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PERIODIC REVIEW OF ACCIDENT TOWING AND STORAGE FEES

FINAL REPORT

JULY 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, the price of accident towing and storage services is 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 higher than these benchmarks, and often significantly higher.
- 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 Commission has also consulted closely with stakeholders, including with the Victorian Automobile Chamber of Commerce (VACC) and accident towing operators, and insurers IAG and Suncorp Group. All stakeholders were provided with the opportunity to contribute to the review through submissions and meetings.

The information available to the Commission and its analysis of that information does not support a rebasing of existing fees. Instead, the Commission's 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 conclusions on these matters for further consideration are contained in Part B of this final report.

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 when a damaged vehicle is transported to the tow truck operator's depot and stored in a secure location to await repair or towing to another location.
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 FINAL 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.

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.

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.

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 final report

The final 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 findings.

Recommendations

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

Recommendation 1 – Regulated accident towing and storage fees

The current level of regulated accident towing and storage fees (as presented below) is appropriate, subject to annual adjustment, with the next annual adjustment to be 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 per kilometre
- After hours surcharge – \$67.20

Storage fees (including GST)

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

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 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 associated with 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.

In addition to benchmarking Controlled Area accident towing fees against a number of competitive benchmarks, the Commission also benchmarked Victoria's Controlled Area accident towing fees against price regulated accident towing fees in other Australian states.

In response to the Commission's draft decision, the Victorian Automobile Chamber of Commerce (VACC) and a number of operators provided additional information to the Commission. For example, the Commission considered the benchmarking analysis and the operator cost information presented by the VACC in making its final recommendation on regulated fees.

The VACC compared the cost information to operator costs presented by the Commission in its last review, suggesting that costs have increased significantly and therefore regulated fees should increase. Further detail was requested by the Commission on the cost information, which the VACC was able to provide (confidentially). The Commission was able to consider the detailed cost information and the reasonableness of the VACC's comparison of this information to the Commission's operator cost information from the last review.

Insurers IAG and Suncorp Group also made submissions in response to the Commission's draft report. Both parties supported the Commission's draft recommendation on regulated fees.

Recommendation 2 – Productivity adjustment factor

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 section 3.1 of this final 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.

No further comment in relation to the productivity adjustment was received from stakeholders, and the Commission's recommendation remains unchanged.

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. As drivers are 'captive' customers in such situations, some form of protection, in the form of price control, is warranted.

The Commission is concerned about the quantum of salvage fees charged and the ability for the reasonableness of salvage charges to be determined from the provided documentation (noting the costs and inefficiencies involved in investigating and negotiating excessive salvage fees).

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

The Commission acknowledges that salvage is an unpredictable and cost variable process, and therefore there is difficulty in setting a regulated fee that specifically compensates operators in every conceivable scenario. However it notes that a prescribed fee represents an average charge, intended to provide (on average) appropriate compensation to operators across the variety of salvage operations

Recommendation 4 – Setting basic salvage fees

If the Commission's recommendation 3 to regulate basic salvage is accepted, the Commission recommends the following fees apply to basic salvage.

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 2012-13 should be **\$71 per hour (including GST)**, to be applied as a flat rate (i.e. in full) for the first hour of salvage operations, and then proportionately to the time taken in excess of the first hour. It should only be applied from the commencement of the salvage operation (not from the time at which the tow truck operator arrives at the scene) and it should only be applied for the duration of actual salvage operations at the accident scene (not for any travel time, waiting time, or time spent back at the depot following a salvage).

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.

Assistants required for basic salvage operations

For basic salvage operations that require an assistant, the same hourly rates (i.e. **\$71 per hour (including GST)** during standard business hours, plus an additional surcharge of **20 per cent** after hours) should apply for the assistant.

Additional tow trucks

For basic salvage operations that require additional tow trucks to be called to the scene, 50 per cent of the base rate applying to the original tow truck (i.e. **\$98.45 (including GST)** during standard business hours, and **\$132.05 (including GST)** after hours) should apply for the additional tow truck.

For clarity, where more than one tow truck has received an allocation to attend the accident scene, and any of these trucks provides assistance to any other in a salvage operation (i.e. is used as an 'additional' tow truck), the additional tow truck salvage charge may not be levied because the 'additional' tow truck will receive the full base fee (for its allocated accident tow).

In recommending a basic salvage fee, the Commission 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.

This analysis was discussed in detail in the Commission's draft report and resulted in the Commission's draft recommendation of a basic salvage fee of \$65 per hour

(including GST) for 2013-14. In response to the draft report the Victorian Automobile Chamber of Commerce (VACC) and operators made submissions opposing the regulation of basic salvage and the \$65 per hour fee. The Commission had several meetings with the VACC and operators, and encouraged them to provide information and an alternative methodology for determining a reasonable salvage fee. While the VACC did not provide an alternative methodology or propose a basic salvage fee, it provided useful context about the nature of salvage operations and the range of salvage fees typically charged.

Commission recommended salvage fee

Through these consultations and additional analysis by the Commission, a basic salvage fee of \$71 per hour for 2012-13 is recommended. This was based on benchmarking with total salvage charges in NSW, taking into account the (assumed) adjusted 'salvage component' included in the NSW base fee. The Commission recommends that its proposed salvage fee be escalated in 2013-14 via the annual adjustment mechanism along with the existing regulated fees.

How the salvage fee should be applied

The salvage fee should be applied as a flat rate for the first hour of salvage operations (regardless of whether the salvage takes less than an hour), 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, and was supported by stakeholders. The same hourly basic salvage rate should apply where an assistant is required. This approach is consistent with the Commission's recommendations in its 2010 review.

After-hours salvage surcharge

The Commission has also considered the after hours surcharge that could apply to the salvage fee. For salvage undertaken after hours (that is between 5pm to 8am Monday to Friday, 5pm Friday to 8am Monday and midnight to midnight on public holidays), the Commission concluded that an after-hours surcharge of 20 per cent should apply to the regulated basic salvage fee, given the strong regulatory precedent for after hours surcharges of approximately 20 per cent in accident towing, salvage and other transport industries.²

Salvage fees when an additional truck is required

When an additional truck is required to assist in a salvage operation, the overall level of salvage fees applicable will depend on whether that 'additional' truck was already allocated to the accident scene (i.e. it has received an accident allocation through the Accident Allocation Centre to attend the accident scene to tow a

² For example, accident towing and salvage charges in NSW and SA, as well as taxi charges in Sydney, Darwin, Hobart, the ACT and Adelaide (see draft report, p. 69).

separate accident damaged vehicle) or whether it has been called out specifically to assist in salvage.

First, the Commission considered the appropriate rate applicable where an additional tow truck has not been sent to the accident scene via an allocation. That is, when an operator who has been allocated an accident tow determines at the accident scene that they require assistance from another truck, and they arrange for another truck (likely to be from their depot) to attend the scene and assist. In the Commission's view, allowing the whole base fee to be charged for an additional tow truck will provide compensation beyond that required, given that the base fee (along with other regulated fees) is intended to cover a wide range of costs associated with operating an accident towing business. In other words, allowing the whole base fee (\$196.90) to be charged for the additional tow truck would over compensate the costs of the additional truck, given it does not actually tow the damaged vehicle away.

The Commission concludes that where an additional tow truck (that has not been allocated to the accident scene) is required to assist in a basic salvage, a charge of 50 per cent of the base rate applicable for the first tow truck (i.e. \$98.45 in standard business hours, or \$132.05 after hours) should be applied for the additional tow truck. Also, the salvage assistant fee (\$71 per hour) applies (for the driver of the additional tow truck).

Second, the Commission also had to consider the case of an accident scene with multiple accident towing allocations (e.g. an accident involving two cars and hence two tow trucks are allocated to the accident to tow a vehicle each), where one of these tow trucks is used to assist another in a salvage operation. In such examples (where the 'additional' truck is allocated to the accident scene to tow a vehicle), a salvage charge for this 'additional' tow truck should not be levied. The costs of the 'additional' tow truck to attend the scene are already compensated under the base fee received for the allocated accident tow, and therefore the additional tow truck charge for salvage is not warranted. However, the hourly assistant fee for basic salvage (i.e. for the operator of the 'additional' tow truck acting as an assistant) may be charged.

Basic salvage case studies

The following examples demonstrate how the Commission's recommended salvage charges are to be applied.

Case study 1: Single truck (driver/operator) only

- Duration under one hour, and
- undertaken by the accident towing operator alone (with a single truck), then
- the applicable salvage charge would be the flat rate of \$71 during standard business hours, or \$85.20 after hours (\$71 plus 20 per cent surcharge).

Case study 1 Total salvage charges (\$)
 With an assistant (no additional tow truck) – under one hour

<i>Charge</i>	<i>Standard hours</i>	<i>After hours</i>
Operator (salvage fee)	71.00 ^a	85.20 ^a
Total salvage charges	71.00	85.20

^a Flat fee for the first hour.

Case study 2: Operator plus an assistant

- Duration under one hour, and
- requires an assistant (but no additional tow truck), then
- the applicable salvage charges would be \$142 during standard business hours (flat rate of \$71 for the operator and \$71 for the assistant). If the salvage occurs after hours, the applicable salvage charges would be \$170.40 (flat rate of \$85.20 for the operator and \$85.20 for the assistant).

Case study 2 Total salvage charges (\$)
 With an assistant (no additional tow truck) – under one hour

<i>Charge</i>	<i>Standard hours</i>	<i>After hours</i>
Operator (salvage fee)	71.00 ^a	85.20 ^a
Assistant (salvage fee)	71.00 ^a	85.20 ^a
Total salvage charges	142.00	170.40

^a Flat fee for the first hour.

Case study 3: Operator plus an assistant and additional truck

- Duration under one hour, and
- requires an assistant, and
- requires an additional tow truck (that has not received an allocation to attend the accident scene), then
- the applicable charges would be \$240.45 during standard business hours (flat rate of \$71 for the operator and \$71 for the assistant, plus \$98.45 for the additional tow truck). If the salvage occurs after hours, the applicable salvage charges would be \$302.45 (flat rate of \$85.20 for the operator and \$85.20 for the assistant, plus \$132.05 for the additional tow truck).³

³ Where an additional tow truck has been allocated through the Accident Allocation Centre to attend the accident scene to tow a different vehicle, the additional tow truck charge should not be levied because it would receive the full base fee for its allocated accident tow (i.e. the charges in case study 2 would apply).

Case study 3 Total salvage charges (\$)

With an assistant and an additional tow truck – under one hour

<i>Charge</i>	<i>Standard hours</i>	<i>After hours</i>
Operator (salvage fee)	71.00 ^a	85.20 ^a
Assistant (salvage fee)	71.00 ^a	85.20 ^a
Additional tow truck ^b (additional tow truck fee)	98.45	132.05
Total salvage charges	240.45	302.45

^a Flat fee for the first hour.

^b Additional tow truck that has not been allocated to attend the accident scene.

Case study 4: Operator plus an assistant and additional truck, and duration over an hour

- Duration of 90 minutes, and
- requires an assistant and an additional tow truck (that has not received an allocation to attend the accident scene), then
- the applicable charges would be \$311.45 during standard business hours (time-based charges of \$106.50 for the operator and \$106.50 for the assistant, plus \$98.45 for the additional tow truck). If the salvage occurs after hours, the applicable salvage charges would be \$387.65 (time-based charges of \$127.80 for the operator and \$127.80 for the assistant, plus \$132.05 for the additional tow truck).⁴

Case study 4 Total salvage charges (\$)

With an assistant and an additional tow truck – 90 minutes

<i>Charge</i>	<i>Standard hours</i>	<i>After hours</i>
Operator (salvage fee)	106.50 ^a	127.80 ^a
Assistant (salvage fee)	106.50 ^a	127.80 ^a
Additional tow truck ^b (additional tow truck fee)	98.45	132.05
Total salvage charges	311.45	387.65

^a Equals the hourly salvage rate times 1.5, given the salvage duration of 90 minutes.

^b Additional tow truck that has not been allocated to attend the accident scene.

⁴ Where an additional tow truck has been allocated through the Accident Allocation Centre to attend the accident scene to tow a different vehicle, the additional tow truck charge should not be levied because it would receive the full base fee for its allocated accident tow.

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. The Commission is satisfied that the current allowance included in regulated fees for non-commercial tows is reasonable.

VicRoads has requested that we consider options for the treatment of non-commercial tows as part of this review. 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.

The Commission assessed 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.

The VACC submission to the draft report suggests the allowance for non-commercial tows should be increased by around 80 per cent. The Commission considered the VACC's analysis but found some of the assumptions made by the VACC were not supported by the evidence (see chapter 5 for detailed discussion).

Consultation process

The Commission has conducted a public review process by releasing an issues paper, inviting submissions on that issues paper and then releasing a draft report and calling for further submissions. The Commission has also held meetings with stakeholders to listen to their views and gain additional information, as well as liaising with stakeholders via email and phone as necessary. Submissions were received from the Victorian Automobile Chamber of Commerce (VACC) and their consultant, Pitcher Partners, insurance companies Suncorp Group and IAG, and accident towing operators Advance One Towing, Melville Body Works, Action Towing, and an operator who wished to withhold their name. As necessary, follow up discussions and meetings were held with these stakeholders. The Commission also spoke with the Victoria Police Communications Centre.⁵

⁵ The Communications Centre contacts the Accident Allocation Centre when a police officer attends the scene of an accident and phones the Communications Centre to arrange for a tow truck.

The Commission has considered the information submitted by stakeholders and conducted its own research and analysis, resulting in the findings and recommendations contained in this final report.

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
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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 was interested in the level of service provided by the industry and the industry's financial viability (at the aggregate level).

Industry performance information was presented in the Commission's draft report. The following summarises that information — readers are referred to the draft report for a more detailed discussion.

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. The 30 minute target is set out in clause 32 (1) of the Accident Towing Services Regulations 2008 (the Regulations). 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)).

Despite the 30 minute target being the primary performance standard for the industry, data on response times is not collected.

Clearance times

'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).

The RACV provided a breakdown of clearance times (table 1.1). It shows that the percentage of clearances less than 74 minutes has decreased slightly between 2009 and 2012, while the percentage of clearances greater than 75 minutes has increased. However the 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).

The Commission notes that the clearance time data is likely to be unreliable. 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, and in some cases allocations have remained 'open' for weeks.

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	239 min	215 min	216 min	228 min

Source: RACV.

Complaints

Given the data on clearance and response times is probably not reliable or is not available, the Commission also considered the number and type of complaints received by VicRoads in relation to accident towing operators.

Data provided by VicRoads indicated that the number of complaints each year has moved in line with the total number of accident allocations, with the number of complaints per 1,000 allocations remaining relatively constant at around 1.4. This could imply that service levels are not falling.

However, the Commission notes that the VicRoads Statewide Investigation Group does not record complaints (at least two per week⁶) in relation to matters that are

⁶ *Pers. communication* (phone) with VicRoads, 4 April 2013.

resolved without requiring an investigation (e.g. where a matter is resolved by a phone call to an operator stating that they cannot charge a particular unregulated charge).

Stakeholder comments

Suncorp Group questions whether both response time and clearance time data should be collected. It notes that *'in recent times VicRoads has generally lost resources in this area [response times], which may be impacting on VicRoads' capacity to actively enforce this'*.⁷ It suggests that the use of reliable clearance rates might be a better and more efficient approach in enforcing this requirement.⁸

In meetings with operators, some have commented that contacting the Accident Allocation Centre when they arrive at the accident scene (i.e. to record response time) is impracticable. For example, because police at the scene are asking that they remove the vehicle as soon as possible.

Conclusion on service levels

Response time data should be collected as required by clause 32 (6) of the Regulations. 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 clearance time reporting requirements of under clause 32 (7) of the Regulations should be more strictly enforced to ensure the accuracy of the data that is recorded. Recording of this 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.

The Commission notes that operators do not have to contact the Accident Allocation Centre immediately when they arrive at the accident scene (for response times) or after they clear the accident scene (for clearance times). They are only required to make contact 'as soon as is practicable'. Contacting the Centre at a practicable time and noting when they arrive at, and subsequently clear, the accident scene, is not an unreasonable burden for operators to perform.

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 that is available on clearance times suggests that clearance times have increased over the last two years, while the number of complaints appears to be constant.

⁷ Suncorp Group 2013, *Periodic review of accident towing and storage fees submission (draft report)*, 14 June, p. 2.

⁸ Suncorp Group submission, 14 June, p. 2.

Based on the information available, the Commission has found no conclusive evidence of changes in service levels.

1.2 Value of accident towing licences

The value of an accident towing licence should represent the discounted present value of expected future profit streams associated with providing accident towing services. Therefore the licence value 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.

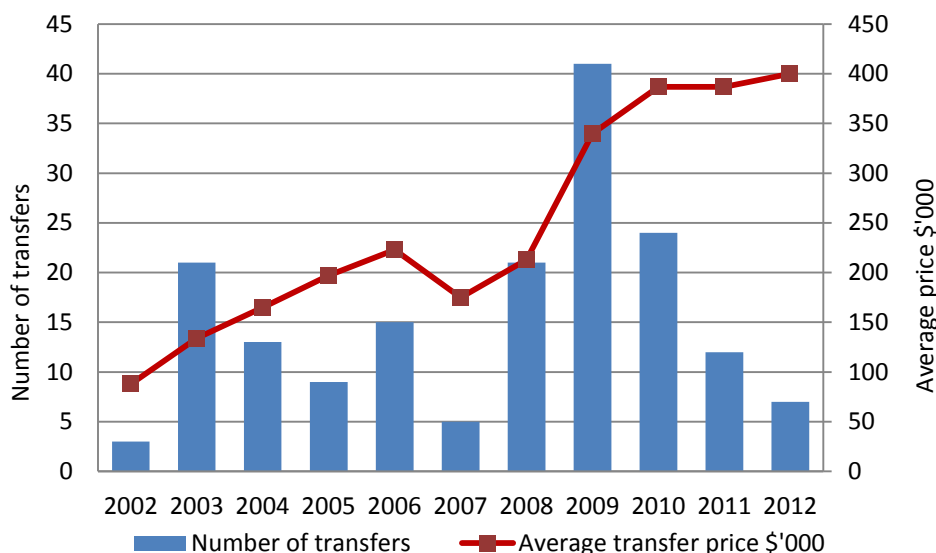
Figure 1.1 summarises data on accident towing licence transfers in the Controlled Area since 2002. The data suggests that in the past three calendar years, transfers of tow truck licences have decreased, while at the same time the average transfer price has increased slightly. The licence transfer data provided to the Commission also 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 (see table 1.3 in the Commission's draft report).

Other factors influencing licence values

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 significant income from additional unregulated fees associated with performing an accident tow. The Commission also notes that licence values have increased and been maintained at current 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.

Figure 1.1 Licence transfers and average transfer price



Source: VicRoads.

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 1.2). 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.

Table 1.2 Controlled Area operators and licences

	2004	2009	2011	2013
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.

VicRoads also provided the Commission with a breakdown of licences held by operators, as at March 2013. This shows that the majority of operators hold 5 or fewer licences.⁹

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 1.3). This suggests that operators are consolidating their businesses into fewer depots (with efficiency gains).

Together, the data shows 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.

⁹ See the Commission's draft report, table 1.5.

Table 1.3 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	

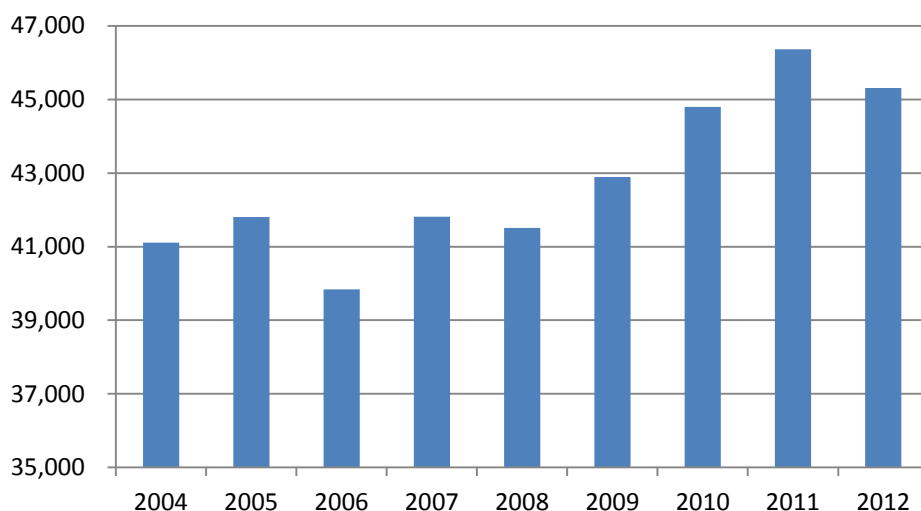
Source: VicRoads.

1.4 Demand for accident towing services

Another relevant matter in considering 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, and 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 1.4).

Table 1.4 Average number of accident allocations per licence

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

Source: VicRoads.

The data reported in figure 1.2 and table 1.4 do not suggest a declining trend in demand for towing services.

Stakeholder comments

In its submission to the draft report, the VACC contests the claim that rising demand has led to greater industry viability. It states that there was not a consistent upward trend in allocations between 2004 and 2012 (see figure 1.2), and argues that rising allocations have been accompanied by increased traffic on Melbourne's roads and a constant number of tow trucks, towing licences and depots, which points to significant improvements in efficiencies on the part of operators. The VACC states that maintaining these improvements will be difficult in an environment of difficult business conditions and higher equipment costs and overheads.¹⁰

1.5 Summary

The analysis in this chapter indicates that the available market level data does not suggest concerns regarding financial viability in the industry at the aggregate level. Further, based on the information available, the Commission has found no conclusive evidence of changes in service levels.

There has been long term 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.

Further, 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. If business conditions have been difficult, they have not been so severe as to negatively impact on industry viability at the aggregate level (as measured via licence values).

¹⁰ VACC submission, 19 June, p. 5.

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 fees in other states as benchmarks.

2.1 The Commission’s draft recommendation

Under section 212A (1)(a) of the Act, the Commission is required to recommend changes to current towing and storage fees. In making its draft recommendation, the Commission applied a benchmarking approach.

Benchmarking is a process of comparing performance or procedures between entities, for example to identify opportunities for improvement and or provide pressure to improve by reporting on relative performance. An important part of the benchmarking process is understanding differences between the benchmarked entities (e.g. the environments they operate under) which may influence the extent to which they can be readily compared — to the extent possible, benchmarking aims to control for these differences and therefore make ‘like with like’ comparisons. Reflecting this issue, the Commission’s approach was not to identify a single benchmark that accident towing fees should be moved towards. Rather, the Commission identified a number of feasible benchmarks and for each of these looked to identify issues that limited a ‘like with like’ comparison.

In the Commission’s draft report, the competitive benchmarks of trade, clearway, impound and breakdown towing were considered, as well as comparisons to regulated fees in other states.

Competitive benchmarks

In benchmarking against competitive towing services, it was assumed that an accident towing distance of 15 kilometres was undertaken during standard business hours. This distance assumption was consistent with the trade towing fees compiled by NERA¹¹, and also the typical accident towing distance for the

¹¹ NERA Economic Consultants (NERA) were engaged by the Commission to provide independent advice and review benchmarks for accident towing. NERA’s report to the Commission was provided in April 2013 and is available from the Commission’s website.

Controlled Area.¹² A comparison of competitive towing fees and existing Controlled Area regulated fees is presented in table 2.1.

**Table 2.1 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.

Controlled Area fees are 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 expected that accident towing fees be different to the competitive benchmarks. For example, some of the difference between trade and regulated towing fees is explained by the higher costs involved in accident towing relating 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. Additionally, the Commission acknowledged that trade and breakdown towing fees may be lower because such towing may typically take less time.

Interstate regulated fee benchmarks

The Commission also benchmarked Controlled Area fees against regulated fees in NSW, Queensland and SA. Since the fee structures are different across the states, the analysis attempted to standardise the fee calculations so as to promote a 'like with like' comparison (or at least acknowledge the differences).

The Commission calculated fees for two broad scenarios:

1. The tow occurs during standard 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 standard business hours.¹³

¹² 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.

In calculating these fee levels, the Commission:

- calculated 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 ten kilometres)
- assumed that three days of undercover storage is required (note that fees in NSW and Queensland already include three days of storage), and
- assumed 30 minutes of working time at the scene.

This approach promoted, to the extent possible, a ‘like with like’ comparison. The following outcomes of this regulated fee analysis were presented in the draft report (table 2.2).¹⁴

Table 2.2 Comparison of regulated towing and storage fees (2012-13)

	<i>Vic</i>	<i>NSW</i> (10km)	%	<i>Vic</i>	<i>SA</i> (20km)	%	<i>Vic</i>	<i>Qld</i> (50km)	%
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 Commission noted that there are reasons why regulated fees between states could differ, for example different:

- current and historic regulatory arrangements and obligations (e.g. in Victoria operators receive ‘guaranteed’ accident tows through 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 was satisfied that differences in regulated fees were explained by these factors.

The information available to the Commission and its analysis of that information did not support a rebasing of existing fees. Instead, the Commission’s draft

¹³ 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 standard business hours.

¹⁴ In its draft report the Commission also presented regulated fee comparisons for a ‘typical tow’ of 15 kilometres — table 2.7 in the draft report. The Commission noted in its draft report that this is less of a ‘like with like’ comparison since base fees for South Australia and Queensland include a towing distance greater than 15 kilometres.

recommendation was for existing fees to be adjusted by the annual adjustment mechanism in 2013-14. The Commission also invited additional information on competitive and regulated benchmarks from stakeholders.

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

2.2 Stakeholder comments

The majority of submissions responding to the Commission's draft report comment on the draft recommendation to increase regulated accident towing and storage fees by the annual adjustment mechanism in 2013-14.

Both IAG and Suncorp Group support the Commission's draft recommendation, agreeing that current fees are sufficient compensation for work performed. IAG also comment that the annual adjustment mechanism is sufficient.¹⁵

Suncorp Group also submitted that the applicable period for standard business hours should be extended to reflect the timing of most accident towing work. It notes that a significant proportion of accidents occur between 4pm and 7pm, and therefore standard business hours for regulated fees should be extended from 8am–5pm to 8am–7pm.¹⁶ This would mean the after hours surcharge would not apply until 7pm.

Operators within the towing industry and the industry representative body argued for an increase in regulated fees. For example, Action Towing state that industry

¹⁵ IAG 2013, *Periodic review of accident towing and storage fees submission (draft report)*, 12 June, p. 4.

¹⁶ Suncorp Group submission, 14 June, p. 4.

growth has not been significant enough to compensate for a broad range of rising costs, including increases in fuel costs, insurance, wages, council rates, rent, utility bills and workcover premiums.¹⁷

The VACC raise a number of issues in relation to the Commission's draft decision to increase fees by only the annual adjustment mechanism in 2013-14, including that:

- the recommendation places the long term financial viability of the towing industry at risk
- the Commission should only consider the income and costs associated with providing accident towing services in the Controlled Area, and not consider an operator's income from non accident towing businesses
- competitive towing services (e.g. trade and clearway towing) do not incur the costs of an accident towing licence and have the opportunity to carry more than one vehicle at a time, and
- Controlled Area fees should be increased by 8.8 per cent based on its benchmarking against NSW regulated fees.¹⁸

Melville Body Works submits that storage fees should increase, providing a costing of its annual storage costs. Its calculations suggest its annual storage costs are \$234 per day, compared to potential maximum storage revenue of \$151 per day. Furthermore, Melville Body Works also comments:

The suggestion of a correlation between private car parking rates and storage of accident damaged vehicles is substantiated in that unclaimed vehicles continue to take up storage space that could be allocated to 'paying customers' resulting in a loss to the tow depot operator.¹⁹

2.3 The Commission's analysis

The following discussion considers issues raised by accident towing operators and the VACC in their submissions for a higher increase in regulated fees than provided for in the Commission's draft recommendation, as well as the application of the after hours surcharge, as raised by Suncorp Group. The time period for the application of the after hours surcharge is also considered.

¹⁷ Action Towing 2013, *Periodic review of accident towing and storage fees submission (draft report)*, 14 June, pp.1–2.

¹⁸ VACC submission, 19 June, pp. 4, 8, and 11–13.

¹⁹ Melville Body Works 2013, *Periodic review of accident towing and storage fees submission (draft report)*, 13 June, pp. 2.

Benchmarking

The VACC submission provides comment on a number of benchmarking issues.²⁰

1. ***The validity of competitive benchmarks*** — the VACC submits that clearway and trade towing operators are not subject to the regulatory responsibilities that are placed on accident towing operators and do not face the same costs, namely the cost of a licence.
2. ***NSW fee benchmarks*** — the VACC states that NSW regulated fees are a reasonable benchmark since the number of tows required, operating costs and regulated fees are similar. The VACC benchmarks NSW and Controlled Area fees, and concludes that Controlled Area fees should be increased by 8.8 per cent based on the difference in after hours fees.²¹ It also presents an update to the NERA analysis, suggesting that the difference between Controlled Area and NSW fees is increased when the NERA ‘error’ is corrected.²²
3. ***Emergency services and other benchmarks*** — the VACC benchmarks accident towing fees against emergency services, noting that regulated towing fees (e.g. \$196.90 base towing fee, \$3.10 additional kilometre fee and \$67.20 after hours surcharge) compare to ambulance attendance fees of around \$300, and (based on VACC calculations) call out fees for the Melbourne Fire Brigade of between \$2,500 and \$7,920. The VACC also presents information from the NERA report on fees for escort services for over-size loads, noting that VicRoads charges \$191.10 per hour.

In the following sections the Commission considers the issues raised by the VACC.

The validity of competitive benchmarks

The Commission’s draft report presents in detail the benchmarking of regulated fees against competitive towing services and regulated fees in other states. That discussion notes that an important part of the benchmarking process is understanding any differences in the services being benchmarked.

The Commission’s analysis and decisions acknowledge the differences between the services being benchmarked, and has looked to account for these. Hence, it has not looked to equate Controlled Area fees to any specific benchmark (e.g. since regulatory and cost differences imply fees should differ).

²⁰ VACC submission, 19 June, pp. 11–14.

²¹ This analysis is broadly consistent with the analysis presented by the Commission in its draft report – see table 2.7, p. 41.

²² Independent consultants NERA Economic Consultants were engaged by the Commission to provide advice on accident towing fee benchmarks and the annual adjustment mechanism. NERA’s report is available from the Commission’s website.

The Commission also acknowledges that accident towing operators require a licence to operate. However, it would not be appropriate to include changes in licence values in the fee setting methodology. To do so would introduce circularity to the methodology — increases in licence values would lead to an increase in fees, this increase in fees would in turn increase licence values (since higher fees implies higher returns), which would lead to fee increases. Avoiding this circularity was a feature of the Commission’s last review of accident towing.

NSW fee benchmarks

The VACC argues that Controlled Area fees should increase by 8.8 per cent to be equivalent to NSW fees. The Commission’s draft report presented similar analysis, showing that Controlled Area fees are 2.7 to 10.8 per cent lower than NSW fees depending on the specific benchmark compared.²³ The Commission also noted that differences in regulated fees between states reflect differences in regulatory regimes, industry costs and industry structures. The Commission was satisfied that differences in regulated fees were explained by these factors.

The Commission also notes that in NSW, salvage fees (which are regulated) cannot be charged for the first 30 minutes. However, the base towing fee is higher in NSW as it includes the first 3 days of storage, and could reflect some allowance for the first 30 minutes for salvage. Such differences in regulatory frameworks need to be recognised in the benchmarking process, and suggest that equalisation of fees across benchmarked jurisdictions should not be an aim in itself.

The VACC also comment that NERA’s ‘typical tow’ analysis, based on 15 kilometres travel from the accident scene to the depot, needs to have an additional 15 kilometres added to the fee for travel to the accident scene. Inclusion of these kilometres increases the difference between Controlled Area and NSW fees.

The Commission acknowledges that based on the wording of NERA’s report, an additional 15 kilometres of travel could be added to recognise that the fee in Melbourne is based on travel from the depot, to the accident scene, and then to the destination requested by the vehicle owner. However, the key issue is what distance is a reasonable representation of the typical tow.

The Commission’s draft report presents a 15 kilometre ‘typical tow’ based on survey information from the previous review. While not presented, the Commission also calculated regulated fees for higher tow distances. Based on all of the benchmarks (competitive and regulated), the Commission was satisfied that Controlled Area fees should be increased by the adjustment mechanism (as recommended in the draft report).

²³ Essential Services Commission Draft report, pp. 40–41.

Emergency services and other benchmarks

In conducting the fee benchmarking process, the Commission has been mindful of the shortcomings of benchmarking. In particular, the Commission has been careful to consider services that closely resemble the *services* provided by accident towing operators — hence a focus on other towing services in competitive and regulated markets.

Therefore, while accident towing operators perform an important service in clearing an accident scene, the Commission finds that the costs of emergency services (e.g. ambulance or fire services) do not provide a reasonable benchmark for accident towing fees — these services are not comparable to accident towing in terms of the nature of services offered or the costs of specialised equipment involved.

The VACC submission also comments on fees for heavy vehicle pilot and escort services.²⁴ These services were considered by NERA as they have ‘*a broadly similar cost base to accident towing, i.e. labour, fuel, vehicle maintenance and certification...*’.²⁵ NERA noted that Main Roads Western Australia charges around \$165 per hour, and VicRoads charges \$191 per hour. The VACC submission notes the \$191 per hour rate, and comments that the ‘*towing industry would be happy to accept that as an hourly charge*’.²⁶

The heavy vehicle pilot and escort service benchmarks were not presented by the Commission in its draft report given the preference for focussing on similar *services* to accident towing. Again, because of the non-comparable nature of the service and the costs of those services, the Commission concludes that vehicle pilot and escort services do not provide a reasonable benchmark for accident towing fees.

Industry cost levels

The VACC submission presents information from six of its members on the costs of operating an accident tow truck.²⁷ These costs are compared to the estimated costs of a ‘representative’ tow truck presented by the Commission during its last review, with the VACC noting that cost increases range from 18 to 167 per cent.

While the VACC presented aggregated cost information for six operators in its submission, on request it separately provided the Commission with the detailed cost information from the operators. The Commission has not been able to verify or

²⁴ Heavy vehicle pilot and escort services are required for the movement of oversize loads carried by heavy vehicles on public roads.

²⁵ NERA 2013, *Benchmarking accident towing fees and options for annual adjustment*, A final report for the Essential Services Commission, 8 April, p. 20.

²⁶ VACC submission, 19 June, p. 14.

²⁷ VACC submission, 19 June, p. 15.

audit the information. However, it does note that there is some variation in how operators have interpreted cost items. For example, while in the Commission's cost schedule the 'vehicle replacement costs' item represents an *annual* estimate based on the purchase price of an operator's last tow truck and how frequently trucks are replaced, most operators have included the *total cost* of the truck in their cost schedule. This is inconsistent with the approach adopted by the Commission in estimating accident tow truck costs in the last review (2010).

The Commission also notes that cost increases of the amount suggested by some operators (e.g. up to 167 per cent) are inconsistent with licence values being maintained at high levels over recent years.

Storage fees

Both the VACC and Melville Body Works submit that storage fees should increase. The VACC submits that storage fees should increase by 8.8 per cent based on its benchmarking against NSW regulated fees, and states that '*Businesses who offer parking services in metropolitan Melbourne and incur similar types of costs, charge much more for vehicle parking*'.²⁸ Melville Body Works presents cost information for its 'stand alone' storage facility which suggests storage fees need to increase by over 50 per cent (Melville Body Works provides accident repairs, allocation towing and trade towing services. It informed the Commission that its storage facility is separate to its smash repair business and is only used for storing accident damaged vehicles.)²⁹

As noted in the Commission's draft report and above when discussing NSW fee benchmarks, the Commission is satisfied that regulatory and industry differences explain the variance in Controlled Area and NSW regulated fees. In regard to the Melbourne car parking costs being a reasonable benchmark for storage fees, the Commission notes:

- car parking and accident damaged vehicle storage are very different services, hence it is unclear that car parking represents a reasonable benchmark³⁰
- while storage costs for an operator in or close to the city may be higher than others in the outskirts of Melbourne, the regulated fees represent an 'average' for the industry. It would be inappropriate to base fees only on a higher cost operator.

The submission from Melville Body Works provides useful information on its 'stand alone' storage facility. However it is unclear that fees need to increase to the extent suggested by its submission, since:

²⁸ VACC submission, 19 June, p. 9.

²⁹ *Pers. communication* (email), 21 June 2013.

³⁰ The relevance of Melbourne car parking rates to accident towing storage fees was considered in more detail by the Commission in its draft report – see pp. 45–48.

- when last setting the level of fees the overall level of accident towing revenue was considered rather than each of the towing fees separately (i.e. base towing, additional kilometre, storage and after hours surcharge fees) — this means that considering storage costs (and revenues) alone may not indicate whether fees need to change, and
- staffing costs, which for Melville Body Works account for over 50 per cent of its estimated storage costs, will in part be recouped through other fees (e.g. the base towing fee).

Application of the after hours surcharge

Suncorp Group submits that the after hours surcharge should not apply until after 7pm (on weekdays) to reflect that the number of accidents ‘spike’ between 4pm and 7pm. It argues that this period is likely to be considered standard business hours by accident towing operators.

While acknowledging Suncorp Group’s observation that accidents do spike between those hours, the Commission has considered three other issues in determining whether to change the timing of the after hours surcharge:

- the social benefits of towing services
- what will be the financial impact on operators and drivers, and
- how do other jurisdictions apply any after hours surcharge.

The social benefits of towing services

Suncorp Group notes that the number of accidents peaks between 4pm and 7pm. This is also a period of peak road use with higher levels of road congestion. Accidents during these times, particularly those on heavily trafficked roads, have the potential to cause major travel disruptions and high levels of congestion.

It is at these times of greatest road use and congestion that the social benefits from accident towing services are also greatest. It is therefore reasonable that society’s willingness to pay for towing services is also greatest at these times. This suggests that a surcharge during these times may be reasonable.

Assessing the financial impact on operators and drivers

The level of accident towing fees received by operators will fall if timing of the after hours surcharge is adjusted (all other things being equal). By shifting the surcharge from 5pm to 7pm on weekdays, operators would no longer be able to charge the surcharge between these hours.

The Commission does not have information on the number of accident tows performed in this time period. However, there is information on the number of

reported accidents. Based on this information, approximately 16 per cent of accidents occurred between 5pm and 7pm in 2012 (for the Controlled Area).³¹

Assuming that 16 per cent of accident tows also occurred between these hours, the Commission estimates that 7,250 tows could no longer apply the after hours surcharge with the change from 5pm to 7pm. Given the current late night surcharge is \$67.20, this equates to reduced earnings per year of:

- \$487,200 across all operators in the Controlled Area, or
- \$4,596 per operator, or
- \$1,157 per licence.

While operators will face lower fee revenue, they are unlikely to experience a change in staff (e.g. driver) costs. For example, simply changing the timing of the after hours surcharge does not impact on an employee's entitlements under the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* — if an employee is currently entitled to overtime or call back payments for work between 5pm and 7pm, then this would continue to be the case³², and conversely if they are not, then this would also continue to be the case.

However, similar to operators receiving lower fees, drivers may receive lower earnings if the surcharge is changed to 7pm. A number of operators have indicated that their drivers are employed on a commission basis, with earnings related to the accident towing fees they generate. Hence to the extent that operators earn lower revenue since they cannot charge the after hours surcharge on work they previously could, drivers on commission will also have lower earnings. For those drivers employed under the award, the Commission expects that there would be no change in their earnings (with operators effectively 'taking the hit' from not being able to apply the after hours surcharge between 5pm and 7pm).

Other examples of the after hours surcharge

The Commission has considered how other jurisdictions apply the after hours surcharge for accident towing, as well as the surcharge applied to taxi fares.

The accident towing after hours surcharges in both NSW and South Australia are applied from 5pm — the same timing as in the Controlled Area. Queensland does not have an after hours surcharge.

There is greater variability in the timing of after hours surcharges (usually referred to as late night surcharges) in the taxi industry. In Victoria the late night surcharge applies from midnight; in NSW from 10pm; in the ACT from 9pm; in Tasmania from

³¹ The Commission's accident towing review issues paper presented this information – table 2.4.

³² The VACC similarly noted that an employee may be entitled to overtime or a call back payments under the Award if they are required to work beyond their ordinary hours – *Pers. communication*, 21 June 2013.

8pm; in Queensland and South Australia from 7pm; and in Western Australia from 6pm.

While there is greater variability of taxi late night surcharges, the application of the surcharges is less generous compared to the Controlled Area accident towing surcharge, i.e. the taxi surcharges apply for fewer hours of the day. The taxi late night surcharges end at either 6am or 7am (compared to 8am for the Controlled Area accident towing surcharge).

Conclusion

The application of the after hours surcharge in the Controlled Area is consistent with a period of peak road use and congestion. At these times society's willingness to pay for towing services should also be at its greatest. The timing of the surcharge is also consistent with other jurisdictions that apply an accident towing surcharge. In contrast, the application of the surcharge applies for more hours than the late night surcharges for taxi fares.

However, the Commission is wary of changing the timing of the accident towing after hours surcharge at this time. The surcharge will result in lower fee revenue for the industry overall (other things being equal). It will also result in lower earnings for drivers who are employed on a commission basis. At this point the Commission has limited information on how drivers are employed, and therefore the extent to which earnings would be reduced. To properly review the application of the after hours surcharge, driver remuneration arrangements should also be considered. For example, while arrangements may be fixed in the short term, in the longer term arrangements (including the relevant award) could be varied to account for changes in the application of the after hours surcharge. The Commission has not been able to fully consider this issue as part of this review, but notes it is an issue for future investigation.

Further, higher fees at times when road use is greatest is consistent with the greater benefits to society from clearing an accident at these times of higher congestion.

2.4 Recommendation on regulated fees

In view of the above analysis, the Commission confirms its draft recommendation on regulated accident towing and storage fees.

Recommendation 1 – Regulated accident towing and storage fees

The current level of regulated accident towing and storage fees (as presented below) is appropriate, subject to annual adjustment, with the next annual adjustment to be 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 per kilometre
- After hours surcharge – \$67.20

Storage fees (including GST)

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

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 The Commission's draft recommendation

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 includes a productivity adjustment (i.e. 'X' factor) currently of 0.5 per cent, which is subtracted from the change in CPI (Melbourne, Transport) and is intended to reflect the productivity incentives of competitive markets in the regulated fees.

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

The Commission engaged NERA to provide advice on an appropriate productivity adjustment factor.³³ To find an appropriate 'X' factor, NERA estimated the annual change in industry productivity (relative to the implied productivity improvements in the wider Melbourne transport industry) using the average change in revenue per truck (adjusted to remove the effect of increases in regulated fees).

However, NERA noted that this measure is highly sensitive to the assumption chosen for the number of licences per truck in 2008, for which there are varying estimates. The Commission's analysis found that the estimates for the number of licences per truck that were provided by the industry survey (in the Commission's previous review) and by VicRoads both have a reasonable basis. These estimates suggest an 'X' factor ranging from 1.8 per cent to -1.0 per cent.

Given these results, the Commission concluded that an 'X' factor of 0.5 per cent remains appropriate as it lies near the centre of this range and, for regulatory consistency, its draft recommendation was that the 'X' factor remains at 0.5 per cent.

³³ NERA's report, *Benchmarking accident towing fees and options for annual adjustment*, is available from the Commission's website.

Draft recommendation 2 – Productivity adjustment factor

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*.

3.2 Stakeholder comments

IAG was the only stakeholder to provide comment on the productivity adjustment, stating that it supported the Commission's draft recommendation.³⁴

3.3 The Commission's analysis

The Commission's detailed analysis on the productivity adjustment factor (summarised in section 3.1 above) is contained in its draft report. The Commission is satisfied with the analysis provided by NERA on this issue.

As such, the Commission continues to support an annual productivity adjustment of 0.5 per cent.

3.4 Recommendation on the productivity adjustment factor

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.

Recommendation 2 – Productivity adjustment factor

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*.

³⁴ IAG submission, p. 5.

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.

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 basic salvage services should be subject to a fee determination by the Minister under section 211 of the Act, and if so, the recommended fee.³⁵

4.1 The Commission's draft recommendation

Should basic salvage be regulated?

On the question whether basic salvage charges should be regulated, the Commission found that the same rationale for regulating accident towing fees applies to salvage fees. That is, since tow truck operators have the exclusive right to attend an accident via the allocation scheme and accident victims (often suffering from shock) have limited ability to 'negotiate' fees with the tow truck operator, there is a need to protect the customer from excessive or unnecessary salvage fees. While the documentation requirements that now apply to salvage (i.e. photographs of the salvage operation be taken and the invoice to include a detailed description of the work undertaken) contribute to protecting the consumer from inappropriate levying of salvage fees, on the basis of comments by the insurers and VicRoads the Commission concluded that the simple requirement for salvage fees to be reasonable (as specified in section 212I (1)(b) of the Act) may not be sufficient to protect consumers from excessive basic salvage fees.

The Commission noted its concern about the quantum of salvage fees and the difficulties associated with VicRoads, insurance companies and vehicle owners to verify (simply from the required documentation) whether charged salvage fees are reasonable. In addition the Commission acknowledged comments from insurers

³⁵ 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.

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.

Relevantly, salvage services are provided as an additional necessary service as part of the provision of some regulated towing services. It follows that the accident towing customer has no scope to choose an alternative service provider for salvage, and so has no course for redress if fees are considered excessive.

For these reasons, the Commission's draft recommendation was that basic salvage should be regulated and that a prescribed basic salvage fee is warranted.

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.

How should a basic salvage fee be set?

In regard to setting a recommended basic salvage fee, the Commission considered two approaches: a roll forward approach (taking the basic salvage charge recommended by the Commission in its previous review, and rolling it forward using the annual adjustment mechanism) and a benchmarking approach (looking at the level of comparable fees in other states). The Commission found that the regulated light salvage fees in NSW are the most appropriate benchmark for determining a recommended regulated basic salvage fee (as the regulated fees in South Australia are not comparable).

Based on the two approaches, the Commission recommended in its draft report that a basic salvage fee of \$65 per hour (including GST) for 2013-14 was reasonable.

The Commission also compared these results with the reported typical basic salvage charges in Victoria, finding that a basic salvage fee of \$65 per hour is consistent with the range of previously reported total salvage fees in Victoria, and more recent information provided by the VACC and Suncorp Group.

For salvage undertaken after hours, the Commission concluded that an after hours surcharge of 20 per cent should apply to the regulated basic salvage fee, given the prevailing regulatory precedent for after hours surcharges of approximately 20 per cent in accident towing, salvage and other transport industries.

The Commission sought 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.

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.

Salvage fees for assistants and additional tow trucks

In its 2010 review, the Commission recommended that the same hourly basic salvage rate should 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) should apply for the additional tow truck. The Commission noted that a similar arrangement applies in NSW.

However, in its 2013 draft report, the Commission found that this allowance for an additional truck will provide compensation beyond that required, as the base fee is intended to cover accident towing activities that are not required of the additional tow truck (such as towing of the accident damaged vehicle). Therefore, the base towing fee would provide compensation in excess of the costs of calling out the additional tow truck to assist with the salvage.

For this reason, the Commission sought stakeholder feedback on what fee should apply when an additional tow truck is required to undertake basic salvage operations. It also sought feedback on what after hours surcharge should apply for an additional tow truck.

4.2 Stakeholder comments

Both IAG and Suncorp Group support the Commission's draft recommendations. IAG states that regulation would provide greater clarity for all parties, addressing the varying interpretations of 'salvage' across the industry. IAG prefers a flat rate be charged (from the commencement of the actual salvage) for the first hour and be proportioned after that period. IAG also recommends '*an administrative function be established within VicRoads to ensure adoption of and compliance with this recommendation*'.³⁶

Suncorp Group also supports the draft recommendations and prefers a flat fee applied for the first hour of salvage (and proportional beyond an hour), stating that having no salvage charge for the first 30 minutes (as in NSW) may not be the best fee structure to support competition and efficiency in salvage works. In terms of fees for additional tow trucks (for salvage), Suncorp Group suggests that a charge of 50 per cent of the base rate would be reasonable.³⁷

The VACC and tow truck operators oppose the regulation of basic salvage. VACC reiterates '*the difficulties in establishing costs for salvage as each salvage task is so varied and in some cases very difficult*', stating that '*each salvage job is an individually unique task [and it does] not recommend a fixed rate*'.³⁸ It believes that a '*standard hourly salvage rate is not a viable fee for most salvage cases*'.³⁹

VACC also states that its members '*estimate the average rate of salvage to be around \$134.00*', and that '*in any definition this is a reasonable charge for salvage and the current rule should continue*'.⁴⁰

Melville Body Works maintains that only the towing operator should be able to determine the fair and reasonable salvage fee. This is due to the knowledge of the amount of time and effort required and the pressing need to finish the work and return the tow truck to other jobs. Further, it states that efficiency could be improved by permitting tow trucks to tow two vehicles from an accident.⁴¹

Action Towing oppose the regulation of salvage, stating that basic and complex salvage can differ according to operator experience and competence, and thus categorisation is unhelpful. It also argues that the proposed hourly rate of \$65 is too low and that the hourly rate should be set according to the base accident towing fee (given that the average clearance time is close to an hour). Action Towing also believes that additional tow trucks for salvage operations should be

³⁶ IAG submission, 12 June, pp. 5–6.

³⁷ Suncorp Group submission, 14 June, pp. 2–3.

³⁸ VACC submission, 19 June, p. 9.

³⁹ VACC submission, 19 June, p. 9.

⁴⁰ VACC submission, 19 June, p. 9.

⁴¹ Melville Body Works submission, 13 June, pp. 1–2.

charged at the same rate as the first tow truck, except where the additional tow truck has also been allocated to attend the same scene for an accident tow (i.e. when an accident requires multiple allocations). Action Towing also provides evidence of invoices suggesting an industry average salvage charge of \$134.⁴²

In consultation meetings with the Commission, one operator (name withheld) stated that an hourly fee of \$110 for basic salvage would be reasonable.

4.3 The Commission's analysis

Should basic salvage be regulated?

The VACC and accident towing operators oppose the regulation of basic salvage, on the basis that salvage operations are varied in nature. In its submission to the draft report, the VACC note that '*Commission [staff] agreed that salvage is a difficult task and cost variable process*'⁴³; however it claims that, despite this, '*the Commission concluded salvage work is a simple process*'.⁴⁴ The Commission acknowledges the variability in the nature and difficulty of basic salvage operations, and that salvage is a 'cost variable process'. Furthermore, it acknowledges that it is not possible to set a regulated fee structure for salvage that specifically accommodates every possible situation.

However, in the Commission's view, the varied nature of salvage and the difficulty in setting a regulated fee does not negate the need for, nor prevent the setting of, a regulated fee in order to provide some protection for drivers who are in no position to negotiate salvage fees.

As stated in the Commission's draft report, the same rationale for regulating accident towing and storage charges applies to salvage charges. Stakeholders have not challenged this concern.

The VACC argues that salvage charges are reasonable and appropriate, quoting Suncorp Group in support of this.⁴⁵ However, while Suncorp Group has stated '*prices being charged [for salvage] are, on the whole, reasonable and reflective of the work done*'⁴⁶, it went on to state that at times it has to challenge and negotiate charges it believes are excessive – arguing that '*this is not the ideal outcome, and Suncorp would rather see a fixed rate for basic salvage*'.⁴⁷

⁴² Action Towing submission, 14 June, p. 4.

⁴³ VACC submission, 19 June, p. 8.

⁴⁴ VACC submission, 19 June, p. 9.

⁴⁵ VACC submission, 19 June, p. 9.

⁴⁶ Suncorp Group submission (issues paper), 28 March, p. 2.

⁴⁷ Suncorp Group submission (issues paper), 28 March, p. 4.

While the Commission accepts at face value that salvage charges levied by most operators may be reasonable, it is the potential for (and incidence of) some operators levying excessive salvage charges that regulation is intended to prevent.

The Commission is concerned about the quantum of salvage fees and the ability for the reasonableness of salvage charges to be determined from the provided documentation (noting the costs and inefficiencies involved in investigating and negotiating excessive salvage fees). For these reasons, the Commission continues to find that basic salvage should be regulated.

How should a basic salvage fee be set?

The Commission notes that a prescribed fee is an average charge — in some circumstances the prescribed fee will not sufficiently compensate operators for the service provided, and in other scenarios the prescribed fee will over-compensate operators for the service provided. A prescribed fee is intended to provide, on average, appropriate compensation to operators across the variety of services provided.

As such, a basic salvage fee is intended to provide, on average, appropriate compensation to operators.

The Commission sought further feedback and detailed information from the VACC and operators on salvage costs and, in particular, an appropriate methodology for setting a basic salvage fee. Only Action Towing (who proposed that salvage be charged an hourly figure based on the base accident towing fee) provided an alternative methodology (however the VACC and operators provided useful context about the nature of salvage operations and gave an indication of typical salvage fees actually charged).

Action Towing suggested that an hourly rate of \$196.90 (equal to the base accident towing rate), or \$98.45 per half hour, is a fair and reasonable rate for basic salvage. Action Towing has suggested this on the basis that an accident tow takes approximately an hour, and therefore the base fee of \$196.90 is an appropriate hourly service fee.

The Commission notes that the base fee, along with other components of regulated fees (i.e. storage and the after hours surcharge), covers:

- equipment costs — the costs of supplying the tow truck to the accident scene, and
- accident towing service and business costs — the costs related to services that are provided by the operator when performing an accident tow (e.g. the actual towing of the accident damaged vehicle, the cleaning of oil leaked from the vehicle onto the tow truck, out-of-storage towing, etc), and general business costs associated with operating the towing business (e.g. rent, utilities, insurance, etc).

These costs have already been covered by the regulated fees and should not be included in the basic salvage fee. The basic salvage fee relates to the additional labour costs of undertaking salvage operations and should not be based on the base fee.

On a related matter, the Commission notes that the hourly charge applies only for the duration of the salvage operations. Travel time, waiting time, and time spent back at the depot following a salvage are covered by the regulated fees (or the additional tow truck charge). Therefore, the hourly fee for salvage should only be applied from the commencement of the salvage operation (not from the time at which the tow truck operator arrives at the scene) and should only be applied for the duration of actual salvage operations (travel time, waiting time, and time spent back at the depot following a salvage is covered by other fees).

Benchmarking against regulated salvage charges in NSW

In the draft report, the Commission considered the basic salvage charge it recommended in the previous review (2010), rolling it forward using the annual adjustment mechanism. It then looked to benchmark this salvage charge against salvage charges in New South Wales (NSW) and South Australia (SA). The Commission's analysis found that SA salvage fees were not comparable to salvage fees in Victoria (due to several factors, such as the inclusion of complex salvage and waiting time), and that NSW salvage fees were more easily compared. Therefore the draft report used NSW fees as the appropriate benchmark for determining a basic salvage charge for Victoria (with the expectation that cost levels and cost drivers for salvage are similar across the two jurisdictions).

This analysis from the draft report has been developed further by the Commission to take into account the differences in the accident towing fee structure in NSW and Victoria. In meetings with the Commission, VACC commented that the base fee in NSW is higher than in Victoria, and thus this difference must be considered when benchmarking Victorian salvage charges against the regulated salvage charges in NSW.

The Commission's additional analysis notes that the base towing fee in NSW is higher than in the Controlled Area in Victoria, and that operators in NSW cannot charge for the first 30 minutes of a salvage operation. While the NSW fee structure and regulations do not suggest this, it is assumed that the NSW base fee includes a salvage component (which compensates operators for the first 30 minutes of salvage). Based on this assumption, the total salvage fees in NSW would include this 'salvage component' as well as the regulated hourly fee for salvage.

Overall, the new analysis involves determining:

- the salvage component that could be included in the NSW base fee
- the proportion of accident tows that involve salvage operations (in order to determine the expected salvage revenue received by NSW operators for each salvage), and

- the total salvage fees in NSW, incorporating the salvage component (adjusted by salvage frequency) and the regulated hourly fee for salvage.

First, the salvage component that could be included in the NSW base fee was calculated. The following illustrates the calculation of this salvage component (\$15.60).

- The Victorian base accident towing fee was adjusted for additional kilometre and storage charges to enable a 'like-for-like' comparison with the NSW base fee (which includes ten kilometres of towing and three days of storage). This results in adjusted Victorian accident towing charges of \$248.40.
- The adjusted Victorian accident towing charges were then subtracted from the NSW base fee (\$264) to determine the salvage component that could be included in the NSW base fee. This results in a salvage component in the NSW base fee of \$15.60.

Second, the proportion of accident tows involving salvage was calculated — noting that salvage does not occur for all accident towing jobs. To calculate the revenue received by operators per salvage operation, the salvage component needs to be multiplied proportionately based on the percentage of accident towing jobs that require salvage.⁴⁸

Without any data on accident towing jobs in NSW, the Commission has used the proportion of accident towing jobs requiring salvage in Victoria as a proxy. The Commission received a wide range of estimates from individual operators and the VACC during consultation meetings — this is largely due to the probability of salvage varying across different parts of the Controlled Area. While only based on a relatively small set of accident tows (compared to the number of accident tows across the Controlled Area annually), the Commission has relied on the data provided by the VACC. In its submission to the issues paper, the VACC indicated one out of three accident towing jobs required salvage.⁴⁹ The salvage component in the base fee (\$15.60) was therefore multiplied by three to find the adjusted salvage component (\$46.80) for benchmarking of an hourly fee for Victoria.

Lastly, total salvage charge was calculated for an assumed salvage duration of one hour. The Commission notes that, due to operators in NSW being unable to levy salvage charges for the first 30 minutes, the adjusted salvage component cannot simply be added to the NSW hourly rate to establish a comparable hourly salvage charge. With a fixed adjusted salvage component and an hourly rate applying after the first 30 minutes, the effective hourly salvage rate in NSW depends on the duration of salvage operations. Given that stakeholders supported a flat salvage fee for the first hour of salvage operations (regardless of whether the salvage takes

⁴⁸ For example, if one in four accident tows involves salvage, the salvage fee in NSW would be four times the salvage component plus the existing regulated salvage fee.

⁴⁹ VACC submission (issues paper), 26 March, p. 9.

less than an hour) and universally agreed that very few salvages take longer than an hour (see table 4.3), the Commission concludes it is appropriate to base its analysis on an assumed salvage operation of one hour.

Therefore, the total salvage charge for a one hour salvage in NSW was calculated by adding the adjusted salvage component (\$46.80) and the regulated hourly salvage fees that apply for the time in excess of the first 30 minutes — that is, half an hour at the \$62.70 regulated hourly rate (\$31.35). This results in a total salvage charge of \$78.15 (including GST) for a one hour salvage, as shown in table 4.1.

**Table 4.1 NSW total salvage charges 2012-13 (\$, including GST)
Including 'salvage component'**

	<i>Adjusted fees^a</i>
Accident towing charges	
NSW	264.00
Vic (adjusted)	248.40
Salvage component in base fee	15.60
Adjusted salvage component ^b	46.80
<i>plus 30min at NSW hourly rate^c</i>	31.35
Total salvage charge (1 hour)	78.15
Adjusted for 2013-14 ^d	80.35

^a Base fee plus additional kilometres charges (10 kilometre tow) and storage charges (3 days of storage).

^b The salvage component in the base fee is adjusted to account for the fact salvage is not required for all accident towing jobs (the Commission has assumed 33% of accident towing jobs require salvage).

^c 30 minutes of salvage at the NSW light salvage hourly rate (\$62.70) is added to the adjusted salvage component (which covers the first 30 minutes of salvage) to determine a total salvage charge for an hour of salvage.

^d 2012-13 charges adjusted for 2013-14 using the legislated annual adjustment mechanism for accident towing services in Victoria.

This additional analysis demonstrates that when assuming that a 'salvage component' is included in the NSW base fee, the total salvage charge for a one hour salvage would be \$78.15 including GST (or \$80.35 adjusted to 2013-14).

Comparison against total salvage charges in NSW

To compare this \$78.15 hourly rate and the Commission's draft recommendation of \$63.22 (or \$65 for 2013-14) against the light salvage charges in NSW, table 4.2 calculates the total salvage charge by duration of operation.

It shows that a \$78.15 fee provides equivalent revenue to the NSW total salvage charges for a salvage operation of one hour (as per the salvage duration assumed under the analysis), and in all other cases provides greater revenue than in NSW. This is because:

- for salvage operations taking less than an hour, the \$78.15 flat fee is greater than the total salvage charges in NSW (including the adjusted salvage component), and
- for salvage operations taking more than an hour, the \$78.15 hourly fee (that would apply to time in excess of the first hour) is greater than the NSW hourly fee of \$62.70.

Table 4.2 also shows that the Commission's draft recommendation of \$63.22 (or \$65 for 2013-14) provides more revenue than total salvage charges in NSW for salvage operations taking 45 minutes or less.

Table 4.2 Total salvage fee comparison 2012-13 (\$, including GST)
By duration of salvage operation

Duration of salvage operation	NSW total salvage charges ^a	VIC salvage charges ^b	
		\$63.22 fee ^c	\$78.15 fee
15 min	\$46.80	\$63.22	\$78.15
30 min	\$46.80	\$63.22	\$78.15
45 min	\$62.48	\$63.22	\$78.15
60 min	\$78.15	\$63.22	\$78.15
75 min	\$93.83	\$79.03	\$97.69
90 min	\$109.50	\$94.83	\$117.23

^a Total salvage charges (including 'salvage component').

^b With hourly fee applied as a flat fee for the first hour.

^c A \$63.22 fee for 2012-13 is equivalent to the \$65 fee for 2013-14 under the Commission's draft recommendation.

Note: Fees relate to standard business hours (i.e. do not include after hours surcharge).

Given stakeholder feedback that most salvage operations take on average approximately 15 to 45 minutes (as discussed in the following section), a fee of \$63.22 is therefore greater than salvage charges in NSW for most salvage operations. A \$63.22 flat fee represents an effective hourly rate of between \$84 (for a 45 minute salvage) and \$253 (for a 15 minute salvage) – this compares favourably to \$83 and \$187 respectively in NSW.

Similarly, a \$78.15 flat fee is significantly more generous than salvage charges in NSW, representing an effective hourly rate of between \$104 (for a 45 minute salvage) and \$313 (for a 15 minute salvage).

This suggests that an hourly fee for basic salvage between \$63.22 and \$78.15 (applied as a flat fee for the first hour) would be reasonable, being more generous than salvage charges in NSW for average salvage operations (particularly shorter salvages).

Calculating the recommended salvage fee

The Commission notes that for any salvage operation of 46 minutes or more, a fee of \$63.22 would provide less revenue than total salvage charges in NSW. However, noting that it was agreed by stakeholders that very few salvage operations take longer than one hour, the lower revenue for salvage operations taking 46 minutes or more is offset by the higher revenue from salvage operations taking less than 45 minutes — the relative compensation for salvage operations would average out (over all salvage operations), meaning a fee of \$63.22 is comparable (or more generous) to total salvage charges in NSW.

Nonetheless, the Commission notes that despite the adjustments it has made in its calculations, there may be some unaccounted for differences between the two jurisdictions. Therefore, the Commission finds that an hourly salvage fee greater than \$63.22 may be warranted.

On the other hand, the Commission notes that a fee of \$78.15 is significantly more generous than salvage charges in NSW, given that it would provide equivalent or greater (and in some cases significantly greater) revenue than total salvage charges in NSW.

On this basis, the Commission has considered an hourly fee of \$71 including GST (or \$73 for 2013-14), which is close to the midpoint of this reasonable fee range. Table 4.3 compares the revenue from a salvage charge of \$71 (applied as a flat fee for the first hour) to the total salvage charges in NSW (including the adjusted salvage component).

**Table 4.3 Total salvage fee comparison 2012-13 (\$, including GST)
By duration of salvage operation**

<i>Duration of salvage operation</i>	<i>NSW total salvage charges^a</i>	<i>Recommended fee \$71.00^b</i>
15 min	\$46.80	\$71.00
30 min	\$46.80	\$71.00
45 min	\$62.48	\$71.00
60 min	\$78.15	\$71.00
75 min	\$93.83	\$88.75
90 min	\$109.50	\$106.50

^a Total salvage charges (including 'salvage component').

^b With hourly fee applied as a flat fee for the first hour.

Note: Fees relate to standard business hours (i.e. do not include after hours surcharge).

Table 4.3 shows that a fee of \$71 would provide significantly more revenue than salvage charges in NSW for the average salvage operations of 15 to 45 minutes (providing more revenue for all salvage operations up to 53 minutes). For salvage operations of 54 to 60 minutes, a fee of \$71 would provide slightly less revenue than salvage charges in NSW, but this would be more than offset by the higher revenue for salvage operations that take less than 53 minutes. Therefore a fee of \$71 is more generous than salvage charges in NSW. The Commission also notes that for very long salvages taking 112 minutes or longer, a fee of \$71 would provide more revenue than salvage charges in NSW.

Overall, the Commission considers that a \$71 hourly fee including GST (or \$73 adjusted for 2013-14) for basic salvage is appropriate, being more generous than salvage charges in NSW and providing a balance within the reasonable fee range. This represents an \$85.20 hourly fee including GST (or \$87.60 adjusted for 2013-14) during after hours (with a 20 per cent surcharge).

Comparison against reported typical basic salvage charges in Victoria

In submissions and consultation meetings for this review, as well as the previous review, the Commission has received a variety of estimates for typical basic salvage charges in Victoria, as well as for typical salvage duration. These estimates are shown in table 4.4.

Table 4.4 Typical salvage charges and times in Victoria
Reported by stakeholders

<i>Estimate provided by</i>	<i>Typical salvage fee</i>		<i>Typical salvage times</i>	
	<i>Range</i>	<i>Average</i>	<i>Range</i>	<i>Average</i>
VicRoads (2009)	\$60 – \$80			
Survey of operators (2009)	\$60 – \$100		15 – 60min	
Suncorp Group (submission to issues paper)	\$60 – \$120			
Suncorp Group (consultation meeting)	\$60 – \$150		< 50min	
Operator (name withheld) (consultation meeting)	\$70 – \$240		15 – 60min	20 – 30min
Action Towing (submission to the draft report)	\$80 – \$250	\$134		15 – 45min
VACC (submissions to the issues paper and draft report)		\$134		

Source: Stakeholders submissions and consultation meetings for the Commission's current and previous fee reviews.

The Commission notes that stakeholders universally agreed that the majority of salvages take under an hour. Therefore, the Commission's recommended hourly rate, applied as a flat rate for the first hour, would cover the majority of salvage operations. A basic salvage charge of \$71 including GST (or \$73 adjusted for 2013-14) falls within most ranges of reported typical salvage fees.

While a fee of \$71 may be closer to 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. In consultation meetings with the Commission, the VACC stated that one reason for salvage fees in NSW being lower than Victoria is that competition in NSW has driven charges down⁵⁰—this is precisely the competitive market outcome regulators seek in setting regulated prices.

The Commission also notes that current salvage charges:

- are total fees (as opposed to an hourly charge) and reflect salvage operations during standard business hours and after hours. An hourly charge, with an after hours surcharge, would therefore result in salvage charges closer to the upper range of typical reported charges in Victoria for salvage operations taking in excess of an hour, and/or undertaken after hours.
- include charges relating to assistants and additional tow trucks required to undertake basic salvage operations. Under the Commission's recommended

⁵⁰ Commission consultation with VACC, 21 June 2013.

prescribed charges, additional charges would apply for an assistant or additional tow truck (see the following section), and therefore would result in salvage charges closer to the upper range of typical reported charges in Victoria.

For example, under a basic salvage charge of \$71, the total salvage charges for a salvage operation that requires an assistant (taking less than an hour) would be \$142 during standard business hours, or \$170.40 after hours (with a 20 per cent surcharge). If an additional tow truck was also required (at 50 per cent of the base fee – see the following section), this becomes \$240.45 during standard business hours, or \$302.45 after hours. These figures are consistent with the higher salvage charges submitted to the Commission by operators.

Based on the above analysis, the Commission considers that a basic salvage fee of \$71 including GST (or \$73 adjusted for 2013-14) per hour appears to be consistent with the range of reported typical total salvage fees in Victoria.

Salvage fees for assistants and additional tow trucks

Action Towing suggested that the appropriate charge for additional tow trucks required for salvage operations is the same base fee as the first tow truck (i.e. \$196.90 in standard business hours, or \$264.10 after hours). Note that in the circumstances raised by Action Towing, the additional tow truck is not already allocated to the accident scene, but is called out to assist in the salvage by the operator who received the towing allocation (accident scenes with multiple allocations are discussed in the next section).

However, as noted in the Commission's draft report, the base fee covers the costs for, or related to, services that are not provided by the additional tow truck (i.e. the actual towing of the accident damaged vehicle, the cleaning of oil leaked from the vehicle onto the tow truck, out-of-storage towing, etc). The additional tow truck does not undertake these services or face these related costs, and therefore should not be compensated for these costs.

Suncorp Group suggested that a charge of 50 per cent of the base rate (i.e. \$98.45 in standard business hours, or \$132.05 after hours) would be reasonable.⁵¹ At this 50 per cent rate, the total charges for the additional tow truck operator called out to an accident scene to undertake salvage operations would be a minimum of \$169.45 (including the \$71 flat rate for salvage operations) — slightly less than the base accident towing fee of \$198.90. Since the average accident scene is cleared within 50 minutes, and the vast majority of salvage operations take less than 50 minutes, these figures are relatively comparable.

⁵¹ Suncorp Group submission, 14 June, pp. 2–3.

As noted above, the base fee covers additional services that are not undertaken by an additional tow truck, and therefore, it is appropriate that the total salvage charges relating to an additional tow truck operator are less than the base fee.

For these reasons, the Commission concludes that a charge of 50 per cent of the base rate (i.e. \$98.45 in standard business hours, or \$132.05 after hours) would be reasonable.

Accident scenes with multiple allocations

In the case of multiple allocations (e.g. where two tow trucks have each received an accident allocation to attend an accident scene because two vehicles require towing), salvage operations that require more than one truck may potentially be undertaken by the tow trucks that have been allocated to the accident scene (i.e. no additional trucks need to be called out). Action Towing was the only stakeholder to comment on this issue, agreeing with the Commission that, where a tow truck used to assist in salvage operations has been allocated to the accident scene (for accident towing of another vehicle involved in the accident) and therefore has not been specifically called out to the scene to assist in the salvage, a salvage charge for the additional tow truck should not be levied.

In such an event, where multiple accident towing allocations have been made, and salvage can be performed using tow trucks already attending the scene (i.e. tow trucks that have received an accident allocation), the Commission concludes that no additional salvage charges should be levied for the 'additional' tow truck used in the salvage operation — the costs of the 'additional' truck are compensated in the base fee for towing of the vehicle that it has been allocated to tow. However, the hourly assistant fee for basic salvage (i.e. for the operator of the 'additional' tow truck acting as an assistant) may be charged.

4.4 Recommendation on regulation of basic salvage

The same rationale for the regulation of accident towing and storage fees applies to the regulation of basic salvage fees. The Commission is concerned about the quantum of salvage fees and the ability for the reasonableness of salvage charges to be determined from the provided documentation (noting the costs and inefficiencies involved in investigating and negotiating excessive salvage fees). For these reasons, the Commission's continues to find that basic salvage should be regulated.

Recommendation 3 – Regulation of basic salvage

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

The Commission has used the regulated salvage charges in NSW as a benchmark in setting a regulated hourly basic salvage fee for Victoria. On this basis, the Commission recommends that the regulated basic salvage fee during standard business hours should be \$71 per hour including GST (applied as a flat rate (i.e. in full) for the first hour and then applied proportionally to the time taken in excess of the first hour) for 2012-13 (to be escalated by the annual adjustment mechanism for 2013-14). This fee is more generous than salvage fees in NSW.

As recommended by the Commission in its previous review, the basic salvage fee should only be applied from the commencement of the salvage operation (not from the time at which the tow truck operator arrives at the scene) and should only be applied for the duration of actual salvage operations (not for any travel time, waiting time, or time spent back at the depot following a salvage).

Given the 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.

Where assistants are required to undertake salvage operations, the same hourly salvage rate and after hours surcharge should apply for the assistants. Where an additional tow truck (that has not been allocated to the accident scene) is required to undertake basic salvage, a charge of 50 per cent of the base rate (i.e. \$98.45 in standard business hours, or \$132.05 after hours) should be applied for the additional tow truck.

For clarity, where more than one tow truck has received an allocation to attend the accident scene and any of these trucks provides assistance to any other in a salvage operation (i.e. is used as an 'additional' tow truck), the additional tow truck salvage charge may not be levied because the 'additional' tow truck will receive the full base fee (for the allocated tow). However, the hourly salvage rate may apply for its operator as an assistant.

Recommendation 4 – Setting basic salvage fees

If the Commission's recommendation 3 to regulate basic salvage is accepted, the Commission recommends the following fees apply to basic salvage.

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 2012-13 should be **\$71 per hour (including GST)**, to be applied as a flat rate (i.e. in full) for the first hour of salvage operations, and then proportionately to the time taken in excess of the first hour. It should only be applied from the commencement of the salvage operation (not from the time at which the tow truck operator arrives at the scene) and it should only be applied for the duration of actual salvage operations at the accident scene (not for any travel time, waiting time, or time spent back at the depot following a salvage).

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.

Assistants required for basic salvage operations

For basic salvage operations that require an assistant, the same hourly rates (i.e. **\$71 per hour (including GST)** during standard business hours, plus an additional surcharge of **20 per cent** after hours) should apply for the assistant.

Additional tow trucks

For basic salvage operations that require additional tow trucks to be called to the scene, 50 per cent of the base rate applying to the original tow truck (i.e. **\$98.45 (including GST)** during standard business hours, and **\$132.05 (including GST)** after hours) should apply for the additional tow truck.

For clarity, where more than one tow truck has received an allocation to attend the accident scene and any of these trucks provides assistance to any other in a salvage operation (i.e. is used as an 'additional' tow truck), the additional tow truck salvage charge may not be levied because the 'additional' tow truck will receive the full base fee (for its allocated accident tow).

5 | NON-COMMERCIAL (UNPAID) TOWS

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

5.1 The Commission's draft recommendation

Non-commercial (or unpaid) tows are accident towing jobs for which a tow operator is not paid. They can occur when the owner of a vehicle refuses or fails to pay for the tow (e.g. because the owner abandons the damaged vehicle). They also arise because operators cannot refuse an accident tow once they have accepted an allocation and are only paid after they have performed the towing service.

In the draft report the Commission considered three options for the treatment of non-commercial tows:

- 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.

Direct compensation was considered administratively costly, and there are no significant impediments to sale of abandoned or unclaimed vehicles under the *Australian Consumer Law and Fair Trading Act 2012*. Hence, there is limited value in pursuing a change to this legislation.

Currently there is an allowance in the regulated fee for bad debts. This allowance was calculated on the basis of the average cost of non-commercial tows reported via operator surveys. Given the comparative administrative simplicity of this approach and its reflection of common commercial practice in terms of bad debt recovery, the Commission concluded this to be the preferred option for dealing with non-commercial tows.

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.

5.2 Stakeholder comments

IAG does not support the Commission's draft recommendation to include non-commercial tows as a cost item and recoup it through fees. It argues that under

current arrangements, motorists that choose to insure their vehicles are subsidising uninsured drivers, the general cause of non-commercial tows. IAG states:

Allowances made in the regulated fee increase costs and these are ultimately passed on to Victorian customers through their insurance policies.⁵²

IAG recommends a small levy be applied to vehicle registrations to fairly and equitably compensate tow truck operators for unpaid work.

The VACC submits that the allowance for non-commercial tows needs to be increased. It calculates that the allowance from the Commission's last review (\$1,461) needs to increase to \$2,649.85.⁵³

5.3 The Commission's analysis

IAG raise a relevant issue — to the extent that non-commercial tows are more likely to arise with uninsured drivers, then the current approach of providing for non-commercial tows through regulated fees results in insured drivers cross-subsidising the uninsured (on average).

However, it is unclear how significant this issue is. The Commission is not aware of any detailed information on the proportion of completed accident tows that result in non-payment by an uninsured operator. The Commission also has to consider the costs of administering a scheme that levies vehicle registrations. As noted in the Commission's draft report, such a scheme would be administratively costly. Without detailed information on the extent of the issue raised by IAG, the Commission is wary of moving to a scheme that would be costly to administer.

In regard to the VACC's analysis, the Commission wishes to comment on two assumptions made by the VACC.

1. **The extent of non-commercial tows** — the VACC's calculations assume non-commercial tows total 10.7 per cent of all tows. The VACC submits that:

Situations that encompass a non-commercial tow include:

- *Driving to locate a smash tow and finding the vehicle is not there; usually it has been driven off from the accident site and the Accident Allocation Centre has not been informed*
- *A non-licensed business has collected the vehicle*
- *The vehicle is uninsured and a customer does not want to pay for the tow.⁵⁴*

⁵² IAG submission, 12 June, p. 6.

⁵³ VACC submission, 19 June, p. 10.

The Commission notes that ‘non-commercial’ tows can also result from:

- an allocation being cancelled or reallocated, and
- the vehicle not being located.

However, these are not non-commercial tows for the purpose of setting regulated fees. Neither are the first two points raised by the VACC. For the purposes of setting fees, the Commission considers that non-commercial tows arise where an *actual* accident tow has been performed for which the operator has not been paid. That is, regulated fees should only be compensating operators when they have actually performed an accident tow — receiving an allocation but not performing the tow for whatever reason, while a ‘non-commercial’ tow, is not a tow that should be recouped through regulated fees.

2. **Number of storage days** — the VACC’s calculation of the foregone revenue from a non-commercial tow incorporates 39 days of storage. This reflects the time required to hold the vehicle before it can be disposed.

While the Commission acknowledges that an operator must hold a vehicle for a minimum period before it can be disposed, it does not agree with the suggestion that this represents foregone revenue. When a vehicle has been abandoned, there is no likelihood of receiving the initial tow fee or storage fees for the period the operator is required to hold the vehicle before disposal.

For the reasons outlined above, the Commission is concerned that if it were to adopt the VACC’s approach on these issues it would overstate the costs of non-commercial tows. The Commission also notes that every accident tow which is paid includes an amount to recoup non-commercial tows. Hence operators receive this as well as any amounts they get from selling an abandoned vehicle.

5.4 Recommendation on non-commercial tows

The Commission continues to consider that the most cost effective way of recouping the costs of relevant non-commercial tows is via an allowance in regulated fees. No new evidence has been presented which suggests the level of the allowance needs to be reviewed (the Commission notes that since its last review, the level of the allowance has been adjusted each time the annual adjustment mechanism has been applied).

⁵⁴ VACC submission, 19 June, p. 10.

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. The Commission is satisfied that the current allowance included in regulated fees for non-commercial tows is reasonable.

PART B | MATTERS FOR FURTHER
CONSIDERATION

6 SUMMARY OF MATTERS FOR FURTHER CONSIDERATION

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 matters for further consideration.

6.1 Matters for further consideration

The Commission's matters for further consideration⁵⁵ are presented below along with a brief overview of the issues assessed. Chapters 7 to 11 of this final report provide the detailed analysis and discussion behind these matters.

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 considered how outcomes-based regulation could be applied to the economic regulation of accident towing. It found 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.

No further comment in relation to outcomes-based regulation was received from stakeholders, and the Commission's conclusion remains unchanged.

⁵⁵ These were referred to as 'findings' in the draft report, but are referred to as 'matters for further consideration' in this final report to make it clear that the Act does not provide for the Commission to make formal recommendations about these issues.

Matter for further consideration 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 conclusions on outcomes-based regulation (matter for further consideration 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).

No further comment in relation to salvage fees under outcomes-based regulation was received from stakeholders, and the Commission’s conclusion remains unchanged.

Matter for further consideration 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 matter for further consideration 1), salvage fees would need 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 reviewed the current mechanism and considered alternate cost indices and productivity factors.

Submissions and comment from stakeholders, including from the VACC and insurer groups, generally supported the continued application of the adjustment mechanism.

However, in an appendix to the VACC's submission, Pitcher Partners argued that an industry specific index with a labour component was a more appropriate index for adjusting accident towing fees. Pitcher Partners used a ten year 'indexation gap' analysis to support its argument.

The Commission has considered the Pitcher Partners analysis and notes that:

- given the periodic review of fees, any 'indexation gap' analysis comparing alternative cost indices should be conducted over three years (as the annual adjustment mechanism only applies for the three years before the next fee review by the Commission), 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.

Therefore the Commission still concludes that a simple and transparent approach using CPI (Melbourne, Transport) is preferable to an industry specific index.

Matter for further consideration 3 – Cost index

The Commission concludes 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 also 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 Commission found that, in the interests of fee smoothing and certainty, the annual adjustment mechanism should continue to 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.⁵⁶

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

Matter for further consideration 4 – Application of the adjustment mechanism

The Commission concludes 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
- section 212H of the *Accident Towing Services Act 2007* should be amended such that, 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 (or the first zero per cent change when consecutive zero per cent changes have been implemented).

⁵⁶ 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.

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 tow⁵⁷ 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. It has also been suggested to the Commission that some operators attempt to charge secondary tow fees by travelling via their depot to the location on the authority to tow docket (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.

⁵⁷ 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.

Matter for further consideration 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. When it next reviews the Act, VicRoads could also consider whether operators should be required to get delivery instructions from the vehicle insurer when requested by the owner.

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.

'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.

Matter for further consideration 6 – 'Out of storage' towing

To address the potential for operators to charge an 'out of storage' fee, the Commission concludes that 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 matter for further consideration 7).

Coverage of the regulated fees

Accident towing and storage fees are regulated to protect drivers who have been in an accident from excessively high fees. 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.

Matter for further consideration 7 – Coverage of the regulated fee

The Commission concludes that 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.

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. The Commission concludes that regulation 40 of the Regulations applies in relation to payments by the vehicle owner or the agent of the owner (i.e. their insurer).

It is also clear to the Commission that drivers involved in an accident are unlikely to be aware of their rights (e.g. in relation to the cash payments issue) or the operation of the Act. Providing such information prior to signing of the authority to tow would promote improved consumer understanding of their rights and could

assist in limiting any misunderstandings between consumers (including their agents) and accident towing operators.

Matter for further consideration 8 – Payment options

The Commission draws the above matters on demands for cash payments to the attention of VicRoads for its consideration of whether they warrant investigation and possible enforcement action.

Matter for further consideration 9 – Information provision to drivers involved in an accident

The Commission suggests that VicRoads should produce an information pamphlet that details the rights of drivers involved in an accident and key aspects of the *Accident Towing Services Act 2007*. This should be provided by the accident towing operator to the driver, who should have the opportunity to read the information before the authority to tow is signed. The pamphlet should be jointly signed by the operator and driver as evidence that it has been provided.

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

7.1 The Commission's draft findings

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 most efficiently deliver these outcomes while ensuring compliance with the regulatory framework.

The Commission considered how outcomes-based regulation could be applied to the economic regulation of accident towing. It found that many of the issues in relation to accident towing (e.g. secondary towing (out of storage tows in particular) and the 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 outcomes-based regulation. The Commission noted that because salvage is an additional service that is not always required at an accident scene, it should have a separate fee under any such outcomes-based 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.

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.

7.2 Stakeholder comments

Stakeholders did not make any comments on outcomes-based regulation in submissions to the draft report.

7.3 The Commission’s analysis

Given no further stakeholder comment on the Commission’s draft conclusions in relation to outcomes-based regulation, the Commission’s views on outcomes-based regulation are unchanged.

7.4 Conclusions on opportunities for innovation

The Commission concludes that an outcomes-based approach to regulation could be adopted to address many of the issues discussed in this report (e.g. out of storage tows and coverage of the regulated accident towing and storage fees). The Act could be amended to define regulated accident towing services by the desired outcomes rather than specifying particular activities.

Matter for further consideration 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.

Matter for further consideration 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 matter for further consideration 1), salvage fees would need to remain separate from accident towing and storage fees.

Readers should note that the matters for further consideration in the remainder of Part B of this final report assume the current approach to regulation of the accident towing industry. If industry legislation is amended and an outcomes-based approach applied, then some of these matters will need to be appropriately adjusted.

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 The Commission's draft findings

As discussed in chapter 3, 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) currently of 0.5 per cent.

While the Commission is required to review and recommend a figure for the 'X' factor (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.⁵⁸

The cost index

The VACC's consultants, Pitcher Partners, proposed a composite index using CPI (Melbourne, Transport) and a labour component (as it had suggested during the Commission's previous review). For the labour component, it suggested using the change in average weekly ordinary time earnings (AWOTE) for Melbourne.⁵⁹ The Pitcher Partners report included a ten year 'indexation gap' analysis, showing the difference between indexation by its cost index and CPI (Melbourne, Transport) over ten years.

In its draft report, the Commission reviewed the annual adjustment mechanism and considered alternate cost indices, concluding that:

⁵⁸ The NERA report, *Benchmarking accident towing fees and options for annual adjustment*, is available from the Commission's website.

⁵⁹ VACC submission, *Appendix One*, 19 June, p. 8.

- the Wage Price Index (WPI) for Melbourne was a more appropriate index than AWOTE to use as a labour component in an industry specific index (should one be used for adjusting accident towing fees)
- a simple and transparent approach using CPI (Melbourne, Transport) is preferable to an industry specific index
- 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, and
- given the periodic review of fees, any ‘indexation gap’ analysis comparing alternative cost indices should be conducted over three years (as the annual adjustment mechanism only applies for the three years before the next fee review by the Commission).

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*.

Application of the annual adjustment mechanism

The Commission’s draft report also considered two matters in relation to the application of the annual adjustment mechanism.

First, it considered whether fees should be able to decrease when the adjustment mechanism gives a negative outcome (so that consumers would benefit from cost decreases). Given the volatility in the CPI (Melbourne, Transport) index, the Commission concluded that the annual adjustment mechanism should be restricted to prevent fee decreases, to provide fee smoothing and increased certainty in accident towing fees. The Commission noted that fees can be adjusted for significant long term cost decreases through the periodic fee review process.

Second, it considered the related issue of how the annual adjustment mechanism has been implemented. The Commission noted that 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. Therefore, as currently implemented, the annual adjustment mechanism provides fee increases above and beyond estimated costs (with fees being increased where costs have merely returned to previous levels following a decrease).

This outcome is not what the Commission intended when first recommending implementation of an annual adjustment mechanism as part of its previous fee review, and the Commission concluded 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.

8.2 Stakeholder comments

Stakeholders did not provide specific comment on the above issues relating to the annual adjustment mechanism. In meetings with the Commission, the VACC indicated it supported an annual adjustment of fees,⁶⁰ and IAG similarly indicated support for the annual adjustment mechanism in its submission to the draft report.⁶¹

Specific comments on the issues raised by the Commission have only been made by Pitcher Partners in its report included as an attachment to VACC's submission. In its cover letter, Pitcher Partners states that it has '*no problem with the WPI as a labour index [in place of AWOTE as proposed by Pitcher Partners]*'.⁶² However, Pitcher Partners argue that analysis of the three year indexation gap '*does not address the accrued shortfall that occurs due to the use of a different index basis*'.⁶³

8.3 The Commission's analysis

In its report for the VACC, Pitcher Partners disagrees with the Commission that any indexation gap analysis should only cover three years. It states:

*while a reset should re-start the process, any discrepancy in the indexation regime will lead to a further accrued shortfall over the next three year cycle. Each three year deficiency will lead to an accumulated shortfall over a longer period that remains unaddressed unless the indexation regime is improved.*⁶⁴

The Commission has carefully considered the issues raised by Pitcher Partners, and makes the following observations.

⁶⁰ Commission consultation with VACC, 21 June 2013.

⁶¹ IAG submission, 12 June, p. 4,

⁶² VACC submission, *Appendix One*, 19 June, p. 20.

⁶³ VACC submission, *Appendix One*, 19 June, p. 20.

⁶⁴ VACC submission, *Appendix One*, 19 June, p. 20.

First, Pitcher Partners' argument relies on the assumption that its industry specific cost index is the accurate reflection of actual cost increases. As noted by the Commission in its draft report, an 'indexation gap' analysis only demonstrates the different results of indexation methodologies – it does not demonstrate whether one indexation methodology is superior or more accurate. The 'accrued shortfall' referred to by Pitcher Partners is merely the accrued difference between two different indexation methodologies (see discussion of the relative performance of cost indices below).

Second, any shortfall in fees (in relation to actual costs) is to be dealt with in the periodic reset of fees. Any 'accumulated shortfall' (between the annual adjustment mechanism and actual costs) would only occur if the annual adjustment mechanism is applied continuously without review – with the periodic review of fees, any shortfall should be rectified in the reset of fees.

For these reasons, the Commission disagrees with Pitcher Partners analysis, and concludes that, given the periodic review of fees, any 'indexation gap' analysis comparing alternative cost indices should be conducted over three years.

Pitcher Partners also states that:

*it is our opinion that the objective of indexation should be to reflect actual cost movements. The components of the index should logically therefore reflect in percentage terms, as nearly as possible, the mix of significant costs in the running of the actual tow truck business.*⁶⁵

The Commission agrees with Pitcher Partners that the objective of indexation is to reflect actual cost movements as closely as possible. However, 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).⁶⁶

8.4 Conclusion on annual adjustment mechanism

The Commission concludes that its draft findings on the annual adjustment mechanism are appropriate. It has considered the suggestion that a ten year indexation gap analysis should be used, but feels this is unnecessary given the periodic nature of the Commission's fee reviews.

⁶⁵ VACC submission, *Appendix One*, 19 June, p. 20.

⁶⁶ NERA 2013, p. 29.

Meanwhile, in the absence of comprehensive and detailed cost information about the accident towing industry, the Commission does not consider that an industry specific cost index is superior or more accurate estimate of changes in costs than CPI (Melbourne, Transport).

Furthermore, the Commission concludes that the adjustment mechanism should be applied in the manner originally intended by the Commission, namely that, 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. This would require legislative amendment to section 212H of the Act.

Matter for further consideration 3 – Cost index

The Commission concludes 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*.

Matter for further consideration 4 – Application of the adjustment mechanism

The Commission concludes 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
- section 212H of the *Accident Towing Services Act 2007* should be amended such that, 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 (or the first zero per cent change when consecutive zero per cent changes have been implemented).

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.

Issues related to secondary towing have been raised by stakeholders and VicRoads. There appears to be some misinterpretation of the Act in terms of when a secondary tow fee can be levied. The Commission has considered the issue as part of this review.

9.1 The Commission’s draft findings

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 tow⁶⁷ 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.

In its draft report the Commission noted that some operators are reportedly 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).

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.

⁶⁷ 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 terms of non-payment of towing fees, the Commission understands that there is no provision compelling an owner or his/her insurer to make immediate payment upon completion of an accident tow. The Act allows tow truck operators to hold a vehicle in the event of non-payment, but does not allow for charging for tows between the location on the authority to tow docket and the operator's depot before delivery.

Given a common misinterpretation of the legal requirements in terms of secondary tows amongst operators and customers, the Commission found that VicRoads should make these clear on their website.

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.

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

An issue associated with secondary towing is the potential for vehicle owners (or insurers) being charged for the moving of their vehicle out of storage to a location where it can be collected by the owner. The issue is whether these tows are a type of secondary tow, or a part of the regular accident towing service and thus covered by the regulated fee.

The provisions of the Act in relation to these charges are unclear. 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 other hand, section 212I (1) of the Act allows operators to apply reasonable charges for services that the Minister has not made a fee determination on.

In its draft report the Commission considered it reasonable that an accident tow include the service of making the damaged vehicle available for pick-up by the

customer, and noted that the approach to fee setting in the previous review would have included out of storage tow costs as part of the regulated fees. Extra fees for this service were therefore considered inappropriate.

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).

9.2 Stakeholder comments

Submissions from the VACC, IAG and Suncorp Group comment on secondary and 'out of storage' tows. The VACC states that the base towing fee should be increased to include out of storage tows.⁶⁸

IAG supports the Commission's draft finding that VicRoads publish on its website a clear guide on the responsibilities of operators in regards to secondary towing. It submits that secondary tow fees of between \$80 and \$200 have been charged by operators to tow vehicles from their depot to the destination requested by the owner (and listed on the authority to tow). IAG adds that on many occasions customers are not aware that their vehicle is being towed to the operator's depot since they have given clear instructions to tow their vehicles to their insurer's assessment centre. IAG submits that secondary tows are an area that requires enforcement and adequate penalties for breaches.⁶⁹

IAG also raised concerns that additional costs such as administration fees, quote fees and insurance levies were charged when tows were performed by operators that were owned or aligned with smash repairers. It stated that some smash repairers had recently purchased large numbers of accident towing licences, leading to instances where vehicles were towed to smash repair shops that attempted to charge storage and other fees in excess of the regulated fee.⁷⁰

⁶⁸ VACC submission, 19 June, p. 16.

⁶⁹ IAG submission, 12 June, pp. 3 and 6.

⁷⁰ IAG submission, 12 June, p. 3.

Suncorp Group also raises concerns that some operators are not towing vehicles to the location requested by the owner, stating:

We wish to reiterate our concerns (from previous submissions) that despite the fact our customers explain to tow operators that the vehicle is insured by one of our brands, they still, in the majority of cases tow the vehicle to their yard.

One way to overcome this issue would be to have a section on the Tow Docket that requires the tow operator to identify the insurer of the vehicle in question and to obtain destination instructions from the insurer.⁷¹

Suncorp Group also submits that fees for legitimate secondary tows should be prescribed, since it is difficult to establish and argue what is a 'reasonable' fee under the Act.

9.3 The Commission's analysis

The following considers issues raised by the VACC and insurers on secondary towing issues.

Adjusting the base towing fee

The VACC submits that the base towing fee should be adjusted to include out of storage tows. Its assumption is that existing fees do not include costs associated with out of storage towing.

However, as noted by the Commission in its draft report:

the Commission finds it reasonable for a customer to expect the regulated fee to cover the costs of an out of storage tow... 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.⁷²

The Commission also notes that existing fees are based on the estimated costs of providing all accident towing services (e.g. vehicle tow, storage and provision to the owner). Therefore the costs of out of storage tows are included within existing fees and it would be inappropriate to add a further allowance.

⁷¹ Suncorp Group submission, 14 June, p. 3.

⁷² Essential Services Commission 2013, *Periodic review of accident towing and storage fees*, Draft report, May, p. 114.

An issue of enforcement and education

As noted in the Commission's draft report, three issues relating to secondary tows have been identified:

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, and
3. secondary tows occurring because insurers are unwilling to pay immediately for the regulated 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 licensed 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.

However, secondary tows taking place without owner (or insurer) consent or being charged because insurers are unwilling to pay immediately for the regulated tow are prohibited under the Act (and Regulations).

Tows taking place without owner consent

In regard to tows taking place without consent, an example is operators putting their depot on the authority to tow when another location has been requested by the vehicle owner. This is contrary to section 38 of the Regulations. Suncorp Group's suggestion of requiring operators to get instructions from the insurer could assist in addressing this issue.

Further, there is no legal secondary tow when operators first tow vehicles to their depot, and then from their depot to the destination requested by the owner (and listed on the authority to tow). Operators must tow the vehicle to the location requested by the owner (and listed on the authority to tow). An operator choosing to drive via their depot to the requested location cannot charge a secondary tow fee for the depot to requested location trip.

Tows occurring because of non-payment

In regard to insurers being unwilling to pay immediately for the accident tow, some operators are choosing to hold onto the vehicle and are charging secondary tow fees (e.g. between the insurer's assessment centre and the operator's depot). However section 150 (3) of the Act does not permit operators to charge for tows **between** the location listed on the authority to tow (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.⁷³

Conclusion

The Commission considers that the Act is clear when a secondary tow fee can be charged. However the Act's requirements may not be clear to operators. The Commission concludes 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 or are otherwise being inappropriately charged — this is an enforcement matter and should be dealt with as such.

9.4 Conclusions on secondary towing

The Act is clear when secondary tows take place — they only occur after the accident damaged vehicle has been first **delivered** to the location specified in the authority to tow docket. 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 requirements of the Act in regard to secondary tows should be made clear to operators, and these requirements should be enforced by the industry regulator.

⁷³ 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.

Matter for further consideration 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. When it next reviews the Act, VicRoads could also consider whether operators should be required to get delivery instructions from the vehicle insurer when requested by the owner.

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.

Matter for further consideration 6 – 'Out of storage' towing

To address the potential for operators to charge an 'out of storage' fee, the Commission concludes that 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 matter for further consideration 7).

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 The Commission's draft finding

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 the range of services (or costs) that may be involved in providing an accident tow. Hence, current legislation does not clearly state what is covered by the fee.

The Commission noted that, in setting the regulated fee for the last review, it estimated costs with information from operator survey responses. These costs included all those associated with performing accident towing and operating a towing business, including 'out of storage' towing and the cleaning of tools, equipment and the tow truck.

The Commission also highlighted 'border' issues that may arise with any definition of coverage of the regulated fee, whereby different parties may interpret differently what is or is not caught by the definition. This situation could be addressed with a definition of exactly what is paid for with the regulated fee being given a legal basis. An alternative solution is to introduce an outcomes-based approach that describes the overall outcomes of the regulated service. This could provide less ambiguity in terms of what is paid for with the regulated fee.

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).

10.2 Stakeholder comments

Submissions from the VACC, IAG and Suncorp Group comment on coverage of the regulated fees. The VACC submits:

VACC agrees a base fee definition is important in towing fee assessments. Currently the base fee is \$196.90 (including GST). Yet the Commission expects other expenses to be included in the base fee without any increase to the base fee i.e.

- *out of storage fees*
- *cleaning of tools and equipment.*⁷⁴

The VACC recommends that the base fee be increased by 8.8 per cent to include out of storage fees and the costs of cleaning tools and equipment.

On the other hand, both IAG and Suncorp Group submit that operators are charging for services that are already covered by the regulated fees. IAG states:

While accident towing in Victoria is regulated, there are a number of practices within the towing industry that are either in breach of current legislation or maximise the use of loopholes. Such practises can put additional pressure on a motorist at the scene of a collision or result in additional and unnecessary fees.

*Such practices include... Charging fees of \$50–\$75 for the cleaning of tow trucks after each service. This component is also covered by the regulated fee and forms part of the accident towing service.*⁷⁵

Suncorp Group submits that ‘*out of storage fees should form part of the basic tow fee*’.⁷⁶

⁷⁴ VACC submission, 19 June, p. 8.

⁷⁵ IAG submission, 12 June, pp. 2–3.

⁷⁶ Suncorp Group submission, 14 June, p. 3.

10.3 The Commission's analysis

The Commission noted in its draft report that 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.⁷⁷ 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.

As stated in the draft report, the process of setting regulated fees in the past has meant that all relevant costs of an accident towing business have been included in the fee setting process. Therefore, while the VACC states that '*the Commission expects other expenses to be included in the base fee without any increase to the base fee*', it is actually the case that the costs of out of storage tows and cleaning of tools and equipment are accounted for in regulated fees that have previously been calculated by the Commission, as are other relevant costs such as driver and other labour costs, repairs and maintenance, fuel, rent, insurance, etc.

10.4 Conclusion on coverage of regulated fees

The Commission is satisfied that the relevant costs of an accident towing business are accounted for in the regulated fees. Establishing a clearer and legal basis for coverage of the regulated fees would help to minimise any confusion over what 'additional' services can or cannot be charged by operators.

Matter for further consideration 7 – Coverage of the regulated fee

The Commission concludes that 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.

⁷⁷ VicRoads 2012, *Fees and charges*, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/AboutTheIndustry/TowTruckFees.htm on 27 June 2013.

11 | PAYMENT OPTIONS

This chapter discusses the issue of payment options and whether an operator can demand cash payment.

11.1 The Commission's draft finding

Through its consultations for this review, the Commission 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).⁷⁸ The Commission did not seek to confirm or refute these allegations, but nonetheless considered whether or not accident towing operators can demand cash payments.

The Commission noted that 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.

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).⁷⁹ On this basis, the Commission concluded that it is clear that accident towing operators must accept payments by cash, credit card or debit card (and cannot demand payment in cash), and its draft finding was that this 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.

⁷⁸ 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.

⁷⁹ VicRoads 2012, *Paying for a tow truck*, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/CustomerInformation/PayingForATowTruck.htm on 26 June 2013.

11.2 Stakeholder comments

Stakeholder comments on demands for cash payments was brief. IAG submits that towing operators sometimes demand cash payments from customers at accident scenes.⁸⁰

In meetings with the Commission, Suncorp Group suggested that some operators insisted on cash payments from insurers in response to lost trade towing and smash repair work.⁸¹

VicRoads suggests to the Commission that some operators may be demanding cash payments from insurers on the basis that the requirements under regulation 40 of the Regulations apply in relation to vehicle owners (and not insurers).⁸²

11.3 The Commission's analysis

As noted by the Commission in its draft report, the legislation states that accident towing operators must accept payments by cash, credit card or debit card (and cannot demand payment in cash) from vehicle owners.

If some operators are demanding cash payments from customers, whether at the operators depot or at the accident scene, VicRoads should investigate these allegations and, if necessary, enforce the regulatory requirements relating to payments for accident tows. Providing additional information to customers (i.e. drivers of accident damaged vehicles) informing them of their rights would also be useful.

While regulation 40 of the Regulations relates to payments from vehicle owners, the Commission concludes that the same requirements (to accept payments by an approved payment system) apply in relation to payments from insurers, when acting as an agent for the owner.

The Commission notes that section 141 of the Act specifies that in Part 5 of the Act an 'owner includes the agent of an owner'. Unless the contrary intention appears, expressions in the Regulations have the same meanings as they have in the Act (as per section 23 of the *Interpretation of Legislation Act 1984* (Vic)). Although the definition of owner under section 141 is confined to Part 5 of the Act only, regulation 40 of the Regulations deals with the same subject matter as part 5 of the Act. Therefore, the Commission concludes that the owner (of a motor vehicle) is to be interpreted as including the agent of an owner (i.e. their insurer).

Furthermore, the Commission notes that regulation 36 of the Regulations includes a note stating: '*The term owner, in relation to a motor vehicle, includes the agent of*

⁸⁰ IAG submission, 12 June, p. 4,

⁸¹ Commission consultation with Suncorp Group, 19 June 2013.

⁸² Commission consultation with VicRoads, 24 May 2013.

an owner.' This note forms part of the Regulations,⁸³ and while it is unclear whether the note applies only to regulation 36 or to the whole of the Regulations generally, the inclusion of the note reinforces the view that the definition of owner under section 141 of the Act is intended to apply to the Regulations (as no contrary intention appears in the Regulations).

Therefore, the Commission concludes that, under regulation 40 of the Regulations, operators must accept payments from owners and their agents (i.e. insurers) by an approved payment system (cash, credit card or debit card). It is clear that operators cannot demand cash payments.

11.4 Conclusion on payment options

The Commission concludes that accident towing operators must accept payments by cash, credit card or debit card (and cannot demand payment in cash). The Commission also concludes that this requirement applies to payments from vehicle owners or an agents of the owner (i.e. their insurer).

The Commission also concludes that drivers involved in an accident are unlikely to be aware of their rights or the operation of the accident towing legislation. Where drivers are able to sign the authority to tow (i.e. have not been severely injured in the accident), providing them with a pamphlet detailing key information on their rights could assist drivers in making arrangements for the towing of their vehicle. This should be provided to the driver *before* they are asked to sign the authority to tow.

Matter for further consideration 8 – Payment options

The Commission draws the above matters on demands for cash payments to the attention of VicRoads for its consideration of whether they warrant investigation and possible enforcement action.

⁸³ A 'note' at the foot of a provision, not being a marginal note, footnote or endnote, forms part of a regulation if the regulation was passed after 1 January 2001 (section 36(3A) of the *Interpretation of Legislation Act 1984* (Vic)).

Matter for further consideration 9 – Information provision to drivers involved in an accident

The Commission suggests that VicRoads should produce an information pamphlet that details the rights of drivers involved in an accident and key aspects of the *Accident Towing Services Act 2007*. This should be provided by the accident towing operator to the driver, who should have the opportunity to read the information before the authority to tow is signed. The pamphlet should be jointly signed by the operator and driver as evidence that it has been provided.

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.⁸⁴ 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.

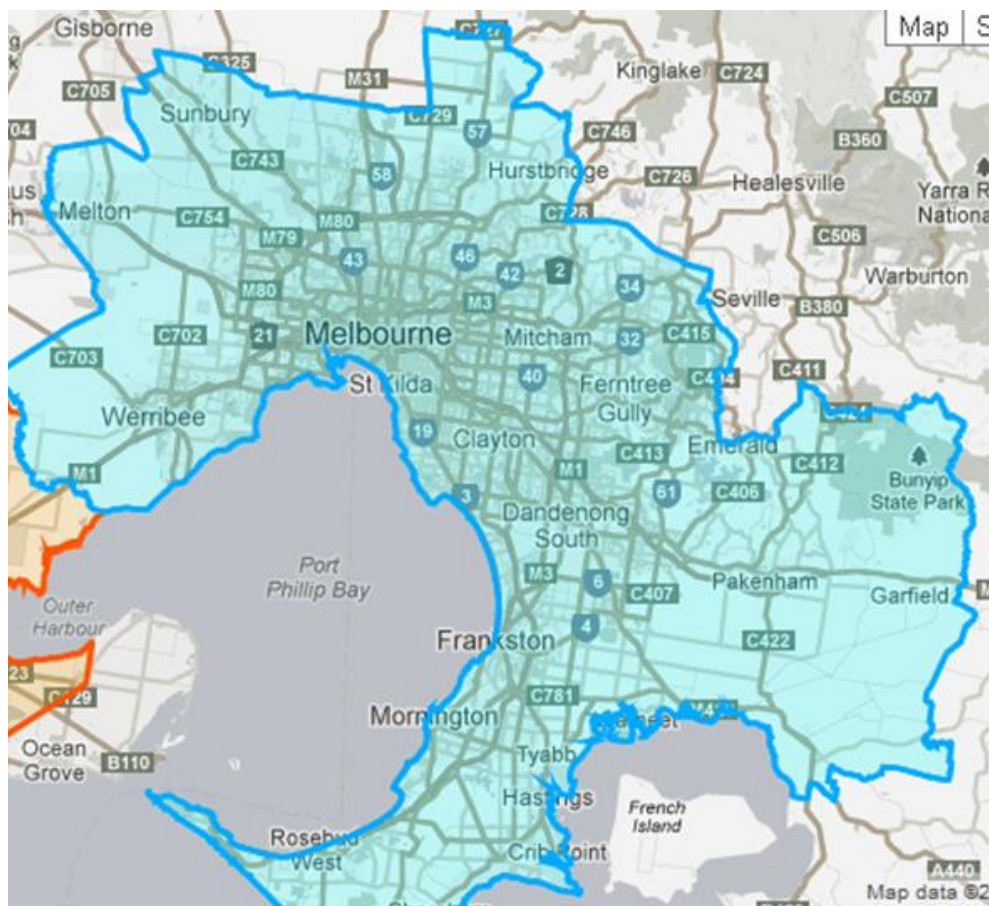
⁸⁴ *Accident Towing Services Act 2007*, section 1 (a).

The Melbourne Controlled Area

The Controlled Area was first established in 1983, covering only the Melbourne metropolitan area. In 2002, the Area was extended to include additional suburbs due to growth in Melbourne's urban fringe. The boundary has not changed since 2002, and covers all of metropolitan Melbourne and goes as far as Werribee and Melton in the west, Sunbury, Craigieburn and Whittlesea to the north, Lilydale and Pakenham to the east and the Mornington Peninsula to the south (figure B.1). VicRoads has the responsibility of determining the boundaries of the Controlled Area.

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

Figure B.1 Melbourne's Controlled Area



Source: VicRoads 2013, Map of Controlled Area, accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/AboutTheIndustry/Accidenttowingallocationmap.htm on 27 June 2013.

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 731 licences in the whole of Victoria.⁸⁵

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.

⁸⁵ 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 27 June 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.⁸⁶

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.

⁸⁶ VicRoads 2013, *Tow truck licences*, accessed at [www.vicroads.vic.gov.au/Home/More info andservices/TowTrucks/OperatorsDepotManagersDrivers/TowTruckLicences.htm](http://www.vicroads.vic.gov.au/Home/More%20info%20and%20services/TowTrucks/OperatorsDepotManagersDrivers/TowTruckLicences.htm) on 27 June 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 tows⁸⁷
- 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
- 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.

⁸⁷ Since January 2009, trade towing has been deregulated in Victoria. Prior to this, drivers and operators required a trade towing licence and plates, and an authority to tow, to undertake trade towing activities.

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

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 depots⁸⁸ 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.⁸⁹

⁸⁸ VicRoads 2013, *Tow Truck Accident Allocations – 2012*, accessed at www.vicroads.vic.gov.au/NR/rdonlyres/3A371A9A-A65B-4B0F-9A6F-A169ADF26BDD/0/2012towTruckaccidentallocations2012.pdf on 27 June 2013.

⁸⁹ VicRoads 2011, email correspondence, 17 October.

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 insured person is restricted in their ability to choose their repairer) reduce the incentive for accident towing businesses to be integrated with smash repairers.⁹⁰

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:

⁹⁰ IBISWorld 2008, *Smash Repairing in Australia*, Industry Report:G5323.

- 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.

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 27 June 2013.

Explanation of accident towing fees

The current accident towing and storage fee schedule includes the following items.⁹¹

⁹¹ VicRoads 2013, *Fees and charges* accessed at www.vicroads.vic.gov.au/Home/Moreinfoandservices/TowTrucks/AboutTheIndustry/TowTruckFees.htm on 27 June 2013.

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 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.⁹² The Commission understands that this recommendation was not adopted.

⁹² 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 2005.⁹³

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.

⁹³ 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).