

Review of Accident Towing and Storage Fees

Consultation Paper

5 April 2018



An appropriate citation for this paper is:

Essential Services Commission 2018, Review of Accident Towing and Storage Fees: Consultation Paper 5 April

Copyright notice

© Essential Services Commission 2018



This work, Review of Accident Towing and Storage Fees, is licensed under a Creative Commons Attribution 4.0 licence [creativecommons.org/licenses/by/4.0/]. You are free to re-use the work under that licence, on the condition that you credit the Essential Services Commission as author, indicate if changes were made and comply with the other licence terms.

The licence does not apply to any brand logo, images or photographs within the publication.

Contents

Summary	1
We conduct reviews of accident towing, storage and salvage services and make recommendations	2
Our objective	2
The minister regulates accident towing and storage fees in Melbourne	2
We conduct reviews of fees and make recommendations to the minister	3
What is outside the scope of our review?	3
Current fees will apply until the minister makes a new determination	4
We want to know whether accident towing and storage fees should change	5
Have there been any significant changes in the industry since our last review?	5
Should we recommend any changes to fees?	5
Should we recommend changes to the productivity adjustment factor?	8
Should any currently unregulated services have a regulated price?	10
We encourage stakeholders to make a submission to this consultation paper	12
Key dates for the review	12
How you can make a submission	13
We will publish submissions on our website	13
Glossary	14
Appendix A: Context	16
What is accident towing?	16
Overview of industry participants	17
The Melbourne controlled area has an accident allocation system	18
Reasons for accident towing fee regulation in Melbourne	19
Overview of our 2013 review of accident towing and storage fees	19
Overview of our 2015 review of Victorian accident towing and storage economic regulation	21
Appendix B: Legislative framework	23

Summary

The Essential Services Commission conducts periodic reviews of fees for accident towing, storage and salvage services in Melbourne. We make recommendations to the Minister for Roads about whether currently regulated fees are appropriate and whether any unregulated storage or salvage services should have a regulated fee.

The minister has previously determined regulated accident towing and storage fees and may determine new fees in response to our recommendations. The minister also has the power to determine a regulated fee for basic salvage services.

We have now started our review of accident towing, storage and salvage services and will make recommendations to the minister at the conclusion of this review.

In this consultation paper, we explain our role and the scope of our review. We also outline the methodology we intend to adopt for this review, which is based on the methodology we used for our previous review in 2013.

We are seeking input from stakeholders on whether our proposed methodology to review accident towing and storage fees is appropriate. We are also seeking information from stakeholders on whether there have been significant changes in the industry since our previous review of which we should be aware.

Submissions to this consultation paper will be the first of a number of opportunities for you to share your views on accident towing, storage and salvage fees. We encourage all interested parties to share their views on whether we should recommend changes to regulated accident towing and storage fees and whether any unregulated storage or salvage services should have a regulated fee.

Submissions will close on 3 May 2018.

We conduct reviews of accident towing, storage and salvage services and make recommendations

The Essential Services Commission conducts periodic reviews of fees for accident towing, storage and salvage services in Melbourne. We make recommendations to the Minister for Roads about whether currently regulated fees are appropriate and whether any unregulated storage or salvage services in Melbourne should have a regulated fee. Other parts of Victoria are not subject to accident towing fee regulation. In addition, our role relates solely to regular vehicle accident towing and we have no role to recommend fees for breakdown or trade towing or heavy vehicle accident towing.

Our objective

The objective of the Accident Towing Services Act 2007 is to promote the safe, efficient and timely provision of accident towing services.¹

The minister regulates accident towing and storage fees in Melbourne

Accident towing is the towing of accident damaged vehicles by a tow truck from an accident scene. Accident towing does not involve trade towing (such as the towing of breakdown vehicles), which is not a regulated service in Victoria.

The industry regulator, VicRoads, issues licences to operators and drivers to perform accident towing services in Victoria. Licences are subject to geographical restrictions on where an accident tow can be performed.

Victoria is separated into three separate geographic areas for accident towing services. These are:

- the Melbourne controlled area (metropolitan Melbourne and the Mornington Peninsula)²
- the Geelong self-management area (Geelong and surrounding areas)
- the remainder of Victoria.

Accident towing and storage fees in the Melbourne controlled area are regulated by the Minister for Roads.³ Accident towing and storage fees are not subject to regulation in other areas of Victoria,

¹ Accident Towing Services Act 2007, section 4. The Act also has an objective to ensure that persons who provide accident towing services are of appropriate character, are technically competent, act with integrity and have regard to vulnerable persons.

² The boundaries of the controlled area are specified in the Victoria Government Gazette. See; Victoria Government Gazette 2009, *Accident Towing Services Act 2007: Declaration of controlled area*, No. S 494 Tuesday 29 December 2009

but there is a requirement that fees are reasonable.⁴ The minister also has the power to determine a regulated fee for basic salvage services in the Melbourne controlled area but has not yet done so.

We conduct reviews of fees and make recommendations to the minister

We must conduct and complete periodic reviews and make recommendations to the Minister for Roads on:⁵

- whether any fee for accident towing or storage services previously determined by the minister is appropriate
- whether existing accident towing services that are unregulated (relating to storage and salvage) should be regulated and, if so, what regulated fees should apply
- a figure for the productivity adjustment contained in the annual adjustment mechanism, which is applied to regulated fees every year
- any other matter relating to accident towing services, the storage of accident damaged vehicles or salvage that the minister specifies in writing.⁶

The current regulated fees for accident towing and storage services will continue to apply until the minister makes a new fee determination, which may occur in response to our recommendations. We seek stakeholder input to help us develop our recommendations to the minister.

We conducted our last review of accident towing, storage and salvage services in 2013 and our recommendation was that existing accident towing and storage fees were appropriate and should continue to apply. We also recommended the introduction of a regulated fee for basic salvage services.⁷ To date, a regulated basic salvage fee has not been introduced.

What is outside the scope of our review?

Our focus in this review will be on accident towing, storage and salvage pricing matters within the Melbourne controlled area.

³ Accident Towing Services Act 2007, section 211

⁴ Accident Towing Services Act 2007, section 212(1)(b). In addition, s. 212(2) specifies factors that the court must consider when determining what is a 'reasonable' charge for the provision of accident towing services.

⁵ Accident Towing Services Act 2007, section 212A(1)

⁶ The minister has not specified any additional matters for us to consider in this review.

⁷ Salvage is defined in section 3 of the Accident Towing Services Act. Salvage is the moving of an accident damaged motor vehicle to a place on a road or road-related area or into an upright position (or both) so that it may be towed by a tow truck without assistance. Salvage may involve the use of additional tow trucks or equipment. Salvage fees are currently not subject to price regulation, but fees are required to be reasonable.

We conduct reviews of accident towing, storage and salvage services and make recommendations

The Accident Towing Services Act limits the scope of our review and the recommendations we can make to the minister. In particular, we are unable to review:

- fees for heavy vehicle and trade towing
- issues with licence boundaries
- the functioning of the allocation system for accident towing jobs
- accident towing, storage and salvage fees in areas outside of the Melbourne controlled area.

We reviewed these items in our review of Victorian accident towing economic regulation in 2015.

This review was outside of our general role under the Accident Towing Services Act and was conducted in response to terms of reference issued by the Minister for Finance.⁸ In particular, the 2015 review considered both regular and heavy vehicle accident towing and was about:

- whether fees should be regulated
- the appropriateness of existing boundaries establishing the Melbourne controlled and Geelong self-management areas
- whether accident towing jobs should be allocated or whether operators should be free to compete for accident towing jobs.

In Appendix A, we provide an overview of the accident towing industry, how it is regulated and a summary of our most recent reviews.

There are also matters related to accident towing in the Melbourne controlled area that are beyond the scope of this review, specifically, matters such as secondary towing.

Current fees will apply until the minister makes a new determination

The Minister for Roads may only make a determination of accident towing, storage and salvage fees after receiving our recommendation and a report from VicRoads.⁹

The current regulated fees for accident towing and storage services will continue to apply after the completion of our review, unless the minister makes a new determination in response to our recommendations.

⁸ The Minister for Finance issued the terms of reference (following consultation with the Minister for Roads) under section 41 of the Essential Services Commission Act 2001. The terms of reference required us to review the economic regulation of accident towing services in Victoria.

⁹ Accident Towing Services Act, section 212(1)

We conduct reviews of accident towing, storage and salvage services and make recommendations

We want to know whether accident towing and storage fees should change

We propose reviewing accident towing and storage fees using the methodology we used in our 2013 review. We would like to hear stakeholders' views on whether our methodology is still appropriate or whether it could be improved. We will also again review whether basic salvage (or any other unregulated storage or salvage services) should be subject to regulated fees.

We would like to hear from stakeholders on whether there have been any significant changes in the industry since our last review that would warrant a change in accident towing and storage fees.

Have there been any significant changes in the industry since our last review?

The Victorian accident towing industry generally consists of depots, operators and drivers. We would like to hear from stakeholders about any relevant changes in the business arrangements and structure of the accident towing industry.

We would like to hear from those in the accident towing industry on recent developments in the industry. For example, we would be interested to hear about significant changes in your costs, revenue, demand or productivity.

Box 1 **Questions on changes in the accident towing industry**

1. Have there been any significant changes in the accident towing industry since our last review?
2. How have the costs of accident towing operators changed since our last review? Can any significant cost changes be supported with material illustrating these changes?

Should we recommend any changes to fees?

We are required to review whether existing accident towing and storage fees are appropriate. In our last review, we applied a benchmarking approach to compare regulated fees against fees for interstate accident towing and against non-regulated fees for other towing services¹⁰ in Victoria. We propose applying a similar benchmarking approach in this review.

The current regulated fees in the Melbourne controlled area are outlined in table 1.

¹⁰ Our benchmarks for non-regulated towing services came from trade, clearway, impound and breakdown towing.

Table 1 Regulated accident towing and storage fees in the Melbourne controlled area, 2017-18

Fee or charge description	Charge (\$ incl. GST)
Accident towing fees	
Base fee (including first 8km travel by tow truck)	216.20
Additional fee per kilometer beyond 8km	3.40
After hours surcharge ^(a)	73.80
Storage fees (charge per day)	
Car – under cover	16.60
Car – in car yard	11.20
Motorcycle – under cover	5.50
Motorcycle – in locked yard	3.50

Note: (a) applies from 5pm to 8am Monday to Friday, 5pm Friday to 8am Monday, and public holidays.

Source: VicRoads

We decided between two methodologies in our previous review

In our previous review, we considered two different methodologies to review whether fees were appropriate:

- a cost of service approach, where we would review existing fees based on the estimated costs of providing that service
- a benchmarking approach, where we would review existing fees based on comparisons to fees charged for similar services in other jurisdictions (such as interstate) and for non-regulated towing services in Victoria.

We decided against using a cost of service approach, due to the difficulty of obtaining the required cost information through surveys and concerns with the accuracy of this information. Instead, we implemented a benchmarking approach, which relies relatively less on receiving information from operators and can provide a good indication of competitive fee levels.¹¹

¹¹ Essential Services Commission 2013, *Periodic review of accident towing and storage fees: Draft report*, May, pp. 25-27

We want to know whether accident towing and storage fees should change

We applied benchmarking of fees in the previous review and propose to do so again

We propose to apply a benchmarking approach to review whether accident towing and storage fees are appropriate. We propose to use similar benchmarks to those we used in our 2013 review, as described below.

Competitive towing benchmarks

In our previous review, we compared regulated accident towing fees against fees for non-regulated towing services in Victoria.¹² This included fees for trade, clearway, impound and breakdown towing. In our analysis, we assumed an accident towing distance of 15 kilometres¹³ was undertaken during standard business hours. We found that regulated accident towing fees were higher than competitive benchmarks, which we acknowledged was partly due to higher costs involved in accident towing and longer times to complete jobs.

Interstate regulated accident towing benchmarks

In our previous review, we also compared regulated accident towing fees against regulated accident towing fees in New South Wales, Queensland and South Australia.¹⁴ Fee structures differ across each of the states, so we attempted to standardise the fee calculations in order to conduct a 'like for like' comparison.

In calculating the fees for comparison, we:

- calculated the Melbourne controlled area fee for a tow distance equal to the kilometres included in the base fee of other jurisdictions (for example, in NSW the base fee includes ten kilometres of towing)
- assumed three days of undercover storage was required
- assumed 30 minutes of working time at the accident scene.

When we assessed the outcomes, we found that differences in regulated accident towing fees between jurisdictions could be explained by the differences in regulatory arrangements, industry structures, number of jobs per licence and the potential additional revenue from non-regulated services.

¹² Essential Services Commission 2013, *Periodic review of accident towing and storage fees: Final report*, July, pp. 25-26

¹³ During our 2009 review, a 'typical accident tow' was identified based on survey information. Among other things, a typical tow included 15 kilometres of towing.

¹⁴ *Ibid*, pp. 26-27

We want to know whether accident towing and storage fees should change

Box 2 Questions on our approach to benchmark fees

3. What are your views on our proposal to continue our benchmarking approach to review accident towing and storage fees?
4. Do you agree with the benchmarks we have previously used for the Melbourne accident towing industry? If not, what benchmarks would be more appropriate?
5. Are the current accident towing and storage fees appropriate? If not, do you consider they should increase or decrease?

Should we recommend changes to the productivity adjustment factor?

We are required to recommend a figure for the productivity adjustment factor. This factor is used in the annual adjustment mechanism to amend fees each year. During our last review, we estimated changes in the rate of productivity improvement in the accident towing industry over time through changes in the amount of revenue per truck (with fees held constant). We propose using the same methodology for this review.

What is the productivity adjustment factor?

The productivity adjustment factor is an adjustment factor that applies to annual fee increases. In the context of this regime, fees increase each year by the value of CPI (Melbourne, transport) minus the productivity adjustment factor. The equation used to make this adjustment is specified in section 212H of the Accident Towing Services Act and reproduced in Appendix B of this paper.

The reason that fees are reduced by an amount less than CPI is to reflect the workings of a competitive market, where businesses are expected to pass on cost increases to customers and also search for ways to improve their productivity. In competitive markets, if a firm improves its productivity relative to its competitors, it can lower prices and increase its market share. In the context of the accident towing industry, when a tow truck business becomes more productive, it is able to use fewer resources to produce the same amount of output. Such a result means that a tow truck business can maintain its profitability even when its costs are increasing.

The productivity adjustment is intended to reflect efficiency gains that accident towing operators are capable of achieving and incentivise them to do so.

Fees are amended each year by the annual adjustment mechanism

Section 212H of the Accident Towing Services Act outlines the annual adjustment mechanism that applies to regulated accident towing fees every year. The annual adjustment mechanism is currently based on changes in CPI (Melbourne, transport) minus a productivity adjustment factor of 0.5 per cent. Our role under section 212A of the Act is to review and recommend a figure for the productivity adjustment factor. Table 2 shows how the annual adjustment mechanism has applied

We want to know whether accident towing and storage fees should change

to accident towing fees since 2009. In years where CPI minus 0.5 per cent gives a negative figure, accident towing fees have remained constant, as seen in 2015-16 and 2016-17.

Table 2 Change in accident towing fees in the Melbourne controlled area (incl. GST), 2009-10 to 2017-18

	Annual adjustment mechanism (CPI - 0.5 %)	Base fee	Distance fee (after 8 km)	After hours surcharge	Storage (car under cover)
2009-10	N/A	\$168.45	\$2.65	\$57.55	\$12.90
2010-11	N/A	\$189.50	\$3.00	\$64.75	\$14.50
2011-12	2.6 %	\$194.40	\$3.10	\$66.40	\$14.90
2012-13	1.3 %	\$196.90	\$3.10	\$67.20	\$15.10
2013-14	2.8 %	\$202.40	\$3.20	\$69.10	\$15.50
2014-15	2.4 %	\$207.30	\$3.30	\$70.80	\$15.90
2015-16	-7.1 %	\$207.30	\$3.30	\$70.80	\$15.90
2016-17	-1.1 %	\$207.30	\$3.30	\$70.80	\$15.90
2017-18	4.3 %	\$216.20	\$3.40	\$73.80	\$16.60

Source: VicRoads, Victorian Government Gazette Specials

We used a revenue per truck estimate to assess the productivity adjustment factor in the last review

In 2013, we engaged a consultant (NERA Economic Consulting) to provide advice on the productivity adjustment factor in our review. NERA estimated the annual change in industry productivity through the average change in revenue per tow truck.

We describe NERA's analysis further in Appendix A.

In the final report of our 2013 review, we considered NERA's analysis and concluded that the range of estimated annual productivity growth in the accident towing industry was between -1.0 per cent and 1.8 per cent.¹⁵ Our final recommendation was that the existing productivity adjustment factor of 0.5 per cent remained reasonable because it fell within the range of productivity growth estimates.¹⁶

¹⁵ Essential Services Commission 2013, *Periodic review of accident towing and storage fees: Final report*, July, p. 53

¹⁶ Essential Services Commission 2013, *Periodic review of accident towing and storage fees: Final report*, July, p. 53

We want to know whether accident towing and storage fees should change

6. What are your views on our proposal to review the productivity adjustment factor using the same methodology as the last review?
7. Have there been any changes in the rate of productivity improvement in the industry since the last review?

Should any currently unregulated services have a regulated price?

We are required to review unregulated services related to the storage and salvage of accident damaged vehicles. We must recommend whether those services should have regulated prices and, if so, what those prices should be.

In the event that we do recommend the regulation of basic salvage services, we propose calculating a prescribed fee using a similar benchmarking methodology as that used in our previous review.

We recommended a regulated fee for basic salvage services in the last review

In our 2009 and 2013 reviews, we recommended that basic salvage charges should be regulated.¹⁷ To date, a regulated salvage fee has not been introduced.

Our rationale for recommending price regulation was that there is inadequate consumer protection for accident victims. This is because tow truck operators are given the exclusive right to attend an accident via the allocation scheme and accident victims have limited, or no, ability to negotiate the fee with the tow truck operator.

In our 2009 review, we also recommended that where salvage is required and charged, tow truck operators should take a minimum of two photographs of the salvage operation undertaken.¹⁸ In response, the Victorian Government updated the documentation requirements for salvage to now require tow truck drivers to take photographs of the salvage operation and to include a detailed description of the work undertaken in the invoice.¹⁹ Although this provides some protection to consumers from inappropriate salvage fees, we considered that the legislative requirement that salvage fees be 'reasonable'²⁰ may not be sufficient to protect consumers from excessive salvage

¹⁷ Essential Services Commission 2013, *Periodic review of accident towing and storage fees: Final report*, July, pp. 41-56

¹⁸ Essential Services Commission 2010, *Review of accident towing and storage fees: Final report: Volume 2 – Detailed reasons and methodology*, June, p. 49

¹⁹ Accident Towing Services Regulations 2008, Reg 35(12) and Schedule 2

²⁰ Accident Towing Services Act 2007, s. 212I (1)(b)

We want to know whether accident towing and storage fees should change

fees.²¹ In particular, our 2013 review suggested that the magnitude of salvage fees had continued to increase since the 'reasonable' requirement was introduced.²²

We acknowledged the variability in the nature of salvage operations and that it is not possible to set a regulated fee structure that accommodates every possible salvage operation. To overcome this issue, we recommended a flat fee for basic salvage services to recover the average costs of *basic* salvage operations.²³ We considered that this approach would provide, on average, appropriate compensation to operators across the variety of basic salvage services.

To recommend a regulated basic salvage fee in 2013, we first considered the basic salvage charge we recommended in the 2009 review and rolled it forward using the annual adjustment mechanism. We then benchmarked this salvage charge against salvage charges in New South Wales (we found that South Australian salvage charges were not comparable). Stakeholders supported a flat salvage charge for the first hour of operations, so we estimated the price for one hour of salvage in NSW and compared this to our rolled-forward salvage charge. Our final recommended charge was around the midpoint of these two values, at \$71 per hour (including GST) for the first hour of salvage operations.²⁴ We propose to use this same methodology to calculate a regulated basic salvage fee, if we recommend the regulation of basic salvage services.

We would like to hear your views on other currently unregulated services

We are also interested to hear from stakeholders on any unregulated fees related to the storage of accident damaged vehicles that we should review to decide on whether regulation is required. We have not previously recommended the regulation of unregulated storage services.

The Accident Towing Services Act restricts the matters on which we can make ministerial recommendations. Specifically, we can only recommend the regulation of unregulated storage and salvage services.

Box 3 Questions on whether any unregulated services should be regulated

8. Should fees for basic salvage services be regulated? If so, what is an appropriate regulated price for basic salvage services?
9. Are there any unregulated storage or salvage services that should be subject to a regulated price?

²¹ Essential Services Commission 2013, *Periodic review of accident towing and storage fees: Final report*, July, p. 41

²² Essential Services Commission 2013, *Periodic review of accident towing and storage fees: Draft report*, May, p. 58

²³ Essential Services Commission 2013, *Periodic review of accident towing and storage fees: Final report*, July, pp. 46-55

²⁴ *Ibid*, p. 51

We want to know whether accident towing and storage fees should change

We encourage stakeholders to make a submission to this consultation paper

We are inviting stakeholders to provide us with submissions to this consultation paper by 3 May 2018.

We will consult with stakeholders throughout our review and we encourage all interested parties to contribute their views by making submissions.

For those in the accident towing industry, this review is an opportunity to inform us of changes in the industry and whether existing regulated fees are appropriate and whether any unregulated storage or salvage services should have a regulated fee. We may recommend changes to fees if significant changes in the industry since our last review (for example, changes in costs, productivity, profits or industry structure) warrant changes in fees.

We are also interested in consumers' views on the appropriateness of currently regulated accident towing and storage fees and whether any unregulated storage or salvage services should be regulated.

Key dates for the review

During this review, we will release a draft report and final report, to allow stakeholders to comment on our draft recommendations before we make our final recommendations to the minister.

Stakeholders can make submissions on this consultation paper and our draft report. We will also meet with interested stakeholders throughout the review.

Table 3 provides an indicative timeline for our review.

Table 3 Indicative timelines for our review of accident towing and storage fees

Activity	Indicative timeline
Commission consults with stakeholders	April 2018
Deadline for submissions on consultation paper	3 May 2018
Commission releases draft report for public consultation	July 2018
Commission consults with stakeholders	July - August 2018
Commission releases final report and makes final recommendations	October 2018

We encourage stakeholders to make a submission to this consultation paper

How you can make a submission

Interested parties are invited to make submissions in response to this consultation paper. Submissions to this consultation paper close 3 May 2018.

Please email submissions to towtruckreview@esc.vic.gov.au

You may also send submissions via fax to 03 9032 1303 or by mail, marked:

Attention: Transport Division
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

Any questions about this consultation paper may be directed to:

Andre Kersting
Project Manager, Transport
Essential Services Commission
Email: [**towtruckreview@esc.vic.gov.au**](mailto:towtruckreview@esc.vic.gov.au)
Phone: 03 9032 1300

We will publish submissions on our website

To promote an open and transparent review process, we will make all submissions publicly available on our website. If there is information that you do not wish to be disclosed publicly on the basis that it is confidential or commercially sensitive, this information should be clearly specified in the submission.²⁵

²⁵ Essential Services Commission, *Our submission policy*, www.esc.vic.gov.au/our-submission-policy

Glossary

Term	Definition
Accident allocation scheme	A roster-based system for allocating accident towing jobs between tow truck licence holders. Separate schemes operate in the Melbourne controlled area and Geelong self-management area.
Accident towing	The towing and storage of accident-damaged motor vehicles from road accident scenes. Accident towing and storage fees are regulated within the Melbourne controlled area.
Breakdown towing	The towing of vehicles as part of the road side assistance service offered by car insurance providers and car retailers. Breakdown towing fees are not regulated.
Clearway towing	The towing of vehicles illegally parked in designated clearway zones during specified times, under contract with the responsible authority. Clearway towing fees are not regulated.
Depot	Premises from which accident tow trucks operate. A single depot may be shared by multiple accident towing service businesses.
Driver	A person who drives a tow truck to accident scenes and performs the tow. Under the Accident Towing Services Act 2007, drivers must be accredited by VicRoads.
Geelong self-management area	A declared area consisting of Geelong and surrounding areas. Tow truck drivers may only attend an accident scene after receiving an allocation through the self-managed allocation scheme. Accident towing and storage fees are not regulated beyond a requirement to be 'reasonable'.
Impound towing	The towing of vehicles that are either abandoned, derelict or otherwise causing obstruction, as arranged by the local council. Impound towing fees are not regulated.
Operator	A person who owns or operates a tow truck business. Under the Accident Towing Services Act 2007, operators must be accredited by VicRoads.
Melbourne controlled area	A declared area consisting of the Melbourne metropolitan area and the Mornington Peninsula. Accident towing and storage fees are regulated within the Melbourne controlled area.
Salvage	Salvage, in the case of an accident damaged motor vehicle that, as a result of the accident— (a) is in a location that is not a road or road related area (b) is embedded in a building or in an object that is not a motor vehicle

Term	Definition
	<p>(c) is overturned or on its side means the moving of the motor vehicle to a place on a road or road-related area or into an upright position or both so that it may be towed by a tow truck without assistance.</p> <p>Salvage may involve the use of additional tow trucks or equipment. Specific salvage fees are not regulated, however fees are required to be 'reasonable'.</p>
Secondary tow	Occurs when an accident-damaged vehicle is towed from the accident scene and delivered to the destination listed on the authority to tow docket and then is subsequently towed to another destination. Secondary tow fees are not regulated.
Storage	Occurs when an accident-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, including any tows following the delivery of an accident-damaged vehicle to the location specified on the authority to tow docket. Examples include breakdown, clearway, impound and secondary tows. Trade towing fees are not regulated.
Unregulated area	For regular vehicle accident tows, refers to areas of Victoria excluding the Melbourne controlled and Geelong self-management areas.
VicRoads	The accident towing industry regulator. VicRoads is the Victorian Government agency responsible for administering the Accident Towing Services Act 2007.

Appendix A: Context

In this Appendix, we briefly describe the accident towing industry and its participants, as well as provide a summary of our two most recent reviews related to the accident towing industry, where:

- in 2013, we reviewed accident towing, storage and salvage services and made some recommendations to the Minister for Roads
- in 2015, in response to a terms of reference issued by the Minister for Finance, we reviewed the economic regulation of Victorian accident towing services.

What is accident towing?

Accident towing is the towing and storage of accident-damaged vehicles from road accident scenes. For regulatory purposes, accident towing is classified into 'regular vehicle' and 'heavy vehicle' accident towing. Regular vehicles have a gross vehicle mass of less than four tonnes, while heavy vehicles have a gross vehicle mass of four tonnes or more. Our role is in relation to the accident towing of regular vehicles.

The regulation of regular vehicle accident towing varies between different areas of Victoria. The industry regulator, VicRoads, issues licences²⁶ to operators and drivers to perform accident towing services, which are subject to geographical restrictions on where an accident tow can be performed. Victoria is separated into three separate geographic areas for accident towing:

- the Melbourne controlled area (metropolitan Melbourne and the Mornington Peninsula)
- the Geelong self-management area (Geelong and surrounding areas)
- the remainder of Victoria.

Our role is to make recommendations on the regulated accident towing and storage fees in the Melbourne controlled area. In the other parts of Victoria, fees are unregulated but are subject to a requirement that they are 'reasonable'.²⁷

Regular vehicle accident towing includes three distinct services

Accident towing of regular vehicles includes three distinct services:

- **towing:** refers to the towing of an accident-damaged vehicle from a road accident scene to the location requested by the vehicle driver or owner

²⁶ Licences are transferable – that is, a licence can be purchased or leased from an existing licence holder, subject to approval by VicRoads.

²⁷ Accident Towing Services Act 2007, section 212I(1)(b)

- **storage:** refers to the storing of an accident-damaged vehicle in a secure location at the tow truck operator's depot to await repair or towing to another location
- **salvage:** refers to the moving of an accident-damaged vehicle, sometimes with the assistance of additional equipment or another vehicle, into a position where it can be safely towed without assistance.

There are other types of towing that are not accident towing

Trade towing is a term that encompasses all other towing besides accident towing and includes:

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

Trade towing is not regulated in Victoria due to the competitive nature of the sector and the ability of consumers to make informed choices relating to trade towing services.

Overview of industry participants

In the Victorian accident towing industry, business arrangements generally consist of depots, operators and drivers.

Depots are locations from which accident tow trucks operate

A depot is a premise from which accident tow trucks operate. In the Melbourne controlled area, each depot is located in a designated zone. A single depot may be occupied by one operator or could be shared by multiple accident towing businesses. In some cases, a single accident towing business may operate out of more than one depot, depending on the geographic restrictions on its licences.

Operators own or operate tow truck businesses

An operator is a person or corporation that owns or operates a tow truck business. A business may employ an accredited depot manager to manage accident towing services from a depot. If a depot has no accredited manager, the operator of the licences at that depot is responsible for depot manager duties.

Drivers are those that perform towing jobs

A driver is a person who drives a tow truck to the accident scene and performs the towing job.

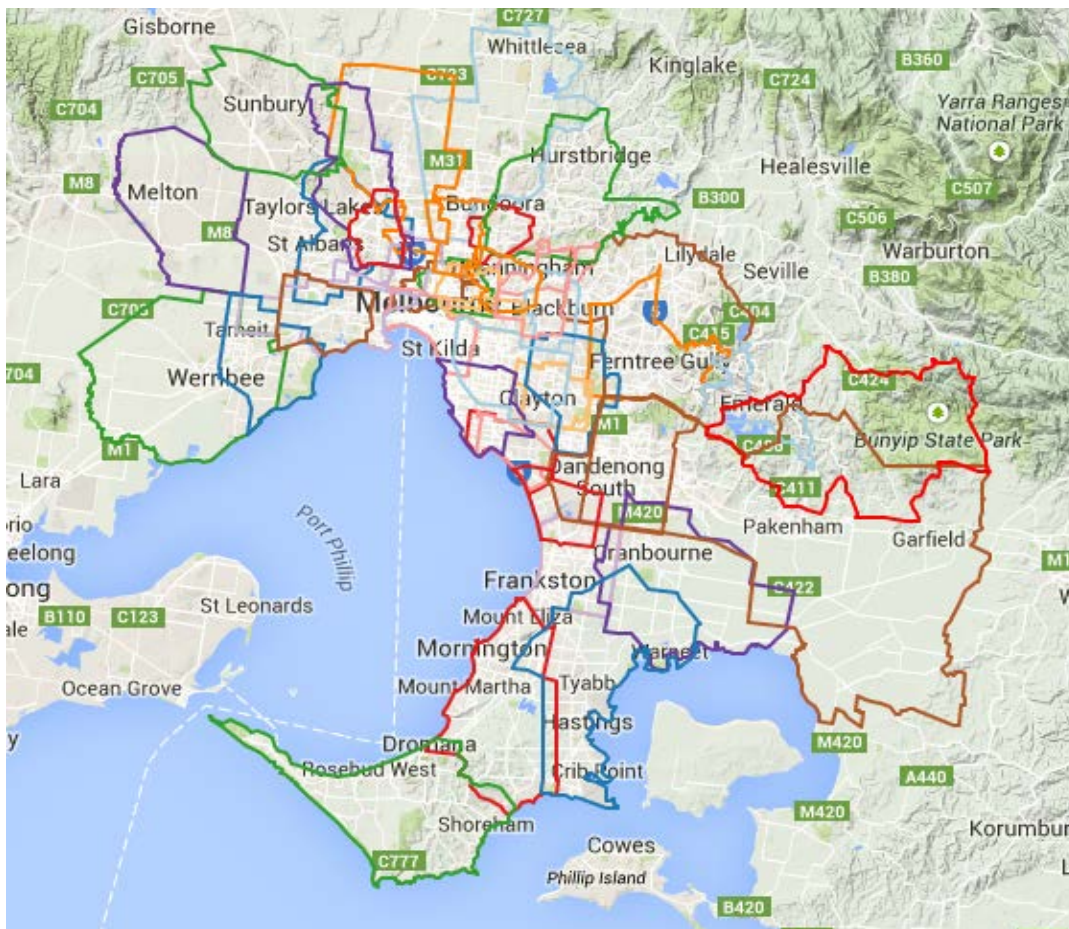
The Melbourne controlled area has an accident allocation system

Road accidents within the Melbourne controlled area are assigned to tow truck drivers via an accident allocation scheme administered by VicRoads. The Royal Automobile Club of Victoria (RACV), under contract with VicRoads, runs the call centre that allocates accident towing jobs to operators.

The Melbourne controlled area is divided into allocation zones. When an accident occurs, the accident towing job is allocated to the depot within the allocation zone of the accident and the operator of that depot (or depot manager) allocates the job to a specific licence. If there is more than one depot within an allocation zone, the job is allocated to the depot that has received the least allocations per licence in that month.

The allocation zones in the Melbourne controlled area are displayed in Figure A.1 below.

Figure A.1 The Melbourne controlled area allocation zones



Source: VicRoads, 2015

Reasons for accident towing fee regulation in Melbourne

The introduction of an accident allocation system in Melbourne occurred in response to shortcomings in the accident towing industry. In particular, prior to this system, it was typical for multiple tow truck drivers to arrive at an accident scene and compete for an accident towing job. This would lead to increased stress and anxiety to the accident victim from being put under pressure at the scene of an accident to decide which tow truck operator to use, and also increase 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.

With the introduction of the accident allocation system, accident towing operators were granted a monopoly entitlement to attend an accident scene in the Melbourne controlled area. In order to prevent towing operators from charging excessive prices, the Victorian Government decided to regulate fees to protect consumers from potential price gouging and to ensure that accident towing remains a profitable and viable industry.

Overview of our 2013 review of accident towing and storage fees

We completed a review of accident towing, storage and salvage services in February 2013 and made recommendations to the Minister for Roads on the matters outlined in section 212A of the Accident Towing Services Act. Our reviews are recommendatory only and it is at the minister's discretion whether accident towing and storage fees change or new fees are introduced. Currently regulated fees continue to be adjusted annually for inflation (minus a productivity adjustment factor) in accordance with section 212H of the Accident Towing Services Act.

We recommended no changes to accident towing and storage fees

We recommended that the current level of regulated accident towing and storage fees continue to apply.²⁸

We analysed various aspects of industry performance in our review, such as licence values and changes in industry productivity. We also conducted a benchmarking analysis to compare regulated accident towing fees against non-regulated towing fees in Victoria and against regulated accident towing fees in other Australian states. We concluded from our benchmarking analysis that the current regulated accident towing and storage fees were appropriate.

²⁸ Essential Services Commission 2013, *Periodic review of accident towing and storage fees: Final report*, July, p. 4

We recommended no changes to the productivity adjustment factor

We recommended that the productivity adjustment of 0.5 per cent continue to apply under the annual adjustment mechanism.²⁹

We engaged a consultant (NERA Economic Consulting) to provide advice on the productivity adjustment factor. NERA estimated the annual change in industry productivity by using the average change in revenue per truck.

NERA held accident towing fees constant when creating its estimates, in order to remove the effects of the CPI (Melbourne, transport) index and focus solely on the productivity changes in the accident towing industry over time.

NERA's analysis indicated that annual productivity changes in 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 how the number of licences per tow truck is estimated. We further refined this range to between -1.0 per cent and 1.8 per cent in our final report.³⁰ We concluded that the existing 0.5 per cent productivity adjustment remained reasonable because it was within the range of reasonable estimates of productivity growth in the accident towing industry.³¹

We recommended the regulation of basic salvage services

We recommended that basic salvage should be regulated and that a prescribed basic salvage fee of \$71 per hour (incl. GST) would be appropriate.³²

As tow truck operators have the exclusive right to attend an accident (through the allocation scheme), drivers of accident damaged vehicles have no negotiating power in relation to the salvage fee or whether a salvage fee is required. We were also concerned about the salvage fees being charged and the ability for consumers to determine the reasonableness of these charges from provided documentation. As such, we considered a form of protection, in the form of price control, was warranted.

In recommending a fee of \$71, we applied two methodologies to guide our considerations:

- rolling forward the basic salvage fee we recommended in our 2009 review
- benchmarking fees against total salvage charges in New South Wales (we also considered South Australian charges but found that these charges were not comparable).

²⁹ Ibid, p. 5

³⁰ Ibid, p. 53.

³¹ Ibid, p. 54.

³² Ibid, pp. 6-7

We recommended no changes to the treatment of non-commercial tows

We recommended the retention of the current practice of making an allowance for the costs of non-commercial tows in the regulated fee.³³

VicRoads requested that we consider options for the treatment of non-commercial tows in this review. Non-commercial (or unpaid) tows are accident towing jobs for which a tow truck operator is not paid. This may occur where the vehicle owner refuses or neglects to pay because, for example, their vehicle is uninsured or they abandon the vehicle at the operator's storage facility. The costs associated with non-commercial tows were included in the existing regulated fees.

We considered three alternatives to address non-commercial tows:³⁴

- direct compensation, where tow truck operators are fully compensated in cases where they are unable to recover the costs of non-commercial tows (could be financed through a levy on vehicle registration fees)
- processes for selling abandoned vehicles, where operators use the proceeds from the disposal of abandoned vehicles to compensate for the cost of non-commercial tows
- providing an allowance in the cost base underpinning the regulated fees, as currently occurred.

We decided to recommend the retention of the current practice due to the simplicity of making an allowance for the costs of non-commercial tows in the regulated fees.

Overview of our 2015 review of Victorian accident towing and storage economic regulation

In January 2014, the Minister for Finance issued terms of reference under section 41 of the Essential Services Commission Act 2001, requesting that we review the economic regulation of accident towing and storage services in Victoria. The review covered both regular and heavy vehicle accident towing in all of Victoria (not just the Melbourne controlled area). The terms of reference required us to consider three key matters:

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

³³ Ibid, p. 12

³⁴ Essential Services Commission 2013, *Periodic review of accident towing and storage fees: Draft report*, May, pp. 74-77

As this was a review of the broad economic regulation of accident towing and storage in Victoria, we did not review regulated fees and did not make a recommendation on the appropriateness of fees to the Minister for Roads.

Our final 19 recommendations from this review were aimed at three broad areas:³⁵

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

We provided our final report and recommendations to the Minister for Finance in January 2016. No legislative changes have been made in response to this review.

³⁵ Essential Services Commission 2015, *Accident towing regulation: Final report*, December, p. xvii

Appendix B: Legislative framework

The following sets out the relevant sections of the Accident Towing Services Act 2007.

Section number	Section detail
s. 4	<p>Objective</p> <p>The objective of this Act is to—</p> <ul style="list-style-type: none">(a) promote the safe, efficient and timely provision of accident towing services and other related services;(b) ensure that persons who are providing accident towing services—<ul style="list-style-type: none">(i) are of appropriate character; and(ii) are technically competent to provide the services; and(iii) when providing the services, act with integrity and in a manner that is safe, timely, efficient and law abiding, and in particular, that regard is had for vulnerable persons.
s. 211	<p>Minister to determine charges for accident towing services and other services</p> <p>The Minister may from time to time determine the amounts that may be charged by the providers of the following—</p> <ul style="list-style-type: none">(a) accident towing services;(b) the service of storing accident damaged motor vehicles;(c) basic salvage services— for the provision of those services.
s. 212 (1)	<p>Determinations of charges</p> <p>The Minister must not make a determination under section 211 unless he or she—</p> <ul style="list-style-type: none">(a) has received a recommendation from the Commission under Division 2 on the matter; and(b) has received a report from VicRoads.
s. 212 (2)	<p>A determination of the Minister under section 211—</p> <ul style="list-style-type: none">(a) may be of general or of specially limited application; and(b) may differ according to differences in time, place or circumstance.
s. 212 (3)	<p>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.</p>
s. 212 (4)	<p>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.</p>
s. 212A (1)	<p>Periodic review of charges</p>

Section number	Section detail
	<p>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—</p> <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (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) any other matter relating to accident towing services, the storage of accident damaged vehicles or salvage that the Minister specifies in writing.
s. 212A (2)	<p>The Minister must consult with the Minister administering the Essential Services Commission Act 2001 before specifying a matter for review under subsection (1)(d).</p>
s. 212A (3)	<p>The Commission must conduct and complete a review and make a recommendation to the Minister under this section—</p> <ul style="list-style-type: none"> (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.
s. 212B (1)	<p>Additional review at Minister’s direction</p> <p>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.</p>
s. 212B (2)	<p>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).</p>
s. 212B (3)	<p>A written direction under this section must specify terms of reference for the review.</p>
s. 212B (4)	<p>The Minister may—</p> <ul style="list-style-type: none"> (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

Section number	Section detail
	<p>review;</p> <p>(e) specify objectives that the Commission is to have in performing its functions and exercising its powers in relation to the review.</p>
s. 212B (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.
s. 212B (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.
s. 212C (1)	<p>Conduct of review</p> <p>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.</p>
s. 212C (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.
s. 212C (3)	The Commission may receive written submissions or statements.
s. 212C (4)	<p>If the Commission holds a public hearing—</p> <p>(a) the Commission has a discretion as to whether any person may appear before the Commission in person or be represented by another person;</p> <p>(b) the Commission may determine that the hearing, or part of the hearing, be held in private if it is satisfied that—</p> <p>(i) it would be in the public interest; or</p> <p>(ii) the evidence is of a confidential or commercially sensitive nature.</p>
s. 212C (5)	<p>In conducting a review, the Commission—</p> <p>(a) may consult with any person that it considers appropriate;</p> <p>(b) may hold public seminars and hold workshops;</p> <p>(c) may establish working groups and task forces.</p>
s. 212D	<p>Objectives not to apply</p> <p>Except to the extent (if any) that the Minister otherwise determines, the objectives of the Commission under the Essential Services Commission Act 2001 or any other Act do not apply to the functions and powers of the Commission under this Division.</p>
s. 212H (1)	<p>Charges to be adjusted for CPI</p> <p>Subject to subsection (2), an amount of a charge determined under section 211 must be varied, in respect of each financial year, in accordance with the formula—</p> $A \times \left(\frac{B}{C} - D \right)$

Section number	Section detail
	<p>where—</p> <p>“A” is the amount of the charge for the financial year immediately preceding the relevant year;</p> <p>“B” is the transport group consumer price index for Melbourne in original terms for the reference period in which falls the March quarter of the financial year immediately preceding the relevant year last published by the Australian Bureau of Statistics before the relevant year;</p> <p>“C” is the transport group consumer price index for the corresponding reference period one year earlier than the reference period referred to in B last published by the Australian Bureau of Statistics as at 15 June in the financial year immediately preceding the relevant year;</p> <p>“D” is the productivity adjustment figure specified in the recommendation under section 212A most recently made by the Commission or, if the Commission has not made a recommendation under section 212A that relates to the relevant year, “D” is 0.005.</p>
s. 212H (2)	If it is necessary for the purposes of this section to calculate an amount that consists of or includes a fraction of a whole dollar, the amount is taken to be calculated in accordance with this section if the calculation is made to the nearest whole 10 cents.
s. 212H (3)	If the variation under subsection (1) of the amount of a charge would reduce the amount of that charge, the amount of the charge must not be varied under subsection (1).
s. 212H (4)	If the amount of a charge is varied under subsection (1), VicRoads must publish a notice in the Government Gazette specifying— <ul style="list-style-type: none"> (a) the service to which the charge relates; and (b) the amount of the charge as varied; and (c) the data from which the charge as varied applies.
s. 212H (5)	In this section, relevant year means the financial year for which the adjusted amount is being varied.