, should be responsible or contribute to this campaign.<sup>107</sup>

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<sup>105</sup> Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), November 2015, p. 27.

<sup>106</sup> Suncorp, submission to Draft Report, October 2015, p. 5.

<sup>107</sup> VACC submission to the Draft Report, 17 November, 2015 p.13.

The ATI argued that “it is essential that the accident towing industry be closely involved in the design of the relevant initiatives.”<sup>108</sup>

The Consumer Action Law Centre (CALC) supports the development of an industry education campaign to educate drivers about what to do at an accident scene. However CALC note it can be difficult to determine the effectiveness of broad consumer education campaigns suggesting education messages are likely to be more effective at the moment the information is needed.<sup>109</sup>

#### 4.5.4 SPECIFIC COMMENTS ON DRAFT RECOMMENDATION 7

Draft report recommendation 7 (limiting the destination where an accident damaged vehicle can be towed) was subject to a range of views among industry participants.

Generally, representatives of the accident towing industry opposed recommendation 7 (limiting tow destinations).

The ATI submitted that:

- there was no evidence to support the recommendation
- the proposal was impractical to implement because consumers might refuse to sign the Authority to Tow, or would be otherwise unenforceable
- that the proposal would impinge on consumers’ freedom to contract, which necessarily entailed a substantial risk of reducing consumer welfare.<sup>110</sup>

The VACC stated that:

*In respect to the towing destination, it is unclear what the ESC’s rationale is for restricting consumer choice by limiting where a driver’s damaged vehicle can be towed. This is likely to cause considerable angst particularly for vehicle owners who want to have their damaged vehicle towed to their repairer of choice, and may result in vehicle owners undertaking two tows on separate days to deliver their damaged*

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<sup>108</sup> Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), November 2015, p. 27.

<sup>109</sup> Consumer Action Law Centre (CALC) and West Justice submission to Draft Report, October, p.4.

<sup>110</sup> Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), November 2015, pp. 24-27.

*vehicle to their repairer. Common sense and the rights of vehicle owners need to prevail so that they can have their damaged vehicle towed wherever they choose. This position should be clarified on the existing roadside advice provided by VicRoads for tow operators.<sup>111</sup>*

On the other hand, insurers including IAG, Suncorp and the Insurance Council of Australia (ICA) supported the proposal, as did the Consumer Action Law Centre (CALC):

*...the simplified set of destination choices on the tow authority form will help prevent unscrupulous operators 'capturing' consumers by touting for repair work at the scene of an accident. Providing a simplified list of destination choices will:*

- i. ensure it is quicker and easier for consumers to make an informed decision at the scene of accident;*
- ii. allow the consumer the option to have their vehicle stored at a safe location while they make further decisions, including their choice of independent repairer if offered within their insurance policy;*
- iii. ensure that vehicles can be more easily located after an accident, in turn improving repair turnaround times; and*
- iv. assist in reducing illegal touting behaviours, while preserving choice for consumers.<sup>112</sup>*

*We strongly support this recommendation. We agree that limiting towing destinations to discourage a damaged vehicle being towed immediately to a smash repairer will reduce the opportunity for that repairer or their agent to begin work outside the authority of the driver or their insurer. In turn, this will reduce the opportunity provided to these repairers to recover inflated costs.<sup>113</sup>*

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<sup>111</sup> VACC submission to the Draft Report, 17 November, 2015, p. 6.

<sup>112</sup> Suncorp submission to Draft Report, pp. 2-3.

<sup>113</sup> Consumer Action Law Centre (CALC) and West Justice submission to Draft Report, October, p.4.

#### 4.5.5 ALTERNATIVE MEANS TO ACHIEVE THE COMMISSION'S OBJECTIVES

Some submissions provided alternatives to the Commission's set of recommendations designed to protect consumers that would better achieve its objectives:

*VACC acknowledges consumer detriment is significant, if it does occur, where a not-at-fault driver's body repairer is unable to fully recover all of the costs for the body repair and associated services... VACC believes that full and frank disclosure of the risks and potential financial obligations involved in entering into a third-party body repair recovery agreement, authority to act agreement and so forth would be a better alternative and address the lack of awareness of the not-at-fault drivers.*<sup>114</sup>

We return to this suggestion in Appendix F.

#### 4.5.6 OTHER ISSUES RAISED

The VACC also identified a source of consumer concern relating to authorisations to tow. It said:

*7.6 VACC encourages ESC to mandate the requirement that an authority to tow be required to be signed by an owner for the removal of the vehicle from its first place of storage to any next address. This reform is in the accident driver's best interest because they will know where and when their vehicle is moved. It also provides the consumer with the opportunity to remove personal items and reduce adverse consequences if their vehicle is lost (e.g., removed from a repairer's facility and sent to a holding yard without the insurer informing the vehicles owner).*<sup>115</sup>

The ATI expressed similar concerns.

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<sup>114</sup> VACC submission to the Draft Report, 17 November, 2015 p. 26.

<sup>115</sup> VACC submission to the Draft Report, 17 November, 2015 p. 15

This particular concern is said to result from consumers being unaware that vehicles are being moved, usually by their insurer. The frequency of this practice is not specified or estimated by the VACC or the ATI.

## 4.6 THE COMMISSION'S FINAL ANALYSIS

The Commission's terms of reference require it to analyse the performance and regulation of the accident towing and storage industry. However, the market for accident towing services does not operate in isolation; towing and smash repair services are separate but related. It follows that to understand the operation of the accident towing market it is necessary to consider these broader services and markets. Indeed, Divisions 4 and 5 of the *Accident Towing Services Act* already imposes obligations on the behaviour of *repairers* when dealing with accident-damaged vehicles.<sup>116</sup>

The concerns that have been raised with the Commission regarding adverse customer outcomes involving smash repairers are worthy of further consideration. We have not investigated these complaints in detail as our terms of reference are limited to accident towing. However, we do describe the issues raised with us in appendix F of this report and highlight some matters for government to consider.

### 4.6.1 THE ROLE OF ACCIDENT TOWING OPERATORS

In areas where allocation schemes are in force, an accident towing operator has an *exclusive right* under the allocation scheme to attend to the driver involved in the accident and collect their car. Given this *exclusive right*, the smashed vehicle is in the care of an accident tow operator until it is delivered to either the depot or a smash repairer or the home of the vehicle owner (or some other location instructed by the vehicle owner).

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<sup>116</sup> For example, section 153 of the Accident Towing Services Act, states no repair work is to be carried out without the owner's approval.

The role of the accident towing operator is complicated by the possible relationships between tow truck operators and smash repairers. These relationships extend to joint ownership, co-location (of a depot with a repairer), and third party arrangements (i.e. commission payments). That such relationships exist is not disputed. In fact, the ATI states that it does not dispute the linkage between accident towing and accident repair industries <sup>117</sup>

Further, accident vehicle owners are not to know whether their allocated towing driver is potentially conflicted by these possible relationships.

We agree with submissions that there is no conclusive evidence that the legislative provisions regarding touting have been breached, and the Commission is not suggesting they have been breached. We note however, that while there are anti-touting provisions, these are not easy to enforce. The line between touting and a tow truck operator responding to customer inquiries or providing 'information' can often lack clarity.

It is within this context that the Commission has had to consider the role of the tow truck operator and the extent of any obligation to assist the vehicle owner to make an informed decision about where and how the vehicle should be repaired. We have concluded that it is strongly in consumers' interests to receive appropriate information about their situation.

In practice, this means that the accident vehicle owner will need to receive some information about their options, including the distinction between the *authority to tow* and an *authority to repair* a vehicle, and the importance of making an informed decision about the repair. The main question is how much of this information should be supplied at the accident site, and how much can be left until the vehicle reaches its first destination.

As we discussed in the draft report, some consumers are signing third party repair agreements, but the Commission does not know where or when these are signed. Nonetheless, the anecdotal evidence that has been received through the course of the Commission's review suggests that there are situations where accident vehicle owners

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<sup>117</sup> Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), p.20

are making uninformed decisions that are not in their best interests – as judged after the repair is underway or has been completed.

In summary, we contend that tow truck operators, given their presence at the scene of the accident, can play a role in assisting consumers. This role should not impose unreasonable expectations or costs on tow truck operators. We have therefore changed our final recommendations to reflect these considerations, which have been informed by the further evidence and submissions put forward by stakeholders.

#### 4.6.2 LIMITING TOW DESTINATIONS

As identified in the draft report, a possible regulatory action would be to limit the locations to which a vehicle could be towed. The intention was that this would limit the ability for accident towing operators to direct vehicles to affiliated smash repairers, except under the instructions of an insurer. The Commission suggested that the particular destinations listed on the tow docket might be limited to locations specified by insurers, 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 or an insurer.

As we noted in the section 4.5.4, there was opposition to this recommendation on the basis that it restricted consumer choice, could impose further costs of consumers and poorly targeted the problem identified. Other submissions to the draft report suggested that this further restriction was unnecessary given other proposed recommendations to improve information to consumers.

The Commission did not intend to restrict consumer choice, but accepts that recommendation could be perceived as having that effect. On balance, we agree that restricting options for towing destinations for all accident vehicle owners may not be an efficient way to deal with problems that may emerge downstream in the smash repair industry. This draft recommendation has therefore been removed from the final recommendations.

### 4.6.3 TREATMENT OF SECONDARY TOWS

Both the VACC and the ATI call for a written authority to be required by the owner for the removal of the vehicle from its first place of storage to the next address.<sup>118</sup>

The VACC puts forward two benefits for this proposal. The first is that it means the owner knows where the vehicle has been towed to, and so avoids any uncertainty or problems when the vehicle cannot be immediately located. The second benefit is that it would allow the owner an opportunity to remove any personal items from the accident vehicle.

The Commission notes that neither the VACC nor the ATI have provided evidence as to the magnitude of the problem or the potential costs of the proposal (for example, that the vehicle owner would have to attend the depot to sign the new Authority to Tow form). Without information on the potential inconvenience this would cause to owners and the size of the existing problem we are hesitant to propose such a recommendation.

Nonetheless, there may be a way to achieve the objective of establishing information (i.e. a paper trail) about where damaged vehicles are located, without requiring owners to sign an authority. For example, VicRoads could amend the regulations to require the secondary tower to provide the initial depot with an authority to tow (which like the initial authority to tow includes the destination and who has authorised the tow). This should alleviate the concern about owners being unable to trace the current location of a vehicle without imposing material costs on any party.

We further note that we would expect the tow truck driver to already advise the driver to remove personal items from the car before the driver and the vehicle part ways (unless, of course, the driver is injured and unable to do so). This is already included on the VicRoads Fact Sheet provided to accident vehicle owners at the scene of the accident.

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<sup>118</sup> VACC submission to the Draft Report, 17 November, 2015, p.15 and Patten Robins (ATI) p.16

## 4.7 FINAL RECOMMENDATIONS

### 4.7.1 CONSUMER INFORMATION (DRAFT RECOMMENDATIONS 5 AND 6)

As in the draft report, our recommendations focus on informing and educating drivers and improving existing measures, rather than introducing new laws and regulations. However, we have concluded that changes to these recommendations should be made to simplify and streamline the messages provided, as well as to ensure they are promoted by the appropriate bodies and with stakeholder support.

#### **AN AMENDED AUTHORITY TO TOW: 'IMPORTANT INFORMATION 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, in simple and clear language, information about the steps following an accident that requires an accident tow. This 'important information page' could be included on the reverse side 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.

As is current practice, the accident tow truck driver is required to obtain three signatures on the front of the authority to tow form from the owner or driver of the damaged vehicle.<sup>119</sup> The signatures are for: 1) confirming receipt of the VicRoads Fact Sheet; 2) authorisation of the tow; and 3) authorising the storage (see Appendix B for a copy of the authority to tow form).

The existing authority to tow form could be amended to require the driver or vehicle owner to acknowledge that they have read and signed the important information page (to be put on the back of the authority to tow form) before the authority to tow is signed. The accident towing operator would be prohibited from towing the vehicle until both the back and the front of the authority to tow form were signed.

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<sup>119</sup> Assuming the driver is able to sign. In the case where the driver cannot sign, police will sign the Authority to Tow.

The Commission notes that the VACC does not support the provision of further information at accident scenes. However, the Commission's view is that the accident scene is the most efficient place to dispense this information. As CALC points out, messages are likely to be more effective at the moment the information is needed.<sup>120</sup>

That said, the Commission accepts the comments from the VACC and ATI that any warnings should be simpler and clearer than those proposed in the draft report, so as not to unduly delay the process of clearing the accident scene. Consequently, we have revised our example of how the new messages could be worded (see box 4.2). This wording should be subject to refinement in consultation with stakeholders.

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 important information page.

#### BOX 4.2 EXAMPLE — IMPORTANT INFORMATION PAGE

- You are required to sign the Authority to Tow form before your vehicle can be moved and stored by the tow truck driver.
- You can choose where your vehicle is towed, for example, to your home, to a repairer of your choice, or a location instructed by an insurer.
- An Authority to Tow does not cover the repair of your vehicle.
- You do not need to make a decision now about where and how your vehicle is repaired.
- Smash repairs can be expensive. You should avoid signing anything relating to vehicle repair until you have had time to consider your options.

I have read and understood these points.

[Driver's signature and contact details]

<sup>120</sup> Consumer Action Law Centre (CALC) and West Justice submission to Draft Report, October, p.4.

## AMENDMENTS TO VICROADS' FACTSHEET

To reinforce the information provided in the proposed '*important information page*', some amendments should be made to VicRoads' existing accident towing factsheet. It is well understood from our consultations that that the factsheet is not necessarily read at the accident scene, as it is *only required to be received* at the accident scene by the driver. That is, accident towing operators are required to give this factsheet to the driver of the damaged vehicle at the accident scene.

The benefit of the factsheet is that it provides takeaway information to the driver after the accident. This factsheet already provides considerable detail, but it could provide additional information to better complement the new important information page. For example, the factsheet could explain 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, and could entitle the insurer not to pay a claim.

### Final recommendation 5: Authority to Tow docket and Fact sheet

VicRoads should amend the authority to tow docket to include a (simple) page of important information 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 better complement the important information page on the authority to tow.

## EDUCATION CAMPAIGN

In the draft report, the Commission recommend that an education campaign may be helpful to educate drivers about:

- what to do after an accident, and
- their rights and responsibilities.

The rationale for this recommendation was that because accidents are rare events, accident vehicle owners might not be fully aware of:

- their rights and options with regard to choice of smash repairer; and
- their rights, responsibilities and obligations under their insurance policies.

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.

A theme addressed in submissions was who should conduct this campaign. Our draft recommendation focused on the role of insurers; however, we accept that greater benefits would be derived if this were led or coordinated by a government body such as Consumer Affairs Victoria (CAV), VicRoads or the Australian Competition and Consumer Commission (ACCC). This is more likely to engender broader industry support and have greater traction with consumers. We note the CAV already has a web page about “Getting your car towed” which could be reviewed to better target the key messages regarding accident towing.<sup>121</sup>

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<sup>121</sup> See <https://www.consumer.vic.gov.au/motor-cars/maintenance-and-repairs/getting-your-car-towed-after-an-accident>

### **Final recommendation 6A — improving consumer outcomes (education campaign)**

VicRoads should coordinate with other relevant agencies (eg. CAV, ACCC) and stakeholders (eg. industry and its peak bodies, driver representative organisations, insurers) to support the education of drivers about their rights, obligations and options in the event of an accident.

### **Final recommendation 6B — improving consumer outcomes (education campaign)**

VicRoads and/or CAV should develop a readily accessible website with information on “*What to do if you’ve been in a car accident*”.

The VicRoads Fact Sheet should also include a statement like the following: “Before agreeing to the repair of your vehicle, please consider visiting the government’s information website [address].”

## **4.7.2 LIMITING TOW DESTINATIONS (DRAFT RECOMMENDATION 7)**

Having noted the concerns raised about secondary tows (from the accident towing operators’ depot to a smash repairer) (see section 4.6.3), we consider there is merit in considering a change in regulations. This would ensure that secondary tows also require an authority to tow form or similar to be signed by the owner or owner’s representative (such as an insurer) specifying where the vehicle is to be towed to. This would provide further information to accident vehicle owners about the location of their vehicles, at minimal cost to the owner or to the depots.

### **Final recommendation 7A**

VicRoads should consider amending the regulations (or developing a self-regulatory solution) to ensure that tows subsequent to the initial tow from the accident scene also require an authority to tow, which identifies who has authorised the tow and where the vehicle is to be taken.

## 4.8 FURTHER OBSERVATIONS

Throughout this inquiry and the many discussions we have held (and submissions received), concerns have been raised about conduct in the smash repair industry. These matters lie beyond the terms of reference of this inquiry and we have been mindful not to confuse these concerns with our findings regarding accident towing. Nonetheless, the issues raised may be material for affected customers. We have therefore summarised in **Appendix F** some of the main observations shared with us.

While we do not make any recommendations about the smash repair industry, we raise these matters for further consideration by policy makers.



# 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 INTRODUCTION

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).<sup>122</sup>

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<sup>122</sup> 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 appropriate 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 INITIAL STAKEHOLDER COMMENTS

Initial stakeholder comments were received in response to the Commission's Issues Paper. Stakeholders supported continued fee regulation in the controlled area. This support came from both accident towing industry representatives and users of accident towing services. For example, the VACC stated:

*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.*<sup>123</sup>

<sup>123</sup> VACC submission, 3 December 2014, p. 12.

Stakeholder responses were 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 presented two arguments in favour of not extending fee setting. First, it argued that links between accident towing and smash repairs meant that insurers were 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 argued that a form of fee regulation already applies across the state via the “reasonable” requirement.<sup>124</sup>

One operator, Wallan Towing, argued 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.<sup>125</sup> Some operators suggested that accident towing services may not be provided if regulated fees were set too low.

In contrast, some insurers submitted that fee setting should remain in the controlled area and be introduced across Victoria. Suncorp stated 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*”.<sup>126</sup>

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<sup>124</sup> 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”.

<sup>125</sup> Wallan Towing submission, 21 November 2014, p. 1.

<sup>126</sup> Suncorp submission, 28 November 2014, p. 2. IAG submission, 28 November 2014, p. 3.

IAG submitted 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”.<sup>127</sup>

Similarly, the Insurance Council of Australia stated:

*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.*<sup>128</sup>

Some operators located outside the controlled area did support fee regulation. One operator supported a base fee of \$350 including the first 10 kilometres.<sup>129</sup> Another suggested a base fee of \$250 would be reasonable. Squires Towing submitted that the Government should “regulate accident towing prices throughout the state of Victoria. Metropolitan country and heavy towing”.<sup>130</sup>

## 5.3 CONTROLLED AREA FEE REGULATION

### 5.3.1 COMMISSION’S DRAFT REPORT ANALYSIS

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.

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<sup>127</sup> IAG submission, 28 November 2014, p. 3.

<sup>128</sup> Insurance Council of Australia submission, 28 November 2014, p. 1.

<sup>129</sup> Anonymous submission, 10 December 2014, p. 1.

<sup>130</sup> Squires Towing submission, 26 November 2014, p. 2.

In contrast, markets for accident towing services do not exhibit the characteristics of competitive markets. In the controlled and self-management areas allocation schemes 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.

### 5.3.2 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.<sup>131</sup>*

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.<sup>132</sup>*

IPART recommends that maximum fees for regular vehicle accident tows continue to be regulated throughout NSW.<sup>133</sup> 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...<sup>134</sup>*

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<sup>131</sup> 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.

<sup>132</sup> IPART 2014, p. 38.

<sup>133</sup> IPART 2014, p. 6.

<sup>134</sup> VACC submission, 3 December 2014, p. 4.

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.*<sup>135</sup>

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.

### **5.3.3 NEGOTIATING FEES IS COSTLY**

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.

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<sup>135</sup> IAG submission, 28 November 2014, p. 3.

The impacts on other road users may be larger in the controlled area, where roads are typically more congested.

#### 5.3.4 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 46,000 accident tows each year in the controlled 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.

#### 5.3.5 STAKEHOLDER COMMENTS ON DRAFT RECOMMENDATION 8 – (FEE REGULATION FOR THE CONTROLLED AREA)

The Commission's draft recommendation 8 proposed that fee regulation be maintained for the controlled area.

In response to the Commission's draft report, Suncorp<sup>136</sup>, IAG<sup>137</sup> and ICA<sup>138</sup> support the recommendation that the Minister continue to set regular vehicle accident towing and storage fees in the controlled area. While VACC also supports the recommendation, it raises concern about the disparity between rates for tow operators in the Melbourne

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<sup>136</sup> Suncorp submission to Draft Report, 30 October 2015, p. 6.

<sup>137</sup> IAG submission to Draft Report, 3 November 2015, p. 5.

<sup>138</sup> IAG submission to Draft Report, 2 November 2015, p. 4.

controlled area and tow operators in the Sydney metropolitan area, arguing that traffic density and operating costs are comparable across the two areas.<sup>139</sup>

### 5.3.6 THE COMMISSION'S FINAL ANALYSIS

The Commission considers the case for maintaining fee regulation in the controlled area is strong. Stakeholder submissions to the issues paper and draft report expressed support for this position.

On the issue of disparity between Victorian accident towing fees and NSW accident towing fees, it is important to recognise that in NSW both metropolitan and country/regional areas accident towing fees are regulated.

In NSW, the base fee of \$257 is the same in both the metropolitan and country/regional areas and includes 3 days of storage. The metropolitan NSW fee also includes the first 10 kilometres while in country and regional NSW it includes the first 20 kilometres travelled. This compares to the Victorian metropolitan base fee of \$207.30, which includes the first 8 kilometres travelled but no storage. If we adjust the Victorian base fee to add in three days of undercover storage, the Victorian base fees comes to \$255, which makes it comparable with the NSW base fee of \$257.<sup>140</sup>

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<sup>139</sup> VACC submission to Draft Report, 13 November 2015, pp. 15-16.

<sup>140</sup> Note — the distance rate in NSW is \$6.23 in the metropolitan area but substantially less in the regional and country areas at \$3.12. This compares to Victoria's metropolitan distance fee of \$3.30 and an unregulated distance fee in Victorian regional and country areas (where operators set their own fee and fee structures).

### 5.3.7 FINAL RECOMMENDATION

The Commission supports 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).

#### **Draft recommendation 8: Fee regulation — controlled area (continue fee regulation)**

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

## 5.4 FEES IN THE UNREGULATED AREA

### 5.4.1 THE COMMISSION'S DRAFT ANALYSIS

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.

#### **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 | Self-mgt      | Goldfields <sup>a</sup> | Mildura         |
|------------------------------------|------------|---------------|-------------------------|-----------------|
| Base fee <sup>b</sup>              | \$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) <sup>c</sup> | –          | \$110 – \$132 | –                       | –               |

<sup>a</sup> Ballarat, Bendigo and Castlemaine. <sup>b</sup> 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. <sup>c</sup> 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.

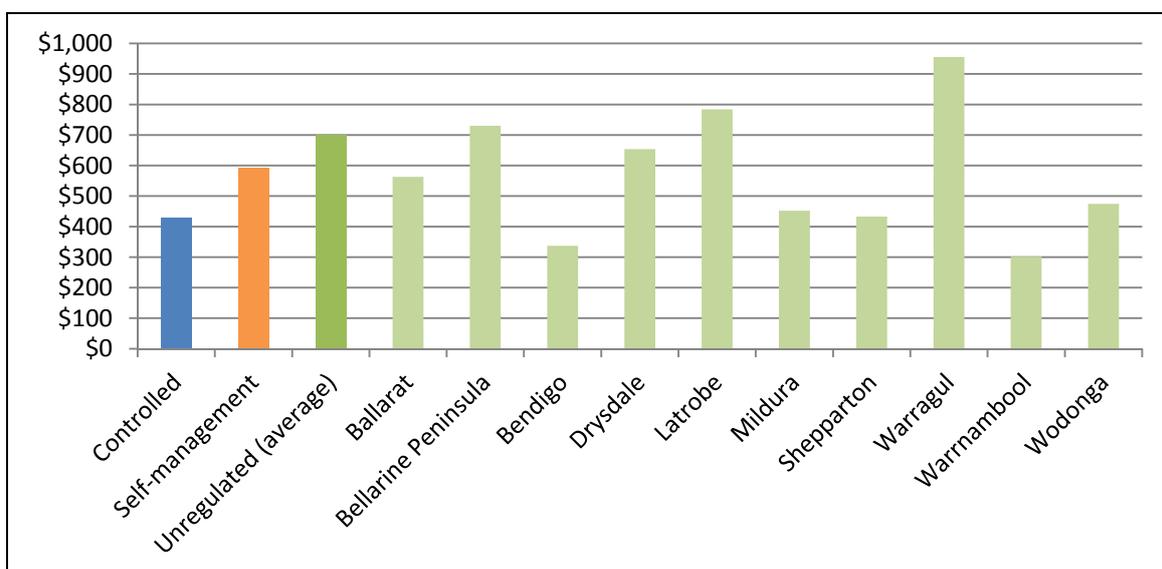
Based on our consultations with operators to date and the information presented in table 5.1, we make the following observations:

- 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.

## 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.<sup>141</sup>

## 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.<sup>142</sup>

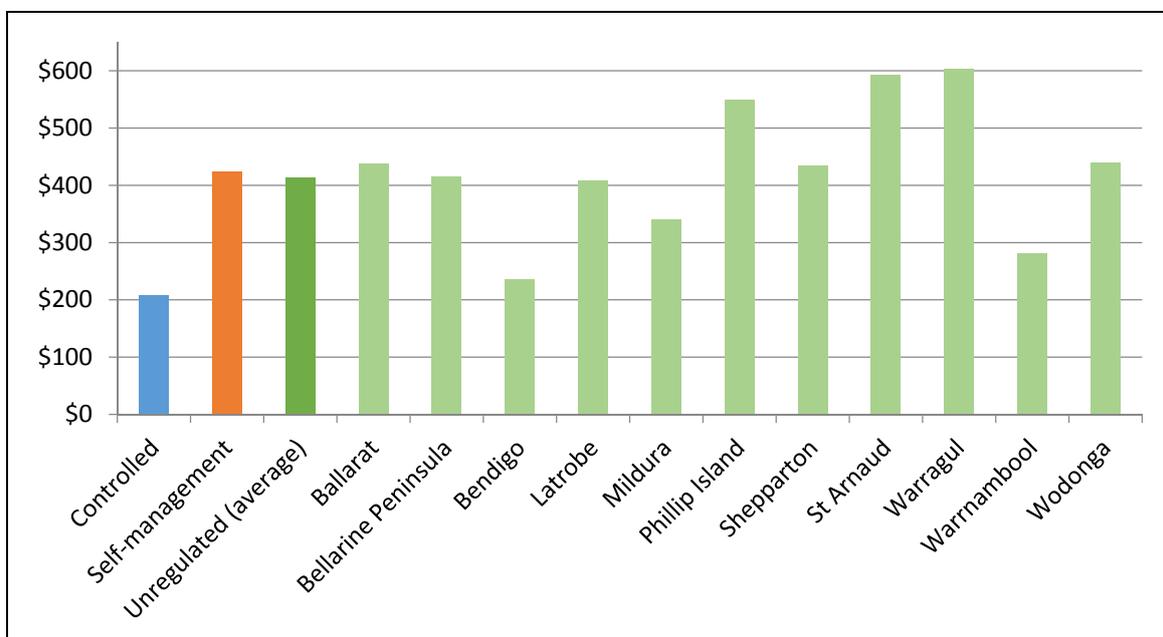
Figure 5.2 illustrates that there is significant variability in the **base fee** charged by operators. It is clear that in a majority of regions operators charge at least double the controlled area base fee, with the exception of Bendigo where the base fee is only 14 per cent higher, Warrnambool (35 per cent higher) and Mildura (64 per cent higher).

<sup>141</sup> 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.

<sup>142</sup> 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.

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).

**FIGURE 5.2 AVERAGE BASE FEE BY REGION (\$ inc GST)**

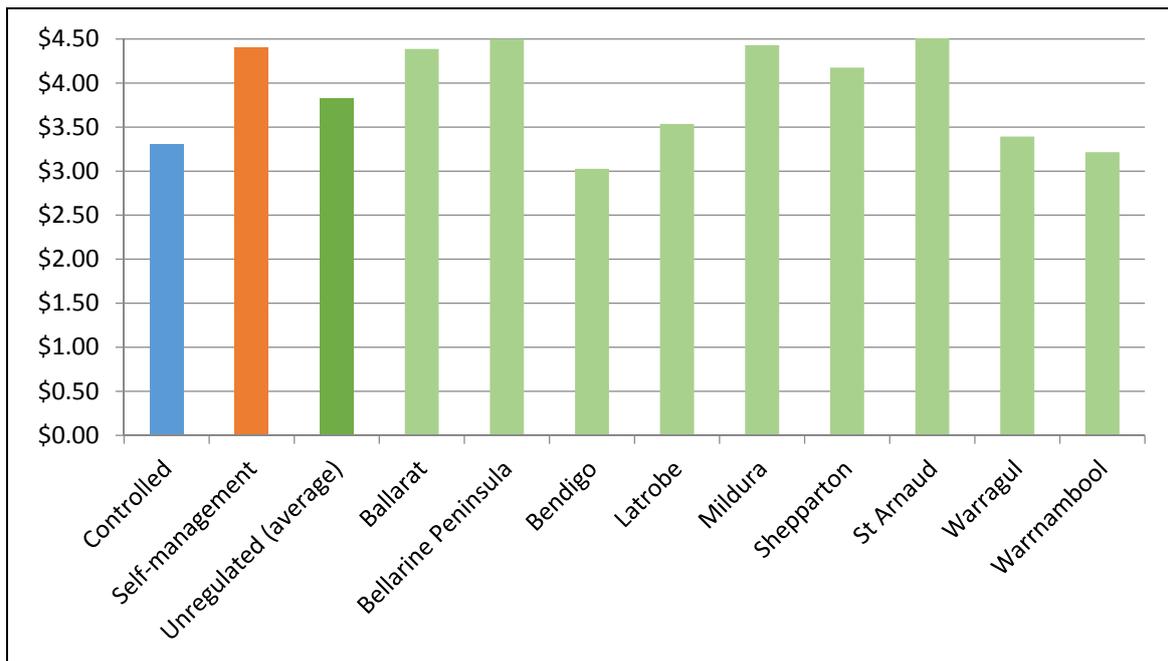


Data source: Regulated fees, operator information and Commission analysis of IAG and Suncorp data.

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.

We also analysed the **other fee components** including 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 the Latrobe Valley. 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.

## 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.

### 5.4.2 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.

#### 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 costs<sup>143</sup> over a larger number of tows.<sup>144</sup> Similarly, accident towing businesses that are involved in more activities (e.g. trade towing, smash repair) can recover common costs<sup>145</sup> across a

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<sup>143</sup> Those costs that do not vary with the number of tows. The most significant fixed cost is the tow truck.

<sup>144</sup> 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.

<sup>145</sup> 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.

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.

## 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 5.2 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 approval* to perform accident tows, we consider it a less relevant measure of business size compared to tows per truck.

**TABLE 5.2 ACCIDENT TOWING BUSINESSES — OBSERVATIONS ON SIZE  
2014**

|  | Controlled area | Unregulated area <sup>a</sup> | Self-mgt area |
|--|-----------------|-------------------------------|---------------|
| Accident tows                          | 46,596          | ≈14,100                       | 1,753         |
| Accident tows per truck <sup>b</sup>   | 184.9           | ≈59.2                         | 194.8         |
| Accident tows per operator             | 443.8           | ≈100.7                        | 350.6         |
| Accident tows per licence <sup>c</sup> | 110.7           | ≈50.7                         | 70.1          |

<sup>a</sup> We have had to estimate the number of accident tows in the unregulated area. All values presented are therefore approximations. <sup>b</sup> Number of trucks is estimated as the number of licences (attached and unattached) less the number of dormant licences. <sup>c</sup> Includes attached and unattached licences.

Table 5.2 shows that:

- Tows per truck — is highest for operators in the self-management area (194.8 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 50.7<sup>146</sup> 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.

<sup>146</sup> 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.

## 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 separate 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.<sup>147</sup>*

Wallan Towing submits that its main income is trade towing, not accident towing.<sup>148</sup>

### **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.

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<sup>147</sup> VACC submission, 3 December 2014, p. 5.

<sup>148</sup> Wallan Towing submission, 21 November 2014, p 1.

## 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 5.3. 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 5.3 NSW ACCIDENT TOWING AND STORAGE FEES (EXC GST)**  
Light vehicles, 2015-16

|  | Sydney  | Other areas |
|--|---------|-------------|
| Base fee (\$) <sup>a</sup>             | \$257   | \$257       |
| Distance fee (\$/km) <sup>b</sup>      | \$6.23  | \$3.12      |
| Storage (\$/day) <sup>c</sup>          | \$19.50 | \$19.50     |
| Salvage                                | \$61    | \$61        |
| Secondary tow                          | \$90    | \$90        |
| After hours surcharge (%) <sup>d</sup> | 20%     | 20%         |

<sup>a</sup> Includes the first 3 days of storage. <sup>b</sup> 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. <sup>c</sup> Only payable from the fourth day of storage. <sup>d</sup> 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. While in Queensland, fees are the same across selected cities and regional areas.

Arguments from Victorian operators that it is reasonable for accident towing fees to be higher than the regulated controlled area accident towing fees should be considered carefully.

### 5.4.3 DRAFT REPORT CONCLUSIONS ON FEE REGULATION FOR THE UNREGULATED AREA

Higher fees in the unregulated area could potentially be justified if operators had higher average costs of providing accident towing services in this area. This might be due to different characteristics of the service. Alternatively, it might be due to having fewer tows per vehicle. We found that tows per truck were lowest in the unregulated area, which, in the presence of fixed costs<sup>149</sup>, suggests 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 the costs that are common to the other activities from revenues earned in these other activities. This can lower average costs per accident tow.

Our findings in relation to business size (the number of tows) and scope (breadth of activities) were inconclusive in terms of the extent to which fees need to be higher in the unregulated area. But we did have some concerns with the level of fees in some parts of the area — that is, we were not convinced that all operators were charging reasonable fees. In some cases, for example, fees were three times the level in the controlled area. This suggests some operators may have market power to charge high fees.

In the draft report, we examined three options:

- To leave the current arrangements as they were.
- To recommend regulation in a ‘light handed’ manner using fee notification, including seeking the collection of information to make a more informed assessment of whether fees in the self-management and uncontrolled areas were reasonable.

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<sup>149</sup> Fixed costs are those that do not vary with the number of tows undertaken. An example is the cost of the vehicle.

- To recommend regulating fees in the unregulated area.

Our draft conclusion was that there was sufficient cause to support the introduction of fee notification, to better inform government and stakeholders of the pricing behaviour in the self-management and unregulated areas.

#### 5.4.4 STAKEHOLDER COMMENTS ON DRAFT RECOMMENDATION 9 (FEE NOTIFICATION IN THE UNREGULATED AREA)

##### FEES AND COSTS IN THE UNREGULATED AREA

A number of submissions addressed the draft report analysis and conclusions regarding unregulated area fees. VACC<sup>150</sup>, ATI<sup>151</sup>, Country Auto Service<sup>152</sup> and Yarram Towing Service<sup>153</sup> provided useful insights and comments.

The submission from Yarram Towing Service emphasised the issue of smaller scale of towing businesses in the unregulated area. Yarram Towing Service operates one tow truck on a 24 hours per day / 7 days a week basis. They submitted that they have limited income to service the required depot, office, tow truck and other expenses. The Yarram Towing Service submission expressed concerns that if fees were regulated to be at low levels then the business would not be able to operate or supply the towing service on a 24 hours per day / 7 days a week basis<sup>154</sup>.

Country Auto Service submitted that fees in the unregulated area are not excessive:

*Charges to my knowledge are not excessive in most cases in the rural area. Based on the distances occurred, the time span held up at an accident scene and the heavier extent of salvage & clean up due to 100 kph hits, I believe our current rates are applicable in our rural areas.*<sup>155</sup>

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<sup>150</sup> VACC submission to Draft Report, 17 November 2015.

<sup>151</sup> Patten Robin submission on behalf of ATI, 16 November 2015.

<sup>152</sup> Country Auto Service, submission to Draft Report 29 October 2015.

<sup>153</sup> Yarram Towing Service submission to Draft Report 30 October 2015.

<sup>154</sup> Yarram Towing Service submission to Draft Report, 30 October 2015, p. 1.

<sup>155</sup> Country Auto Service submission to Draft Report, 29 October 2015, p. 6.

In the quote above, Country Auto Service suggests a range of factors that may contribute to towing charges being higher in the unregulated area. They also discuss the need for tow services to be 'fit for purpose' and suggest that the terrain in the Gippsland area may be a contributing factor for why the Commission's analysis identified Gippsland as having relatively high fees.<sup>156</sup>

The VACC agreed with the Commission's draft report analysis that there are factors that result in towing charges being higher in the unregulated area, and noted these factors vary across the unregulated area:

*VACC agrees with the ESC's conclusion that accident tow operators in the unregulated area have lower tow truck utilisation rates and hence higher average costs. Utilisation rates and costs will vary significantly depending on the number of accidents where a tow operator is located. Accordingly, it is difficult to apply a uniform price regulation scheme similar to the Melbourne controlled area.*<sup>157</sup>

*... Fees and charges in unregulated areas are based on the actual running costs with the business of towing. VACC's earlier submission clearly articulates this through its analysis of actual towing costs as opposed to preferred costs based on a simple calculus. Issues of timing, the complexity of the tow, distance and time needed to engage with officials at the accident scene are just some of the considerations that impact pricing for towing operations.*<sup>158</sup>

The VACC also submitted that:

*...the ESC has not produced any evidence that tow operators in the unregulated area are charging different fees to different customers.*<sup>159</sup>

*...If this were the case, insurers would quickly identify inconsistent charging by tow operators for similar type towing jobs. While uninsured motorists are at greater risk of not knowing what the tow operator*

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<sup>156</sup> Country Auto Service submission to Draft Report, 29 October 2015, p. 6.

<sup>157</sup> VACC submission to Draft Report, 17 November 2015, p. 28.

<sup>158</sup> VACC submission to Draft Report, 17 November 2015, p. 9.

<sup>159</sup> VACC submission to Draft Report, 17 November 2015, p. 9.

*normally charges, word-of-mouth is a powerful deterrent particularly in regional centres and townships to prevent the different treatment of different types of customers. VACC understands from VicRoads that there have been only a handful of complaints regarding the cost of towing, mostly from uninsured drivers.*<sup>160</sup>

*...VicRoads also has the powers to inspect a tow operator's records (including authorisation to tow and invoices). This power would enable VicRoads to identify any different treatment of customers in respect to towing fees.*<sup>161</sup>

## **FEE NOTIFICATION**

A number of stakeholders did not support the Commission's draft recommendation 9 to implement fee notification in the unregulated area.

The primary reason stakeholders cited was that the benefits of the regulation would not outweigh the costs. For example, ATI submitted:

*... the ATI does not believe that a move to fee notification in the Uncontrolled Area would be likely to yield positive outcomes.*<sup>162</sup>

*The ATI does not support [Recommendation 9]*<sup>163</sup>

The VACC submitted that:

*The monitoring of fees is not likely to assist Government with determining whether a tow operator's fees are excessive. The Government would still need to know the utilisation rates, and operating*

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<sup>160</sup> VACC submission to Draft Report, 17 November 2015, p. 28.

<sup>161</sup> VACC submission to Draft Report, 17 November 2015, p. 28.

<sup>162</sup> Patten Robin submission on behalf of members of the accident towing industry (ATI), 16 November 2015, p. 6.

<sup>163</sup> Patten Robin submission on behalf of members of the accident towing industry (ATI), 16 November 2015, p. 47.

*costs of the individual operator concerned, to determine whether the published prices resulted in an excessive rate of return.*<sup>164</sup>

*Even if VicRoads published towing fees on its website, it is unlikely that many insurers or uninsured drivers would access the website. Insurers already know the tow fees charged by tow operators. Insured drivers are not interested in the cost of towing because their insurer pays for the tow. This leaves about 20 per cent of motorists who are uninsured that may benefit from the website. VicRoads would need to spend considerable funds to target, promote and inform uninsured drivers about the website.*<sup>165</sup>

*The ESC has assumed the publication of tow fees would impose a relatively low cost to Government. However, in addition to collecting the tow fees from each individual tow operator across the State, VicRoads would need to establish a section on its website and design the section to enable amendment to towing fees for 140 tow operators from the unregulated areas that will occur at different times of the year. VicRoads from time to time will make human errors and publish incorrect towing fees (that could be higher or lower than the actual towing fees submitted). This will cause problems for the tow operator and motorists unless VicRoads establishes a system where it requires each tow operator to verify the submitted prices before it publishes the prices on its website. This task alone would double the administrative time and cost to each tow operator and to VicRoads.*<sup>166</sup>

There were also concerns that the price information would be used in ways that negatively affect consumers. For example, the ATI submitted that:

*The draft report highlights the potential for a fee notification requirement to lead to convergence in fees, at least within the geographical areas that are, or potentially could be, served by the same operators. The ATI believes that such an outcome is relatively likely, as would be a tendency for fees to “level up”, rather than to be reduced overall. As the ESC notes, such an outcome would not be beneficial to consumers. Moreover, the foreshadowed response to such an outcome, of*

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<sup>164</sup> VACC submission to Draft Report, 17 November 2015, p. 28.

<sup>165</sup> VACC submission, 17 November 2015, p. 28.

<sup>166</sup> VACC submission, 17 November 2015, p. 29.

*implementing fee regulation in the Uncontrolled Area, is unlikely to be feasible given the likelihood that cost functions would differ widely across the different parts of the Uncontrolled Area, and for different operators.*<sup>167</sup>

The Country Auto Service submission discusses that fee notification and comparison of tow service of a price basis only may mask some of the quality aspects of the tow service. Country Auto Service submitted that:

*Every accident scene is different posing different problems and different costing. Having costs per Tow Company listed on a VicRoads site for insurance companies to see would once again let them chose their towers by cost not performance, with no regard to the needs of the local community.*<sup>168</sup>

In light of these views, the VACC proposed an alternative mechanism:

*If the Government wishes to monitor towing fees in the unregulated area, VACC believes the Government should consider a lower cost option that enables the collection of price information but applies the user pays principle. An annual survey of all tow operators could be undertaken where VicRoads or the ESC conducts the survey by phone or email and collates the information. In this way, the cost is being borne predominately by Government who would be the main beneficiary of price monitoring. This option would also reduce the time and effort for tow operators in providing prices compared with a more formalised arrangement under a price notification scheme.*<sup>169</sup>

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<sup>167</sup> Patten Robin submission on behalf of ATI, 16 November 2015, p. 47.

<sup>168</sup> Country Auto Service, 29 October 2015, p. 4-5.

<sup>169</sup> VACC submission, 17 November 2015, p. 16.

## 5.4.5 THE COMMISSION'S FINAL ANALYSIS (FEE NOTIFICATION IN THE UNREGULATED AREA)

In this section, we set out why the Commission considers that the case for fee notification in the unregulated area is appropriate. We then set out further details of how the notification scheme could work, addressing the issues raised in submissions.

### THE CASE FOR A FORM OF FEE REGULATION

As we identified in our draft report, no accident towing fee or cost information is routinely collected in Victoria. This has made our consideration of the case for any form 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 therefore mindful of reaching conclusions based on incomplete data. Further, we are cognisant of the points made in submissions that there will be a range of reasons why the costs of tows might be higher in unregulated areas, including fewer tows on average, and the potential for higher-speed collisions. That said, we remain 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, which indicates that fees are generally higher but also much more variable
- the scope of accident towing businesses (covering accident towing, trade towing and smash repair) which reduces the costs that need to be recovered to support the trade towing business and so 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.

Further, the market structure of accident towing in most parts of the unregulated area tends towards local monopolies or duopolies. At least the potential for use of market power exists in localities of the unregulated area where there is no or insufficient competition.

The Commission further accepts that there have been relatively few complaints to VicRoads regarding towing and storage fees in the unregulated area; however, this is not strong evidence that market power is not being used.

## **BENEFITS AND COSTS OF FEE NOTIFICATION**

The Commission considers that price (fee) notification will enable transparency and better monitoring to assess whether operators are using any market power. Fee notification fits more towards the ‘light handed’ end of economic regulation. It is important to emphasise that it **involves no direct control of prices**. Notification still allows operators to set their own fees – and so allows operators to reflect their own costs in their charges – but is intended to provide a discipline on prices charged by a business. This discipline comes from:

- promoting increased transparency and scrutiny of fees, with the implied threat of regulation if fees cannot be justified
- 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).

It is important that the fee notification scheme be proportionate to the issues we have identified. We assess this by considering the benefits and costs of fee notification.

## **BENEFITS**

The benefits of a fee notification scheme derive from the scheme’s ability to hold prices to reasonable levels, across all operators. Primarily, we see this discipline coming from increased transparency and the threat of future regulation being imposed.

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 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.

## COSTS

The costs 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 entered 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 routine field investigations into whether operators were abiding by their notified fees. However, we would expect that VicRoads would investigate (as the industry regulator) any complaints from drivers involved in an accident or complaints by insurers of alleged over-charging. Further, compliance with notified maximum fees should be made 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.<sup>170</sup> The regime simply requires accident towing operators to advise VicRoads of their accident towing fee schedule. This could be as simple as emailing or posting an operator's schedule of fees to VicRoads.

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<sup>170</sup> This is an important difference compared to fee (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.

The concern was raised by the Commission and in submissions that there may be an unintended consequence of fee notification – that better awareness of what other tow truck operators charge (due to the notification scheme) may lead to prices rising rather than falling. The Commission has amended the recommendation to state that VicRoads should treat this information confidentially.

## HOW FEE NOTIFICATION WOULD WORK

A fee notification scheme does not involve fixing accident towing fees nor does it imply a flat fee for all accident towing work.<sup>171</sup> Under fee notification, operators in the unregulated area would continue to set their own 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. We have explicitly excluded salvage as we recognise the complexity of the work done by regional accident towing operators when it comes to salvaging a vehicle.

However, there would be an obligation on accident towing operators to notify VicRoads of their accident towing fees. 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 VicRoads with information for each fee component which makes up the total accident towing charge (e.g. base fee, distance and storage fees). 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.

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<sup>171</sup> VACC media release, *Towing review out of scope*, 8 October, 2015.

## BOX 5.2 FEE NOTIFICATION FOR THE UNREGULATED AREA

Fee notification for the unregulated area should involve the following:

- Operators notifying VicRoads of their accident towing fees. Fees would cover all accident towing and storage related fees (excluding salvage) that the operator charges.
- Fees would be kept by VicRoads on a confidential internal database.
- 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.
- 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.
- VicRoads would publish only aggregated and anonymised information on accident towing fees in the unregulated area in its annual report, to better inform stakeholders on fee outcomes. The annual report should also include information on any investigations and complaints relating to unreasonable fees being charged.

## CONCLUSION ON FEE NOTIFICATION

The Commission remains of the view that fee notification in the unregulated area will produce more benefits than the costs of implementation and compliance. While it is not possible to define a threshold for concern about the reasonableness of fees, the evidence we have examined suggests light handed regulation that allows further scrutiny of the fees being charged can be justified. We have been careful to only recommend a scheme which involves low implementation costs for the industry — a similar low-cost notification scheme applies to the taxi industry in the unregulated country and regional areas of Victoria.

Concerns regarding the use of notified fee information would only be realised if the fees are made public. As a result, we propose the fee notification data not be published on a

public website. Rather, VicRoads would report annually on trends and aggregated/anonymised information relating to fees in the unregulated area.

Finally, the Commission has considered the VACC's alternative proposal of an annual survey being undertaken to collect fee information.<sup>172</sup> The Commission considers information on fees is only useful if it captures all unregulated accident towing operators. We do not believe the necessary information can be captured in an annual survey as suggested by the VACC. Our experience over a number of reviews of accident towing fees (namely our 2005-06 and 2009-10 reviews) is of a very low survey response rate when surveying industry participants. The benefits of fee notification must stem from coverage across all unregulated operators – operators charging unreasonable fees will simply choose not to respond to a survey.

For these reasons, it is the Commission's view that monitoring of fees (via fee notification) is in the long-term interests of consumers.

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<sup>172</sup> VACC submission to Draft Report, 17 November 2015, p. 16.

## 5.4.6 FINAL RECOMMENDATION

We recommend the introduction of accident towing fee notification for the unregulated area.

### **Final recommendation 9: Fee regulation — unregulated area (fee notification)**

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 in the unregulated area notifying VicRoads of their accident towing fees schedule (excluding salvage)
- compliance with notified maximum fees should be made a licence obligation for each operator
- fees will be kept by VicRoads on a confidential internal database
- VicRoads to publish only aggregated and anonymised information on accident towing fees in the unregulated area in its annual report to better inform stakeholders on fee outcomes. The annual report should also include information on any investigations and complaints relating to unreasonable fees being charged



# 6 CONTROLLED AREA BOUNDARY

*This chapter considers the appropriateness of the controlled area boundary and approaches to amending the boundary.*

## 6.1 INTRODUCTION

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) (see figure 6.1).

The controlled area was established in 1983. The boundary defines the area where the 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.



Wallan Towing stated 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.<sup>173</sup>

The VACC supported criteria such as population density, traffic flow information and the number of accidents to set boundaries.<sup>174</sup>

The Insurance Council supported reviewing allocation boundaries as metropolitan Melbourne expands.<sup>175</sup> Similarly, IAG believed that the existing allocation boundaries were reasonable but would need to be reconsidered to account for continued urban expansion of Melbourne.<sup>176</sup>

Suncorp considered 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.<sup>177</sup>

### **6.3 COMMISSION'S DRAFT ANALYSIS — IS THE CURRENT BOUNDARY APPROPRIATE?**

Before examining whether the controlled area boundary is appropriate, it is useful to first explain why the controlled area is needed. The controlled area boundary defines where the accident allocation scheme applies, and it also defines the area where accident towing fees are set by the Minister rather than set by operators (subject to the condition that the fees are 'reasonable').

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<sup>173</sup> Wallan Towing submission, 18 November 2014, p. 1.

<sup>174</sup> VACC submission, 28 November 2014, p. 6.

<sup>175</sup> Insurance Council of Australia submission, 28 September 2014, p. 2.

<sup>176</sup> IAG submission, 28 November 2014, p. 3.

<sup>177</sup> 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.

In the Commission's view, it would be appropriate to shift the boundary inward if there is evidence that areas within the current controlled area no longer need allocation or fee regulation. 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 were 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).

Conversely, 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 could be improved by extending the boundary.

## 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. Operators now part of the controlled area will be subject to 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 about whether a shift in the boundary is warranted. However, it is clear that Melbourne has grown since the last boundary change. For example, according to the Australian Bureau of Statistics (ABS) the population of Melbourne has grown by over 20 per cent since 2004.<sup>178</sup>

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).<sup>179</sup> 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.<sup>180</sup>

We also note that the expansion of Melbourne has been formalised by other agencies:

- The 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.<sup>181</sup> Compared to the previous Plan Melbourne report, this definition has expanded the Melbourne metropolitan boundary to the east.

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

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<sup>178</sup> Australian Bureau of Statistics 2015, *Regional Population Growth, Australia, 2013-14*, table 2 Estimated residential population, statistical areas level 2, Victoria.

<sup>179</sup> 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](http://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.

<sup>180</sup> Australian Bureau of Statistics 2015, *National Regional Profile, Greater Melbourne, 2007-11*.

<sup>181</sup> This report is a strategy document designed to guide Melbourne's housing, commercial and industrial development through to 2050.

controlled area. Nor have stakeholders identified any areas within the current controlled area that should be subject to no regulation.

The Commission's draft report found that we currently do not have sufficient information or data to inform us on whether a change to the controlled area boundary is required.

### 6.3.2 STAKEHOLDER COMMENTS

No additional information was submitted in response to the draft report to alter our draft conclusion.

The VACC submitted that 'VACC recommends VicRoads should not alter the boundaries given the system is working very well within the controlled area.'<sup>182</sup>

### 6.3.3 CONCLUSION

At this time, there is insufficient market-based evidence (data) to support a shift of the controlled area boundary.

## 6.4 COMMISSION'S DRAFT REPORT ANALYSIS — A FUTURE PROCESS FOR AMENDING THE CONTROLLED AREA BOUNDARY

While we are not recommending a change to the controlled area boundary, 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.

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<sup>182</sup> VACC submission, 17 November 2015, p. 17

**TABLE 6.1 USEFUL DATA TO INFORM FUTURE BOUNDARY CHANGES**

| <b>Data</b>                      | <b>Description</b>  |
|----------------------------------|---|
| Accident towing fees             | Would fees remain reasonable if the boundary were shifted; 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; 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 would require 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, to reflect '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..

The Commission's Draft Recommendation 10 was that VicRoads should establish the primary purpose of the controlled area boundary. The Commission noted that it was unclear whether the boundary was intended to reflect the market for accident towing services (market based) or whether its purpose was 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'.

## 6.5 STAKEHOLDER COMMENTS ON DRAFT RECOMMENDATION 10

A number of stakeholders supported Draft Recommendation 10 and submitted that it was important for boundaries to adjust as Melbourne grows. For example:

*The ICA supports the ongoing review of the boundaries of the controlled area to ensure that, as suburban Melbourne expands, boundaries are adjusted accordingly.*<sup>183</sup>

*Suncorp supports a clearer mechanism for defining regulated boundaries. As metropolitan Melbourne expands, we have observed a range of issues just outside regulated boundaries.*<sup>184</sup>

The IAG expressed support for Draft Recommendation 10, and submitted:

*Due to the continued expansion of population growth, regular analysis should be conducted by VicRoads and analysed to promote improvements to towing services.*<sup>185</sup>

VACC and Suncorp stated that a geographic based definition was most appropriate:

*The primary purpose of the controlled area boundary is intended to reflect a geographic area defining metropolitan Melbourne (geographic based) and should remain so.*<sup>186</sup>

*Suncorp supports a geographic based definition as we believe this would be the simplest to define and keep current over time.*<sup>187</sup>

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<sup>183</sup> ICA submission to Draft Report, 4 November 2015, p. 4.

<sup>184</sup> Suncorp submission to Draft Report, 30 October 2015, p. 7.

<sup>185</sup> IAG submission to Draft Report, 29 October 2015, p. 6.

<sup>186</sup> VACC submission, to Draft Report, 17 November 2015, p. 17

<sup>187</sup> Suncorp submission to Draft Report, 30 October 2015, p. 7.

The VACC and ATI identified that increased transparency was required around VicRoads definition of the boundary:

*VACC believes greater transparency is required in the method(s) used to define and amend the boundaries and allocation zones. In this regard, VicRoads should publish draft method(s) for defining and amending boundaries and allocation zones for public comment before making a final decision.*<sup>188</sup>

The ATI submitted that:

*No explicit criteria for determining how to revise allocation zone boundaries have been established in regulation and none are known to exist in other formal policies or internal documents. Discussion with former VicRoads staff indicates that boundary changes are typically made by VicRoads staff without reference to any specific criteria and, in fact, simply reflect subjective judgements, often exercised by individuals with little or no consultation.*

*This suggests the potential for a policy process which sought to identify objectives and operational principles to be used in considering revisions to allocation zones to facilitate the achievement of significantly improved outcomes. Adoption of key principles in a regulatory context, along with the identification of a formal process to be followed would ensure that stakeholders had an opportunity to be heard on this issue. This would improve both accountability and, consequently, consistency in decision-making.*<sup>189</sup>

The VACC added that clarity is required when using ABS geographic definitions:

*VACC recommends the ESC ask VicRoads to use and make clear their use of Government census geographic based classifications from the ABS, either the Melbourne Urban Centre Locality (UCL), Melbourne Significant Urban Area (SUA) or Greater Capital City Statistical Areas (GCCSAs). None of these include Geelong within their boundary. VACC understands the GCCSA is the broadest*

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<sup>188</sup> VACC submission to Draft Report, 17 November 2015, p. 17.

<sup>189</sup> Patten Robins submission on behalf of Accident Towing Industry (ATI), 16 November 2015, p. 41.

*geographical boundary designed to represent the functional extent of each of the eight state and territory capital cities. They replace the current Capital City Statistical Divisions and will provide a stable definition for these cities which will be used for the output of a range of social and economic survey data.*<sup>190</sup>

## 6.6 COMMISSION'S ANALYSIS

The comments received in response to Recommendation 10 reveal that there is some dissatisfaction with existing processes used to set the controlled area boundary.

The key requirement sought from VicRoads (as the industry regulator and boundary setter) is greater transparency about its policy objectives, methods and principles used to set the boundaries.

On the question of whether the boundary setting should reflect a geographic basis or rely on specific data analysis, support tended to be stronger for the geographic approach (that is, linking the boundary to ABS defined locations).

A market approach would rely on data collection and analysis (relating the identification of boundary problems and an understanding of the consequences of changes) and so imposes higher regulatory costs. However, it would also be more targeted towards the particular conduct concerns that the controlled area regulations are designed to address. The geographic approach has the benefit of being simpler and objective (that is, it requires no subjective assessment of data by VicRoads). In both cases, there will be transitional issues that will require management as more operators are included in the controlled area.

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<sup>190</sup> VACC submission to Draft Report 17 November 2015, p. 17

## 6.7 FINAL RECOMMENDATION

The Commission maintains its draft recommendation that we consider both market and geographic definitions are relevant options to update the controlled area boundary over time. The first step towards adopting either of these approaches is for VicRoads to establish a policy objective and then to determine (and consult on) its approach to updating.

### **Final recommendation 10: Area boundaries — controlled area (purpose of boundary)**

Vic Roads 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.<sup>191</sup>

A simple queue scheme 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

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<sup>191</sup> 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](http://www.gazette.vic.gov.au/gazette/Gazettes2012/GG2012S326.pdf#page=1).

tow. Once a licence holder completes its allocated accident tow job that licence moves to the end of the queue.<sup>192</sup>

### 7.2.1 INITIAL STAKEHOLDER COMMENTS

Initial 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 DRAFT ANALYSIS OF ACCIDENT ALLOCATIONS IN THE SELF-MANAGEMENT AREA

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 found 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 attending an accident scene) outweigh its costs (e.g. impacts on operator performance and administration costs) (discussed in section 3.2.5 in the context of the controlled area scheme).

Given the above, we found that an accident allocation scheme should to continue to operate in the self-management area.

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<sup>192</sup> 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).

As with the controlled area scheme, improvements could be made to the self-management area allocation scheme. Proximity-based allocations (by allocating the accident tow to the nearest depot) could improve the efficiency of the allocation scheme by improving response and clearance times.

## 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 — 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<sup>a</sup>**  
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%   |

<sup>a</sup> 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 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.<sup>193</sup>

<sup>193</sup> 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).

## **SIGNIFICANT BENEFITS FROM PROXIMITY-BASED ALLOCATIONS**

A change to proximity-based allocations would have a significant impact on the distance of accident tows. Our analysis suggested that, based on 2014 data, total accident towing kilometres would fall from 33,941 kilometres to 17,340 kilometres and the average tow distance would fall from 21 to 10 kilometres.

Based on our analysis, proximity-based allocations have the potential to produce significant benefits in terms of improving response and clearance times, and reducing congestion, towing fees and operator costs.

## **IMPLEMENTING PROXIMITY-BASED ALLOCATIONS**

The self-management area operators played a role in implementing the area's allocation 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.

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.

### **7.2.3 STAKEHOLDER COMMENTS ON DRAFT RECOMMENDATION 11 (ACCIDENT ALLOCATIONS IN THE SELF MANAGEMENT AREA)**

#### **CONTINUATION OF SELF-MANAGED ALLOCATION SCHEME**

There was broad agreement from stakeholders that that the accident allocation scheme in the self-management area should continue; no stakeholder submitted that the scheme should be removed.

Suncorp submitted that, while it supports the continuation of the allocation scheme in the self-management area, the scheme should be accompanied by fee regulation. This is because, in Suncorp's view, an allocation scheme without pricing regulation has

guaranteed operators work in the self-managed area but provided little incentive for fee competition or improvements to service.<sup>194</sup>

## PROXIMITY-BASED ALLOCATION

Both the ATI and VACC opposed our recommendation to move progressively to a proximity-based allocations scheme in the self-management area (if operators are unable to achieve sufficient improvements to the scheme, relative to a proximity-based allocations benchmark).

Both submitters noted that operators in the self-management area had made a number of improvements to the scheme, including:<sup>195</sup>

- Improvements to processes to protect the privacy of vehicle owners.
- Cooperation with Victoria Police to establish and maintain 'Victoria Policy Authority Tow Report Books', which record important particulars and instructions relating to damaged vehicles that are towed subject to an authority issued by Victoria Police members.
- Implementation of processes for clarification of area boundaries and for ensuring that a tow truck will be despatched in all circumstances.
- Implementation of a process whereby, in the case of afterhours incidents, operators collect from the vehicle owner their particulars (i.e. phone number, name, details of vehicles) and pass these on to the tow operator to verify the accident before attending the scene. VACC noted that this process was introduced to improve safety for tow operators attending incidents, particularly late at night.

VACC and the ATI noted that these initiatives were evidence of operators' commitment to continuing improvement of the allocation scheme.

The ATI also set out a number of reasons why it considers that a move towards a proximity-based allocation scheme is unwarranted.<sup>196</sup>

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<sup>194</sup> Suncorp submission to Draft Report, 30 October 2015, pp.3, 7.

<sup>195</sup> VACC submission to Draft Report, November 2015, and p.18; ATI submission, 16 November 2015, p.44.

<sup>196</sup> Patten Robbins Lawyers on behalf of members of the Accident Towing Industry (ATI) 16 November 2015, pp29-36

1. The ATI noted that the current average clearance<sup>197</sup> time within the self-management area is 22 minutes, which it submitted was “*significantly less than that achieved in the Controlled Area...*”
2. The ATI argued that operators may be some distance from their depots (e.g. at home afterhours) when allocated a job. This means that a proximity-based allocation scheme involving allocation of jobs to the depot nearest to the accident may not necessarily result in a reduction in average distances travelled. That, in turn, may mean that the benefits associated with moving to a proximity-based allocation scheme may be smaller than the Commission has suggested.
3. The introduction of a proximity-based allocation scheme may encourage operators to relocate depots in order to maximise allocations. The ATI suggests that the costs associated with such relocations could outweigh the savings to consumers of moving to a proximity-based allocation scheme.

## 7.2.4 COMMISSION'S FINAL ANALYSIS

The Commission recognises that operators in the self-management area have made improvements to the allocation scheme, and considers that initiatives of the kind noted by VACC and the ATI are encouraging. While there may be important benefits from such improvements, the initiatives described by the submitters do not address directly the main source of improvement identified by the Commission in its draft report.

The specific improvement that the Commission identified was that average tow distances, response and clearance times would improve by moving to a proximity-based allocation scheme.

Our recommendation of moving to a proximity-based allocation scheme (if operators are unable to demonstrate improvements, e.g. by reducing average towing distances) was motivated by a desire to address that source of improvement.

In respect of the ATI's contention that the average response time within the self-management area is lower than those in the controlled area, the Commission

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<sup>197</sup> We note that ATI has referred to clearance times but we believe it is actually intending to refer to response times; that is, the time to get to the accident scene.

notes that it is currently not possible to accurately measure response times in the controlled area.

In respect of the ATI's argument against a move to a proximity-based allocation scheme (i.e. that such a scheme may encourage costly relocation of depots), the Commission agrees that such an outcome could occur. However, relocation of depots towards the regions of greatest need or demand may in fact represent an efficiency improvement (because depots would be located, on average, closer to accidents).

The lack of information about the costs of relocation against the benefits from proximity-based scheme is one of the reasons that the Commission's recommendations are not to move immediately to such a scheme but to use it as a benchmark against which improvements in the current scheme could be measured.

An alternative approach would be to allocate jobs not to the nearest depot, but to the nearest truck at the time of the accident. This would require a scheme that allows tracking in real time (e.g. via GPS) all trucks within the area. Yet another approach to addressing our original concern might be the introduction of a zoned allocation scheme (similar to the scheme that operates in the controlled area).

In other words, there may be a range of options for addressing the problem of improving the efficiency of the current scheme (i.e. by reducing average tow distance). The details of how each of those options could be implemented in practice, and their respective merits, would need to be evaluated in due course. The priority at this point is for operators in the self-management area to implement improvements to the current allocation scheme system that result in demonstrable improvements to tow distances and reductions in towing fees. In the Commission's view, the relevant, objective benchmark against which such improvements should be measured are the outcomes under a proximity-based allocation scheme.

## 7.2.5 FINAL RECOMMENDATION

The self-managed allocation scheme should continue to operate. However, we recommend that improvements to its operation, which result in lower average tow distances and reductions in towing fees, are made.

### **Final recommendation 11: Accident allocations — the self-management area (allocation improvements)**

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 sufficient improvements to the existing allocation scheme cannot be achieved, then current arrangements should be reviewed to assess whether an alternative allocation scheme would provide more efficient outcomes for drivers and vehicle owners. This could include moving to a proximity-based allocation scheme, a zoned allocation scheme or a truck-based allocation scheme.

## 7.3 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.

### 7.3.1 INITIAL STAKEHOLDER COMMENTS

In response to our Issues Paper, stakeholders disagreed about whether fees in the self-management area should be regulated. The VACC and self-management area operators did not support fee setting by the Minister for Roads. The VACC stated fees

were already regulated under the “reasonable” requirement and operators would not charge unreasonable fees as this would jeopardise their chances of winning smash repair work.<sup>198</sup>

Insurers, as significant purchasers of accident towing services, supported the extension of fee setting across the state. For example, IAG submitted 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*”.<sup>199</sup>

### 7.3.2 COMMISSION’S DRAFT ANALYSIS

In considering the regulation of accident towing fees in the self-management area, we considered:

- 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 arise from the impracticality and costs of fee negotiation, and thereby assisting drivers who have been involved in an accident to allow for the clearing of 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 would also be costs if the regulator sets fees at an inefficient level.

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<sup>198</sup> VACC submission to Draft Report, 3 December 2014, pp. 5 and 14.

<sup>199</sup> IAG submission to Draft Report, 28 November 2014, p. 3.

## FEES IN THE SELF-MANAGEMENT AREA

In assessing fees charged by self-management area operators, we considered 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 — self-management area operators charge a higher base fee 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 <sup>a</sup> | Mildura         |
|------------------------------------|------------|---------------|-------------------------|-----------------|
| Base fee <sup>b</sup>              | \$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) <sup>c</sup> | –          | \$110 – \$132 | –                       | –               |

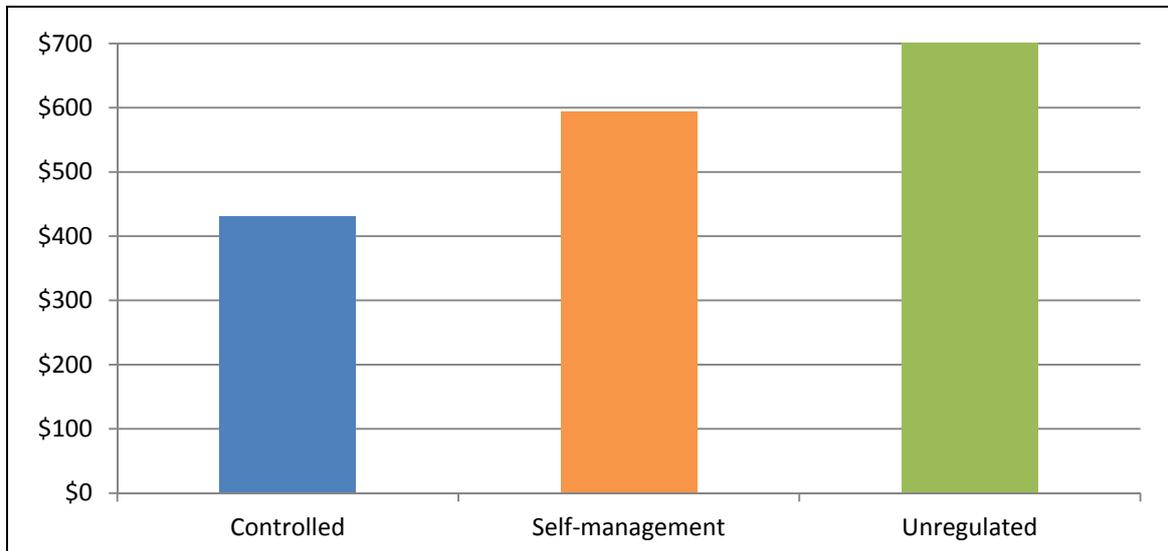
<sup>a</sup> Ballarat, Bendigo and Castlemaine. <sup>b</sup> Across different regions and operators, there may be differences in inclusions in the base fee. For example, in the controlled area the base fee includes the first 8 kilometres of travel (measured from the depot). Some, but not all operators, outside of the controlled area also provide for the first 8 kilometres in the base fee. <sup>c</sup> 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 considered two sets of accident towing fee information from insurers. The first was a sample of approximately 18,500 accident tows over the period 2013-2014 (figure 7.1).<sup>200</sup> For this sample we were 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) was 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.<sup>201</sup> After adjusting the controlled area average towing charge for differences in tow distance, the self-management area average charge of \$593 remains materially higher than the adjusted controlled area charge (\$451).

**FIGURE 7.1 AVERAGE TOTAL TOWING CHARGE (INC GST)**



Data source: Commission analysis of IAG and Suncorp data (18,500 accident tows throughout Victoria).

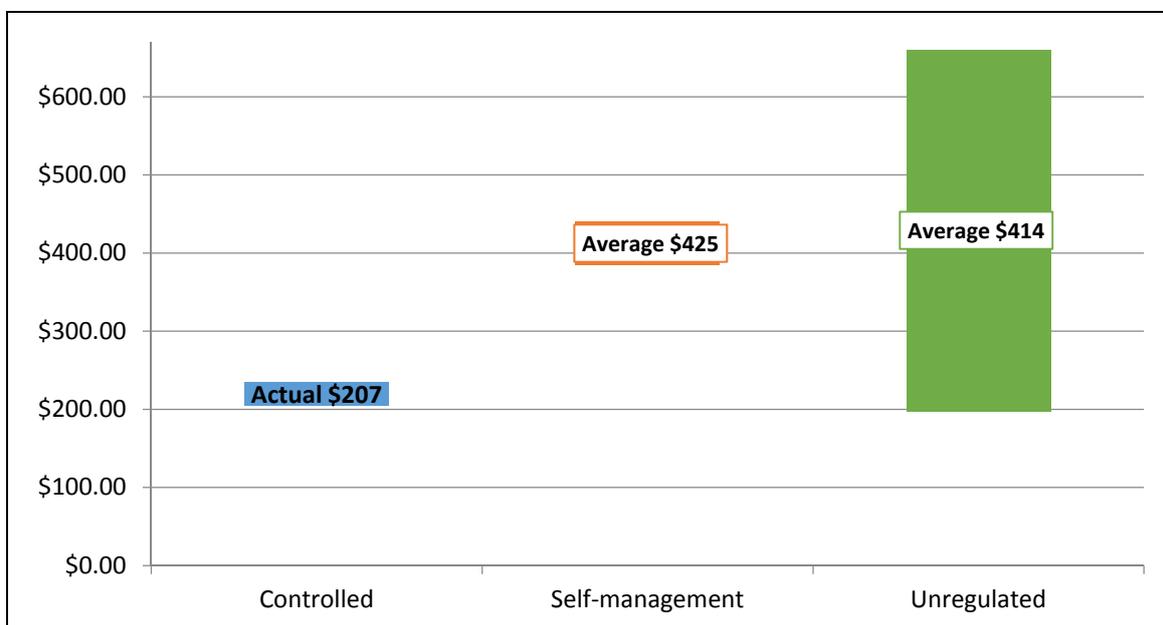
<sup>200</sup> The sample of 18,500 accident tows covers approximately a third of accident tows for each of the controlled and self-management areas, and for the unregulated area, the sample covers around 20 per cent of accident tows.

<sup>201</sup> 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 was 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 presented data on the base and distance fees.

The **base fee** data indicated the average base fee in the self-management area (\$425) was higher than both controlled area (\$207) and unregulated area (\$414) (figure 7.2). Also, in the self-management area, different operators charged a similar base fee — the fee ranges from \$385 to \$440. The base fee range charged by operators in the unregulated area was much wider (\$200 to \$660).

**FIGURE 7.2 AVERAGE BASE FEE BY AREA (\$ inc GST)<sup>a</sup>**  
2013-14



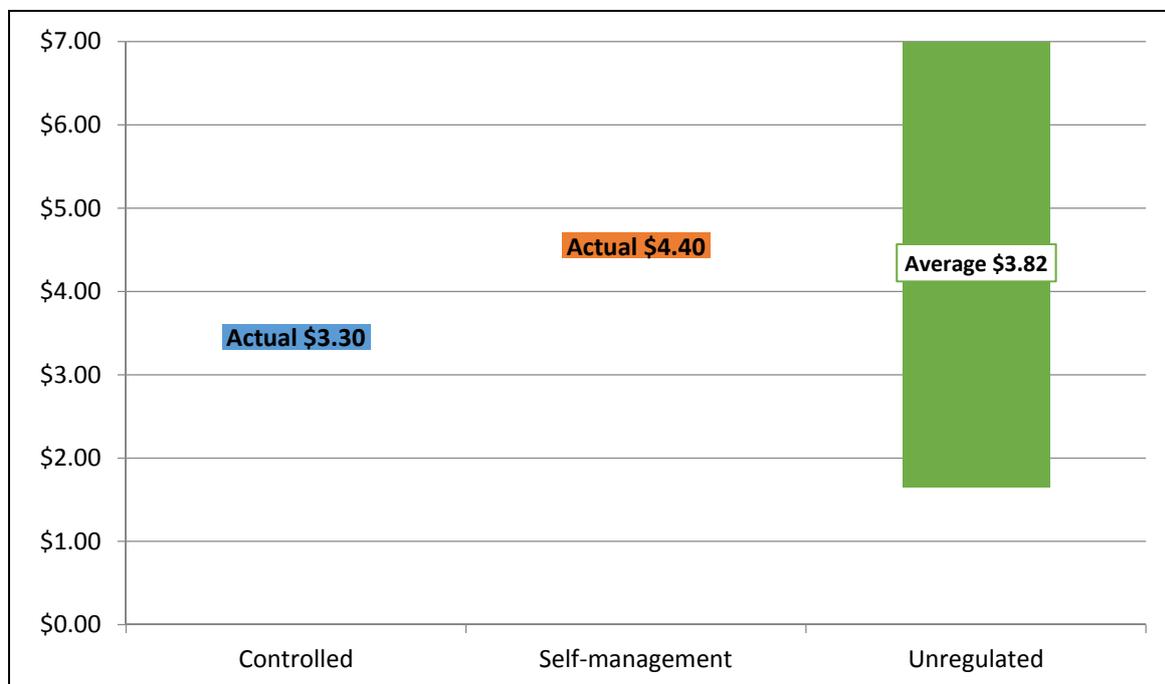
<sup>a</sup> Since controlled area fees are regulated, for this area the figure shows only the regulated fee (\$207) — there is no range for this area. For each of the self-management and unregulated areas, the figure presents the base fee range charged by operators and the average fee.

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

The average **distance rate** was 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 charged the same distance rate. In the

unregulated area the distance rate ranged 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)<sup>a</sup>**  
2013-14



<sup>a</sup> 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 indicated that accident towing fees in the self-management area were usually higher than controlled area fees. Higher fees may be justified if costs in the self-management area were also higher. To assess whether this is the case, we considered the size and scope of towing businesses — businesses of smaller size and narrower 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. In the draft report, using estimates of the average number of accident tows per truck, the Commission estimated that the average revenue per truck in the self-management (\$150,000) area exceeded significantly the average revenue truck in the controlled area (\$79,000) and in the unregulated area (\$41,000).

As discussed below (in section 7.3.3), stakeholders advised us that we had underestimated the number of trucks operating in the self-management area and, as a result, we had overestimated the average revenue per truck in the self-management area. In section 7.3.4 we address those submissions by stakeholders.

## Scope of towing businesses

The scope of a business refers to the range of markets it operates in. Two markets closely 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 was that very few businesses are only involved in accident towing. For example, we heard from operators that:

- accident towing was 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 also closely linked. For example, 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.

## IS FEE REGULATION REQUIRED IN THE SELF-MANAGEMENT AREA?

Based on the information available to us, we had a number of reasons to be concerned about the reasonableness of fees in the self-management area. These were:

- Fees were generally higher in the self-management area.
- The evidence for higher costs in the self-management area was not strong. In particular, self-management area operators had no lack of size (as measured by accident tows per truck) compared to controlled area operators, although this analysis was later challenged and revised by the Commission (as discussed below).
- The scope of accident towing businesses (covering accident towing, trade towing and smash repair) limited the extent to which fees need to be higher than the controlled area.
- Evidence from reviews in NSW and Queensland had 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 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.

### 7.3.3 STAKEHOLDER COMMENTS ON DRAFT RECOMMENDATION 12 (FEE REGULATION FOR THE SELF AMANGEMENT AREA)

A number of stakeholders from the insurance industry strongly supported the recommendation that the Minister for Roads should set accident towing and storage fees in the self-management area. These submitters included the Insurance Council of Australia,<sup>202</sup> IAG<sup>203</sup> and Suncorp.<sup>204</sup> The main reason cited by these submitters for this position is their view that towing charges in the self-management area appear to be significantly higher than in the controlled area. The submitters interpreted this as evidence of excessive charging in the self-management area.

For instance, the Insurance Council of Australia stated that:

*Average towing charges in the self-regulated area are significantly higher than in the controlled area, with little evidence of additional operating costs to justify this disparity.*

*Fee regulation is therefore required to ensure towing fees are reasonable.*<sup>205</sup>

Suncorp stated that:

*Suncorp supports the proposal to regulate fees in the Geelong self-management area. As noted in Suncorp's previous submission, average accident towing costs in Geelong are approximately twice those in the controlled area. While self-management is working well, the high fees observed in this area indicate that allocation has created an environment*

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<sup>202</sup> Insurance Council of Australia submission, to Draft Report 2 November 2015, p.5.

<sup>203</sup> IAG submission to Draft Report, 3 November 2015, p.6.

<sup>204</sup> Suncorp submission to Draft Report, 30 October 2015, p.3.

<sup>205</sup> Insurance Council of Australia submission to Draft Report 2 November 2015, p.5.

*where there is guaranteed work and little incentive for fee competition or improved behaviour.*<sup>206</sup>

By contrast, VACC opposed the recommendation to regulate fees in the self-management area on the basis that the higher average revenues of operators in the self-management area may be because those operators face higher costs than operators in the controlled area. VACC submitted that the ESC should undertake a more comprehensive analysis of operators' costs in the self-management area before fee regulation is pursued:

*VACC opposes the recommendation that the Minister for Roads and Road Safety should set accident towing and storage fees in the self-management area. The ESC has misrepresented the operators in self-management area of Geelong by only focusing on the revenue side of accident towing without considering the actual costs. VACC members have provided a cost analysis to the ESC based on the actual utilisation of a tow truck and the associated hourly costs to demonstrate that operators incur an operating loss from accident towing. Furthermore, a thorough due diligence by the ESC on the real costs and livelihood of operators in the self-management area of Geelong is required prior to Government making a shift from unregulated fees to set fees for accident towing and storage.*<sup>207</sup>

The ATI submitted that it is not, in principle, opposed to fee regulation in the self-management area. However, it considers that there are a number of practical difficulties would be encountered if fee regulation were to be implemented. Specifically, the ATI submitted that the task of determining an appropriate regulated fee structure, and updating that fee structure from time to time, would be complex and costly. The ATI also suggested that, given this complexity, there would be a risk of setting an inappropriate fee structure that imposes losses on operators. In other words, there could be scope for regulatory error that has a significant adverse economic impact on the industry.

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<sup>206</sup> Suncorp submission to Draft Report 30 October 2015, p.3.

<sup>207</sup> VACC submission to Draft Report, November 2015, p.18.

For these reasons, the ATI (like VACC) recommended that the ESC should undertake a detailed review of operators' costs in the self-management area before fee regulation is introduced:

*The ATI believes that it would be essential for any regulated fees to be arrived at following a detailed process of research on operator cost structures and the nature of the accident towing market in the SMA, equivalent to that undertaken by the ESC in respect of the Controlled Area in earlier fee reviews in relation to the Controlled Area.<sup>208</sup>*

Finally, the ATI submitted that the Commission's draft report overstates the difference in average revenues between the self-management area and the controlled area because:

- the Commission had understated the number of trucks operating in the self-management area. The ATI noted that there are in fact nine trucks operating in the area, whereas the Commission had assumed there are that only seven trucks. This point was also made to the Commission during its consultation with stakeholders in Geelong. The ATI noted that correcting this error would reduce the average revenue of operators in the self-management area from \$150,000 per truck to \$115,000 per truck (the latter figure being closer to the \$79,000 of revenue per truck in the controlled area reported by the Commission).
- the allocation scheme operating in the self-management is funded completely by operators. The ATI estimates that the self-management allocation scheme costs \$7,500 per annum to each truck.
- the incidence of bad debts in the self-management area is higher than in the controlled area. The ATI submitted that the high incidence of unpaid fees places upward pressure on fees in the self-management area.

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<sup>208</sup> Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), November 2015, p. 46

## 7.3.4 COMMISSION'S FINAL ANALYSIS

### SIZE OF TOWING BUSINESSES

In our draft report, we noted that operators in the self-management area benefit from larger size than operators in other areas. The benefits of size or utilisation should mean that operators' average costs in the self-management are lower than in other areas, all other things being equal. The Commission's view is that the most relevant measure of business size is accident tows per truck; this is because the truck is the major cost component in an accident towing business and because one truck can serve multiple licences.

We also performed some indicative analysis that suggested that the average per truck revenues of operators in the self-management area were significantly greater than in the controlled and unregulated areas. As noted in section 7.3.3, during consultations some stakeholders submitted that Commission staff had underestimated the number of trucks operating in the self-management area, which had the effect of overstating operators' revenues. We have therefore adjusted our calculations to reflect the revised data.

Data for the controlled, self-management and unregulated areas are re-presented in table 7.3. The data indicates that operators in the self-management area benefit from more tows per truck compared to the other areas, although this is now close to the controlled area tows per truck. This does not support 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 <sup>a</sup> |
|--------------------------------------|--------------------|--------------------|-------------------------------|
| Accident tows per truck <sup>b</sup> | 194.8 <sup>b</sup> | 184.9 <sup>c</sup> | ≈59.2 <sup>c</sup>            |

<sup>a</sup> We have had to estimate the number of accident tows in the unregulated area. The value presented is therefore an approximation. <sup>b</sup> Number of trucks based on submission by the ATI and on consultations with stakeholders in Geelong. <sup>c</sup> Number of trucks is estimated as the number of licences (attached and unattached) less the number of dormant licences.

With their level of activity and an average accident towing fee of \$593, and based on revised figures on the number of trucks operating in the self-management area, we estimate that operators in the self-management area are earning revenue of around \$115,000 per year from each truck. This is still significantly larger than the corresponding figures for the controlled and unregulated areas, which are \$79,000 and \$41,000 per year from each truck, respectively.

## **NEED FOR A DETAILED COST STUDY**

The Commission's view is that there is evidence to suggest that the average revenues per truck earned by operators in the self-management area exceeds the average revenues per truck earned by operators in other areas. We agree with the view expressed by some stakeholders that the form of the allocation scheme currently operating in the self-management area could potentially create an environment where competition between operators, and choice for consumers, is limited. This could, in turn, result in fees that are excessive. In these circumstances, there could be a case for regulation of fees in the self-management area.

However, the Commission accepts that the difference in revenues between areas may possibly be explained by operators in the self-management area facing higher costs than operators in other areas. Unfortunately, as part of the present review process, we have been unable to obtain sufficiently reliable information to undertake a proper assessment of the cost structure of operators in the self-management area. While we did receive some cost information from VACC, these data were not sufficiently comprehensive or detailed for us to use as part of our analysis.

In our view, what is required at this point is better evidence on the revenues and costs of operators in different areas. We agree with stakeholders that, given the scope for regulatory error and burden, it would be prudent to undertake a further study that:

- evaluates properly the revenues earned by operators in the self-management area (and compares these with revenues in other areas);
- assesses in as much detail as is feasible the costs of operators in the self-management area and in other areas to understand if any differences in revenues between regions is due to differences in costs; and

- form conclusions on whether there is evidence that the fees charged by operators in the self-management area are excessive.

It is important that if we undertake a study of this kind, it takes account of the circumstances of operators in the self-management area, because those circumstances may differ from the circumstances faced by operators in other areas. If that were the case, it would be inappropriate to simply apply the regulated fees associated with the controlled area to operators in the self-management area.

However, in order for us to understand properly any differences in circumstances faced by operators in different areas, it is important that we have engagement, support and information sharing from operators in the self-management area, as well as operators in other areas.

### **7.3.5 FINAL RECOMMENDATION – SELF-MANAGEMENT AREA FEE REGULATION**

We recommend that the Commission undertake a comprehensive study that examines the revenues and costs of operators in the self-management area, vis-à-vis those in other areas, in order to better understand whether the unregulated accident and towing fees currently charged in the self-management area are fair and reasonable.

#### **Final recommendation 12: Fee regulation — self-management area (review of fees)**

The Government should request the Commission to undertake a review to assess whether accident and towing fees in the self-management area are fair and reasonable.



### 7.4.1 INITIAL STAKEHOLDER COMMENTS

Only one submission commented on the self-management area boundary. This stakeholder suggested that if a restructure of the self-management area boundary occurs, it should consider the location of depots outside of the area. In particular, the boundary should not be set close to a depot outside the area, since this could result in accidents being attended to by a self-management area operator when another operator outside the area is much closer to the accident scene. The stakeholder submitted that the boundary should be set at the midpoint between two such depots.<sup>209</sup>

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.

### 7.4.2 COMMISSION'S DRAFT ANALYSIS ON THE SELF-MANAGEMENT AREA BOUNDARIES

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 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

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<sup>209</sup> Anonymous submission, 10 December 2014, p. 1.

should be expanded. We therefore concluded that the self-management area boundary does not need to be extended, and that the existing boundary is appropriate.

## POTENTIAL BOUNDARY ADJUSTMENTS

While we recommended that the self-management area boundary does not need to be extended, we nonetheless considered 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.

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.

### 7.4.3 STAKEHOLDER COMMENTS ON DRAFT REPORT RECOMMENDATION 13

VACC and the ATI supported the Commission's recommendation to retain the self-management area boundary.

However, the VACC did not believe it was necessary to amend the boundary at intersections:

*This would appear to reflect concerns by adjoining tow operators about missing out on a greater number of accident allocations on one side of the intersection. Unless there is evidence that this has resulted in violence amongst tow operators and distress to accident victims, VACC recommends VicRoads use appropriate published guidelines and standards to determine the boundaries of the self-management area of Geelong.<sup>210</sup>*

### 7.4.4 COMMISSION'S ANALYSIS

As is evident from the analysis in chapter 3, the key focus of the Commission in boundary determination is consumer outcomes and their interests in having accident scenes cleared in a timely manner. In this instance, the Commission considers that having boundaries that are at intersections creates unnecessary uncertainty about whether towing operators outside the self-management area can perform tows. It would be relatively straightforward to determine that the intersections either are in the self-managed area or are not.

We do, however, agree with the VACC that VicRoads should publish guidelines for amending the Geelong boundary. This is consistent with the recommendation for VicRoads to publish guidelines on boundary revising more generally.

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<sup>210</sup> VACC submission to Draft Report November 2015, p. 19.

#### 7.4.5 FINAL RECOMMENDATION — BOUNDARY

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. We conclude, however, that boundaries should not pass through intersections and recommend changes to address this.

##### **Final recommendation 13: Area boundaries — the self-management area (review of boundary)**

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. As per Recommendation 3A, VicRoads should publish rules and processes about how it will review the boundaries of the self-managed area.

# 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 *Accident Towing Services Act 2007* (the Act)'s requirement for fees to be “reasonable”, and there is no allocation schemes that applies to heavy vehicle accident tows.

The heavy vehicle accident towing market in Victoria is significantly smaller than the regular vehicle towing market. 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).<sup>211</sup>

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<sup>211</sup> 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 <sup>a</sup>  | 20              | 3             | 13               | 36       |
| Unattached licences    | 3               | 0             | 2                | 5        |
| Operators              | 5               | 1             | 11               | 17       |
| Depots <sup>b</sup>    | 5               | 1             | 11               | 17       |
| Accidents <sup>c</sup> | 529             | 38            | 229              | 796      |

<sup>a</sup> Licence numbers include unattached licences. <sup>b</sup> 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. <sup>c</sup> 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 in section 8.2.2.

## 8.2.1 INITIAL STAKEHOLDER COMMENTS

For heavy vehicle accident towing, most stakeholders commented that fees do not need to be regulated. The Victorian Automobile Chamber of Commerce (VACC) stated:

*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.<sup>212</sup>*

Similar views were stated 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.<sup>213</sup>*

Stakeholders also supported 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 submitted 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*

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<sup>212</sup> VACC submission, 3 December 2014, p. 5.

<sup>213</sup> Insurance Council of Australia submission, 28 November 2014, p. 3.

*“heavy vehicle accident allocations should also continue to be unregulated.”<sup>214</sup>*

Further, towing operators with whom we spoke noted that heavy vehicle owners have a commercial relationship with, and preference for, a particular operator. Squires Towing stated:

*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.”<sup>215</sup>*

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 WHAT WE SAID REGARDING HEAVY VEHICLE ACCIDENT TOWING**

### **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, the Independent Pricing and Regulatory Tribunal (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”*.<sup>216</sup> Similarly, the VACC stated 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”*.<sup>217</sup>

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<sup>214</sup> Insurance Council of Australia submission, 28 November 2014, p. 3.

<sup>215</sup> Squires Towing submission, 26 November 2014, p. 2.

<sup>216</sup> IPART 2014, *Review of tow truck fees and licensing in NSW*, Draft Report, October, p. 41.

<sup>217</sup> VACC submission, 3 December 2014, p. 5.

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.

### **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 considered 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.<sup>218</sup>*

Similarly, a recent inquiry in NSW also noted the towing arrangements that owners of heavy vehicles have in place. In its draft report, IPART suggested 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*

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<sup>218</sup> VACC submission, 3 December 2014, p. 5.

*mishaps. As part of good business practice, heavy vehicle transport operators should have these arrangements in place.*<sup>219</sup>

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.

### 8.2.3 STAKEHOLDER COMMENTS ON DRAFT RECOMMENDATION 14 (REGULATION OF HEAVY VEHICLE ACCIDENT TOWING)

All stakeholders that commented on the regulation of heavy vehicle accident towing are supportive of our draft recommendation that heavy vehicle accident towing and storage fees continue to be subject to the current reasonableness requirement and that allocation of heavy vehicle accident tows remain unregulated.

The recommendation was supported by IAG, Suncorp and the Insurance Council of Australia, as well as by the VACC.<sup>220</sup> For example, Suncorp states:

*Suncorp has not observed any significant behaviour or cost issues in the heavy towing market and therefore supports the continuation of the current regulation.*<sup>221</sup>

While supporting the draft recommendation, IAG suggests that *“the term “reasonableness” needs greater clarification.*<sup>222</sup>

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<sup>219</sup> IPART 2014, *Review of tow truck fees and licensing in NSW*, Draft Report, October, p. 42.

<sup>220</sup> IAG submission to Draft Report, 29 October 2015, p.6; Suncorp submission to Draft Report, 30 October 2015, p.7; ICA submission to Draft Report, 04 November 2015, p.5; VACC submission to Draft Report, 17 November 2015, p.19.

<sup>221</sup> Suncorp submission to Draft Report, 30 October 2015, p.7.

<sup>222</sup> IAG submission to Draft Report, 29 October 2015, p.6.

The Insurance Council of Australia also notes that it:

*supports a licensing regime for heavy accident towing to ensure that license holders are of good and proper character and not associated to criminal organisations.*<sup>223</sup>

## 8.2.4 COMMISSION'S ANALYSIS

Given the support for our draft recommendation, we continue to recommend that the current reasonableness requirement apply to heavy vehicle accident towing and storage fees and that allocation of heavy vehicle accident tows remain unregulated.

### **Reasonableness**

Some stakeholders suggested that greater clarification is needed regarding what is a “reasonable” charge under section 212I of the Act. We note that it is a decision of the court to determine what is a reasonable charge in any particular case, taking into account the matters listed in section 212I(2) (see box 5.1).

We note that section 212I of the Act is an offence provision, and therefore relates to actions brought by VicRoads against an operator. VicRoads may wish to provide some guidance to operators on what it believes constitutes a reasonable charge.

### **Licensing and accreditation regime**

In relation to the Insurance Council of Australia’s suggestion in regard to the licensing regime for heavy accident towing, we note that VicRoads has some discretion under industry accreditation and driver accreditation regimes to refuse accreditation. One objective of industry and driver accreditation is to ensure that members of the industry “are of appropriate character” (sections 55(b)(i) and 97(c) of the Act).

There may be some scope to improve the licensing and accreditation regime to ensure license holders (and other industry participants) are of good and proper character. However, this is a matter of industry regulation that is outside the scope of our review.

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<sup>223</sup> ICA submission to Draft Report, 04 November 2015, p.5.

Improvements to the licensing and accreditation regime should be considered by the Government and VicRoads as the industry regulator.

### 8.3 FINAL 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.

#### **Final Recommendation 14: Regulation of heavy vehicle accident towing (no regulation)**

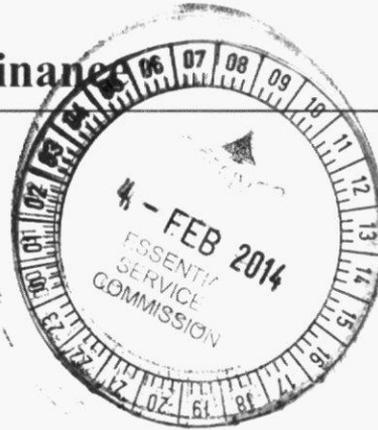
Heavy vehicle accident towing and storage fees should continue to be subject to the current reasonableness requirement in the *Accident Towing Services Act 2007* only.

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

# APPENDIX A: TERMS OF REFERENCE



Minister for Finance



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Melbourne Victoria 3001  
Telephone: (03) 8684 1101  
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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

## 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.

#### Towing for repairs is prohibited

Laws are in place to prohibit a tow truck driver or any other person from towing 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) 99542600.

#### Further information

For general enquiries and further information about accident towing in Victoria email [accident.towing@roads.vic.gov.au](mailto:accident.towing@roads.vic.gov.au) or visit [vicroads.vic.gov.au](http://vicroads.vic.gov.au)



## 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 <b>location</b> 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 <b>embedded</b> 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 <b>position</b> 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 <b>equipment</b> 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 |



# 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                      |
| <b>Total</b>       | <b>78</b>                 | <b>95</b>              |

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                |
| <b>Total</b>       | <b>46</b>        |

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.<sup>224</sup> 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.

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<sup>224</sup> 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<sup>a</sup>

|          | Licences | Operators | Avg. tows per licence per month | Share of licences (%) | Market share (%) <sup>b</sup> |
|----------|----------|-----------|---------------------------------|-----------------------|-------------------------------|
| 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                           |

<sup>a</sup> Depot numbers in this table may not be comparable to the depot numbers in table C.4. <sup>b</sup> 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.<sup>225</sup> 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

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<sup>225</sup> Notwithstanding debates that some of Uber's services may be inconsistent with current tax regulations, the technology associated with Uber shows the potential for real-time matching of service providers with users of the service.

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 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.)<sup>226</sup>

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.

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<sup>226</sup> 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**

| <b>Driver fault</b>         | <b>Insured?</b> | <b>Role of driver / insurer</b>   | <b>Oversight of smash repair costs</b>   |
|-----------------------------|-----------------|---|--|
| 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.  |

# APPENDIX F: SMASH REPAIR

*This appendix discusses issues relating to smash repairs that have been raised by stakeholders in the context of the link between accident towing and smash repair.*

## F.1 INTRODUCTION

In the course of our review, stakeholders have raised concerns in relation to affiliated smash repairers and “repair networks”<sup>227</sup>, and potential negative consequences for drivers – in particular not-at-fault drivers — from signing a repair agreement or “authority to act”<sup>228</sup>.

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.

The potential detriment to consumers occurs outside the accident towing market, in the separate but related smash repair market. Our terms of reference are limited to accident towing, and therefore the issue is outside the scope of our review.

Nonetheless, the concerns that have been raised with the Commission regarding adverse customer outcomes involving smash repairers may be worthy of further consideration.

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<sup>227</sup> The broader network of affiliated or associated businesses relating to smash repair, including: accident towing operators, smash repairers, rental car business and debt recovery agents / lawyers.

<sup>228</sup> 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.

## F.2 WHAT IS THE ISSUE THAT HAS BEEN RAISED?

Stakeholders have reported concerns with the behaviour of some accident towing operators and smash repairers. It has been alleged that some accident towing operators and smash repairers are encouraging drivers to sign repair agreements and “authority to act” agreements. In some cases, the driver may not fully understand what they are signing or the potential implications of signing the agreements.

As a result, and in some situations, it has been alleged that:

- smash repairers have charged unreasonably high repair costs, due to the lack of scrutiny from the party that is liable to pay the repair bill (the at-fault driver or their insurer, or the not-at-fault driver who believes or is lead to believe costs will be covered by someone else)<sup>229</sup>
- legal action has been taken on behalf of a driver without their knowledge, and
- the risk of unreasonable costs being sought from the driver if not recovered from the at-fault party or an insurer.

We have been informed of cases where customers (typically not-at-fault drivers) have found themselves liable for bills worth tens of thousands of dollars.

Our preliminary analysis suggested that current regulations are not always providing appropriate protections to consumers, and this may have been facilitating excessive charging for smash repair through a lack of scrutiny and oversight of repair costs.

## F.3 INITIAL STAKEHOLDER COMMENTS

In response to the issues paper, a number of stakeholders raised the issue of repair agreements in relation to not-at-fault drivers. Both IAG and Suncorp stated 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

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<sup>229</sup> 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 an accident towing operator that has financial interests to direct work to a particular repairer.

and oversight of an insurer.<sup>230</sup> If the not-at-fault driver also signs an “authority to act” agreement, this can lead to legal action being taken on behalf of the not-at-fault driver, for recovery of these repair and associated costs.<sup>231</sup> Where these recovery efforts prove unsuccessful, the driver is left to pay the costs of this legal action.

Similar submissions were received from consumer legal centres. These centres, which have represented both not-at-fault drivers and at-fault drivers in legal proceedings relating to the recovery of unreasonable costs, have expressed concerns about the practice of misleading or pressuring not-at-fault drivers.<sup>232</sup>

## F.4 WHAT WE SAID REGARDING SMASH REPAIR

In our draft report, we identified the consumer detriment that can occur, but acknowledged that there was an absence of clear evidence about the extent of the problem. Nonetheless, we identified the potential for significant detriment to individual consumers and discussed the existing consumer protections that were available to consumers. We found that the existing consumer protections were not necessarily sufficient in protecting consumers from these situations.<sup>233</sup>

Our draft recommendations were to implement a combination of measures intended to address the issue at the interface between accident towing and smash repairs. These draft recommendations were aimed at improving driver awareness and assisting drivers to make informed choices.

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<sup>230</sup> IAG submission, 28 November 2014, p. 8; Suncorp submission, 28 November 2014, p. 4.

<sup>231</sup> IAG submission, 28 November 2014, pp. 9–10; Suncorp submission, 28 November 2014, pp. 4–5.

<sup>232</sup> Footscray Legal Service and Consumer Action Law Centre consultation meeting with Commission staff (January 2015).

<sup>233</sup> ESC 2015, Draft Report, pp.108-112

## F.5 STAKEHOLDER COMMENTS ON DRAFT REPORT

Following our draft report, the industry responded to our analysis and conclusions by stating that the Commission has not demonstrated compelling evidence on the true extent of the problem. The ATI suggests that the evidence presented “provides very limited support for the proposition that significant consumer harms are occurring”<sup>234</sup>, going on to suggest that:

*...this very limited and unsatisfactory evidence must be set against the significant evidence...of a major incidence of compromised repair quality due to the conduct of the insurance companies.*<sup>235</sup>

The VACC states that it is “as equally concerned as the ESC about the issues raised by consumer groups in relation to documented consumer detriment.”<sup>236</sup> However, it noted that it “acknowledges the significance of the consumer detriment that can be caused but is unaware, like the ESC, of the extent of the problem.”<sup>237</sup>

Both the VACC and ATI went on to argue that any regulatory response to the issue should be targeted directly to the relevant industry. For example, the ATI suggests that:

*any regulatory response should directly address the industry of concern – i.e. accident repair – rather than seeking to address the problem indirectly through changes to the regulation of the accident towing industry.*<sup>238</sup>

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<sup>234</sup> Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), 16 November 2015, p.18.

<sup>235</sup> Patten Robins Lawyers on behalf of members of the Accident Towing Industry (ATI), 16 November 2015, p.19.

<sup>236</sup> VACC submission to the Draft Report, 17 November 2015, p.7.

<sup>237</sup> VACC submission to the Draft Report, 17 November 2015, p.22.

<sup>238</sup> ATI submission to the Draft Report, 16 November 2015, p.21.

The VACC went further to suggest an alternative approach “to target the source of the problem; that is, at the body repair shop”<sup>239</sup>:

*VACC believes that full and frank disclosure of the risks and potential financial obligations involved in entering into a third-party body repair recovery agreement, authority to act agreement and so forth would be a better alternative and address the lack of awareness of the not-at-fault drivers.*<sup>240</sup>

## F.6 OUR ANALYSIS

We accept that the detriment to consumers that might be arising appears to derive from actions in the smash repair industry rather than from accident towing. As we acknowledged in the draft report, we agree with the argument put forward by the industry that we do not have sufficient evidence on the extent of the issue. Anecdotally, the costs to individual consumers may be large but the costs may not be large in aggregate terms. As we noted in our draft report, it is difficult to gauge the extent of the problem, and a key challenge is to ensure that any policy response is proportionate to the problem identified.

The concerns that have been raised with the Commission regarding adverse customer outcomes involving smash repairers may be worthy of further consideration. Indeed, it appears to be accepted by all parties that there is consumer detriment occurring in some instances. We have not investigated these complaints in detail. Any regulatory response should include a more detailed analysis of the extent and magnitude of the problem, and the context within the broader markets.

It is possible that the approach proposed by the VACC may resolve many of the issues raised about consumer detriment. The VACC suggests that an appropriate regulatory response may be to require full disclosure of the risks and potential financial obligations involved in entering into a repair agreement and authority to act agreement.<sup>241</sup> This

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<sup>239</sup> VACC submission to the Draft Report, 17 November 2015, p. 26.

<sup>240</sup> VACC submission to the Draft Report, 17 November 2015, p. 26.

<sup>241</sup> VACC submission to Draft Report November 2015 p .26

disclosure should occur with the smash repairer before the vehicle owner signs any repair agreement or authority to act agreement. Nonetheless, providing more information to consumers does not always have the desired effect due to a lack of ability of consumers to comprehend or use that information.<sup>242</sup>

As such, we suggest that the Government could consider the matters raised through our review and whether this indicates a need to undertake an inquiry into aspects of the smash repair market.

The Commission is aware that there is a voluntary code of conduct for repairers<sup>243</sup> that was facilitated by the Commonwealth Government in 2006. The taskforce<sup>244</sup> that developed the code of conduct was guided by the Government's response to the Productivity Commission Inquiry Report into the Smash Repair and Insurance Industry and the Terms of Reference for the Smash Repair and Insurance Industry Implementation Taskforce. The code of conduct provides for minimum industry-wide standards, as well as an independent external dispute resolution mechanism.

We note that the code of conduct is voluntary, but may be particularly relevant in any wider review of smash repair. The code is currently being reviewed by the industry.

## F.7 CONCLUSION

The Government may wish to consider the matters raised through our review and whether this indicates a need to undertake an inquiry into aspects of smash repair.

We also suggest that the Government consider the proposal from the VACC that a mechanism be established to ensure full disclosure of the risks and potential financial obligations involved in entering into a repair agreement and authority to act agreement.

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<sup>242</sup> See Consumer Affairs Victoria, *Information Provision and Education Strategies*, Research Paper No. 3 March 2006. CAV suggests that (p. 5): "In addition, while clear information is usually essential to empowering consumers, it may not be sufficient on its own to get consumers to change their behavior and make better choices. There may be other barriers to behavioral change that cannot be overcome by information. Such barriers could include a lack of skills or opportunity to make the change, or social pressure to maintain the previous behaviour. These barriers may mean that other strategies are needed in conjunction with information to empower consumers"

<sup>243</sup> Commonwealth of Australia 2006, *Motor Vehicle Insurance and Repair Industry Code of Conduct*, June.

<sup>244</sup> The taskforce consisted of key motor insurers and repairer representative bodies, with an independent Chairperson and a Secretariat based in the Office of Small Business

### **Matter for Government consideration 2: Inquiry into the smash repair and associated industries**

The Victorian Government could consider the matters raised through our review and whether this indicates a need to undertake an inquiry into aspects of the wider smash repair market.

### **Matter for Government consideration 3: Full disclosure**

The Victoria Government should consider the proposal from the VACC that a mechanism be established to ensure full disclosure of the risks and potential financial obligations involved in entering into a repair agreement and any related agreements (such as an authority to act).