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PERIODIC REVIEW OF ACCIDENT TOWING AND STORAGE FEES

DRAFT REPORT

MAY 2013

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CHAIRPERSON'S INTRODUCTION

Given the monopoly right provided to an accident towing operator to perform an accident tow in the Greater Melbourne metropolitan area, there are market power issues associated with providing accident towing and storage services. For these reasons, accident towing and storage services are price regulated in the Greater Melbourne metropolitan area.

The *Accident Towing Services Act 2007* (the Act) sets out the regulatory arrangements for accident towing in Victoria. Under the Act, the Minister for Roads determines accident towing fees applying in the Greater Melbourne metropolitan area (referred to as the Controlled Area). The Act specifies that the Minister cannot make a determination until a recommendation has been received from the Essential Services Commission (the Commission).

In recommending an appropriate fee level, the Act requires that the Commission promote the efficient provision of accident towing services. This requires that consumers are not charged fees that are unduly high, but also that fees are set at a level that allows the industry to be financially viable.

The Commission has considered a range of information sources in recommending an appropriate fee level.

- The available information on the industry's financial viability (as captured in licence transfer values) suggests that the industry is profitable.
- Benchmarking analysis against identified benchmarks suggests that Controlled Area fees are generally significantly higher than these benchmarks.
- Benchmarking analysis against interstate regulated accident towing fees suggests that Controlled Area fees are broadly similar. Where differences exist, they can be explained by varying fee structures or regulatory regimes.

The information available to the Commission and its analysis of that information does not support a rebasing of existing fees. Instead, the Commission's draft recommendation is for existing fees to be adjusted by the annual adjustment mechanism in 2013-14.

The Commission has also considered a number of other matters directly related to its fee setting role in the Controlled Area, which are of interest to VicRoads' role as the industry regulator. The Commission's draft findings on these matters are contained in Part B of this draft report.

Submissions on the Commission's draft recommendations and draft findings are requested from interested parties by 14 June 2013.

Dr Ron Ben-David
Chairperson

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GLOSSARY

Accident Allocation Scheme	A roster based system for allocating accident towing jobs between tow truck licence holders within designated zones of the Controlled Area. Under the Accident Allocation Scheme, an accident is allocated to the licensee that has received the least number of allocations in that particular month within that particular zone.
Accident towing	The towing and storage of accident damaged motor vehicles from road accident scenes. Accident towing and storage is price regulated within the Controlled Area of Victoria.
Allocation	A monopoly right provided to a tow truck operator through the Accident Allocation Scheme to provide accident towing services at a particular accident scene. Tow truck drivers may only attend an accident scene in the Controlled Area after receiving an allocation.
Authority to tow	In the Controlled Area, a driver must receive an authorisation (the authority to tow) to perform an accident tow. The authorisation is usually given by the accident damaged vehicle owner or driver.
Benchmarking	A process of comparing performance or processes between entities, e.g. to identify opportunities for improvement and or provide pressure to improve performance by reporting on the relative performance of the benchmarked entities.
Breakdown towing	The towing of vehicles as part of the road side assistance service offered by car insurance providers and car retailers. Breakdown towing is not price regulated in Victoria.
Clearway towing	The towing of vehicles illegally parked in designated clearway zones during specified times, under contract with

	the responsible authority. Clearway towing is not price regulated in Victoria.
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.
Consumer price index (CPI)	A price index that is used to measure changes in the overall price level in Australia, by using the price of a representative basket of final goods and services. The Australian Bureau of Statistics calculates the index.
Controlled Area	A declared area consisting of the Melbourne metropolitan area and the Mornington Peninsula. Accident towing and storage fees are regulated within the Controlled Area.
Cost of service regulation	A form of economic regulation whereby the regulator reviews and determines the (efficient) costs of service provision in order to set a revenue requirement and prices. It has been applied to utility industries (e.g. electricity, gas, water) as well as transport (e.g. rail access, taxis).
Debris removal	The removal of any glass or debris caused by a road accident. Under the Accident Towing Services Regulations 2008, tow truck operators are required to perform this function at a road accident scene.
Depot	Premises from which accident tow trucks operate. In Melbourne, each depot is located in a designated zone within the Controlled Area. A single depot may be shared by multiple accident towing service businesses.
Dormant licence	A tow truck licence held by an operator but not assigned to a specific tow truck. A dormant licence still receives allocations through the Accident Allocation Scheme.
Driver	A person that drives a tow truck to accident scenes and performs the tow. Under the <i>Accident Towing Services Act 2007</i> drivers must be accredited by VicRoads.
Heavy vehicle accident towing	The towing and storage of accident damaged motor vehicles with a gross vehicle mass of four tonnes or more

	from road accident scenes.
Impound towing	The towing of vehicles that are either abandoned, derelict or otherwise causing obstruction, as arranged by the local council. Impound towing is not price regulated in Victoria.
Operator	A person that owns or operates a tow truck business. Under the <i>Accident Towing Services Act 2007</i> , an operator must be accredited by VicRoads.
Out of storage tow	Refers to the movement of a vehicle from its storage position within a depot to a location where it can be accessed by the owner or his/her insurer.
Preferred repairer schemes	The practice of insurers referring their smash repair work to preferred smash repairers.
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 price regulated, however fees charged 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 (which is subject to a regulated fee), and then is subsequently towed to another destination (the secondary tow). Secondary tow fees are not price regulated.
Self-Management Area	A declared area of Geelong and surrounding districts where a self-managed scheme is in operation. Tow truck drivers may only attend an accident scene in the Area after receiving an allocation through the self-managed allocation scheme. Fees in the area are not regulated (beyond a 'reasonable' fee requirement).
Storage	Occurs in the event the damaged vehicle is transported to the tow truck operator's depot and stored in a secure location to await repair or towing to another location.
Trade towing	General towing and storage services that are not the immediate result of a road accident, and include towing

jobs between depots. Trade towing is not price regulated in Victoria.

VicRoads

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

PART A

THE COMMISSION'S
RECOMMENDATIONS

OVERVIEW AND DRAFT RECOMMENDATIONS

Purpose of this review

The Commission's role in relation to the accident towing services industry is to advise the Minister for Roads on the pricing of regulated accident towing and storage services within the Controlled Area¹.

Under the *Accident Towing Services Act 2007* (the Act), the Commission is required to conduct a periodic review of accident towing and storage charges. The purpose of this current review is to satisfy the periodic review requirement under the Act. The Commission has no role in enforcing or administering the Act or its Regulations — this is the role of the industry regulator, VicRoads.

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

These are:

- review of the level of regulated fees and charges (section 212A (1)(a) of the Act),
- whether currently unregulated services (i.e. services for which the Minister has not made a fee determination) should be subject to fee regulation, and if so, the appropriate fee (section 212A (1)(b) of the Act), and
- review of the productivity factor in the annual fee adjustment mechanism (section 212A (1)(c) of the Act).

What is accident towing and storage?

Accident towing is the towing of accident damaged vehicles by a tow truck from an accident scene.

The provision of accident towing services is regulated in Victoria by the industry regulator VicRoads under the Act which provides that accident towing operators and drivers who are performing accident towing services must be accredited by VicRoads. Accident towing services are also price regulated within the Controlled Area of Victoria.

¹ A declared area consisting of the Melbourne metropolitan area and the Mornington Peninsula. Accident towing and storage fees are regulated within the Controlled Area.

An overview of the Victorian accident towing industry is provided in appendix B while box 1 provides a snapshot summary of the Controlled Area accident towing industry.

Box 1 **The Controlled Area accident towing industry**

The Controlled Area incorporates all of metropolitan Melbourne and goes as far as 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.

Number of licences, operators and depots

- 421 accident towing licences operate in the Area — this figure has been constant over recent years.
- 106 operators are accredited in the Area — the number of operators has increased over recent years.
- 52 depots are located within the Controlled Area — the number of depots has fallen slightly over recent years, indicating improved industry efficiency through larger depots (i.e. slightly fewer depots are associated with a constant number of licences).

Accident allocations

- over 45,000 accident allocations occurred in 2012.
- on average, each licence received 107.6 accident allocations in 2012

Structure of the draft report

The draft report is structured in two parts:

- Part A makes recommendations on the matters the Commission is to review under the legislation;
- Part B addresses a number of other matters of interest to VicRoads' role as the industry regulator which are directly related to the Commission's fee setting role in the Controlled Area. For these issues, the Commission presents its draft findings.

Draft recommendations

The Commission's draft recommendations are presented below along with a brief overview of the issues assessed. The Commission has made draft recommendations in areas covered by section 212A of the Act.

Chapters 2 to 5 in Part A of this draft report provide the detailed analysis and discussion behind the Commission's draft recommendations.

Draft recommendation 1 – Regulated accident towing and storage fees

The current level of regulated accident towing and storage fees (as presented below) is appropriate, and should continue until the annual adjustment mechanism is next applied in 2013-14.

Towing fees (including GST)

- Base fee (covers first 8 kilometres) – \$196.90
- Additional per kilometre fee beyond 8 kilometres – \$3.10
- After hours surcharge – \$67.20

Storage fees (including GST)

- Car under cover – \$15.10
- Car not under cover – \$10.10
- Motorcycle under cover – \$5.10
- Motorcycle not under cover – \$3.20

The Commission has analysed various aspects of industry performance in order to assess the need for any fee change. Key issues included licence values and changes in industry productivity. Industry statistics show that the industry has continued to consolidate its operations, leading to productivity improvements, for example through higher accident tows per licence and increased depot sizes on average, over recent years.

This analysis complements the Commission's benchmarking analysis, and suggests current regulated fee levels are reasonable.

The key service quality performance target for the industry is to respond to an accident allocation within 30 minutes. This target underpinned the establishment of the Accident Allocation Scheme and is relevant to the ongoing adjustment by VicRoads of allocation zones within the Controlled Area. While it is a requirement of the legislation that this information be notified (as soon as practicable), this is not enforced and no information is recorded on response time. The Commission has been unable, therefore, to consider changes in accident response times as a measure of industry performance.

The Commission considers that clauses 32 (6) and (7) of the Accident Towing Services Regulations 2008 should be enforced. These require tow truck drivers to ensure, as soon as is practicable, that the allocation body is notified when the tow

truck arrives at the accident scene and when the tow truck departs from the accident scene. The lack of enforcement deprives VicRoads and the Commission of useful information for its future fee reviews, and also hampers VicRoads in its adjustment of the Controlled Area boundary and allocation zones.

Assessing the level of fees

The Commission considered the cost of service and benchmarking approaches for assessing accident towing fees. An advantage of the cost of service approach is fee setting can be based on actual industry cost information. However, there are disadvantages associated with the approach, namely: risk of poor participation by industry in the survey and issues associated with data accuracy and verification. Conversely, there are benefits of benchmarking in terms of identifying more competitive and therefore efficient fee levels. The main limitation with benchmarking is finding comparable benchmarks and understanding any differences such that benchmarks can be compared. After considering the advantages and disadvantages of both approaches, the Commission has applied the benchmarking approach.

The Commission considered a number of benchmarks, namely trade, clearway, impound and breakdown towing. Each of these services is different to accident towing and some judgement was applied in comparing fees across the different services. However, the benchmarks provide an indication of fees applying in a more competitive industry environment and are a useful comparator for regulated accident towing fees.

The Commission also benchmarked Controlled Area accident towing fees against price regulated accident towing fees in other Australian states.

The Commission invites stakeholder comment on its draft recommendation for regulated fees. Additional information on competitive and regulated benchmarks is invited. The provision of industry-wide cost information, in particular changes in costs over recent years, would be welcomed and would inform the Commission's final report to the Minister in June.

Draft recommendation 2 – Productivity adjustment

The Commission recommends that a productivity adjustment of 0.5 per cent continue to apply under the annual adjustment mechanism in section 212H of the *Accident Towing Services Act 2007*.

The Commission has considered the extent of any productivity factor to be applied as part of the annual adjustment mechanism. The analysis conducted by the Commission and its consultant NERA indicate that productivity of the accident towing industry is sensitive to assumptions on the number of accident towing trucks operating in the Controlled Area. Nonetheless, the Commission considers that its

conclusions provide an appropriate balance between: (i) providing incentives for industry to continually pursue productivity gains (as businesses in more competitive environments have to do); and (ii) setting fees at a level that recover industry costs.

The NERA analysis indicates annual productivity of the accident towing industry (relative to the wider Melbourne transport industry) from 2008 to 2012 could range between 1.8 per cent and -2.3 per cent, depending on the truck number assumption. As discussed in detail in section 3.1 of this draft report, the current 0.5 per cent productivity adjustment falls in the middle of the range based on what the Commission considers to be reasonable assumptions on truck numbers, and the Commission concludes that the current figure should be retained.

Draft recommendation 3 – Regulation of basic salvage

The Commission recommends that basic salvage should be regulated, and a prescribed basic salvage fee should be introduced.

Salvage refers to the movement of an accident damaged vehicle from its resting position after an accident to a place where it may be towed by a tow truck. Salvage may be categorised into basic salvage (being salvage of a vehicle using one or more tow trucks that are not heavy tow trucks, and without using a crane) and complex salvage (being salvage which requires the use of a heavy tow truck and/or specialised equipment such as a crane).

The same rationale for regulating towing fees applies to salvage. That is, given tow truck operators have the exclusive right to attend an accident via the allocation scheme, drivers of accident damaged vehicles have no 'negotiating power' in relation to the salvage fee or even whether a salvage fee is required.

For this reason, the Commission recommends that a prescribed fee for basic salvage should be introduced.

Draft recommendation 4 – Determining the basic salvage and after hours basic salvage fees

Standard hours

For basic salvage operations undertaken in standard business hours (between 8am to 5pm Monday to Friday, except public holidays) the regulated salvage fee for 2013-14 should be **\$65 per hour (including GST)**. It should only be applied from the commencement of the salvage operation and not from the time at which the tow truck operator arrives at the scene.

This basic salvage fee should apply for 2013-14, and should not be escalated by the annual adjustment mechanism until 2014-15.

After hours

For basic salvage operations undertaken after standard business hours (between 5pm to 8am Monday to Friday, 5pm Friday to 8am Monday and midnight to midnight on public holidays) an after hours surcharge of **20 per cent** should apply to the hourly basic salvage fees for the accident towing operator and for an assistant if required.

In recommending a basic salvage fee, the Commission has applied two methodologies to guide its considerations, namely:

- (i) considering its previous analysis of salvage fees; and
- (ii) benchmarking fees against fees in New South Wales and South Australia.

Based on its analysis (discussed in detail in chapter 4), the Commission considers a basic salvage fee of \$65 per hour (including GST) for 2013-14 to be reasonable. This recommended fee has already been escalated by CPI (Melbourne, Transport) for 2013-14, and therefore the annual adjustment mechanism should not be applied to the basic salvage fee until 2014-15.

The Commission has previously recommended (in the 2010 review) that the salvage fee should be applied as a flat rate for the first hour of salvage operations, and then proportionately for additional time after the first hour. This is an administratively simple approach given most salvage operations are completed within an hour.

The Commission seeks stakeholder feedback on whether:

- ***the basic salvage fee should be applied as a flat rate (i.e. in full) for the first hour of salvage operations (regardless of whether the salvage takes less than an hour) and then applied proportionally to the time taken in excess of an hour, or***

- ***no basic salvage fee should be applied for the first 30 minutes of salvage operations and the basic salvage fee should be applied proportionally to the time taken in excess of the first 30 minutes.***

The Commission has also considered the after hours surcharge that should be applied to the salvage fee. The surcharge applied in other states that regulate accident towing fees and the surcharge in other transport industries (namely taxis) has been reviewed. From this, the Commission notes there is a strong regulatory precedent for after hours surcharges of approximately 20 per cent.

Another issue that arises is the relevant fee (and surcharge) to apply when an additional tow truck is required to undertake salvage operations. Allowing the base fee to be charged for an additional tow truck is generous for an operator, given that the base fee is intended to cover all accident towing services (e.g. towing of the accident damaged vehicle for 8 kilometres, cleaning of oil spills from the tow truck, as well as other accident towing business costs such as rent, financing costs, maintenance and accreditation). This would overcompensate the costs of the additional tow truck for services that it will not provide (particularly where multiple vehicles require accident towing and the additional tow truck is already attending the scene, and receiving the base fee, for its own accident allocation), and may provide perverse incentives for accident towing operators to call in additional tow trucks to assist with salvage operations where an additional tow truck is not justifiable.

For these reasons, the Commission is concerned that allowing the regulated base towing fee to be charged by additional tow trucks attending an accident for the purposes of salvage is inappropriate. ***The Commission seeks stakeholder feedback on what fee should apply when an additional tow truck is required to undertake basic salvage operations.***

The Commission has considered the level of the after hours surcharge that might apply for the additional truck and whether this should be a specific figure (as per the \$67.20 surcharge applying to the regulated towing fee) or a percentage figure applied to the rate for the additional tow truck. ***The Commission seeks stakeholder feedback on what after hours surcharge should apply for an additional tow truck.***

Draft recommendation 5 – Non-commercial tows

The Commission recommends the retention of the current practice of making an allowance for the costs of non-commercial tows in the regulated fee.

Non-commercial (or unpaid) tows are accident towing jobs for which a tow operator is not paid. This may occur where the owner of the vehicle refuses or neglects to pay for the service (e.g. because their vehicle is uninsured or the vehicle owner abandons the damaged vehicle at the operator's storage facility). The costs

associated with non-commercial tows are included in the regulated fees and VicRoads has requested that we consider options for the treatment of non-commercial tows as part of this review.

The Commission entertained three alternatives to address non-commercial tows: direct compensation; processes for selling abandoned vehicles; and providing an allowance in regulated fees (the current situation). Given the potential administrative costs associated with direct compensation and the absence of significant impediments to disposal under existing legislative requirements, the Commission prefers the simplicity of the current practice of making an allowance for the costs of non-commercial tows in the regulated fee.

Consultation process

The Commission has conducted a public review process by releasing an issues paper, inviting submissions on that issues paper and holding meetings with stakeholders to listen to their views. Submissions were received by the Victorian Automobile Chamber of Commerce (VACC) and their consultant, Pitcher Partners, insurance companies Suncorp Group and IAG, and an accident towing operator Advance One Towing. The Commission has considered the information submitted to date by stakeholders and conducted its own research and analysis, resulting in the draft findings and draft recommendations contained in this report.

The Commission invites submissions on this draft report and will undertake further consultations with stakeholders, before finalising its report for the Minister for Roads.

Timelines for this review

Table 1 presents the timings for the review.

Table 1 Review process

<i>Activity</i>	<i>Timing</i>
Issues paper release	21 February 2013
Submissions to issues paper close	22 March 2013
Stakeholder consultations	25 February – April 2013
Draft report release	16 May 2013
Stakeholder consultations	May – June 2013
Submissions to draft report close	14 June 2013
Final report to Minister	by 30 June 2013

Invitation for submissions

The Commission invites interested parties to comment on the draft recommendations contained in this report by sending a written submission or comments to the Commission by **14 June 2013**.² Submissions on the issues where the Commission seeks further comment are also invited (box 2). Submissions should contain supporting evidence for any claims made.

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

You can also send comments by fax (03) 9032 1303 or by mail, marked

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

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

Publication of submissions

The Commission's normal practice is to make all submissions publicly available on its website. If there is information that you do not wish to be disclosed publicly on the basis that it is confidential or commercially sensitive, this should be clearly identified in the submission.

² Part B of this report presents the Commission's draft findings. Submissions on these findings are also invited from stakeholders.

Box 2 Issues for stakeholder feedback

Assessing the level of fees

The Commission invites stakeholder comment on its draft recommendation for regulated fees. Additional information on competitive and regulated benchmarks is invited. The provision of industry-wide cost information, in particular changes in costs over recent years, would be welcomed and would inform the Commission's final report to the Minister in June.

Regulation of basic salvage

The Commission seeks stakeholder feedback on whether:

- the basic salvage fee should be applied as a flat rate (i.e. in full) for the first hour of salvage operations (regardless of whether the salvage takes less than an hour) and then applied proportionally to the time taken in excess of an hour, or
- no basic salvage fee should be applied for the first 30 minutes of salvage operations and the basic salvage fee should be applied proportionally to the time taken in excess of the first 30 minutes.

Fees for an additional tow truck required to undertake basic salvage operations

The Commission seeks stakeholder feedback on what fee should apply when an additional tow truck is required to undertake basic salvage operations, and what after hours surcharge should apply for an additional tow truck.

1 | INDUSTRY PERFORMANCE

This chapter looks at industry performance, including service levels and the industry's financial viability.

To provide context for its consideration of matters for this review, the Commission has considered the performance of the accident towing industry. In particular, the Commission is interested in the level of service provided by the industry and the level of the industry's financial viability (at the aggregate level).

As part of this analysis, the Commission has considered the level and change in licence values over recent years. Stable licence values may suggest the current level of regulated fees is sufficient and a fee increase is unnecessary, while a continuing trend of increasing licence values may suggest that fees are too high and a decrease is appropriate. Conversely, rapidly decreasing or low licence values may indicate regulated fees are too low and an increase is warranted.

1.1 Service levels

Service quality can be used as an indicator of industry performance. For example, if there is evidence of deteriorating performance, this may indicate cost cutting in the face of excessive cost pressures in the market or decreased financial viability. Conversely, if service levels are being met or improving, then it could be argued that fee levels are reasonable. However the Commission also notes that deteriorating service quality may reflect the monopoly status provided to an operator via the Accident Allocation Scheme — that is, a monopolist may have few incentives to provide high quality service since the consumer does not have the option of choosing an alternative supplier.

Response time

The primary service standard set by the industry regulator (VicRoads) is the 30 minute time limit for tow truck drivers to arrive at an accident scene once they receive an allocation. Given the allocation scheme and the zone boundaries have been designed by VicRoads in order to ensure accidents are responded to within this limit, assessment of accident response times is a key service level indicator.

The 30 minute target is set out in clause 32 (1) of the Accident Towing Services Regulations 2008 (the Regulations), which requires the tow truck driver (and the licence holder, if they are not the driver) to take reasonable steps to ensure that the tow truck arrives at the accident scene within 30 minutes. Furthermore, the driver is required to ensure, as soon as is practicable, that the allocation body is notified

when the tow truck arrives at the accident scene (clause 32 (6)) and when the tow truck departs (clause 32 (7)).

Despite the 30 minute target being the primary performance standard for the industry, data on response times is not collected as required by the Regulations. While acknowledging administrative burdens should be minimised where possible, the Commission sees great value in this data being collected as required by the Regulations. In addition to providing a measure of service levels, response time data would be relevant to the setting of zone boundaries.

Clearance times

While response times are not collected, 'clearance times' (the time taken from dispatch of an allocation job to the time taken to remove of the vehicle from the accident scene) are recorded. A tow truck driver is required to ensure, as soon as is practicable, that the Accident Allocation Centre is notified when the tow truck departs from the accident scene (clause 32 (7) of the Regulations).

Data provided from VicRoads for 2011-12 shows that around 47 per cent all accident allocations were notified as cleared within 60 minutes, and three quarters within 90 minutes.³ During the previous review, VicRoads reported that approximately 58 per cent of accident allocations were cleared within 50 minutes. This data suggests that clearance times have increased. Whether this change is related to increases in traffic congestion is unclear.

In addition to VicRoads' 2011-12 data, the RACV has provided the Commission with an alternative breakdown of clearance times for the period 2009 – 2012. Table 1.1 shows the percentage of accident allocations that were cleared within an hour, and then by 15 minute intervals up to two hours, as well as the total average clearance time for the each year. The RACV data shows that the percentage of accident allocation clearances within 60 minutes and between 60 and 74 minutes has decreased slightly between 2009 and 2012, while the percentage of allocations for all clearance time periods 75 minutes or greater has increased — this also suggests an increase in clearance times.

However the RACV data also shows that average clearance times have decreased since 2009 (and while average clearance times have increased in the last two years, they remain lower than in 2009).

While this information provides an indication of service levels, they are not the primary service level imposed on the industry. Further, the Commission notes that the clearance times reported to the RACV are likely to be unreliable, as the data is

³ Based on allocation data from VicRoads, excluding data for depots identified by the Allocation Centre as consistently failing to 'clear their jobs on time'.

reliant on the driver or the depot ringing the Accident Allocation Centre once the accident scene has been cleared.

Table 1.1 Accident allocation clearance times

<i>Clearance time</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
0 – 59 min	45.6%	44.1%	43.2%	43.2%
60 – 74 min	16.8%	16.5%	16.6%	16.5%
75 – 89 min	9.9%	9.9%	10.1%	10.4%
90 – 104 min	5.9%	5.9%	6.3%	6.3%
105 – 119 min	3.7%	3.8%	3.8%	3.9%
120+ min	18.1%	19.8%	20.0%	19.7%
Average clearance time	239 min	215 min	216 min	228 min

Source: RACV.

VicRoads and the RACV have indicated that different drivers and depots ‘clear’ their accident tows in an inconsistent way. For example, some drivers contact the Accident Allocation Centre when the vehicle is loaded on the tow truck, while others ring the Centre only after the driver has returned to the depot from a job, and in some cases allocations have remained ‘open’ for weeks. The Commission concludes that existing data on clearance times is not reliable, and improvements should be made in how response and clearance time data is collected.

Complaints

Given the data on clearance and response times is not reliable, a third indicator that may assist in evaluating service levels is the number and type of complaints received by VicRoads in relation to accident towing operators. For example, if a significant or increasing number of complaints are received, this would indicate a decrease in service levels in the industry.

Data provided by VicRoads (table 1.2) shows the number of complaints each year have moved in line with the total number of accident allocations, with the number of complaints per 1,000 allocations remaining relatively constant. This could imply that service levels are not falling.

However, the Commission notes that the VicRoads Statewide Investigation Group does not record the number of complaints (at least two per week⁴) in relation to simple matters that are resolved without requiring an investigation (e.g. where a

⁴ *Pers. communication* (phone) with VicRoads, 4 April 2013.

matter is resolved by a phone call to an operator stating that they cannot charge a particular unregulated charge).⁵ As a result, this data may not accurately reflect the total number of complaints in relation to accident towing.

Table 1.2 **Complaints in relation to accident towing**

	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Complaints	60 ^a	63	64	64
Complaints per 1,000 allocations	1.40	1.41	1.38	1.41

^a Estimate based on half-year data adjusted for full year.

Source: VicRoads Statewide Investigation Group.

Conclusion on service levels

Response time data should be collected. Clause 32 (6) of the Regulations requires drivers to ensure, as soon as is practicable, that the allocation body is notified when the tow truck arrives at the accident scene. This regulation should be enforced, and the data recorded, as the information is fundamental to the regulatory framework, including the establishment and operation of the Controlled Area, the Accident Allocation Scheme and allocation zones, and associated service levels.

Similarly, the requirement that drivers ensure, as soon as is practicable, that the allocation body is notified when the tow truck departs from the accident scene (clause 32 (6) of the Regulations) should be more strictly enforced to ensure the accuracy of the data that is recorded.

More complete data on the total number of complaints should also be recorded.

Given the lack of performance information and data, it is difficult to make any definitive conclusions on service quality. The RACV data on clearance times suggests that clearance times have increased over the last two years, while the number of complaints appears to be constant. However, as discussed above, the accuracy of these indicators is questionable.

Based on the information available, the Commission has found no conclusive evidence of deteriorating service levels in Victoria's accident towing services industry indicating that a fee increase for accident towing services may not be warranted. The Commission is also mindful that if service levels were deteriorating,

⁵ *Pers. communication* (email) with VicRoads, 4 April 2013.

this could reflect the lack of competition under the regulatory arrangements rather than fees being too low.

The Commission considers that clauses 32 (6) and (7) of the Accident Towing Services Regulations 2008 should be enforced. Recording of this response time and clearance time data will provide useful information for the Commission for future fee reviews, and will also assist VicRoads in its adjustment of the Controlled Area boundary and allocation zones.

1.2 Value of accident towing licences

In general, the value of an accident towing licence should represent the discounted present value of expected future profit streams associated with providing accident towing services. In part, this is influenced by government restrictions which limit licence supply. The number of accident towing licences has remained constant at 421 since 2007.⁶

The value of an accident towing licence can be an indicator of the relative financial viability of the industry. For example, should the financial viability of the industry increase (e.g. because of increases in regulated fees or improvements in productivity), the value of a licence would be expected to increase. By contrast, if financial viability was expected to fall (e.g. due to the issue of new licences or if fewer accidents and therefore towing jobs occur resulting in fewer tows per licence), the value of licences would be expected to decrease.

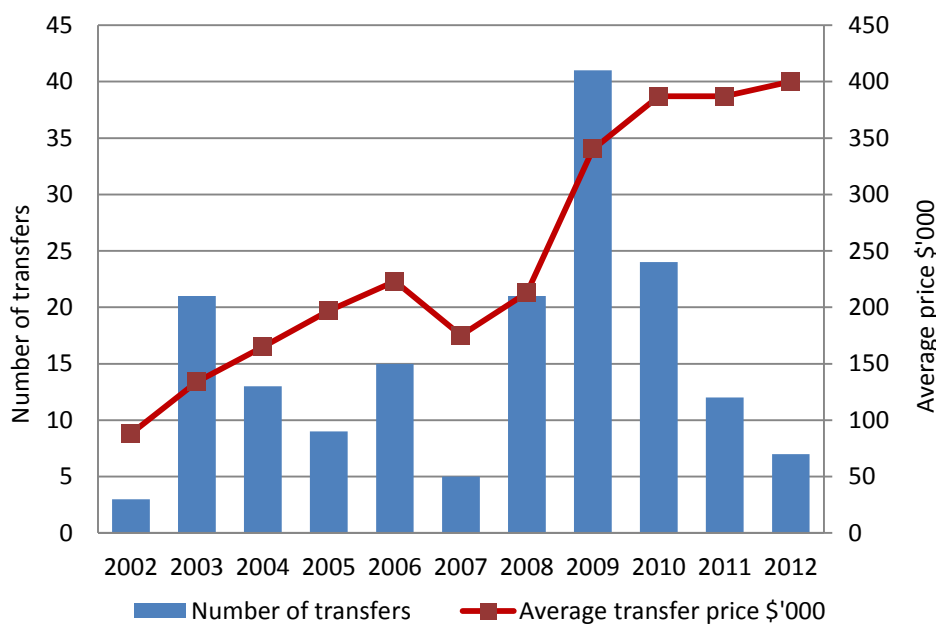
However, the exact value of an accident towing licence is difficult to assess due to the following issues:

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

⁶ Data on licence numbers provided by VicRoads.

Figure 1.1 summarises data on accident towing licence transfers in the Controlled Area since 2002. The data suggests that in the past three calendar years, the number of transfers of tow truck licences has decreased, while at the same time the average transfer price has increased. Furthermore, table 1.3 (which contains the data that was used to generate figure 1.1) demonstrates that while the maximum price has remained steady over recent years, the average and minimum prices for licence transfers have increased to their highest levels on record. (The low number of transfers in recent years means care should be taken in drawing conclusions from the data.)

Figure 1.1 Licence transfers and average transfer price



Source: VicRoads.

Table 1.3 Licence transfers within the Controlled Area

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

Note: The average price reported by VicRoads is a weighted average; however for 2009–12 VicRoads did not receive transfer values for all transactions and its sample size was too small to provide a weighted average (for these years the average price is the average of the minimum and maximum transfer prices).

Source: VicRoads.

Given a fixed number of licences, changes in their value are associated with changes in licence demand. In turn, the demand for licences is largely driven by present and future financial viability, and such increases in licence values therefore suggest that over recent years, expectations of the industry's financial viability have been high and were expected to increase.

Other factors influencing licence values

High licence values may also be influenced by other revenue sources such as unregulated fees. That is, if revenue is increased by levying additional unregulated fees, this may be capitalised in licence values, thus pushing values up.

Therefore, 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. The Commission also notes that licence values have increased and been maintained at high levels during a period where links between accident towing and smash repair revenues have largely disappeared. That is, since insurance companies have moved increasingly to preferred repairer schemes, accident towing operators have lost revenues associated with performing the smash repair after the accident tow.

1.3 Licence transfers and market entry/exit

In a competitive market, businesses that are unable to generate sufficient revenue to cover their costs will exit the market. A decrease in the number of accident towing operators (a net market exit) could indicate that the regulated fees are too low to cover the costs associated with providing accident towing. However, in considering such industry changes, it is important to consider whether decreases in the number of operators is due to industry consolidation (i.e. operators 'merging'). This could be an indication of efficiency improvements, with operators and depots increasing in size and sharing costs over a greater number of licences.

VicRoads publishes information on the number of accident towing licences issued and the number of businesses holding them (table 1.4). The data shows that while a consolidation of accident towing operators appeared to have occurred leading up to the last fee review in 2009, the number of Controlled Area operators has almost doubled since then.

VicRoads has also provided the Commission with the following breakdown of licences held by operators, as at March 2013 (table 1.5). This table shows that the majority of operators hold 5 or fewer licences.

Table 1.4 **Controlled Area operators and licences**

	<i>2004</i>	<i>2009</i>	<i>2011</i>	<i>2013</i>
No. of operators	69	57	84	106
No. of licences	432	421	421	421
Average no. of licences	6.3	7.4	5.0	4.0

Source: VicRoads.

Table 1.5 **Licences per operator (March 2013)**

Licences	<i>Operators</i>	<i>%</i>
5 or fewer	78	73.6
6 to 10	21	19.8
11 to 15	3	2.8
16 to 20	4	3.8
20 or more	0	0
Total	106	100
Minimum	1	
Average	3.95	
Maximum	19	
Total licences	421	

Source: VicRoads.

Note: Time series data on licences per operator are not kept by VicRoads.

While detailed time series information on licences per operator is not available, such information is available for depots. The available information shows that the number of depots in the Controlled Area has continued to decrease (in contrast to the number of operators), with licences held per depot continuing to increase (table 1.6). This suggests that operators are consolidating their businesses into fewer depots (with efficiency gains).

Together, these three tables show that there has been an increase in the number of operators, and a consolidation of depots, with operators operating out of shared depots to reduce costs.

In combination with the information on licence values, this increase in the number of operators and consolidation of operators within depots is consistent with an industry managing its cost levels and maintaining its financial viability (given the recently high licence values).

Table 1.6 Licence holdings of Controlled Area depots

<i>Licences</i>	<i>2004</i>		<i>2008</i>		<i>2009</i>		<i>2010</i>		<i>2011</i>		<i>2012</i>	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
5 or fewer	41	59.4	33	53.2	28	48	22	41.5	27	48.2	21	39.6
6.to 10	18	26.1	20	32.3	17	30	20	37.7	15	26.8	14	27.1
11 to 15	6	8.7	6	9.7	8	14	7	13.2	7	12.5	10	18.8
16 to 20	2	2.9	1	1.6	2	4	3	5.7	6	10.7	5	10.0
20 or more	2	2.9	2	3.2	2	4	1	1.9	1	1.8	2	4.0
Total	69	100	62	100	57	100	53	100	56	100	52	100
Minimum	1		1		1		1		1		1	
Average	6.3		6.8		7.4		7.9		7.5		8.1	
Maximum	39		39		39		39		39		39	
Total licences	432		421		421		421		421		421	

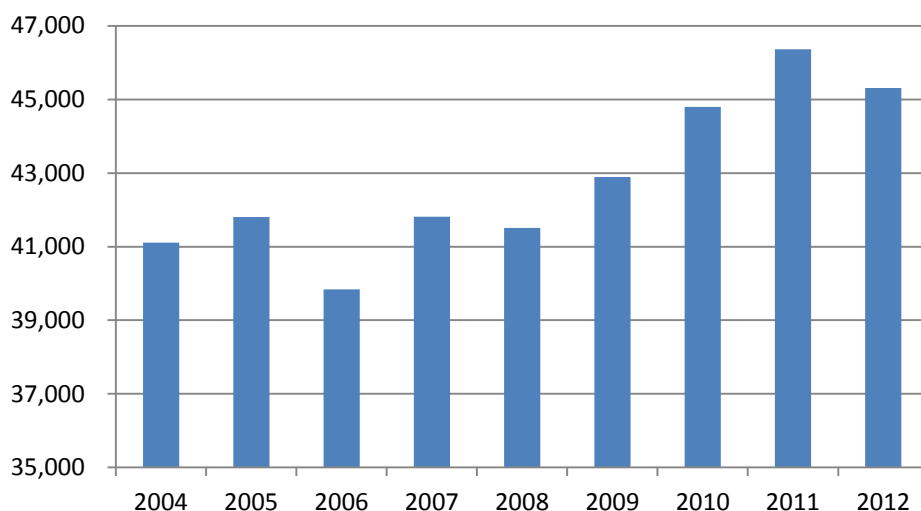
Source: VicRoads.

1.4 Demand for accident towing services

Another indicator of the industry's financial viability is the demand for accident services, and in particular the number of allocations received by tow truck operators. If demand and the number of allocations per licence decrease, this may suggest financial viability concerns for the industry (unless there are compensating efficiency gains).

Figure 1.2 shows allocations of accident towing services in the Controlled Area. Allocations have trended upwards since 2004. Allocations have increased by approximately 10 per cent since 2008.

Figure 1.2 Controlled Area accident allocations



Source: VicRoads.

A similar trend can be seen in the number of accident allocations per licence. The data provided by VicRoads indicates an average of 107.6 allocations per licence in the Controlled Area for 2012 (table 1.7).

Table 1.7 Average number of accident allocations per licence

	2008	2010	2011	2012
No. of tows	98.6	106.4	110.1	107.6

Source: VicRoads.

While a lack of demand might suggest financial viability issues for the industry, figure 1.2 and table 1.7 show that this is not the case, with demand for accident

towing services experiencing recent growth. A higher number of allocations and annual increases in regulated fees through the annual adjustment mechanism suggests increased revenues for the industry.

1.5 Summary

The analysis in this chapter suggests there has been no decreased or insufficient financial viability in the industry at the aggregate level. However, due to lack of performance data, it is difficult to make any definitive conclusions on service quality. Notwithstanding, there is no conclusive evidence of any significant widespread issues of decreased service levels in accident towing that may indicate a lack of financial viability in the industry.

The value of licences reflects expectations on financial viability (from both regulated and unregulated fees). In this regard, average licence values have increased over recent years, from \$340,000 in 2009 (the year the Commission commenced its last fee review) to \$400,000 in 2012. This potentially suggests that regulated fees could be too high or licence values also reflect the potential to levy additional unregulated fees. However, the Commission is also mindful of drawing too strong a conclusion from the limited the data.

Finally, there has been growth in the demand for accident towing services and the number of allocations per licence, which together with annual increases in regulated fees has contributed to increased regulated revenues per tow. At the same time, there has been consolidation of depots, which suggests reduced costs for providing accident towing services.

2 | ASSESSING THE LEVEL OF REGULATED FEES

This chapter discusses the Commission’s approach to resetting accident towing and storage fees. It focuses on applying a benchmarking approach, and considers competitive towing services and regulated accident towing fees in other states as benchmarks.

2.1 Options for assessing the level of regulated fees

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

In making its fee recommendation, the Commission is required to promote the efficient provision of accident towing services — in doing so the Commission’s guiding principles focus on:

- the efficient costs of service provision
- replicating the outcomes of a competitive market, and
- providing for the financial viability of the industry (at the aggregate level).

Two methodologies that could be utilised for reviewing regulated fees are:

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

Cost of service approach

Under the cost of service approach, the regulator estimates the costs of providing the regulated service. The approach is a useful method for determining the initial base for regulated fees where accurate cost information is available.

The approach was used by the Commission in its previous accident towing fee review whereby the Commission issued an industry-wide survey to operators to collect information on the costs and revenues of accident towing services. However, the Commission had difficulty in collecting information due to:

- poor participation in the survey by industry; and

- common cost issues associated with the integration of accident, trade and breakdown towing in particular, and to a lesser extent, smash repair.

As a result, in its previous review, the Commission recommended that VicRoads collect information on costs and revenues from accident towing operators in advance of the Commission's next review. Currently this information is not available.

Benchmarking

An alternative to the cost of service approach is benchmarking. Benchmarking involves comparing performance or processes between entities, e.g. to identify opportunities for improvement or provide pressure to improve performance by reporting on the relative performance of the benchmarked entities.

Benchmarking is particularly useful where the regulated service can be compared to a similar service that is subject to competition, since fees in the competitive market are more likely to reflect efficient costs. This compares to the cost of service approach where actual cost information is collected, with the regulator then required to make an assessment of efficient costs. Further, benchmarking is much simpler than a cost of service approach and would not be subject to the same issues in obtaining accurate and robust data from accident towing operators.

An important part of the benchmarking process is understanding (and where possible accounting for) any differences in the services being benchmarked. For example, regulatory frameworks requiring accident towing operators to be 'on call' add to the costs of accident towing compared to trade towing. The Commission has had to consider these issues when benchmarking services.

Potential fee benchmarks to compare to accident towing fees include:

- **trade towing fees** — fees for the towing of non-accident vehicles negotiated under private contracts
- **clearway towing fees** — fees for towing of vehicles illegally parked in designated clearway zones during specified times
- **impound towing fees** — fees for towing of vehicles that have been abandoned, are derelict or are otherwise causing obstruction
- **breakdown towing fees** — towing fees associated with the provision of breakdown services, which car insurance providers often provide to their members, and
- **regulated fees in other States** — for example in New South Wales, Queensland and South Australia.

Stakeholder comments

The VACC submits that benchmarking should be applied, with '*comparisons made to charges made in unregulated accident towing and other regulated accident*

towing'. It also states that it is willing to consider other methodologies, and that '*the rate for after-hours work should be recalculated and increased*'.⁷

IAG states that benchmarking would be difficult as accident towing is a unique industry.⁸ A similar view was expressed by Advance One Towing, which states '*benchmarking should not be used as the towing industry is one in its own. It cannot be compared to other industries*'.⁹

Suncorp Group submits a change to benchmarking is unnecessary.¹⁰

Commission's analysis

Both the cost of service and benchmarking approaches have their advantages and disadvantages. While the cost of service approach may reflect actual costs incurred by the industry, this will only be the case if accurate information is provided by the majority of industry operators.

Given the low participation by industry in the Commission's 2009 survey, the Commission is of the view that the benefits of repeating this process are likely to be outweighed by the costs, particularly when compared to other options.

On the other hand, benchmarking relies less on receiving and verifying operator information, and if good benchmarks can be identified, can provide an indication of competitive and efficient fee levels. Benchmarking a regulated service against a similar competitive service is potentially a useful and effective way of setting fees.

Considering these advantages and disadvantages, the Commission finds that a cost of service approach is unlikely to be the best approach at this time. It has therefore applied a benchmarking approach to assessing accident towing fees. To this end, the Commission engaged NERA Economic Consultants (NERA) to provide independent advice and review benchmarks for accident towing.¹¹

2.2 Trade towing fees

Trade towing refers to general towing and storage services that are not the immediate result of a road accident. For example, while the towing of an accident

⁷ VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 15.

⁸ IAG 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 3.

⁹ Advance One Towing 2013, *Periodic review of accident towing and storage fees submission*, 5 April, p. 2.

¹⁰ Suncorp Group 2013, *Periodic review of accident towing and storage fees submission*, 28 March, p. 4.

¹¹ The NERA report is available from the Commission's website – www.esc.vic.gov.au.

damaged vehicle from an accident scene and its delivery to the location requested by the vehicle owner is an accident tow (with regulated fees applying), any subsequent tow of that vehicle is a trade tow.¹²

Trade towing is not a regulated service in Victoria. Hence any business with a suitable towing vehicle is able to offer trade towing services. Since there is competition between trade towing operators, trade towing fees may offer a competitive benchmark to compare to accident towing fees.

The Commission has been able to consider trade towing fees in Victoria, New South Wales (NSW), Queensland, South Australia (SA) and Western Australia. Information has been gathered by NERA as well as through direct discussions between the Commission and operators.

NERA collected information on typical trade towing fees for a 10 to 20 kilometre tow. It found that trade towing fees are similar across Australia, and are significantly lower than the regulated fee for an equivalent tow. Typical trade towing rates are presented below (table 2.1).

**Table 2.1 Trade towing rates (2013)
10 – 20 kilometre tow distance**

<i>Jurisdiction</i>	<i>Fee range</i>
Victoria	\$110 – \$190
New South Wales	\$110 – \$180
Queensland	\$95 – \$150
South Australia	\$80 – \$120
Western Australia	\$120 – \$264
Tasmania	\$88 – \$150
Northern Territory	\$77 – \$99
Australian Capital Territory	\$70 – \$88

Source: NERA 2013, *Benchmarking accident towing fees and options for annual adjustment*, A final report for the Essential Services Commission, 8 April, p. 16

Trade towing fees are lowest in the Northern Territory and the ACT. Fees are highest in Western Australia, followed by Victoria and NSW. Trade towing fees ranged from around \$90 to \$190.

The Commission also received information on trade towing fees from discussions with Victorian operators. From these discussions, trade tows ranged from \$88 to \$160, with fees varying depending on whether the service was being provided to

¹² Secondary tows (discussed in Part B, chapter 9) are a subset of trade towing.

an insurer or not.¹³ These rates are slightly lower than the Victorian rates presented in the NERA report.

2.3 Clearway and impound towing fees

Clearway towing refers to the towing of vehicles illegally parked in designated clearway zones during specified times, and impound towing refers to the towing of vehicles that are either abandoned, derelict or are otherwise causing obstruction. Providers of these services may be contracted by the relevant authority (e.g. local council) to perform these tows.

Both clearway and impound towing fees could represent a competitive and efficient benchmark for accident towing if the selection of the towing operator was through a competitive tender process. Fees applying in 2012-13 have been presented by NERA.

Clearway towing fees

Information on charges for clearway towing is not as readily available as those for trade towing. Nonetheless, NERA was able to estimate clearway towing fees for road managers in Victoria, Sydney, Brisbane and Adelaide.

NERA estimates that clearway fees range from \$162 to \$227.¹⁴ Fees are highest in Sydney (\$227), followed by Victoria (\$180 – \$198), and lowest in Brisbane (\$162).

Impound towing fees

Each council within the Controlled Area is responsible for clearing and impounding vehicles that are abandoned, derelict or are causing obstruction. Councils charge a fee for this service, which generally covers the tow, administration, storage and a punitive component.

While councils generally publish the release fee in their annual budgets, only a few separately publish the specific towing fee. The NERA report presents impound towing fees for four councils:

- \$114 – Darebin City Council
- \$120 – Knox City Council
- \$207 – Manningham City Council, and
- \$120 – Nillumbik Shire Council.

¹³ One operator stated that insurance companies were charged \$160 for a trade tow, and also noted that insurance companies were charged \$300 if the tow was of a stolen vehicle.

¹⁴ NERA 2013, *Benchmarking accident towing fees and options for annual adjustment*, A final report for the Essential Services Commission, 8 April, p. 17.

The average fee across these councils is \$140.

For 15 other Melbourne councils who do not publish impound towing fees, NERA estimates an 'implied' towing fee based on impounded vehicle release fees.¹⁵ Implied fees ranged from \$129 – \$335, with an average fee of \$222.¹⁶

The average implied fee for the bottom quartile of the sample is \$152, which is broadly consistent with the \$140 figure for the average actual impound towing fee.

The implied fee estimates rely on assumptions on administration and storage fees, which are based on limited observations. The Commission also notes that the fee estimates include the punitive component, and hence overstate the level of the actual impound towing fees. For these reasons the Commission concludes it is prudent to give more weight to the published impound towing fee figures.

2.4 Breakdown towing fees

Many car insurance providers and car retailers offer road side assistance, whereby if a vehicle breaks down, a mobile mechanic will attend the scene and attempt to get the vehicle operating. If the vehicle cannot be started, the insurer will arrange for the vehicle to be towed to a repairer.¹⁷ Similar to trade and clearway towing fees, breakdown towing fees could provide a useful benchmark for accident towing and provide an indication of competitive and efficient fee levels.

The Commission received information on breakdown towing fees from discussions with insurers and towing operators. It appears that breakdown towing fees are provided at a discount compared to trade towing fees on the basis of the volume of work associated with the breakdown towing contract. For example, one operator stated they performed around 45 breakdown tows per week — this compares to around 8 – 10 accident tows per month per accident towing licence. The Commission also notes that breakdown towing fees may be lower because breakdown towing may typically take less time than accident towing (e.g. there is additional time to load an accident damaged vehicle due to clearing of debris from an accident scene).

Breakdown towing fees range from around \$65 – \$90 (inclusive of the first 20 kilometres), plus an additional per kilometre fee of \$3 – \$4, for tows during standard business hours. In one example, a flat surcharge of \$20 is applied for after hours work.

¹⁵ Using published impound vehicle release fees for these councils, NERA nets off an estimate of administrative and storage fees to derive an 'implied' impound towing fee.

¹⁶ NERA 2013, pp. 18–19.

¹⁷ Similar breakdown services are also provided by car manufacturers / retailers, i.e. purchase of a vehicle often comes with road side assistance for the period of the vehicle warranty, which includes breakdown towing services.

2.5 Regulated accident towing fees in other states

In addition to considering competitive benchmarks such as trade and breakdown towing, the Commission (and NERA) has also considered the regulated fees applying in other states. Specifically, fees in (New South Wales) NSW, Queensland and South Australia (SA) have been considered.

New South Wales

In NSW different regulated accident towing fees apply in metropolitan and other areas. The following considers metropolitan fees only as these are a more relevant benchmark for the Controlled Area. As well as setting accident towing and storage fees, salvage and secondary towing fees are also regulated in NSW (table 2.2). NSW fees are adjusted annually based on movements in the CPI.

Table 2.2 NSW regulated accident towing and storage fees (2012-13)

	<i>Fee level</i>
Accident towing fee (\$) ^a	264.00
Additional distance fee (\$/km beyond first 10 km)	6.40
Storage fee (\$/day) ^b	19.80
After hours surcharge (%) ^c	20%
Salvage fee (\$/hr)	62.70
Secondary towing fee (\$)	84.00

^a The base fee includes the first 10 kilometres of travel, 3 days of storage and all time associated with providing the service.

^b Applies from the fourth day of storage.

^c Standard hours are 8am to 5pm on working days. After hours is all other times. The surcharge is applied to (base) towing fee and distance fee.

Source: NERA 2013, p. 9.

Queensland

In Queensland regulated accident towing fees apply in specified areas across the state. Unlike NSW, regulated fees only apply to the accident tow and additional kilometres. Other fees such as storage and salvage are not regulated.

Table 2.3 presents the regulated fees applying in Queensland. The NERA report notes that fees in Queensland have been increasing by between 2 and 3 per cent each year since 2004-05. These increases are generally in line with CPI. ¹⁸

¹⁸ NERA 2013, p. 7. The report is available from the Commission's website – www.esc.vic.gov.au.

Table 2.3 Queensland regulated accident towing and storage fees (2012-13)

	<i>Fee level</i>
Accident towing fee (\$) ^a	293.80
Additional distance fee (\$/km beyond first 50 km)	5.85
Storage fee (\$/day) ^b	not regulated
After hours surcharge (%) ^c	na
Salvage fee (\$)	not regulated
Secondary towing fee (\$)	not regulated

^a The base fee includes the first 50 kilometres of travel, 3 days of storage and the first 60 minutes associated with providing the service.

^b Applies from the fourth day of storage.

^c No after hours surcharge applies.

Source: NERA 2013, p. 7.

It is interesting to note that in Queensland:

- regulated fees apply to all hours of the day, i.e. there is no after hours surcharge
- fees for additional storage beyond the first three days are not regulated, and
- fees for additional time beyond the first hour are not regulated, and the fee perhaps provides a perverse incentive for operators to prolong the time required to clear the accident scene.

While fees for additional storage and working time are not directly regulated, they are required to be 'reasonable'.

South Australia

In SA regulated accident towing fees apply in Adelaide and the surrounding metropolitan areas. Similar to NSW, storage fees and an after hours surcharge are also regulated. Adelaide's regulated accident towing and storage fees are presented in table 2.4. Since 2006-07 fees have been adjusted annually.¹⁹

¹⁹ NERA 2013, p. 11.

Table 2.4 Adelaide regulated accident towing and storage fees (2012-13)

	<i>Fee level</i>
Accident towing fee (\$) ^a	320.00
Additional distance fee (\$/km beyond first 20 km)	2.82
Additional working time (\$/hr)	
– first operator	46.00
– additional staff	33.00
Storage fee (\$/day)	
– covered	21.00
– uncovered	12.00
After hours surcharge ^b	
– towing fee (\$)	52.00
– distance fee (\$/km)	1.02
– operator (\$/hr)	23.00
Salvage fee (\$)	included in regulated fees
Secondary towing fee (\$)	not regulated

^a The base fee includes the first 20 kilometres of travel and the first 60 minutes associated with providing the service (whether waiting or working).

^b Standard business hours are 7.30am to 5pm on working days. After hours is all other times.

Source: NERA 2013, p. 11.

It is interesting to note that in Adelaide:

- the regulated fees include salvage, including use of equipment that would be considered complex salvage in Victoria
- unlike NSW and Queensland, the (base) regulated fee does not include an initial allowance for storage (this is the same as in Victoria, with storage fees applying from the first day of storage), and
- a fee applies for additional working time, perhaps giving the perverse incentive for operators to prolong the time required to clear the accident scene (similar to the Queensland fee structure).

2.6 Stakeholder comments

The VACC submission

The VACC supports the application of benchmarking to adjust regulated accident towing fees. The VACC submission recommends that ‘*fees for allocated towing should be increased based on the benchmark data provided in the Pitcher Partners Report*’.²⁰

In regard to benchmarking regulated fees, the Pitcher Partners report compares Controlled Area fees to regulated fees in NSW, SA and Queensland, as well as unregulated fees that apply in areas outside of the Melbourne Controlled Area.²¹

VACC submission – comparison of regulated fees

In comparing the interstate fees to Melbourne’s Controlled Area fees, much of Pitcher Partners’ analysis assumes the tow is performed in standard business hours and three days of storage is also required, and it carries out the analysis in two ways:

1. It calculates the Controlled Area fee based on the included distance in the interstate base fee.²²
2. It compares the base fee plus the fee for three days storage across the states.

Under the first approach, Pitcher Partners concludes that:

- the NSW fee is 25 per cent higher than the Controlled Area fee
- the SA fee is 61 per cent higher than the Controlled Area fee, and
- the Queensland fee is 21 per cent lower than the Controlled Area fee.

Under the second approach, Pitcher Partners concludes that:

- the NSW fee is nine per cent higher than the Controlled Area fee
- the SA fee is 58 per cent higher than the Controlled Area fee, and
- the Queensland fee is 21 per cent higher than the Controlled Area fee.

The VACC submission states the Pitcher Partners’ benchmarks should be used to increase Controlled Area fees.

²⁰ VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 7.

²¹ The Pitcher Partners Report is included as appendix one of the VACC submission, and is available from the Commission’s website.

²² This is equivalent to the Commission’s analysis as presented in table 2.6.

VACC submission – unregulated fees in Victoria

The Pitcher Partners report for the VACC compares the Controlled Area regulated towing fee (\$196.90) to fees outside of the Controlled Area. The report states that the comparison is based on tows of less than eight kilometres provided to insurance companies during standard business hours.

Based on the invoices provided to Pitcher Partners, its report states that fees outside of the Controlled Area are 240 per cent higher, and that this '*would tend to indicate that the regulated fee in the Melbourne Controlled Area is below the market benchmark*'.²³ Pitcher Partners acknowledges that market and industry characteristics are different between the Controlled Area and areas outside; however it states that '*the level of differential is so significant that it is unlikely to be attributed to these factors [level of demand, cost structures and levels of competition] alone*'.²⁴

Other stakeholder comments

Other submissions, while not necessarily commenting on benchmarking of regulated fees across Australian states, did comment on the level of existing fees. Advance One Towing states:

*Since the last review the costs of accident towing have significantly increased ...Current fees and charges... should be increased as we do not believe they are at [an] appropriate level.*²⁵

This sentiment was echoed by the VACC, who wish to see the regulated fee increased as well as the rate for after hours work.²⁶

Conversely, both IAG and Suncorp Group believe that regulated fees do not need to be increased. IAG submits '*tow accident fees are at an appropriate level and should be maintained*'.²⁷ IAG also notes that regulated fee increases have a flow-on effect and result in increases in unregulated secondary tow fees.

²³ See VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, Appendix One, p. 7.

²⁴ See VACC 2013, Appendix One, p. 7.

²⁵ Advance One Towing 2013, *Periodic review of accident towing and storage fees submission*, 5 April, p. 1.

²⁶ VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 15.

²⁷ IAG 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 2.

Suncorp Group states:

Suncorp is of the view that fees are at an appropriate level. In the last review fees were increased substantially to recognise how low they were, Suncorp supported this. This has in the main stopped operators using unregulated fees to pad out bills. This indicates to Suncorp that the fees are satisfactory.²⁸

2.7 Commission's analysis

The information gathered by the Commission and NERA allow the Commission to compare and analyse fees for competitive towing services (such as trade and breakdown towing) and regulated accident towing. The following separately compares competitive towing fees and regulated accident towing fees against existing Controlled Area fees. Fees for storage are also discussed.

Competitive towing fees v Controlled Area fees

Since trade towing and other similar services usually cover only a towing component (i.e. storage is not required), the analysis compares competitive towing fees to regulated towing fees only.

For comparative purposes, it is assumed that an accident towing distance of 15 kilometres is undertaken during standard business hours. This distance assumption is consistent with the trade towing fees compiled by NERA, and also the typical accident towing distance for the Controlled Area.²⁹ A comparison of competitive towing fees and existing Controlled Area regulated fees is presented in table 2.5.

²⁸ Suncorp Group 2013, *Periodic review of accident towing and storage fees submission*, 28 March, p. 4.

²⁹ During the Commission's previous review, a 'typical accident tow' was identified based on survey information. Amongst other things, a typical tow included 15 kilometres of towing.

**Table 2.5 Comparison of competitive and regulated fees (2012-13)
15 kilometre tow during standard business hours**

	<i>Trade</i>	<i>Clearway</i>	<i>Impound</i>	<i>Breakdown</i>	<i>Regulated</i>
Base fee	\$88–\$160	\$162–\$227	\$114 – \$207	\$65–\$90	\$196.90
Additional km	na	na	na	\$15–\$20 ^a	\$21.70 ^b
Total	\$88–\$160	\$162–\$227	\$114 – \$207	\$80–\$110	\$218.60

^a The example of breakdown towing fees provided to the Commission from an insurer noted that the base fee included the first 20 kilometres of travel. For this analysis the Commission has adopted a 'cautious' approach by assuming only the first 10 kilometres is covered by the base fee.

^b 7 kilometres x \$3.10 per additional kilometre.

The Commission makes the following observations in regard to the level of regulated fees compared to competitive towing services:

- **Clearway towing** — regulated fees are broadly consistent with the upper bound of clearway towing fees. Further, while clearway towing is a competitive service (assuming that sufficient independent operators participate in a competitive tender process), the Commission notes that clearway and regulated accident towing are similar in that operators are required to be 'on call' to respond to a request to tow a vehicle but usually for a much more limited period. The Commission also notes that information on clearway towing fees is limited and it has been difficult to get accurate information on these fees.³⁰
- **Impound towing** — regulated fees are higher than published impound towing fees, and significantly higher than the average of the published fees. Some of this difference may be explained by impound towing being less time critical than accident towing.
- **Trade and breakdown towing** — regulated fees are significantly higher than both trade and breakdown towing fees. The Commission was able to collect a reasonable amount of information on trade towing fees across Australia, and specific information on breakdown towing fees. It has more confidence in these numbers compared to information on clearway towing fees.

The Commission notes that some of the significant difference between trade towing fees and regulated fees is explained by the higher costs involved in accident towing — these higher costs relate to accident towing operators being 'on call' and therefore having to have a tow truck available at any time in case they receive an allocation. Conversely, trade towing operators are able to schedule their trade towing business. Additionally, the Commission

³⁰ See NERA 2013, p. 16.

acknowledges that trade and breakdown towing fees may be lower because such towing may typically take less time than accident towing.

However, this argument cannot be applied to breakdown towing, as these operators need to have a truck 'on call' to respond to a breakdown in a timely way. Despite this similarity, breakdown towing fees are significantly lower than regulated fees. This may be explained by operators providing a 'discount' for breakdown towing given the volume of breakdown towing work.

Response to the VACC submission

The Pitcher Partners analysis was based on information (invoices) provided to it by the VACC or directly from VACC member operators. The Commission requested this same information, however the VACC was unable to provide the full set of information to the Commission, as some of its members were concerned that the invoices may not be interpreted correctly. Because of this, it is impossible for the Commission to verify the Pitcher Partners' analysis.

From the limited set of invoices provided to the Commission, it is noted that:

- the invoices relate to a range of different tows, e.g. breakdown and accident
- some invoices include additional fees, e.g. for salvage, an after-hours surcharge, additional kilometres or storage, and
- as fees outside of the Controlled Area are not regulated, it is unclear in most invoices what tow distance has been included in the base fee.

Notwithstanding these issues, it is difficult to classify fees outside of the Controlled Area as competitive and efficient without more detailed analysis. The Commission also notes that Pitcher Partners' analysis only relates to fees charged to insurance companies. This focus is likely to overstate the average market fee level because operators have indicated to the Commission that higher fees are usually charged to insurance companies compared to members of the public.

For these reasons, the Commission considers that it cannot rely on the Pitcher Partners' analysis when considering fees in the Controlled Area. A more detailed assessment of the Pitcher Partners' report is presented in section D.1 of appendix D.

Draft conclusions – competitive towing fees v regulated fees

Regulated fees are comparable to the upper bound of clearway towing fees. This comparability is consistent with the similar 'on call' nature of these services. Apart from the upper bound for clearway towing, regulated fees are higher than the competitive benchmarks, and in particular are significantly higher than trade and breakdown towing fees. To the extent that regulation aims to promote competitive outcomes and hence fee levels, these benchmarks suggest fees in the Controlled Area do not need to be increased.

To provide additional context to the analysis of regulated fees, the following section considers the level of regulated fees in other jurisdictions.

Interstate regulated fees v Controlled Area fees

This section considers Controlled Area fees against regulated fees in NSW, Queensland and SA. Since the fee structures are different across the states, any analysis must attempt to standardise the fee calculations so as to promote a 'like with like' comparison (or at least acknowledge the differences).

The Commission calculates fees for two broad scenarios:

1. The tow occurs during normal business hours, and hence an after hours surcharge is not payable.
2. An 'average' fee is calculated which incorporates an allowance for any after hours surcharge. These calculations assume that 54 per cent of tows occur outside of normal business hours.³¹

In calculating these fee levels, the Commission's analysis:

- calculates the Controlled Area fee for a tow distance equal to the kilometres included in the other jurisdictions base fee, e.g. since the NSW base fee includes the first ten kilometres, the Controlled Area fee is calculated for a ten kilometre tow
- assumes that three days of undercover storage is required (note that fees in NSW and Queensland include three days of storage, so for these jurisdictions additional charges for storage have not been included), and
- assumes 30 minutes of working time at the scene.

This approach promotes, to the extent possible, a 'like with like' comparison. The following table presents the outcomes of this regulated fee analysis, including the percentage difference between the Controlled Area fee and the interstate fee (table 2.6). It should be noted that since the base fee for each state includes a different kilometre allowance, the calculated fees for NSW, SA and Queensland cannot be directly compared — each specific 'Vic' fee can only be compared to its corresponding interstate fee.

³¹ During the Commission's previous review, survey information from accident towing operators was used to identify a 'typical' tow. Such a tow involved 15 kilometres of towing, three days of undercover storage and a 54 per cent of occurring outside normal business hours.

Table 2.6 Comparison of regulated towing and storage fees (2012-13)

	<i>Vic</i>	<i>NSW</i>	<i>%</i>	<i>Vic</i>	<i>SA</i>	<i>%</i>	<i>Vic</i>	<i>Qld</i>	<i>%</i>
Standard	\$248	\$264	-5.9	\$279	\$383	-27.0	\$372	\$294	26.8
Average	\$285	\$293	-2.7	\$316	\$424	-25.5	\$409	\$294	39.1

The analysis indicates that Controlled Area fees are lower than those in NSW and SA, but are higher than Queensland fees.

- Controlled Area standard fees are 5.9 per cent lower than NSW fees or only 2.7 per cent lower under the average calculation.
 - Similar regulated fees between Sydney and Melbourne may be reasonable given their similar populations and traffic densities, and hence operational and cost pressures.

It is also noted that the regulated fee structures have similar inclusions, e.g. included kilometres (8 compared to 10) and all work time involved in the tow.

 - NSW fees being slightly higher than Controlled Area fees may reflect differences in regulatory regimes, industry costs and industry structures. For example, Victorian operators in the Controlled Area are effectively given a guaranteed income stream via the Accident Allocation Scheme, which contrasts to NSW where an allocation scheme does not operate.
- Controlled Area standard fees are 27 per cent lower than SA fees, or 25.5 per cent lower under the average calculation.
 - Comparisons with SA fees are problematic because an allowance for salvage is included in SA fees.
- Controlled Area standard fees are 26.8 per cent higher than Queensland fees, or 39.1 per cent higher under the average calculation.
 - The Queensland fee structure includes the first 50 kilometres of the tow. Comparisons with Queensland may be problematic because few tows in the Controlled Area are likely to be 50 kilometres in length. As noted, in its last fee review, the Commission identified that a typical tow is 15 kilometres in the Controlled Area.

Applying the analysis to a 'typical' tow

For completeness, the Commission has also repeated the analysis for the 'typical' tow as identified during the Commission's previous fee review. For this analysis regulated fees are calculated for a 15 kilometre tow. This approach is less of a 'like with like' comparison, since the base fees for SA and Queensland include a towing distance in excess of 15 kilometres. Nonetheless, the approach complements the

analysis in table 4.6 and provides further insight into the relative level of regulated fees in the Controlled Area.

The following presents the outcomes of the Commission’s ‘typical’ regulated fee analysis (table 2.7). Since the fees are calculated for the same towing distance (15 kilometres) for all states, the fees for each state can be compared (unlike the analysis in table 2.6).

Table 2.7 Comparison of regulated towing and storage fees for a ‘typical’ tow (2012-13)

	<i>Vic</i>	<i>NSW</i>	<i>%</i>	<i>SA</i>	<i>%</i>	<i>Qld</i>	<i>%</i>
Standard	\$264	\$296	-10.8%	\$406	-35.0%	\$294	-10.2%
Average	\$300	\$328	-8.5%	\$447	-32.8%	\$294	2.2%

The results for the ‘typical’ tow are consistent with those in table 2.6 for NSW and SA. Controlled Area fees are:

- lower than those in NSW — again, higher NSW fees can reflect the different regulatory regimes and industry and cost structures that exist between NSW and the Controlled Area.
- lower than those in SA — however this comparison is skewed, e.g. because SA fees include a salvage component and the included distance in the SA base towing fee is 20 kilometres, and
- fees are now comparable to those in Queensland — however Queensland fees include the first 50 kilometres of the tow, whereas the Controlled Area fee is calculated for 15 kilometres.

NERA conducted a similar ‘typical’ tow analysis to the Commission, although with some minor variances in assumptions. The NERA analysis concluded that:

Notably, the results show that the total fee for the Melbourne Controlled Area is:

- *within 10 per cent of the average fee charged within other jurisdictions (excluding South Australia);*
- *slightly lower than the total fee in New South Wales. However tow truck operators in Victoria have a higher degree of certainty of obtaining a job because of the allocation system; and*
- *broadly in line with the total fee in Queensland.*³²

³² NERA 2013, p. 14.

Since the regulated fees benchmarked apply under different regulatory regimes, differences in regulated fee levels (as indicated in tables 2.6 and 2.7) does not immediately imply that Controlled Area fees need to be increased (or decreased) to match a specific state's fee levels. Rather, the Commission is satisfied that the differences in regulated accident towing fees can be explained by the different regulatory regimes and fee structures that apply in each jurisdiction.

Further, rather than focussing on a specific benchmark as the basis for recommending changes to Controlled Area fees, the task of the Commission has been to consider the reasonableness of both the competitive and regulated fee benchmarks, and in conjunction with other industry performance information, determine an appropriate fee level.

How have regulated fees changed over recent years?

The change in the regulated base towing fee and additional kilometre fee over recent years has also been considered (table 2.8). This analysis ignores the different basis for each of the fees (e.g. different included kilometres in the base towing fee and an allowance for salvage included in SA fees).

Fees are presented from 2009-10, which is the period before the previous Commission recommendation on accident towing fees. Percentage changes in fees have been calculated from 2009-10 and from 2010-11 — the presentation illustrates how the timing of rebasing fees can impact on comparisons between the states.

For the period 2009-10 to 2012-13, the fee information indicates that increases in Controlled Area fees have only been outstripped by SA, with NSW and Queensland having the lowest level of fee increases. However, fee increases since 2010-11 (i.e. after the rebasing of Controlled Area fees following the Commission's 2010 review) have been lowest in the Controlled Area. At least some of this difference is explained by the annual adjustment mechanism in the Controlled Area which includes a productivity adjustment factor. As the NERA report mentions, fees in other states have usually been adjusted by CPI only.

- For the base towing fee, the Controlled Area fee increased by 16.9 per cent between 2009-10 and 2012-13, compared to 27.5 per cent in SA and only 8.1 per cent in NSW and Queensland.
 - The annual average increase was 8.4 per cent in SA, 5.3 per cent in the Controlled Area, and 2.6 per cent in NSW and Queensland.
- In contrast, between 2010-11 and 2012-13, the Controlled Area base towing fee increased by 3.9 per cent, compared to 9.6 per cent in SA, 6.2 per cent in NSW and 4.9 per cent in Queensland.
- For the additional kilometre fee, the Controlled Area fee increased by 17.0 per cent between 2009-10 and 2012-13, compared to 19.5 per cent in SA, 8.1 per cent in NSW and 7.3 per cent in Queensland.

- The annual average increase was 6.1 per cent in SA, 5.4 per cent in the Controlled Area, 2.6 per cent in NSW and 2.4 per cent in Queensland.
- In contrast, between 2010-11 and 2012-13, the Controlled Area additional kilometre fee increased by 3.3 per cent, compared to 10.6 per cent in SA, 6.1 per cent in NSW and 4.5 per cent in Queensland.

Table 2.8 Base towing and additional kilometre fees (\$) For tows during standard business hours

	<i>Vic</i>	<i>NSW</i>	<i>SA</i>	<i>Qld</i>
Towing fees				
2009-10	168.45	244.20	251.00	271.80
2010-11	189.50	248.60	292.00	279.95
2011-12	194.40	255.20	298.00	290.05
2012-13	196.90	264.00	320.00	293.80
Total change				
2009-10 – 2012/13	16.9%	8.1%	27.5%	8.1%
2010-11 – 2012-13	3.9%	6.2%	9.6%	4.9%
Annual avg. change				
2009-10 – 2012/13	5.3%	2.6%	8.4%	2.6%
2010-11 – 2012-13	1.9%	3.1%	4.7%	2.4%
Additional kilometre fees				
2009-10	2.65	5.92	2.36	5.45
2010-11	3.00	6.03	2.55	5.60
2011-12	3.10	6.18	2.65	5.80
2012-13	3.10	6.40	2.82	5.85
Total change				
2009-10 – 2012/13	17.0%	8.1%	19.5%	7.3%
2010-11 – 2012-13	3.3%	6.1%	10.6%	4.5%
Annual avg. change				
2009-10 – 2012/13	5.4%	2.6%	6.1%	2.4%
2010-11 – 2012-13	1.7%	3.0%	5.2%	2.2%

Response to the VACC submission

The Commission has considered the benchmarking applied by Pitcher Partners comparing Controlled Area fees to interstate regulated fees, and makes the following comments on the Pitcher Partners' analysis:

- under the first approach applied by Pitcher Partners:

- there are some mathematical errors in the analysis which overstate the degree to which Controlled Area fees are lower than NSW and SA fees
- the Pitcher Partners' analysis does not consider or acknowledge that SA fees include an allowance for salvage, and
- under the second approach applied by Pitcher Partners:
 - the analysis is not a 'like with like' comparison — this is not considered or acknowledged.

A more detailed assessment of the Pitcher Partners' analysis is presented in section D.1 of appendix D.

Conclusions – interstate regulated fees v Controlled Area fees

As noted above, comparison of regulated fees across Australian states is made difficult by the fee structures having different inclusions and varying regulatory regimes. To the extent possible, the Commission's analysis has attempted to standardise the comparisons or otherwise highlight areas where standardisation has not been possible.

The Commission also notes there are reasons why regulated fees between states could differ, for example different:

- regulatory arrangements and obligations (presently and historically), e.g. in Victoria there is greater certainty of Controlled Area operators performing accident tows given the Accident Allocation Scheme, whereas there is no such scheme in NSW
- cost and industry structures (e.g. number of operators and trucks)
- number of accident towing jobs per licence (or truck), and
- opportunities to earn additional revenue from non-regulated towing services.

The Commission is satisfied that differences in regulated fees are explained by these factors. For example, the Commission's analysis shows that existing Controlled Area fees are lower than those applying in NSW and SA. However, Controlled Area operators have a guaranteed income stream via the Accident Allocation Scheme (each licence received on average 108 allocations in 2012) — no such scheme operates in NSW to provide operators a guaranteed income stream. In this regard, Controlled Area operators have lower costs of getting accident towing jobs.

In relation to SA fees, much of the difference is likely to be explained by SA fees including an allowance for salvage (including complex salvage) and a higher tow

distance in the base fee (20 kilometres compared to eight in the Controlled Area). It is also noted that the accident allocation system operating in Adelaide requires an operator to have (at least) one truck for each position on the roster.³³ This differs to the Controlled Area, where operators are able to have multiple licences (which are equivalent to spots on the allocation system) per vehicle. This is likely to lower the costs of providing accident towing services in the Controlled Area compared to Adelaide.

Storage fees

In order to assess the reasonableness of existing fees compared to other states, the preceding analysis considered accident towing and storage fees together (the after hours surcharge was also considered as part of the 'average' fee analysis). The Commission considers that such an approach, which looks to consider the overall revenue associated with an accident tow, is the most appropriate way to assess the need for any fee adjustments.

Nonetheless, for completeness, the following specifically considers storage fees.

The VACC submission

The VACC notes that storage fees are low compared to parking fees in central Melbourne, and states that storage fees should be increased. It submits:

Currently the storage fee for a vehicle under cover, in a secured location, is \$15.10 per 24 hours. Businesses that offer parking in the CBD charge \$68.00 for casual parking up to 4 hours and \$16.00 for 8-10 hours if you park during the early bird period. The rate of storage charged by towing operators is comparatively low. An increase in the regulated fee would be appropriate.³⁴

Commission's analysis

The storage fees for the Controlled Area, NSW, SA and Queensland are presented below (table 2.9).

³³ See section 27(1)(d) of the Motor Vehicles (Accident Towing Roster Scheme) Regulations 2000, South Australia.

³⁴ VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 10.

Table 2.9 Storage fees per day ^a

	<i>Vic</i>	<i>NSW^b</i>	<i>SA</i>	<i>Qld^b</i>
Covered	\$15.10	\$19.80	\$21.00	“reasonable”
Uncovered	\$10.10		\$12.00	

^a Storage fees for a car are presented. A lower fee for motorcycles is charged.

^b In both NSW and Queensland, the base towing fee includes the first three days of storage.

While there is some variability in storage fees, these differences do not appear to be significant in absolute terms — the difference between Controlled Area and SA uncovered fees is \$1.90, and for covered storage \$5.90. The difference between Controlled Area and NSW covered fees is \$4.70. The Commission notes that fees in the Controlled Area are the lowest of those regulated.

NERA was also able to collect some information on storage fees associated with clearway and impound towing. Storage fees charged by clearway road managers ranged from \$10.50 to \$37 (these examples are all interstate). Storage fees charged by councils for impound towing ranged from \$5.60 to \$40.³⁵

The VACC suggest that accident towing storage fees are lower than CBD car parking rates, and therefore should be increased. The suggestion is that CBD parking rates are a reasonable benchmark for accident towing storage fees — the Commission does not share this assessment (box 2.1).

³⁵ NERA 2013, pp. 17–19.

Box 2.1 CBD car parking rates and storage fees

For the following reasons, the Commission does not find CBD car parking rates to be a reasonable benchmark for accident towing storage fees.

First, customers of CBD car parks, based on their particular circumstances, have chosen to use those services. Further, those customers have the opportunity to compare and assess different car parking options within the CBD. They are able to make a reasonably informed decision on use of the car park. Conversely, users of accident towing storage services have not usually chosen to be involved in a car accident and choice of accident towing operator is not available.

Second, fees for CBD car parking reflect the supply and demand for CBD car spaces. Similarly, fees for accident towing storage are based on the costs of providing these services, as last determined by the Commission in its previous review using industry provided information as well as information on trade and clearway towing fees and regulated fees in other states. To the extent that accident towing operators have depots in the CBD, then these costs can be incorporated into the fee assessment. However, the Commission is not aware of any accident towing depots within the CBD.

Third, the level of storage fees has been determined in combination with the level of towing fees and the after-hours surcharge. To separately change the storage fee component based on CBD car parking rates, without reconsidering the other fee components, would result in an 'internal inconsistency' in how fees have been calculated.

Finally, the nature of the service being provided by car park operators is different to accident towing. To be a reasonable benchmark, there needs to be some broad similarity between the services being benchmarked. Trade, clearway and impound towing are more reasonable benchmarks compared to CBD car parks.

Conclusions – storage fees

The available information suggests there is a reasonably wide range in storage fees, when considering both the fees set for accident towing operators and those applied by local councils as part of their clearway or impound towing activities (the range is \$5.60 to \$40 and accident towing storage fees fit within this range, rather than forming either of the upper or lower bounds).

While the Controlled Area fees are towards the lower bound of this range, the Commission has not been provided with any strong arguments or evidence that Controlled Area fees need to be increased.

Further, the Commission notes that the level of storage fees may differ for a range of reasons, e.g. size and availability of storage facilities, storage facility rental costs, frequency of clearway and impound tows and size of other fees associated with these activities, methodology for setting the fee and financial strength of the council. It is not possible to account for all of these factors in an analysis. The Commission's preference is to consider overall accident towing revenue (e.g. revenue from towing, storage and the after hours surcharge), rather than each of these components in isolation. This approach was applied during the last review, and has been applied in comparing Controlled Area fees to interstate benchmarks.

2.8 Draft recommendations on the level of regulated fees

In considering regulated accident towing and storage fees, the Commission has been able to compare the current level of fees to competitive benchmarks and interstate regulated fees.

Generally, current Controlled Area fees are significantly higher than competitive benchmarks, especially compared to trade and breakdown towing rates. Some of this difference is likely to be explained by different costs involved in service provision, so it is not expected that accident towing fees be the same as the competitive benchmarks. In regard to regulated fee benchmarks, Controlled Area fees are lower than those applying in NSW and SA, but generally higher than those in Queensland. The Commission is satisfied that these differences can be explained by varying fee structures and regulatory regimes across the states.

To the extent that regulation should aim to produce results consistent with a competitive market, then greater weight should be placed on the competitive benchmarks in setting Controlled Area fees, rather than regulated fees from other states. On this matter NERA writes:

Importantly, in our opinion information on the fees charged for comparative services provided in competitive markets (eg, trade and clearway towing, and heavy vehicle piloting and escort services) provide a more useful benchmark to assess the appropriateness of accident towing fees in Victoria than simply comparing regulated accident towing fees between jurisdictions. This is because the interaction between many buyers and sellers in these competitive markets ensures that the resultant fees are more likely to align with the underlying cost of providing the comparison service.³⁶

In making its recommendation on regulated fees, the Commission has considered the fee benchmarks, as well as the performance and financial health of the

³⁶ NERA 2013, p. 2.

industry. The available information indicates that the industry overall is financially healthy, for example given high and sustained licence values, and productivity improvements through increased depot size.

Based on this information, the Commission considers that there is no need for a rebasing of current fees. Instead, the existing process of adjusting fees using the annual adjustment mechanism should apply for 2013-14.

The Commission invites stakeholder comment on its draft recommendation for regulated fees. Additional information on competitive and regulated benchmarks is invited. The provision of industry-wide cost information, in particular changes in costs over recent years, would be welcomed and would inform the Commission's final report to the Minister in June.

Draft recommendation 1 – Regulated accident towing and storage fees

The current level of regulated accident towing and storage fees (as presented below) is appropriate, and should continue until the annual adjustment mechanism is next applied in 2013-14.

Towing fees (including GST)

- Base fee (covers first 8 kilometres) – \$196.90
- Additional per kilometre fee beyond 8 kilometres – \$3.10
- After hours surcharge – \$67.20

Storage fees (including GST)

- Car under cover – \$15.10
- Car not under cover – \$10.10
- Motorcycle under cover – \$5.10
- Motorcycle not under cover – \$3.20

3 THE PRODUCTIVITY ADJUSTMENT FACTOR

This chapter discusses the Commission's assessment of the productivity adjustment (or 'X' factor) used in the annual adjustment mechanism. It looks at productivity in the accident towing industry relative to the wider Melbourne transport industry.

3.1 Productivity adjustment – the 'X' factor

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

In monopoly markets, such as accident towing, monopolists have weak incentives to improve productivity given the lack of competition for their business. As a result, the regulator seeks to reflect the productivity incentives of competitive markets in the regulated fees. It does this through the use of a productivity adjustment (the 'X' factor), i.e. by subtracting from any proposed price increase a productivity adjustment which aims to reflect efficiency gains that accident towing operators are capable of achieving.

Section 212H of the Act sets out the annual adjustment mechanism that applies to regulated accident towing fees (between periodic fee reviews). The annual adjustment mechanism is currently based on changes in CPI (Melbourne, Transport) less a 'productivity adjustment (i.e. 'X' factor) of 0.5 per cent.

The Commission is required under section 212A (1)(c) of the Act to review and recommend a figure for the productivity adjustment.

Stakeholder comments

Stakeholders have not specifically commented on the issue of the productivity adjustment. (Comments made by stakeholders in relation to the annual adjustment mechanism more generally are noted in section 8.2 in Part B of this draft report.)

On the broader issue of industry productivity, Advance One Towing claimed that modern car manufacturing has translated into more demanding debris removal

work (i.e. more shattered plastic) which means operators now need to spend more time clearing accident scenes.³⁷

The VACC suggested that removing the single vehicle per tow restriction and allowing tow truck operators to tow two accident damaged vehicles at once, when possible, would assist productivity improvements in the industry.³⁸

Commission's analysis

The Commission's engaged a consultant (NERA) to provide advice on an appropriate productivity adjustment factor. The Commission was unable to consider the VACC's suggestion that tow trucks be permitted to carry more than one accident damaged vehicle at once as part of its analysis. This is not an issue that the Commission can make a recommendation on under the Act, but rather is a matter for consideration by the industry regulator.

NERA notes that output price indices (such as CPI) implicitly include underlying improvements in productivity.³⁹ That is, decreases in the price of inputs through productivity improvements are reflected in lower output prices, and therefore implicitly incorporated into the output price index.

Therefore, the relevant 'X' factor to be considered is the additional productivity growth in the accident towing industry compared to the implied productivity growth in the wider Melbourne transport industry incorporated in the CPI (Melbourne, Transport).

The NERA report provides a snapshot of the accident towing industry between 2008 and 2012.⁴⁰ This snapshot considers changes in key industry variables, including allocations per truck and accident towing revenue per tow, licence and truck (deflated by CPI (Melbourne, Transport)). As an estimate of the annual change in industry productivity (relative to the implied productivity improvements in the wider Melbourne transport industry), NERA has used the average change in revenue per truck, adjusted to remove the effect of increases in regulated fees.

An input to NERA's productivity calculations is the estimated number of licences per truck in 2008 and 2012. However, there are conflicting estimates for the number of licences per truck in 2008, and NERA's analysis notes that the annual change in productivity measure is highly sensitive to the assumption chosen for the number of licences per truck in 2008 (table 3.1). For example, if the number of

³⁷ Advance One Towing 2013, *Periodic review of accident towing and storage fees submission*, 5 April, p. 3.

³⁸ VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 16.

³⁹ NERA 2013, p. 29.

⁴⁰ NERA 2013, p. 32.

licences per truck in 2008 is assumed to be 1.7, then the annual change in productivity is 1.8 per cent; however if the number of licences per truck is assumed to be 2.0, then the annual change in productivity is -2.3 per cent.

Table 3.1 Sensitivity of change in productivity results to licences per truck assumption

<i>Licences per truck assumption (2008)</i>	<i>Avg. annual change in revenue per truck (2008-12)</i>	<i>Annual change in productivity^a (2008-12)</i>
1.7	5.0%	1.8%
1.8	3.5%	0.3%
1.9	2.1%	-1.0%
2.0	0.8%	-2.3%

^a As measured by the average annual change in revenue per truck in real terms.

Source: NERA 2013, *Benchmarking accident towing fees and options for annual adjustment*, A final report for the Essential Services Commission, 8 April, p. 34.

The issue for the Commission is what is a reasonable assumption for the number of licences per truck in 2008. NERA considers values from 1.7 and 2.0 because:

- 1.7 – this figure was estimated based on information from the industry survey conducted by the Commission during the its last review
- 1.8 – this figure is the average of the two estimates provided by the industry survey and VicRoads during the Commission’s last review
- 1.9 – this figure was estimated by VicRoads at the time of the last Commission review, and
- 2.0 – this figure was used by the Commission in its previous review for its accident towing cost analysis.

For the purposes of estimating industry productivity, the Commission notes the figure of 2.0 licences per truck can be removed as an option. When this figure was used in the Commission’s last review, it was on the basis of estimating the costs of an accident towing business (and the costs of an accident tow). Since a business can only own a whole number of licences, the figure of 2.0 was used in the analysis. However, for the purposes of considering licences per truck across the industry (within the Controlled Area), this restriction is not required.

The remaining two estimates (1.7 and 1.9 licences per truck) both have a reasonable basis, suggesting an estimated relative annual productivity growth in the accident towing industry ranging from 1.8 per cent to -1.0 per cent. The Commission notes that the existing ‘X’ factor of 0.5 per cent lies near the centre of this range.

Given the existing 'X' factor of 0.5 per cent is within the range implied by NERA's analysis, the Commission concludes an 'X' factor of 0.5 per cent remains reasonable.

3.2 Draft recommendations on the productivity adjustment

Given the results of NERA's analysis on the estimated relative productivity growth in the accident towing industry, the Commission concludes that an 'X' factor of 0.5 per cent remains appropriate, and for regulatory consistency, recommends that the 'X' factor remain at 0.5 per cent.

Draft recommendation 2 – Productivity adjustment

The Commission recommends that a productivity adjustment of 0.5 per cent continue to apply under the annual adjustment mechanism in section 212H of the *Accident Towing Services Act 2007*.

4 THE REGULATION OF BASIC SALVAGE

This chapter considers whether basic salvage fees should be regulated, and if so, approaches for setting the level of basic salvage fees.

4.1 Should basic salvage fees be regulated?

Salvage refers to the movement of an accident damaged vehicle from its resting position after an accident to a place where it may be towed by a tow truck. Section 212A (1)(b) of the Act requires the Commission to review whether salvage services should be subject to a fee determination by the Minister under section 211 of the Act, and if so, the recommended fee.

Section 211 (c) of the Act allows the Minister to determine fees for basic salvage services only. The Act defines the basic salvage service 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. Any salvage that requires the use of a heavy tow truck or a mobile crane is not covered in the basic salvage service — the Commission refers to this as complex salvage. Since the Minister is not empowered to determine fees for complex salvage, the Commission has not considered the regulation of complex salvage.

In its previous 2009/10 review and following consultation with the industry and various meetings with the VACC, the Commission recommended that basic salvage be regulated. In the absence of the accident towing industry and the VACC providing a proposed methodology or basis on which to set basic salvage fees, the Commission recommended a regulated basic salvage fee of \$60 per hour (including GST), with a 20 per cent surcharge to be applied after standard business hours. This was based on benchmarking of salvage fees in NSW and the typical salvage fees reported by VicRoads and by operators in response to the Commission's survey of 2009.

This fee was to be applied from the commencement of the salvage operation (not from the time of arrival at the scene) as a flat rate for the first hour of salvage operations (i.e. applied in full for salvage operations taking up to an hour), and then proportionately to the time taken in excess of an hour. The same hourly rate would apply if an assistant is required, and the base fee would apply if an additional truck is required.

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

recommended that VicRoads collect information on the incidence and level of salvage fees imposed.

The Commission's recommendation to regulate basic salvage was not adopted at that time. Rather, the current legislation (section 212I of the Act) requires any salvage fees levied by operators (for either basic or complex salvage) to be 'reasonable'.⁴¹ However, the Government adopted the Commission's recommendation that any salvage undertaken be subject to documentation requirements (i.e. photographs of the salvage operation be taken and the invoice to include a detailed description of the work undertaken).

In addition to the requirement under the Act, VicRoads has also specifically asked the Commission to consider the regulation of salvage as part of this review. That is, to assess whether the 'reasonable' fee requirement as well as the documentation requirements are sufficient to prevent inappropriate charging for salvage by accident towing operators or whether regulation and a prescribed fee is required.

Stakeholder comments

The VACC believes that salvage should not be regulated, due to the variability in the nature of each salvage operation.⁴² It believes salvage fees are at reasonable levels⁴³, and that '*a reasonable charge, verified with images, should continue as the preferred methodology*'.⁴⁴

Towing operator Advance One Towing is also opposed to regulated salvage fees, stating '*salvage can only be determined after you have done the job as you don't know how hard it is going to be until a vehicle has been salvaged*'.⁴⁵

However, while IAG and Suncorp Group agreed that salvage fees have generally been fair and reasonable, both insurers believe that salvage fees are uncertain and volatile (with IAG noting that fees '*differ greatly from operator to operator*'⁴⁶), and that salvage fees should be regulated.⁴⁷

⁴¹ VicRoads 2012, *New regulations - 1 June 2012*, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/New+regulations.htm on 4 February 2013.

⁴² VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 12.

⁴³ VACC submission, p. 16.

⁴⁴ VACC submission, p. 12.

⁴⁵ Advance One Towing 2013, *Periodic review of accident towing and storage fees submission*, 5 April, p. 3.

⁴⁶ IAG 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 2.

⁴⁷ IAG 2013, pp. 2–3 and Suncorp Group 2013, *Periodic review of accident towing and storage fees submission*, 28 March, p. 2.

In particular, Suncorp Group stated that the reasonable requirement is '*insufficient to allow for certainty from the insurer/consumer perspective*'.⁴⁸ It believes that investigating and negotiating salvage fees that it considers excessive is not the ideal outcome, and that it would rather a fixed basic salvage fee.⁴⁹

Similarly, IAG noted that:

*... there is difficult[y] determining and therefore justifying what work has been completed and what the correct cost would have been for the work undertaken ... [meaning] substantial resources [are] required to investigate costs... .*⁵⁰

IAG also stated that there has been an increase in '*additional salvage fees*'.⁵¹

In regard to level of salvage fees, Suncorp Group believes the fee for basic salvage should be \$60.⁵²

Commission's analysis

Definition of salvage

In Victoria, section 3 of the Act defines salvage to include the movement or recovery of a vehicle that, as a result of the accident, is:

- in a location that is not a road or a road related area; or
- embedded in a building or in an object that is not a motor vehicle; or
- overturned or on its side.

Some stakeholders have suggested that certain accident towing operators are charging salvage in situations as trivial as a vehicle with one wheel on the curb. As the curb beside a road is considered a road related area (as defined by the *Road Safety Act 1986*), salvage could only be charged in these instances if the vehicle was embedded in a building or object (that is not a motor vehicle) or overturned on its side — simply having one wheel on the curb does not constitute salvage.

⁴⁸ Suncorp Group 2013, *Periodic review of accident towing and storage fees submission*, 28 March, p. 4.

⁴⁹ Suncorp Group submission, p. 4.

⁵⁰ IAG 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 4.

⁵¹ IAG submission, p. 4.

⁵² Suncorp Group submission, p. 4.

Should basic salvage be regulated?

In its previous review, the Commission recommended that basic salvage should be regulated. Since tow truck operators have the exclusive right to attend an accident via the allocation scheme, there is the potential that they may levy excessive salvage fees or even levy a salvage fee when it is not actually required. Furthermore, the ability of affected parties to 'negotiate' with a tow truck operator after an accident is likely to be limited given their likely lack of knowledge about accident towing services, and the likelihood of suffering from shock or distress.

The documentation requirements that now apply provide increased transparency in the levy of salvage fees, allowing VicRoads, insurance companies and vehicle owners to determine whether salvage was required. The requirements should sufficiently prevent the levy of salvage fees when salvage is not actually required.

However, consultation with stakeholders suggests that the reasonable requirement has not significantly reduced the magnitude of excessive salvage fees. While Suncorp Group suggests there has been a decrease in the incidence of salvage fees being imposed when salvage is not really needed⁵³, both insurers agreed that the magnitude of salvage fees has not changed (or has in fact continued to increase) despite the reasonable requirement.⁵⁴ Based on these comments, the 'reasonable' fee requirement may not be sufficient to prevent inappropriate basic salvage fees.

The Commission continues to be concerned in relation to the magnitude of salvage fees and the ability for VicRoads, insurance companies and vehicle owners to determine (simply from the required documentation) whether the level of the salvage fee is reasonable (as noted by IAG in its submission)⁵⁵. It notes the comments from the insurers about the uncertainty and variability of salvage fees between tow truck operators, and the costs and inefficiencies involved in investigating and negotiating excessive salvage fees.

Therefore, the Commission finds that the rationale for regulating basic salvage fees is still valid, and that a prescribed basic salvage fee is warranted.

4.2 Draft recommendation on regulation of basic salvage

As the same rationale for regulating accident towing fees applies to basic salvage fees, there is a strong argument to regulate basic salvage fees. The Commission

⁵³ Commission consultation with Suncorp Group, 21 March 2013.

⁵⁴ Commission consultation with Suncorp Group, 21 March 2013, and with IAG, 22 March 2013.

⁵⁵ IAG 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 4.

notes that the 'reasonable' fee requirement in section 212I of the Act would continue to apply for complex salvage fees.

Draft recommendation 3 – Regulation of basic salvage

The Commission recommends that basic salvage should be regulated, and a prescribed basic salvage fee should be introduced.

4.3 How should a basic salvage fee be set?

In its previous review, the Commission recommended basic salvage be regulated at a flat fee of \$60 per hour (including GST) with a 20 per cent after hours surcharge. As part of this review, the Commission has considered two approaches to setting a basic salvage fee.

- (1) **The roll forward approach (see section 4.4)** — this approach involves rolling forward the previous Commission recommended basic salvage fee.⁵⁶ The roll forward is based on the existing annual adjustment mechanism.
- (2) **A benchmarking approach (see section 4.5)** — this involves looking at the level of comparable fees in other states, and determining an appropriate fee based on the similarities and differences between the markets and between the structure (or proposed structure) of fees in the different jurisdictions.⁵⁷

Each of these approaches is discussed in turn below.

4.4 Roll forward approach

Under section 212H of the Act, regulated accident towing fees are adjusted each year by the annual adjustment mechanism. This adjustment mechanism is used to automatically adjust regulated fees on an annual basis in line with estimated accident towing industry cost increases for the accident towing industry. The current legislated annual adjustment mechanism is based on changes in the CPI (Melbourne, Transport) less a productivity adjustment of 0.5 per cent.

The legislated annual adjustment mechanism can also be used to roll forward the Commission's previously recommended basic salvage fee. That is, by applying the annual adjustment mechanism to the previously recommended basic salvage fee, an equivalent basic salvage fee for 2013-14 may be determined that takes into

⁵⁶ That is, convert the recommended salvage fee from the Commission's previous review (the 2010-11 fee) to an equivalent 2013-14 fee (taking into account inflation and productivity increases).

⁵⁷ Unlike accident towing, in the case of salvage fees there is no 'competitive' benchmark available for comparison.

account cost increases in the general transport industry as well as the relative productivity increases estimated for the towing industry.

Draft conclusions on setting salvage fee using the roll forward methodology

The results of applying the annual adjustment mechanism to the previously recommended basic salvage fee are set out in table 4.1. Applying the roll forward (and rounding up to the next dollar) suggests a regulated basic salvage fee (during standard business hours) for 2013-14 of \$65 per hour (the roll forward basic salvage fee).

As recommended by the Commission in its previous review, the basic salvage fee would be applied as a flat rate (i.e. in full) for the first hour actually required for any salvage operations, and then proportionally to the time taken in excess of an hour. This recognises that most basic salvage operations are usually completed within one hour. It also provides an administratively simple basis for levying the fee by avoiding the need to calculate a proportional fee within the first hour.

Table 4.1 Roll forward of 2010 recommended salvage fee (\$/hr)

	<i>2010 review fee 2010-11</i>	<i>Roll forward fee 2011-12</i>	<i>Roll forward fee 2012-13</i>	<i>Roll forward fee 2013-14</i>
Current legislated mechanism ^a	60.00	61.59	62.36	64.11

^a Calculated using the March quarter CPI (Melbourne, Transport) and an 'X' factor of 0.5 per cent (as per the Commission's draft recommendation 2).

4.5 Benchmarking the basic salvage fee

Another approach to setting a basic salvage fee is benchmarking. The Commission has considered the regulated salvage fees in New South Wales (NSW) and South Australia (SA). NSW is the only other state to have separate regulated salvage fees, while SA has been selected for comparison as salvage is included in the regulated base accident towing fee.⁵⁸

⁵⁸ In Queensland, salvage charges are required to be reasonable, and a regulated charge has not been set, while in the Northern Territory, Western Australia, Tasmania and the Australian Capital Territory no regulated charges have been prescribed for accident towing or salvage.

New South Wales

In NSW, fees for salvage of light motor vehicles and for salvage of heavy motor vehicles are regulated. This breakdown between light and heavy salvage is comparable to the distinction between basic and complex salvage.⁵⁹

The Commission's consultant NERA notes in its report for the Commission that the regulated maximum salvage fee for salvage of a light vehicle (analogous to a basic salvage fee) in NSW is \$62.70 (including GST) per hour.⁶⁰ However, the Commission also notes that in NSW a tow truck operator may not levy a salvage fee for the first 30 minutes for salvage.⁶¹ After the first 30 minutes, the maximum fee of \$62.70 may be charged for each hour or part of an hour in excess of the first 30 minutes (with the same rate applying if an assistant is required).⁶² The accident towing regulator in NSW, Roads and Maritime Services (formerly the Roads and Traffic Authority) has advised the Commission that this hourly fee is charged proportionately to time (after the first 30 minutes).⁶³

The NSW regulated salvage fee is less generous than the Commission's proposal. That is, in NSW, operators are not allowed to levy a salvage fee for the first 30 minutes whereas the Commission recommended that a basic salvage fee be charged as a flat rate for the first hour regardless of whether actual salvage took less than an hour.⁶⁴

Given this difference in benchmarking Victoria and NSW salvage fees, the hourly fees should not be directly compared, but rather, the total salvage fees by duration of salvage operations should be compared.

Furthermore, for the purposes of determining a basic salvage fee for 2013-14, the NSW hourly rate of \$62.70 for 2012-13 must also be adjusted for general inflation

⁵⁹ A heavy motor vehicle is defined in the *Tow Truck Industry Regulation 2008 (NSW)* as a motor vehicle that has a gross vehicle mass of more than 4.5 tonnes (whereas in Victoria, a motor vehicle that has a gross vehicle mass of more than 4 tonnes would require a heavy tow truck, and therefore if salvage were required, it would be classified as complex salvage).

⁶⁰ NERA 2013, *Benchmarking accident towing fees and options for annual adjustment*, A final report for the Essential Services Commission, 8 April, p. 9.

⁶¹ Clause 40N (a) of the *Tow Truck Industry Regulation 2008 (NSW)*.

⁶² Clause 40N (b) and (c) of the *Tow Truck Industry Regulation 2008 (NSW)*.

⁶³ *Pers. communication* (phone) with NSW Roads and Maritime Services, March 2013.

⁶⁴ The Commission recommended a flat salvage charge of \$60 for the first hour (inc GST) and then proportionally for the time taken in excess of the first hour. For example, if salvage only takes 30 minutes, \$60 would be applied. However if salvage takes 1 hour and 30 mins then \$75 (\$60 flat rate, plus 15 minutes at \$60 per hour) would apply.

(into 2013-14\$). This results in an adjusted NSW hourly fee of approximately \$64.27.⁶⁵

Table 4.2 sets out the adjusted light salvage fees that would apply in NSW by duration of salvage operations. Table 4.2 shows that the maximum fee for a salvage operation taking 60 minutes would be \$32.13 (reducing to \$0 for salvage operations taking 30 minutes or less). On the other hand, any duration of salvage operations in excess of 30 minutes would be charged at the hourly rate for that excess time. This would suggest that an appropriate hourly basic salvage fee for Victoria would likely fall somewhere between \$32.13 and \$64.27 per hour.

Table 4.2 Adjusted NSW light salvage fees by duration of operation

<i>Duration of salvage operation</i>	<i>Adjusted NSW regulated fee^a</i>
0 – 30 min	\$0
30 – 60 min	\$0 – \$32.13
60 – 90 min	\$32.13 – \$64.27

^a Regulated fee for 2012-13 adjusted for inflation (to 2013-14) and GST.

Note: Fees calculated updated using March quarter CPI (Australia, All groups) figures. Fees relate to 'normal' business hours (i.e. do not include after hours surcharge).

Another way to consider the regulated NSW light salvage fees is to calculate the effective hourly fee by duration of salvage operations (table 4.3). The table shows that because in NSW operators do not get paid for the first 30 minutes of salvage, this reduces the effective hourly rate. The effective hourly rate increases with the duration: the first hour of salvage operations is provided at an effective hourly rate of \$32.13, and the effective rate approaches \$64.27 as duration increases. Again, this would suggest that an appropriate hourly basic salvage fee for Victoria would likely fall somewhere between \$32.13 and \$64.27 per hour.

⁶⁵ The current NSW salvage rate as at 1 July 2012 is \$62.70 (including GST). Updating for general inflation (using CPI (Australia, All groups)) from the March 2012 quarter to the March 2013 quarter gives \$64.27.

Table 4.3 Effective hourly light salvage fee (based on adjusted NSW fees) by duration of operation

<i>Duration of salvage operation</i>	<i>Effective hourly NSW light salvage fee^a</i>
60 min	\$32.13
90 min	\$42.85
120 min	\$48.20
150 min	\$51.42
180 min	\$53.56
360 min	\$58.91

^a Regulated fee for 2012-13 adjusted for inflation (to 2013-14) and GST.

Note: Fees calculated using March quarter CPI (Australia, All groups) figures. Fees relate to 'normal' business hours (i.e. do not include after hours surcharge).

South Australia

In SA, the regulated accident towing base fee includes the provision of salvage (including if specialised equipment is required). Therefore, for benchmarking purposes, the salvage component of the base fee must be separately identified. However, there are complicating factors that make benchmarking between basic salvage in Victoria and an estimated SA 'salvage allowance' difficult:

- The 'salvage allowance' in SA's regulated fees is not an hourly rate, and therefore is not directly comparable to an hourly basic salvage fee suggested for Victoria (additional working and waiting time are regulated at the hourly rate in SA, however this does not account for the first 30 minutes of waiting time included in the base fee and is based on labour costs only and excludes the cost of salvage equipment).
- The SA base towing fee includes 30 minutes of time at the accident scene (including waiting time and time doing non-salvage operations), after which additional time fees apply — as these fees are based on time spent at the scene (not time spent undertaking salvage operations), they cannot be compared to an hourly basic salvage fee proposed for Victoria by duration of salvage operations.
- The SA base fee includes salvage where specialised equipment is required, which would be classified as complex salvage in Victoria — therefore the estimated 'salvage allowance' overstates salvage fees when considering basic salvage only.

For these reasons, salvage fees in SA are much more difficult to compare than light salvage fees in NSW against an hourly basic salvage fee recommended for Victoria. Therefore, the Commission concludes that SA salvage fees are not a good benchmark for determining its recommended regulated basic salvage fee.

Draft conclusions on setting salvage fee using a benchmarking approach

The Commission notes that benchmarking generally works best when there are a range of benchmarks to consider. In the case of determining a salvage fee, the choice of benchmarks is effectively limited to NSW. However, as discussed below, the Commission has also been able to consider previously reported salvage fee information in determining an appropriate basic salvage fee.

Based on benchmarking against light salvage fees in NSW, an appropriate hourly basic salvage fee for Victoria could range between \$32.13 and \$64.27 per hour.

4.6 Determining the basic salvage fee and after hours surcharge

Section 4.4 applied a roll forward methodology to calculate a roll forward basic salvage fee of \$65 per hour (during standard business hours), and section 4.5 discussed two potential benchmarks:

- the adjusted regulated light salvage fees in NSW, and
- an estimated 'salvage allowance' included in the SA base accident towing fee.

This section compares the roll forward basic salvage fee to the NSW benchmark, as well as comparing it to reported typical salvage fees in Victoria, in order to determine the Commission's draft recommended basic salvage fee.

Benchmarking against salvage fees in NSW

The following analysis assumes the Commission's roll forward basic salvage fee would be applied in the Controlled Area as recommended by the Commission in its previous review: namely, that the basic salvage fee would be applied as a flat rate (i.e. in full) for the first hour actually required for any salvage operations, and then proportionally to the time taken in excess of an hour. Therefore, due to the 30 minutes of free salvage in NSW, the hourly fees in NSW should not be directly compared with an hourly basic salvage fee recommended for the Controlled Area. Instead, table 4.4 compares the total salvage fees by duration of salvage operations.

Table 4.4 Salvage fee comparison – NSW and Commission’s roll forward

<i>Duration of salvage operation</i>	<i>Adjusted NSW fee ^a</i>	<i>Commission’s proposed fee</i>
0 – 30 min	\$0	\$65.00
30 – 60 min	\$0 – \$32.13	\$65.00
60 – 90 min	\$32.13 – \$64.27	\$65.00 – \$97.50

^a Regulated fee for 2012-13 adjusted for inflation (to 2013-14) and GST.

Note: Fees calculated using March quarter CPI figures. Fees relate to ‘normal’ business hours (i.e. do not include after hours surcharge).

Table 4.4 demonstrates that while the quantum of the hourly rates is similar, due to the differing application, the effective salvage fees that would be levied under each pricing structure are significantly different. For a salvage operation of any duration, the salvage fee levied using the Commission’s roll forward basic salvage fee is higher than the NSW salvage fee — approximately \$33 to \$65 more (depending on duration).

Table 4.5 compares the effective hourly salvage fees by duration of salvage operations.

Table 4.5 Effective hourly salvage fee comparison – NSW and Commission’s proposed roll forward

<i>Duration of salvage operation</i>	<i>Effective NSW hourly fee ^a</i>	<i>Commission’s proposed effective hourly fee</i>	<i>Difference (%)</i>
60 min	\$32.13	\$65.00	102%
90 min	\$42.85	\$65.00	52%
120 min	\$48.20	\$65.00	35%
150 min	\$51.42	\$65.00	26%
180 min	\$53.56	\$65.00	21%
360 min	\$58.91	\$65.00	10%

^a Regulated fee for 2012-13 adjusted for inflation (to 2013-14) and GST.

Note: Fees calculated using March quarter CPI figures. Fees relate to ‘normal’ business hours (i.e. do not include after hours surcharge).

Similarly, table 4.5 demonstrates that the effective hourly fee using the Commission’s roll forward basic salvage rate is greater than the NSW effective hourly fee for all salvage operation durations (and is twice that of NSW for a one hour salvage operation) — with the NSW effective hourly fee approaching the effective roll forward basic salvage hourly fee only as the duration gets above six

hours. Again, this demonstrates that a basic salvage fee of around \$65 per hour is, in effect, significantly greater than the regulated light salvage fee in NSW.

Differences in when salvage can apply

There are circumstances where a salvage fee can be levied in Victoria but not in NSW. Clause 40M of the Tow Truck Industry Regulation 2008 (NSW) states that ‘a fee cannot be charged for the salvage...if the salvage is from a road or road related area.’⁶⁶ In Victoria, section 3 of the Act defines salvage to include the movement or recovery of a vehicle that, as a result of the accident, is:

- in a location that is not a road or a road related area; or
- embedded in a building or in an object that is not a motor vehicle; or
- overturned or on its side.

Therefore, in Victoria salvage can apply when a vehicle from a road or road-related area is salvaged if the vehicle is embedded in a building or object (that is not a motor vehicle) or is overturned or on its side — in NSW salvage cannot be levied in these circumstances.

Comparison with reported typical salvage fees in Victoria

Responses to the survey of tow truck operators conducted by the Commission in its previous review reported that typical fees ranged from \$60 to \$100. Similarly, VicRoads advised that salvage fees were typically around \$60 to \$80.⁶⁷

Suncorp Group indicates in its submission that it observes fees for basic salvage varying from \$60 to \$120.⁶⁸ In its submission, the VACC reports an average salvage fee of \$133.75 across 48 invoices it reviewed from members.⁶⁹

Based on the Commission’s survey results during the last review, most salvage work was reported to take between 15 to 60 minutes. Therefore the Commission’s roll forward basic salvage fee would provide \$65 in salvage fees for most salvage

⁶⁶ A road related area includes: an area that divides a road, a footpath or nature strip adjacent to a road, an area that is open to the public and is designated for use by cyclists or animals, an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles, a shoulder of a road, or any other area that is open to or used by the public and that has been declared by the NSW Minister for Roads to be a road related area (see Section 3 of the *Road Transport (General) Act 2005 (NSW)*).

⁶⁷ ESC 2010, *Review of Accident Towing and Storage Fees*, Final report, vol. 2, Detailed reasons and methodology, June, p. 47.

⁶⁸ Suncorp 2013, *Periodic review of accident towing and storage fees submission*, 28 March, p. 4.

⁶⁹ VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 9.

operations — this falls within the range of reported typical salvage fees (both the previously reported figures, and the range reported by Suncorp Group).

While a fee of \$65 may accord with the lower bound of reported salvage fees, the Commission notes that these reported salvage fees are for unregulated fees that are not subject to competition. The Commission finds it is appropriate to benchmark regulated basic salvage fees to the lower bound of reported salvage fees, to better reflect competitive prices.

Furthermore, the Commission notes that reported typical salvage fees are total fees (as opposed to an hourly charge) and reflect salvage operations during standard business hours and after hours. A salvage operation taking 75 minutes during normal hours would incur a total salvage fee of \$81.25 under a \$65 hourly charge, while applying the draft recommended 20 per cent after hours surcharge (discussed in section 4.7 below) gives an after hours salvage fee of \$78 per hour — these are similar to the upper range of typical salvage fees previously reported by VicRoads.

A salvage operation taking 90 minutes in normal hours (or an after hours salvage operation taking 75 minutes) would incur a total salvage fee of \$97.50, which approaches the upper end of salvage fees reported by tow truck operators in the Commission's 2009 survey. For a 110 minute salvage operation in normal hours the applicable total salvage fee would be \$119, while a 90 minute salvage undertaken after hours would attract a fee of \$117 — these roughly accord with the upper range of typical salvage fees reported by Suncorp Group.

The \$133.75 average salvage fee reported by the VACC is consistent with a two hour salvage operation in normal hours (or a 100 minute salvage operation after hours).

As such, a basic salvage fee of \$65 per hour appears to be consistent with the range of previously reported total salvage fees in Victoria, and more recent information provided by the VACC and Suncorp Group.

Salvage fees for assistants and additional trucks

In its previous review, the Commission recommended that the same hourly basic salvage rate would apply where an assistant is required. Where an additional tow truck is required, the rate applicable for the first tow truck (i.e. the base fee) would apply for the additional tow truck. The Commission notes that a similar arrangement applies in NSW.

The Commission suggests that this allowance for an additional truck is generous, as the base fee is intended to cover all accident towing activities (and includes an allowance for towing the accident damaged vehicle for 8 kilometres, for cleaning oil spills from the tow truck, as well as the costs of running the towing business such as rent, financing costs, maintenance, fuel and accreditation) — activities not undertaken by the additional tow truck. Therefore, the base towing fee

overcompensates the costs of calling out the additional tow truck to assist with the salvage.

In cases where accident towing of two or more vehicles from an accident scene is required, salvage operations may be able to be undertaken by the multiple accident tow trucks allocated to attend the scene. In such a case, the additional tow truck required to undertake the salvage has already been called out to the scene for their allocated accident tow, and charging a second base fee for use of that tow truck to undertake salvage would also overcompensate the costs of the tow truck attending the scene.

Furthermore, allowing the base towing fee to be charged for an additional tow truck introduces perverse incentives for accident towing operators to call out an additional truck where it is not needed, in order to collect the additional base fee.

The Commission also notes that an additional tow truck operator does not lose its spot in the allocation queue by attending an accident scene in the capacity of an additional tow truck for salvage.

For these reasons the Commission is concerned whether allowing the rate applicable for the first tow truck (i.e. the base fee) to apply for an additional tow truck is appropriate.

The Commission seeks stakeholder feedback on what fee should apply when an additional tow truck is required to undertake basic salvage operations.

After hours surcharge

The above analysis relates to basic salvage operations during normal hours. For basic salvage performed after hours⁷⁰, where the cost base is different (with increased labour costs), it is appropriate for different fees to apply, similar to the after hours surcharge for the base accident towing fee.

Therefore, in setting a regulated basic salvage fee, the Commission must also consider an appropriate after hours surcharge for basic salvage. In its previous review, the Commission recommended a 20 per cent after hours surcharge.

⁷⁰ After hours has been defined as 5pm to 8am Monday to Friday, 5pm Friday to 8am Monday, and midnight to midnight on public holidays (see Victorian Government Gazette, *Special Gazette No. S 447*, 29 October 2010).

Stakeholder comments

Stakeholders did not comment in regard to an after hours surcharge for basic salvage; however as noted in chapter 2, the VACC stated that the rate for after hours work should be '*recalculated and increased*'.⁷¹

Commission's analysis

A surcharge of approximately 20 per cent for after hours work is not uncommon in the accident towing industry. For example, a 20 per cent surcharge applies to both accident towing jobs and salvage work in NSW.⁷² In SA, the equivalent of a 16.25 per cent surcharge applies to the base fee for accident towing (which includes salvage).⁷³

Furthermore, after hours surcharges in other transport industries also support a 20 per cent surcharge. A 20 per cent surcharge (or approximate equivalent) applies to taxi fares in Sydney, Darwin and Hobart,⁷⁴ while a lower surcharge applies to taxi fares in the ACT.⁷⁵ In some other areas, such as Adelaide, because the surcharge applies to both the taxi flagfall and distance charge, the actual per cent surcharge varies by distance travelled. In the case of Adelaide, only for short trips (shorter than 2.5 kilometres) is the effective surcharge above 20 per cent.⁷⁶

Hence there is a strong regulatory precedent for after hours surcharges of approximately 20 per cent.

For clarification, the 20 per cent after hours surcharge would only apply to the recommended hourly basic salvage rate of \$65 for the accident towing operator and for an assistant where one is required. The after hours surcharge applying to the base towing fee is \$67.20 (see draft recommendation 1), and therefore the after hours surcharge for an additional truck required to undertake basic salvage

⁷¹ VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 15.

⁷² Clauses 40C (c) and 40N (e) of the *Tow Truck Industry Regulation 2008 (NSW)*.

⁷³ The South Australian Government Gazette, No. 41, 7 June 2012, p. 2701.

⁷⁴ A 20 per cent surcharge applies to the distance rate in Sydney and Hobart, while a surcharge of 19 per cent to the flagfall and 23 per cent to the distance rate applies in Darwin (see www.transport.nsw.gov.au/content/maximum-taxi-fares-and-charges, www.transport.tas.gov.au/miscellaneous/understanding_taxis_and_luxury_hire_cars and www.transport.nt.gov.au/taxi/aboutus/tariffs - as accessed 20 March 2013).

⁷⁵ A surcharge of 15 per cent applies to the distance rate in the ACT (see www.rego.act.gov.au/aboutus/publictaxifares.htm - as accessed 20 March 2013).

⁷⁶ A surcharge of 32 per cent applies to the flagfall and 10 per cent to the distance rate in Adelaide — for all fares with a distance of 2.5 kilometres or more, the effective after hours surcharge is 20 per cent or less (see www.taxicouncilsa.com.au/taxi_fares_charges.htm - as accessed 20 March 2013).

would also be \$67.20 (i.e. the 20 per cent after hours surcharge does not apply to the fees for an additional truck).

The Commission seeks stakeholder feedback on what after hours surcharge should apply when an additional tow truck is required to undertake salvage operations.

4.7 Draft recommendation on basic salvage fees

The Commission has used a roll forward methodology to calculate a roll forward basic salvage fee of \$65 per hour, which it has benchmarked against light salvage fees in NSW, as well as comparing it to reported typical salvage fees in Victoria.

The Commission concludes that NSW light salvage fees are the most appropriate benchmark for determining the Commission's recommended regulated basic salvage fee. Estimating an SA 'salvage allowance' is not a good benchmark, as it provides for basic and complex salvage, and it is not a comparable hourly fee to the Commission's roll forward basic salvage fee.

Based on this benchmarking, an appropriate hourly basic salvage fee for Victoria could range between \$32.13 and \$64.27 per hour. A basic salvage fee of \$65 per hour (during normal hours) compares favourably to the regulated light salvage fee in NSW, being significantly greater by duration of salvage and being chargeable in more situations.

A basic salvage fee of \$65 per hour appears to be consistent with the lower bound of reported typical salvage fees in Victoria, as reported by Suncorp Group and previously by tow truck operators and VicRoads. Given the unregulated and non-competitive nature of these reported fees, a regulated fee consistent with the lower bound of reported fees is reasonable. Additionally, a \$65 per hour fee appears to be consistent with the range of reported fees when taking into account the recommended after hours surcharge and salvage operations of durations longer than an hour.

Therefore, the Commission recommends that the regulated basic salvage fee during standard business hours should be \$65 per hour for 2013-14. This recommended fee has already been escalated by CPI (Melbourne, Transport) for 2013-14, and therefore the annual adjustment mechanism should not be applied to the basic salvage fee until 2014-15.

As recommended by the Commission in its previous review, the basic salvage fee would be applied as a flat rate (i.e. in full) for the first hour and then applied proportionally to the time taken in excess of an hour.

An alternative to this would be to follow the same fee structure as NSW, with the first 30 minutes of basic salvage operations included under the base fee, and the hourly rate applying to the time in excess of the first 30 minutes. This would bring

the application of the Commission's \$65 hourly basic salvage fee in line with the regulated light salvage fee in NSW.

However, the Commission notes that this may be more administratively complex than the recommended flat fee for the first hour, and could create perverse incentives to take longer than 30 minutes to complete salvage operations — unlike in Victoria, NSW does not have an allocation scheme, meaning tow truck operators in NSW have the opposing incentive to complete salvage operations as quickly as possible in order to seek accident towing jobs.

The Commission seeks stakeholder feedback on whether:

- ***the basic salvage fee should be applied as a flat rate (i.e. in full) for the first hour of salvage operations (regardless of whether the salvage takes less than an hour) and then applied proportionally to the time taken in excess of an hour, or***
- ***no basic salvage fee should be applied for the first 30 minutes of salvage operations and the basic salvage fee should be applied proportionally to the time taken in excess of the first 30 minutes.***

Given the strong regulatory precedent for after hours surcharges of approximately 20 per cent, the Commission recommends that an after hours surcharge of 20 per cent should apply to the regulated basic salvage fee.

The Commission seeks stakeholder feedback on what fee should apply when an additional tow truck is required to undertake basic salvage operations, and what after hours surcharge should apply for an additional tow truck.

Draft recommendation 4 – Determining the basic salvage and after hours basic salvage fees

Standard hours

For basic salvage operations undertaken in standard business hours (between 8am to 5pm Monday to Friday, except public holidays) the regulated salvage fee for 2013-14 should be **\$65 per hour (including GST)**. It should only be applied from the commencement of the salvage operation and not from the time at which the tow truck operator arrives at the scene.

This basic salvage fee should apply for 2013-14, and should not be escalated by the annual adjustment mechanism until 2014-15.

After hours

For basic salvage operations undertaken after standard business hours (between 5pm to 8am Monday to Friday, 5pm Friday to 8am Monday and midnight to midnight on public holidays) an after hours surcharge of **20 per cent** should apply to the hourly basic salvage fees for the accident towing operator and for an assistant if required.

5 | NON-COMMERICAL (UNPAID) TOWS

This chapter considers the issue of non-commercial (unpaid) tows and how to account for these costs.

5.1 Non-commercial (unpaid)

Non-commercial (or unpaid) tows are accident towing jobs for which a tow operator is not paid. This may occur where the owner of the vehicle refuses or fails to pay for the service (e.g. because their vehicle is uninsured or the vehicle owner abandons the damaged vehicle at the operator's storage facility).⁷⁷

The problem of non-commercial tows arises because, under the current accident towing regulations, accident towing businesses are paid only after they have delivered the towing service and have invoiced the vehicle owner or their insurer. Operators are not allowed to request a deposit before performing a tow. Under clause 39 of the *Accident Towing Service Regulations 2008*, tow truck drivers are also prohibited from refusing a tow once they arrive at the accident scene unless the owner of the vehicle states that he or she is unable or unwilling to pay.⁷⁸

As part of this review, VicRoads has asked the Commission to consider whether there needs to be a change to how non-commercial tows are treated.

Stakeholder comments

In consultations with the Commission, one operator claimed that ten per cent of allocations resulted in unpaid tows or failed allocations. The same figure was cited by the VACC in its submission to the review, but in reference to tows that remain 'unpaid or uncollected'.⁷⁹

⁷⁷ In addition to the non-payment of tows, an accident allocation can result in no tow due to: the job being cancelled, the vehicle being moved by the owner before the tow operator arrives, or a prank call. These instances fall outside of the definition of non-commercial accident tows and are not the subject of the current analysis that focuses on uncompensated towing work.

⁷⁸ Clause 39, *Accident Towing Services Regulations 2008*.

⁷⁹ VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 17.

The VACC indicates that accepting an allocation equated to a responsibility to perform an accident tow regardless of the likelihood of being paid.⁸⁰ This viewpoint was echoed in Advance One Towing's submission, wherein it was claimed that '*the police will have a car towed even if the owner does not want the car towed as they don't have any money to pay for the tow*'.⁸¹

While Advance One Towing suggests there would be lower socio-economic areas serviced by operators where the incidence of non-commercial tows was higher,⁸² the VACC indicated that '*there does not appear to be any regional or geographic variation*' to the distribution of non-commercial tows.⁸³

The VACC also argues that, though operators may sell uncollected vehicles to recover costs, '*using the Uncollected Goods Act, is a process that is time consuming and costly*'.⁸⁴ The VACC further states that the basic fee should be raised to recover non-commercial towing costs.⁸⁵

IAG states that it is happy with the current arrangement of non-commercial tows being covered by the regulated fee.⁸⁶

Advance One Towing suggests the administrator of the Accident Allocation Scheme should record caller details and that the caller be liable for the costs of the tow.⁸⁷

Commission's analysis

Accident towing businesses have limited ability to manage non-commercial tows. Operators are unable to assess the likelihood of final payment when deciding whether to accept or reject an allocation.

Operators are prohibited from refusing a tow once they arrive at an accident scene unless the owner of the vehicle states that he or she is unwilling to pay for the service. Therefore, operators are obliged to perform tows regardless of the actual likelihood of receiving payment.

⁸⁰ VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 14.

⁸¹ Advance One Towing 2013, *Periodic review of accident towing and storage fees submission*, 5 April, p. 5.

⁸² Advance One Towing 2013, p. 6.

⁸³ VACC submission, p. 18.

⁸⁴ VACC submission, p. 14.

⁸⁵ VACC submission, p. 18.

⁸⁶ IAG 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 3.

⁸⁷ Advance One Towing submission, p. 5.

The restricted circumstances in which operators are able to refuse towing work effectively means that accident towing businesses cannot employ the usual measures to avoid incurring bad debts such as demanding a deposit or performing background checks on customers before providing a service. The problem is obviously greater in instances where the vehicle owner lacks insurance and the vehicle is of lower value or badly damaged.

The Commission has considered a number of options for the treatment of non-commercial tows. These are:

- a system of direct compensation
- operators selling unclaimed accident damaged vehicles, and
- a continuation of the current allowance provided for in the regulated fee for bad debts.

These are discussed separately below.

Direct compensation

A direct compensation scheme could be established to fully compensate tow truck operators in cases where they are unable to recover costs from non-commercial tows. This could be financed through a small levy added on to the vehicle registration fees collected by VicRoads. VicRoads would also be responsible for administering this compensation scheme.

The scheme would be administratively costly, however, adding to the resource requirements at VicRoads. It would involve a regulatory burden on the part of operators in terms of requirements to prove the attempts they had made to obtain payment from vehicle owners and require them to make efforts to maximise the sale value of abandoned vehicles. Further burden would be placed on both operators and VicRoads in providing evidence and verifying efforts to maximise sale values.

Sale of unclaimed abandoned and damaged vehicles

At the time of the last review, the relevant legislation governing the recovery of accident towing costs from damaged vehicles was the *Disposal of Uncollected Goods Act 1961*. This Act has since been repealed and replaced by the *Australian Consumer Law and Fair Trading Act 2012* (the Consumer Act).

The provisions under the Consumer Act allow for disposal of goods valued under \$1000 within two months of abandonment and allow six months for those valued at over \$1000 (box 5.1 below). The requirements are not onerous and the Commission concludes the legislation does not pose significant impediment to recovering costs from unclaimed vehicles.

BOX 5.1 Disposal of vehicles — the *Australian Consumer Law and Fair Trading Act 2012*

For the purposes of the disposal of uncollected vehicles, the Consumer Act distinguishes between goods of low value (under \$1000) and high value (equal to or more than \$1000). Different provisions apply to both types

Low value vehicles

Under section 60 of the Consumer Act, an operator may dispose of a low value vehicle 28 days after providing written notice of their intention to do so to the owner or, if the operator cannot locate the owner to provide this notice, after 60 days of it becoming apparent to the operator that the owner does not intend to collect the vehicle.

'Disposal' may take the form of sale, destruction, appropriation or other means (subsection 60(3)).

High value vehicles

Under section 62 of the Consumer Act, an operator may dispose of a high value vehicle 28 days after providing written notice of their intention to do so to the owner and having obtained a written search result under section 170(2)(b) of the *Personal Property Securities Act 2009*.

If the operator cannot locate or communicate with the owner, 180 days must pass after it becomes apparent to the operator that the owner does not intend to collect the vehicle before the operator may dispose of the vehicle.

'Disposal' must take the form of a public auction advertised 7 days in advance or held over a period of 7 days, or private sale (provided notice has been given to the owner and the operator believes the best price could only be obtained by private sale and the operator takes reasonable care that the vehicle is sold for the best price that can be obtained).

The operator may not dispose of any vehicle if a dispute exists with the owner over the relevant charge (subsection 58(2)).

Under section 73 of the Consumer Act, the operator may retain monies that are owing for the towing work and that cover the costs of disposal.

In meetings with the Commission, the VACC indicated that operators already routinely dispose of abandoned vehicles and in some cases the payments they receive inadequately compensate them for all costs incurred. This would suggest that there may be limited value in pursuing a change to this legislation.

An allowance in the regulated fee

A third option for dealing with the issue of non-commercial tows is to continue with the current practice of providing an allowance for non-commercial tows in the regulated fee.

In its previous review of accident towing and storage fees, the Commission included a cost for non-commercial tows in the cost base used to calculate the regulated fee.⁸⁸ This allowance was included in recognition of non-commercial tows being a cost of performing an accident towing service.

While there are difficulties in definitively determining the overall cost associated with non-commercial tows the Commission finds the current arrangement is the most simple to administer and reflects common commercial practice.

The inclusion of an allowance for non-commercial tows in the cost base is also consistent with the interpretation of them as bad debts. That is, bad debts are included as a cost of doing business and a provision for them is made by businesses which are then recovered through the prices they charge customers.

5.2 Draft recommendations on non-commercial tows

Given the potential administrative costs associated with the option of direct compensation and the absence of significant impediment posed by the regulatory requirements for disposal, the Commission concludes that there should not be a change to how non-commercial tows are treated and finds the benefits of the current practice of making an allowance for the costs of non-commercial tows in the regulated fee outweigh the administrative costs and complexity of other options.

Stakeholders have not argued that non-commercial tows are a major growing problem which suggests that current arrangements provide sufficient compensation for these costs.

Draft recommendation 5 – Non-commercial tows

The Commission recommends the retention of the current practice of making an allowance for the costs of non-commercial tows in the regulated fee.

⁸⁸ That is, an explicit allowance of \$1,461 was included in the cost base to account for non-commercial tows. This figure was based on the average cost of non-commercial tows reported in the survey that was conducted as part of the previous Commission review see ESC 2010, *Review of accident towing and storage fees*, Final report, vol. 2: detailed reasons and methodology, June, p. 56.

PART B | FINDINGS ON OTHER ISSUES

6 SUMMARY OF FINDINGS ON OTHER ISSUES

In the early stages of this review, other issues were presented to the Commission which directly relate to its fee recommendation role. However, on these topics the Act does not provide for the Commission to make formal recommendations. For these issues the Commission presents its analysis in the form of draft findings and we seek further comment.

6.1 Draft findings

The Commission's draft findings are presented below along with a brief overview of the issues assessed. Chapters 7 to 11 of this draft report provide the detailed analysis and discussion behind the Commission's draft findings.

The Commission notes that many of the issues were also raised as part of the Commission's previous accident towing fee review.

Opportunities for innovation – outcomes-based regulation

In recent years, there has been an increased interest in outcomes-based regulation. Rather than prescribing and listing the inputs and actions to be taken, outcomes-based regulation focuses on what the final result (or outcome) should be. This style of regulation provides scope for regulated entities to innovate around how to best and most efficiently deliver these outcomes while ensuring compliance with the regulatory framework.

The Commission has considered how outcomes-based regulation could be applied to the economic regulation of accident towing. It finds that many of the issues discussed in this report (e.g. chapter 9 on secondary towing and chapter 10 on coverage of the regulated accident towing and storage fees), which could be addressed by adding prescription to the Act, could be addressed more effectively through a outcomes-based approach to regulation.

Draft finding 1 – Applying outcomes-based regulation

An outcomes-based approach to the regulation of accident towing appears to be consistent with the policy objectives of regulating accident towing.

In relation to industry regulation — a comprehensive review of the accident towing legislation and regulations would be required in order to make it more outcomes based.

In relation to economic regulation (price setting) — the *Accident Towing Services Act 2007* (the Act) could be amended to define regulated accident towing services by the desired outcomes rather than specifying particular activities. The Act would specify that the regulated fees cover all activities of the accident towing operator (except complex salvage) required to meet these outcomes.

For example, the outcomes included in the regulated accident towing and storage fees could be specified as:

- restoring a road and immediate surrounds to safe usage after an accident
- safely towing an accident damaged vehicle to the location listed on the authority to tow
- providing safe storage of an accident damaged vehicle (if required) and making an accident damaged vehicle available to its owner (or their representative) at a readily accessible location within or at the entrance of the depot, and within a reasonable period, and
- returning the tow truck and any other equipment to a safe and operational state.

Outcomes-based regulation and salvage fees

Under the Commission's finding on outcomes-based regulation (draft finding 1), salvage services are covered by the description of outcomes to be provided by accident towing operators. However, because salvage is an additional service that is not always required at an accident scene, it will need to have a separate fee. This is consistent with the existing approach to fee regulation, with fees currently set for towing and storage, and separate fees for salvage (which are required to be 'reasonable' under the Act).

Draft finding 2 – outcomes-based regulation and salvage fees

If the *Accident Towing Services Act 2007* is amended to introduce an outcomes-based approach to the economic regulation of accident towing (in line with draft finding 1), salvage fees are to remain separate from accident towing and storage fees.

The annual adjustment mechanism

An annual adjustment mechanism currently applies to regulated accident towing and storage fees each financial year. The aim of the mechanism is to reflect changes in input costs faced by accident towing businesses. The current mechanism adjusts accident towing and storage fees annually by the March CPI (Melbourne, Transport) less a productivity factor (0.5 per cent).

The Commission has reviewed the current mechanism and has considered alternate cost indices and productivity factors. The Commission considers that:

- a simple and transparent approach using CPI (Melbourne, Transport) is preferable to an industry specific index, and
- in the absence of sufficiently robust information on the cost structure of the accident towing industry, a composite price index is unlikely to perform any better than a general price index.

Draft finding 3 – Annual adjustment mechanism

The Commission continues to find that CPI (Melbourne, Transport) is the appropriate cost index for adjusting accident towing fees under the annual adjustment mechanism in section 212H of the *Accident Towing Services Act 2007*.

Application of the adjustment mechanism

The Commission has considered how fees should be adjusted when the annual adjustment mechanism gives a negative change, i.e. CPI (Melbourne, Transport) minus the productivity factor (0.5 per cent) is negative.

The annual adjustment mechanism should be restricted to prevent fee decreases. Hence when CPI (Melbourne, Transport) less the productivity factor, is negative, there should be no change to fees.

However, following such an outcome, fees should not be increased until costs have risen above the level they were prior to the zero fee adjustment. This is not how the mechanism currently operates. In effect, decreases in estimated costs are ignored, while the subsequent corresponding increases (merely returning costs to the previous levels at which fees were held constant) are being incorporated into increased fees.⁸⁹

The current application is not what the Commission intended when first recommending implementation of an annual adjustment mechanism as part of its last review.

Draft finding 4 – Application of the adjustment mechanism

The Commission finds that:

- the annual adjustment mechanism should adjust fees by the greater of zero or the rate of change in CPI (Melbourne, Transport) minus X, i.e. fees cannot be adjusted down by the annual mechanism, and

⁸⁹ For example, suppose the annual adjustment mechanism indicates that CPI-X has fallen by 5 per cent in a given year. If CPI-X increases in the following year, it would need to increase by 5.26 per cent simply to reach the level prior to the initial fall (e.g. if CPI-X fell 5 per cent – with costs falling from 60 to 57 (for simplicity) – CPI-X would have to increase by $(60-57)/57$ per cent (5.26 per cent) to reach the original cost level. This increase should not be reflected as a regulated fee increase. Only increases beyond this 5.26 per cent level should be passed onto consumers as higher fees.

- following the imposition of a zero per cent fee change, fees should not subsequently be increased until CPI (Melbourne, Transport) minus X exceeds the level it was prior to the imposition of the zero per cent fee change.

Issues relating to secondary towing

When a vehicle is involved in an accident, a tow truck arrives at the scene of the accident and is required to tow the vehicle to the destination requested by the driver or owner of the vehicle. The authority to tow⁹⁰ docket must specify the location to which the accident damaged vehicle is to be towed. The regulated base towing fee (\$196.90) covers this tow. A secondary tow involves the towing of a vehicle, once delivered to the location listed on the authority to tow docket, to another location, such as another depot.

The Commission understands some operators are charging secondary tow fees for tows between the location listed on the authority to tow (e.g. the insurer's accident assessment centre) back to their depot when either: (i) the insurer is unwilling to immediately pay for the initial regulated tow, or (ii) the assessment centre is closed when the operator arrives there (see chapter 9).

However, the Act prohibits charging for these tows as secondary tows. Section 3 of the Act defines an 'accident towing service' to include all towing that occurs until the vehicle is first **delivered** to the location specified in the authority to tow. Section 150 (3) of the Act also specifically prohibits operators charging for additional tows between the location specified on the authority to tow and the operator's depot for the purposes of storage before delivery of the vehicle.

Draft finding 5 – Secondary towing

Under section 150(3) of the *Accident Towing Services Act 2007* (the Act), secondary tow fees cannot be charged for tows between the location on the authority to tow docket and an operator's storage location. The implication is that under the Act, all accident tows until the vehicle is **delivered** to the location on the authority to tow are covered by the regulated fee, and no additional fees can be levied. VicRoads should clearly outline on its website the responsibilities of operators towards their customers in regards to secondary towing (in particular, when an operator may or may not charge secondary towing fees) under the Act.

It is also clear that secondary tows can only occur **after** delivery of the accident damaged vehicle to the location specified in the authority to tow (and at the request of the vehicle owner or their representative), and that secondary tow fees are unregulated but are subject to a 'reasonable' charge.

⁹⁰ In the Controlled Area, a driver must receive an authorisation (the authority to tow) to perform an accident tow. The authorisation is usually given by the accident damaged vehicle owner or driver.

In addition, enforcement and penalty provisions in the Act should be reviewed to ensure they discourage accident towing operators from illegally charging for secondary tows and undertaking secondary tows without owner consent.

'Out of storage' towing

The Commission is also aware that some operators are charging for the release of a vehicle from its storage position (an 'out of storage' tow). Following consultation and further analysis, the Commission is of the view that these tows should be considered part of the regulated accident towing service, and should not be subject to an additional unregulated fee imposed by some operators.

Clarifying the Act or refocussing the Act to be more outcomes-based are options to address this issue.

Draft finding 6 – 'Out of storage' towing

To address the potential for operators to charge an 'out of storage' fee, the Commission suggests that either:

- legislation should be amended to define clearly those costs and services that are covered by regulated accident towing and storage fees, and that out of storage tows should be included in this definition (see draft finding 7), or
- if the option of outcomes-based regulation is pursued, one of the outcomes should include 'making an accident damaged vehicle available to its owner (or their representative) at a readily accessible location within or at the entrance of the depot, and within a reasonable period' (see draft finding 1).

Coverage of the regulated fees

Accident towing and storage fees are regulated to protect accident victims from excessively high fees from the monopoly accident towing provider. The fee is set such that it covers the costs of clearing an accident scene, the towing of the accident damaged vehicle to the operator's depot or location elected by the owner, release of the vehicle to the owner or the owner's agent (e.g. insurance company) from storage, as well as the costs of maintaining and cleaning tow trucks and equipment, and the costs of running the accident towing business (e.g. rent, financing, registration, accreditation, etc).

However, the current legislation does not clearly state what is covered by the fee. This has resulted in some operators separately charging for services that are intended to be covered by the regulated towing and storage fees.

Similar to secondary towing issues, adding prescription to the Act or refocussing the Act to be more outcomes-based are options to address issues of coverage of the regulated fees.

Draft finding 7 – Coverage of the regulated fee

The Commission finds:

- the description of the regulated tow currently on the VicRoads website could be extended to cover out of storage towing and the cleaning of tools as well as the accident tow truck, and that this description could be included in the *Accident Towing Services Act 2007* or the Government Gazette include the definition when there are changes to regulated fees, or
- if the option of outcomes-based regulation is pursued, that these outcomes should be designed to cover the provision of accident damaged vehicles to their owners (or representatives) and the cleaning of all tools and equipment including the accident tow truck (see draft finding 1).

Payment options

Allegations have been made that some operators are demanding cash payments for accident tows. Regulation 40(1) of the Regulations states that a tow truck operator must provide the owner of a vehicle opportunity to make payment by way of an approved payment system. Regulation 40(2) defines 'approved payment system' as a system that is approved by VicRoads for the processing of payments by credit card and debit card, and the VicRoads website lists cash, credit and debit card as the methods of payment that must be allowed (specifically stating that it is illegal for a tow truck operator to demand cash).

Although the Commission has not sought to confirm or refute allegations of demanded cash payments, it is clear that accident towing operators must accept payments by credit card or debit card or cash, and cannot demand only payment in cash.

Draft finding 8 – Payment options

The Commission finds that VicRoads should investigate these allegations and, if necessary, enforce the regulatory requirements relating to payments for accident tows.

7 OPPORTUNITIES FOR INNOVATION

This section looks at opportunities for innovation, including the possibility of introducing an outcomes-based approach to the price regulation of accident towing.

In the issues paper, the Commission sought views on whether a move to an outcomes-based regulatory framework should be considered for accident towing, and what outcomes could be applied.

7.1 Outcomes-based regulation

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

Prescriptive forms of regulation can provoke increasingly lengthy and complex legislation as legislators look to directly control the behaviour of the regulated entities through black letter law.

Rather than focussing on the inputs and prescribing the detail, outcomes-based regulation focuses on what the final result (or outcome) should be. This style of regulation provides scope for regulated entities to innovate and determine themselves how to best and most efficiently meet and deliver outcomes while ensuring compliance with the regulatory framework.

Outcomes-based regulation allows regulated entities to respond to changes in technology and incorporate productivity enhancing processes. It can be less costly for government to administer, and legislation is less likely to require updating and change over time.

Outcomes-based regulation is reflected in the Victorian Government's Guide to Regulation. The guide states:

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

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

Performance-based standards specify desired outcomes or objectives, but not the means by which these outcomes/objectives have to be met... Principle-based regulation [requires] the application of general objectives or principles, rather than specific outcomes... Process-based regulation is increasingly adopted when governments are seeking to manage substantial but diverse risks. It is generally best applied when: there are a number of substantial risks that need to be managed simultaneously; there are a range of management measures available; and individual firms within the regulated industry have sufficient capacity to effectively assess risks and develop tailored solutions to mitigate those risks under their control.⁹¹

The Commission also notes that the Regulation Taskforce⁹² stated that regulations that conform to best practice design principles are not unduly prescriptive, are performance and outcomes focussed, and are general rather than overly specific.⁹³

Stakeholder comments

The Suncorp Group does not support an outcomes-based approach to regulation, stating that it believes '*the [current prescriptive] law needs to be made clearer and properly enforced*'.⁹⁴ The Suncorp Group also argues that any regulatory regime is only as effective as the resources allocated to ensure that the licensees meet their obligations. The Suncorp Group submits that VicRoads has lost resources and does not manage the industry effectively, which has led the Suncorp Group to instead pursue civil action against towing operators.⁹⁵

⁹¹ Government of Victoria 2011, *Victorian guide to regulation*, Edition 2.1, Department of Treasury and Finance, Melbourne, August, p. 25.

⁹² A taskforce appointed by the Australia Government in 2005 to identify practical options for alleviating the compliance burden on business from Government regulation.

⁹³ Regulation Taskforce 2006, *Rethinking regulation*, Report of the Taskforce on Reducing Regulatory Burdens on Business, January.

⁹⁴ Suncorp Group 2013, *Periodic review of accident towing and storage fees submission*, 28 March, p. 5.

⁹⁵ Suncorp Group submission, p. 2.

Towing operator Advance One Towing also did not support the introduction of outcomes-based regulation.⁹⁶

Insurance group IAG did not object to an outcomes-based approach, but argued ‘*certain forms of more prescriptive legislation may be required to address some of the issues outlined in [its submission]*’.⁹⁷

The VACC did not make comment in support or objection to an outcomes-based approach to regulation, stating that operators require more information to comment, and that ‘*if a change is proposed then it must be discussed with licensed towing operators*’.⁹⁸

Commission’s analysis

The traditional rationale for outcomes-based regulation

Outcomes-based regulation is most effective where the desired outcomes are measurable and there are likely to be different ways of achieving those outcomes, particularly where there is scope for innovation or new technology. The New Zealand Government has noted:

*Principle and performance based standards are more appropriate where the outcome can be measured (to ensure compliance), and where innovation is likely to be an important consideration ... Prescriptive standards are useful where information costs are high, and there is little scope for innovation.*⁹⁹

The Commission notes that outcomes-based regulation has generally been applied in the context of industry regulation, such as the regulation of heavy vehicles in Australia under the Performance-Based Standards Scheme, as opposed to economic regulation. It is also common in social regulation, promoting health, safety and environmental goals¹⁰⁰ — areas where the scope for innovation and new technology for achieving the desired outcomes is particularly significant.

The Commission has not considered the potential for outcomes-based regulation for the general regulation of the accident towing industry\). However the

⁹⁶ Advance One Towing 2013, *Periodic review of accident towing and storage fees submission*, 5 April, p. 6.

⁹⁷ IAG 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 3.

⁹⁸ VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 18.

⁹⁹ Ministry of Commerce (New Zealand) 1999, *A Guide to Preparing Regulatory Impact Statements*, p. 8.

¹⁰⁰ Such as emissions standards under environmental regulations and occupational health and safety laws, which are based on the duty to provide a workplace that is safe.

Commission has considered it in the context of setting prices for accident towing services.

Potential application of outcomes-based regulation in the context of economic regulation

The Commission's role in this review is confined to the price regulation of accident towing (i.e. the fee setting aspects of the Act). While outcomes-based regulation is not usually applied in the context of price regulation, there may be merit in taking an outcomes-based approach to the price regulation of accident towing.

As discussed in chapters 9 and 10, there appear to be issues associated with some towing operators charging for services that are intended to be (or should be) covered by the regulated fees (such as fees for 'out of storage' towing and cleaning of oil spills). A potential remedy for these issues is to prescribe in legislation what is covered by the regulated fees (as previously recommended by the Commission in its last review). An alternative is to use an outcomes-based approach to capture these services under the regulated fees. By applying an outcomes-based approach, the desired outcomes could be appropriately defined to encapsulate all relevant services (and hence costs) that are intended to be covered by the regulated fees.

There are a number of benefits of describing services in this way. First, it prevents 'border disputes' from the arbitrary interpretation of which services are considered part of the provision of the accident towing service.

Second, the flexibility provided by an outcomes-based approach reduces the potential need for future legislative changes. Under a prescriptive approach, legislation potentially requires amendment to clarify these 'border disputes'. This is less likely under an outcomes-based approach.

Therefore, while the price regulation of accident towing is not a traditional candidate for outcomes-based regulation, applying such an approach could be beneficial for these reasons, while also being consistent with the Victorian Government's *Guide to Regulation* (which encourages prescriptive regulation to be avoided where possible).

However, the potential disadvantages of an outcomes-based (or principle-based) approach also need to be recognised:

Principles are criticised for not providing certainty; for creating an unpredictable regulatory regime in which regulators can act retrospectively; for allowing firms to 'backslide', and get away with

*the minimum level of conduct possible; and thus for providing inadequate protection to consumers or others.*¹⁰¹

The Commission has been mindful of these potential disadvantages when considering the application of outcomes-based regulation to accident towing.

7.2 Outcomes that could apply to accident towing operators

To introduce an outcomes-based approach to the economic regulation of accident towing, the Act could be amended to define the outcomes of regulated accident towing services, rather than prescriptively defining the services covered by the regulated fees.

For example, accident towing could be represented by four key outcomes:

- restoring a road and immediate surrounds to safe usage after an accident
- safely towing an accident damaged vehicle to the location listed on the authority to tow
- providing safe storage of an accident damaged vehicle (if required) and making an accident damaged vehicle available to its owner (or their representative) at a readily accessible location within or at the entrance of the depot, and within a reasonable period, and
- returning the tow truck and any other equipment to a safe and operational state.

While the above are presented as ‘new’ outcomes for accident towing, they do not imply radical change from the current approach to regulation, and are consistent with the existing regulation of the industry. For example, in carrying out an accident tow, an operator is required to salvage (if required) and tow the vehicle to the location requested by the vehicle owner. Under the outcomes above, salvage is covered by the requirement to restore a road and its immediate surrounds to safe usage, and the actual accident tow corresponds to the second outcome above.

Stakeholder comments

While the Commission received comments from stakeholders in regard to applying outcomes-based regulation (see section 7.1), no comments were received on the *specific* outcomes presented in the Commission’s issues paper.

Commission’s analysis

As the rationale for applying an outcomes-based approach to price regulation is to resolve issues surrounding the clarity of what services are included under the

¹⁰¹ Black, J. 2007, *Principles based regulation: risks, challenges and opportunities*, London School of Economics and Political Science, p. 2.

regulated fees, it is important to ensure that the outcomes are appropriately defined to cover all the intended services (and related costs).

The first two key outcomes above ('restoring a road and immediate surrounds to safe usage after an accident' and 'safely towing an accident damaged vehicle to the location listed on the authority to tow') cover the key tasks in accident towing, namely clearing the accident scene (including any debris) and removing the car from the scene and towing it to the desired location, while the third outcome ('providing safe storage of an accident damaged vehicle (if required) and making an accident damaged vehicle available to its owner (or their representative) at a readily accessible location within or at the entrance of the depot, and within a reasonable period') covers the provision of storage where a vehicle cannot be directly provided to the vehicle owner or their agent (such as an insurer). These activities are clearly covered by the current prescriptive regulation.

It should be noted that this first outcome also covers all types of salvage. The Commission has recommended in draft recommendation 3 (see chapter 4 of this draft report) that consideration should be given to the regulation of basic salvage fees (with a prescribed fee); however complex salvage (where special equipment, such as a heavy tow truck or crane, is required) is not regulated. Therefore the 'reasonable' fee requirement should continue to apply to complex salvage fees.

The third outcome also covers the provision of the vehicle, or access to the vehicle, to its owner or their insurer. This would address the issue under the current regulations in relation to 'out of storage' tows (discussed in chapter 9).

The fourth outcome ('returning the tow truck and any other equipment to a safe and operational state') covers related cleaning and maintenance activities that arise as a consequence of the accident tow. This would address the issue of coverage of the base fee, and the levy of addition fees for activities that are intended to be included in the base fee such as the cleaning of oil spills (discussed in chapter 10).

Therefore, the Commission concludes that the above definition of outcomes sufficiently covers all intended services (and costs) relating to accident towing.

In defining the services that are to be covered by the regulated fees in this manner (by outcomes rather than a prescriptive definition) it should be made clear that the regulated fees cover all activities of the accident towing operator related to the provision of these four outcomes (except complex salvage). That is, the accident towing operator may not levy any additional fee for any services (except complex salvage) required to achieve these outcomes.

7.3 Findings on outcomes-based regulation

The Commission's draft findings are that an outcomes-based approach could be used as an alternative to a prescriptive definition of accident towing services

covered by regulated fees. For example, rather than amending the Act to clarify the services that are covered in the base fee (as recommended in draft findings 6 and 7), the Act could be amended to specify the required outcomes of accident towing services, while specifying that the regulated fees cover all activities of the accident towing operator (except complex salvage) required to meet these outcomes.

Draft finding 1 – Applying outcomes-based regulation

An outcomes-based approach to the regulation of accident towing appears to be consistent with the policy objectives of regulating accident towing.

In relation to industry regulation — a comprehensive review of the accident towing legislation and regulations would be required in order to make it more outcomes based.

In relation to economic regulation (price setting) — the *Accident Towing Services Act 2007* (the Act) could be amended to define regulated accident towing services by the desired outcomes rather than specifying particular activities. The Act would specify that the regulated fees cover all activities of the accident towing operator (except complex salvage) required to meet these outcomes.

For example, the outcomes included in the regulated accident towing and storage fees could be specified as:

- restoring a road and immediate surrounds to safe usage after an accident
- safely towing an accident damaged vehicle to the location listed on the authority to tow
- providing safe storage of an accident damaged vehicle (if required) and making an accident damaged vehicle available to its owner (or their representative) at a readily accessible location within or at the entrance of the depot, and within a reasonable period, and
- returning the tow truck and any other equipment to a safe and operational state.

7.4 Outcomes-based regulation and salvage fees

The Commission notes that the outcomes outlined in its draft finding 1 include salvage. However, since salvage is a separate (but related) service to accident towing that is not always required, it should not be included in the base accident towing fee, but rather requires a separate regulated basic salvage fee (and ‘reasonable’ complex salvage fees). This is consistent with the current fee schedule, and recommended fee schedule under the Commission’s draft recommendations, that is:

- regulated accident towing and storage fees exist, and
- separate requirements (e.g. the ‘reasonable’ fee requirement) or a separate regulated fee applies to salvage.

As such, if the Act is amended to introduce an outcomes-based approach to the economic regulation of accident towing, salvage fees are to remain separate from other regulated accident towing and storage fees — with a regulated basic salvage fee and the requirement for complex salvage fees to be reasonable.

Draft finding 2 – outcomes-based regulation and salvage fees

If the *Accident Towing Services Act 2007* is amended to introduce an outcomes-based approach to the economic regulation of accident towing (in line with draft finding 1), salvage fees are to remain separate from accident towing and storage fees.

8 THE ANNUAL ADJUSTMENT MECHANISM

This chapter discusses the annual adjustment mechanism. It looks at the cost index used in the annual adjustment mechanism, and other matters relating to the application of the annual adjustment mechanism.

8.1 Overview of the annual adjustment mechanism

In competitive markets, firms are able to raise the prices of their goods and services as the price of their inputs increase. Failure to do so may result in losses of profitability. In regulated markets, such as accident towing, the regulator seeks to reflect how prices adjust in a competitive market for the regulated firm.

In its last review, the Commission recommended an annual automatic adjustment to fees be applied according to a simple, transparent calculation that reflects changes in input costs faced by accident towing businesses, but removes the need for a detailed appraisal of cost movements.

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

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

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

where –

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

8.2 The cost index

The Commission is required under section 212A (1)(c) of the Act to review and recommend a figure for the 'X' factor to be used in the annual adjustment

mechanism (which is dealt with in chapter 3). In contrast, the Act stipulates that the cost index to be used in the mechanism is CPI (Melbourne, Transport).

However, at the request of VicRoads the Commission has also considered the cost index and the annual adjustment mechanism more broadly. To assist in its review of the annual adjustment mechanism, the Commission engaged NERA to provide a report on the mechanism and alternatives.¹⁰²

Stakeholder comments

The Suncorp Group believes the annual adjustment mechanism is effective, stating that it supports CPI (Melbourne, Transport) as the appropriate cost index to use.¹⁰³

Similarly, IAG states that it believes '*the annual adjustment has been effective for operators to help manage CPI-X for their business*' and '*CPI-X charges are fair and reasonable*'.¹⁰⁴

In response to the question whether CPI (Melbourne, Transport) is the appropriate cost index to use, the VACC states that the question '*requires further clarification as to what would be proposed as an alternative*'.¹⁰⁵ The VACC's consultants, Pitcher Partners, proposed creating an index using CPI (Melbourne, Transport) and a labour component (as it previously suggested during the Commission's previous review).¹⁰⁶

On the other hand, towing operator Advance One Towing stated that it does '*not believe that using a generic transport CPI indicator [is] effective*'.¹⁰⁷

Commission's analysis

Choice of cost index

One option for estimating costs in the accident towing industry (for the purposes of adjusting prices) is to use a general price index. This option was chosen by the Commission in its previous review, with the Commission recommending the CPI (Melbourne, Transport) index as the appropriate proxy for costs in the accident

¹⁰² The NERA report, *Benchmarking accident towing fees and options for annual adjustment*, is available from the Commission's website.

¹⁰³ Suncorp Group 2013, *Periodic review of accident towing and storage fees submission*, 28 March, p. 4.

¹⁰⁴ IAG 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 3.

¹⁰⁵ VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 16.

¹⁰⁶ VACC submission, p. 8.

¹⁰⁷ Advance One Towing 2013, *Periodic review of accident towing and storage fees submission*, 5 April, p. 2.

towing industry. The Commission recommended CPI (Melbourne, Transport) over an industry specific composite index on the basis that a simple and transparent approach for adjusting prices was preferable, noting that most regulators rely on some form of the CPI index to adjust prices for these reasons.¹⁰⁸

NERA has suggested that the Producer Price Index (PPI) could be used as an alternative general price index.¹⁰⁹ The PPI has the benefit that there is a specific classification for road freight transport (which includes accident towing), meaning that it does not incorporate non-road transport industries (which may have very different cost structures).

However, as noted by NERA, the PPI (Road Freight Transport) is a national index, incorporating fuel and labour rates in other parts of Australia.¹¹⁰ CPI (Melbourne, Transport), on the other hand, is a Melbourne specific index, and will better reflect the specific changes in fuel and labour prices in Melbourne.

For this reason, the Commission continues to conclude that CPI (Melbourne, Transport) is the most appropriate general price index for estimating accident towing costs.

An alternative to using a general price index for estimating costs in the accident towing industry is to construct an industry specific composite index, based on specific price indices that reflect the cost components faced by the industry.

Pitcher Partners has suggested using a composite index based on CPI (Melbourne, Transport) and a labour component. For the labour component, it has suggested using the change in average weekly ordinary time earnings (AWOTE) for Melbourne.¹¹¹

The Commission has considered the use of AWOTE (Melbourne) as well as an alternative labour index, the Wage Price Index (WPI) for Melbourne, in appendix D.2. The Commission considers that WPI (Melbourne) is a more appropriate labour index than AWOTE (Melbourne) to incorporate in a composite index (should one be used for adjusting accident towing fees).

Therefore, in determining the appropriate cost index for the annual adjustment mechanism, the Commission has considered the choice between CPI (Melbourne,

¹⁰⁸ ESC 2010, *Review of accident towing and storage fees*, Final report, vol. 2, detailed reasons and methodology, June, p. 39.

¹⁰⁹ NERA 2013, *Benchmarking accident towing fees and options for annual adjustment*, A final report for the Essential Services Commission, 8 April, p. 27.

¹¹⁰ NERA 2013, p. 35.

¹¹¹ VACC 2013, *Periodic review of accident towing and storage fees submission, Appendix One*, 26 March, p. 8.

Transport) and a composite index based on CPI (Melbourne, Transport) and WPI (Melbourne).

Comparison of indices

In its paper supporting the VACC's submission, Pitcher Partners compared the trend in CPI (Melbourne, Transport) to its composite index using CPI (Melbourne, Transport) and the AWOTE (Melbourne) index.¹¹² In particular, Pitcher Partners looked at the 10 year 'indexation gap' between the two indexation methodologies. The Commission has considered the Pitcher Partners analysis and notes that:

- such an analysis only demonstrates the different results of indexation methodologies — it does not demonstrate whether one indexation methodology is superior or more accurate
- due to the periodic review of fees, the annual adjustment mechanism only applies for the three years before the next fee review by the Commission, and therefore a ten year analysis is not illustrative of a 'gap' that may actually emerge, and
- Pitcher Partners' analysis does not take into account the zero per cent fee changes in years where the adjustment mechanism would result in a decrease.

A more detailed assessment of the Pitcher Partners' analysis is presented in section D.2 of appendix D.

The Commission has conducted its own analysis of indexation using:

- CPI (Melbourne, Transport)
- a composite index based on CPI (Melbourne, Transport) and WPI (Melbourne), and
- Pitcher Partner's suggested composite index based on CPI (Melbourne, Transport) and AWOTE (Melbourne) (included for comparison only).

Note: Pitcher Partners has not specifically stated the proportion of labour costs to be used — the Commission assumes that Pitcher Partners continues to propose a 55 per cent labour component and 45 per cent CPI (Melbourne Transport) component as it submitted in its submission to Commission's last fee review.¹¹³ The Commission has used these proportions in its analysis.

The Commission's analysis looks at the results of indexation over the last three years (representing the application of the annual adjustment mechanism over the

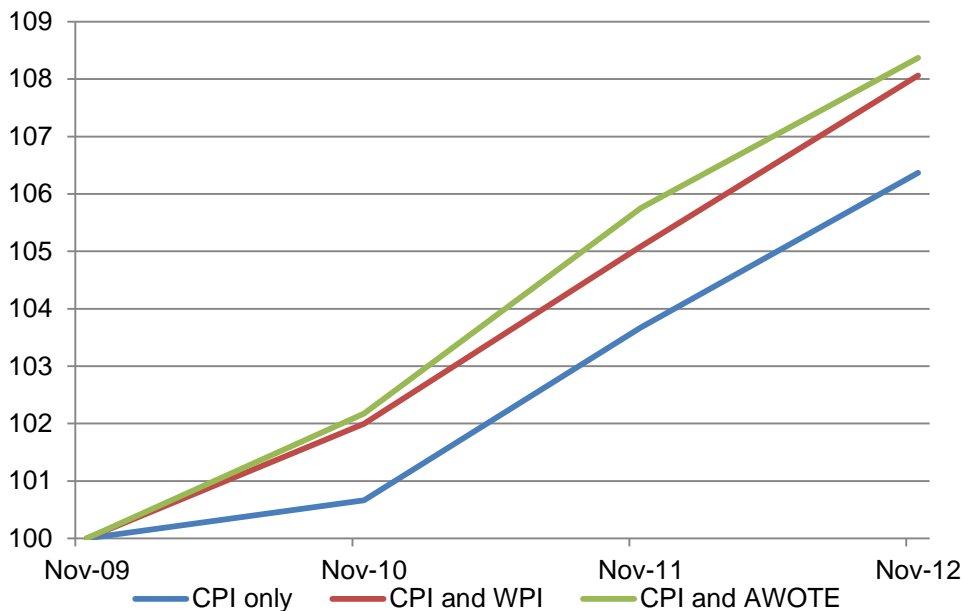
¹¹² VACC 2013, *Periodic review of accident towing and storage fees submission, Appendix One*, 26 March, p. 8–9.

¹¹³ Pitcher Partners 2010, *VACC – Proposed towing & storage fees*, April, p. 8.

regulatory period between periodic fee reviews) and takes into account the zero per cent fee changes in years where indexation would result in a decrease.

Figure 8.1 shows the Commission’s three year indexation comparison of the three indices. Indexation using only CPI (Melbourne, Transport) results in a 1.6 per cent gap when compared to the composite index using WPI (Melbourne) (or 1.9 per cent using AWOTE (Melbourne)). This implies that the indexation gap from using CPI (Melbourne, Transport) rather than a composite index (based on WPI (Melbourne)) over the three year period between periodic fee reviews would be 1.6 per cent – far lower than the 12 per cent indexation gap over ten years suggested by the Pitcher Partners analysis.

Figure 8.1 Comparison of indices – three year indexation



Note: CPI refers to CPI (Melbourne, Transport); WPI refers to WPI (Melbourne); AWOTE refers to AWOTE (Melbourne). For the composite indices, the Commission has assumed a 55 per cent proportion of labour costs. Where the date of available data does not match, the Commission has applied linear interpolation to estimate the index value at the relevant point in time (i.e. a November index value is estimated as the weighted average between September and December index values for that year).

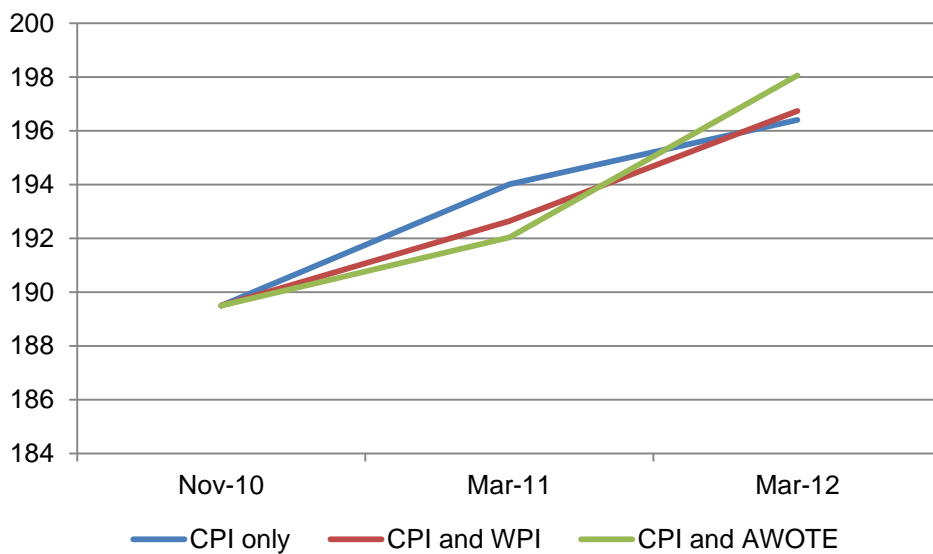
Source: Australia Bureau of Statistics.

Pitcher Partners submitted a similar short term trend analysis comparing changes in the base fee indexed using CPI (Melbourne, Transport) and using the composite

index based on AWOTE (Melbourne) – its results show a 2.09 per cent difference between the two methodologies from November 2010 to March 2012.¹¹⁴ This analysis removes the effect of the large decrease in CPI (Melbourne, Transport) in March 2009.

Figure 8.2 recreates Pitcher Partners’ short term trend analysis to include the composite index based on WPI (Melbourne). The Commission’s results show a 0.17 per cent difference between the indexation using CPI (Melbourne, Transport) and the composite index using WPI (Melbourne), and a 0.84 per cent difference when compared to the composite index using AWOTE (Melbourne).

Figure 8.2 Changes in base fee using different indices



Note: CPI refers to CPI (Melbourne, Transport); WPI refers to WPI (Melbourne); AWOTE refers to AWOTE (Melbourne). For the composite indices, the Commission has assumed a 55 per cent proportion of labour costs. Where the date of available data does not match, the Commission has applied linear interpolation to estimate the index value at the relevant point in time (i.e. a March index value is estimated as the weighted average between February and May index values for that year).

Source: Australia Bureau of Statistics.

Figures 8.1 and 8.2 show that there is only a small effective difference between indexation using CPI (Melbourne, Transport) and the composite indices over the short term that the annual adjustment mechanism will apply – particularly when the

¹¹⁴ VACC 2013, *Periodic review of accident towing and storage fees submission*, Appendix One, 26 March, p. 8.

effects of large decreases in CPI (Melbourne, Transport) are removed. This suggests that indexation by an industry specific composite index as suggested by Pitcher Partners would not give significantly different results than indexation using CPI (Melbourne, Transport).

For comparison purposes, the Commission has also undertaken a ten year analysis in line with the analysis done by Pitcher Partners (see section D.2 of appendix D).

8.3 Findings on the cost index

In its last review, the Commission chose not to recommend an industry specific index, as it was concerned that accident towing labour costs may not move directly in line with average weekly earnings (which depends on the supply and demand of accident towing labour and the skills required). In addition, the Commission considered it inappropriate to adjust storage and distance fees with a labour index. The Commission concluded a simple and transparent approach using CPI (Melbourne, Transport) was preferable, noting that most regulators rely on some form of the CPI index to adjust prices for these reasons.¹¹⁵ This rationale for choosing a general price index continues to apply.

As noted by NERA in its report for the Commission, in the absence of sufficiently robust information on the cost structure of the accident towing industry, a composite price index is unlikely to perform any better than a general price index – arguably a general price index might perform better given that it will not be influenced by the choice of weights (as would be the case in a composite price index).¹¹⁶

Indexation using CPI (Melbourne, Transport) tracks relatively closely with the composite index based on WPI (Melbourne), even over a ten year timeline (see section D.2 of appendix D). Given the small effective difference between the two indices over the short term that the annual adjustment mechanism will apply, the Commission finds using the CPI (Melbourne, Transport) index is not inferior to an industry specific composite index. Therefore, based on the simplicity and transparency of using the CPI (Melbourne, Transport) index, and the previously noted issues in using a labour index, the Commission continues to find CPI (Melbourne, Transport) to be the appropriate cost index for the annual adjustment of accident towing fees.

¹¹⁵ ESC 2010, *Review of accident towing and storage fees*, Final report, vol. 2, Detailed reasons and methodology, June, p. 39.

¹¹⁶ NERA 2013, p. 29.

Draft finding 3 – Cost index

The Commission continues to find that CPI (Melbourne, Transport) is the appropriate cost index for adjusting accident towing fees under the annual adjustment mechanism in section 212H of the *Accident Towing Services Act 2007*.

8.4 Other adjustment mechanism matters

The Commission's issues paper raised two additional adjustment mechanism matters. First was whether fees should be able to decrease when the adjustment mechanism gives a negative outcome. During the last review of accident towing fees, the Commission discussed that fees should not be decreased when the mechanism suggests that costs have fallen, on the basis of minimising volatility (the Commission's report noted that the CPI (Melbourne, Transport) could be a volatile index, hence the decision not to adjust fees downwards). However there is also an argument that consumers should benefit from cost decreases.

Second, and a related issue, is how the mechanism has been implemented. Following a negative result from the adjustment mechanism (and hence zero change to fees), when the adjustment mechanism next gives a positive result, fees will be increased. This can provide the industry with fee increases above estimated cost increases (as shown in figure 8.3¹¹⁷). However, this differs from the Commission's intention in its previous review which stated that when the adjustment mechanism suggests fees should fall (and a zero per cent fee change is imposed), fees should not be subsequently increased until costs have returned to the level they were prior to the imposition of the zero per cent change.

This ensures that the industry receives a fee increase only when estimated costs have actually increased. (This issue would be removed if fees are able to be adjusted down).

Like the cost index, the Act does not provide the Commission with the power to make recommendations on how the annual adjustment mechanism is applied. Nonetheless, the Commission has taken the opportunity to review the application of the annual adjustment mechanism as this has an important effect on the level of regulated fees.

¹¹⁷ For illustrative purposes, figure 6.5 covers a 10 year period. However, it should be noted that the annual adjustment mechanism has only been applied since the Commission's last fee review in 2010.

Stakeholder comments

IAG stated that it does not believe price decreases should be provided because it believes '*CPI-X charges are fair and reasonable.*'¹¹⁸

Commission's analysis

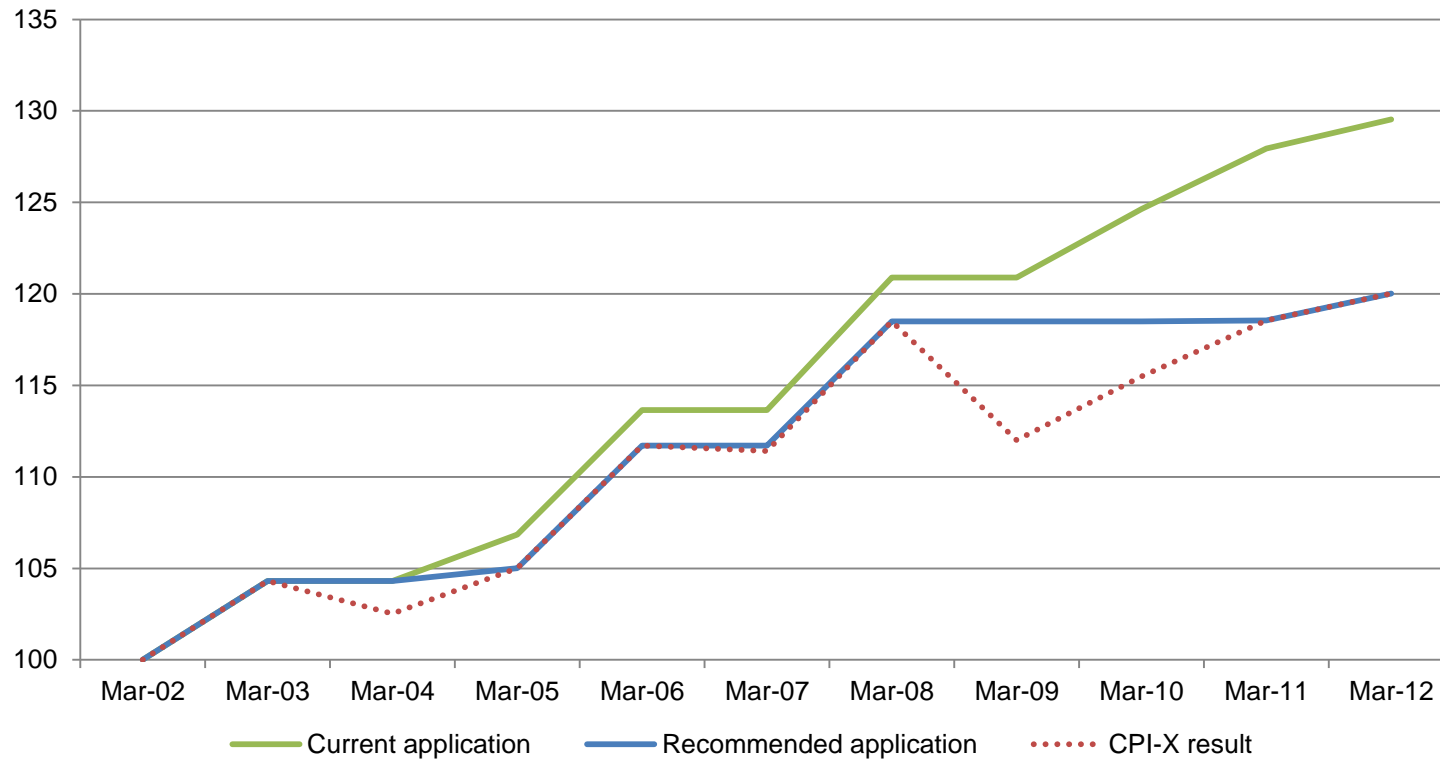
Should annual fee decreases be applied?

Figure 8.4 shows the results of CPI-X over the last 10 years using CPI (Melbourne, Transport) and a productivity adjustment of 0.5 per cent. For comparison, it also shows the results using CPI (Australia, All groups). Figure 8.4 indicates that the CPI (Melbourne, Transport) index is relatively volatile, and it was for this reason that the Commission recommended in its previous review that a zero per cent fee change should be applied in years where a fee decrease would result (i.e. where CPI-X is negative). The Commission continues to find this is appropriate.

While there is an argument that cost decreases should be passed on to consumers, the Commission considers the benefits of fee smoothing and increased certainty in accident towing fees justify restricting fee decreases under the annual adjustment mechanism. The Commission notes that fees can be adjusted for significant long term cost decreases through the periodic fee review process.

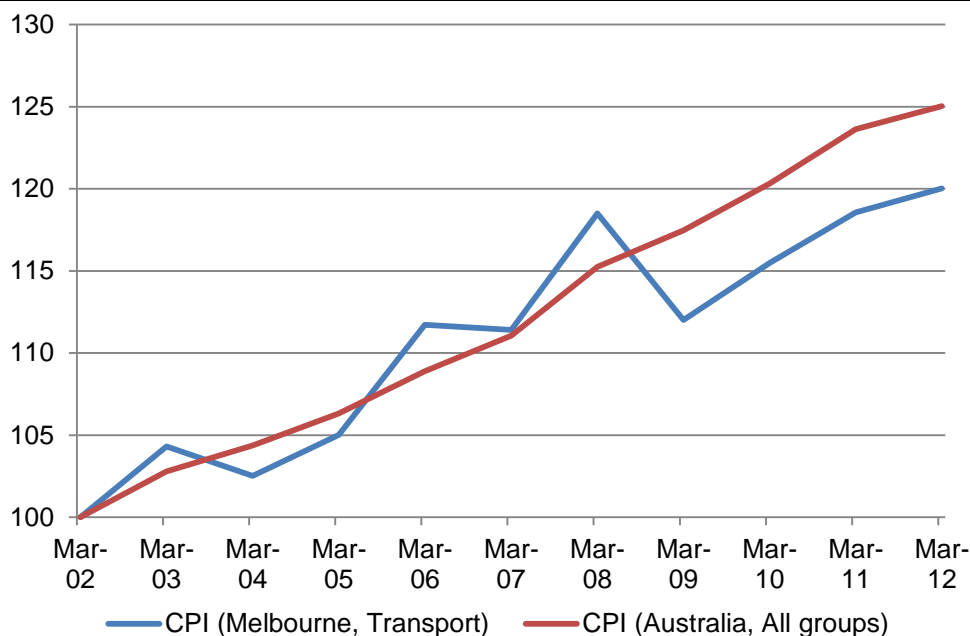
¹¹⁸ IAG 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 3.

Figure 8.3 Comparison between current and recommended application of annual adjustment mechanism



Source: Australia Bureau of Statistics.

Figure 8.4 The annual adjustment mechanism (CPI-X)



Note: The above graph uses an 'X' factor of 0.5 per cent (see draft recommendation 2).

Source: Australia Bureau of Statistics.

Applying the annual adjustment mechanism

As noted above, the current application of the annual adjustment mechanism by the Government provides for fee increases above the estimated cost increases (CPI-X), as demonstrated in figure 8.3.¹¹⁹ In effect, increases in CPI-X that merely offset previous decreases can potentially be passed on to consumers as higher fees, even though estimated costs have not actually increased. This can result in indexation of fees that surpasses the indexation of estimated costs. This is inappropriate given that the intention of the annual adjustment mechanism is to update regulated fees to account for changes in underlying input costs. (It should be noted that the annual adjustment mechanism has not returned a negative number (i.e. CPI-X has not been less than zero) since its introduction, and so consumers have not been affected by unnecessary fee increases to date).

¹¹⁹ For illustrative purposes, figure 6.5 covers a 10 year period. However, it should be noted that the annual adjustment mechanism has only been applied since the Commission's last fee review in 2010.

Consistent with the Commission's consideration of the adjustment mechanism during the last review, the Commission concludes that when the adjustment mechanism suggests fees should fall (CPI-X is negative) and a zero per cent fee change is imposed, fees should subsequently only be increased when estimated costs increase relative to the level they were prior to the imposition of the zero per cent change. That is, estimated costs should be held at the level prior to the decrease in CPI-X, and only increased once CPI-X surpasses this level. This ensures that fees are in line with estimated costs (except during periods where CPI-X has decreased below previous levels) and the industry receives a fee increase only when estimated costs have actually increased.

8.5 Findings on other adjustment mechanism matters

Given the volatility in the CPI (Melbourne, Transport) index, the Commission continues to conclude the annual adjustment mechanism should be restricted to prevent fee decreases. This provides the benefits of fee smoothing and increased certainty in accident towing fees. Fees can be adjusted for significant long term cost decreases through the periodic fee review process.

However, as currently implemented, the annual adjustment mechanism provides fee increases above and beyond estimated costs (as driven by changes in the CPI (Melbourne, Transport)), with fees being increased where costs have merely returned to previous levels following a decrease. In effect, decreases in estimated costs are ignored, while the subsequent corresponding increases (merely returning costs to the previous levels at which fees were held constant) are being incorporated into increased fees.

The current application is not what the Commission intended when first recommending implementation of an annual adjustment mechanism as part of its previous fee review, as it provides for fee increases that surpass estimated costs. The Commission finds that section 212H of the Act should be amended to prevent these fee increases that surpass estimated costs.

Draft finding 4 – Application of the adjustment mechanism

The Commission finds that:

- the annual adjustment mechanism should adjust fees by the greater of zero or the rate of change in CPI (Melbourne, Transport) minus X, i.e. fees cannot be adjusted down by the annual mechanism, and
- following the imposition of a zero per cent fee change, fees should not subsequently be increased until CPI (Melbourne, Transport) minus X exceeds the level it was prior to the imposition of the zero per cent fee change.

9 ISSUES RELATING TO SECONDARY TOWING

This chapter considers the incidence of secondary towing and ‘out of storage’ towing, and whether operators are allowed to charge for these services.

9.1 What is secondary towing?

When a vehicle is involved in an accident, a tow truck arrives at the scene of the accident and is required to tow the vehicle to the destination requested by the driver or owner of the vehicle. The authority to tow docket must specify the location to which the accident damaged vehicle is to be towed. The regulated accident towing service fee (\$196.90) covers this tow.

Once delivered to the location on the authority to tow docket, a secondary tow involves the towing of a vehicle from this location to another. For example, a tow truck operator may tow a vehicle to a sub-depot (as listed on the authority to tow), and then charge a secondary tow fee to tow the vehicle from the sub-depot to a final depot. Alternatively, if an accident happens when an insurer’s assessment centre is closed, the towing operator may be requested to tow and store the vehicle overnight at their depot (as listed on the authority to tow), and to subsequently tow the vehicle to the assessment centre the next day (the secondary tow). Secondary tows are not price regulated and are, in effect, trade towing.

While the authority to tow docket must clearly identify the place to where the accident damaged vehicle is to be towed, during the Commission’s last fee review the Commission was concerned that accident victims, not knowing the best place to nominate where to tow the vehicle, were vulnerable to incurring the costs of a secondary tow.

During its previous review, the Commission received anecdotal evidence of tow truck operators improperly charging customers for secondary tows. However, the Commission was not able to evaluate the extent or nature of such charging as it did not receive submissions nor had sufficient evidence from stakeholders on the issue. As a result, the Commission made a final recommendation that data on the incidence and nature of secondary towing fees be collected by VicRoads in order to facilitate evaluation at the next review.

The Commission notes that no formal mechanism for data collection related to secondary towing charges has been established. Through consultation with stakeholders and VicRoads, the Commission has learned that the problem of incorrect charging for secondary towing may still exist.

The Minister is not empowered to make a fee determination in relation to secondary towing, and the Commission may not make a recommendation. However, issues related to secondary towing have been raised by stakeholders and VicRoads and there appears to be some misinterpretation of the Act in terms of when a secondary tow fee can be levied. Hence the Commission has considered the issue and presents its analysis and findings below.

Stakeholder comments

Incidence of secondary tows

Consultations with stakeholders have indicated that many secondary tows arise when an insurer's assessment centre is closed. Operators have advised the Commission that while it is common practice for insurance companies to specify the location for the accident damaged vehicle to be towed (usually the insurer's accident assessment centre), these centres are closed outside of standard business hours. In these circumstances, the vehicle is towed back to the accident towing operator's depot for storage, before being towed to the assessment centre again (e.g. the next day). Operators contend that the charging for these tows as secondary tows is legitimate.

The VACC has also confirmed that secondary tows occur '*in most situations ... as a result of a smash tow completed outside normal business hours*'.¹²⁰

Operators also submit that even if an insurance centre is open, and they have been requested to tow the vehicle to the centre from the scene of the accident, insurers sometimes refuse to pay immediately for the regulated tow. Consequently, operators tow the vehicle back to their depot and charge for this tow as a secondary tow.

VicRoads advised the Commission that there are some instances where operators are performing secondary tows inappropriately.¹²¹ For example, where the vehicle owner (or insurer) requests that the damaged vehicle be towed to the insurer's assessment centre, but the accident towing operator instead puts its depot as the tow destination on the authority to tow (which the vehicle owner signs unaware that the depot has been listed as the location for the tow). The operator then tows the vehicle to its depot and subsequently to the owner's (insurer's) requested location and charges a secondary tow fee for the tow from the depot to this requested location.

¹²⁰ VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 13.

¹²¹ *Pers. communication*, 20 March 2013.

Similarly, Suncorp Group has claimed that '*despite our customers explaining to the operator that the car is insured by one of our brands, they still, in the majority of cases tow the vehicle to their yard*'.¹²²

Secondary tow fees currently charged

The Commission has received information that the fees being charged for secondary tows range from \$80 to \$200.¹²³ Suncorp Group suggests that fees for secondary tows vary greatly and in order to create certainty, Suncorp asks that secondary tow fees be regulated on a per kilometre basis.¹²⁴

The VACC opposes secondary tows being covered by the regulated fee as the secondary tow market is unregulated and such a change would introduce one fee for two tows.¹²⁵

Commission's analysis

Through its consultations, the Commission has identified three common issues relating to secondary tows, namely:

1. vehicle owners not knowing where the vehicle should be towed to after an accident
2. secondary tows taking place without owner (or insurer) consent
3. secondary tows occurring because insurers are unwilling to pay immediately for the regulated tow.

Each of these issues is analysed in turn below.

Not knowing where the vehicle should be towed to after an accident

The accident towing services legislation requires that an accident damaged vehicle must be towed to the location on the authority to tow (section 146 of the Act), as specified by the vehicle owner (section 38 of the Regulations), and the vehicle must be stored at the same location on the authority to tow (section 150 (1A)).¹²⁶

¹²² Suncorp Group 2013, *Periodic review of accident towing and storage fees submission*, 28 March, p. 5.

¹²³ See Suncorp Group 2013, p. 4 and IAG 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 3.

¹²⁴ Suncorp Group 2013, pp. 2 and 5.

¹²⁵ VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 17.

¹²⁶ The same section allows a tow truck operator to remove the vehicle from their depot and move it to a nearby place for the purposes of storage, however section 150 (3) prohibits the operator from charging for this tow

Where the authority to tow docket specifies that the vehicle is to be towed to a 'depot', this depot is the depot of the licenced accident towing operator. Consequently, operators do not have a choice as to which depot to tow the vehicle, and concerns that secondary tows can occur because vehicle owners may not know if the depot location is the best location to avoid a secondary tow are removed.

Secondary tows taking place without owner (or insurer) consent

Secondary tows taking place without owner (or insurer) consent (e.g. when the operator lists their depot as the location on the authority to tow rather than the requested location) is a contravention of sections 150 (1A) and 150 (3) of the Act.¹²⁷

These provisions prohibit accident towing operators from moving the vehicle to any other location without the consent of the owner. Further, the case of operators putting their depot on the authority to tow when another location has been requested by the vehicle owner is contrary to section 38 of the Regulations. Under these circumstances, the Commission understands that some tow truck operators are requesting payment for the secondary tow fee from owners before they release the vehicle. Given the legal requirements, cases of secondary towing taking place without the consent of the vehicle owner are a breach of the legislation and are best dealt with via enforcement action by the industry regulator, VicRoads.

Tows occurring because of non-payment

Some operators are charging for secondary tows as a result of the insurer not immediately paying for the regulated accident tow when the vehicle is first brought to the insurer's assessment centre.¹²⁸ In this case, given the towing operator does not receive payment, the operator tows the vehicle from the assessment centre to their depot — this is being charged as a secondary tow.

The Commission understands that there is no provision compelling an owner (or insurer as agent of an owner) to make *immediate* payment of fees upon completion of an accident tow. Moreover, there are no provisions in the Act or Regulations governing the timing of payments in relation to accident towing services.

However, section 39 (3)(b) does give a tow truck driver the right to refuse an accident tow if the driver or owner indicates they would be **unwilling** to pay for the

¹²⁷ Section 150 (1A) obliges an operator to store a vehicle at the location on the Authority to Tow. Section 150 (3) says that operators can't charge for transfers between this location and the nearby storage place. Performing a secondary tow without the consent of the owner contravenes 150 (1A).

¹²⁸ The insurer may be unwilling to immediately pay for the tow as it is yet to assess whether it will pay out on the insurance policy, e.g. the policy may be voided if the driver was intoxicated.

towing services upon completion of that service by cash or via a mobile payment facility. The key issue here is **willingness to pay**, not actual payment — that is, the owner of a vehicle could indicate a willingness to pay but is not required by the Act to follow through on any such promise when the vehicle is first delivered to the requested location.

Section 156 (4) of the Act also gives tow truck operators the right to hold a vehicle in the event that the towing or storage fees have not been paid by the owner of a vehicle.

However section 150 (3) of the Act does not permit operators to charge for tows **between** the location listed on the authority to tow (for e.g. the insurer's accident assessment centre) back to their depot. This applies irrespective of why the tow was made. This is because an accident towing service covers all tows from the time when the road accident concerned occurs to the time when the motor vehicle is first **delivered** to the location in the authority to tow — therefore, until the vehicle is delivered (meaning the vehicle has been handed over) to the requested location, any towing that occurs is part of the accident towing service.¹²⁹

The Commission's draft conclusions

The Act defines 'accident towing service' as including all towing that occurs until the vehicle is first **delivered** to the location specified in the authority to tow. The Act prohibits additional charges for tows between the location specified on the authority to tow and the operator's depot for the purposes of storage before delivery of the vehicle.

Where an insurer is unable to take possession of a vehicle (due to their assessment centres being closed or as a result of lawfully refusing to immediately pay for the accident tow) and the tow truck driver tows the vehicle back to its depot — this is not a secondary tow and operators cannot charge for this tow.

The Commission finds that the requirements of operators under the existing legislation and regulations in relation to what can be charged as a secondary tow should be made clear to operators and enforced. Where secondary tows are taking place without owner (or insurer) consent — this is also an enforcement matter and should be dealt with as such.

Finally, in reviewing secondary towing issues, the Commission notes that the Act generally refers to the vehicle 'owner' or 'driver', e.g. when referring to the party

¹²⁹ The Act defines an accident towing service as 'the service of operating tow trucks for the following purposes— (a) the purpose of towing accident damaged motor vehicles, where the towing of the accident damaged motor vehicle takes place between the time when the road accident in which the motor vehicle is damaged occurs and the time when the motor vehicle is first delivered to the place specified in the authority to tow; (b) the purpose of clearing road accident scenes', p.2

providing the authority to tow. Given many drivers have comprehensive insurance, and hence their insurance company is involved in the accident towing (and repair) process, VicRoads may wish to consider whether owner and driver representatives (e.g. insurers) should have greater recognition in the Act.

9.2 Findings on secondary towing

Draft finding 5 – Secondary towing

Under section 150(3) of the *Accident Towing Services Act 2007*, secondary tow fees cannot be charged for tows between the location on the authority to tow docket and an operator's storage location. The implication is that under the Act, all accident tows until the vehicle is **delivered** to the location on the authority to tow are covered by the regulated fee, and no additional fees can be levied. VicRoads should clearly outline on its website the responsibilities of operators towards their customers in regards to secondary towing (in particular, when an operator may or may not charge secondary towing fees) under the Act.

It is also clear that secondary tows can only occur **after** delivery of the accident damaged vehicle to the location specified in the authority to tow (and at the request of the vehicle owner or their representative), and that secondary tow fees are unregulated but are subject to a 'reasonable' charge.

In addition, enforcement and penalty provisions in the Act should be reviewed to ensure they discourage accident towing operators from illegally charging for secondary tows and undertaking secondary tows without owner consent.

9.3 Should 'out of storage' towing be regulated?

An associated issue with secondary towing is the potential for vehicle owners (or insurers) to be charged a fee by the tow truck operator for removing the vehicle out of storage. That is, from its storage position within a depot to a location where it can be accessed by the owner (or insurer) for collection or inspection. This location could be within the depot or just outside it (the Commission collectively refers to these as 'out of storage' towing).

The question arises whether towing of this nature is a type of secondary tow, or is part of the service in providing accident towing and therefore is included as part of the regulated fees.

Stakeholder comments

Both IAG and Suncorp Group submit that they have seen an increase in the incidence of 'out of storage' fees being imposed and the latter argues it is one of the areas that causes most friction between tow truck drivers and insurers. Suncorp Group and IAG advised that tow truck operators were charging between \$60 to \$88 to release vehicles (tow the vehicle from within the depot to the front gate). Both Suncorp and IAG argue that the 'out of storage' tows should be

considered as part of the regulated fee (currently \$196.60 plus any applicable storage fees).¹³⁰

Suncorp Group claim it is common for vehicles to be placed in areas of an operator's yard that are difficult to access, thus creating the conditions for the out of storage tow. They express a preference for operators to be obligated to make vehicles readily available at the entrance to their yard, as is the case in Queensland.¹³¹

The VACC was unable to comment on the circumstances or the extent of the charging for out of storage towing, but maintained that '*movements within the yard should be charged separately*'.¹³²

In discussions with the Commission, operators acknowledged that out of storage fees were charged. However, they argued the service is similar to a basic trade tow (e.g. moving a car from the back to front of a person's house). Advance One Towing submitted that it charges \$88 for an out of storage tow, noting that the charge was applied '*as you still have to load and unload and clean up the mess on the tray and in the depot*'.¹³³

Commission's analysis

The purpose of regulated charges for accident towing and storage work is to protect consumers from unreasonably high fees arising from market power held by accident towing operators. Charging a fee for making a vehicle available for pick-up by its owner (or representative) is considered by the Commission to be inappropriate. Though not clearly outlined in the description of the coverage of the base (regulated) fee listed on the VicRoads website, it is reasonable that provision of a regular accident tow service includes making the vehicle available for pick-up.

An offence under the Act?

Under section 156 of the Act it is an offence for the person responsible for storage of an accident damaged vehicle to hinder the release of (or fail to release) the vehicle to its owner once payment for towing and storage services has been made. On the basis that the owner (or insurer) has paid the towing and storage fees

¹³⁰ IAG 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 3 and Suncorp Group 2013, *Periodic review of accident towing and storage fees submission*, 28 March, pp. 2 and 5.

¹³¹ Suncorp Group submission, p. 2.

¹³² VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 17.

¹³³ Advance One Towing 2013, *Periodic review of accident towing and storage fees submission*, 5 April, p. 5.

'charged in accordance with the Act', charging for an out of storage tow could be taken to be contrary to section 156 of the Act.

However, an alternative argument could be made supporting operators' actions to charge an out of storage fee. Operators are able to set their own fees for services for which the Minister has not made a fee determination. In this regard, section 212I (1) of the Act states that:

A person must not charge an amount for the provision of an accident towing service, for the storage of an accident damaged motor vehicle or for the provision of salvage services unless—

- (a) if a determination for the service has been made under section 211, the charge is determined in accordance with that determination; or*
- (b) if no determination for the service has been made under section 211, the charge is a reasonable charge for the provision of that service.*

Given legislative uncertainty as to what services are covered by regulated accident towing and storage fees (see chapter 10), it could be argued that operators are free to charge an out of storage fee, with the Act requiring that it be 'reasonable'.

Nevertheless, the Commission finds it reasonable for a customer to expect the regulated fee to cover the costs of an out of storage tow. As highlighted by the Suncorp Group, the reasonableness of charges is difficult for a customer to establish or argue, suggesting a failure of the Act to prevent this type of charging. To help prevent incorrect charging for this service, a more specific description of what is covered by the base towing fee would render the requirements less open to interpretation.

The Commission also notes that its finding on outcomes-based regulation (chapter 7) could address the issue of operators charging for the provision of a vehicle from its storage position. By including the outcome '*making an accident damaged vehicle available to its owner (or their representative) at a readily accessible location within or at the entrance of the depot, and within a reasonable period*', it will be explicit that the regulated accident towing fee provides for provision of a vehicle from its storage position, and therefore that operators cannot charge extra for the out of storage tow.

9.4 Findings on 'out of storage' towing

The service described as out of storage towing should be included in the description of what is involved in the regulated fees in order to provide clarity for customers and businesses as to the responsibilities of tow truck operators.

Draft finding 6 – 'Out of storage' towing

To address the potential for operators to charge an 'out of storage' fee, the Commission finds that either:

- legislation should be amended to define clearly those costs and services that are covered by regulated accident towing and storage fees, and that out of storage tows should be included in this definition (see draft finding 7), or
- if the option of outcomes-based regulation is pursued, one of the outcomes should include 'making an accident damaged vehicle available to its owner (or their representative) at a readily accessible location within or at the entrance of the depot, and within a reasonable period' (see draft finding 1).

10 | COVERAGE OF THE REGULATED FEES

This chapter considers the services (and costs) covered by the regulated accident towing and storage fee, and mechanisms to prevent unnecessary charging by operators.

10.1 What services are included in the regulated fees?

When paying the regulated fee for an accident tow, it is important for the consumer to know which services are covered by this fee. If the range of services covered by this fee is not well defined, the consumer has little recourse in the event they do not agree with the operator charging extra fees for some of the services provided.

Currently the Act (section 3 (1)) defines an accident towing service as *'the service of operating tow trucks for ... the purpose of towing accident damaged motor vehicles ... 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'*. This definition of an accident tow does not cover specifically the range of services (or costs) that may be involved in providing an accident tow. Section 212I (1)(b) obliges operators to set charges that are not covered by the regulated fees at a level that is reasonable. This ambiguity effectively allows operators to use their own judgement on which services are covered by the regulated fee and other services for which extra payment is required.

In addition to the issue of out of storage towing (chapter 9), another example of this ambiguity that has been the subject of stakeholder complaint are additional fees for the cleaning of tools, the tow truck and other towing equipment.

In its previous accident towing review, the Commission recommended that debris removal be added to the list of services covered by the regulated fee and the Act be amended to clearly specify the services that the regulated towing fee covers. However, this recommendation was not adopted.

Instead, the VicRoads website provides a definition — the regulated fee is defined to cover:

- the first eight kilometres travelled by the tow truck (from the depot),
- removal of all debris from the accident site (including any spills),
- cleaning the tow truck,
- waiting time at the scene,
- phone calls, and

- unpaid tows and administration, such as photos and documentation.¹³⁴

The Commission has again been asked to consider coverage of the regulated fee, and must consider whether the VicRoads definition is sufficiently clear and comprehensive (and how best to enforce this) or whether an outcomes-based approach would provide a better basis on which to define the services covered by the regulated fee.

Stakeholder comments

Both IAG and Suncorp Group expressed support for the idea of an amendment to the Act to specify services included in the regulated fee, with the latter claiming it to be common practice for operators to be charging \$50 to \$60 extra for cleaning per tow.¹³⁵ IAG submitted that cleaning fees could range from \$55 to \$75, but stated that a cleaning fee of \$55 to clean a large amount of oil was reasonable.¹³⁶

The VACC argued that the regulated fee did not cover all possible costs connected to the provision of an accident tow and that it would be unreasonable to expect that some variable costs would not be charged. It believes the matter requires further discussion as the VicRoads website definition is not agreed to by all parties.¹³⁷

Commission's analysis

The Commission notes the Act and Regulations do not specify the detailed services (or costs) covered by the regulated accident towing and storage fees, though the VicRoads website presents such a list.¹³⁸ Any definition on services covered by the regulated fee automatically creates 'border' issues, whereby different parties may interpret differently what is or is not caught by the definition. This confusion over what is intended to be covered by the regulated fee could lead to some operators charging additional fees for services associated with accident towing. This situation could be addressed with a definition of exactly what is paid for with the regulated fee being given a legal basis.

¹³⁴ VicRoads 2012, *New fees and charges from 2012-13*, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/AboutTheIndustry/TowTruckFees.htm on 4 March 2013.

¹³⁵ IAG 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 3 and Suncorp Group 2013, *Periodic review of accident towing and storage fees submission*, 28 March, p. 5.

¹³⁶ IAG submission, p. 4.

¹³⁷ VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, p. 13.

¹³⁸ VicRoads 2012, *Fees and charges*, accessed at www.vicroads.gov.au/Home/Moreinfoandservices/TowTrucks/AboutTheIndustry/TowTruckFees.htm on 8 May 2013.

This legal basis could take the form of a definition included in section 3 of the Act. Alternatively, the definition could accompany the Minister's gazetted changes to the regulated fees in the government gazette.

In discussions with VicRoads and insurers, it has been reported that some operators are now charging for cleaning products used to clean the tow truck or equipment and tools. The issue for the Commission is whether these costs are already covered by the regulated fee.

In setting the regulated fees in previous reviews, the Commission considered the costs involved in providing accident towing services. For example, in its previous review, the Commission estimated costs by way of a survey sent to all licence holders. From the information provided by accident towing operators, the Commission estimated the annual costs for a representative tow truck, and similarly the annual costs associated with accident towing and costs per accident tow. The Commission's cost build-up included all the costs associated with performing accident towing and operating the towing business. The cost estimates and regulated fees therefore include maintenance and cleaning costs, and any costs associated with making the vehicle available to the owner (or owner's representative, e.g. insurer), i.e. any costs associated with an out of storage tow.

It follows that such services should be covered in the description of those services covered by the regulated fee. Along with the finding suggesting an extension to the regulated tow description to cover out of storage towing (chapter 9), the inclusion of the cleaning of tools would make the coverage more complete and further remove the possibility of double charging.

A case for outcomes-based regulation?

To potentially avoid 'border' issues associated with a prescriptive regulatory definition of service coverage, there is an alternative of an outcomes-based regulatory arrangement that describes the overall outcomes of a regulated service, as discussed in chapter 7. This approach may provide a clearer basis for the definition of the regulated service and assist in avoiding the levying of fees for services already covered by the regulated fee .

By defining the outcomes to be achieved (performed) by the operator, the regulations are likely to reduce 'border' issues, and therefore reduce the likelihood of operators misinterpreting what work is covered by the regulated fee. As an example, the clearing of debris and the cleaning of equipment and the tow truck are covered by the outcome: 'restoring a road and immediate surrounds to safe usage after an accident'.

The outcomes-based approach would also be expected to reduce the need to revisit the issue of coverage and the status of particular extra charges in future reviews.

To further discourage the practice of double charging for regulated services, a raising of the penalties for incorrect charging could be pursued and the practice

more clearly addressed in the Act. Currently, section 212I (1) of the Act prohibits operators from charging beyond the set fee for regulated accident towing and storage work. It also requires the level of charges to be reasonable if this work falls outside of the set of regulated services. As the extension of the regulated fee description covers more obvious core services such as out of storage towing, it becomes progressively more difficult to justify incorrect extra charges. For greater clarity, section 212I (1)(b) could be extended to state that the extra charges themselves need to be reasonable, not only their level.

10.2 Findings on coverage of regulated fees

To provide clarity for operators and customers and to help prevent unreasonable charging for towing services, the coverage of the regulated towing and storage fees should be extended to incorporate the cleaning of tools and out of storage towing. If an outcomes-based approach to regulation is adopted, outcomes should be designed to clearly cover these costs and services.

Draft finding 7 – Coverage of the regulated fee

The Commission finds:

- the description of the regulated tow currently on the VicRoads website could be extended to cover out of storage towing and the cleaning of tools as well as the accident tow truck, and that this description could be included in the *Accident Towing Services Act 2007* or the Government Gazette include the definition when there are changes to regulated fees, or
- if the option of outcomes-based regulation is pursued, that these outcomes should be designed to cover the provision of accident damaged vehicles to their owners (or representatives) and the cleaning of all tools and equipment including the accident tow truck (see draft finding 1).

11 | PAYMENT OPTIONS

This chapter discusses other issues raised by stakeholders and considered by the Commission.

11.1 Payment options

Through its consultations for this review, the Commission has received information that some operators are demanding cash payments for accident tows. This practice has been described by one stakeholder as operators 'using cash as a lever' to charge insurers for secondary tows (this issue is discussed in chapter 9).¹³⁹

The issue for the Commission is whether or not accident towing operators can demand cash payments.

Stakeholder comments

Suncorp Group has reiterated in its submission that '*demands for cash continue to be an issue*', stating that it would like the Act to specify that payment can be made by EFT funds transfer, credit card payment or a company cheque.¹⁴⁰

Commission's analysis

Regulation 40(1) of the Regulations states that a tow truck operator must provide the owner of a vehicle opportunity to make payment by way of an approved payment system. Regulation 40(2) defines 'approved payment system' as a system that is approved by VicRoads for the processing of payments by credit card and debit card. VicRoads is required by regulation 40(4) to publish a list of approved payment systems on its website.

¹³⁹ In such a scenario, the accident towing operator will tow the vehicle to the insurers assessment centre, demanding cash payment. The insurer refuses to make cash payment, and the accident towing operator tows the vehicle back their depot. The accident towing operator then charges the insurer for the tow to the depot (and subsequent tow back to the assessment centre, if agreed) as a secondary tow.

¹⁴⁰ Suncorp Group 2013, *Periodic review of accident towing and storage fees submission*, 28 March, p. 2.

VicRoads' website states that an approved depot payment facility is an electronic payment system that:

- enables you to pay for authorised repairs or other work done on the vehicle, accident towing, and/or
- storage charges by credit or debit card (whichever you choose); and
- provides a receipt which includes the date of payment, the amount paid, and the name of the entity (e.g. the tow truck company) to which payment is made.¹⁴¹

The VicRoads website lists cash, credit and debit card as the methods of payment that must be allowed (specifically stating that it is illegal for a tow truck operator to demand cash for a vehicle to be released).¹⁴²

Although the Commission has not sought to confirm or refute allegations of demanded cash payments, it is clear that accident towing operators must accept payments by cash, credit card or debit card, and cannot demand payment in cash.

11.2 Findings on payment options

The Commission finds that the Act and Regulations are clear that accident towing operators:

- must offer vehicle owners (and their agents) the opportunity to make payment by way of an approved payment system (i.e. by cash, credit card or debit card), and
- must not demand cash payments.

These requirements should be enforced by VicRoads.

Draft finding 8 – Payment options

The Commission finds that VicRoads should investigate these allegations and, if necessary, enforce the regulatory requirements relating to payments for accident tows.

¹⁴¹ VicRoads 2012, *Paying for a tow truck*, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/CustomerInformation/PayingForATowTruck.htm on 8 April 2013.

¹⁴² VicRoads 2012.

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

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

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

- (a) accident towing services;
- (b) the service of storing accident damaged motor vehicles;
- (c) basic salvage services—

for the provision of those services.

Section 212 – Determinations of charges

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

Section 212A – Periodic review of charges

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

Section 212B – Additional review at Minister's direction

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

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

Section 212C – Conduct of review

- (1) Subject to this Act and any directions under section 212B, the Commission may conduct a review under this Division in any manner the Commission considers appropriate.
- (2) In conducting a review, the Commission is not bound by the rules of evidence and may inform itself on any matter in any way it thinks fit.
- (3) The Commission may receive written submissions or statements.
- (4) If the Commission holds a public hearing—
 - (a) the Commission has a discretion as to whether any person may appear before the Commission in person or be represented by another person;
 - (b) the Commission may determine that the hearing, or part of the hearing, be held in private if it is satisfied that—
 - (i) it would be in the public interest; or
 - (ii) the evidence is of a confidential or commercially sensitive nature.
- (5) In conducting a review, the Commission—
 - (a) may consult with any person that it considers appropriate;
 - (b) may hold public seminars and hold workshops;
 - (c) may establish working groups and task forces.

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

B.1 Current regulatory arrangements

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

Rationale for regulation

The objective of accident towing regulation in Victoria is to promote the safe, efficient and timely provision of accident towing and storage services.¹⁴³ Prior to regulation, it was typical for multiple tow truck drivers to arrive at an accident scene and compete for a towing job. This would lead to increased stress and anxiety to the accident victim being put under pressure at the scene of an accident to decide which tow truck operator to use, and also increased congestion by delaying removal of the damaged vehicle from the road. There was also concern about the ability of an accident victim (often suffering from shock) to comprehend and make an informed choice between multiple tow truck drivers regarding price and service quality.

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

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

¹⁴³ *Accident Towing Services Act 2007*, section 1 (a).

Accident allocations

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

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

Accident towing licences and accreditation

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

VicRoads can only issue a new licence with authorisation from the Minister for Roads. There are currently 421 regular tow truck licences in the Controlled Area, compared to a total of 722 licences in the whole of Victoria.¹⁴⁴

Licensing

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

¹⁴⁴ A 'regular' tow truck licence allows the truck to provide accident towing services to vehicles of any gross vehicle mass that the truck is capable of towing. A heavy tow truck licence limits the vehicle to providing towing services for vehicles of a gross mass of four tonnes or more. See VicRoads 2013, Accident Towing Licences, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/AboutTheIndustry/ on 31 January 2013.

The Act specifies that the Minister may only authorise the issue of a new licence if:

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

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

In practice, no new accident towing licences have been issued in the Controlled Area in recent years, and there are currently no plans to issue any new licences in Victoria.¹⁴⁵

Dormant licences

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

Area of operation

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

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

¹⁴⁵ VicRoads 2013, *Tow truck licences*, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/OperatorsDepotManagersDrivers/TowTruckLicences.htm on 1 February 2013.

Accreditation

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

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

B.2 Accident towing services

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

- trade towing — these are towing and storage services negotiated under private contracts that have not arisen due to a road accident, e.g. they can include depot-to-depot tows¹⁴⁶
- clearway tows — these are towing of vehicles illegally parked in designated clearway zones during specified times for local councils
- impound tows — these are towing of vehicles that have been abandoned, are derelict or are otherwise causing obstruction
- breakdown towing fees — these are the provision of breakdown services, which car insurance providers often provide to their members, and
- heavy vehicle accident towing — refers to accident towing and storage services for vehicles weighing over four tonnes.

Accident towing services themselves generally comprise three distinct services:

- towing — the immediate removal of a damaged vehicle from an accident scene and its transportation to a specified location. This service includes the cleaning of the accident scene (e.g. removal of glass and debris) as instructed by officials including Victorian Police or VicRoads officers
- storage — the storing of damaged vehicles at the accident towing operator's depot to await repair or secondary towing, and

¹⁴⁶ Since January 2009, trade towing has been deregulated in Victoria. Prior to this, drivers and operators required a trade towing licence and plates, and an authority to tow, to undertake trade towing activities.

- salvage — arises where the assistance of additional equipment or another vehicle is required to move the damaged vehicle into a position from where it can be safely towed.

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

B.3 Structure of the industry

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

Industry participants

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

Depots

Towing businesses operate out of depots. In metropolitan Melbourne, each depot is located in a designated zone in the Controlled Area. A recent trend appears to be for a number of different businesses to aggregate their operations in a single depot, thereby sharing costs such as rent and other overheads. In other situations, a single business may operate out of more than one depot, depending on the geographic restrictions on the licences it owns.

Operators and drivers

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

The latest figures available show 84 operators and 52 depots¹⁴⁷ active in the Controlled Area of Melbourne. This compares to 267 operators and 222 depots for all of Victoria. There are 2,302 accredited accident towing drivers in Victoria.¹⁴⁸

Integration with other industries

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

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

Integration can improve the efficiency of a business or number of businesses, e.g. by facilitating cost sharing. The ability to share costs such as rent, vehicle purchase, maintenance and repairs, insurance and other overheads (such as office and administration costs) reduces the per-unit cost of each accident towing business and can improve overall efficiency.

In addition to the above, synergies between towing activities can allow businesses to employ their resources more efficiently. For example, businesses can perform trade towing work, which may use the same trucks and staff, during 'down time' in accident or other towing work and reduce the extent of under-utilisation of resources (trucks and drivers).

Smash repairers

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

Insurance companies

Insurance companies have for over a decade been providing work to preferred smash repairers. Insurance company payouts account for up to 75 per cent of smash repair industry revenue and preferred repairer schemes (whereby the

¹⁴⁷ VicRoads 2013, *Tow Truck Accident Allocations – 2012*, accessed at www.vicroads.vic.gov.au/NR/rdonlyres/3A371A9A-A65B-4B0F-9A6FA169ADF26BDD/0/2012towTruckaccidentallocations2012.pdf on 8 February 2013.

¹⁴⁸ VicRoads 2011, email correspondence, 17 October.

insured person is restricted in their ability to choose their repairer) reduce the incentive for accident towing businesses to be integrated with smash repairers.¹⁴⁹

B.4 What fees are regulated?

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

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

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

The 2012-13 fees and charges for accident towing and storage services are outlined in table B.1.

¹⁴⁹ IBISWorld 2008, *Smash Repairing in Australia*, Industry Report:G5323.

Table B.1 Accident towing fees and charges

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

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

Explanation of accident towing fees

The current accident towing and storage fee schedule includes the following items:¹⁵⁰

Towing fees

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

Storage fees (per day)

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

¹⁵⁰ VicRoads 2013, *Fees and charges* accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/AboutTheIndustry/TowTruckFees.htm on 5 February 2013.

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

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

Annual fee variations

As discussed in chapter 8, regulated fees are adjusted annually based on a formula recommended by the Commission in its previous accident towing fee review. This provides for the recovery of general price increases in between the Commission's periodic fee reviews.

The annual adjustment formula, contained in section 212H of the Act is:

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

where –

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

B.5 Unregulated services

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

Salvage charges

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

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

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

Secondary towing

Once delivered to the location on the authority to tow docket, a secondary tow involves the towing of a vehicle from this location to another. For example, a tow truck operator may tow a vehicle to a sub-depot (as listed on the authority to tow), and then charge a secondary tow fee to tow the vehicle from the sub-depot to a final depot. Alternatively, if an accident happens when an insurer's assessment centre is closed, the towing operator may be requested to tow and store the vehicle overnight at their depot (as listed on the authority to tow), and to subsequently tow the vehicle to the assessment centre the next day (the secondary tow). Secondary tows are not price regulated and are, in effect, trade towing.

At the time of the last review, the Commission received reports that some tow truck operators may have been charging secondary towing fees improperly, e.g. for secondary towing from sub-depots to final depots. In its previous review, the Commission recommended that VicRoads collect data on the incidence and nature of secondary tows to enable it to monitor the nature of charges imposed and the incidence of those charges.¹⁵¹ The Commission understands that this recommendation was not adopted.

¹⁵¹ Essential Services Commission 2010, *Review of accident towing and storage fees*, Final report, vol. 1: overview of recommendations and findings, June, p. 3 (recommendation 6).

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

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

The Commission has undertaken three reviews of accident towing and storage fees in the past eight years. The first two of these were at the request of the Minister for Transport in 2003 and then in 2005.¹⁵²

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

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

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

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

¹⁵² At the time of the 2003 and 2005 reviews, the regulation of the Victorian towing industry was administered by the Victorian Taxi and Tow Truck Directorate (VTTD), which was part of the Department of Transport. Since September 2007, the regulation of tow trucks has been administered by VicRoads and the Minister for Roads.

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

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

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

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

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

Included in the VACC submission (as appendix one) is a report from Pitcher Partners which provides benchmarking analysis on fee levels and commentary on an appropriate cost index for the annual adjustment mechanism.

In this appendix the Commission considers and responds to the analysis conducted by Pitcher Partners.

D.1 Fee benchmarking

Competitive towing fees v Controlled Area fees

As discussed in section 2.6, Pitcher Partners has compared the level of Controlled Area fees to those in other ('competitive') parts of the state.

While the Pitcher Partners report acknowledges that differences in market characteristics between the Controlled Area and other parts of the state could explain some of the observed difference in fees, it nonetheless presents the fee information outside of the Controlled Area as representing a '*competitive market place*'.¹⁵³

The Pitcher Partners analysis was based on information (invoices) provided to it by the VACC. In order to understand and verify the Pitcher Partners analysis, the Commission requested this same information. The VACC was unwilling to provide the full set of information to the Commission, as some of its members were concerned that the invoices may not be interpreted correctly by the Commission. Because of this, it is impossible for the Commission to verify the Pitcher Partners' analysis.

From the limited set of invoices provided to the Commission, it is noted that:

- the invoices relate to a range of different tows, including breakdown, accident and salvage of burnt out vehicles
- some invoices include additional fees, e.g. for salvage, an after hours surcharge, additional kilometres or storage — without the full set of information the

¹⁵³ See VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, Appendix One, p. 7.

Commission cannot verify what has been included in the Pitcher Partners' analysis, and

- as fees outside of the Controlled Area are not regulated, it is unclear in most invoices what tow distance has been included in the base fee — Pitcher Partners states that its analysis is based on tows of less than eight kilometres, the Commission is unable to verify this given the information provided in the invoices.

Notwithstanding these issues, the Commission is weary of the extent to which fees outside of the Controlled Area can be classified as competitive and efficient without more detailed analysis. In areas where there are few operators, and therefore limited competition, there is likely to be greater scope for operators to levy fees higher than what would occur in a more competitive environment.

To this end, concerns about fee levels outside of the Controlled Area were raised during the Commission's last fee review, with Suncorp Group stating:

*Suncorp has encountered numerous instances where the fees charged for towing services in the Geelong Area are well above what would be regarded as reasonable industry levels.*¹⁵⁴

The Commission also notes that Pitcher Partners' analysis only relates to fees charged to insurance companies. This focus is likely to overstate the average market fee level and what might be considered an efficient fee level. For example, as noted in the discussion on trade towing fees, fees charged to insurance companies tend to be at the higher end of the range of trade towing fees.

For these reasons, the Commission does not find the Pitcher Partners' analysis of fees to be compelling in terms of recommending an increase in Controlled Area fees.

Interstate regulated fees v Controlled Area fees

Pitcher Partners also compares regulated accident towing fees across Australian states (see section 2.6).

The Commission has assessed the benchmarking applied by Pitcher Partners when it compares Controlled Area fees to interstate regulated towing fees. Based on this consideration the Commission makes the following comments on the Pitcher Partners analysis:

- under the first approach applied by Pitcher Partners:

¹⁵⁴ See ESC 2010, *Review of accident towing and storage fees*, Final report, vol. 2: detailed reasons and methodology, June, p. 65.

- while Pitcher Partners' calculations of the actual fee levels are correct, two of its three percentage difference calculations are incorrect —
 - the difference between the NSW and Controlled Area fees is not 25 per cent – the NSW fee is only 6.3 per cent higher (NSW \$264 v \$242.20)
 - the difference between the SA and Controlled Area fees is not 61 per cent – the SA fee is 37.1 per cent higher (SA \$383 v \$279.40)
- the Pitcher Partners analysis' does not acknowledge that the fees for SA include an allowance for salvage, including the use of equipment that would be considered complex salvage in the Controlled Area
- under the second approach applied by Pitcher Partners:
 - the analysis is not a 'like with like' comparison, in particular because the fee structure in each jurisdiction includes a different kilometre allowance in the base fee (e.g. the Controlled Area includes the first eight kilometres, in NSW the first ten, in SA the first 20 and in Queensland the first 50) — these differences are not acknowledged by Pitcher Partners under its second approach
 - the result is that for Queensland, for example, an eight kilometre Controlled Area tow fee is compared to a 50 kilometre Queensland tow fee, and
 - as above, the inclusion of a salvage allowance in SA's fees is ignored.

D.2 The cost index for the annual adjustment mechanism

As discussed in section 8.2, Pitcher Partners has suggested using a composite index based on CPI (Melbourne, Transport) and a labour component as the cost index for the annual adjustment mechanism.¹⁵⁵ Pitcher Partners has not specifically stated the proportion of labour costs to be used — the Commission assumes that Pitcher Partners continues to propose a 55 per cent labour component and 45 per cent CPI (Melbourne Transport) component as in its 2010 submission.¹⁵⁶

¹⁵⁵ See VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, Appendix One, p. 8.

¹⁵⁶ Pitcher Partners 2010, *VACC – Proposed towing & storage fees*, April, p. 8.

Choice of labour component for composite cost index

For the labour component, Pitcher Partners has suggested using the change in average weekly ordinary time earnings (AWOTE) for Melbourne.¹⁵⁷

The Commission notes that AWOTE (Melbourne) is a measure of total earnings of individual employees within a business (based on a survey of a representative sample of businesses across all states, sectors and business sizes). Any improvements in the productivity of employees within a firm will likely be reflected over time in a higher labour cost per employee within that firm, and therefore the AWOTE (Melbourne) index includes compensation to employees for improvements in productivity.

The WPI (Melbourne), on the other hand, is a measure of income that excludes bonuses and non-wage payments (such as superannuation). It is estimated using data on wages for a sample of positions within a business — this means that any improvement in the productivity of any individual (which might translate as a promotion within the business) is not captured in the wage cost data. Therefore, the WPI (Melbourne) measures changes in wages that are not associated with underlying improvements in productivity of labour over time.

If an industry specific composite index were to be used, the change in labour costs, net of productivity improvements, would be the most appropriate basis for measuring changes in output prices for a business.

Further, the AWOTE (Melbourne) index has recently changed from a quarterly to a biannual index (with figures released for May and November each year). Given the lag in release of the biannual figures, the latest AWOTE (Melbourne) figure available at the end of each financial year will be the November figure for the previous calendar year – this means that prices adjusted on 1 July each year by a composite index based on AWOTE (Melbourne) would be indexed to figures that are eight months old. The WPI (Melbourne) index, on the other hand, is released quarterly, with March figures released before the end of the financial year. This means that using WPI (Melbourne), prices can be adjusted on 1 July each year indexed to more up to date figures.

For these reasons, the Commission considers that WPI (Melbourne) is a more appropriate labour index than AWOTE (Melbourne) to incorporate in a composite index (should one be used for adjusting accident towing fees).

Comparison of indices

In its paper supporting the VACC's submission, Pitcher Partners compared the trend in CPI (Melbourne, Transport) to its composite index.¹⁵⁸ In particular, Pitcher

¹⁵⁷ See VACC 2013, *Periodic review of accident towing and storage fees submission*, 26 March, Appendix One, p. 8.

Partners looked at the 10 year ‘indexation gap’ between the two indexation methodologies. Pitcher Partner’s analysis shows a 12 per cent cumulative long term gap — that is, indexation using CPI (Melbourne, Transport) resulted in a figure 12 per cent lower than Pitcher Partners’ composite index using both CPI (Melbourne, Transport) and AWOTE (Melbourne).¹⁵⁹

The Commission has considered the Pitcher Partners analysis and makes the following comments.

First, the Commission notes that such an analysis only demonstrates the different results of indexation methodologies – it does not demonstrate whether one indexation methodology is superior or more accurate. Pitcher Partners’ analysis assumes that its composite cost index more accurately reflects changes in accident towing costs; however it is not clear that this is the case. As indicated by NERA in its report for the Commission, in the absence of sufficiently robust information on the cost structure of the accident towing industry, a composite price index is unlikely to perform any better than a general price index — arguably a general price index might perform better given that it will not be influenced by the choice of weights (as would be the case in a composite price index).¹⁶⁰

Second, the Commission notes that it is required under the Act to conduct periodic fee reviews, and therefore the annual adjustment mechanism only applies for the three years before the next fee review by the Commission. Therefore any ‘indexation gap’ would arise over three years only, and a ten year analysis (while interesting) is not illustrative of a ‘gap’ that may actually emerge.

Thirdly, as the Commission has noted in section 8.2, WPI (Melbourne) is a more appropriate labour index to use for a composite index, and more likely to reflect the true changes in accident towing costs.

Lastly, the Commission notes that Pitcher Partners’ analysis does not take into account the zero per cent fee changes in years where the adjustment mechanism would result in a decrease. Nor does it take into account the current application of the annual adjustment mechanism which provides for fee increases where costs have not increased, but merely returned to previous levels after a cost decrease – (see section 8.6).

For these reasons the Commission has undertaken its own three year indexation analysis in section 8.2.

¹⁵⁸ VACC 2013, *Periodic review of accident towing and storage fees submission, Appendix One*, 26 March, p. 8-9.

¹⁵⁹ VACC 2013, *Periodic review of accident towing and storage fees submission, Appendix One*, 26 March, p. 8-9.

¹⁶⁰ NERA 2013, p. 29.

For comparison purposes, the Commission has also undertaken a ten year analysis in line with the analysis done by Pitcher Partners. The Commission again notes that the ten year analysis is not illustrative of any indexation gap that would actually occur, given the regulatory period between periodic fee reviews by the Commission.

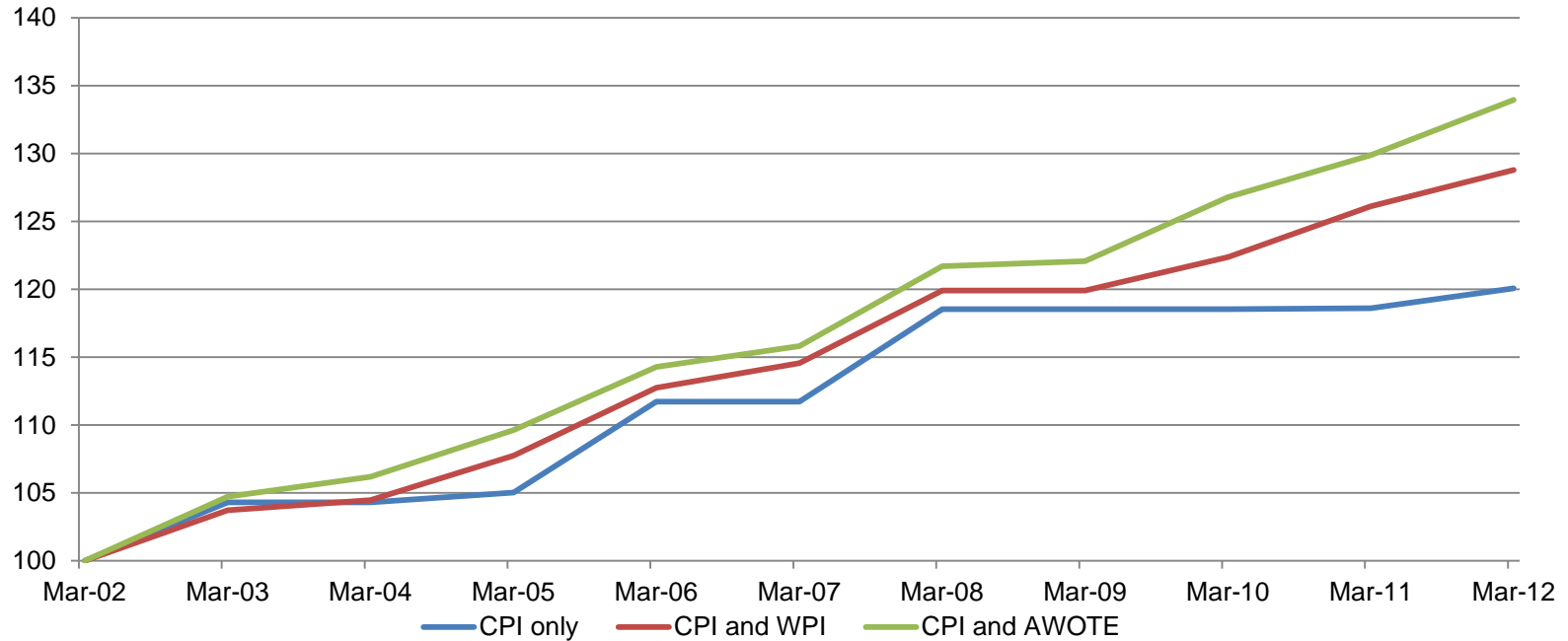
Figure D.1 recreates the ten year indexation analysis done by Pitcher Partners to include the composite index based on WPI (Melbourne), and also account for the zero per cent fee changes in years where indexation would result in a decrease. The Commission's analysis shows:

- a 7.3 per cent indexation gap over ten years between indexation using CPI (Melbourne, Transport) and using the composite index based on WPI (Melbourne).
- an 11.6 per cent indexation gap over ten years between indexation using CPI (Melbourne, Transport) and using the composite index based on AWOTE (Melbourne).
- indexation using CPI (Melbourne, Transport) tracked the composite index based on WPI (Melbourne) relatively closely between March 2002 and March 2008.
- following years of zero per cent fee adjustment (in March 2004 and March 2007), the indexation using CPI (Melbourne, Transport) increased faster than the composite indices, closing the gap created by years of zero per cent fee adjustment.

While the indexation gap of 7.3 per cent over ten years may appear significant, the Commission notes that March 2009 saw a large drop in CPI (Melbourne, Transport), which only recovered to previous levels in 2011-2012. As noted above, the indexation using CPI (Melbourne, Transport) has 'caught up' to the composite index based on WPI (Melbourne) in the years following a zero per cent fee adjustment – the Commission expects that CPI (Melbourne, Transport) will again increase faster than the composite indices in 2013-2014, and therefore it expects the indexation gap is currently overstated.

Furthermore, the Commission notes that using the current application of the annual adjustment mechanism which allows for increases where estimated costs have merely returned to previous levels (see section 8.6), the gap between indexation over ten years using CPI (Melbourne, Transport) and the composite index based on WPI (Melbourne) is in fact zero. Figure D.2 shows that the current application of the adjustment mechanism using CPI (Melbourne, Transport) has tracked the composite index based on WPI (Melbourne) very closely, and the ten year increase between March 2002 and March 2012 is exactly the same using the two indices. Even compared to the composite index based on AWOTE (Melbourne), the current application of the annual adjustment would result in only a 3.4 per cent indexation gap over ten years.

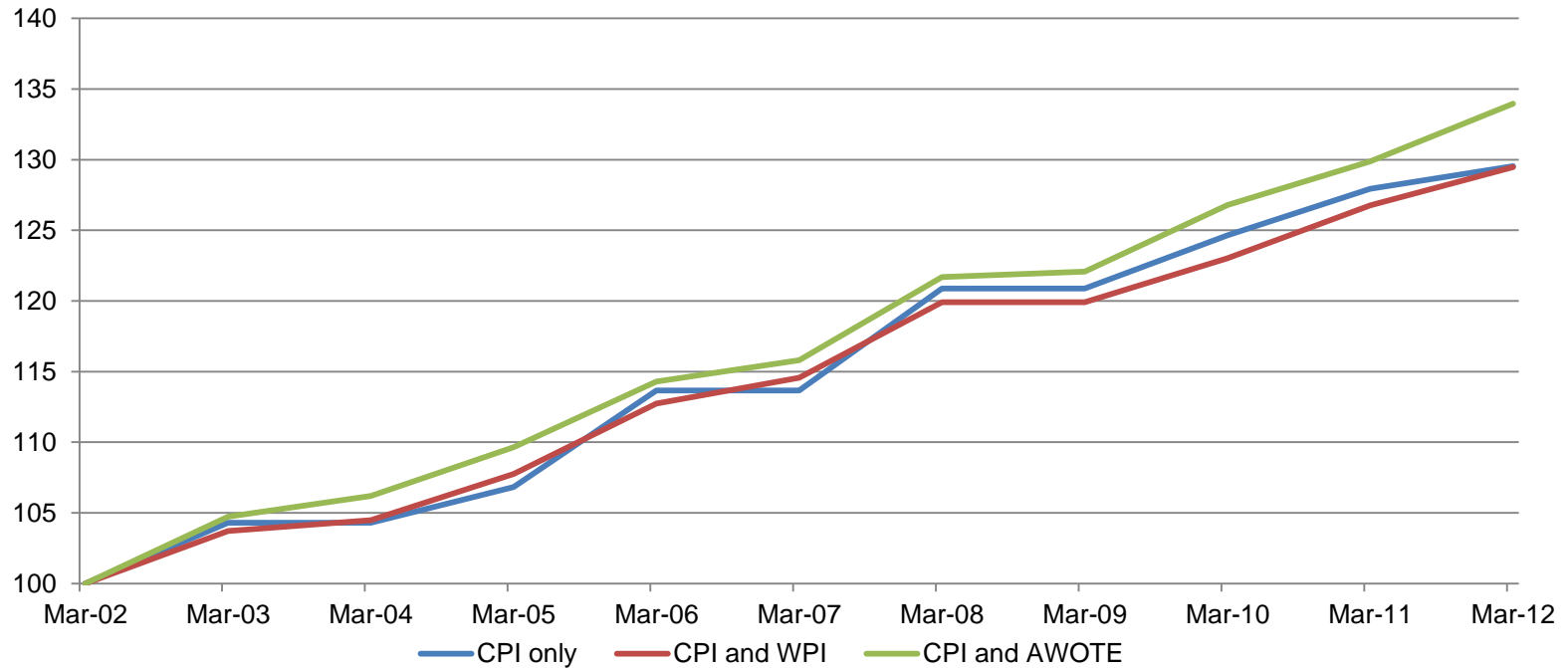
Figure D.1 Comparison of indices – ten year indexation (using recommended application of adjustment mechanism)



Note: CPI refers to CPI (Melbourne, Transport); WPI refers to WPI (Melbourne); AWOTE refers to AWOTE (Melbourne). For the composite indices, the Commission has assumed a 55 per cent proportion of labour costs (as proposed by Pitcher Partners in its submission to the Commission's 2010 review). Where the date of available data does not match, the Commission has applied linear interpolation to estimate the index value at the relevant point in time (i.e. a March index value is estimated as the weighted average between February and May index values for that year).

Source: Australia Bureau of Statistics.

Figure D.2 Comparison of indices – ten year indexation (using current application of adjustment mechanism)



Note: CPI refers to CPI (Melbourne, Transport); WPI refers to WPI (Melbourne); AWOTE refers to AWOTE (Melbourne). For the composite indices, the Commission has assumed a 55 per cent proportion of labour costs (as proposed by Pitcher Partners in its submission to the Commission’s 2010 review). Where the date of available data does not match, the Commission has applied linear interpolation to estimate the index value at the relevant point in time (i.e. a March index value is estimated as the weighted average between February and May index values for that year).

Source: Australia Bureau of Statistics.