Accident Towing Services

Regulations 2019

Regulatory Impact Statement

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Acronyms and Abbreviations

|  |  |
| --- | --- |
|  |  |
| The Act | Accident Towing Services Act 2007 |
| AAC | Accident Allocation Centre |
| CALC | Consumer Action Law Centre |
| ESC | Essential Services Commission |
| ICA | Insurance Council of Australia |
| NCC | National Competition Council |
| VACC | Victorian Automobile Chamber of Commerce |

# Executive Summary

## Overview

The Accident Towing Services Regulations 2008 came into effect on 1 January 2009 and were due to sunset on 31 December 2018. The regulations were extended on 30 October 2018 until 15 December 2019 under the Subordinate Legislation (Accident Towing Services Regulations 2008) Extension Regulations 2018.

The Accident Towing Services Act 2007 (the Act) provides for price regulation of accident towing and storage fees, accident tow truck licences and accreditation for accident operators, depot managers and tow truck drivers. In respect to tow truck licences, the issuing of new licences is subject to a public interest needs test and there have been no new licences issued since the 1980s (other than for CityLink and Peninsula Link) primarily due to the decline in the number of road accidents.

Trade towing and break-down towing were deregulated with the passage of the Act and are outside the scope of this regulatory impact statement.

In addition, Victoria is divided into three geographic areas: Melbourne Controlled Area, Geelong Self-Management area and an unregulated regional area. In the Melbourne Controlled Area, the Royal Automobile Club of Victoria (RACV) administers the accident allocation centre on behalf of VicRoads and allocates accident towing jobs to licensed accident tow truck operators with a depot within an allocation zone. The Geelong Self-Management area also has an accident allocation centre that allocates accident towing jobs to licensed tow truck operators with a depot in the area. The areas outside of the two aforementioned areas constitute the unregulated regional area. This area does not have a formal accident allocation centre although the Victoria Police sometimes allocate accident towing jobs to licensed accident tow truck operators closest to the road accident scene.

All of the aforementioned matters in the Act are outside the scope of this regulatory impact statement. The Act provides regulation-making powers for the matters listed below.

The proposed Regulations prescribe requirements for:

* Industry and Driver Accreditation Qualifications & Training
* Tow Truck Licence Certificates
* Record Keeping and Specified Depots
* Vehicle Specifications
* Road Accident Scene Rosters and Allocations in a Controlled Area
* Tow Truck Operations
* Accident Towing Demerit Points
* Infringements, and
* Fees.

## Objectives

The primary objective is to provide timely, safe, and efficient accident towing services in order to minimise traffic congestion and to provide consumer protection to prevent consumer detriment to drivers and owners of vehicles involved in road accidents.

The secondary objective is to fund the efficient and equitable regulation of accident towing services.

## Rationale for Government Intervention

The rationale for Government intervention into the accident towing services market is to provide safe and orderly accident towing services to motorists involved in a road accident and to address the information asymmetry that exists between tow truck operators and drivers/owners of accident damaged motor vehicles.

Prior to 1983, it was common for tow truck drivers to race to accident scenes (which endangered other road users), have violent confrontations with other tow truck drivers at the accident scene to obtain the towing job and display aggressive behaviour towards accident victims to get their signature on the authority to tow.

Motorists involved in an accident are normally traumatised, vulnerable, lack experience with accident towing services and face high and prohibitive transaction costs in understanding their consumer rights in a high-pressured situation where the aim is to ensure the restoration of normal traffic flow as quick as possible subject to the safe handling and transport of seriously injured persons and the containment of hazards at the road accident scene.

## Nature of the Problem

### Traffic Congestion

Based on the most recent data, traffic congestion in Melbourne has been estimated to cost $4.6 billion (2015). Traffic accidents have been estimated to account for about 25% of congestion on major traffic routes. Accordingly, about $1.150 billion of traffic congestion in Melbourne could be attributable to road accidents.

While the motor vehicles involved in a road accident create traffic congestion, the efficiency of emergency services (Victoria Police, Ambulance Victoria, Melbourne Fire Brigade, Country Fire Brigade and State Emergency Services) and accident tow truck drivers to respond quickly, and to clear the road accident scene, is paramount to restoring normal traffic conditions.

### Unsafe Management of Road Accident Scenes

The towing of a damaged motor vehicle from the road accident scene requires a competent tow truck driver who has the knowledge and skills, an appropriately designed tow truck and equipment to secure and load damaged vehicles to ensure safe, efficient and timely accident towing services.

Road accident scenes are hazardous sites and often involve oil and chemical spillages and other debris. Accident tow truck drivers need to make a hazard assessment before hooking up or loading the damaged motor vehicle to ensure public safety as well as their own personal safety is not compromised.

### Consumer Detriment

The infrequent nature of road accidents for most motorists and the associated trauma of a road accident puts driver/owners of accident damaged motor vehicles at a disadvantage in not knowing their consumer rights in relation to accident towing services.

With the clearance of a road accident scene a key priority, accident victims may feel pressured to sign agreements with tow truck drivers without knowing their consumer rights in respect to where their vehicle can be towed, the costs associated with towing and storage and payment methods.

## Extent of the Problem

Given that accident towing services have been regulated over the past fifty years it is difficult to know the extent of the problem if the industry were unregulated. The number of infringements issued under a regulated environment provides a proxy to measure what might happen in the absence of regulation. 302 infringements were issued from 2011 to 2018. Of the 302 infringements issued, 38 percent related to road safety, 20 percent for consumer detriment, 16 percent for unlawful attendance of a tow truck at a road accident scene and 26 percent for non-compliance with licence and accreditation conditions.

The 302 infringements represent about 0.007 percent of the estimated 400,000 accident tows that were conducted during this period.

The number of complaints made is another proxy to measure what might happen in the absence of regulation. Since 2011, VicRoads has received 80 to 110 complaints per annum. This represents about 0.16 percent of the 60,000 accident tows in 2011 and 0.13% for the 72,000 accident tows in 2018.

The low number of infringement notices and complaints relative to the number of accident tows demonstrates that, by and large, licensed accident towing operators and their tow truck drivers have been compliant. However, in the absence of regulation, it is reasonable to assume that the number of offences could rise and pose increased risks to road safety and consumer protection in view of the past violent practices that occurred prior to 1983.

## Review of the Current Regulations

Some of the regulations have limited the industry from using technologies such as GPS and electronic communication for the purposes of providing accident towing services. The use of these technologies can also change the roles of the accident allocation body and tow truck drivers that could provide significant reductions to the clearance of road accident scenes and the associated traffic congestion.

The Industry Commission, National Competition Council and the Essential Services Commission found the accident allocation scheme has been successful in addressing behavioural issues associated with multiple tow operators attending an accident tow. However, there may be scope for improving the efficiency of the scheme by addressing the prescribed response time, the restriction on double tows (tow truck drivers are not permitted to tow more than one accident damaged vehicle from the road accident scene) and the restriction on tow truck drivers to use electronic authorisation of accident towing. Double towing is safe and accident towing operators are allowed to double tow with their tow trucks for trade towing (non-accident towing).

### Response Time

The regulations require an accident tow truck driver who has accepted a job to arrive within 30 minutes at the road accident scene in the Melbourne controlled area and to notify the accident allocation centre upon arrival and departure from the road accident scene. The 30-minute response time is necessary to ensure timely, safe and efficient clearance of the road accident scene and the notification of arrival and departure times provides the necessary information to determine whether the 30-minute response time is being complied with, and also for the efficient administration of the accident allocation centre. The regulatory response time and notification requirements do not apply to accident towing jobs outside the Melbourne controlled area.

VicRoads does not require the accident allocation body to collect data on the location of the tow truck that accepts the allocation job, the time taken to respond to an accident scene, and the time taken to clear an accident scene. The absence of this data prevents VicRoads from making adjustments to the response time where appropriate and to benchmark the performance of individual tow truck operators and tow truck drivers. The Regulations do not require accident tow trucks to be fitted with GPS which would enable VicRoads to measure response and clearance times.

### Double Tow Restrictions

The Regulations prohibit an accident tow truck driver to tow more than one accident damaged motor vehicle in the Melbourne Controlled area even if the licence holder has received more than one accident allocation for the same road accident scene. An analysis of police crash data revealed that 28,080 of the 52,000 annual accident allocations in the Melbourne Controlled area could potentially be subject to double-tows, with 12,480 during business hours and 15,600 after-hours.

Analysis estimates the restriction imposes an average cost of $245.90 per accident tow and $1,534,416 for 6,240 accident tows during business hours. It also suggests the restriction results in an average cost of $321.50 per accident tow and $2,507,700 for 7,800 accident tows during after-hours. This equates to a potential total additional cost of $4,042,116 to the driver/owner of damaged motor vehicles or their insurers.

The restriction on double tows may result in greater capital expenditure and operating costs (more tow trucks than are actually required) for accident towing operators than is necessary, lower productivity per tow truck and higher than necessary accident towing fees.

In addition, the restriction on double tows results in additional greenhouse gas emissions of 228.58 CO2-e.

### Electronic Authorisation of Accident Towing

The adoption of GPS and electronic communication by non-regulated towing operators (trade and break-down towing) has enabled the role of the dispatchers at the depot and the tow truck driver to be reversed, and in doing so, enabled the tow truck driver to focus on hooking up a motor vehicle rather than collecting information from the driver of the vehicle before hooking-up the motor vehicle. This system provides significant efficiencies and reduces the time spent by the tow truck driver at the pick-up location. The dispatcher at the tow truck depot collects the personal and vehicle details from the driver and sends this information electronically to the tow truck driver.

However, for accident towing operators and drivers, the traditional method is used where the accident allocation body collects minimal information from the driver/owner of the accident damaged motor vehicle and the accident tow truck driver collects most of the information. This results in an estimated additional five minutes spent by the tow truck driver at the road accident scene and in a longer clearance time of the accident scene with delayed restoration of normal traffic flows.

The estimated avoidable traffic congestion costs associated with the tow truck driver providing the authority to tow is $63.96 million if the 5 minutes currently expended on these activities were not undertaken.

While the VicRoads Business Rules can be changed to expand the current informational requirements from motorists and the RACV Accident Allocation Centre’s software can be modified to incorporate this information for electronic transmission, sections 142(1)(b) and (2)(b) of the *Accident Towing Services Act 2007* require paper-based authority to tow forms to be used. Hence, the aforementioned sections and a number of other related provisions in the Act would need to be amended to enable authority to tow forms to be prepared electronically.

### Public Access to Accident Towing Services

The Essential Services Commission (ESC) recommended in its Final report, *“The requirement for VicRoads to approve depot relocations and movement of licences to different depots within the controlled, self-management and unregulated areas should be removed”. The requirement to link a licence to a specific depot should also be removed”* (Recommendation 3).

The approval of depot relocations and movement of licences to different depots within the controlled, self-management and unregulated areas is governed by regulation 13B and is designed to ensure the adequate coverage of accident towing services across Victoria in view of the fact that the Act effectively imposes a supply cap on the number of accident tow truck licences with a public interest needs test requirement for new licences. Under sections 14 & 15 of the Act, the Minister may authorise the issue of new regular and heavy tow truck licences respectively only if the Minister *“considers it to be in the public interest to do so having regard to any increase in the need for tow trucks operating under regular or heavy tow truck licences in the area.”* There have not been any accident tow truck licences issued since the early 1980s and VicRoads needs to take into account the impact on the public before granting the movement of licences and/or the relocation of a depot. Given the nature of the regulatory framework, VicRoads considers it is essential that it approves the movement of licences and the location of depots to ensure adequate servicing throughout Victoria otherwise some areas could be overserviced, and other areas, underserviced. If the public interest needs test for new licences did not exist in the Act, it would not be necessary for VicRoads to approve the movement of licences and the relocation of depots.

### Consumer Detriment

The ESC recommended in its Final Report, “*Authority to tow docket includes a (simple) page of important information that must be signed by the driver or vehicle owner before an accident tow is performed and that VicRoads should amend its ‘Towing from an accident scene: Your rights’ factsheet to better complement the important information page*”.

The VicRoads Factsheet is mostly related to the content of the authority to tow docket that needs to be signed by the tow truck driver and the driver/owner of the accident damaged vehicle. The VicRoads Factsheet has limited effectiveness particularly in regards to vulnerable consumers who speak another language other than English or have reading difficulties.

Another issue is that the is the tow truck driver is required to provide the VicRoads Factsheet with the authority to tow docket to the driver/owner of the accident damaged motor vehicle. In view of the traumatic circumstances of a road accident, the provision of the VicRoads Factsheet may not have the desired effect given the driver/owner’s ability to read and comprehend the consumer information before signing the authority to tow docket may be impaired.

The ESC analysed a new issue raised by insurers and consumer legal centres in respect to some tow truck operators misleading or pressuring not-at-fault drivers to have their damaged motor vehicles repaired by their smash repairer or an affiliated smash repairer. This is often referred to as ‘car-napping’.

The ESC found it difficult to measure the extent of the problem. WestJustice, a community legal centre that has been involved in a number of ‘car napping’ cases, was unable to provide VicRoads with a definitive number of cases but advised that it has had about 20 to 30 cases of car-napping related issues over the past several years. This represents a small percentage of third-party repairs undertaken. In many cases, WestJustice advised that their clients did not know where their vehicle had been taken and had not kept the authority to tow docket as recommended in the VicRoads Factsheet. Many of WestJustice’s clients speak and read little English and are unaware of their legal rights across a wide of range of matters; not just towing, smash repair and insurance.

In view of the limitations of the traditional methods of consumer dissemination at the road accident scene, technological solutions such as SMS text messages (including other languages) are considered as a means of delivering critical consumer rights information to driver/owners prior to the tow truck arriving at the road accident scene. These changes do not necessarily require regulatory change but can be added to complement the current provision of consumer information.

### Adequacy of Industry Training

The current regulations provide for qualifications, training and testing of licensee, depot managers and drivers. However, unlike most regulatory frameworks, the current regulations do not prescribe the qualifications, training and testing. Instead, the regulations provide a power to enable the determination and making of qualifications, training and testing. VicRoads has not exercised regulations 5, 6, 7, 9 and 10, and as a result, no qualifications are prescribed and no formal training or testing is undertaken of industry operators, depot managers and tow truck drivers by VicRoads.

This would suggest that qualifications, training and testing are not required given that VicRoads has not exercised regulations 5 to 10 over the past ten years of the current regulations. The infringement data also does not suggest a problem exists that would warrant government regulation in this area.

Notwithstanding that a problem does not appear to exist, the current regulations do not impose a regulatory burden on accident towing services as VicRoads has not exercised the provisions in the regulations.

## Assessment of the Options

The following criteria are used to measure the incremental costs and benefits of the options relative to the Base Case:

* road safety - to ensure that accident towing services are conducted in a manner that is safe for road users;
* operational efficiency - to ensure that accident towing services are conducted in a timely and efficient manner that minimises congestion and delays for all road users;
* consumer protection – to ensure motorists involved in an accident are provided with appropriate information to make informed decisions; and,
* cost to accident tow truck operators, driver/owners of damaged motor vehicles and Government.

### Alteration of Specified Depot

Without regulations accident towing operators would not be able to change their depot or to move a tow truck licence to another depot. This would prevent the reallocation of resources in response to changing population shifts that normally result in changes to the number of accidents.

In view of this, several options were assessed:

* Option 1: Current regulation
* Option 2: Removal of Red Tape in the current regulation

Option 1 provides a detailed application process for licence-holders seeking to change their depot or move tow truck licences to another depot. Option 2 is essentially the same as Option 1 but proposes the removal of red tape in the form of local council approvals that have been previously provided to an existing VicRoads and local council approved depot.

Option 1 has costs of $14,156.80 compared with Option 2 that has costs of $10,214.47. Both Options have identical benefits with Option 2 having $3,942.33 in cost savings. Accordingly, the Department is recommending Option 2. The Department seeks further feedback on the need for, and the content of, written guidance on the application process, methodology and approval criteria.

### Requirements relating to specified depots

In the absence of regulation accident towing operators could set their own opening hours which could deny drivers and owners of accident damaged motor vehicles access to their vehicles and personal belongings and prevent insurers from moving vehicles to smash repairers.

Given the nature of an accident towing business and the interaction of clients at tow truck depots, most towing operators would have staff, a telephone and a sign, and be open during business hours. the Department considers these as business-as-usual costs.

In addition to these requirements, the Department considered two alternatives to the base case which relate to a requirement to base tow trucks at the depot specified in the licence: (1) the current regulated depot operational and garaging requirements and (2) the current depot operational requirements but with varied operational requirements in relation to where accident tow trucks should be based.

In relation to the issue as to where the tow truck should be based, two options were assessed:

* Option 1: Current depot operational requirements
* Option 2: Tow trucks only required to be based at the depot during business hours

In effect, Option 1 requires that the tow truck is garaged at all hours of the day (when not undertaking accident or trade towing services) at the depot. Option 2 limits the required amount of time the tow truck must be garaged to within the existing operating hours of the depot (8.00 a.m. and 5.00 p.m. from Monday to Friday inclusive but excluding any public holidays).

The Department considers that Option 2 is the preferred option as this allows tow truck drivers to base the tow truck at their residence outside of the standard business hours and potentially lead to more timely clearance of accident towing scenes.

### Vehicle Specifications and Equipment

The tow truck specifications in the current regulations are the same as those specified in the Australian Design Rule (ADR 44/02). However, ADR 44/02 does not specify equipment such as a broom and shovel. Given this, the Department considered the option of incorporating by reference ADR44/02 in the regulations and prescribing the requirement for a broom and shovel as an additional provision in the regulations. This option would remove the current duplication of ADR 44/02 and the need for the Department to amend the regulations when ADR 44/02 is amended from time to time. This would make sense if ADR 44/02 was a long document and was regularly amended. However, it is only one page in length and has not been amended since 2006. It should be noted the current duplication does not involve two separate approval processes. Hence, the duplication does not have any impact on accident towing operators.

In addition, the Department may in the future prescribe technical specifications for other equipment such as for GPS, electronic equipment & software and double tow equipment. The Department considers the inclusion of tow truck specifications and all equipment in the regulations reduces the need for tow truck operators to obtain tow truck specifications and equipment requirements from two separate sources: the Accident Towing Services regulations and the Australian Design Rules. For these reasons, The Department believes the incorporation of ADR 44/02 by reference in the regulations is not a feasible option.

The prescribed vehicle specifications and equipment are almost identical to the Australian Design Rules. In view of this and the immaterial cost of the equipment for the removal of debris and glass, the Department considers there are no other feasible alternatives to Option 1.

The costs of Option 1 are relatively low given that the maintenance costs are primarily a business as usual cost. The benefits provide the Police and authorised officers with the capacity to enforce the clearing of debris and glass, thereby protecting other motorists after the road accident scene has been cleared.

### Allocation Response Time and Notification of Arrival and Departure

Under the base case, there would be no prescribed response time tow truck drivers would have to attend a road accident in the Melbourne Controlled area or any requirement to notify the Accident Allocation Centre upon arrival and departure.

In view of this, several options were assessed:

* Option 1: Telephone notification (current regulation)
* Option 2: GPS notification

The Department estimates that Option 1 costs $916,000 per annum to use the current telephone notification requirements. Under Option 2, the Department has estimated that it would cost from $35,360 to $565,760 per annum However, the Department has not been able to quantify the establishment costs of GPS at this point which could be substantial. Such costs include upgrades to the Accident Allocation Centre software (e.g. functional changes and greater levels of security due to privacy implications), as well as the purchase and installation of GPS units by tow truck operators.

In addition to the establishment costs, amendments to the contract with the Accident Allocation Centre to account for the change of duties and functions may impact future annual tow truck licence fees should these additional costs be recovered. These impacts, as well as ongoing maintenance and operational costs incurred by tow truck operators, may be passed onto consumers through the base towing fee.

Option 1 benefits are limited to ensuring the operational efficiency of the accident allocation centre. Option 2 provides this benefit as well but in addition up to $38 million in reduced traffic congestion costs. Other benefits include providing VicRoads with the capability to measure and benchmark tow truck driver performance in relation to response and clearance times that would enable VicRoads to make adjustments to allocation zone boundaries where an accident towing operator is having legitimate problems in complying with the 30-minute response due to persistent traffic congestion in the area. Similar to Ambulance Victoria and the Melbourne Fire Brigade, VicRoads would be able to publish the average response and clearance times for road accidents to demonstrate the level of compliance and reliability of the accident towing services in the Melbourne Controlled area.

Based on the estimated annual operating costs, Option 2 is superior to Option 1 and offers potentially substantial reduction in traffic congestion costs. However, as outlined above, the establishment and ongoing costs to the Accident Allocation Centre and tow truck operators are central to the feasibility of GPS notifications.

As the Accident Allocation contract is due to expire in 2020, the Department will seek to investigate software and operational costs as part of re-tendering process which is expected to occur early in 2020.

The introduction of GPS could have broad policy and operational implications for the accident towing scheme beyond notification of arrival and departure from an accident scene, particularly how accident towing jobs are allocated, response times and depot relocations. Therefore, the Department will undertake further investigation into the costs, privacy issues as well as any other practical issue that might arise before recommending the use of GPS in accident tow trucks. In view of this, the Department recommends Option 1.

### Double Tows

Under the base case, tow truck drivers in the Melbourne Controlled Area are permitted to tow more than one accident damaged motor vehicle from a road accident scene if they receive more than one accident allocation.

As the base case would permit double towing in the Melbourne Controlled Area, the Department considered there was only one feasible alternative to the base case, namely the prohibition of double tows and this is reflected in Option 1: Single Tows (Current regulation).

The Department’s assessment found the base case could have potential cost savings of up to $4 million per annum in accident towing operational costs. However, the Department would need to undertake further investigation into the establishment costs and practical issues that might arise to determine whether permitting double tows provides enough benefits to warrant the cost to establish and administer such a system. This will be included in the forward work program.

There are other transitional impacts that would need to be considered, particularly in relation to the potential negative impact on consumers due to delays and additional towing costs resulting from increased towing distances. In addition, the financial impact on accident towing operators who may need to dispose of redundant tow trucks (and are out-of-pocket where the sale of the tow truck did not cover all of the outstanding leasing costs) and the impact on employment for affected tow truck drivers also needs to be considered. Subject to a detailed business case that recommended the introduction of double tows in defined circumstances, this option may need to be phased-in subject to operational testing by the accident allocation centre.

### Authorities to Tow

As shown in the base case, most accident towing operators would require their tow truck drivers to collect the proposed prescribed information in an authority to tow form. The authority to tow form is effectively a contract between the driver/owner of the accident damaged motor vehicle and the accident towing operator and it provides protections for both parties if a disagreement occurs later.

Given this, the estimated costs of preparing the authority to tow form should be seen as a business as usual cost. The information prescribed in the authority to tow form has been effective in ensuring a low number of disputes between driver/owners and accident towing operators. On this basis, the Department considers the proposed remaking of the current regulation confers a net benefit on the community.

### Consumer Information

Under the base case there would be no consumer information provided at the road accident scene.

Several options were assessed:

* Option 1: VicRoads Information Pamphlet (Current regulation)
* Option 2: Additional Consumer Information
* Option3: SMS Text Message

Option 1 requires the tow truck driver to provide a hardcopy of VicRoads Factsheet before the driver or owner signs the authority to tow. Option 2 would incorporate and highlight important information in the Factsheet. VicRoads can implement Option 2 administratively at any time without the need for regulation as the Factsheet is incorporated by reference in the regulations. VicRoads can also implement Option 3 administratively without the need for regulation by changing the business rules governing the operation of the Accident Allocation Centre as well as compensating the RACV for the cost of executing Option 3.

Given that Option 2 is effectively a sub-set of Option 1, the choice is between the driver or owner of the accident damaged vehicle receiving a hardcopy (Option 1) or electronic copy (Option 3) of the consumer information.

The analysis suggested that the hardcopy is probably not read in most cases at the road accident scene but still provides the driver or owner relevant information later. An electronic solution was proposed as a means to provide the driver or owner the opportunity to read the consumer information prior to the arrival of the tow truck driver. However, given that not everyone owns a mobile phone or may have lost it during the collision, the electronic solution cannot be fully relied upon to provide consumer information in all circumstances.

In view of this, the Department still considers Option 1 is the superior option but will investigate implementing Options 2 & 3 administratively as these options complement and help to achieve the objective of providing critical consumer information to the driver and owner before signing the authority to tow.

### Record keeping

Under the base case there would be no retention period for records.

Several options were assessed:

* Option 1: Retain records for one year (Current regulation)
* Option 2: Retain records for two years

The costs of Options 1 and 2 are identical and both options have similar benefits. However, the Department considers the benefits of storing records beyond 12 months in Option 2 will provide little benefit as any complaint and/or investigation would have occurred and been completed within 12 months of the towing of an accident damaged motor vehicle. For these reasons, the Department considers Option 1 is the superior option.

### Electronic Records

Under the base case, Authorities to Tow must be in hard copy, however the Act is silent on how accident tow operators are permitted to keep records.

In view of this several options were assessed:

* Option 1: Electronic records other than Authority to Tow (Current Regulation)
* Option 2: Electronic Authority to Tow (Tow Truck Driver)
* Option 3: Electronic Authority to Tow (Accident Allocation Centre)

All options considered allow other records to be kept in electronic form, however Option 1 maintains the current requirement that an Authority to Tow must be in hard copy.

Option 1 provides minimal unquantified costs and benefits and would not permit the use of an electronic authority to tow. Preliminary estimates suggest that Option 2 would cost $750,560 with benefits of $12.792 million in reduced traffic congestion and costs savings of $275,040 to accident towing operators and $72,000 to drivers and owners of accident damaged motor vehicles. They also suggest that Option 3 would cost $882,960 with benefits of $63.960 million in reduced traffic congestion and cost savings of $406,640 to accident towing operators and $208,000 to drivers and owners of accident damaged motor vehicles. While Option 3 appears to be the superior option, the contract for the Accident Allocation Centre is due to expire in 2020. As a result, the Department is not recommending Option 3 until it can determine whether value could be provided operationally, including any impact on annual tow truck licences and the base towing fee. These costs can be better assessed as part of the contract re-tendering process, which is expected in early 2020. In view of this, Option 1 is recommended, and Option 3 will be subject to a detailed business case as part of the Department’s evaluation strategy.

### Fee Options

The level of cost recovery and fee options were assessed in respect of:

* Annual tow truck licences;
* Application to alter a depot; and,
* Replacement of a tow truck licence certificate

As can be seen in Table A below, VicRoads incurs estimated costs of $1,632,344 per annum to administer the relevant aspects of the regulations and under-recovers an estimated $1,109,943 per annum. This under-recovery is substantially due to the cost of administering the Accident Allocation Centre.

While there is under-cost recovery overall, the annual tow truck licence fees for outside the Melbourne Controlled Area and for heavy vehicles slightly over-recover the associated costs.

Table A: Summary of Cost Recovery Levels

|  |  |  |  |
| --- | --- | --- | --- |
|  | Cost | Revenue | Surplus/Deficit |
| Annual tow truck licences in Melbourne Controlled Area | $1,565,193.80 | $437,259.02 | ($1,127,934.78) |
| Annual tow truck licence fees for outside the Melbourne Controlled Area | $47,384.10 | $63,342.00 | $15,957.90 |
| Annual licences for Heavy tow trucks | $6,039.15 | $8,073.00 | $2,033.85 |
| Applications to alter a depot | $13,727 | $6,464 | ($7,263) |
| Replacement tow truck licence certificate | $0 | $0 | $0 |
| Total | $1,632,344.05 | $508,674.02 | ($1,109,943.03) |

The Department considered several options with regard to annual tow truck licence fees:

* Option 1: current fees that provide partial cost recovery.
* Option 2: full cost recovery through the annual tow truck licence.
* Option 3: full cost recovery using annual tow truck licence and accident allocation fees.
* Option 4 considers full cost recovery for licence holders outside the Melbourne Controlled Area while maintaining the current annual tow truck licence fee for licence holders in the Melbourne Controlled Area.

Two options were also considered in respect of fees for an application to alter a specified depot:

* Option 1: Current fee
* Option 2: Full cost recovery (Preferred Option)

In measuring the options against the base case, the following criteria are used:

* efficiency (the cost and effectiveness of the processes used);
* level of cost recovery (the amount of costs recovered relative to tax payer funding);
* simplicity – how easy the fee is to calculate; and
* cost to administer the system (the cost to regulate)

#### Proposed Fees

The Department is recommending no changes to annual licence fees by remaking the current regulations. As can be seen in Table B below, tow truck licences held in the Melbourne Controlled area, the annual fee would remain the same $1,038.62, and for all other tow truck licences, the annual fee would remain at $207 (subject to indexation).

In respect to the application fee for the alteration of a depot, the fee would remain at $207 and the application fee for a replacement tow truck licence certificate would be abolished.

When a licence holder applies for a replacement tow truck licence certificate, VicRoads emails the certificate to the licence holder. The cost involved is minimal and VicRoads receives applications on an infrequent basis. Accordingly, it is not proposed to charge an application fee for this service and Regulation 13 (2)(b) “*be accompanied by a fee of 1.8 units”* has been removed.

Table B: Current & Proposed Fees

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Type of Fee | Current Fees | | Proposed Fees | |
| $ | Fee Units | $ | Fee Units |
| Tow truck licences in Melbourne Controlled Area | $1,038.62 | 70.13 | $1,038.62 | 70.13 |
| Tow truck licences outside the Melbourne Controlled Area | $207.00 | 13.98 | $207.00 | 13.98 |
| Tow truck licences for heavy tow trucks | $207.00 | 13.98 | $207.00 | 13.98 |
| Applications to alter a depot | $207.00 | 13.98 | $207.00 | 13.98 |
| Replacement tow truck licence certificate | $26 | 1.8 | $0 | 0 |

Note: One fee unit is valued at $14.81 (2019/20)

### Other Proposed Amendments

The following provides an explanation of other proposed amendments to the current regulations, which were not subject to an options assessment in this RIS. Note the proposed regulations have been renumbered.

Current regulation 13B (Alteration of specified depot) enables the holder of a tow truck licence to apply to VicRoads to alter the depot specified in the tow truck licence by substituting another depot for the depot specified in the licence. Applicants are required to provide several types of evidence to support their application. It is proposed to remove from proposed regulation 18 (Alteration of specified depot) the requirement to provide a written statement from the municipal council supporting the applicant’s proposed depot in cases where there is currently a tow truck service at the address of the proposed depot and VicRoads has received from the municipal council the written statement of support no more than five years before the date of application. In all other cases, essentially where the proposed depot does not have an existing tow truck service, a written statement of support from the municipal council will still be required in proposed regulation 18.

Current regulation 19 (Information to be displayed on licensed tow truck) specifies that a licence holder must ensure the prescribed information is displayed on the licensed tow truck. Items 1 and 2 in the Table attached to the regulation provide the critical information to be displayed on a licensed tow truck and Item 3 (power for VicRoads to require further signs) has never been exercised by VicRoads. With the eventual adoption of GPS and other technologies, it is highly unlikely that VicRoads will require a licensed tow truck to include matters in item 3: other signs, symbols, notices or labels to be displayed on the tow truck. Accordingly, Item 3 has been removed from proposed regulation 25 (Information to be displayed on licensed tow truck).

Current regulation 28 (Removal or suspension from the roster) specifies that VicRoads must direct the chief allocation officer to remove or suspend an allocated place on the road accident scene roster for a range of conditions. A further condition is to be added to proposed regulation 33 (Removal or suspension from the roster) where the annual licence fee, or instalment of the annual licence fee, of the rostered tow truck is outstanding.

Current regulation 36 (Moving motor vehicle to reduce a hazard) specifies that the driver of a tow truck may complete the authority to tow form as far as practicable and move the incapacitated vehicle to the side of the highway to reduce the hazard when the driver or owner of the vehicle or a police officer is unable to complete the authorisation. However, under section 142(3) of the Act an authorisation may be given by a police officer or an authorised officer if the driver or owner is unavailable. Accordingly, it is appropriate to include a reference in proposed regulation 44 (Moving motor vehicle to reduce a hazard) to an authorised officer so that the provision will provide that the driver of a tow truck may complete the authorisation if the driver or owner, police officer or authorised officer, is unavailable to complete the authorisation.

Current regulation 39 (Refusal to salvage or tow from road accident scene) states that if the driver of a licensed tow truck attends a road accident scene, the driver must not refuse to salvage or tow an accident damaged motor vehicle to a particular place when asked by a police officer or authorised officer or the owner or driver of the accident damaged motor vehicle. Current regulation 39 provides particular circumstances in which a tow truck driver can refuse to salvage or tow the accident damaged motor vehicle. It is proposed to amend current regulation 39(3)(b). This regulation allows a tow truck driver to refuse to tow a vehicle to a particular place if:

* the driver or owner indicates an inability or unwillingness to pay immediately upon completion of the tow by way of cash payment (regulation 39(3)(b)(i)) and
* the tow truck driver offers the driver or owner the opportunity to may a payment via a mobile payment facility and the driver or owner is unwilling or unable to make use of that facility (regulation 39(3)(b)(ii)). (A mobile payment facility is one that is approved by VicRoads for the processing of payments by credit and debit card.)

As VicRoads has never approved such a facility, proposed regulation 47(4)(b)(ii) will allow the tow truck driver to offer the driver or owner the opportunity to make payment by cheque, electronic funds transfer, credit or debit card. If the driver or owner does not make payment by one of these methods and has already indicated that payment will not be made by cash, the tow truck driver may refuse to tow the vehicle. VicRoads’ power to approve a mobile payment facility will not be included in the proposed regulations.

Current regulation 40 (Method of receiving payment for outstanding charges) requires an accredited person who is owed money for vehicle repair and accident towing services to provide the vehicle owner with the opportunity to make payment by way of an approved payment system. (An approved payment system is one approved by VicRoads for the processing of payments by credit and debit card.) As VicRoads has not approved such a system, proposed regulation 48 (Method of receiving payment for outstanding charges) will require the accredited person to provide the owner with the opportunity to make payment by way of cash, cheque, electronic funds transfer, credit or debit card.

Regulation 41 is a new regulation and clarifies that an owner includes the agent (eg. insurer) of an owner in respect to the regulations contained in Part 7. Part 7 deals with authorities to tow, the conduct of drivers at accident scenes and outstanding charges.

It is proposed to amend item 6 in current Schedule 1 Tow Truck Specifications and Equipment by removing the requirement that a warning light have a combined power output of at least 55 watts with a requirement that requires a warning light to show a light that is visible in normal daylight from any direction at a distance of not less than 200 metres. The Schedule 1 Tow Truck Specifications and Equipment have been included in proposed regulation 23 (Specifications and Equipment).

## Implementation & Enforcement

Prior to the commencement of the regulations, the Department will advise the VACC, ICA, insurers and licence holders of accident tow trucks of the key amendments.

The Victoria Police undertake enforcement action at the road accident scene for serious accidents such as ensuring that the rostered tow truck driver arrives within 30 minutes after the Accident Allocation Centre has provided authorisation, the tow truck driver has cleared the debris from the road accident scene and that the tow truck has connected a lighting board (if required) as well as ensuring the authority to tow form is correctly filled out.

VicRoads authorised officers respond to complaints and also plan to undertake random inspections of depots to ensure tow trucks and the prescribed records are compliant with the requirements under the Act and Regulations.

## Evaluation Strategy

### Evaluation of Preferred Options

In terms of undertaking an evaluation of the preferred options, the Department will be able to assess the alteration of specified depots. The approval rate for applications to alter a depot provides an indication to some extent as to how effective VicRoads has provided guidance on the assessment methodology and approval criteria. VicRoads does not collect specific data on the other preferred options. However, there are infringements/demerit points attached to each of the preferred options. As a result, the number and type of offences committed provides an indicator of the effectiveness of the preferred options to provide consumer protection to drivers/owners of a vehicle involved in a road accident. VicRoads has the appropriate databases to monitor the level of offences as well as any trends in respect to specific types of offences. In addition, the number and type of complaints will also provide useful information for the Department to evaluate the effectiveness of the preferred options.

### Forward Work Program

The nature and extent of the problem section and the assessment of the options revealed considerable potential scope for improvement to the current regulatory arrangements.

GPS notification, electronic authority to tows and double tows in section 6 appear prima facie to provide an opportunity to significantly improve the efficient operation of the accident allocation system, to reduce traffic congestion attributable to the road accident and to reduce accident towing fees. These options would have more than likely been the preferred options if not for the absence of additional cost and operational information; given that the quantified benefits significantly outweighed the known costs at this point.

These options (if implemented) would generate significant productivity benefits, lower towing fees and reduced traffic congestion.

In view of this, the Department is committed to undertake a detailed business case to identify not only the costs associated with software modifications to the accident allocation centre but also any limitations such as the inability to conduct double tows (four wheel drive vehicles typically need to be winched onto the back of a tow truck and cannot be towed from behind the tow truck), privacy issues in the use of GPS and other practical matters that are likely to be uncovered during the business case phase.

The Department would undertake a detailed cost and benefits business case for the use of GPS, electronic authority to tows and double tows to show whether the introduction of these measures are superior to the current regulations and make recommendations to the responsible Minister.

In particular, the Department will assess the following matters:

* the need for a GPS systems introduction and the type of GPS system required for effective communication between the RACV Accident Allocation Centre and accident tow trucks and the associated cost, the legislative limitations of using GPS and any privacy issues;
* the software modifications that need to be undertaken and the associated costs to enable the RACV Accident Allocation Centre to collect the information in the authority to tow from the driver/owner, insurer or Police at the time a request is made for an accident tow truck;
* the communication equipment required in the tow truck, the associated costs and the communication protocols between the RACV Accident Allocation Centre, rostered tow truck drivers, Police, insurers and the driver/owner of the accident damaged motor vehicle;
* the practicality of permitting double tows during peak-hour, off-peak periods and Police requested accident tows and the business rules that would need to be developed;
* the authorisation procedures to be used by the RACV Accident Allocation Centre to allow a double tow including software modifications and the associated costs;
* the possibility of SMS text message (consumer rights) to be sent to the driver/owner of the accident damaged motor vehicle, who should be messaging the accident victim (privacy concerns), the type of languages that should be provided and whether visual presentation of the key messages can be developed;
* the annual tow truck licence fee; and,
* investigation into website that allows interested parties to know an accident has occurred and potentially lists the accident towing operator to registration plate

In addition, The Department will seek further feedback on the need for, and the content of, written guidance on the process, methodology and approval criteria for applications to alter a depot.

# Introduction

## Overview

The Accident Towing Services Regulations 2008 came into effect on 1 January 2009 and were due to sunset on 31 December 2018. The regulations were extended on 30 October 2018 until the 15 December 2019 under the Subordinate Legislation (Accident Towing Services Regulations 2008) Extension Regulations 2018.

The proposed Accident Towing Services Regulations 2019 prescribe requirements for:

* Industry and Driver Accreditation Qualifications & Training;
* Tow Truck Licence Certificates;
* Record Keeping and Specified Depots;
* Vehicle Specifications;
* Road Accident Scene Rosters and Allocations in a Controlled Area;
* Tow Truck Operations;
* Accident Towing Demerit Points;
* Infringements; and,
* Fees

The *Subordinate Legislation Act* *1994* requires that a Regulatory Impact Statement (RIS) be prepared for the remaking of statutory rules (regulations) that impose a significant economic or social burden on a sector of the public.

This section provides the scope of the regulatory impact statement, a summary of the Accident Towing Services Act 2007, and the Essential Services Commission’s (ESC) Inquiry into Accident Towing 2015.

## Scope of the Regulatory Impact Statement

The RIS is confined to the matters within the Accident Towing Services Regulations 2008 and where the Act provides appropriate enabling powers to make regulations in respect to specific matters. Any provision in the Act is outside the scope of the RIS.

By definition under section 3(1) of the Act, accident towing services*, “means 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; and,*

*(b) the purpose of clearing road accident”.*

Non-accident towing services such as trade and break-down towing were deregulated in 2008 and are not covered in the Accident Towing Services Act 2007 and Regulations 2008.

The RIS addresses the ESC recommendations where appropriately related to the Accident Towing Services Regulations 2008. The RIS does not deal with any of the ESC recommendations that specifically relate solely to the Accident Towing Services Act 2007 as discussed in section 2.5 below.

Key stakeholders raised a number of issues in their written submissions that can be only addressed by an amendment to the Accident Towing Services Act 2007, specifically price regulation. The insurance industry recommended price regulation of the Geelong Self Management area and the unregulated area. The VACC is opposed to price regulation in these areas other than the current legislative arrangements that require towing and storage charges to be reasonable. The VACC also requested a review of the regulated fees in the Melbourne Controlled area.

Pricing regulation is governed solely by the Act. The Act establishes the framework for the ESC to undertake periodic pricing reviews and to recommend to the Minister for Roads, inter alia, the appropriateness of accident towing and storage fees. The ESC recently completed its pricing review in December 2018 and considered the aforementioned issues raised by stakeholders.

Under section 211 of the Act, the Minister for Roads has the power to determine amounts that may be charged for accident towing services, storage and salvage services. The amounts that may be charged are published in the Government Gazette. Accordingly, towing and storage charges are not prescribed in the regulations and are therefore outside the scope of the regulations.

There are a number of other fees that are currently made under the Act and published in the Government Gazette. These fees include:

* application for a whole or partial exemption from complying with regulation 19(1)(specified depot requirements);
* application to substitute the tow truck specified in the licence with another tow truck;
* application to transfer a tow truck licence to another person; application for a temporary permit authorising the tow truck specified in the licence to be operated in a manner not authorised by the licence or that is contrary to the manner authorised by the licence;
* application for the grant or renewal of a towing operator, towing depot manager and tow truck driver accreditation;
* application for a replacement of a certificate of accreditation; and, application for a tow truck trainee permit.

These fees are also outside the scope of the regulations. However, consideration is being given to prescribing these fees in the regulations. In the event, that the Government accepts this proposal, the Act will need to be amended to enable these fees to be prescribed in the regulations.

## Accident Towing Services Act 2007

The primary objective of the Accident Towing Services Act 2007 as stated in section 4 is to:

1. *promote the safe, efficient and timely provision of accident towing services and other related services;*
2. *ensure that persons who are providing accident towing services –*
3. *are of appropriate character; and*
4. *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.*

The objective to promote safe, efficient and timely provision of accident towing services and other related services are achieved in the Act by -

* Licensing the operation of tow trucks that provide accident towing services;
* Accrediting operators of accident towing service businesses and manager of depots from which accident towing services are provided;
* Accrediting tow truck drivers when driving licensed tow trucks or providing accident towing services;
* Providing for other matters related to the provision of accident towing services;
* Providing for matters related to the storage and repair of motor vehicles;
* Providing for matters relating to the salvage of accident damaged motor vehicles

Several sections of the Act are relevant to the Accident Towing Services Regulations 2008. Sections 46 and 47 empower VicRoads to declare an area to be a controlled area and to appoint a person or body to be the allocation body for a controlled area respectively. Section 48 enables the holder of a regular tow truck licence issued within the controlled area, subject to the regulations, to one entitlement to a place on the road accident scene roster provided the regular tow truck licence has a specified depot within the controlled area.

Parts 3 and 4 of the Act require tow truck operators, depot managers and tow truck drivers to obtain accreditation.

Section 142 of the Act requires a tow truck driver to obtain written authorisation from the owner/driver of the accident damaged motor vehicle or a police officer/authorised officer in the prescribed form.

Part 6, Division 1 of the Act requires VicRoads to keep an Accident Towing Demerits Register.

## Related Subordinate Legislation

The Act makes provision for service standards and codes of practice. Section 75 of the Act enables the Minister to determine minimum service standards to be met by all holders of accreditation. Section 205 of the Act enables the Minister to approve codes of practice to provide guidance to holders of accreditation.

The service standards and a code of practice would likely to have an impact on the regulations. However, the Minister responsible for the Act has not exercised these provisions since the introduction of the Act and accordingly these legal instruments do not have any relevance to the re-making of the regulations.

## Essential Services Commission Inquiry

In January 2014, the Minister for Finance commissioned the ESC to review accident towing and storage economic regulation with the following terms of reference:

* The accident towing industry in Victoria, including an analysis of the role of Government and an analysis of the industry’s competitiveness;
* Regulation of the accident towing and storage industry, including an identification and assessment of the benefits and costs;
* Possible alternative arrangements for accident towing services that the Commission considers may be appropriate, including an identification and assessment of the benefits and costs;
* The appropriateness of the existing boundary and zones in the Melbourne controlled area;
* The basis on which accident towing jobs are allocated in the Melbourne controlled area having regard to the safe and efficient service without impacting quality and timeliness of the service to customers;
* The appropriateness of the existing boundaries and the current form of economic regulation in the self-management area of Geelong;
* The current form of regulation applying to heavy vehicle accident towing services

The ESC completed its inquiry with its Final Report on December 2015. The ESC’s recommendations were directed at three areas:

* Improving the processes for the allocation of accident tows;
* Ensuring that fees for accident towing are fair and reasonable for consumers; and,
* Ensuring that consumers are appropriately informed of their rights and responsibilities once in an accident.

Some of the ESC recommendations in the report would require amendments to the Accident Towing Services Act 2007 and/or the implementation of administrative changes within VicRoads. These recommendations are therefore outside the scope of this regulatory impact statement.

The following ESC recommendations that are directly related to the Accident Towing Services Regulations 2008 are outlined in Table 1 below.

Table 1: ESC Recommendations Relevant to the Current Regulations

|  |  |  |
| --- | --- | --- |
| Recommendation No. | Recommendation | Regulation Number |
| 2b | VicRoads investigate options or rules to facilitate double or multiple tows where it can produce more efficient outcomes for accident drivers and road clearance. | 32(8) |
| 2c | VicRoads should review regulation 16 (a) & (b) relating to where a tow truck is garaged to ascertain whether this regulation is still needed. | 16(a) & (b) |
| 3 | The requirement for VicRoads to approve depot relocations and movement of licences to different depots within the controlled, self-management and unregulated areas should be removed. | 13B |
| 5 | Authority to tow docket to include a (simple) page of important information that must be signed by the driver or vehicle owner before an accident tow is performed and that VicRoads should amend its ‘Towing from an accident scene: Your rights’ factsheet to better complement the important information page. | 35 & 38(1)(b) |

Source: Essential Services Commission, “Accident Towing Regulation” Final Report, December 2015.

These ESC recommendations are discussed in Section 4.5 Review of the Current Regulations and Section 6 Assessment of the Options.

# Profile of the Industry

Accident towing services are on call 24 hours 7 days a week to attend road accident scenes and tow an estimated 72,000 damaged motor vehicles valued at $2.9 billion per annum.[[1]](#footnote-1)

Accident towing services play an integral role with police, ambulance, fire brigade, state emergency services at road accident scenes that resulted in 214 fatalities in 2018 and 7,700 claims involving hospitalisation in 2017[[2]](#footnote-2) Tow truck drivers from time to time provide assistance to Police in dealing with hazardous traffic situations at a road accident scene and clear glass and debris associated with the road accident from the road to prevent further hazards to other motorists.

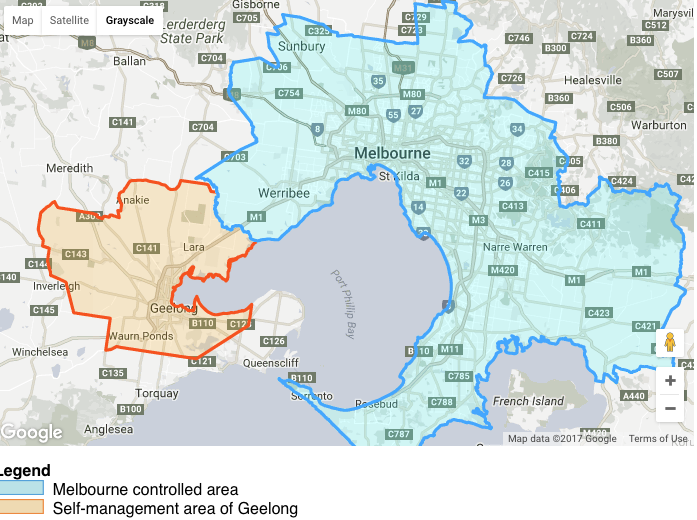
Tow truck drivers tow accident damaged vehicles from a road accident scene to the driver/owner’s home, insurer nominated or independent smash repairer, or to the tow truck depot. Tow operators are required to provide secure and safe storage facilities to protect damaged motor vehicles prior to being sent to smash repairers.

Accident towing services are heavily regulated with price regulation, tow truck licences, accreditation for owners/operators, depot managers and tow truck drivers, tow truck technical specifications and paperwork regulation. In addition, Victoria is divided into three geographic areas: Melbourne Controlled Area, Geelong Self-Management area and an unregulated regional area.

Accident tow operators tend to operate their own smash repair business or are affiliated with other smash repair businesses. These services are outside of the scope of the Accident Towing Services Regulations.

Figure 1 shows the boundaries of the Melbourne Controlled area and the Geelong Self-Management area. The Royal Automobile Club of Victoria (RACV) administers the Accident Allocation Centre on behalf of VicRoads and allocates accident towing jobs to licensed accident tow truck operators with a depot within the area. The Geelong Self-Management area also has an accident allocation centre that allocates

Figure 1: Allocation Maps



accident towing jobs to licensed tow truck operators with a depot in the area. The areas outside of the two aforementioned areas constitute the unregulated regional area. This area does not have a formal accident allocation centre although the Victoria Police allocate accident towing jobs to licensed accident tow truck operators closest to the road accident scene where they are in attendance or requested to do so. In other cases, tow trucks are organised by operator/owner of the vehicle or by insurers.

Table 2 below provides a profile of the accident towing industry in terms of the number of operators, depot managers, tow truck drivers and tow truck licences across the three areas. There are two types of tow truck licences; regular tow truck licences for towing light vehicles (<4 tonnes) and heavy tow truck licences for towing trucks, buses etc (>4 tonnes).

Table 2 Accident Towing Industry Profile (January 2019)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Melbourne Controlled Area | Geelong Self-Management Area | Regional Area | Victoria |
| **Regular** |  |  |  |  |
| Operators | 93 | 3 | 121 | 217 |
| Depot Managers | 13 | 0 | 4 | 17 |
| Drivers | n/a | n/a | n/a | 1,430 |
| Tow Truck Licences | 421 | 25 | 281 | 727 |
| Depots | 45 | 4 | 141 | 195 |
| **Heavy** |  |  |  |  |
| Operators | 4 | 0 | 11 | 15 |
| Depot Managers | 1 | 0 | 0 | 1 |
| Drivers | n/a | n/a | n/a | - |
| Tow Truck Licences | 14 | 0 | 25 | 39 |
| Depots | 7 | 0 | 0 | 7 |

Table 3 shows the number of accident tow trucks. The number of tow trucks is less than the number of licences issued. In the Melbourne Controlled area, there are 421 licences for 212 tow trucks (209 licences have been shelved and without a tow truck). This enables accident tow truck operators to obtain higher allocation entitlements for each tow truck. Similarly, the Geelong Self-Management area has shelved 16 licences and the unregulated regional area has shelved 46 licences.

Table 3: Number of Accident Tow Trucks (Feb 2019)

|  |  |  |  |
| --- | --- | --- | --- |
| Melbourne Controlled Area | Geelong Self Management Area | Unregulated Regional Area | Total |
| 212 | 9 | 235 | 456 |

Source: VicRoads

There are 34 registered heavy licensed tow trucks (5 licences have been shelved and without a tow truck)

## Size of the Market

Table 4 shows the number of accident tows across the three areas with the Melbourne Controlled area representing about 72 per cent of accident tows in Victoria.

Table 4: Number of Accident Tows 2018

|  |  |  |  |
| --- | --- | --- | --- |
| Melbourne Controlled Area | Geelong Self-Management Area | Unregulated Regional Area | Victoria |
| 52,000 | 2,000 | 18,000 | 72,000 |

Source: VicRoads 2018

## Price Regulation

As mentioned previously, price regulation is governed by the Act rather than the regulations. The following information is provided as it is used for various calculations in section 6 Assessment of the Options. Table 5 below shows the current price regulation for accident towing and storage of damaged motor vehicles at accident tow truck depots within the Melbourne Controlled area. Salvage charges, if applicable, must be reasonable in accordance with section 212I of the Act.

Table 5: Melbourne Controlled Area Accident Towing and Storage Charges 2018/19

|  |  |
| --- | --- |
| Towing Charges | Charge |
| **Base Fee**  The first 8 kilometres travel by tow truck. This is based on the distance from the authorised depot to the accident scene, and then from the accident scene to the address on the Authority to Tow. | $221.40 |
| **Additional fee per kilometre**  Travel beyond the first 8 kilometres | $3.50 |
| **After-hours surcharge**  5 pm to 8 am Monday to Friday  5pm Friday to 8.00 am Monday  Public Holidays (midnight to midnight) | $75.60 |
| **Daily Storage Charges** |  |
| Car under cover | $25.00 |
| Car – in locked yard | $16.90 |
| Motorcycle – under cover | $8.25 |
| Motorcycle – in locked yard | $5.30 |

Charges for accident towing services in the Geelong self management area, regional Victoria and for accident damaged heavy vehicles (four tonnes or more) are not specifically regulated. However, the fees charged for these services must be reasonable in accordance with section 212I of the Act. Some of the factors that may be taken into account to determine whether the fee charged is reasonable include:

* the nature of the service provided;
* the day and time that the service is provided;
* the administrative costs incurred;
* the amount charged for a similar towing service, such as a car breakdown; and
* the amount charged for the same or similar service by another accident towing operator in the same or similar area.

# Nature and Extent of the Problem

## Overview

This section is divided into several parts. The first part identifies the rationale for government intervention into accident towing services (section 4.2). The second part analyses the nature and extent of the problem (sections 4.3 and 4.4). The third part (section 4.5) evaluates the current regulations, specifically the impediments to orderly and timely clearance of road accidents and efficient authorisation of accident tows, public access to accident towing services, adequacy of industry training and vehicle safety and consumer detriment.

A key consideration in this section is to assess whether the extent of the problem has changed over the past ten years since the introduction of the *Accident Towing Services Regulations 2008* and whether the regulations are still as effective in delivering safe, efficient and timely accident towing services given the changes in the wider towing market with the adoption of innovative practices and the use of technology such as global position satellite (GPS), electronic messaging and electronic payment.

## Rationale for Government intervention

The rationale for Government intervention into the accident towing services market is to provide safe and orderly accident towing services to motorists involved in a road accident and to address the information asymmetry that exists between tow truck operators and drivers/owners of accident damaged motor vehicles.

Motorists involved in an accident are normally traumatised, vulnerable, lack experience with accident towing services and face high and prohibitive transaction costs in understanding their consumer rights in a high pressured situation where the aim is to ensure the restoration of normal traffic flow as quick as possible subject to the safe handling and transport of seriously injured persons and the containment of hazards at the road accident scene.

The Industry Commission (1995) observed, *“in the accident towing market, consumers are usually in a poor position to negotiate. They are frequently in trauma, often under pressure to have their vehicle removed from the accident scene and/or inexperienced about the towing market. Few consumers have a ‘preferred’ tower and, even if they did, that tower might not be available in the area where the accident has occurred. Moreover, with insurance covering towing fees, insured drivers have little or no incentive to negotiate at the scene of the accident”.[[3]](#footnote-3)*

## Nature of the Problem

### Historical Context

By way of background, in 1983 the Government introduced regulation of accident allocations in the Melbourne Controlled area to establish orderly and timely clearance of road accidents and to protect the driver/owner of the accident damaged motor vehicle from unscrupulous tow truck drivers taking advantage of traumatised drivers involved in a road accident.

*“Prior to the introduction of an accident allocation scheme, it was typical for multiple tow trucks to arrive at an accident scene and compete for a towing job. This placed unnecessary stress on the accident victim and increased traffic congestion as it delayed clearing of the accident-damaged vehicle from the accident scene”.[[4]](#footnote-4)*

Prior to 1983, it was common for tow truck drivers to race to accident scenes (which endangered other road users), have violent confrontations with other tow truck drivers at the accident scene to obtain the towing job and display aggressive behaviour towards accident victims to get their signature on the authority to tow.

As will be seen later, the introduction of the allocation scheme has been successful in eradicating the aforementioned undesirable behaviours.

The Government also introduced regulation of accident towing and storage fees in 1983 to prevent tow truck drivers from charging excessive fees to driver/owners of accident damaged motor vehicles.

These reforms together with the *Accident Towing Services Act 2007* that introduced an accreditation scheme for accident towing operators, depot managers and accident tow truck drivers has ensured that the past intrusion of criminal elements into some parts of the industry has been eliminated.

The proposed regulations address the following problems in the accident towing services market:

* Traffic congestion caused by delays in tow truck attendance at the road accident scene;
* Unsafe management of road accident scenes; and,
* Consumer detriment

### Traffic Congestion

Traffic congestion in Melbourne has been estimated to cost $4.6 billion in 2015.[[5]](#footnote-5) Traffic accidents have been estimated to account for about 25% of congestion on major traffic routes.[[6]](#footnote-6) Accordingly, about $1.150 billion of traffic congestion in Melbourne could be attributable to road accidents.

About seventy percent of accidents occur on freeways and arterial roads in the Melbourne Controlled area and are likely to cause traffic congestion.[[7]](#footnote-7) Other accidents occur on local or municipal roads and sometimes cause traffic congestion depending on the volume of traffic, the severity of the crash and where the damaged vehicles are positioned on the road. Minor crashes that allow the drivers to move and park their vehicles parallel to the road after the accident are unlikely to cause traffic congestion.

The extent of traffic congestion caused by the motor vehicle accident is dependent on the capacity of our emergency services (Victoria Police, Ambulance, Fire Brigade) and accident towing operators to safely and efficiently attend and service the accident scene so that traffic conditions are restored to normal.

Accident towing services are always required to attend a road accident scene whereas the emergency services attend if required to deal with fatalities, serious injuries, fire and serious traffic disruption on major arterial roads.

Emergency services and accident towing operators work as a team to safely and efficiently provide assistance to persons involved in a road accident. Accident towing services are invariably the last to leave a road accident scene with the damaged motor vehicle.

Serious accidents require paramedics to be given first access to deal with injured drivers and passengers and the fire brigade may also need prime access if the vehicle is on fire or a driver/passenger is trapped within the vehicle. These emergency services need to have primary access, first and foremost, to save lives and to prevent hazardous situations escalating and putting other motorists at risk.

The Victoria Police has a key role in controlling and co-ordinating serious road accident scenes. Only when victims are safely removed from a vehicle and any other matter that needs to be dealt with at the scene by the Victoria Police, will the tow truck driver gain access to the vehicle. As the circumstances will vary at each serious road accident scene, the tow truck driver will need to wait, and in extreme cases, this could involve waiting for an hour or more.

In view of the likely order of access to a serious road accident scene, the impact of the tow truck driver on traffic congestion should be measured from the time that the Victoria Police gives a directive that the tow truck driver can gain access to the damaged motor vehicle.

In less serious accidents where only the tow truck driver attends, it is appropriate to measure the time it takes the tow truck driver to arrive at and depart from the road accident scene.

In the absence of regulation (base case), accident tow truck drivers could set their own schedule to arrive at, and clear a road accident scene. This could lead to considerable delays to the clearance of a road accident scene and lead to further traffic congestion.

There are several measures in the Act to address the arrival and clearance of road accidents in the Melbourne Controlled area. Section 47 of the Act empowers VicRoads to appoint a person or body to be the allocation body for a controlled area and section 48 creates allocation roster entitlements for the holder of a regular tow truck licence with a specified depot in the area.

However, these measures do not deal with the expected response time for an accident tow truck driver to attend and clear the road accident scene.

### Unsafe management of road accident scenes

The towing of a damaged motor vehicle from the road accident scene requires a competent tow truck driver who has the knowledge and skills, an appropriately designed tow truck and equipment to secure and load damaged vehicles to ensure safe, efficient and timely accident towing services.

Road accident scenes are hazardous sites and often involve oil and chemical spillages and other debris. Accident tow truck drivers need to make a hazard assessment before hooking up or loading the damaged motor vehicle to ensure public safety as well as their own personal safety is not compromised.

Most accident tow truck operators will undertake salvage operations with the tow truck that is allocated to the accident, with the exception being heavy vehicle salvage. Salvage involves the retrieval of a damaged motor vehicle that has departed the roadway. These include motor vehicles that have crashed into houses, shops and other buildings to roll-overs and extreme cases such as rolling down the embankment of a steep hillside. Salvage can involve different techniques depending on the nature of the salvage, and for extreme cases, may require assistance of another regular tow truck or a heavy tow truck.

Salvage needs to be treated as a hazard scene. The tow truck driver together with other emergency personnel will make an initial hazard assessment of the damaged motor vehicle before commencing retrieval. The hazard assessment includes taking into account public infrastructure such as electricity, gas and water lines, road environment, traffic management and public safety, condition of the damaged motor vehicle (leaking fuels etc) and the location of the damaged motor vehicle vis a vis public infrastructure, residential homes and the road way. The tow truck driver and emergency personnel will decide the safest strategy to retrieve the damaged motor vehicle taking into account environmental and public safety factors.

In the absence of regulation, accident towing operators could employ tow truck drivers without the necessary knowledge and skills. This would pose a risk to public safety as well as lead to the delayed clearance of the road accident scene.

The Act provides for the accreditation of accident tow truck drivers. Section 97 of the Act states the objective of the driver accreditation;’

*(a) provide safe and convenient services to persons using the tow trucks and other persons, particularly persons involved in road accidents; and*

*(b) are technically competent to drive the relevant tow truck and provide the relevant services; and*

*(c) are of appropriate character; and*

*(d) when providing the services, act with integrity and in a manner that is safe, timely,*

*efficient, responsible and law abiding.*

Section 106 of the Act further provides that VicRoads may approve an application for driver accreditation if it is satisfied, amongst other things, *“the applicant is technically competent and sufficiently fit and healthy to be able to provide the service to which the accreditation relates”.*

The Act, however, is silent on what constitutes “technically competent”. The Act does not specify qualifications or testing requirements to demonstrate technical competence. The low number of infringement notices and complaints relative to the number of accident tows would also strongly suggest that tow truck drivers are technically competent (refer to section 4.4).

### Consumer Detriment

The infrequent nature of road accidents for most motorists and the associated trauma of a road accident puts driver/owners of accident damaged motor vehicles at a disadvantage in not knowing their consumer rights in relation to accident towing services.

With the clearance of a road accident scene a key priority, accident victims may feel pressured to sign agreements with tow truck drivers without knowing their consumer rights in respect to where their vehicle can be towed, the costs associated with towing and storage and payment methods.

In the absence of regulation, tow truck drivers could omit critical information in the towing agreement, tout for smash repair business and obtain a smash repair agreement or insist on cash only payment for the towing service.

There are several measures in the Act to address consumer protection for motorists requiring accident towing services. Section 142 prohibits an accident damaged motor vehicle from being towed without an authority to tow signed by the driver or owner of the vehicle. However, the Act only prescribes information regarding the accident towing operator, the tow truck driver, the depot and the location where the damaged vehicle needs to be removed in the authority to tow. There is no requirement to include information such as costs of towing and storage, salvage information and the identification of the motor vehicle.

Section 147 of the Act makes it an offence for a tow truck driver: to tout for repairs at the scene of an accident; to offer, obtain or attempt to obtain an authority or agreement to repair a vehicle; and to offer, obtain or attempt to obtain a quote for repairs.

The Act is silent on the method of payment for accident towing services.

## Extent of the Problem

The number of infringements issued provides a proxy for what might happen in the absence of regulation. As can be seen in Table 6, 164 infringement notices were issued for offences under the regulations and 138 infringement notices were issued for offences under the Act; making a total of 302 infringement notices over the period 2011 to 2018.

Table 6: Number of Infringements Notices Issued 2011 to 2018

|  |  |  |  |
| --- | --- | --- | --- |
| Year | Offences under the Regulations | Offences under the Act | Total Number of Infringements issued |
| 2011 | 23 | 27 | 50 |
| 2012 | 29 | 24 | 53 |
| 2013 | 35 | 19 | 54 |
| 2014 | 6 | 16 | 22 |
| 2015 | 11 | 10 | 21 |
| 2016 | 19 | 12 | 31 |
| 2017 | 20 | 7 | 27 |
| 2018 | 21 | 23 | 44 |
| Total | 164 | 138 | 302 |

As per the Table above, the 302 infringements issued represents about 0.007 percent of the estimated 400,000 accident tows that were conducted from 2011 to 2018. This demonstrates that, by and large, the licensed accident towing operators and their tow truck drivers were compliant. However, in the absence of regulation, it is reasonable to assume that the number of offences could rise and pose increased risks to road safety and consumer protection.

It is noteworthy that failure to attend the road accident scene within 30 minutes has not attracted an infringement in recent years. However, up until the late 1990s, this offence represented about 30 percent of infringement notices issued. In most cases, accident tow truck drivers were caught in traffic congestion on the way to the road accident scene but failed to communicate this with the Accident Allocation Centre.[[8]](#footnote-8) Accident tow truck drivers now advise the Accident Allocation Centre if they are being delayed by traffic conditions so this information can be passed onto Police at the road accident scene.

The 302 infringement notices were issued for offences related to road safety, consumer detriment, unlawful attendance at a road accident scene and non-compliance with licence and accreditation conditions.

Of the 302 infringements issued, 38 percent related to road safety, 20 percent for consumer detriment, 16 percent for unlawful attendance of a tow truck at a road accident scene and 26 percent for non-compliance with licence and accreditation conditions. Further details about the nature of these infringements are provided below for each category.

### Infringement notices issued in relation to road safety

115 infringement notices were issued for offences related to road safety. Most of the infringements issued related to the tow truck not equipped with a lightboard (53 infringements). A further 35 infringements related to the tow truck driver failing to correctly display the lightboard. These 88 offences represented 29 percent of the 302 infringements.

The lightboard is attached to the accident damaged motor vehicle to alert other motorists travelling behind the tow truck so that they see the brake and turning lights from the position of the damaged motor vehicle and not the tow truck. In this way, motorists can safely brake in response to the position of the towed damaged motor vehicle rather than the tow truck.

A number of infringements were issued for the following offences: a tow truck not having a fire extinguisher (12 infringements), a tow truck not having a broom/shovel/receptacle (10 infringements), the tow truck driver failed to clean the road accident scene (3 infringements), and the tow truck not fitted with warning lights or adjustable lights (2 infringements).

These infringements highlight the inability of some tow truck drivers to deal with fire hazards and to clean the debris (particularly glass) from the road accident scene which could pose a safety hazard to other motorists.

### Infringement notices issued in relation to consumer detriment

61 infringement notices were issued for offences related to consumer detriment. These included offences for failure to give copy of the authority to tow form to the driver of damaged vehicle (4 infringement notices), the authority to tow book not being carried in the tow truck (3 infringements), depot not open for business (17 infringement notices) failure to keep records, failure to keep records at depot, and failure to produce records (8 infringement notices), failure to store damaged vehicle in a secure area at the tow truck depot (8 infringements), failure to tow the damaged vehicle to the specified address in the authority to tow form (3 infringements), towed damaged vehicle without an authority to tow (7 infringements), refusing to salvage or tow a damaged vehicle (2 infringement notices) and failed to provide approved payment systems (1 infringement); a total of 53 infringement notices.

These infringements highlight that drivers/owners or their insurer/agent have been potentially denied access to their accident damaged motor vehicles at the tow truck operator’s depot, not received a copy of the authority to tow or been forced to make a cash payment for the towing services.

In addition, 8 infringement notices were issued for touting or soliciting smash repair work at the road accident scene. 7 of these infringement notices were issued between 2011-2013. These infringements show that some driver/owners may have been taken advantage during the trauma of a road accident scene and lured into signing a repair contract without having the time and space to make a considered decision.

### Unlawful attendance of a tow truck at a road accident scene

47 infringement notices were issued in relation to the unlawful attendance of a tow truck at a road accident scene. These infringements show a disregard for the rules by some licensees for the rostered accident allocation system. In particular, it results in a reduction in the number of accident allocation tows received by other licensees. This is particularly relevant to licensees operating in the Melbourne Controlled Area and the Geelong Self Management area.

### Non- compliance with licence and accreditation conditions

79 infringement notices were issued in relation to noncompliance with licence and accreditation conditions. 38 of the infringement notices were related to tow truck drivers breaching accreditation conditions and 41 infringement notices related to accident tow operators breaching their accreditation conditions. These infringements demonstrate that the Police are unable to identify whether the tow truck driver is competent, a fit and proper person and not a person with a criminal background as well as whether the tow truck meets road safety specifications.

### Demerit Point Register

The demerit point register could also provide a proxy system but has only been recently made fully effective. The infringement notices issued by VicRoads authorised officers have been incorporated into the demerit point system. However, the infringement notices issued by the Victoria Police have not been included. Fines Victoria within the Department of Justice and Community Safety has recently rectified the omission of this data and is now transferring infringement notices issued by Victoria Police for incorporation into the demerit points register. However, due to the omission of Police infringement notices from the demerit point register, there have been no licences or accreditation subject to suspension or cancellation.

### Number of Complaints

The number of complaints made is another proxy to measure what might happen in the absence of regulation. Since 2011, VicRoads has received 80 to 110 complaints per annum. This represents about 0.16 percent of the 60,000 accident tows in 2011 and 0.13% for the 72,000 accident tows in 2018.[[9]](#footnote-9)

Most of the complaints related to allegations in respect to:

* Failing to release the accident damaged motor vehicle;
* Failing to allow access to vehicles at the depot;
* False documents;
* Overcharging in respect to unwarranted additional kilometres or charging salvage when not required;
* Refusing to tow to a requested location; and
* Operators not operating their tow truck from their specified depot.

The low rate of complaints relative to the total number of accident tows would suggest that the regulations have been effective in providing safe, efficient and timely accident towing services to the Victorian community.

## Review of the Current Regulations

### Impediments to Orderly and Timely Clearance of Accidents

Since the introduction of the accident allocation system in 1983, the previous smash chasing by multiple tow truck operators to the scene of an accident has disappeared as only the licensed accident tow operator that has been allocated a job number from the RACV Accident Allocation Centre can attend the accident.

The Industry Commission (1995) noted the benefits of accident allocation schemes have enabled reductions in smash chasing but also reductions in unnecessary operating costs for unsuccessful tow truck operators searching for accidents and attending accidents without securing a tow.

*The main benefit is seen to be a reduction in the incentives to smash chase and to harass or intimidate vehicle owners and other tow truck drivers. Allocation schemes are also said to reduce operating costs by reducing the time spent “looking” for accidents or attending accidents without securing a tow*. [[10]](#footnote-10)

Similarly, the National Competition Council (NCC) agreed that the accident allocation scheme generates substantial behavioural benefits to the community and is warranted.

*“As stated by the Allen Consulting Group report, the Accident Allocation Scheme has improved community safety by eliminating the need for tow trucks to ‘race’ to accident scenes, cutting back congestion at accident scenes and reducing aggressive or violent behaviour by tow truck operators (ACG 2004, p. ix). The Council agrees that such roster arrangements generate substantial behavioural benefits to the community. The Council considers that this regulation is warranted and is probably sufficient to yield these benefits.*

And the Essential Services Commission (2015) recommended the retention of the accident allocation scheme in its recent review, *“While we don’t know what would have happened without an allocation scheme, our review of the available data indicated that the controlled area allocation scheme had minimised the impacts of congestion on road users, with the majority of accidents being cleared in an orderly and timely manner. Importantly, the controlled area allocation scheme had been successful at addressing behavioural issues associated with multiple tow operators attending an accident scene”*.[[11]](#footnote-11)

The Act establishes the accident allocation system and the regulations set out the broad operating rules while VicRoads Business Rules set out the detailed administrative procedures.

While key stakeholders such as the Insurance Council of Australia (ICA) and the Victorian Automobile Chamber of Commerce (VACC) are strongly supportive of the accident allocation system, there are two specific areas that affect the efficiency of accident towing services and potentially increase traffic congestion: the response time and the restriction on double tows.

### Response Time

The regulations require an accident tow truck driver who has accepted a job to arrive within 30 minutes at the road accident scene and to notify the Accident Allocation Centre upon arrival and departure from the road accident scene. The 30-minute response time is necessary to ensure timely, safe and efficient clearance of the road accident scene and the notification of arrival and departure times provides the necessary information to determine whether the 30-minute response time is being complied with, and also for the efficient administration of the Accident Allocation Centre.

The ESC noted in its periodic pricing review reports 2010 and 2013 that VicRoads was unable to verify whether tow truck drivers were meeting the prescribed times and recommended that VicRoads collect this data.

Consultation with the accident allocation centre revealed that despite the requirements of regulation 32(6), accident tow truck drivers have not notified it upon arrival. In addition, tow truck drivers do not notify upon departure but instead notify later for the purposes of clearing the allocation job so that they can return to the roster and be eligible for future allocation jobs. In the past, the RACV has attempted to follow-up with tow truck operators on the arrival and departure times. However, this added a significant administrative burden and was considered an inappropriate use of resources given that several counterfactual matters would suggest that tow truck drivers are achieving the 30-minute response time.

Firstly, the RACV AAC does not allocate a towing job to a specific driver/owner of an accident damaged motor vehicle. As a result, the tow truck driver does not know how many motor vehicles are involved at the road accident scene, and given that most tow truck operators operate or are affiliated with smash repairs, they have an incentive to arrive expeditiously in order to select the type of motor vehicle they wish to tow and hopefully repair. This occurs where the RACV AAC has allocated two or more towing jobs to separate tow truck operators. In some cases, one tow truck operator may be allocated two towing jobs to meet the tow truck operator’s licence entitlements.

Secondly, the tow truck driver does not know whether the Victoria Police will be in attendance at the road accident scene. The Victoria Police attend about 30 percent of road accidents. These road accidents invariably involve fatalities, serious injuries or significant traffic impacts.[[12]](#footnote-12) Tow truck drivers know that the Victoria Police have the authority to issue infringement notices for arriving later than the 30-minute response time. In addition, police officers are likely to give tow truck drivers a directive to speed up the clearance of a road accident scene if they believe the clearance process is being unnecessarily delayed. The Police have a responsibility to manage the road accident scene in a safe, timely and efficient manner to enable the roads to be re-opened and restore normal traffic conditions.

In view of the above, it is reasonable to conclude that tow truck drivers are meeting the current regulatory requirements. Notwithstanding this, the Department is unable to determine whether there is scope for improvements to the prescribed response time as it does not know the actual average response time a tow truck driver takes to arrive at a road accident scene.

As previously stated, VicRoads does not require the RACV AAC to collect data on the location of the tow truck that accepts the allocation job, the time taken to respond to an accident scene, and the time taken to clear an accident scene. The absence of this data prevents the Department from making up or down adjustments to the response time where appropriate and to benchmark the performance of individual tow truck operators and tow truck drivers.

Response time is a key performance indicator used and published by other emergency services. For example, Ambulance Victoria has committed to respond to 85% of emergency (Code 1) incidents to within 15 minutes statewide and 90% of emergency (Code 1) incidents to within 15 minutes in centres with more than 7,500 population.[[13]](#footnote-13)

The Melbourne Fire Brigade has committed to respond to 90 per cent of emergency structure fires within 7.7 minutes, and for emergency medical response, the target is 90 per cent of incidents within 9.2 minutes.[[14]](#footnote-14)

While these response times are considerably lower than accident towing, it should be noted that ambulances and the fire brigade are able to use flashing lights and siren to ensure that motorists provide a clearway to enable them to pass and to cross red-light traffic signal intersections. By contrast, accident tow trucks are only permitted to turn on their flashing lights 500 m from the accident road scene.

Nonetheless, the targets for Ambulance Victoria and the Melbourne Fire Brigade recognise that in some circumstances, the response time is not always achievable. This is not an option for accident tow operators.

The Melbourne Fire Brigade provides a useful comparison with accident tow trucks as both use heavy vehicles. The Melbourne Fire Brigade has 47 fire stations compared with 35 accident towing depots[[15]](#footnote-15).

Notwithstanding that fire trucks are able to travel faster with the use of a siren to an emergency this would suggest, prima facie, that there is potential scope for reducing the response time for tow trucks with the associated benefits of quicker clearance of accident scenes and reduced traffic congestion.

Ambulance Victoria and the Melbourne Fire Brigade use GPS to measure the response time. While some accident tow operators have GPS enabled tow trucks, these are not linked to the RACV accident allocation centre to enable recording of arrival and departure times from the road accident scene and the regulations do not require tow trucks to be fitted with GPS.

### Restriction on Double Tows

Regulation 32(8) states, “The driver of a rostered tow truck must ensure that the tow truck is not used to tow more than one vehicle from the road accident scene at the same time (regardless of whether the licence holder has been allocated more than one allocation by the allocation body)”.

This regulatory restriction only applies to the Melbourne Controlled Area and was established to prevent a tow truck driver arriving at the road accident scene and offering to tow both vehicles before the driver/owners of the damaged vehicles had called the allocation body. However, since the introduction of this restriction, mobile phone usage has become widespread and most motorists will have their mobile phone with them and use it to call their insurer immediately after an accident. The insurer will call the RACV AAC to organise an accident tow truck. Hence, part of the rationale for the restriction is no longer relevant given the interaction between motorists, insurers and the RACV AAC.

The ESC recommended “VicRoads investigate options or rules to facilitate double or multiple tows where it can produce more efficient outcomes for accident drivers and road clearance” (Recommendation 2B). This recommendation was in response to the VACC’s submission that recommended double tows be permitted.

The RACV advised that there have been instances where a licence-holder receives several authorisations but only sends one tow truck. For example, the RACV allocated three authorisations for three damaged vehicles at the same accident scene to the same tow truck operator. Rather than sending three separate tow trucks, the tow truck operator used the same tow truck and made three separate trips. This is inconvenient to the other two drivers who have to wait for the tow operator to return. These incidents are the exception rather than the norm, but it demonstrates what can happen under the current system.

Tow trucks are capable of towing more than one damaged vehicle. Most tow trucks are flat-bed vehicles and are capable of loading one vehicle onto the flat-bed (tilt bed that can driven onto, or pulled onto with an electric operated winch) and the second vehicle is towed behind with a dolly.

The driver/owner of the damaged vehicle has the right to have their vehicle towed to any destination. This becomes an issue for collisions involving multiple vehicles if the driver/owners instruct to have their vehicles towed in opposite directions. In these cases, a double tow becomes impractical where one driver/owner’s vehicle will take longer to be towed to their desired destination. In addition, an insurer may instruct the driver/owner to have their damaged motor vehicle towed to one of their assessment centres if the accident has occurred during business hours. The accident towing industry reports that from 60 to 90 percent of their accident damaged motor vehicles are towed by the tow truck driver back to their tow truck depot. The wide range is dependent on the time and location of the accident, and the severity of the damage.

However, this is usually not an issue after-hours when insurer’s assessment centres and smash repairers are closed. In these cases, the damaged vehicle is invariably towed to the tow truck depot for temporary storage until the insurer or driver/owner organizes a smash repairer during business hours.

A sample of police road crash data was analysed and revealed 54% of accidents involved collisions with another vehicle (30% after-hours and 24% during business hours) and 46% of accidents involved crashes with a fixed object, pedestrian or the vehicle had overturned.

This sample has been applied to the 52,000 allocations in the Melbourne Controlled area as shown in the Table 7 below. As can be seen, a total of 28,080 allocations could potentially be subject to double-tows, with 12,480 during business hours and 15,600 after-hours.

Table 7: Estimated number of vehicles involved in multiple collisions

|  |  |
| --- | --- |
| Accident Timeframe | No of Vehicles involved in collision with another vehicle |
| Business hours | 12,480 |
| After-hours | 15,600 |
| Total | 28,080 |

Note: After-hours from 5.00 pm Friday until 7.00 am Monday and on public holidays.

As can be seen in Table 8, the restriction on double tows results in a total additional cost of $4,042,116 to the driver/owner of damaged motor vehicles or their insurers. The restriction imposes an average cost of $245.90 per accident tow and $1,534,416 for 6,240 accident tows during business hours. The restriction also results in an average cost of $321.50 per accident tow and $2,507,700 for 7,800 accident tows during after-hours. These costs are based on the average towing distance of 15 km in the Melbourne Controlled area.[[16]](#footnote-16)

Table 8: Estimated cost of the restriction on multiple tows

|  |  |  |  |
| --- | --- | --- | --- |
| Accident Timeframe | No Additional Tows | Average Towing Fee[[17]](#footnote-17) | Total Towing Fee |
| Business hours | 6,240 | $245.90 | $1,534,416 |
| After-hours | 7,800 | $321.50 | $2,507,700 |
| Total | 14,040 | $287.90 | $4,042,116 |

The restriction on double tows results in a misallocation of resources (more tow trucks than are actually required) greater capital expenditure and operating costs for accident towing operators than is necessary, lower productivity per tow truck and higher than necessary accident towing fees.

In addition, the restriction on double tows results in additional greenhouse gas emissions. Each of the 14,040 accident tows results in a 30 km roundtrip for a typical accident towing job resulting in a total of 421,200 km travelled and total fuel consumption of 84,240 litres of diesel (average tow truck fuel consumption of 5 km/litre).

Using this data, the additional greenhouse gas emissions have been calculated as shown in Table 9 below. Appendix 1 provides the methodology for the calculations. As can be seen the 14,040 additional accident tows arising from the restriction results in greenhouse gas emissions of 228.58 CO2-e.

Table 9: Estimated greenhouse gas emissions arising from the restriction on multiple tows

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Accident  Timeframe | Carbon-dioxide  CO2-e | Methane  CO2-e | Nitrous-Oxide  CO2-e | Total  CO2-e |
| Business hours- 6,240 | 99.83 | 0.14 | 0.71 | 100.68 |
| After-Hours – 7,800 | 126.81 | 0.18 | 0.91 | 127.90 |
| Total: 14,040 tows | 226.64 | 0.32 | 1.62 | 228.58 |

The 6,240 additional tows during business hours results in 100.68 CO2-e. The 7,800 additional tows for the after-hours period results in 127.90 CO2-e. The formula and calculations are provided in Appendix 1.[[18]](#footnote-18)

### Impediments to Efficient Authorisation of Accident Towing

The authorisation of accident towing by the motorist involved in an accident provides traceability of the damaged motor vehicle in terms of where it is towed, particularly if the motor vehicle is towed to a destination other than the motorist’s home, identity of the licensed tow truck operator/driver and the towing fees incurred. Without a written record of this information, motorists would have no documentary evidence as to the whereabouts of their motor vehicle and the towing costs prior to agreeing to have their motor vehicle towed.

The information that is critical for inclusion in a written authorisation include:

* the details of the licensed tow truck operator and tow truck driver and depot contact details;
* name and address of the vehicle owner,
* vehicle registration;
* location of the vehicle to be removed;
* address where the vehicle to be towed;
* towing fees; and
* provision for the vehicle owner and tow truck driver’s signature.

It is useful to compare the regulated market for accident towing services with the unregulated non-accident towing services (trade and break-down towing) to better understand the impact the regulatory framework has on the efficient authorisation of accident towing.

A towing operation that provides non-accident towing services have dispatch personnel at their depots to take calls from businesses and motorists and to dispatch a tow truck to tow the motor vehicle. These services collect similar information as prescribed in the authorisation to tow document for accident towing services. In many cases, accident tow operators also provide some or all of the aforementioned non-accident towing services and have dispatch personnel to provide these services as well as receive and respond to accident allocations.

The accident towing services regulatory framework duplicates the dispatch function at accident towing services depots with the establishment of an accident allocation centre. The regulatory framework disrupts the normal business practices of collecting information to enable the owner of the motor vehicle to provide authorisation for the tow. Firstly, the regulatory framework transfers the responsibility for collecting information to the Accident Allocation Centre. However, it collects limited information compared with normal towing business practices, and secondly, the regulations transfer the responsibilities of the towing dispatch officer to the tow truck driver.

In respect to the first point, the RACV Accident Allocation Centre asks the caller for the location of the accident, their phone number and advises that a tow truck will arrive within 30 minutes. The allocation officer then calls the tow truck operator next on the roster to seek their availability. If the tow truck operator is available and can attend within 30 minutes, the allocation officer authorises the allocation.

By contrast, a dispatch officer at the tow depot would collect the following additional information: the name and address of the person requesting the tow, the model and registration number of the motor vehicle, the towing destination and provide the cost of the towing service. Many tow truck operators send this information electronically to their tow truck driver.

In regards to the second point, the regulations switch the responsibilities of the dispatch officer at the tow depot in collecting the aforementioned information with the tow truck driver who is required to collect this information at the accident scene.

The regulations have a significant impact on the efficient operation of accident towing services by transferring the collection of critical information from the dispatch officer at the tow depot to the tow truck driver at the accident scene.

In particular, the tow truck driver needs to spend additional time collecting and recording the information rather than proceeding to hook-up the damaged motor vehicle. This additional time spent has been estimated at 5 minutes and results in a longer clearance time of the accident scene and delayed restoration of normal traffic flows.

Using the $1.150 billion traffic congestion costs attributable to road accidents, the avoidable traffic congestion costs associated with the tow truck driver providing the authority to tow has been calculated in Table 10. As can be seen, the total avoidable cost is $63.96 million if the 5 minutes currently expended on these activities were not undertaken.

Table 10: Avoidable Traffic Congestion Costs

|  |  |  |
| --- | --- | --- |
|  | Costs | Formula |
| Congestion cost attributable to road accidents | $1.150 billion | $4.6 billion\*25% |
| Cost per accident | $22,115 per accident | $1.150 billion/52,000 |
| Cost per minute | $246 per minute | $22,115/90 minutes (average clearance time) |
| Cost of paper-based authorisation | $1,230 per accident | $246\*5 minutes |
| Total congestion cost | $63,960,000 | 52,000 accidents\*$1,230 |

A centralised accident allocation system is capable of collecting additional information. The current arrangements for the RACV Accident Allocation Centre are governed by VicRoads Business Rules.

It is worthwhile comparing the AAC with other centralised accident allocation centres. South Australia is the only other state with a centralised accident allocation centre. The Police manage the centralised accident dispatch system in the Adelaide area and callers are required to provide the following information over the phone:

* the exact location of the crash
* the make, model and registration of the vehicle; and,
* if the vehicle has been moved

The operator will dispatch the next available tow truck and provide the approximate time that it will arrive and the name of the tow truck operator.

As can be seen the South Australian model is slightly closer to normal business practices for the dispatching of non-accident towing services in respect to the type of information collected.

A further limitation of the Victorian and South Australian models is that the centralised accident allocation centres do not transmit their collected information electronically to the tow truck driver.

Most non-accident towing services have adopted GPS tracking systems and electronic communication on their tow trucks so that their dispatch officers at the depot can transmit the collected information in a suitable electronic document to the tow truck driver. The tow truck driver can take electronic signatures (if necessary), make electronic payments and print out invoices/receipts for the motorist at the point of hook-up. In addition, the GPS technology enables the dispatch officer at the depot to provide updates on the expected arrival time of the tow truck to the waiting motorist.

While the VicRoads Business Rules can be changed to expand the current informational requirements from motorists and the RACV Accident Allocation Centre’s software can be modified to incorporate this information for electronic transmission, sections 142(1)(b) and (2)(b) of the *Accident Towing Services Act 2007* require paper-based authority to tow forms to be used. Hence, the aforementioned sections and a number of other related provisions in the Act would need to be amended to enable authority to tow forms to be prepared electronically.

### Public Access to Accident Towing Services

#### Alteration of a Depot

Sections 14 and 15 of the Act require the responsible Minister to approve the issuance of regular and heavy vehicle tow truck licences respectively. Given that there have been no new accident towing licences issued since the early 1980s, sections 14 &15 have effectively imposed a supply cap on the number of accident tow truck licences and restricted competition in the accident towing services market.

In the absence of a competitive market, there is a need for VicRoads to ensure that there is adequate coverage of accident towing services across Victoria. Otherwise in a market with a supply cap, accident towing operators would naturally establish their business in major population centres and where most road accidents occur and leave other areas with low volumes of road accidents under-serviced.

By way of background, the former Victorian Tow Truck Directorate in consultation with the tow truck operators and the RACV Accident Allocation Centre created the original grid zones for depots and established 40 allocation zones within the Melbourne Controlled area where 45 depots currently exist. Some allocation zones have multiple depots and some allocation zones overlap. The boundaries of the allocation zones were designed to enable accident tow truck drivers to respond to a road accident within 30 minutes after receiving authorisation from the Accident Allocation Centre. Allocation zones are determined administratively by VicRoads rather than by the Act or Regulations.

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

Similar arrangements exist in the Geelong Self-Management area. Allocation zones do not exist in other parts of Victoria as most townships have only one accident towing operator. Although, where Police attend the road accident, the Victoria Police ESTA allocates the towing job to the accident towing operator nearest to the road accident.

The Essential Services Commission (ESC) recommended in its Final report, *“The requirement for VicRoads to approve depot relocations and movement of licences to different depots within the controlled, self-management and unregulated areas should be removed”. The requirement to link a licence to a specific depot should also be removed”* (Recommendation 3).

The first part of the ESC’s recommendation relating to VicRoads approval of depot relocations and the movement of licences to different depots is governed by regulation 13B and the second part in respect to linking a licence to a specific depot is governed by section 10(1) of the Act,

*“Subject to subsections (2) and (3), VicRoads may license a person to operate a tow truck that is specified in the licence in the course of conducting an accident towing service business—*

*(a) to provide accident towing services to vehicles of any gross vehicle mass that the*

*tow truck is capable of towing; and*

*from the depot specified in the licence”*.

In respect to the ESC’s recommendation to remove the requirement for VicRoads to approve depot relocations, the ESC considered that this would complement its proposed proximity-based allocation scheme where no allocation zones would exist and accident tows would be allocated to the depot nearest to the accident.

The ESC Draft report acknowledged a key disadvantage of this proposed scheme would be that, “*some operators may choose to relocate their depots closer to areas with more accidents (e.g. Melbourne CBD and inner suburbs), resulting in longer response times in outer suburbs. This may increase clearance times and road congestion costs in these areas”.*

In its Draft report, the ESC states that, *“over time, operators have tended to locate more depots where there are more accidents (e.g Melbourne CBD and inner suburbs)”,* and *“This suggests that the transitional costs (associated with depot relocation) of introducing proximity-based allocations may be low”.*

However, in its Final report, the ESC changed its recommendation from a depot-based to a tow truck-based proximity allocation scheme and also acknowledged that the transitional costs for the relocation of depots may be difficult particularly for some parts of Melbourne due to local planning policy restrictions that impede the establishment of accident towing services.

*“Through industry feedback, it has become apparent that a move to a depot-based proximity allocation scheme may not fully deliver the expected benefits. This is because there is no guarantee that vehicles will be located at the nearest depot to the accident scene, but may instead may be being used for trade tows, or be housed at the owner’s residence.*

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

It would seem the ESC considered that for a proximity-based allocation scheme (depot or tow truck based) to work effectively, accident tow truck operators would need the flexibility to move their resources freely without VicRoads approval.

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

Regulation 13B governs the relocation of a depot and the movement of licences from one VicRoads approved depot to another VicRoads approved depot. In this respect, VicRoads analyses accident allocation data in the Melbourne Controlled Area and Geelong Self Management Area and Police crash data in the unregulated area to determine whether an application to relocate a depot or movement of licences should be granted. From 2015 to 2018, VicRoads received 126 applications for the relocation of a depot and refused 25 or 20 percent of applications. The high level of approvals would not suggest that the application process is a barrier to the efficient movement of resources. The key criterion used by VicRoads to determine an application is the impact on the public both at the existing location of the depot or licences as well as the impact on the proposed location of the depot and licences. This is to ensure that the public are not under-serviced at the existing location and over-serviced at the proposed location.

Upon review, it became apparent that some of accompanying evidence is not always necessary. This adds an unnecessary cost to some applicants.

### Tow Truck Garaging Restrictions

The ESC recommended, “VicRoads should review regulation 16 (a) and (b) [sic] relating to where a tow truck is garaged to ascertain whether this regulation is still needed” (Recommendation 2C).

The ESC made this recommendation after the VACC advised the ESC that their proximity-based allocation nearest to the depot scheme was inaccurate due to the industry practice of strategically locating tow trucks across an allocation zone. The ESC recommendation is focussed on whether the garaging restrictions would impede its final recommendation for VicRoads to investigate the feasibility of a tow truck-based proximity allocation scheme.

Regulation 16(5) states, “A licence holder must ensure that the licensed tow truck – (a) operates from the specified depot; and,

(b) is usually garaged and otherwise based at the specified depot”.

Most accident towing operators will use the licensed accident tow truck for non-regulated towing work such as break-down and trade towing. Regulation 16(5)(a) and (b) do not restrict the accident towing operator from undertaking these other non-regulated towing activities.

However, the limiting of the tow truck garaging requirement to normal business hours could provide operational efficiencies and potentially lead to quicker clearance times for road accident scenes when the accident occurs outside these hours. Accordingly, this option is further assessed in section 6.3.

### Consumer Detriment

Most drivers are infrequently involved in an accident and rarely know what to do let alone know their consumer rights. Invariably, they call their insurer and seek assistance. The insurer organises the accident tow truck by calling the Accident Allocation Centres in the Melbourne Controlled area, the Geelong Self Management area or the police in the rest of Victoria.

There are a number of consumer issues pertinent to the driver involved in a road accident:

* to be able to choose the destination where their damaged motor vehicle is towed, and in particular, to know where their vehicle will be towed (particularly for after-hour tows);
* the cost of the tow, the cost of salvage (if applicable);
* the cost of storage if the damaged vehicle is towed to the tow truck depot;
* the method of payment;
* access to their damaged vehicle to obtain personal belongings at the tow truck depot; and,
* to be not taken advantage of in their vulnerable state to sign contracts for smash repair and related services.

The current regulations address this lack of information with prescribed information requirements in the authority to tow form that must be signed by the owner/driver of the accident damaged motor vehicle and the tow truck driver.

Regulation 38(1)(b) also requires tow truck drivers to provide the owner or driver the relevant information pamphlet approved by VicRoads. The information pamphlet is a factsheet titled “Towing from an accident scene – your rights”. The factsheet is one page and covers:

* Your rights and responsibilities;
* Accident tow truck;
* Signing the ‘authority to tow’;
* Salvage;
* Seeking Advice;
* Choose where your vehicle is towed;
* Touting for repairs is prohibited;
* Storage of your vehicle;
* Your rights at the depot;
* Complaints; and
* Further information

The ESC noted in its Final Report, “It is well understood from our consultations that the factsheet is not necessarily read at the accident scene, as it is only required to be received at the accident scene by the driver”. VicRoads has not conducted any evaluation on the effectiveness of the factsheet.

The Act does not define ‘vulnerable consumers’. Vulnerability has a wide application and is dependent on the characteristics of a particular market and individuals’ attributes and circumstances. Consumer Affairs Victoria has identified the main market factors and personal factors:

“The main market factors creating consumer vulnerability are:

Information asymmetry;

Market power;

Exploitative supplier motivations; and,

Complex products/transactions.

The main personal factors creating consumer vulnerability are:

those ongoing circumstances listed in ‘factors in consumer disadvantage’ (intellectual disability, hearing, vision or mobility impairment, illiteracy, limited English language proficiency, low educational attainment, gullibility, low confidence in exercising interpersonal skills and time deprivation); and,

temporary ‘life events’, such as the sudden death of an immediate family member, serious acute illness or retrenchment, where a consumer faces unavoidable complex and/or infrequent transactions and/or the consumer’s financial position is significantly altered without warning. The emotional trauma associated with such events may affect the consumer’s capacity for critical assessment of information and logical decision-making and expose him or her to manipulation by unscrupulous suppliers”.

A road accident is considered a traumatic experience even for uninjured drivers who are likely to be in shock as a result of the collision. In the context of road accidents, it is reasonable to assume that most drivers would be deemed a vulnerable consumer in that the emotional trauma of the collision affects their capacity for critical assessment of information and logical decision-making. From a market perspective, information asymmetry exists between the accident towing service and the driver/owner of the damaged motor vehicle; primarily due to infrequent transactions and time deprivation (ability to search and coherently analyse information at the road accident scene).

In cases of serious injury or where the driver has become incapacitated, the Police organise the tow truck and sign the authority to tow document on their behalf. In these cases, the provision of consumer rights information at the road accident scene is not likely to be beneficial to the incapacitated driver.

Drivers/owners who cannot read or have limited English language proficiency are more likely to be at a greater risk. The State Library of Victoria estimated, “that more than half a million Victorians aged between the ages of 15 and 74 years have very limited literacy skills (literacy Level 1 or below, meaning that the person has difficulty matching text and information or drawing low-level inferences from simple print or digital text)”.

About 26% of Victorians speak a language other than English at home. This does not mean all of these Victorians are unable to speak and read English, but it does provide an indication of the population that may have difficulties reading English.

In view of the ESC’s consultations and the current timing of the provision of the information to the driver (same time as the authority to tow form) it would appear that the VicRoads Factsheet is unlikely to be read, let alone fully comprehended, by most drivers at the road accident scene. In addition, the VicRoads Factsheet is not beneficial to drivers with low literacy levels or low proficiency in the English language as the VicRoads Factsheet is only available in English.

However, most drivers would keep the Factsheet with their authority to tow form and may read it later. Hence, the VicRoads Factsheet is probably more effective post the road accident scene and would also enable the above-mentioned vulnerable consumers to seek assistance from family members to read and explain the VicRoads factsheet.

The Consumer Action Law Centre (CALC) has advised that the most effective use of information is when it is required, that is at the road accident scene. While this currently occurs, it would seem more effective if the current information was provided prior to the tow truck driver arriving at the road accident scene. After a driver has called the insurer, family, work etc, the driver is likely to have some time waiting for the tow truck driver and a short SMS with key consumer rights is more likely to be read and comprehended by the driver (at least for drivers who have not been injured).

There are other parties besides tow truck drivers who could provide critical information to drivers involved in road accidents. These other parties include insurers and the RACV AAC. They are potentially in a position to send information to motorists in possession of a mobile phone prior to the tow truck driver arriving at the road accident scene.

Most motorists involved in a road accident contact their insurer at the road accident scene and the insurer organises a tow truck on their behalf by contacting the RACV AAC. Insurers do not provide information by sending a SMS text message to the driver about their consumer rights prior to the tow truck arriving at the road accident scene. Similarly, where the driver contacts the RACV AAC directly to organise a tow truck, the RACV AAC does not provide consumer rights information over the phone or send this information as an SMS text message to the driver.

### Emerging Issues

The ESC analysed a new issue raised by insurers and consumer legal centres in respect to some tow truck operators misleading or pressuring not-at-fault drivers to have their damaged motor vehicles repaired by their smash repairer or an affiliated smash repairer.

The ESC noted in its Draft Report, *“There is evidence to suggest that current regulations are not always providing protections, and this may potentially facilitate excessive charging for smash repair through a lack of scrutiny and oversight of repair costs.*

*It is difficult to gauge the extent of the problem. Evidence supplied by insurers and other market participants suggests that the costs of excessive charging are not immaterial. A key challenge is to ensure that any policy response is proportionate to the problem identified.”[[19]](#footnote-19)*

The ESC noted, *“Both IAG and Suncorp state that not-at-fault drivers are being persuaded or pressured into signing repair agreements. This allows the smash repair business to commence repair work without the scrutiny and oversight of an insurer. If the not-at-fault driver also signs an ‘authority to act’ agreement, this can lead to legal action being taken on behalf of the not-at-fault driver, for recovery of these repair and associated costs. Suncorp also submits that not-at-fault drivers are often” unaware legal action is being taken on their behalf”.[[20]](#footnote-20)*

WestJustice, a community legal centre, was unable to provide a definitive number of car-napping cases but advised that it has had about 20 to 30 cases of car-napping related issues over the past several years. In many cases, WestJustice advised that their clients did not know where their vehicle had been taken and had not kept the authority to tow form. Many of WestJustice’s clients speak and read little English and are unaware of their legal rights across a wide of range of matters; not just towing, smash repair and insurance.

Based on WestJustice’s advice, there would appear about 10 car napping cases per annum. This represents about 0.0004% of the estimated 25,000 repairs undertaken on an annual basis that would involve not-at-fault drivers. There is no industry data on the number of third-party repairs undertaken that have direct affiliations with accident towing. Industry sources suggest that accident towing only obtains repairs from about 20 percent of the accident tows. In this case, the 10 cap napping cases would represent 0.002% of the 5,000 repairs. This data analysis is not intended to be precise but is provided to give an idea of the extent of the problem. The financial and emotional cost of cap napping is a serious issue but based on the available data, it would not appear to be widespread across the industry to warrant regulatory action that would affect compliant accident tow operators and drivers.

This would seem consistent with the ESC and Suncorp’s observations, *“On the extent of the problem, Suncorp notes that “third party repair networks which take advantage of drivers are a small subset of the broader smash repair industry. Nevertheless, it argues that the repairers and towing operators engaging in this practice are introducing significant costs and risks to Victorian consumers”.[[21]](#footnote-21)*

While the extent of the problem is not fully known, some of the evidence provided by WestJustice would suggest that vulnerable consumers who have low levels of literacy and/or low proficiency of the English language are at the greatest risk of car napping.

Lawyers that specialise in third-party not-at-fault motor vehicle repairs play a pivotal role in the design, execution and enforcement of legal documents such as the ‘authority to act’ agreement on behalf of their smash repairer client.

The Legal Services Commissioner took action against a lawyer for not seeking instructions from the person (not-at-fault driver) who signed the authority to act agreement. As a result, the lawyer has been suspended from legal practice for two years.

This would suggest there is a role for the Legal Services Commissioner to deal with the problem of consumer detriment associated with third-party repairs.

## Adequacy of Industry Training

Competent and honest drivers and operators using appropriate designed tow trucks and equipment to secure and load damaged vehicles are necessary to ensure safe, efficient and timely accident towing services.

The Act provides an accreditation system for operators, licensees and drivers. Essentially, a police check is required to keep out persons with a criminal background.

The current regulations also provide for qualifications, training and testing of licensee, depot managers and drivers. However, unlike most regulatory frameworks, the current regulations do not prescribe the qualifications, training and testing. Instead, the regulations provide a power to enable the determination and making of qualifications, training and testing. VicRoads has not exercised regulations 5, 6, 7, 9 and 10, and as a result, no qualifications are prescribed and no training or testing is undertaken of industry operators, depot managers and tow truck drivers.

This would suggest that qualifications, training and testing are not required given that VicRoads has not exercised regulations 5 to 10 over the past ten years of the current regulations. The infringement and complaints data also does not suggest a problem exists that would warrant government regulation.

An explanation for the absence of qualifications, training and testing may be due to the fact that most accident tow truck operators are also involved in trade towing, and in some cases, breakdown towing. This form of towing is not regulated and tow truck drivers that want to gain accreditation for accident towing usually start out undertaking trade towing which provides them with the necessary practical skills and experience with loading and unloading a motor vehicle and the administrative process that needs to be undertaken with motorists on the roadside.

The Act provides trainee tow truck driver permits. However, VicRoads advises applicants that the cost of a trainee permit and later the cost of tow truck driver accreditation will be greater than accreditation alone. Due to the limited time of the trainee permit, most applicants are likely to apply for accreditation. As a result, a tow truck driver who starts out doing only trade tows is likely to seek accident towing accreditation that will enable him or her to learn on the job by attending accident tows with an experienced accident tow truck driver, particularly for salvage work, which is not undertaken in respect to trade towing.

## Conclusion

The relatively low level of complaints and infringements issued to the accident tow truck industry would strongly suggest that the current regulations have been effective together with the Act to provide safe and timely accident towing services.

However, this section has demonstrated that the regulations, and in some cases, the Act, prevent optimal efficiency by preventing the adoption of technologies and processes that have become standard in the wider towing industry. These restrictions lead to higher towing costs, longer accident clearance times and greater traffic congestion.

# Objectives

## Overview

The Victorian Guide to Regulation states, “The objectives should identify the ends to be achieved, or the broad policy outcomes desired, rather than the means by which they will be achieved”.

## Primary Objective

The primary objective is to provide timely, safe, and efficient accident towing services in order to minimise traffic congestion and to provide consumer protection to prevent consumer detriment to drivers and owners of vehicles involved in road accidents.

## Secondary Objective

The secondary objective is to fund the efficient and equitable regulation of accident towing services.

## Reconciliation with the Objectives of the Act

The primary objective is consistent with the objective of the Accident Towing Services Act 2007 as stated in section 4,

*(a) to 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—*

*(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.*

# Assessment of Options

## Overview

This chapter is divided into undertaking a cost benefit analysis of the proposed regulations that impose a material burden.

The following components of the proposed regulations impose a material burden and are subject to a cost benefit analysis in this chapter:

Regulation 18 Alteration of specified depot

Regulation 19 Records to be kept by a licence holder

Regulation 20 Manner and form in which records are to be kept

Regulation 21 Specified depots

Regulation 22 Exemptions from specified depot requirements

Part 5 Vehicles (Regulations 23-29)

Regulation 36 Authorisation to attend road accident scene

Regulation 37 Authorised tow truck must attend

Regulation 42 Authorities to tow

Regulation 45 Conduct of tow truck drivers at road accident scene

Regulation 46 Duty to advise owner or driver of an accident damaged motor vehicle

The cost benefit assessment of these proposed regulations is undertaken in sections 6.2 to 6.10. For each of the aforementioned regulations, the base case and feasible alternatives are analysed followed by an assessment of the cost and benefits. The base case for sunsetting regulations is the principal legislation i.e. the Act in the absence of the remaking of the current regulations.

### Criteria to Compare Options

The following criteria are used to measure the incremental costs and benefits of the options relative to the Base Case:

* road safety - to ensure that accident towing services are conducted in a manner that is safe for road users;
* operational efficiency - to ensure that accident towing services are conducted in a timely and efficient manner that minimises congestion and delays for all road users;
* consumer protection – to ensure motorists involved in an accident are provided with appropriate information to make informed decisions; and,
* cost to accident tow truck operators, driver/owners of damaged motor vehicles and Government.

### Calculation of Costs

The cost calculations for the costs and benefits are provided in Appendix 1.

## Alteration of Specified Depot

### Base Case

The Base Case is the Act in the absence of the regulations – that is, no provision for enabling accident towing operators to change their depot or to move tow truck licences to another depot.

Under the base case, accident towing operators would not be permitted to alter their specified depot. This would prevent the reallocation of resources in response to changing population shifts that normally result in changes to the number of accidents.

### Alternatives

To enable accident towing operators to change their depot or move tow truck licences to another depot a public and transparent process needs to be undertaken as any change can have an impact on the availability of accident towing services to the public as well as an impact on other licence-holders. This is primarily due to the limited number of accident towing licences. In view of this, the Department considered the following two alternatives to the base case:

* Option 1: Current regulation
* Option 2: Removal of red tape in the current regulation

Option 1 provides a detailed application process for licence-holders seeking to change their depot or move tow truck licences to another depot. Option 2 is essentially the same as Option 1 but proposes the removal of red tape in the form of local council approvals that have been previously provided to an existing VicRoads and local council approved depot.

### Option 1: Current Regulation

This option would retain the current arrangements where an accident towing operator would need to apply in writing and obtain approval to move licences to an existing approved depot or to relocate a depot to another area.

Regulation 13B(3) in its current form requires licence-holders to submit an application to VicRoads with the following information:

1. tow truck licence number;
2. name, address and telephone number of the licence-holder;
3. Australian Company Number of the licence holder if the licence holder is a company;
4. address of the current depot and the proposed depot;
5. existing tow truck services available at or near the proposed depot;
6. how the present tow truck services (if any) at or near the proposed depot are inadequate to meet all reasonable public demand;
7. the advantages of the change of depot to the public at or near the proposed depot;
8. the impact that the services from the proposed depot would have on any existing accident towing services businesses near the proposed depot; and,
9. effect on the public at or near the current depot, if the proposed depot change is approved

The licence-holder is also required to submit the following information with the application:

* a fee of 13.98 fee units ($207 in 2019-20);
* a written statement from the municipal council in which the proposed depot would be located supporting the application;
* evidence that the applicant has the right to conduct an accident towing services business from the proposed depot (council rates notice or leasing agreement);
* any other information the applicant wishes to provide in support of the application, including any written statement supporting the application from any other government body, industry group, company or individual.

#### Costs

Items 1 to 4 in the application process are relatively straight-forward for a licence-holder to complete. However, items 5 to 9 require the licence-holder to know the number of accidents at the proposed location for the depot. There is an incomplete accident data set available to the public as well as to licence-holders. In the case of the Melbourne Controlled area, the number of accident allocations are published on VicRoads website. The Geelong Self Management area records its accident data. The Victoria Police also publish accidents that they attend by location across the State but this represents a small proportion of total accidents in regional areas.

A licence-holder would need to analyse this data to firstly demonstrate that the present accident towing services at the proposed location for the depot are inadequate to meet all reasonable public demand, ascertain the impact of the services of the proposed depot on the nearby existing accident towing businesses and also the impact on the public at or near the current depot if the proposed depot is approved. Essentially, this requires the licence-holder to make an assessment of the accident towing market at both its current and proposed depot locations to ensure that if the proposed depot is approved, the public and existing accident towing businesses are not disadvantaged.

VicRoads provides no written guidance on the assessment methodology for the alteration of a depot. In most cases, licence-holders speak with VicRoads to better understand the assessment methodology and approval criteria prior to submitting an application. This would explain the 80 percent approval rate of applications. However, the absence of written guidance published on VicRoads’ website might explain the reason for 20 percent of applications being declined.

The Department estimates that an accident tow truck operator would spend about 4 hours to collate and prepare an application to alter a specified depot at a cost of $339.56 per application [[22]](#footnote-22) and a municipal local council would spend about one hour to check whether the proposed location of the depot was compliant with its planning policies and to prepare a letter of support at a cost of $102.84 per application. This results in a total cost of $442.40 per application.

Table 11 below shows the costs. As can be seen, the cost to prepare 32 applications is estimated by VicRoads at $10,865.92 (licence-holder) and $3,290.88 (municipal council) with a total cost of $14,156.80.

Table 11: Costs by Application Type (Option 1)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Annual No. Applications | Average Time Applicant (hrs) | Applicant Cost | Municipal Council Cost | Total |
|  | 32 | 4 | $10,865.92 | $3,290.88 | $14,156.80 |

#### Benefits

The alteration of a depot enables the orderly transfer of accident towing service resources in response to population shifts and changing patterns of road accidents.

In view of the limited supply of accident towing services under the Act, the orderly transfer of resources prevents over-servicing and under-servicing specific geographic areas and ensures that the public is served with a reasonable distribution of accident towing services that will enable the timely clearance of road accident scenes.

The impact analysis undertaken by the licence holder and VicRoads is also designed to protect other licence holders so that their accident allocations do not fall below the average number of allocations in nearby allocation zones within the Melbourne Controlled area. Given that accident towing operator’s licensed tow trucks have low utilisation rates for accident towing, any deterioration below the average number of allocations is likely to affect the financial viability of the business.

### Option 2: Removal of Red Tape in the Current Regulation

This option would have the same application requirements as Option 1 except the following provisions would be added:

The written statement from the municipal council in which the proposed depot would be located supporting the application would not apply if;

(a) there is currently a tow truck service operating at the address of the proposed depot; and

(b) VicRoads has received a written statement from the municipal council in which the proposed depot would be located, supporting an application under subregulation (1) in respect of the tow truck service currently operating at the address of the proposed depot; and

(c) the written statement was received no more than five years before the date of the application under subregulation (1) for the proposed depot.

#### Costs

The Department estimates that about 21 or 65 percent of the 32 applications per annum would not require a written statement from a municipal council supporting the application. In these cases, an accident tow truck operator would spend 3 hours to collate and prepare the application at a cost of $254.67 per application for the alteration of a depot. For the remaining 11 applications that required a written statement from a municipal council, the costs would be the same as Option 1; $411.36 per application.

Table 12 below shows the costs for each application category. As can be seen, applications requiring a written statement from municipal council cost $4,866.40 and applications not requiring a written statement from municipal council cost $5,348.07; with a total cost of $10,214.47

Table 12: Costs by Application Type (Option 2)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Type | Annual No. Applications | Average Time Applicant (hrs) | Applicant Cost | Municipal Council Cost | Total |
| Applications requiring a written statement from municipal council | 11 | 4 | $3,735.16 | $1,131.24 | $4,866.40 |
| Applications not requiring a written statement from municipal council | 21 | 3 | $5,348.07 | $0 | $5,348.07 |
|  | 32 |  | $9,083.23 | $1,131.24 | $10,214.47 |

#### Benefits

This option would have the same benefits as Option 1 along with the below-mentioned benefits.

Licence-holders applying for the movement of tow truck licences to an existing VicRoads approved depot would spend three hours rather than 4 hours relative to Option 1. This would save them one hour or $84.89 in preparation costs or $1,782.69 for the estimated 21 applications and municipal councils would not need to provide a letter of support and would save $102.84 per application and $2,159.64. This would provide total savings of $3,942.33

### Comparative assessment of the options

Option 1 has costs of $14,156.80 compared with Option 2 that has costs of $10,214.47. Both Options have identical benefits with Option 2 having $3,942.33 in cost savings. Accordingly, the Department considers Option 2 is the superior option. The Department seeks feedback on the need for, and the content of, written guidance on the application process, methodology and approval criteria.

## Specified Depots

### Base Case

The Base Case is the Act in the absence of the regulations – that is, no requirements in relation to the operation of a depot prescribed in regulation beyond what is specified in the Act.

The Act does not specify the opening hours of a depot, the means by which the public can contact the depot, the staffing arrangements during opening hours, the suitability of the depot and the garaging arrangements for tow trucks.

A road accident is an unplanned event and most owners/drivers or their insurers will seek temporary storage of the damaged motor vehicle at the accident towing operator’s depot until they have had time to make arrangements to select and engage a suitable smash repairer.

In view of this, the Act requires accident towing operators to have a depot to provide temporary and secure storage for accident damaged motor vehicles to address the circumstances many owner/drivers, particularly when the accident has occurred after normal business hours and smash repair shops or insurance assessment centres are closed. Returning the accident damaged motor vehicle to the depot rather than the owner/driver’s home is likely to provide a more efficient and lower cost secondary tow to the smash repairer given that many depots are co-located in areas with smash repairers.

Under the base case, accident towing operators would normally be open during normal business hours from 8.00 am to 5.00 pm and have a telephone to enable the owner/driver of the damaged motor vehicle to make arrangements to collect personal belongings from their damaged motor vehicle. The owner’s insurer will also send their assessors to the depot for seriously damaged vehicles to determine whether it is economic to repair the vehicle and to make arrangements to have the vehicle towed to another location such as a smash repairer or auction house (if the vehicle has been written-off). These business hours are similar to smash repairers and auction houses.

They would also have at least one staff member managing the depot to undertake dispatch work for trade-towing activities and to supervise insurance assessors and owners that come into the depot. Accident tow depots are hazardous sites where many damaged vehicles have broken glass and continue to leak oil and other fluids. It would be irresponsible from an occupational health and safety perspective for an operator to allow an owner to collect their personal belongings without supervision.

In terms of suitability, accident towing operators select premises that are safe and secure for their tow trucks as well as for the temporary storage of accident damaged motor vehicles so unauthorised persons do not have access to these vehicles. It should also be noted that many accident towing operators have dedicated tow trucks for trade towing and these would be garaged at the depot overnight.

However, in some cases, particularly small depots in remote regional areas, where the accident towing operator is also the tow truck driver, and the volume of accident towing work is relatively low in the area that would not warrant staff at the depot, the depot is unlikely to be readily accessible to the owner/driver of an accident damaged motor vehicle that is in temporary storage as the accident towing operator may be towing another accident damaged motor vehicle. In these situations, the accident towing operator would still be contactable by mobile phone to make suitable arrangements to meet the owner/driver.

### Alternatives

Given the nature of an accident towing business and the interaction of clients at tow depots, most towing operators would have staff, a telephone and a sign, and be open during business hours. the Department considers these as business-as-usual costs. In view of this, the Department considered two alternatives to the base case. First alternative: the current regulated depot operational requirements and the current requirement that the tow truck be usually based at the specified depot. Second alternative: the current regulated depot operational requirements but with the tow truck only being required to be usually based at the specified depot during business hours.

#### Option 1: Current depot operational requirements (including tow trucks to be based at depot)

This option prescribes operational requirements for the specified depot that need to be complied with by the licence holder. These requirements are outlined below.

**Depot operational requirements**

The specified depot is open for business and staffed by the licence holder or an agent or employee of the licence holder between the hours of 8.00 a.m. and 5.00 p.m. from Monday to Friday inclusive but excluding any public holiday.

The specified depot is contactable by telephone during the aforementioned hours of business.

The specified depot has displayed on the exterior of the specified depot a sign giving the name of the licence holder, the depot number allocated by VicRoads (if the depot is within a controlled area), the hours of business and the telephone number of the depot.

The specified depot for the licensed tow truck is suitable for the conduct of business and the keeping of records as required under the Act and these regulations.

The licensed tow truck operates from the specified depot and is usually garaged and otherwise based at the specified depot. This requires the licensed tow truck to be based at the depot at all times.

A depot is considered suitable if the premises are safe and secure with appropriate fencing of yards, lockable roller doors and other entries, and sufficient space has been provided for the storage of records.

In addition, this option enables VicRoads to exempt a licence holder outside the Melbourne controlled area from having to comply with the prescribed opening business hours for the depot if it would impose an unreasonable burden on the licence holder.

Similarly, this option enables VicRoads to exempt a licence holder from ensuring that the tow truck is usually garaged and otherwise based at the specified depot if VicRoads considers it would improve the efficiency of the licence holder’s service and the granting of the exemption would not unreasonably impact on the business of another licence holder.

#### Costs

The costs associated with the depot operational conditions are considered business as usual costs and not attributable to the regulations.

However, accident towing operators based in small regional towns that have a low volume of accident/trade towing and smash repair business may not be able to financially justify staffing the depot during the prescribed business hours.

In these cases, accident towing operators would need to submit an application to VicRoads for an exemption from the depot being required to be staffed during the standard business hours. VicRoads estimates that it would take an accident towing operator about one hour to prepare the exemption application at a cost of $84.89.[[23]](#footnote-23) To date, there have only been about 10 exemptions sought and granted over the past ten years. These exemptions represent about 7 percent of the 141 approved depots outside the controlled area. VicRoads believes there is unlikely to be any significant demand for future exemptions. There have been no applications for an exemption from the garaging conditions.

The current requirement that a tow truck must usually be based at the depot may be impacting operational efficiency of accident towing services in responding to a road accident scene in a timely manner in the event that the accident occurs after business hours and the driver is at home. In these circumstances, the driver will need to travel to the depot to pick up the tow truck first, before proceeding to the accident scene. This may mean that it takes the driver longer to arrive at the accident scene than would be the case if the tow truck were based after-hours at the driver’s residence.

#### Benefits

The standard opening hours should ensure that owners of accident damaged motor vehicles can access any personal belongings left in the vehicle at the time of the accident. The standard opening hours also allow the owner or their insurer/agent to organise a secondary tow of the vehicle to a smash repairer or, in the case where the vehicle has been written-off by the insurer, a secondary tow to a vehicle auction house. Secondary tows are not regulated under the Act and owners and insurers can choose other trade towing operators to tow the accident damaged motor vehicle from the depot to the owner or insurer’s preferred smash repairer or a motor vehicle auction house.

The current requirement that the tow truck be usually garaged and otherwise based at the specified depot appears to have assisted in ending the practice of drivers basing their tow trucks near well-known accident-prone intersections. In the past, this behaviour often resulted in violence between competing tow truck drivers and threats to owner/drivers of accident damaged vehicles.

However, tow truck drivers would be less likely to base their trucks near these intersections after normal business hours as only about 30 percent of road accidents occur during this time. In view of this, the current garaging requirement which is not limited in its application to normal business hours, could comprise an unnecessary burden on licence holders.

### Option 2: Tow trucks only required to be based at the depot during business hours

This option prescribes the same operational requirements for the specified depot as stated in Option 1 other than in respect to the tow truck garaging requirements. In that regard, this option would only require the tow truck to be usually based at the specified depot during normal business hours, that is, 8.00 am to 5.00 pm, Monday to Friday inclusive, excluding public holidays.

This option would allow VicRoads to exempt a licence holder outside the Melbourne controlled area from having to comply with the prescribed opening hours for the depot if the requirement would impose an unreasonable burden on the licence holder. This option would also allow VicRoads to exempt a licence holder from requiring the tow truck to be usually based at the depot during business hours if this would improve the efficiency of the accident towing service and the granting of the exemption would not unreasonably impact on the accident towing service business of another licence holder.

#### Costs

The same costs as described in Option 1 would apply other than for the garaging requirement.

#### Benefits

This option would enable tow truck drivers to base the tow truck at their residence outside of the standard business hours, that is from 5.00 pm to 8.00 am Monday to Friday, and on weekends and public holidays. This would allow a tow truck driver to drive the tow truck directly from their residence to the road accident scene rather than driving to the depot to pick up the tow truck and then proceed to the road accident scene. It is anticipated that this may save time and ensure the road accident scene is cleared in a timely manner.

The proposed requirement that the licensed tow truck be usually based at the specified depot during business hours would not constrain the accident towing operator from utilising the licensed tow truck to undertake break-down towing or other trade towing business.

### Comparative assessment of the options

As shown in the base case, most accident towing operators would meet the depot operational conditions and the Department considers these conditions to be business-as-usual costs, although there are exceptional cases in remote regional townships where low volumes of accident towing make it financially unviable for the accident tow operator to meet the conditions.

In these cases, both Option 1 and 2 permit these accident towing operators to apply for an exemption. In addition, the current garaging requirements for a tow truck in Option 1 will maintain the integrity of the accident allocation scheme (by preventing tow truck drivers from basing their tow trucks at accident-prone intersections) but it does not provide the flexibility for tow truck drivers to base the tow truck at their residence after-hours. This option may be leading to additional travelling time for the tow truck driver and longer clearance of the road accident scene than is anticipated would occur under Option 2.

Option 2, which only requires the tow truck to be usually based at the specified depot during normal business hours, should also preserve the integrity of the accident allocation scheme but will allow tow truck drivers to base the tow truck at their residence after-hours. This may reduce travelling time to an accident scene and lead to faster clearance of the scene.

## Vehicle Specification and Equipment

### Base Case

The Base Case is the Act in the absence of the regulations – that is, no tow truck specifications/equipment and maintenance prescribed in regulation beyond what is specified in the Act.

The Act does not specify the technical specifications and equipment for an accident tow truck. However, the *Vehicle Standard (Australian Design Rule 44/02 Specific Purpose Vehicle Requirements) 2006* made under the Commonwealth *Motor Vehicle Standards Act 1989* prescribes vehicle specifications and equipment for tow trucks. This legislation applies to Victoria and the other States and Territories.

This Australian Design Rule (ADR) applies to the design and construction of tow trucks manufactured on or after 1 July 1993.

The ADR 44/02 has a specific section on tow trucks and covers the technical specifications in respect to the tow truck’s load capacity, crane equipment, tyres, lamps and warning signs, and fire extinguisher.

Accordingly, accident tow truck operators with tow trucks purchased after 1 July 1993 should have tow trucks that meet the ADR 44/02. Most of the accident tow truck fleet is post 1 July 1993 other than some tow trucks operating in small townships in regional Victoria.

As all imported trucks need to be modified to be compliant with ADR 44/02, tow truck operators need to obtain a vehicle assessment signatory scheme (VASS) approval certificate as required under the Road Safety Act 1986 and the Road Safety (Vehicle) Regulations 2009 to ensure the tow truck is compliant with the Standards for Registration; in particular the structural integrity, operation of safety systems and handling characteristics. Where appropriate, new tow trucks will also need to be made compliant with National Heavy Vehicle Regulator Laws.

In terms of maintenance of the tow truck and associated equipment, most accident tow truck operators have a financial incentive to keep the tow truck and equipment safe and serviceable in order to avoid break-downs and to be able to respond to requests for accident as well as trade towing jobs. However, there may be some occasions, where due to financial distress, the accident towing operator may defer maintenance putting the reliability of the tow truck and public safety at risk.

In respect to tow truck drivers clearing debris and glass from the road accident scene, there is no provision in the Act or other legislation that requires tow truck drivers to clear debris and glass that is attributable to the road accident.

It is unlikely that tow truck drivers would clear debris and glass from the road accident scene given that it would not be considered core business to towing an accident damaged motor vehicle.

### Alternatives

Given that ADR 44/02 is the same as the prescribed tow truck specifications in the current regulations other than the requirement to have a broom and shovel, the Department considered the option of incorporating by reference ADR44/02 in the regulations and prescribing the requirement for a broom and shovel as an additional provision in the regulations. This option would remove the current duplication of ADR 44/02 and the need for the Department to amend the regulations when ADR 44/02 is amended from time to time. This would make sense if ADR 44/02 was a long document and was regularly amended. However, it is only one page in length and has not been amended since 2006. It should be noted the current duplication does not involve two separate approval processes. Hence, the duplication does not have any impact on accident towing operators.

In addition, the Department may in the future prescribe technical specifications for other equipment such as for GPS, electronic equipment & software and double tow equipment. The Department considers the inclusion of tow truck specifications and all equipment in the regulations reduces the need for tow truck operators to obtain tow truck specifications and equipment requirements from two separate sources: the Accident Towing Services regulations and the Australian Design Rules. For these reasons, the Department believes the incorporation of ADR 44/02 by reference in the regulations is not a feasible option.

Given that most of the tow truck specifications are contained in Commonwealth legislation (ADR 44/02), self-regulation is not feasible. Accordingly, the Department considered only one alternative to the base case: Option 1 Prescribed Tow Truck Technical Specifications and Equipment. This is the current regulation and is assessed below.

### Option 1: Prescribed Tow Truck Specifications and Equipment (Current Regulation)

In this option, the vehicle specifications and associated equipment are the same as the ADR 44/02 other than the equipment for the removal of debris and glass. Tow truck drivers are required to clear debris and glass at the road accident scene that is attributable to the damaged motor vehicle. A licence holder must ensure that the tow truck specified in that person's tow truck licence meets the specifications and is fitted or equipped with the equipment specified in the Box below. Other than the requirement for a broom and shovel, the other specifications are from ADR 44/02.

**Tow Truck Specifications and Equipment**

1 Load capacity

(i) at least 1.25 tonnes; or

(ii) in the case of a tow truck operated under a heavy tow truck licence, at least 4 tonnes

2 Tyres

Dual tyres on each side of each axle on the wheels of the rear axle group

3 Lifting equipment

(i) fitted with a crane, winch, hoist or other lifting device which has a safe working load of not less than1⋅25 tonnes; or

(ii) in the case of a tow truck operated under a heavy tow truck licence, fitted with a crane, winch, hoist or other lifting device which has a safe working load of not less than 4 tonnes

4 Equipment for removal of debris and glass

Equipped with a broom, shovel and a durable rubbish receptacle for the removal of debris and glass attributable to a road accident

Example

Examples of durable rubbish receptacles include plastic or metal buckets and hessian sacks

5 Fire extinguishing equipment

Equipped with either a fully maintained foam fire extinguisher of at least 4⋅5 litres capacity or a dry chemical powder fire extinguisher of at least 4⋅5 kilograms capacity

6 Warning lights

Fitted with a warning light or lights (other than a strobe light) that, when switched on—

(a) emit a rotating or flashing yellow coloured light; and

(b) show a light that is visible in normal daylight from any direction at a distance of not less than 200 metres

7 Adjustable lights

Fitted with adjustable lights mounted so that the person responsible for loading or unloading an accident damaged motor vehicle will have sufficient illumination to do so safely when it is dark

8 Lightboard

Equipped with a lightboard that:

(a) can be securely placed on the rear of the towed vehicle and connected electrically or wirelessly to the tow truck; and

(b) includes lights and reflector lamps that would, if attached to the rear of the tow truck, meet the standards for registration that apply to a tow truck (including tail lights, number plate lights, brake lights, reversing lights, direction indicator lights and rear reflectors); and

(c) displays a facsimile of the number plate of the tow truck

**Exception** Tow truck that does not tow vehicles behind it including a tow truck that lifts vehicles onto the tow truck for carriage

A licence holder must ensure that the aforementioned equipment fitted to a licensed tow truck is maintained in a safe and serviceable condition.

#### Costs

The vehicle specifications and associated equipment are the same as the ADR 44/02 other than the equipment for the removal of debris and glass.

Accordingly, the vehicle specifications and associated equipment would be the same as the base case. However, the requirement for an accident tow truck to have a broom, shovel and a durable rubbish receptacle for the removal of debris and glass is attributable to this option and would cost about $100 per tow truck and $45,600 for the 456 licensed accident tow trucks in Victoria.

In terms of maintenance, accident tow truck operators spend about $7,500[[24]](#footnote-24) per tow truck on repairs and maintenance, parts and replacement of tyres or $3,517,500 per annum for the 469 licensed tow trucks in Victoria. However, as stated in the base case, most of this cost is attributable to the normal running of the business. This would be different if this option prescribed periodic maintenance of the tow truck and associated equipment.

The cleaning of debris and glass from the road accident scene is attributable to the regulation and it is estimated that a tow truck driver would spend about 5 minutes to clear the road accident scene at a cost of $5.00 per road accident and $360,000 for the 72,000 road accidents.

#### Benefits

The vehicle specifications and associated equipment ensure appropriate tow trucks are used and are suitable for the towing of motor vehicles and heavy vehicles and enables easy identification by consumers and enforcement officers.

The requirement for an accident tow truck to have a broom, shovel and a durable rubbish receptacle for the removal of debris and glass is prescriptive. It would seem necessary to be prescriptive given that there have been several infringements issued in recent years for accident tow truck drivers not carrying this equipment on board the tow truck.

The requirement for tow truck drivers to clear debris and glass from the road accident scene imposes a small cost on a per road accident basis. Clearing debris and glass from the road accident scene reduces the risk of another road accident to other motorists once the road accident scene has been cleared.

### Net Outcome

Given that the prescribed vehicle specifications and equipment are almost identical to the ADR 44/02, the immaterial cost of the equipment for the removal of debris and glass and given the tow truck driver is usually the last to leave the road accident scene and there is no-one else from the emergency services that would be available to conduct the clearing of debris and glass, there are no other feasible alternatives to Option 1.

The costs of Option 1 are relatively low given that the maintenance costs are primarily a business as usual cost. From a road safety perspective, the benefits provide the Police and authorised officers with the capacity to enforce the clearing of debris and glass, thereby protecting other motorists after the road accident scene has been cleared.

## Allocation Response Time and Notification of Arrival and Departure

This section only applies to licensed accident towing services provided in the Melbourne Controlled Area.

### Base Case

The Base Case is the Act in the absence of the regulations – that is, no response time or notification prescribed in regulation beyond what is specified in the Act.

The Act is silent on the response time for the Melbourne Controlled Area. However, VicRoads has established allocation zones within the Melbourne Controlled area. The boundaries of the allocation zone in which a specified depot is located were determined on the basis that a tow truck driver leaving the specified depot would be able to arrive at the road accident scene within 30 minutes. The allocation zones are determined administratively by VicRoads and some changes to the boundaries have been made over the years to reflect changing traffic patterns.

Notwithstanding, the absence of any requirement for a tow truck driver to respond and arrive at an accident within a prescribed time period, it would be expected that tow truck drivers would still make an effort to respond to the accident allocation in an expeditious fashion for the following reasons:

* the tow truck driver is not allocated a job to a driver/owner or their damaged vehicle but to the road accident scene; and,
* the Police would not tolerate a tow truck driver responding within what they considered was an unreasonable time period.

In respect to the first point, the Accident Allocation Centre does not allocate a towing job to a specific driver/owner of an accident damaged motor vehicle. As a result, the tow truck driver does not know how many motor vehicles are involved at the road accident scene, and given that most tow truck operators operate or are affiliated with smash repairs, they have an incentive to arrive expeditiously in order to select the type of motor vehicle they wish to tow and hopefully repair. This occurs where the Accident Allocation Centre has allocated two or more towing jobs to separate tow truck operators. In some cases, one tow truck operator may be allocated two towing jobs to meet the tow truck operator’s licence entitlements.

Secondly, the tow truck driver does not know whether the Victoria Police will be in attendance at the road accident scene. The Victoria Police attend about 30 percent of road accidents that involve fatalities, serious injuries and significant traffic impacts. Tow truck drivers know that the Victoria Police have the authority to issue infringement notices for arriving later than the 30-minute response time. In addition, police officers are likely to give tow truck drivers a directive to speed up the clearance of a road accident scene if they believe the clearance process is being unnecessarily delayed. The Police have a responsibility to manage the road accident scene in a safe, timely and efficient manner to enable the roads to be re-opened and restore normal traffic conditions.

Many accident tow truck operators also use their tow trucks for trade towing activities and can’t afford a tardy response to the road accident scene as this could potentially result in the loss of a trade tow job.

Given the above, it is likely that under the base case tow truck drivers would meet the current 30-minute response time upon receiving an allocation. However, the absence of tow truck driver notification data as well as the inability of the RACV Accident Allocation Centre to know where the tow truck is physically located at the time at an allocation is accepted prevents the Department from knowing whether there is scope for improvement in the response time.

While the counterfactual suggests that tow truck drivers will respond immediately upon receiving an allocation, there may be some circumstances that allow tow truck drivers to not respond immediately but still meet the 30-minute response time. For example, if the tow truck operator receives two allocations for the same road accident and the road accident is located on a local road, there may be less incentive to respond immediately.

The Act does not specify any requirements for licence holders and/or their tow truck drivers to notify the Accident Allocation Centre administering the Melbourne Controlled area of their arrival at, and departure from, a road accident scene.

In the absence of regulation, tow truck drivers would need to communicate with the Accident Allocation Centre at least when they had completed a towing job otherwise the Accident Allocation Centre would not know if they were available to undertake another towing job. The Accident Allocation Centre would more than likely make it a condition that the rostered tow truck driver provided the details of the accident damaged motor vehicle that had been towed in order to rejoin the allocation queue and be allocated another accident towing job.

The Allocation Accident Centre could also impose a condition on rostered tow truck drivers that have been allocated a towing job to notify it upon arrival at the road accident scene in order to be eligible for another accident towing job. However, the Accident Allocation Centre does not know the location of the tow truck and is reliant on the tow truck driver or their depot manager/dispatch officer advising that the tow truck has actually arrived at the road accident scene.

In both instances, notification upon arrival at, and departure from, the road accident scene, the Accident Allocation Centre has to take the advice from the tow truck driver or depot manager/dispatch officer on good faith that the times actually reflect the physical arrival and departure of the licensed tow truck from the road accident scene.

In the absence of regulation, the actual system for the allocation of accident towing jobs could work efficiently. However, it could not ensure optimal and efficient arrival of a tow truck at, and the clearance of, the road accident scene.

### Alternatives

Two alternatives to the base case have been considered:

* Option 1: Telephone notification (Current Regulation)
* Option 2: GPS notification

Given that the boundaries of the allocation zone were determined on the basis that a tow truck driver could respond and arrive at a road accident within 30 minutes, there is no feasible alternative to the maximum time in which a tow truck driver should arrive at the road accident scene. A change in the response time would require a change to the boundaries of the allocation zones and this is outside the scope of the regulations. However, real-time measurement of the response time is possible under Option 2 and is assessed accordingly.

### Option 1: Telephone notification

This option would require the tow truck driver to notify the accident allocation centre upon arrival at, and departure from, the road accident scene. This option relies on telephone communication (including the use of mobile phones by tow truck drivers).

The driver of a rostered tow truck must ensure, as soon as practicable, that the allocation body is notified when the tow truck arrives at the road accident scene.

The driver of a rostered tow truck must also ensure that, as soon as practicable, the allocation body is notified when the tow truck departs from the road accident scene and is given the details of the accident damaged motor vehicle being towed.

#### Costs

About 52,000 accident towing jobs are undertaken in the Melbourne Controlled area per year and would require tow truck drivers to make 104,000 mobile phone calls (one call upon arrival at, and another call upon departure from, the road accident scene). This would cost tow truck drivers about $5 per accident towing job (based on 3 minutes to make both calls) and $260,000 in total for the 52,000 accident towing jobs per annum due to the time taken and the cost of using a mobile phone.

In regards to arrival notifications, the Department has estimated that the tow truck driver would spend about 1 minute to make the call (including waiting for the call to be answered) at a cost of $1 per accident tow and $52,000 for the total number of accident tows. The accident allocation centre would also spend about one minute to take the call and record that the tow truck driver had arrived at the road accident scene at a cost of $4.81 per accident tow and $250,120 for the total number of accident tows.

In regards to departure notifications, the Department has estimated that the tow truck driver would spend about 2 minutes to make the call (including waiting for the call to be answered) and to provide the details of the accident damaged motor vehicle such as the registration number etc at a cost of $2 per accident tow and $104,000 for the total number of accident tows. The accident allocation centre would spend about one minute to take the call and record that the tow truck driver had departed the road accident scene and record the details of the accident damaged motor vehicle at a cost of $4.81 per accident tow and $250,120 for the total number of accident tows.

As can be seen in Table 14, requiring tow truck drivers providing notification upon arrival at, and departure from, a road accident scene is estimated to cost $8 per accident tow and $416,000 in labour and communication costs. Requiring the accident allocation centre to receive and record the notifications is estimated to cost $9.62 per accident tow and $500,240. This results in a total cost of $17.62 per accident tow and $916,240 for the total number of accident tows.

Table 14: Telephone Notification Costs

|  |  |  |
| --- | --- | --- |
|  | Cost per tow | Annual Cost \* |
| Tow Truck Driver | $8 | $416,000 |
| Accident Allocation Centre | $9.62 | $500,240 |
| Total Costs | $17.62 | $916,240 |

\* Note: Annual cost is based on 52,000 accident tows

#### Benefits

Similar to the base case, telephone notification provides operational efficiency of the allocation system. Tow truck drivers need to close out a job by reporting to the Accident Allocation Centre. However, most notifications are not done at the time of departure from the road accident scene but much later when the job has been completed. This meets the operational needs of the Accident Allocation Centre but it does not assist VicRoads in knowing whether the tow truck driver is meeting the prescribed response time of arriving within 30 minutes at the road accident scene and the true time it takes to clear a road accident.

The details of the accident damaged motor vehicle recorded by the Accident Allocation Centre such as the registration number ensures traceability and integrity in the accident allocation system so that VicRoads can advise the Victoria Police, if required in the case that the motor vehicle went missing, of the identity of the tow truck driver responsible for the towing of the accident damaged motor vehicle.

In terms of measuring and ensuring the tow truck driver complies with the response time to a road accident scene, the telephone notification system has no benefits relative to the base case.

### Option 2: GPS notification

This option would require licensed accident tow trucks to have a GPS tracking device installed to enable the Accident Allocation Centre to identify the rostered tow truck driver’s exact location upon acceptance of an accident towing job. The GPS tracking device would automatically transmit the acceptance, arrival and departure times so that VicRoads could collect data on the arrival and departure times for each accident tow job allocation. The details of the accident damaged motor vehicle could also be electronically transmitted to the Accident Allocation Centre.

To implement this option and to ensure integrity in the actual position of the rostered tow truck at the time of allocation, the accident allocation centre would need reassurance before authorising the allocation. It would seem necessary for the tow truck driver to activate the GPS tracking device so that the tow truck signal appeared on the allocation officer’s computer dispatch map. Once the location of the tow truck was confirmed, the allocation officer would authorise the allocation and the clock would commence for the purposes of calculating the response time. The allocation officer would have, unlike the current system, the capability to determine whether the tow truck is actually within 30 minutes of the road accident scene and the authority to withdraw the allocation offer on the grounds that the tow truck would not meet the 30-minute response time.

#### Costs

Tow Truck Operators

Tow truck operators would need to purchase and install GPS tracking devices. The cost of GPS can range from about $500 to several thousand dollars. Some break-down towing operators advised that it cost about $8,000 to fit out each tow truck with GPS, computer display panels and front and rear cameras. While accident tow trucks would not require such an elaborate outfit, this cost has been included to provide a worst-case cost scenario.

The gross cost has been converted to the cost per tow to accurately reflect the unit cost by dividing the gross cost by the average number of accident tow allocations per tow truck.

As can be seen in Table 15, the minimal GPS cost option would involve a GPS tracking device valued at $500 and this would impose a cost of 2.04 per tow or $0.68 per tow (depreciated over three years) or $35,360 per annum. A top range GPS system valued at $8,000 would cost $32.65 per tow or $10.88 per tow (depreciated over three years) or $565,760 per annum.[[25]](#footnote-25)

Table 15: GPS Notification Costs

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| No. Allocations | No. Tow Trucks | Average No. Allocations per Tow Truck | Minimal GPS Cost per tow | Total annual cost for 52,000 tows | Top Range GPS Cost per tow | Total annual cost for 52,000 tows |
| 52,000 | 212 | 245 | $2.04 nominal  $0.68 depreciated | $35,360 | $32.65 nominal  $10.88 depreciated | $565,760 |

Tow truck operators are also likely to have ongoing maintenance and replacement/re-installation costs (as result of a change of tow truck etc.) which have not been quantified as this would vary from device to device and tow truck to tow truck.

VicRoads & the Accident Allocation Centre

VicRoads would need to develop a technical specification for GPS (taking into account that some accident towing operators already have GPS installed on their tow trucks) to ensure the type of GPS used was reliable in all circumstances. GPS can be unreliable, for example, some GPS units do not pick up signals in tunnels. VicRoads would also need to develop business rules to ensure the use of GPS by the Accident Allocation Centre did not infringe upon the privacy of the tow truck driver and the accident tow truck operator’s non-regulated towing business.

The RACV operates the accident allocation centre and its roadside assistance (RA) vehicles are equipped with GPS so its call centre can locate the closest RA vehicle that is available to provide assistance to its member’s motor vehicle. The Accident Allocation Centre operates out of the RACV call centre and the GPS functionality could be applied to the accident allocation software.

Further ongoing costs are likely to be incurred due to additional functions and responsibilities that are not included in the current Accident Allocation Centre contract.

As the contract for the Accident Allocation Centre is due to expire in 2020, any assessment of the establishment and ongoing costs may not be accurate beyond the current contract. Therefore, the Department has not been able to quantify these costs at this point. The Department will quantify this cost as part of its forward work program as outlined in the Evaluation Strategy (section 13).

#### Benefits

Quicker Clearance of Road Accident Scene

The installation and use of GPS on accident tow trucks would enable the accident allocation centre to know the time the tow truck driver arrived at, and departed from, the road accident scene without the need for either party to communicate by telephone.

Using the traffic congestion costs attributable to road accidents, the avoidable traffic congestion costs associated with the tow truck driver notifying the accident allocation centre of its arrival and departure from the road accident scene has been calculated in Table 16. As can be seen, the total avoidable cost is $38.3 million if the 3 minutes currently expended by tow truck drivers as described in Option 1 were not undertaken.

Table 16: Avoidable Traffic Congestion Costs

|  |  |  |
| --- | --- | --- |
|  | Costs | Formula |
| Congestion cost attributable to road accidents | $1.150 billion | $4.6 billion\*25% |
| Cost per accident | $22,115 per accident | $1.150 billion/52,000 |
| Cost per minute | $246 per minute | $22,115/90 minutes (average clearance time) |
| Cost of paper-based authorisation | $738 per accident | $246\*3 minutes |
| Total avoidable congestion cost | $38,376,000 | 52,000 accidents\*$738 per accident |

Tow Truck Driver compliance and performance

VicRoads would be able to analyse the GPS tow truck data to determine whether the response time was reasonable given the distance the tow truck had to travel upon acceptance of the allocation job to the road accident scene. VicRoads would be able to analyse and compare the performance of tow truck operators and their drivers with neighbouring allocation zones as well as identify obvious tardiness. For example, taking 30 minutes to travel 2 kms would strongly suggest the tow truck driver is either not responding and traveling to the road accident straight away or stopping along the way knowing that they can still make the job within the required 30 minutes.

VicRoads would also be able to compare clearance times at the road accident scene to ascertain whether the presence of police giving directions leads to quicker clearances. In most cases, non-police attended road accident scenes should be cleared quicker given that police normally attend serious accidents involving ambulance/fire brigade/SES who invariably have priority at the road accident scene resulting in the tow truck driver having to wait to clear the scene.

Depending on the outcomes of the GPS data analysis, the Department could use the results to adjust the response times across the Melbourne Controlled Area. For example, it may be possible to have lower response times for inner suburbs whereas certain remote areas in the eastern part of the Melbourne Controlled area may in fact require a slightly longer time than 30 minutes.

These benefits are far superior to option 1 in which the current reliance on telephone data is unreliable and based on the good faith of tow truck drivers.

Publication of Response & Clearance Times

With the GPS data providing the arrival and departure times of a tow truck, VicRoads would be able to calculate the average response and clearance times as well as the percentage of allocations that met the 30-minute response target. VicRoads could publish these results on its website similar to Ambulance Victoria and the Melbourne Fire Brigade.

Benchmarking Current Allocation with Proximity-Based Allocation

The current model for the allocation of accident towing is based on allocating a job to the depot closest to the road accident scene. A proximity-based allocation approach would entail allocating the towing job to the closest tow truck to the road accident scene. For the purposes of assessing the proximity-based allocation scheme, the GPS data would enable VicRoads to collect data on the distance from the location of the tow truck when the job was accepted to the road accident scene and compare that distance with the distance from the tow truck depot to the road accident scene. For example, the tow truck might be 5 kms from the road accident scene whereas the tow truck’s depot might be 9 kms from the road accident scene. In this example, the tow truck-based allocation is nearer to the road accident than the depot. Intuitively, one would expect the spread of tow trucks to be, more than often, closer to road accidents than if all tow trucks were garaged at the depot.

Over an extended period, VicRoads would be able to observe patterns of locational behaviour for each tow truck in each allocation zone at different times of the day and determine whether the ESC’s proposed tow truck-based proximity allocation scheme would be superior to the current allocation scheme.

### Comparative assessment of the options

The Department estimates that Option 1 costs $916,000 per annum to use the current telephone notification requirements. Under Option 2, the Department has estimated that it would cost from $35,360 to $565,760 per annum However, the Department has not been able to quantify the establishment costs at this point which could be substantial.

Option 1 benefits are limited to ensuring the operational efficiency of the accident allocation centre.

Option 2 provides this benefit as well but in addition up to $38 million in reduced traffic congestion costs. Other benefits include providing VicRoads with the capability to measure and benchmark tow truck driver performance in relation to response and clearance times that would enable VicRoads to make adjustments to allocation zone boundaries where an accident towing operator is having legitimate problems in complying with the 30-minute response due to persistent traffic congestion in the area. Similar to Ambulance Victoria and the Melbourne Fire Brigade, VicRoads would be able to publish the average response and clearance times for road accidents to demonstrate the level of compliance and reliability of the accident towing services in the Melbourne Controlled area.

Based on preliminary estimates of the annual operating costs, Option 2, compared to Option 1, offers potentially substantial benefits of reduced traffic congestion costs. However, establishment and ongoing costs to the Accident Allocation Centre (e.g IT systems, process changes and possibly greater levels of security due to the increase in privacy implications), as well ongoing maintenance costs for tow truck operators have not been quantified. There could be an impact on annual tow truck licence fees if Accident Allocation Centre costs are to be recovered, which in turn could impact the base towing fee. The base towing fee could also be impacted by ongoing maintenance costs incurred by tow truck operators.

Given the broader implications of introducing GPS notifications, which are potentially significant, The Department will undertake further investigation into the costs, privacy issues as well as any other practical issue that might arise before recommending the use of GPS in accident tow trucks.

In view of this, Option 1 is the preferred option. However, the Department seeks feedback on the nature and extent of costs and practical issues under option 2.

## Double Tows

### Base Case

The Base Case is the Act in the absence of the regulations – that is, double towing is not prohibited.  The Act does not deal with it and does not prevent it or restrict it.  In the absence of the regulations, tow truck operators and drivers could engage in double towing.

However, the Department does not support double towing at this dime due to the significant impracticalities to manage such a scheme, as well as the unknown impacts on drivers and owners of accident damaged vehicles.

For example, the Accident Allocation Centre would not have enough information, ex ante, on the particulars of the accident to make a judgment on whether it was appropriate to enable an operator to undertake a double tow. This presents a significant challenge to the development business rules for the Accident Allocation Centre about when it would be inappropriate for a tow truck to tow more than one vehicle (for example some vehicles have to be winched onto the back of the tow truck and not towed behind the tow truck as this can cause damage to the rear axle eg. Four-wheel drive vehicles).

Additionally, there is the potential for a negative impact on drivers and owners of accident damaged vehicles if a double tow were permitted in circumstances, whereby they may be subject to higher towing costs than would otherwise be applicable under a single tow as a result of non-direct trips to their choice of location (e.g. the accident damaged vehicles are to be towed in opposite directions).

VicRoads would also need to investigate whether critical roads (eg. Kings Way) at peak hour would be better served and cleared quicker with two tow trucks than a single tow truck. These and other practical issues would need to be carefully considered to ensure that moving towards a double tow system was efficient and offered sufficient volume of road accidents to warrant a change.

The Accident Allocation Centre would need to modify its allocation software to enable double tows to be allocated to a single rostered tow truck driver without affecting licence-holder’s allocation entitlements. VicRoads has not quantified the aforementioned costs or investigated the practical issues with undertaking double tows. These costs will be quantified as part of the Department’s future work program.

### Alternatives

As the base case would permit double towing in the Melbourne Controlled Area, the Department considered there was only one feasible alternative to the base case, namely the prohibition of double tows and this is reflected in Option 1: Single Tows (Current regulation).

### Option 1: Single Tows (Current Regulation)

This option would continue with the current requirements in regulation 32(8) that states, “The driver of a rostered tow truck must ensure that the tow truck is not used to tow more than one vehicle from the road accident scene at the same time (regardless of whether the licence holder has been allocated more than one allocation by the allocation body)”. This effectively prohibits double tows in any circumstances under option 1.

Costs and benefits of this option are compared to the base case.

#### Costs

This option would prevent accident towing operators from achieving productivity improvements for about 54% of road accidents that involve collisions with multiple vehicles; an estimated 28,080 accident damaged motor vehicles. This would prevent tow truck drivers undertaking up to 14,040 double tows. The loss of those productivity improvements would result in a base towing fee higher than would otherwise be the case if they were permitted to undertake double tows for owners of accident damaged motor vehicles or their insurers. This is due to the fact that twice as many tow trucks and tow truck drivers are required to tow accident damaged motor vehicles at road accidents involving multiple vehicles.

As can be seen in Table 18, accident towing operators would need to have 212 tow trucks compared with 99 tow trucks under the base case (105 more tow trucks). A new tow truck costs about $200,000. Accordingly, accident towing operators would incur about $21 million or $2,100,000 if depreciated over ten years or $4,200,000 if depreciated over five years for the additional 105 tow trucks.[[26]](#footnote-26)

Table 18: Current and Base Case Tow Truck Productivity

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | | Current Productivity (Single Tows) Option 1 | | | Base Case Productivity (Double Tows | | | |
| No. Depots | Tow Truck Licences | No. Tow Trucks | Range of Tows per Tow Truck per month | Average Tows per month per Tow Truck | Potential Reduction in number of Tow Trucks | Residual Number of Tow Trucks | Range of Tows per Tow Truck | Average Tows per month per Tow Truck |
| 16 | 2 to 5 | 44 | 8 to 46 | 16 | 28 | 16 | 17 to 68 | 43 |
| 15 | 6 to 10 | 65 | 12 to 37 | 20 | 34 | 27 | 26 to 75 | 45 |
| 11 | 11 to 18 | 69 | 18 to 45 | 25 | 29 | 36 | 31 to 68 | 45 |
| 3 | 29 to 39 | 34 | 26 to 41 | 34 | 14 | 20 | 47 to 68 | 53 |
| **45** |  | **212** |  | **22.5** | **105** | **99** |  | **46.5** |

An estimated additional 315 accident tow truck drivers would be required under this option, which is an additional cost to operators.[[27]](#footnote-27) However, the actual number of hours worked provides a better indicator of the number of effective full-time jobs. The 105 tow trucks would have performed an estimated 42,528 hours of accident towing and this represents 25 additional effective full-time jobs required under this option relative to the base case.[[28]](#footnote-28)

As can be seen from Table 19 below, the average annual number of tows per tow truck would be lower under this option 245 per tow truck compared with 526 tows per tow truck under the base case. Similarly, the average daily rate of tows would be lower under this option 0.67 per tow truck compared to 1.4 tows per tow truck under the base case.

Table 19: Average Daily and Annual Tow Truck Utilisation Rates

|  |  |  |  |
| --- | --- | --- | --- |
|  | No. Tow Trucks | Average Annual No. Tows Per Tow Truck | Average No. Tows Per Day Per Tow Truck |
| Option 1 | 212 | 245 | 0.67 |
| Base Case | 99 | 526 | 1.4 |

Note: The calculation for the average annual number of tows per tow truck is based on 52,000 accident allocations divided by the number of tow trucks. For option 1, the average is based on the following single and double tow calculations: 23,920 single tows divided by 99 tow trucks equals 242 tows per tow truck and 14,040 double tows divided by 99 tow trucks and multiplied by two equals 284. As a result, the 242 single tows and the 284 double tows equal 526 tows per tow truck per annum.

Small accident towing operators with 2 to 5 tow truck licences would incur the greatest productivity loss. These operators currently receive under this option an average of 16 tows per tow truck per month. This is lower than the average of 43 tows per tow truck per month that these operators could achieve under the base case (refer to Table 18).

The additional 14,040 accident tows undertaken in this option would cost owners or their insurers $287.90 per average tow. This equates to a total towing cost of $4,042,116 for the additional 14,040 estimated tows that could potentially be involved in a double tow. This is based on the average cost of $245.90 per accident tow and $1,534,416 for 6,240 accident tows during business hours and an average cost of $321.50 per accident tow and $2,507,700 for 7,800 accident tows during after-hours. These costs are based on the average towing distance of 15 km in the Melbourne Controlled area.[[29]](#footnote-29)

Table 20: Estimated cost saving of double tows

|  |  |  |  |
| --- | --- | --- | --- |
| Accident Timeframe | No Additional Tows | Average Towing Fee[[30]](#footnote-30) | Total Towing Fee |
| Business hours | 6,240 | $245.90 | $1,534,416 |
| After-hours | 7,800 | $321.50 | $2,507,700 |
| Total | 14,040 | $287.90 | $4,042,116 |

These additional tows would use more fuel and produce 228.58 CO2-e greenhouse gas emissions as shown in Table 21) compared with the base case (Double Tows).

Table 21: Estimated reduction in greenhouse gas emissions

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Accident  Timeframe | Carbon-dioxide  CO2-e | Methane  CO2-e | Nitrous-Oxide  CO2-e | Total  CO2-e |
| Business hours- 6,240 | 99.83 | 0.14 | 0.71 | 100.68 |
| After-Hours – 7,800 | 126.81 | 0.18 | 0.91 | 127.90 |
| Total: 14,040 tows | 226.64 | 0.32 | 1.62 | 228.58 |

#### Benefits

This option provides a simple allocation system whereby the Accident Allocation Centre doesn’t need to consider and take time to decide whether a road accident involving multiple vehicles is appropriate for a single tow truck to tow two damaged motor vehicles. For example, the accident allocation centre currently does not request from the caller information about the type of damaged vehicle. If one or both of the damaged vehicles are a four-wheel drive, these vehicles need to be winched onto the back of a flatbed tow truck and not towed behind the tow truck. Accordingly, a double tow is not practical in these circumstances. This option would be cheaper for the Accident Allocation Centre to administer than under the base case.

This option would also help to speed up clearance times particularly on busy arterial roads at peak hour periods. Subject to two tow trucks arriving at the same time at a road accident scene, two tow truck drivers would clear two damaged vehicles quicker than if only one tow truck driver had to clear both vehicles.

The additional tow trucks required under this option would also benefit drivers employed by tow truck operators through greater employment.

This option would also ensure a driver/owner of an accident damaged vehicle is not impacted by another driver/owner’s choice of where their vehicle is to be towed and ensures a simple pricing system compared with the base case in which a pricing system would need to be developed to deal with the scenario where two accident damaged vehicles are towed to different locations that are not in the same direction. In this case, after the first vehicle has been dropped off at a particular location, the second vehicle would be charged a per km fee that could be greater than if it was charged from the road accident scene to the desired destination.

### Net Outcome

Subject to the caveats provided in the analysis, the base case may deliver some productivity benefits with potential cost savings of up to $4 million per annum in accident towing operational costs and 228.58 CO2-e less greenhouse gas emissions. However, for the reasons outlined earlier in this section, and that further investigation into the establishment costs and practical issues that might arise to determine whether permitting double tows provides enough scale to warrant the cost to establish and administer such a system would need to be undertaken, the Department does not support any changes to the current arrangements which would enable double towing at this time. Therefore, Option 1 is the preferred option.

In view of the significant potential cost savings that could arise from double tows, the Department will undertake a detailed investigation as part of its forward work program as outlined in the evaluation strategy (refer to section 13).

## Authorities to Tow

### Base Case

The Base Case is the Act in the absence of the regulations – that is, no information prescribed in regulation beyond what is specified in the Act.

Section 142(4) of the Act requires an authorisation must be completed to provide the following information—

*(a) the name of, and tow truck driver accreditation number allocated under section 116 to, the driver of the tow truck; and*

*(b) the address of the depot from which the tow truck operates; and*

*(c) the name and address of the holder of the tow truck licence under which the tow truck operates; and*

*(d) the name and address of the place to which the motor vehicle is to be removed; and*

*(e) any other information required by regulations made under this Act.*

Section 143 of the Act sets out additional information required for the authority to tow for towing in a controlled area:

*“In addition to the information set out in section 142(4), a tow truck driver who is obtaining authorisation to tow an accident damaged motor vehicle from— (a) a road accident scene; or (b) a safe and convenient place— located in a controlled area under a job number given by an allocation body must record the job number assigned to the road accident scene or the safe and convenient place on that authorization”.*

Despite the absence of other information that is normally found in a contract, most tow truck operators and their drivers would include the following information that is not specified in the Act; the name and address of the owner/driver and the make of the vehicle and the registration number for the purposes of invoicing and motor vehicle storage stock control. Most would also provide the address where the vehicle is to be towed and pricing information although some operators/drivers in the Melbourne Controlled area may choose not to include it on the grounds that towing fees are regulated. While most operators/drivers would include salvaging fees on the authority to tow which are not regulated anywhere in Victoria but must be reasonable, they may not provide sufficient detail to enable the owner/driver or their insurer to verify whether salvage was actually required, or the costs involved (for example if more than one tow truck was required). Tow truck drivers would collect this information anyway to ensure the authority to tow was enforceable and is considered a business-as-usual cost.

### Alternatives

Given that the Act specifies some of the key requirements and the authority to tow form contains the basic details one would expect in such an agreement, there are no other feasible alternatives to Option 1. The Base case is not an option as it provides minimal information; primarily in relation to the tow truck driver and details about the tow truck. Other states such as New South Wales, Queensland, South Australia and Tasmania have similar content in their authority to tow forms.

### Option 1: Current Regulation

In addition to the above requirements in the Act (Base Case), proposed regulation 42 and Schedule 1 prescribe the following matters to be contained in the authority to tow form as shown in Box 1. Salvaging involves a tow truck retrieving a damaged motor vehicle that has departed the road with winches and shackles. The salvaging details cover a range of simple to complex salvages. A simple salvage would involve retrieving a damaged vehicle that is overturned on the side of the road whereas as a complex salvage would involve calling additional support (heavy tow truck) to winch a damaged vehicle that has plunged down a ravine. This information is used to determine and justify the costs involved.

Tow trucks details:

* Depot number and telephone number

Vehicle to be towed details:

* Name and Address of Vehicle Owner;
* Make of the Vehicle and Registration number;
* Address where vehicle is to be towed;

Salvaging Details:

* Did the vehicle require salvaging (yes or no);
* The location of the salvaged vehicle (multiple choice answers)
* The position of the salvaged vehicle (multiple choice answers)
* Where the vehicle was embedded in an object, what was the object (multiple choice answers)
* The equipment used to salvage the vehicle; and
* Time taken to salvage the vehicle.

Fee Information:

* Itemised towing, storage, salvage fees and total fees incl GST

Authorisations:

* Authority to tow form completed – date and time and tow truck driver’s signature;
* Driver/owner to confirm receipt of VicRoads information pamphlet with signature;
* Person authorising the tow: name and address, phone number, signature and date of either the owner/agent or driver of the vehicle or the police officer/authorised officer; and,
* Person authorising storage: name and address, signature and date.

#### Costs

Most of the information prescribed in the regulation requires the tow truck driver to obtain this information from the owner/driver/agent of the vehicle or the police officer/authorised officer. A tow truck driver would take an estimated 5 minutes on average to hand-write the authority to tow form, to check the accuracy of the details with the person providing the authorisation and to answer any questions related to the authority to tow. The five minutes takes into account that many owners/drivers may take longer to provide this information due to the traumatic circumstances and the chaos that can prevail at an accident scene.

The five minutes it takes to complete the authority to tow imposes a cost on the tow truck driver. If this additional information was not required, the tow truck driver could proceed to hook-up the owner/driver’s damaged motor vehicle and clear the road accident scene five minutes earlier.

This would cost the tow truck driver an estimated $5 per authority to tow and $360,000 for the estimated 72,000 accident tows undertaken in Victoria**.[[31]](#footnote-31)**

The five minutes to complete the authority also imposes an opportunity cost on the driver/owner of the damaged vehicle and is estimated at $4.00[[32]](#footnote-32) per authority to tow and $288,000 for the estimated 72,000 accident tows undertaken in Victoria.

As can be seen in Table 22, the combined cost of the tow truck driver and the driver/owner is $9.00 per authority to tow and $648,000 for the estimated 72,000 accident tows.

Table 22: Authority to Tow Costs

|  |  |  |
| --- | --- | --- |
|  | Cost per tow | Annual Cost \* |
| Tow truck driver | $5.00 | $360,000 |
| Driver/Owner | $4.00 | $288,000 |
| Total Cost | $9.00 | $648,000 |

\* Note: Annual cost is based on an estimated 72,000 accident tows across Victoria.

The additional five minutes taken to clear the road accident scene imposes external costs on motorists waiting for the road to open and return to normal traffic flow.

Using the $1.150 billion traffic congestion costs attributable to road accidents, the traffic congestion costs associated with the tow truck driver providing the prescribed content in the authority to tow has been calculated in Table 23. As can be seen, the traffic congestion cost is $63.96 million for the 5 minutes involved in completing the prescribed content.

Table 23: Traffic Congestion Costs

|  |  |  |
| --- | --- | --- |
|  | Costs | Formula |
| Congestion cost attributable to road accidents | $1.150 billion | $4.6 billion\*25% |
| Cost per accident | $22,115 per accident | $1.150 billion/52,000 |
| Cost per minute | $246 per minute | $22,115/90 minutes (average clearance time) |
| Cost of paper-based authorisation | $1,230 per accident | $246\*5 minutes |
| Total congestion cost | $63,960,000 | 52,000 accidents\*$1,230 |

There would also be traffic congestion costs attributable to road accidents in regional and rural Victoria, particularly on major arterial roads. However, there is no traffic congestion data for these roads located outside the metropolitan area.

#### Benefits

The additional basic information is required to identify the owner/driver, the vehicle, where the vehicle is to be towed, towing fee information, salvaging information (if applicable) and the authorisations for the nominated accident towing services.

The additional information provides consumer protection to the owner/driver of the vehicle. The owner/driver knows where the vehicle is to be towed (particularly if the vehicle is being towed to the tow truck driver’s depot, or the premises of the insurer’s smash repairer or independent smash repairer) and certainty about the towing and associated fees to be charged. The identity of the owner/driver and the vehicle provides evidence and traceability of the damaged vehicle to enable the owner/agent (insurance company) to locate the damaged vehicle, and in some cases, for police/authorised officers to undertake investigations.

### Net Outcome

As shown in the base case, most accident towing operators would require their tow truck drivers to collect the proposed prescribed information in an authority to tow form. The authority to tow form is effectively a contract between the driver/owner of the accident damaged motor vehicle and the accident towing operator and it provides protections for both parties if a disagreement occurs later.

Given this, the estimated costs of preparing the authority to tow form should be seen as a business as usual cost. The information prescribed in the authority to tow form has been effective in ensuring a low number of disputes between driver/owners and accident towing operators. On this basis, the Department considers the remaking of the current regulation confers a net benefit on the community.

## Consumer Information

**Base Case**

The Base Case is the Act in the absence of the regulations – that is, no provision of consumer information prescribed in regulation beyond what is specified in the Act.

The Act prescribes no provision of consumer information at the road accident scene. In the absence of any legislative or regulatory provisions, owners/drivers involved in a road accident scene are able to access information about their rights in relation to accident towing from the VicRoads and Consumer Affairs Victoria (CAV) websites. However, it is unlikely that most motorists involved in a road accident would naturally think of VicRoads or CAV in terms of their consumer rights. Notwithstanding this, a motorist searching on their mobile phone would find a link to VicRoads “I need a tow truck” on Google if they type the words “tow truck”. In this way, they would be able to find out about their consumer rights in respect to accident towing.

However, many insured motorists involved in a road accident are likely to Google the name of their insurer to find their phone number and call the insurer, who in turn, will call the accident allocation centre and request a tow truck on their behalf. or provide the contact details of the accident allocation centre. This would obviate the need for most driver/owners involved in a road accident to Google “I need a tow truck”, and as a result, would not find the VicRoads website.

It is not clear whether insurer’s call centres have staff with the appropriate knowledge regarding consumer rights and/or disseminate this information to the owner/driver as matter of course or upon request.

**Alternatives**

There are several alternatives to the base case:

* Option 1: VicRoads Information Pamphlet (Current regulation)
* Option 2: Additional Consumer Information
* Option3: SMS Text Message

### Option 1: VicRoads Information Pamphlet (Current & Preferred Approach)

This option would require the tow truck driver to provide the driver/owner of the accident damaged motor vehicle with a VicRoads Information Pamphlet prior to completing the Authority to Tow and asking the driver/owner to sign the Authority to Tow. The driver/owner would also need to sign the authority to tow form that would declare they had received a copy of the Information Pamphlet.

VicRoads has published an Information Pamphlet titled ‘Towing from an Accident Scene: Your Rights’ Factsheet. The Factsheet contains information about consumers’ rights and responsibilities regarding the accident tow truck, signing the authority to tow, salvage, seeking advice, choose where your vehicle is towed, touting for repairs is prohibited, storage of the vehicle, rights at the depot, complaints and contact details for further information. The Factsheet is only provided in English and is incorporated by reference in the regulations.

#### Costs

Accident towing operators provide a photocopy of the Factsheet to the driver/owner of the accident damaged motor vehicle at an estimated cost of about .10 cents per Factsheet and $7,200 for the estimated 72,000 accident tows per annum.

The VicRoads ‘Towing from an Accident Scene: Your Rights’ Factsheet takes the average person about five minutes to read. This adds to the tow truck driver’s administration of the Authority to Tow and adds an additional four minutes to the clearance of the road accident scene. However, in the absence of the Factsheet, some owner/drivers may ask questions that would be found in the Factsheet. For serious road accidents where the Police are in attendance, the Police need to stay at the road accident scene for an additional 5 minutes. The delayed clearance of the road accident scene has an impact on other motorists waiting for normal traffic conditions to be restored.

The five minutes it takes to read the Factsheet imposes an opportunity cost on the tow truck driver. If this was not required the tow truck driver could proceed to hook-up the owner/driver’s damaged motor vehicle and clear the road accident scene five minutes earlier.

This would cost the tow truck driver an estimated $4 per tow and $288,000 for the estimated 72,000 accident tows undertaken in Victoria**.[[33]](#footnote-33)** Together with the photocopy costs, the total cost is $4.10 per tow and $295,200.

The five minutes to read the Factsheet also imposes an opportunity cost on the driver/owner of the damaged vehicle and is estimated at $3.20[[34]](#footnote-34) per Factsheet and $230,400 for the estimated 72,000 accident tows undertaken in Victoria.

As can be seen in Table 24, the combined cost of the tow truck driver and the driver/owner is $7.30 per tow and $525,600 for the estimated 72,000 accident tows.

As VicRoads does not know what proportion of drivers/owners of accident damaged vehicles would read the additional information, the costs have been calculated on the basis that they would be read by all drivers and owners involved in an accident to indicate the costs if this option was to be fully effective and used by the driver/owner.

Table 24: Factsheet Costs

|  |  |  |
| --- | --- | --- |
|  | Cost per tow | Annual Cost \* |
| Tow truck driver | $4.10 | $295,200 |
| Driver/Owner | $3.20 | $230,400 |
| Total Cost | $7.30 | $525,600 |

\* Note: Annual cost is based on an estimated 72,000 accident tows across Victoria.

The time taken by the driver/owner to read the Factsheet would delay the clearance of the road accident scene by 5 minutes and represent a traffic congestion cost of $51.168 million.[[35]](#footnote-35)

#### Benefits

VicRoads has not undertaken any studies into the effectiveness of its Factsheet. Key stakeholders (VACC and insurers) advised the Essential Services Commission during its review that while tow truck drivers provide a hard copy of the Factsheet prior to completing the Authority to Tow form, most drivers/owners do not read the Factsheet prior to signing the Authority to Tow.

Notwithstanding this, the Factsheet provides drivers/owners the opportunity to read their consumer rights later and/or seek the assistance of someone else to translate it if they speak a language other than English and to take appropriate action if they believe that the tow truck driver has not complied with their consumer rights.

### Option 2: Additional Consumer Information

This option would require a simple page of critical consumer information to be included in the Authority to Tow form in addition to information provided under Option 1. This option is based on the Essential Services Commission’s (ESC) recommendation, *“VicRoads should amend the authority to tow docket to include a (simple) page of important information that must be signed by the driver or vehicle owner before an accident tow is performed”,* and that, “*VicRoads should also amend its ‘Towing from an accident scene: Your rights’ factsheet to better complement the important information page on the authority to tow”.[[36]](#footnote-36)*

The ESC recommendation is similar to the New South Wales authority to tow in that the authorisation section is in triplicate (carbon copies). In addition, there are two additional pages; the first page containing the rights of the owner/driver of the towed vehicle and a quotation for the towing services; and, the second page found on the reverse side of the first page, information for consumers on their responsibilities and contact details for major insurers. Tow truck drivers must explain the contents to the motorist prior to signing the acknowledgement of the consumer information.[[37]](#footnote-37)

The ESC suggested the following messages in the important information page:

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

This information could be incorporated into VicRoads Factsheet at anytime as the Factsheet is incorporated by reference into the regulations. This enables the content of the Factsheet to be changed from time to time without the need to amend the regulations.

#### Costs

The Deartment has estimated that the Important Information page takes about 30 seconds to read and would delay the tow truck driver from clearing the road accident scene in comparison to the base case. As it will be provided at the same time as the VicRoads Factsheet together with the Authority to Tow form, there is a strong probability that the driver/owner would likely only read the ‘Important Information’ prior to signing the Authority to Tow form.

The 30 seconds it takes to read the Important Information imposes an opportunity cost on the tow truck driver. If this was not required the tow truck driver could proceed to hook-up the owner/driver’s damaged motor vehicle and clear the road accident scene 30 seconds earlier.

This would cost the tow truck driver an estimated $0.50 per Important Information and $36,000 for the estimated 72,000 accident tows undertaken in Victoria**.[[38]](#footnote-38)**

The 30 seconds to read the Important Information also imposes an opportunity cost on the driver/owner of the damaged vehicle and is estimated at $0.40[[39]](#footnote-39) per Important Information and $28,800 for the estimated 72,000 accident tows undertaken in Victoria.

As can be seen in Table 25, the combined cost of the tow truck driver and the driver/owner is $0.90 per Important Information and $64,800 for the estimated 72,000 accident tows. As the Department does not know what proportion of drivers/owners of accident damaged vehicles would read the additional information, the costs have been calculated on the basis that they would be read by all drivers and owners involved in an accident to indicate the costs if this option was to be fully effective and used by the driver/owner.

Table 25: Important Information Costs

|  |  |  |
| --- | --- | --- |
|  | Cost per tow | Annual Cost \* |
| Tow truck driver | $0.50 | $36,000 |
| Driver/Owner | $0.40 | $28,800 |
| Total Cost | $0.90 | $64,800 |

\* Note: Annual cost is based on an estimated 72,000 accident tows across Victoria.

The time taken by the driver/owner to read the Factsheet would delay the clearance of the road accident scene by 30 seconds and represent a traffic congestion cost of $6,396,000.[[40]](#footnote-40)

#### Benefits

As most of the information in both documents is related to what happens in relation to the authority to tow, unless it is read it defeats the purpose of providing it before the signing of the authority to tow. Some drivers and owners may read it later and find some useful information about the depot, payment or making a complaint etc.

It is not clear whether people reading these documents are necessarily fully comprehending what they are reading. If a person is not injured, they are concerned and focussed on making contingency plans. There will be a host of calls made by the person involved in the accident.

### Option 3: SMS the link to VicRoads website for accident towing information

This option would provide consumer information after the accident but before the tow truck driver arrives at the road accident scene. The Accident Allocation Centre and /or the insurers would need to send the driver/owner requesting a tow truck a SMS text message with short messages similar to those recommended by the ESC as well as a link to the VicRoads website page containing the Information Pamphlet.

These messages could be also translated into a number of languages and also simple visual messages to assist motorists that cannot read English or cannot read respectively. Similar agreements could be reached between VicRoads and the accident allocation centre administering the Geelong Self Management area and ESTA administering accident allocations throughout regional and rural Victoria.

Up to about 52,000 drivers/owners of accident damaged motor vehicles would be able to receive a SMS text message while Police requested accident tows for about 20,000 drivers/owners who are involved in serious road accidents would be unlikely to receive an SMS text message. In serious accidents, drivers/owners have been killed, seriously injured, or incapacitated. As a result, Police organise the accident tow and invariably sign the authority to tow form on behalf of the driver/owner and there is less opportunity to provide an SMS text message in these situations. As a result, an estimated 32,000 drivers and owners of accident damaged motor vehicles could benefit from SMS text messages.

The Accident Allocation Centre (AAC) does not collect the mobile phone number from the driver or owner of the accident damaged motor vehicle who has made a request for a tow truck.

The AAC would need to collect this information in order for this option to be effective. The privacy issues involved in doing so will need to be taken into account in developing this role for the ACC and any necessary business rules.

#### Costs

The cost of sending the SMS text message to the estimated 32,000 driver/owners of accident damaged motor vehicles would be about .10 cents per driver/owner and $3,200 for the 32,000 drivers/owners who have requested a tow truck directly or through their insurer. This does not account for any changes required to the Accident Allocation Centre software which may be required to facilitate the sending of SMS text messages.

VicRoads would also incur costs in translating the key messages into languages other than English and also visual presentations. This cost has not been quantified.

Sole-reliance on SMS would prevent drivers and owners of accident damaged motor vehicles who do not own a mobile phone, or do not have their mobile phone with them, or have lost their mobile phone during the vehicle collision from receiving consumer information. In addition, sometimes a resident or passerby at the location of the road accident scene may call the AAC for a tow truck. In these cases, the resident or passerby will unlikely have the mobile phone numbers of the drivers involved in the road accident.

#### Benefits

A key benefit of the accident allocation centre sending a SMS is that the person requesting the tow will receive the message in advance of the tow truck arriving at the road accident scene. Drivers and owners of damaged vehicles waiting up to 30 minutes for the tow truck to arrive are more likely to read short simple messages sent by the accident allocation centre about what to do when the tow truck driver arrives.

Up to about 32,000 drivers and owners of accident damaged motor vehicles would have the opportunity to read short key messages about their consumer rights prior to signing the authority to tow form. Some drivers and owners who do not own a mobile phone or have lost their mobile phone during the accident would be unable to receive the SMS text message.

SMS text messages translated into other languages and visual presentations would ensure vulnerable consumers who cannot read English or have reading difficulties are able to understand their consumer rights prior to signing the authority to tow.

Reliance on the SMS approach would remove the need for the driver/owner to read the Factsheet, speed up the clearance of the road accident scene by 4 minutes and represent a traffic congestion cost saving of up to $31.5 million relative to Option 1.[[41]](#footnote-41)

### Comparative assessment of the options

Option 1 requires the tow truck driver to provide a hardcopy of VicRoads Factsheet before the driver or owner signs the authority to tow. Option 2 would incorporate and highlight important information in the Factsheet. VicRoads can implement Option 2 administratively at any time without the need for regulation as the Factsheet is incorporated by reference in the regulations. VicRoads can also implement Option 3 administratively without the need for regulation by changing the business rules governing the operation of the AAC as well as compensating the RACV for the cost of executing Option 3.

Given that Option 2 is effectively a sub-set of Option 1, the choice is between the driver or owner of the accident damaged vehicle receiving a hardcopy (Option 1) or electronic copy (Option 3) of the consumer information.

The analysis suggested that the hardcopy is probably not read in most cases at the road accident scene but still provides the driver or owner relevant information later. An electronic solution was proposed as a means to provide the driver or owner the opportunity to read the consumer information prior to the arrival of the tow truck driver. However, while most people own a mobile phone they might not be able to access their mobile phone after an accident (it might be damaged or lost as a result of the accident). As well some people do not own a mobile phone. For these reasons, the electronic solution cannot be fully relied upon to provide consumer information in all circumstances.

In view of this, the Department still considers Option 1 is the superior option but will investigate implementing Options 2 & 3 administratively as these options complement and help to achieve the objective of providing critical consumer information to the driver and owner before signing the authority to tow. In particular, Option 3 could provide congestion cost savings of up to $31.5 million. Option 3 does not need to be prescribed in regulation and can be implemented administratively by VicRoads. The Department will seek to understand the costs to the Accident Allocation Centre as part of the re-tendering process, which is expected to be early in 2020. In view of this, Option 1 is the preferred option.

## Record Keeping

**Base Case**

The Base Case is the Act in the absence of the regulations – that is, no retention period for records prescribed in regulation other than for repairers who have prepared a repair quotation and who must keep the authority to tow document for 3 years as provided in section 161 of the Act.

Section 161 states *“A person who receives an authority to tow for the purpose of preparing a quotation in relation to, or repairing, a relevant accident damaged motor vehicle—*

*(a) must keep the authority to tow for 3 years after receiving it; and*

*(b) must produce for inspection that authority to tow and any records the person keeps in relation to quotations on being asked to do so by a police officer or an authorised officer”.*

Under the base case, accident tow operators would keep financial records such as invoices for at least five years as required under the *Income Tax Assessment Act 1997* and at least seven years as required under the *Corporations Act 2001*.

An authority to tow is a contract between the tow truck driver and the owner/driver of the accident damaged vehicle in that the latter has agreed to allow the tow truck driver tow their vehicle to a specified destination at an agreed price. Invoices and contracts constitute financial documents for the purposes of records under section 9 of the *Corporations Act 2001.*

However, accreditation records, photographs of salvage operations and maintenance/inspection records of tow trucks and associated equipment are not required to be kept under the *Income Tax Assessment Act 1997* and the *Corporations Act 2001*.

Under the base case, most accident tow truck operators would keep accreditation records at the specified depot for the life of the accreditation as well as photographs of salvage operations and inspection/maintenance records of their tow trucks and associated equipment for probably seven years as these records, other than accreditation records, form the basis for explaining their transactions and financial position as required under section 286(1) of the Corporations Act 2001.

While the *Income Tax Assessment Act 1997* and *Corporations Act 2001* impose a timeframe on which records must be kept, these Acts do not require that those records must be kept at a particular location so long as they are kept for the prescribed period and can be made available upon request by the Australian Taxation Office and the Australian Securities and Investment Commission.

**Alternatives**

There are several alternatives to the base case:

* Option 1: Retain records for one year (Current regulation)
* Option 2: Retain records for two years

### Option 1: Retain records for one year (Current regulation)

Option 1 requires licence holders to keep invoices, authority to tow forms including salvage operation photographs that are linked to the authority to tow form for a period of one year at the specified depot. The purpose of this option is not to duplicate Commonwealth taxation and corporation legislation but to ensure that this information is available for inspection at the specified depot. This is to enable the Victoria Police and authorised officers to have immediate access to prescribed documentation that will enable the identification and traceability of accident damaged motor vehicles and to ensure accident towing service fees are consistent with the requirements under the Act.

Unlike the Commonwealth legislative powers, the enforcement powers under sections 181,182, 186 and 188 of the *Accident Towing Services Act 2007* (to enter and search tow trucks, entry or search of premises with consent and entry without consent or warrant) are not broad and precise enough to ensure authorised officers can demand and copy invoices and authorities to tow at a specified depot.

This option prescribes the following records in relation to the tow truck specified in the tow truck licence that a licence holder must keep:

* copies of invoices of charges made for towing and storing accident damaged motor vehicles; and
* in chronological order, every authority to tow form which had been completed or partially completed; and
* a record of the names, addresses, tow truck driver accreditation numbers and driver licence numbers of every person who drives the tow truck; and
* a record of the name, address and towing operator accreditation number or towing depot manager accreditation number of the person who manages the accident towing service business to which the licence relates; and
* photographs taken of a salvage operation in a way that clearly links each photograph to the authority to tow to which it relates.

In addition, a licence holder must keep the aforementioned records:

* at the specified depot for the licensed tow truck; and,
* for a period of at least one year from the date the last entries in the records were made.

The holder of a towing operating accreditation must ensure that records relating to the inspection and maintenance of a licensed tow truck and associated equipment are kept for a period of 2 years from the date that the maintenance or inspection takes place. However, these records do not need to be kept at the specified depot.

The rationale for one year is that any complaints or disputes regarding the authority to tow and salvage operations are likely to be exercised by driver/owners of the damaged vehicle and/or their insurers/agents after receiving an invoice for the towing, storage and salvage fees.

#### Costs

This option prevents an accident towing operator from storing the prescribed records at another location other than at the specified depot for at least one year. For example, at another location such as the operator’s smash repair business premise, home, or a storage facility. Although, the licensed tow truck and associated equipment maintenance/inspections records can be kept at another location.

This option does not prevent an accident towing operator from maintaining back-up records at another location while keeping the records at the specified depot.

The actual storage is a business as usual cost given the Commonwealth legislative obligations. Most licence holders would need to store up to 1,000 authority to tow forms at any one time and 1,000 invoices (where the licence holder does not use the authority to tow form as an invoice). This would be the equivalent to one drawer of a filing cabinet.

In addition, the accident towing operator must provide the owner of an accident damaged motor vehicle that has been salvaged, or his or her agent a copy of the photographs (hardcopy or electronic) of the salvage at no cost. Each salvage operation normally involves several photographs. It is not known how often an owner or their agent would request a copy of the salvage photographs. The cost would be nominal to the accident towing operator and is included in the regulated accident towing fees.

Given that most accident towing operators would normally keep their business records at the business premise (specified depot) and these records are required to be kept for longer than one year under Commonwealth legislation, the cost of this option is considered a business as usual cost.

#### Benefits

The primary benefit of this option is to provide consumer protection in respect to towing and storage fees as well as determining the location of an owner’s accident damaged motor vehicle.

Access to invoices at the specified premises would enable VicRoads authorised officers to investigate consumer complaints and to prosecute under section 212(i) in respect to regulated towing fees in the Melbourne Controlled area and reasonable towing fees throughout the rest of Victoria as well as for heavy vehicle towing fees.

This option would also enable the Victoria Police and authorised officers to identify/match the authority to tow form with the towed damaged motor vehicle and/or the vehicle stored at the tow truck depot. This is necessary in the event that the accident damaged motor vehicle is a stolen vehicle and/or been involved in a crime.

Authorised officers are empowered under sections 187 and 188 of the Act to access the depot and the requirement to keep the prescribed records would enable them to access these records as part of their routine inspection of accident towing services to ensure compliance with the Act and Regulations; in particular evidence that the licensed tow truck is well maintained.

The one year timeframe for the retention of the prescribed records at the specified depot would provide a reasonable amount of time for the Police to trace an accident damaged motor vehicle and authorised officers to investigate owner/insurer complaints relating to towing and storage fees or to undertake routine inspections to ensure compliance with the Act and Regulations. In respect to the latter, VicRoads does not currently undertake routine inspections at the specified depot.

### Option 2: Retain records for two years

New South Wales requires accident tow truck operators to retain records for two years at their specified depot.

#### Costs

This option would prevent accident towing operators from storing the prescribed records at another location for two years.

Similar to Option 1, given that most accident towing operators would normally keep their business records at the business premise (specified depot) and these records are required to be kept for longer than two years under Commonwealth legislation, the cost of this option is considered a business as usual cost.

#### Benefits

This option would provide the Victoria Police and authorised officers a period twice as long to access the prescribed records to enhance consumer protection. However, there is no evidence that the current regulation that requires the prescribed records to be kept for one year has been inadequate to provide consumer protection. This is probably due to the fact that most consumer issues are drawn to the Police (almost immediately where the vehicle cannot be located) and to VicRoads authorised officers in respect to towing and storage fees within several months of the road accident.

VicRoads authorised officers would have access to two years of records to audit as part of their routine inspection although one year of records would provide an adequate timeframe to ascertain the accident towing operator’s level of compliance with the Act and Regulations.

### Comparative assessment of the options

The costs of Options 1 and 2 are identical and both options have similar benefits. However, the Department considers the benefits of storing records beyond 12 months in Option 2 will provide little consumer protection benefits as any complaint and/or investigation would have occurred and been completed within 12 months of the towing of an accident damaged motor vehicle. For these reasons, the Department considers Option 1 is the superior option.

## Electronic Records

**Base Case**

The Base Case is the Act in the absence of the regulations – that is, the authority to tow needs to be in hard copy form.

Section 142(1) of the Act states, *“In the case of a road accident scene that is not on a designated road, a tow truck driver must not tow an accident damaged motor vehicle from the road accident scene without obtaining an authorisation to tow that vehicle that is given by the owner of the vehicle or the driver of the vehicle or a person as provided in subsection (3) and is in writing in the prescribed form and that is completed in accordance with subsection (4) and signed by the person giving the authorisation”.*

Section 142(2) of the Act is the same provision but applied to a road accident scene on a designated road.[[42]](#footnote-42)

In view of sections 142(1) and (2), an authority to tow must be hand-written and signed by the tow truck driver as well as signed by the driver/owner of the accident damaged motor vehicle. The Act is silent on how records must be kept.

**Alternatives**

There are several alternatives to the base case:

* Option 1: Electronic records other than Authority to Tow (Current regulations)
* Option 2: Electronic Authority to Tow (Tow Truck Driver)
* Option 3: Electronic Authority to Tow (Accident Allocation Centre)

### Option 1: Electronic records other than Authority to Tow (Current regulations)

Option 1 would clarify that records kept under the Act or these regulations can be kept in an electronic form provided they are convertible into hard copy with the exception of an authority to tow form that must be kept in hard copy form as required under the Act.

#### Costs

Accident towing operators would still need to keep hard copy records of the authority to tow and to store them in chronological order.

This also increases the inspection cost as an authorised officer would need to take photocopies of the authority to tow form rather than making an electronic copy.

#### Benefits

Accident towing operators would be able to keep other records such as invoices, depot manager and driver accreditation, tow truck inspection and maintenance records in an electronic form.

### Option 2: Electronic Authority to Tow (Completed by Tow Truck Driver)

This option would enable tow truck drivers to record an authority to tow electronically using a tablet device. The tow truck driver would type the details and get the driver/owner to sign on the tablet screen. The tow truck driver would be able to print-out a hard-copy of the signed authority to tow form and also send the form by SMS to the driver/owner’s mobile phone. In turn, the driver/owner could SMS text the signed form to the insurer. This option would also allow other records to be kept in electronic form.

#### Costs

Additional capital and operating costs would be incurred for each tow truck relative to the base case:

Capital costs

Tablet device $1,000

Portable wireless truck printer $350

Total Cost: $1,350 or $450 per annum (depreciation over three years).

Annual Operating costs

Wi-fi subscription - $1,000

Printer toner/drum/paper $200

Total cost: $1,200

Total Annual Cost

The depreciated cost of $450 for capital purchases and the $1200 annual operating costs equate to a total annual cost of $1,650 per annum. These costs may be lower depending on the equipment and services purchased.

Cost per tow

The number of towing jobs per tow truck varies across the geographic areas; mainly due to the practice of shelving licences in the Melbourne and Geelong areas. Accordingly, the average cost per tow has been calculated for each area by dividing the annual cost ($1,650) by the average number of tows per tow truck. The results are shown in Table 28 below. The cost per tow in the Melbourne Controlled area and the Geelong Self Management area are $6.73 and $7.43 respectively. As can be seen, the unregulated area is significantly higher with the cost per tow at $22.00. This is due to the lower average number of tows per tow truck in the unregulated area.

The total annual operating cost is estimated at $750,560 for the 456 tow trucks operating across Victoria.

Table 28: Electronic Authority Cost Per Tow and Total Costs

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Area | No. Tows | No. Tow Trucks | Average Tows per Tow Truck | Average Cost Per Tow | Total  Cost |
| Melbourne Controlled Area | 52,000 | 212 | 245 | $6.73 | $349,960 |
| Geelong Self-Management Area | 2,000 | 9 | 222 | $7.43 | $14,860 |
| Unregulated Area | 18,000 | 235 | 77 | $21.43 | $385,740 |
| Total: $750,560 | | | | | |

It should be noted that the cost per tow for some smaller operators in the Melbourne Controlled area would be similar to the unregulated area. Similarly, the cost per tow for some large operators in the Melbourne Controlled area would be lower than $6.73.

#### Benefits

Accident Towing Operators

An electronic authority to tow would enable the tow truck details to be stored in the tablet device so that the tow truck driver did not need to type this information for each accident tow. It is estimated that this would save the tow truck driver about 1 minute or $01.00 per tow and $72,000 for 72,000 accident tows.

The electronic authority to tow form would improve towing administration so that depot staff could quickly copy and paste the relevant details for invoicing purposes. It is estimated depot staff would save about 2 minutes or $2.82 per tow and $203,040 in total from not typing the relevant details from the authority to tow to create an invoice for accident towing and storage fees.

The reduced time spent by the tow truck driver and depot staff on the authority to tow would provide cost savings of $275,040.

Drivers/Owners

The driver/owner of the accident damaged motor vehicle would spend one less minute completing the authority to tow and save $0.80 per tow and $57,600 for the 72,000 accident tows.

The VicRoads Fact Sheet could be on the reverse side of the authority to tow form. This would ensure that the Fact Sheet is always provided and would also make redundant the current requirement that the driver/owner sign that they have received the Fact sheet.

A photo of the tow truck driver could be included in the authority to tow form to enable the driver/owner to verify the identity of the tow truck driver.

The tow truck driver could SMS/email text the signed authority to tow form to the driver/owner or alternatively provide a hard copy. The driver/owner could SMS/email the signed authority to tow form to the insurer.

Clearance of Road Accident Scene

The storage of the tow truck details in the tablet device would save about one minute relative to the paper-based authority to tow. The avoidable traffic congestion costs associated with an electronic authority to tow undertaken by the tow truck driver has been calculated in Table 29. As can be seen, the avoidable traffic congestion cost is $12,792,000.

Table 29: Traffic Congestion Costs

|  |  |  |
| --- | --- | --- |
|  | Costs | Formula |
| Congestion cost attributable to road accidents | $1.150 billion | $4.6 billion\*25% |
| Cost per accident | $22,115 per accident | $1.150 billion/52,000 |
| Cost per minute | $246 per minute | $22,115/90 minutes (average clearance time) |
| Cost of paper-based authorisation | $ 246 per accident | $246\*1 minute |
| Total congestion cost | $12,792,000 | 52,000 accidents\*$246 |

### Option 3: Electronic Authority to Tow (Completed by Accident Allocation Centre)

With this option, the Accident Allocation Centre would collect the information required in an authority to tow at the same time a driver/owner, insurer or police officer requested a tow truck. The Accident Allocation Centre would obtain the driver/owner’s authority for the tow so that the tow truck driver and the driver/owner do not have to provide an electronic signature at the road accident scene.

The accident allocation centre would type the required information into the authority to tow form and send it electronically to the tow truck driver. This would shift the task of completing most of the authority to tow form to call-centre staff that have fast keyboard skills and minimise time spent on the authority to tow form for the driver/owner and the tow truck driver. In this way, the tow truck driver can quickly attend to hooking up the damaged vehicle and clear the accident scene.

For this system to be effective, accident towing jobs would ideally need to be allocated and accepted electronically so that an accident tow truck can be allocated within the same time taken with the current allocation process. This would enable the accident allocation centre to continue with the preparation of an electronic authority to tow with the driver/owner, insurer or Police and send the electronic authority to tow upon completion to the tow truck driver as well as to the person that has requested the accident tow. In most cases, the tow truck driver would receive the electronic authority tow while in transit to the road accident scene.

This option would also allow other records to be kept in electronic form.

#### Costs

To establish an electronic authority to tow would impose the following costs on the accident allocation centre and accident towing operators, as compared to the base case.

Capital Costs

The Accident Allocation Centre software would need to be modified to enable an electronic authority to tow form to be established and sent to tow truck drivers. This cost has not been quantified. However, if the software upgrade cost $500,000 for example, this would add an additional $9.60 per allocation or $3.20 per allocation (depreciation over three years).

Operating Costs

The Department has estimated the allocation officer would spend an additional 5 minutes at a cost of $7.05 and $366,600 for 52,000 allocations in order to complete the authority to tow form and provide consumer information to the caller.

Tow truck equipment

$6.73 per tow and $349,960 for 52,000 tows as discussed in Option 2.

As can be seen in Table 30, this imposes a total cost of $16.73 per tow and $882,960 for 52,000 accidents.

Table 30: Electronic Authority to Tow Costs to Affected Parties

|  |  |  |
| --- | --- | --- |
| Costs | Cost per Tow | Total Annual Cost |
| Allocation software modifications | $3.20 | $166,400 |
| Tow truck equipment | $6.73 | $349,960 |
| Allocation centre operator | $7.05 | $366,600 |
| Total: | $16.73 | $882,960 |

Driver/Owner

In many cases, driver/owners would not be providing the tow truck driver with the authority to undertake the accident tow. Instead, the driver/owner’s insurer would act on their behalf to provide the authority to tow as well as organise an accident tow truck. This could be seen as removing their consumer rights. However, transferring the right to provide authority to tow an accident damaged motor vehicle to insurers is no different than the current arrangement in which the Police or an authorised officer can provide authority to tow where the driver/owner is incapacitated. In these cases, the incapacitated driver/owner or their insurance company are still liable for the payment of the accident towing and storage fees despite the fact they have not provided the authority to tow.

The regulation of accident towing and storage fees in the Melbourne Controlled area provides consumer protection and the accident allocation centre would also have an electronic record of the authority to tow available to the driver/owner if they wanted to access information relating to the accident towing operator, the tow truck driver and the location the motor vehicle was towed. These matters would need to be carefully considered with the implementation of this option.

#### Benefits

Accident Towing Operators

An electronic authority to tow would enable the tow truck details to be stored in the tablet device so that the tow truck driver did not need to type this information for each accident tow. It is estimated that this would save the tow truck driver about 5 minutes or $5.00 per tow and $260,000 for 52,000 accident tows.

The electronic authority to tow form would improve towing administration so that depot staff could quickly copy and paste the relevant details for invoicing purposes. It is estimated depot staff would save about 2 minutes or $2.82 per tow and $146,640 in total from not typing the relevant details from the authority to tow to create an invoice for accident towing and storage fees.

The reduced time spent by the tow truck driver and depot staff on the authority to tow would provide cost savings of $406,640.

Drivers/Owners

The driver/owner of the accident damaged motor vehicle would spend five less minutes relative to the base case and save $4.00 per tow and $208,000 for the 52,000 accident tows. The accident allocation body could send the electronic authority to tow to check the details, the identity of the accident tow truck and photo identity of the tow truck driver prior to the tow truck driver arriving at the road accident scene. The electronic authority to tow form could also be bundled with other information such as VicRoads Factsheet or other consumer rights information.

Efficient Clearance of the Road Accident Scene

This option will enable the tow truck driver to spend considerably less time with the authority to tow document relative to the base case and allow the tow truck driver to focus on placing the damaged vehicle on the tow truck and cleaning the debris from the accident scene. As a result of the time saved with the authority to tow document, the tow truck driver should be able to clear the road accident scene quicker by about 5 minutes.

The avoidable traffic congestion costs associated with an electronic authority to tow undertaken by the accident allocation body has been calculated in Table 31. As can be seen, the total avoidable cost is $63.960 million if the 5 minutes currently expended on these activities were not undertaken.

Table 31: Avoidable Traffic Congestion Costs

|  |  |  |
| --- | --- | --- |
|  | Cost | Calculation |
| Congestion cost attributable to road accidents | $1.150 billion | $4.6 billion\*25% |
| Cost per accident | $1.150 billion/52,000 accidents | $22,115 per accident |
| Cost per minute | $22,115/90 minutes clearance | $246 per minute |
| Cost of paper-based authorisation & manual allocation | 5 minutes\*$246 | $1,230 per accident |
| Total congestion cost | 52,000 accidents\*$1,230 | $63,960,000 |

Other benefits

For police requested accident allocations, the accident allocation body calls back the police to provide them with the tow truck operator’s details once confirmed. The Police could also be interfaced with the allocation system so that they receive electronically the authority to tow document at the same time as it is sent to the tow truck driver. The Police would be able to verify that the tow truck driver’s accreditation photo in the electronic authority to tow matches the tow truck driver who arrives at the road accident scene.

### Comparative assessment of the options

Option 1 provides minimal unquantified costs and benefits and would not permit the use of an electronic authority to tow. Initial estimates suggest that Option 2 would cost $750,560 with benefits of $12.792 million in reduced traffic congestion and costs savings of $275,040 to accident towing operators and $72,000 to drivers and owners of accident damaged motor vehicles. They also suggest that Option 3 would cost $882,960 with benefits of $63.960 million in reduced traffic congestion and cost savings of $406,640 to accident towing operators and $208,000 to drivers and owners of accident damaged motor vehicles. Options 2 & 3 would require an amendment to the Act as the Act does not accommodate electronic authorisation.

While Option 3 appears to be the superior option, the contract for the Accident Allocation Centre is due to expire in 2020. Therefore, the Department is not recommending Option 3 until it can determine whether value could be provided operationally, including any impact on annual tow truck licences and the base towing fee. These costs can be better assessed as part of the contract re-tendering process, which is expected in early 2020.

On this basis, Option 1 is the preferred option and the Department will investigate the Accident Allocation Centre costs and any practical implementation issues will be considered as part of its forward work program in the evaluation strategy (refer to section 13).

# Fees

This section analyses the costs in respect to:

* Annual tow truck licence fees;
* Alteration of a specified depot application fee; and
* Replacement tow truck licence certificate fee

## Funding the administration of accident towing services

## Setting Appropriate Fees

There is a strong principle of providing a service at the minimum cost necessary to achieve the policy objective. This is clearly articulated in the Department of Treasury and Finance (DTF) Cost Recovery Guidelines, *“cost recovery charges should be set according to an efficient cost base: best practice cost recovery arrangements require charges are set at a level that recover the ‘efficient’ (ie. minimum) costs of providing the good/service at the required quality, or of undertaking the necessary regulatory activity”.*

### Annual tow truck licence fees

By way of background, section 185(1)(e) of the Transport Act 1983 provided for the Governor-in-Council to make regulations for or with respect to prescribing the fee not exceeding $1,000 to be paid in respect of the granting or renewal of tow truck licences.

The Accident Towing Services Regulations 2008 did not prescribe annual tow truck licence fees. An amendment to the regulation-making powers in the Act occurred in 2009 with the inclusion of the following: *“may provide for fees to be payable in respect of tow truck licences, which may be payable annually”.[[43]](#footnote-43)*

The Accident Towing Services Regulations were subsequently amended in 2010 to prescribe annual tow truck licence fees. For regular tow truck licences in a controlled area, the prescribed licence fee was set at 70.13 fee units and for a regular tow truck licence outside the controlled area and for a heavy vehicle tow truck licence, the prescribed licence fee was set at 13.98 fee units. These annual licence fees came into effect from 1 July 2010.[[44]](#footnote-44)

As can be seen from Table 33, $508,674 in revenue is generated from the prescribed annual tow truck licence fees. VicRoads’ administrative costs are $1,618,617 per annum. Accordingly, the current prescribed fees have generated under cost recovery of $1,109,943 per annum (refer to section 7.2 for the cost recovery calculations).

Table 33: Annual Tow Truck Licence Cost Recovery Levels

|  |  |  |  |
| --- | --- | --- | --- |
|  | Cost | Revenue | Surplus/Deficit |
| Annual tow truck licences in Melbourne Controlled Area | $1,565,193.80 | $437,259.02 | ($1,127,934.78) |
| Annual tow truck licence fees for outside the Melbourne Controlled Area | $47,384.10 | $63,342.00 | $15,957.90 |
| Annual licences for Heavy tow trucks | $6,039.15 | $8,073.00 | $2,033.85 |
| Total | **$1,618,617.05** | **$508,674.02** | **($1,109,943.03)** |

### Alteration of a specified depot application fee

Regulation 13B prescribes an application fee at 13.98 fee units or $207.00[[45]](#footnote-45). VicRoads has processed an average of 32 applications per annum over the past several years and received $6,464 in revenue to recover the costs associated with making a determination to alter the specified depot. VicRoads’ costs are $13,727 per annum to assess the 32 applications submitted. Accordingly, the current prescribed fee has generated under cost recovery of $7,263.

### Replacement tow truck licence certificate fee

Regulation 13 requires a licence holder to apply to VicRoads for a replacement tow truck licence certificate upon becoming aware that the tow truck licence certificate held by that person has been lost, stolen or destroyed. Regulation 13(2) requires the licence holder a fee of $25.60 to be paid with the application.

VicRoads has not received any applications over the past several years. If an application were received, it would take less than one minute for a VicRoads officer to email the licence holder a replacement certificate. Accordingly, the prescribed application fee at $25.60 would over-recover the costs to process an application and issue a replacement certificate. Accordingly, this fee is not analysed further as it is seldom used.

### Summary of Cost Recovery

As can be seen from Table 34, VicRoads incurs total costs of $1,632,344 and generates revenue of $515,138; resulting in under-recovery of $1,117,206 per annum.

Table 34: Summary of Cost Recovery Levels

|  |  |  |  |
| --- | --- | --- | --- |
|  | Cost | Revenue | Surplus/Deficit |
| Annual tow truck licences in Melbourne Controlled Area | $1,565,193.80 | $437,259.02 | ($1,127,934.78) |
| Annual tow truck licence fees for outside the Melbourne Controlled Area | $47,384.10 | $63,342.00 | $15,957.90 |
| Annual licences for Heavy tow trucks | $6,039.15 | $8,073.00 | $2,033.85 |
| Sub-total | **$1,618,617.05** | **$508,674.02** | **($1,109,943.03)** |
| Applications to alter a depot | $13,727 | $6,464 | ($7,263) |
| Total | **$1,632,344.05** | **$515,138.02** | **($1,117,206.03)** |

**Cost Methodology**

The Department of Treasury and Finance’s Cost Recovery Guidelines outline two methodologies for determining the appropriate cost base: the ‘fully distributed cost’ and ‘incremental cost’ method.

The fully distributed cost method is described as “the most comprehensive costing approach, and allocates all costs (including direct, indirect and capital cost components) to the output, and is typically used where cost-recovered activities account for a large proportion of an agency’s activities”. The incremental cost method recognises that it may be inappropriate to attempt to recover overhead and capital costs if these would be incurred anyway, even if a particular activity was not undertaken. The fully distributed cost method is used to calculate the costs for the annual tow truck licence fee, the alteration of a specified depot fee and depot inspection fee.

**Determining the Base Case**

The base case is the Act in the absence of the proposed regulations. In this case, no fees would be charged and none of the costs associated with administering the tow truck licence would be recovered. Based on the costs estimated in Table 34, this would leave an annual shortfall of $1,618,617 and would need to be funded by VicRoads from general taxpayers revenue.

Similarly, no fees would be charged and none of the costs associated with the alteration of a specified depot would be recovered. Based on the costs estimated in Table 34, this would leave an annual shortfall of $13,727 that would need to be funded by VicRoads from general taxpayers revenue.

**Estimating the efficient cost base**

VicRoads charges fees for a number of functions under the Act. These functions include industry, depot and driver accreditation; trainee permit, licence transfer, variation to the hours of operation for a specified depot, substitution of specified tow truck and temporary tow truck permit. These fees are made under section 213 of the Act and prescribed in the Government Gazette.

This leaves several regulatory functions related to licence-holders that need to be funded, namely complaints management and policy. Accordingly, the efficient cost base has been calculated for the time and resources associated with VicRoads’ complaints management and policy functions.

In regards to the alteration of a specified depot, the efficient cost base has been calculated based on the reasonable time and costs associated with processing an application and undertaking a depot inspection respectively.

**Salary and Oncost Calculations**

Table 35 shows the hourly rates for the different VicRoads officers involved in each of the three proposed functions. The total hourly rate is used to determine the costs associated with these functions.

Table 35: VicRoads Hourly Rates by Classification

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Salary Hourly rate | Salary-on-costs hourly rate | Indirect Costs hourly rate | Total hourly rate |
| VRO6 | $93.91 | $21.78 | $34.98 | $150.67 |
| VRO4 | $58.66 | $13.60 | $34.98 | $107.24 |
| VRO3 to 4 | $53.11 | $12.32 | $34.98 | $100.41 |

Note: VicRoads hourly salaries for June 2019.

The following information shows how the various rates were calculated in Table 34.

The DTF formula for determining the total annual hours used to calculate hourly rates was used:

Number of weeks worked per annum

= 52 - 4 (annual leave) - 2 (sick leave) - 2 (public holidays)

= 44 weeks

Average weekly hours = 38

Total annual hours – 44 weeks \* 38 hours = 1,672 hours

With the total annual number of hours the hourly rate was calculated as shown in Table 36 below for VRO6, VRO4 and VRO3 officer salaries. For example, the VRO6 salary of $157,027 divided by 1672 hours equals $93.91 per hour.

Table 36: Hourly Rates

|  |  |  |
| --- | --- | --- |
| Classification | Salaries | Hourly rate |
| VRO6 | $157,027 | $93.91 |
| VRO4 | $98,079 | $58.66 |
| VRO3-4 | $88,801 | $53.11 |

The salary on-costs and indirect costs per employee are provided below.

Salary on-costs

Long Service Leave 3.5 %

Payroll Tax 4.85%

WorkCover Premiums 1.34 %

Training 4.0%

Superannuation 9.5 %

Total salary on-costs: 23.19%

Indirect costs - Corporate overheads per person

IT charges $12,570

Accommodation $10,900

Business Services $ 5,313

Finance & Risk $ 3,213

Internal charges $18,447

Plant hire & vehicles $ 5,742

Divisional overheads $802

Miscellaneous $1,500

Total: $58,487

Indirect costs per hour per employee = $34.98 ($58,487 divided by 1672 hours).

## Annual Tow Truck Licence Fee

The costs components for an annual tow truck licence fee can be broadly divided into regulatory and accident allocation centre costs and are discussed below.

**Cost Components**

Regulatory Costs

The annual tow truck licence involves the following tasks:

* Financial administration. In the case of licences in the Melbourne Controlled area, invoices are prepared by VicRoads and sent out to operators on a quarterly basis.
* Complaint investigations
* Policy development

Financial administration takes an estimated 76 hours per annum and is undertaken by a VRO4 officer.

Complaint investigation takes an average of 8 hours per complaint and about 800 hours per annum is undertaken by VRO3 to VRO4 officers for about 100 complaints per annum.

Management and policy development involves 200 hours per annum and is undertaken by a VRO6 officer.

Table 37 shows the breakdown of the administrative costs associated with the tow truck licence. As can be seen, the total administrative costs of $118,612.24 results in a cost of $154.85 per tow truck licence.

Table 37: Summary of Regulatory Costs

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Function | Classification | Hourly rate | Administrative processing time (hours) | Cost |
| Financial administration | VRO4 | $107.24 | 76 | $8,150.24 |
| Complaints management | VRO3 to 4 | 100.41 | 800 | $80,328 |
| Policy | VRO6 | $150.67 | 200 | $30,134 |
| Total Costs: $118,612.24\* | | | | |
| Cost per tow truck licence **$154.85** | | | | |

\* Note: rounded to $118,615

Accident Allocation Centre Costs

The RACV administers the accident allocation centre under contract with VicRoads at a cost of about $1.5 million per annum. The contract is due to expire in late 2020, and the Department anticipates that the contract will be re-tendered in early 2020. The subsequent analysis of regulatory costs is undertaken on the basis of current costs, but the Department notes that such costs may change subject to the outcome of the retender of the contract.

The annual tow truck licence fee in the Melbourne Controlled Area contributes $883.77 per licence and $372,067 from the 421 licences or 25 percent to the $1.5 million annual administration of the accident allocation centre.[[46]](#footnote-46) The remaining $1,127,933 is funded by the tax payer.

The cost to allocate an accident towing job to a licence holder is $28.85.[[47]](#footnote-47) with annual tow truck licence fees contributing $7.21 and the tax payer funding $21.64 per allocated accident towing job.[[48]](#footnote-48)

Annual tow truck licence fees, amongst other things, are included in the base towing fee and passed onto the driver/owner of the accident damaged vehicle or their insurer.

The function of the accident allocation body is similar to the dispatching function within a tow truck operation; it receives calls and dispatches an appropriate tow truck to the location of the vehicle. The only difference with the allocation body is that it receives calls and effectively dispatches a tow truck for 93 tow truck operators across the Melbourne Controlled area.

Essentially, the 93 tow truck operators and the driver/owner of the accident damaged vehicle or their insurer are the direct beneficiaries of the accident allocation body. In the absence of the accident allocation body, tow truck operators would incur the administrative costs associated with responding to calls and dispatching a tow truck. These administrative costs would be passed onto the end-user. This is no different to trade and break-down towing operators who incorporate the costs of their dispatching services into their trade and break-down towing fees.

To achieve full cost recovery for the operation of the accident allocation centre, the annual tow truck licence fee would need to be increased from $883.77 to $3,562.95[[49]](#footnote-49) with an adjustment to the base towing fee so that the additional cost was passed onto the driver/owner of the accident damaged vehicle or their insurer. Alternatively, full cost recovery could be also achieved by introducing an accident allocation fee of $28.85 per accident job with an appropriate adjustment to the base towing fee. These approaches are considered in the options below.

**Summary of Costs**

A summary of the costs per tow truck licence is provided below.

|  |  |
| --- | --- |
| Regulatory Costs | $154.85 |
| Accident Allocation Costs | $3,562.95 |
| Total costs per tow truck licence | $3,717.80 |
| Total Costs for 421 tow truck licences | $1,565,193.80 |

**Alternatives**

The Department considered recouping the costs to administer the accident allocation centre from all licence holders on an equal basis. However, licence holders in the Geelong Self Management area contribute to the cost of administering their accident allocation centre while regional and heavy vehicle licence holders incur their own costs of dispatching (allocating) a tow truck to a road accident. Accordingly, it could be argued that it is inappropriate and inequitable to expect these licence holders to also incur the costs of administering the accident allocation centre in the Melbourne Controlled Area where they do not receive any accident allocations. Hence, alternative fee options considered in this RIS do not involve licence holders outside of the Melbourne Controlled Area contributing to the costs of the accident allocation centre.

Due to the significant variation in the number of accident allocation jobs received by licence holders, The Department also considered a stratified tow truck licence fee structure based on the actual number of accident tows allocated to each licence holder. However, the number of accident allocations varies from month to month (up and down) as well as from year to year for each licence holder. This would be not only complex for VicRoads to administer but also likely lead to licence holders whose accident allocations have decreased paying higher licence fees as the licence fee would be based on accident allocation rates for the past year. Similarly, some licence holders whose accident allocations have increased would pay less licence fees.

The Department’s view is that regulatory costs should be recovered proportionally from all licence holders, including those outside the Melbourne Controlled Area.

In view of this, the Department considered several options:

* Option 1: current fees that provide partial cost recovery.
* Option 2: full cost recovery through the annual tow truck licence.
* Option 3: full cost recovery using annual tow truck licence and accident allocation fees.
* Option 4 considers full cost recovery for licence holders outside the Melbourne Controlled Area while maintaining the current annual tow truck licence fee for licence holders in the Melbourne Controlled Area.

### Option 1: Current fee levels

Under this option, the current prescribed fees in the regulations would be maintained: $1,038.62 (70.13 fee units) per regular tow truck licence in the Melbourne Controlled area (comprising $154.85 for regulatory costs and $883.77 for accident allocation costs) and $207.00 (13.98 fee units) per heavy vehicle tow truck licence throughout Victoria and per regular tow truck licence outside the Melbourne Controlled area.

#### Costs

As shown in Table 38, this option would generate revenue of $508,674 compared with costs of $$1,618,617; leading to a deficit of $1,109,943 that would be funded by the taxpayer.

Licence-holders of regular tow truck licences in the Melbourne Controlled area would pay a substantially higher licence fee compared with licence-holders of regular and heavy vehicle tow truck licences throughout the rest of the State due to the $858 contribution to the administration of the accident allocation centre. However, this is a $2,705 annual shortfall per licence.

As can be seen in Table 38, the current annual tow truck licence fee for regional and Geelong Self Management area licence-holders of regular tow trucks and licence-holders of heavy vehicles result in cost over-recovery of about $52.15 per licence or $17,991.75 for the 345 affected licences.

Table 38: Option 1 Cost recovery levels

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Area | Licence Fee | No  Licences | Costs | Licence Revenue | Surplus/Deficit |
| Melbourne Controlled area | $1,038.62 | 421 | $1,565,193.80 | $437,259.02 | ($1,127,934.78) |
| Geelong Self Management area | $207.00 | 25 | $3,871.25 | $5,175 | $1,303.75 |
| Regional | $207.00 | 281 | $43,512.85 | $58,167 | $14,654.15 |
| Heavy Vehicle | $207.00 | 39 | $6,039.15 | $8,073 | $2,033.85 |
| Total: |  | 766 | $1,618,617.05 | $508,674.02 | ($1,109,943.03) |

While each licence holder is contributing the same amount of $883.77 to the administration of the accident allocation centre, a review of the accident allocation data reveals that licence holders are not receiving the same number of accident jobs. The number of accident allocation jobs range from 6.71 to 19.80 per month per licence. This reflects the different number of accidents in the allocation zones across the Melbourne Controlled Area. The data shows that licence holders at 12 depots with 145 licences or 35 percent of the 421 licences are significantly contributing more per accident job to the cost to operate the accident allocation centre and cross-subsidising the other licence holders with most of the other 276 licences.

The cost of accident allocation varies significantly for licence holders depending on the number of allocations received per licence. As can be seen in Table 39, a licence holder with a low monthly allocation of 6.71 incurs an allocation cost of $11.05 per accident towing job. This is $3.84 more than the $7.21 contribution the current annual tow truck licence fee makes to the funding of the accident allocation centre.

Conversely, a licence holder with a high monthly allocation of 19.8 incurs an allocation cost of $3.71 per accident towing job. This is $350 less than the $7.21 contribution to the funding of the accident allocation centre. Accordingly, with this option, licence holders with low monthly allocation rates are cross-subsidising licence holders with high monthly allocations in respect to the accident allocation process. The ESC in its determination of the base towing fee takes into account, amongst other things, the cost of the tow truck licence but does not acknowledge this cross-subsidisation. Accordingly, some licence holders are being over-paid and others under-paid for the tow truck licence component in the base towing fee. Notwithstanding this, all licence holders are underpaying due to the significant under-cost recovery.

Table 39 Comparison of Accident Allocation Costs

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Monthly Accident Allocations | Annual Accident Allocations | Allocation Cost ($883.77 divided by the annual number of accident allocations | Amount more or less than the current tow truck licence contribution of $7.21 |
| Low allocation | 6.71 | 80 | $11.05 | $3.84 more |
| High allocation | 19.80 | 238 | $3.71 | $3.50 less |

All licence-holders would need to receive an average of 11 accident jobs per month per licence to justify a flat rate of $883.77.

#### Benefits

Notwithstanding the under-recovery of costs from licence holders in the Melbourne Controlled Area and the over-recovery of costs for other licence holders, VicRoads would continue to recover $508,674 or 31 percent of $1,618,617 per annum.

### Option 2: Full cost recovery - licence fees

With this option licence holders of regular tow truck licences in the Melbourne Controlled Area would pay $3,717.80 per licence comprising $154.85 for regulatory costs and $3,562.95 for accident allocation costs. Licence-holders of a regular tow truck outside the Melbourne Controlled Area and licence holders of heavy vehicle tow trucks would pay $154.85 per licence.

#### Costs

As shown in Table 40, this option would generate revenue of $1,618,617 compared with costs of $1,618,617 and achieve full cost recovery.

Licence-holders of regular tow truck licences in the Melbourne Controlled area would incur a significant increase in their annual tow truck licence fee from $1,038.62 to $3,717.80; a 258 percent increase. However, the increased cost would be incorporated into the base towing fee which would need to be determined by the ESC. Ultimately, the driver/owner of the accident damaged vehicle or their insurer would incur this cost.

Table 40: Option 2 Cost recovery levels

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Area | Licence Fee | No  Licences | Costs | Licence Revenue | Surplus/Deficit |
| Melbourne Controlled area | $3,717.80 | 421 | $1,565,193.80 | $1,565,193.80 | $0 |
| Geelong Self Management area | $154.85 | 25 | $3,871.25 | $3,871.25 | $0 |
| Regional | $154.85 | 281 | $43,512.85 | $43,512,85 | $0 |
| Heavy Vehicle | $154.85 | 39 | $6,039.15 | $6,039.15 | $0 |
| Total: |  | 766 | $1,618,617.05 | $1,618,617.05 | $0 |

Similar to Option 1, the cost of accident allocation varies significantly for licence holders depending on the number of allocations received per licence. As can be seen in Table 41, a licence holder with a low monthly allocation of 6.71 incurs an allocation cost of $44.54 per accident towing job. This is $15.69 more than the actual cost for the accident allocation centre to administer each allocation. Conversely, a licence holder with a high monthly allocation of 19.8 incurs an allocation cost of $14.97 per accident towing job. This is $13.88 less than the actual cost for the accident allocation centre to administer each allocation. Accordingly, with this option, licence holders with low monthly allocation rates are cross-subsidising licence holders with high monthly allocations in respect to the accident allocation process, which is inequitable. The ESC in its determination of the base towing fee takes into account, amongst other things, the cost of the tow truck licence but does not acknowledge this cross-subsidisation. Accordingly, some licence holders are being over-paid and others under-paid for the tow truck licence component in the base towing fee.

Table 41 Comparison of Accident Allocation Costs

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Monthly Accident Allocations | Annual Accident Allocations | Allocation Cost ($3,563 divided by the annual number of accident allocations | Amount more or less than the cost of $28.85 to allocate an accident towing job |
| Low allocation | 6.71 | 80 | $44.54 | $15.69 more |
| High allocation | 19.80 | 238 | $14.97 | $13.88 less |

#### Benefits

This option achieves full cost recovery of the $1,618,617 and removes the current taxpayer funding of $1,109,943 for the administration of the accident allocation centre.

Regional and Geelong Self Management area licence-holders of regular tow trucks and licence-holders of heavy vehicles would pay an annual tow truck licence fee based on full cost recovery and would save about $52.15 per licence or $17,991.75 for the 345 affected licences.

### Option 3: Full cost recovery – licence and allocation fees

This option would achieve full cost recovery. All licence-holders would pay the same annual licence fee of $154.85 for each tow truck licence held in and outside the Melbourne Controlled area, and for each licence held for a heavy tow truck. In addition, licence-holders in the Melbourne Controlled Area would pay $28.85 per accident job allocated to them from the accident allocation centre.

#### Costs

As shown in Table 42, this option would generate revenue of $1,618,617 compared with costs of $1,618,617 and achieve full cost recovery.

Licence holders in the Melbourne Controlled Area would be required to pay an annual tow truck licence fee and accident allocation fees. It would result in the same increased costs relative to Option 2 for these licence holders. However, the base towing fee would need to be adjusted in the same way and same amount as under Option 2. This additional cost would be incurred by the driver/owner of the accident damaged vehicle or their insurer.

VicRoads would incur administrative costs in establishing the accident allocation fees and invoicing licence holders on a monthly basis.

Table 42: Option 3 Cost recovery levels

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Area | Licence Fee | No  Licences | Costs | Licence Revenue | Surplus/Deficit |
| Melbourne Controlled area | $154.85 | 421 | $65,191.85 | $65,191.85 | $0 |
| Geelong Self Management area | $154.85 | 25 | $3,871.25 | $3,871.25 | $0 |
| Regional | $154.85 | 281 | $43,512.85 | $43,512,85 | $0 |
| Heavy Vehicle | $154.85 | 39 | $6,039.15 | $6,039.15 | $0 |
|  | Accident Allocation Fee | No Allocations | Costs | Allocation Revenue | Surplus/Deficit |
| Melbourne Controlled area | $28.85 | 52,000 | $1,500.001.95 | $1,500.001.95 | $0 |
| Total: |  |  | $1,618,617.05 | $1,618,617.05 | $0 |

#### Benefits

Similar to Option 2, this option achieves full cost recovery of the $1,618,617 and removes the current taxpayer funding of $1,109,943 for the administration of the accident allocation centre.

Regional and Geelong Self Management area licence-holders of regular tow trucks and licence-holders of heavy vehicles would pay an annual tow truck licence fee based on full cost recovery and would save about $52.15 per licence or $17,991.75 for the 345 affected licences.

This option provides additional benefits in the removal of the current cross-subsidisation that exists between licence holders in the Melbourne Controlled Area. In this respect the accident allocation fee would provide an equitable outcome where licence holders all paid $28.85 per accident allocation job.

As can be seen in Table 43, the number of monthly allocations received at depots with a similar number of licences (in this case 15 and 17), can vary significantly. A depot with low monthly allocations (e.g. 6.71 per month) that has 17 licences and receives a total of 1,360 accident allocation jobs per annum would incur $39,236 (1,360 \* $28.85) in accident allocations fees. This is considerably greater than the under recovery of accident allocation costs in Option 1 (17 licences \* $883= $15,011) and considerably less than the over recovery of accident allocation costs in Option 2 (17 licences \* $3,563 = $60,571).

Conversely, a depot with high monthly allocations (19.8 per month) that has 15 licences and receives a total of 3,570 accident allocation jobs per annum would incur $102,994 in accident allocation fees. This is considerably greater than the under recovery of accident allocation costs in Option 1 (15 licences \* $883= $13,245) and Option 2 (15 licences \* $3,563 = $53,445).

Table 43 Comparison of Accident Allocation Fees with Options 1 and 2

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | Monthly Accident Allocations | Annual Accident Allocations Per Licence | Total Annual Accident Allocations for all licences at the depot | Allocation Cost @$28.85 per allocation | Option 1: Tow Truck Licence Cost @ $883 per licence | Option 2: Tow Truck Licence Cost @ $3,563 per licence |
| Depot with 17 licences | 6.71 | 80 | 1,360 | $39,236 | $15,011 | $60,571 |
| Depot with 15 licences | 19.8 | 238 | 3,570 | $102,994 | $13,245 | $53,445 |

### Option 4

This option would maintain the current fee of $1,038.62 per regular tow truck licence in the Melbourne Controlled area and $154.85 per heavy vehicle tow truck licence throughout Victoria and per regular tow truck licence outside the Melbourne Controlled area.

#### Costs

As shown in Table 44, this option would generate revenue of $490,682 compared with costs of $1,618,617 and under recover $1,127,934.

Similar to Option 1, licence-holders of regular tow truck licences in the Melbourne Controlled area would pay a substantially higher licence fee compared with licence-holders of regular and heavy vehicle tow truck licences throughout the rest of the State due to the $883 contribution to the administration of the accident allocation centre. However, this is a $2,680 annual shortfall per licence.

Taxpayers would still need to fund $1,127,934 of the cost to administer the accident allocation centre.

Table 44: Option 4 Cost recovery levels

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Area | Licence Fee | No  Licences | Costs | Licence Revenue | Surplus/Deficit |
| Melbourne Controlled area | $1,038.62 | 421 | $1,565,193.80 | $437,259.02 | ($1,127,934.78) |
| Geelong Self Management area | $154.85 | 25 | $3,871.25 | $3,871.25 | $0 |
| Regional | $154.85 | 281 | $43,512.85 | $43,512.85 | $0 |
| Heavy Vehicle | $154.85 | 39 | $6,039.15 | $6,039.15 | $0 |
| Total: |  | 766 | $1,618,617.05 | $490,682.27 | ($1,127,934.78) |

#### Benefits

Regional and Geelong Self Management area licence-holders of regular tow trucks and licence-holders of heavy vehicles would pay an annual tow truck licence fee based on full cost recovery and would save about $52.15 per licence or $17,991.75 for the 345 affected licences.

The loss of $17,991.75 revenue would result in $490,682 or 30 percent of the $1,618,617.05 costs being recovered.

### Comparative Assessment of the Options

In terms of cost recovery, Options 2 and 3 achieve full cost recovery but Option 2 would impose significant levels of cross-subsidisation between licence holders for accident allocations (from $14.97 to $44.54) whereas Option 3 would introduce a flat accident allocation fee that would ensure that all licence holders in the Melbourne Controlled Area paid exactly the same for accident allocations.

Option 1 achieves partial cost recovery overall but over-recovers the costs associated with annual tow truck licences held by licence holders outside the Melbourne Controlled Area and licence holders of heavy vehicles. In addition, this option also imposes cross-subsidisation between licence holders for accident allocations (although at a lower amount from $3.71 to $11.05 per allocation) compared with Option 2.

Option 4 is effectively the same as Option 1 but provides a modest reduction in the annual tow truck licence of $52.15 per truck and $17,991.75 in total for licence holders outside the Melbourne Controlled Area and licence holders of heavy vehicles.

From an efficiency perspective, Options 1,2 & 4 are less efficient than Option 3 due to the cross-subsidisation between licence holders.

Notwithstanding the above, the current contract for the Accident Allocation Centre is due to expire in 2020, and it is expected to be re-tendered early in 2020. Given the nature of the competitive tendering process, there is no guarantee that the current per annum cost associated with running the Accident Allocation Centre will remain accurate beyond 2020. In light of this, the Department is recommending no changes to tow truck licence fees at this time. This will be reviewed following the completion of the Accident Allocation Centre contract tender process and the associated costs are known. Therefore, Option 1 is the preferred option.

## Alteration of Specified Depot Fees

Movement of tow truck licences to another VicRoads approved depot and relocation of depot

**Cost components**

The process involves the following tasks:

* Receipt and process application;
* Assess the advantages of the change of depot to the public at or near the proposed depot;
* Assess the impact that the services from the proposed depot would have on any existing accident towing services businesses near the proposed depot;
* Assess the effect on the public at or near the current depot, if the proposed depot change is approved.

The following evidence is required in addition with the application only for the relocation of depot:

* Written statement from the municipal council supporting the applicant’s proposed depot, and a council rates notice or lease agreement.

This process takes an average of 4 hours per application and requires analysis of accident allocation data for the Melbourne Controlled area or the Geelong Self-Management area and police accident allocation data for regional areas and is undertaken by a VRO 4 officer.

Table 45 shows the breakdown of the administrative costs associated with the movement of licences. As can be seen, the total cost per application is $428.96 and $13,727 for 32 applications per annum.

Table 45: Movement of Licences – Administrative Costs

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Classification | Hourly Rate | Administrative processing time (hours) | Cost | Average No Applications | Total |
| VRO4 | $107.24 | 4 | $428.96 | 32 | $13,727 |

**Options**

### Option 1: Current fee

Under this option, the current prescribed fee in the regulations would be maintained at $207.00 per application.

#### Costs

As shown in Table 46, this option would generate revenue of about $6,464 compared with costs of $13,727; leading to a deficit of $7,263

Table 46: Option 1 cost recovery level

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Average number of licences | Application Fee | Costs | Revenue | Surplus/Deficit |
| 32 | $202.00 | $13,727 | $6,464 | ($7,263) |

#### Benefits

Licence-holders benefit from lower fees and save $226.97 per application that needs to be funded by the taxpayer.

### Option 2: Full cost recovery

Under this option, a fee of $428.96 would be prescribed to reflect the costs involved in processing an application.

#### Costs

As shown in Table 47, this option would generate revenue of about $13,727 and fully recover the costs associated with the determination of the 32 applications per annum.

Licence holders applying for alteration to a depot would need to pay an additional $226.97 per annum or a 53 percent increase to the current application fees.

Table 47: Option 2 cost recovery level

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Average number of licences | Application Fee | Costs | Revenue | Surplus/Deficit |
| 32 | $428.96 | $13,727 | $13,727 | $0 |

#### Benefits

The fees achieve full cost recovery.

### Comparative Assessment of the Options

While Option 2 results in a significant increase to the application fee it represents the work and associated costs involved in assessing the impact on the public and other licence-holders in ensuring that any proposed changes do not result in under-servicing or over-servicing of the particular area. However, to ensure consistency with current fees, the Department is recommending Option 1 (maintain fees at current levels).

# NATURE AND EFFECT OF THE PROPOSED REGULATIONS

## Authorising Provisions

The proposed regulations are made under section 223 of the Accident Towing Services Act 2007.

## Proposed Regulations

The existing 2008 regulations have been reviewed and it is proposed to make new regulations in the general form of those existing regulations but having made several substantive amendments together with a few other minor amendments discussed below. A copy of the proposed regulations can be found in Appendix B.

The followingregulations contain proposed amendments: 9, 15, 17, 18(5), 20, 21(5)(b), 25, 28(2), 33(1)(i), 41, 44(1) 47(2) & (4), 48. and Schedule 2. These are mostly minor amendments involving redrafting and updating references. The proposed amendments are highlighted in section 8.3.

A comparison of current and proposed fees is provided below.

Current & Proposed Fees

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Type of Fee | Current Fees | | Proposed Fees | |
| $ | Fee Units | $ | Fee Units |
| Tow truck licences in Melbourne Controlled Area | $1,038.62 | 70.13 | $1,038.62 | 70.13 |
| Tow truck licences outside the Melbourne Controlled Area | $207.00 | 13.98 | $154.85 | 10.45 |
| Tow truck licences for heavy tow trucks | $207.00 | 13.98 | $154.85 | 10.45 |
| Applications to alter a depot | $207.00 | 13.98 | $428.96 | 28.96 |
| Replacement tow truck licence certificate | $26 | 1.8 | $0 | 0 |

Note: One fee unit is valued at $14.81 (2019/20)

## Description of Proposed Regulations

**PART 1 – PRELIMINARY**

Regulations 1 to 5 prescribe the objectives, authorising provision, commencement, revocations and definitions.

**PART 2 – INDUSTRY ACCREDITATION AND DRIVER ACCREDITATION**

**Regulation 6 Qualifications for accreditations and renewals**

Regulation 6(1) provides that VicRoads may make a determination as to qualifications to be required of, and tests to be passed by, an applicant for industry accreditation or driver accreditation or the renewal of either accreditation.  A qualification or test determined under subregulation (1) must be one that promotes the safe, efficient, timely and law-abiding provision of accident towing services. Qualifications may include formal training, informal training or prior work experience. Before making a determination, VicRoads must invite public comments or submissions.

**Regulation 7 Notice to be given before determination is made**

Regulation 7 specifies the required public consultation process before a determination can be made under regulation 6.

**Regulation 8 Information to accompany applications for accreditations and renewals**

Regulation 8 specifies that an application for industry accreditation or driver accreditation or the renewal of either accreditation must be accompanied by evidence that the applicant holds the qualifications or has passed the tests (if any) determined by VicRoads under regulation 6(1).

**Regulation 9 Additional information to accompany industry accreditation applications and renewals (Amendment)**

Regulation 9 specifies the evidence in relation to a relevant person that must be provided by a corporation when applying for the grant or renewal of a towing operator accreditation.

**Regulation 10 Conditions of towing operator accreditation – training, testing, tow truck maintenance and other matters**

Regulation 10 specifies the following conditions for a holder of a towing operator accreditation:

* Training and testing;
* Inspection and maintenance of licensed tow truck and equipment;
* Inspection and maintenance records to be kept for two years; and,
* Display towing operator accreditation certificate at the specified depot;

**Regulation 11** **Conditions of towing operator accreditation – engagement of persons to drive tow trucks and manage accident towing service businesses**

Regulation 11 specifies the following conditions for a holder of a towing operator accreditation:

* Tow truck drivers to hold a current driver accreditation;
* Tow truck drivers to be technically competent, fit and healthy and act in a manner that is timely, efficient, safe and law abiding;
* Towing depot manager to hold industry accreditation; and,
* Ensure tow truck driver and towing depot manager undertake training and testing as required.

**Regulation 12 Condition of towing depot manager accreditation**

Regulation 12 specifies that it is a condition of a towing depot manager accreditation that the holder of the accreditation must undergo training and testing as required by VicRoads from time to time in relation to the safe, efficient, timely and law abiding provision of accident towing services.

**Regulation 13 Condition of tow truck driver accreditation**

Regulation 13 specifies that the holder of a tow truck driver accreditation must undergo training and testing as required by VicRoads from time to time in relation to the safe, efficient, timely and law abiding provision of accident towing services. Testing may include medical examinations.

**Regulation 14 Consultation requirements**

Regulation 14 specifies identical public consultation requirements as prescribed in regulation 7 in relation to the training or testing of the holders of a towing operator accreditation, depot manager accreditation and tow truck driver accreditation.

**PART 3- TOW TRUCK LICENCE CERTIFICATES**

**Regulation 15 When a tow truck licence certificate must be returned (Amendment)**

Regulation 15 requires a licence holder to return a tow truck licence certificate to VicRoads within 7 days in the event the certificate becomes illegible, altered and defaced, or if the licence holder changes their address. VicRoads is required to issue a replacement certificate. When a licence holder applies for a replacement tow truck licence certificate, VicRoads emails the certificate to the licence holder. The cost involved is minimal and VicRoads receives applications on an infrequent basis. Accordingly, it is not proposed to charge an application fee for this service and Regulation 15 (2)(b) “*be accompanied by a fee of 1.8 units”* has been removed*.*

**Regulation 16 Lost, stolen or destroyed certificates**

Regulation 16 specifies that a licence holder must apply to VicRoads for a replacement tow truck licence certificate upon becoming aware that the tow truck licence certificate held by that person has been lost, stolen or destroyed.

**Regulation 17 Annual licence fees**

Regulation 17 refers to the annual tow truck licence fees. The fees for annual tow truck licences are as shown in the Table below.

|  |  |  |
| --- | --- | --- |
| Type of Fee | Proposed Fees | |
| $ | Fee Units |
| Annual tow truck licence in Melbourne Controlled Area | $1,038.63 | 70.13 |
| Annual tow truck licence outside the Melbourne Controlled Area | $207.04 | 13.98 |
| Annual tow truck licence for heavy tow trucks | $207.04 | 13.98 |

**Regulation 18 Alteration of specified depot (Amendment)**

Regulation 18 specifies the holder of a tow truck licence may apply in writing to VicRoads for the depot specified in the tow truck licence to be altered. This will apply to where the holder of a tow truck licence seeks relocation of a specified depot or the movement of a tow truck licence to an approved specified depot.

Applications for the relocation of a specified depot and the movement of a tow truck licence to an approved specified depot need to address the impact on the public at the current and proposed depot as well as the impact on existing accident towing service businesses near the proposed depot.

In terms of the evidence that needs to be accompanied with the application for the movement of a tow truck licence to a specified depot, applicants will be exempted from providing a written statement of support from the municipal council provided this has been previously supplied to VicRoads no more than five years ago -regulation 18(5). This exemption recognizes that this evidence has been previously provided at the proposed VicRoads approved specified depot but also recognises that a municipal council may have changed it planning policies by capping the timeframe to five years.

The fee for an application to alter a depot will remain at $207.04 or 13.98 fee units.

**PART 4- RECORD KEEPING AND SPECIFIED DEPOTS**

**Regulation 19 Records to be kept by a licence holder**

Regulation 19 specifies that a licence holder must keep the following records in relation to the tow truck specified in the tow truck licence:

* copies of invoices of charges made for towing and storing accident damaged motor vehicles;
* in chronological order, every authority to tow form which has been completed or partially completed;
* a record of the names, addresses, tow truck driver accreditation numbers and driver licence numbers of every person who drives the tow truck;
* a record of the name, address and towing operator accreditation number or towing depot manager accreditation number of the person who manages the accident towing service business to which the licence relates; and,
* photographs, taken of a salvage operation in a way that clearly links each photograph to the authority to tow to which it relates.

A licence holder must keep these records in English at the specified depot for the licensed tow truck for at least one year. A licence holder must give an authorised officer or police officer within a reasonable time an accurate copy of any the required records to be kept if requested. A licence holder must also give the owner of an accident damaged motor vehicle that has been salvaged a copy of the photographs at no cost if requested by the owner.

**Regulation 20 Manner and form in which records are to be kept (Amendment)**

Regulation 20 specifies that an authority to tow must be kept in hard copy. All other records kept under the Act or Regulations may be kept in electronic form. Regulation has been amended to remove the definition of ‘electronic form’.(previously in regulation 15(3) of the 2008 regulations.

**Regulation 21 Specified depots (Amendment)**

Regulation 21 requires a licence holder to ensure the specified depot for the licensed tow truck:

* is open for business and staffed between 8.00am and 5.00 pm (Monday to Friday) excluding public holidays;
* contactable by telephone during the aforementioned business hours;
* displays on the exterior of the specified depot a sign with the name of the licence holder, the depot number (if within a controlled area), the hours of business and telephone number;
* is suitable for the conduct of business and the keeping of records; and,
* the licensed tow truck operates from the specified depot and is usually based at the specified depot between the hours of 8.00 am and 5.00pm (Monday to Friday) excluding public holidays.

The latter sub-regulation 21(5)(b) has been amended to require that a licensed tow truck be usually based at the specified depot during business hours. The requirement in the 2008 regulations is not limited to business hours and applies 24/7.

**Regulation 22 Exemptions from specified depot requirements**

Regulation 22 permits VicRoads to wholly or partially exempt a licence holder from complying with the prescribed business hours if the specified depot is located outside the controlled area and VicRoads is satisfied that it would impose an unreasonable burden on the licence holder.

VicRoads may also wholly or partially exempt a licence holder from complying with regulation 22(5) that requires the licensed tow truck to be usually garaged at the specified depot if VicRoads is satisfied that the exemption would improve the efficiency of the accident towing services and the exemption would not unreasonably impact on the accident towing business of another licence holder. VicRoads must consult with any licence holder that is likely to be affected before granting an exemption.

**PART 5 – VEHICLES**

**Regulation 23 Specifications and equipment (Amendment)**

Regulation 23 specifies that a licence holder must ensure that the tow truck meets the load capacity and tyre specifications and is fitted with the following prescribed equipment:

* Lifting equipment
* Equipment for removal of debris and glass
* Fire extinquishing equipment
* Warning lights
* Adjustable lights
* Lightboard

It is proposed to remove the requirement that a warning light have a combined power output of at least 55 watts with a requirement that requires a warning light to show a light that is visible in normal daylight from any direction at a distance of not less than 200 metres. The warning lights requirement was previously a requirement under item 6(b) in Schedule 1 of the 2008 regulations and is now included in the proposed regulation 23(1)(f)(ii).

**Regulation 24 Maintenance of equipment**

Regulation 24 specifies that a licence holder must ensure that the equipment required to be fitted to a licensed tow truck under regulation 23 is maintained in a safe and serviceable condition.

**Regulation 25 Information to be displayed on licensed tow truck (Amendment)**

Regulation 25 specifies that a licence holder must ensure the prescribed information is displayed on the licensed tow truck. Items 1 and 2 in the Table provide the critical information to be displayed on a licensed tow truck and Item 3 has never been exercised by VicRoads. With the eventual adoption of GPS and other technologies, it is highly unlikely that VicRoads will require a licensed tow truck to include matters in item 3: other signs, symbols, notices or labels to be displayed on the tow truck. Accordingly, Item 3 has been removed from the Table.

**Regulation 26 Inspection of tow trucks proposed to be specified in a tow truck licence**

Regulation 26 specifies that VicRoads may direct the licence holder to make available for inspection the tow truck proposed to be specified in a tow truck licence.

**Regulation 27 Notice requiring repairs etc**

Regulation 27 specifies that an authorised officer may serve a notice on a licence holder after inspecting a tow truck under the provisions of regulation 26 and finding the tow truck to be unsafe, unsuitable or unfit for the use of providing accident towing services.

**Regulation 28 Operation of warning lights on a licensed tow truck (Amendment)**

Regulation 28 specifies that a driver must activate the tow truck warning lights when the tow truck is within close proximity to an accident damaged vehicle, being used to pick up or set down an accident damaged vehicle at a road accident scene or is in a hazardous position on a highway. Regulation 28(2) provides exceptions to the offence of unlawfully activating warning lights, but with references to redundant notices and permits in regulation 22(3) of the 2008 regulations removed. This has no material change to the intent of the regulation.

**Regulation 29 Connection of lightboard when vehicle is towed behind a licensed tow truck**

Regulation 29 specifies that if a vehicle is being towed behind a licensed tow truck, the driver of the tow truck must ensure that a lightboard is securely placed behind the vehicle that is being towed and connected electrically or wirelessly to the tow truck.

**PART 6- TOW TRUCK OPERATIONS IN A CONTROLLED AREA**

**Division 1- Road accident scene rosters**

**Regulation 30 Appointment of chief allocation officer and allocation officer**

Regulation 30 specifies that VicRoads may, on the nomination in writing of an allocation body, appoint a person or the occupier of an office or position to be the chief allocation officer and an allocation officer for that allocation body.

**Regulation 31 Road accident scene roster**

Regulation 31 requires the chief allocation officer of the allocation body to keep a road accident scene roster.

**Regulation 32 Inclusion in the roster**

Regulation 32 permits a licence holder to apply to VicRoads for a place on the road accident scene roster for a controlled area provided the licence holder holds a regular tow truck licence and the licence has a specified depot in the controlled area.

**Regulation 33 Removal or suspension from the roster (Amendment)**

Regulation 33 specifies that VicRoads must direct the chief allocation officer to remove or suspend an allocated place on the road accident scene roster if:

* the licence holder requests the removal or suspension;
* the specified depot of the licence is not within the controlled area;
* the tow truck licence is cancelled or suspended;
* the rostered tow truck is not registered;
* the licence holder ceases to hold a towing operator accreditation or the accreditation is suspended;
* the use of the rostered tow truck on a highway would constitute an offence;
* the licence holder is an undischarged bankrupt or the corporation is in liquidation or receivership;
* the licence holder (in the case of a corporation) is deregistered within the meaning of the Corporations Act.

It is proposed to add the following provision in regulation 33(1)(i), “ or the annual licence fee, or instalment of the annual licence fee, of the rostered tow truck is outstanding

The same provisions apply in the case of a transferred towing entitlement as well as:

* An exempt or non-exempt tow truck licence that is cancelled or suspended.

**Regulation 34 Review of decision by VCAT**

Regulation 34 enables a person affected by a decision of VicRoads under regulation 33 may apply to VCAT for a review of that decision.

**Regulation 35 Time period for making application to VCAT**

Regulation 35 specifies that an application under regulation 29 must be made within 28 days on the day the decision is made or the person requests a statement of reasons for the decision.

**Division 2- Allocations**

**Regulation 36 Authorisation to attend road accident scene**

Regulation 36 specifies that an allocation officer of an allocation body may make an allocation if a request has been received to remove an accident damaged vehicle from a road accident scene or a previous authorization has been cancelled. An allocation is made by contacting the holder of the place on the roster next entitled to an allocation, and offering that person an authorisation. If the person refuses or is unable to accept the authorisation, the allocation officer will offer the authorisation to the person whose place on the roster is next entitled to an allocation.

An allocation officer must ensure:

* The authorisation is recorded (including name and contact details of the person requesting the tow);
* Job number is allocated to the authorisation;
* Job number allocated to the authorisation is matched with the details of the accident damaged vehicle and the tow truck; and,
* The authorisation is only given for one accident damaged motor vehicle.

**Regulation 37 Authorised tow truck must attend**

Regulation 37(1) requires the driver of a tow truck to arrive at the accident scene within 30 minutes of accepting a towing job from the accident allocation body.

Regulation 37(8) requires the driver to notify the allocation body when the tow truck arrives at the accident scene and regulation 36(9) requires the driver to notify the allocation body when the tow truck departs from the road accident scene and provide details of the accident damaged vehicle.

Regulation 37(10) prohibits a tow truck from towing more than one damaged vehicle even if the allocation body has authorised two allocation jobs to the same licence-holder at a particular road accident scene.

**Regulation 38 Attendance at road accident scene outside controlled area**

Regulation 38 specifies that the licence holder or person operating a rostered tow truck must take reasonable steps to ensure the tow truck does not attend a road accident scene outside the controlled area unless VicRoads has issued a written authorization.

**Regulation 39 Substitute tow truck**

Regulation 39 specifies that a licence holder who has been authorised to attend a road accident scene may seek authorisaton for another tow truck other than the rostered tow truck by notifying the allocation body.

**Regulation 40 Cancellation of authorization**

Regulation 40 permits an allocation officer of the allocation body to cancel an authorization if the licence holder:

* is unable to ensure the rostered tow truck can attend the road accident scene within a reasonable period;
* requests for a substitute tow truck has been refused; or,
* is unable to fulfill the authorization.

The allocation officer must notify the licence holder, or a person at he specified depot or the driver of the rostered tow truck that the authorization is cancelled.

The allocation officer must have regard to current traffic conditions before making a decision to cancel an authorisation.

**PART 7 – TOW TRUCK OPERATIONS GENERALLY**

**Division 1 – Definition**

**Regulation 41 Definition (Amendment)**

Regulation 41 is a new regulation and specifies that an “owner” includes the agent of an owner for the purposes of Part 7.

**Division 2 – Authorities to Tow**

**Regulation 42 Authorities to tow**

Regulation 42 specifies that the form set out in Schedule 1 is the prescribed form of an authorisation to tow.

**Regulation 43 Authorities to tow - offences**

Regulation 43 specifies a range of offences in respect to the authorisation to tow. These include a requirement that the authority to tow form must not contain any information, text or images other than those required in Schedule 1. However, the form may include a tax invoice or contact information of the relevant accident towing service business. The driver of a licensed tow truck must not drive or use the tow truck unless there is in the tow truck, a bound book of forms for authorities to tow, numbered in series and at least in duplicate. The driver must ensure the form used is in order of the serial number. The driver must photograph an accident damaged vehicle, showing the condition and location of the vehicle, at an accident scene where salvage is undertaken to enable the vehicle to be towed.

**Regulation 44 Moving motor vehicle to reduce a hazard (Amendment)**

Regulation 44 specifies that the driver of a tow truck may complete the authority to tow form as far as practicable and move the incapacitated vehicle to the side of the highway to reduce the hazard when the driver or owner of the vehicle or a police officer or authorised officer is unable to complete the authorisation. The inclusion of an authorised officer is a proposed amendment to regulation 44(1).

**Division 3 – Road accident scenes**

**Regulation 45 Conduct of tow truck drivers at road accident scene**

Regulation 45 specifies that the driver of a tow truck that moves an accident damaged vehicle must ensure that before the tow truck leaves the road accident scene, all debris and glass attributable to the road accident is removed. The driver must also take reasonable steps that if there is a hazard, the appropriate authorities are notified of the hazard as soon as possible.

**Regulation 46 Duty to advise owner or driver of an accident damaged motor vehicle**

Regulation 46 specifies that the driver of a licensed tow truck must take reasonable steps to inform the owner or driver of the accident damaged vehicle, to deliver the vehicle to any place specified by the owner or driver and provide a copy of VicRoads information pamphlet. This requirement does not apply if the owner or driver of the accident damaged vehicle is not able to authorise the towing of the vehicle due to absence or incapacity or where regulation 47(2) and 47 (3) & (4) apply.

**Regulation 47 Refusal to salvage or tow from road accident scene (Amendment)**

Regulation 47 specifies that the driver of a licensed tow truck must not refuse to salvage or tow an accident damaged vehicle to a particular place when asked to do so by a police officer, an authorised officer or the owner or driver of the vehicle. However, the driver may refuse to salvage a vehicle if the tow truck is not capable of salvaging the vehicle without the assistance and presence of another tow truck, mobile crane, or specialised equipment. In addition, the tow truck driver can refuse to tow a vehicle if the destination is more than 125 kms. It is not clear how the Victorian Towing Directorate determined this condition in 1983. VicRoads is unaware of any complaints in regards to this limit. A limit is required so that tow truck drivers can return to their depot and be ready to provide accident towing services in response to a request by the AAC.

It is proposed to ensure that regulation 47(4) operates consistently with section 146 of the Act (Section 146 requires tow truck drivers to ensure that the accident damaged vehicle is towed to the place specified in the authority to tow). Regulation 47(4) will therefore make it clear that the tow truck driver may refuse to tow the vehicle to a particular place before the authority is signed.

It is also proposed to amend the current provision that allows a tow truck driver to offer the driver or owner of the accident damaged vehicle the opportunity to make payment by way of a VicRoads approved payment facility (regulation 39(3)(b)(ii)). VicRoads has never approved such a facility and considers it in keeping with normal business practices for the tow truck driver, under regulation 47(4)(b)(ii), to simply offer the driver or owner the opportunity to make payment by cheque, electronic funds transfer, credit or debit card. If the driver or owner does not make payment by one of these methods and has already indicated unwillingness or inability to make payment by cash, the tow truck driver may refuse to tow the vehicle. VicRoads’ power to approve a facility will not be included in the regulations.

**Division 4 – Outstanding charges**

**Regulation 48 Method of receiving payment for outstanding charges (Amendment)**

It is proposed to amend the offence provision under current regulation 40. This provision requires an accredited person owed money for repair, towing or storage services, to provide the vehicle owner the opportunity to make payment by way of a VicRoads approved payment system. VicRoads has never approved such a system and considers it in keeping with normal business practices for the accredited person to be required under regulation 48 to simply provide the owner with the opportunity to make payment by way of cash, cheque, electronic funds transfer, credit or debit card. VicRoads’ power to approve a payment system will not be included in the proposed regulations.

**PART 8 – ACCIDENT TOWING DEMERIT POINTS**

**Regulation 49 Definition**

Regulation 49 defines “relevant prescribed offence” to mean an offence specified in column 3 of the Table in Schedule 2.

**Regulation 50 Circumstances in which accident towing demerit points are incurred and amount**

Regulation 50 specifies that for the purposes of section 165(1) of the Act, a person incurs accident towing demerit points if:

* The penalty specified in an infringement notice issued for a relevant offence is paid;
* The penalty specified in an infringement notice issued for a relevant offence is not paid and notice of objection is not given within the time specified in the notice; or,
* The person is convicted or found guilty of a relevant offence.

**Regulation 51 Notice of recording of accident towing demerit points**

Regulation 51 specifies that VicRoads must notify in writing any person who incurs any accident towing demerit points that have been recorded against the person.

**Regulation 52 Notice of suspension of accreditation**

Regulation 52 specifies the particulars to be included in a notice of suspension to be served on an accredited person.

**Regulation 53 Cancellation of accident towing demerit points**

Regulation 53 specifies the circumstances in which VicRoads may cancel accident towing demerit points.

**PART 9 – INFRINGEMENTS**

**Regulation 54 Infringements**

Regulation 54 explains the columns of the Table in Schedule 3.

**PART 10 – ENFORCEMENT**

**Regulation 55 Embargo notice**

Regulation 55 states for the purposes of section 193(1) of the Act, the form of an embargo notice is set out in Schedule 4.

**SCHEDULE 1—Authority to Tow**

Schedule 1 prescribes the content of the Authority to Tow form.

**SCHEDULE 2—Accident Towing Demerit Points (Amendment)**

Schedule 2 prescribes accident towing demerit points for 74 offences with demerit points for 26 offences under the regulations, 45 offences under the Act, 2 offences under the Summary Offences Act 1966 and 1 offence under the Road Safety Road Rules 2017. Item 63 in Schedule 2 has been amended to replace the outdated reference to Road Rule 603 with Road Rule 293.

**SCHEDULE 3—Infringements**

Schedule 3 prescribes 78 infringements with 36 infringements for offences under the regulations and 42 infringements for offences under the Act.

**SCHEDULE 4 – Embargo notice**

Schedule 4 prescribes the content of the Embargo Notice.

# IMPACT ON SMALL BUSINESS

Most accident towing businesses would constitute a small business by definition. The regulatory costs are applied equally to all accident towing operators regardless of the number of tow truck licences held other than the annual tow truck licence fee which is payable per tow truck licence held.

However, regulation 36(10) that prohibits a rostered tow truck driver in the Melbourne Controlled area to tow more than one accident damaged motor vehicle has a disproportionate impact on accident towing operators with low numbers of tow truck licences. Table 48 below is reproduced from the assessment section on double tows.

Accident towing operators with 2 to 5 tow truck licences average 16 tows per tow truck per month. Without the double tow restriction, these operators could reduce the number of tow trucks used and increase their average to 43 tows per tow truck per month; an increase of 168 percent.

This is in stark contrast to accident towing operators with 29 to 39 tow truck licences who average 34 tows per tow truck per month under the current regulation and without the double tow restriction, would average 53 tows per tow truck per month; an increase of 56 percent.

Table 48: Current and Potential Tow Truck Productivity

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | | Current Productivity | | | Potential Productivity | | | |
| No. Depots | Tow Truck Licences | No. Tow Trucks | Range of Tows per Tow Truck | Average Tows per Tow Truck | Potential Reduction in number of Tow Trucks | Residual Number of Tow Trucks | Range of Tows per Tow Truck | Average Tows per Tow Truck |
| 2 to 5 | 16 | 44 | 8 to 46 | **16** | 28 | 16 | 17 to 68 | **43** |
| 6 to 10 | 15 | 65 | 12 to 37 | 20 | 34 | 27 | 26 to 75 | 45 |
| 11 to 18 | 11 | 69 | 18 to 45 | 25 | 29 | 36 | 31 to 68 | 45 |
| 29 to 39 | 3 | 34 | 26 to 41 | **34** | 14 | 20 | 47 to 68 | **53** |
| TOTAL | 45 | 212 |  | 22.5 | 105 | 99 |  | 46.5 |

# COMPETITION ASSESSMENT

### Overview

The National Competition Policy Agreement set out specific requirements with regard to all new legislation adopted by jurisdictions that are party to the agreements. Clause 5 (1) of the Competition Principles Agreement sets out the basic principle that must be applied to both existing legislation, under the legislative review process, and to proposed legislation.

The guiding principle is that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

1. The benefits of the restriction to the community as a whole outweigh the costs; and
2. The objectives of the regulation can only be achieved by restricting competition.

Clause 5(5) provides a specific obligation on parties to the agreement with regard to newly proposed legislation.

Each party will require proposals for new legislation that restricts competition to be accompanied by evidence that the restriction is consistent with the principle set out in sub-clause (1).

Therefore, all regulatory impact statements must provide evidence that the proposed regulations are consistent with the National Competition Policy obligations.

### Definition of Market

Accident towing services is the primary market affected by the proposed regulations.

### Test for Restriction on Competition

Under the Guidelines for the application of the Competition Test to New Legislative Proposals, legislative schemes are deemed to contain restrictions on competition if they:

* Allow only one company or person to supply a good or service;
* Require producers to sell to a single company or person;
* Limit the number of industry or individual producers; and
* Limit the number of persons engaged in an occupation.

### Assessment

The *Accident Towing Services Act 2007* (the Act) imposes restrictions on competition by limiting the number of industry producers. The Minister for Roads is empowered to issue new licences under sections 14 and 15 of the Act. However, no accident tow truck licences have been issued for over 30 years.

The proposed regulations do not contain any of the above restrictions. The proposed regulations apply to all accident towing services.

In view of the above, this assessment concludes that the proposed regulations do not act to restrict competition.

# Implementation and Enforcement

Prior to the commencement of the regulations, the Department will advise the VACC, ICA, insurers and licence holders of accident tow trucks of the key amendments.

The Victoria Police undertake enforcement action at the road accident scene for serious accidents such as ensuring that the rostered tow truck driver arrives within 30 minutes after the accident allocation centre has provided authorisation, the tow truck driver has cleared the debris from the road accident scene and that the tow truck has connected a lighting board (if required) as well as ensuring the authority to tow form is correctly filled out.

VicRoads authorised officers respond to complaints and also plan to undertake random inspections of depots to ensure tow trucks and the prescribed records are compliant with the requirements under the Act and Regulations. In the event that compliance activities are increased, VicRoads may introduce an inspection fee by amending the regulations.

Authorised officers also include police officers. Under the Act, authorised officers have the powers to enter and search tow trucks for compliance purposes and enter and search premises with consent or with a search warrant. Authorised officers also have the power to issue infringement notices for offences committed under the Act or Regulations.

The regulations prescribe 78 infringements in Schedule 4 with 36 infringements for offences under the regulations and 42 infringements for offences under the Act. The infringement offences attract an infringement penalty ranging from 1.25 to 12 penalty units.

Consistent with requirements for making legislation, the penalties associated with infringements are generally around 20% of the value of a penalty under the relevant regulation. The Department of Justice and Community Services were consulted on the appropriateness of the penalties. A police officer and an authorised officer are empowered under the Act to issue an infringement notice.

The regulations prescribe accident towing demerit points for 74 offences in Schedule 3 with demerit points for 26 offences under the regulations, 45 offences under the Act, 2 offences under the Summary Offences Act 1966 and 1 offence under the Road Safety Road Rules 2017. The demerit points range from 1 demerit point to 4 demerit points.

# CONSULTATION

VicRoads met with several stakeholders to discuss the Accident Towing Services Regulations 2008 since November 2016, including the following stakeholders:

* Consumer Affairs Victoria;
* Insurance Council of Australia;
* Police Policy & Governance, Department of Justice;
* RACV;
* Suncorp;
* VACC; and,
* Victoria Police

Following these meetings, each stakeholder also prepared a written submission.

Three key themes were raised in the submissions:

* accident allocation;
* third-party repairs of vehicles owned by not-at-fault drivers; and,
* pricing regulation.

**Accident Allocation**

The insurance and tow truck sectors are supportive of the current accident allocation scheme. The insurers did not comment on the ESC’s recommendations in relation to proximity-based allocation whereas the VACC does not support the ESC recommendations.

**Third-party repairs**

ICA, Suncorp and CAV focussed on third-party repair networks and offered a range of solutions, some that were recommended by the ESC, some that were dismissed by the ESC in its final report. None of these stakeholders discussed the ESC’s suggestion for Government to consider full and frank disclosure of the risks and financial obligations associated with third-party repairs for not-at-fault drivers.

There is a significant difference of views between the insurance and tow truck/smash repair sectors on how to deal with the consumer detriment that has arisen in respect to third-party repair networks.

The current regulations can be amended to adopt the ESC recommendations in respect to additional consumer information provided at the accident scene. The VACC does not support this recommendation but is supportive of disclosure requirements at smash repair centres. However, the ESC suggestion of disclosure requirements would require an amendment to the Act.

**Price regulation**

The ICA, Suncorp and the VACC raised issues about price regulation. The insurance industry recommended price regulation of the Geelong Self Management area and the unregulated area. The VACC is opposed to price regulation in these areas other than the current legislative arrangements that require towing and storage charges to be reasonable. The VACC also requested a review of the regulated fees in the Melbourne Controlled.

As discussed in Section 2, towing and storage charges are outside the scope of the regulations.

The Department has also engaged with both the insurance and towing industries to keep them informed of the progress on the remaking of the Regulations.

# EVALUTION STRATEGY

As part of the Department’s commitment to good regulatory practice, the following evaluation strategy has been developed to ensure continuous improvement and accountability.

### Objectives of the Regulatory Proposal

The primary objective is to provide timely, safe, and efficient accident towing services in order to minimise traffic congestion and to provide consumer protection to prevent consumer detriment to drivers and owners of vehicles involved in road accidents.

### Regulatory Elements to be evaluated

The Victorian Guide to Regulation states that, consistent with good regulatory practice, all Regulatory Impact Statements must include an evaluation strategy, however, ‘the evaluation strategy should be proportional to the reform proposal’ and “the extent of the data to be collected with the level of sophistication of the methods used to be varied based on the significance of the reform proposal’.

The RIS has revealed that the use of GPS and electronic communication systems by accident towing operators and the Accident Allocation Centre would reduce the clearance time of road accidents and the associated traffic congestion experienced by other motorists. This technology is widely used by the transport sector and some break-down and trade towing companies.

Additionally, the current regulatory restriction on double tows in the Melbourne Controlled area prevents tow truck productivity improvements and reductions in accident towing fees as assessed in section 6.6.

Most of the regulations assessed in the RIS and the efficiency of the Accident Allocation Centre could be improved with the use of the aforementioned technology as assessed in sections 6.5 and 6.10.

Evaluation helps to identify whether the Regulations are meeting their objectives in practice and whether any unintended consequences have arisen. Evaluation is, moreover, useful where a lack of available information has not allowed a potentially viable option to be evaluated fully.

As a result, the evaluation strategy outlined below involves two broad elements:

* how the Regulations generally will be evaluated; and
* further consideration of the use of GPS notification and permitting tow truck drivers to conduct double tows and use electronic authority to tow.

**Evaluation of Preferred Options**

In terms of undertaking an evaluation of the preferred options, the Department will be able to assess the alteration to specified depots. The approval rate for applications to alter a depot provides an indication to some extent as to how effective VicRoads has provided guidance on the assessment methodology and approval criteria. VicRoads does not collect specific data on the other preferred options. However, there are infringements/demerit points attached to each of the preferred options. As a result, the number and type of offences committed provides an indicator of the effectiveness of the preferred options to provide consumer protection to drivers/owners of a vehicle involved in a road accident. VicRoads has the appropriate databases to monitor the level of offences as well as any trends in respect to specific types of offences. In addition, the number and type of complaints will also provide useful information for the Department to evaluate the effectiveness of the preferred options.

**Forward Work Program**

The nature and extent of the problem section and the assessment of the options revealed considerable potential scope for improvement to the current regulatory arrangements. However, some of these improvements need further investigation so will be part of the Department’s forward work program.

GPS notification, electronic authority to tows and double tows in section 6 appear prima facie to provide an opportunity to significantly improve the efficient operation of the accident allocation system, to reduce traffic congestion attributable to the road accident and to reduce accident towing fees. These options would have more than likely been the preferred options if not for the absence of additional cost and operational information; given that the quantified benefits significantly outweighed the known costs at this point.

These options (if implemented) would generate significant productivity benefits, lower towing fees and reduced traffic congestion.

In view of this the Department is committed to undertake a detailed business case to identify not only the costs associated with software modifications to the Accident Allocation Centre (subject to the contract tendering process), but also any limitations such as the inability to conduct double tows (four wheel drive vehicles need to be winched onto the back of a tow truck and cannot be towed from behind the tow truck), privacy issues in the use of GPS and other practical matters that are likely to be uncovered during the business case phase.

As discussed in section 7, VicRoads is under-recovering through the annual tow truck licence fees in the Melbourne Controlled Area. Revenue collected through the licence fee equates to approximately 30% of the current cost to administer the Accident Allocation Centre. Given the government’s policy principle of full cost recovery, the Department will review annual tow truck licence fees following the completion of the Accident Allocation Centre contract tender process and the associated costs are known.

### Baseline data

VicRoads maintains infringement, demerit points complaints and alterations to depots data and is equipped to monitor and evaluate non-compliance with the Act and Regulations and specifically the effectiveness of the preferred options. Baseline data from the forward program would be identified during the business case phase, and if the various matters are implemented, incorporated into the Evaluation Strategy.

### Key Performance Indicators

In terms of the evaluation of the preferred options, VicRoads will monitor the rate of non-compliance using its infringement and complaints database, and provide updates to the VACC and ICA on the general performance of the accident towing industry and where, if appropriate, to identify any problematic areas that need to be addressed.

Infringement notices are issued by Victoria Police and VicRoads authorised officers. To improve accountability, VicRoads will monitor and publish the number of infringement notices issued (by type of offence) and any suspension or cancellation of accreditation due to an accredited person incurring the maximum number of demerit points. This data will be published in VicRoads annual report.

In addition, the Department has developed a preliminary list of KPIs that could be used if the various matters in the forward program are implemented. These KPIs will be reviewed following consultation on this RIS and as the evaluation strategy is implemented. This will also involve the Office of the Commissioner for Better Regulation:

* The average time taken by accident tow truck drivers to arrive at the road accident scene in the Melbourne Controlled area. This KPI seeks to measure whether the use of GPS has improved response times.
* The average time taken by accident tow truck drivers to clear a road accident in the Melbourne Controlled area. This KPI seeks to measure whether the use of GPS has improved clearance times of road accidents.
* Once baseline data for the arrival at the road accident scene and clearance of the vehicle(s) has been established, it will be possible for VicRoads to measure on an annual basis whether tow truck drivers have helped to reduce or increase traffic congestion as result of their performance. This KPI seeks to measure whether the use of GPS and electronic authority to tows has been effective in improving tow truck driver performance and led to quicker restoration of normal traffic conditions.
* The number of double tows conducted during business and after hours, and the average number of allocations per licensed tow truck in the Melbourne Controlled area. This KPI seeks to measure whether permitting tow truck drivers to tow more than one vehicle has been effective in improving accident towing operator’s productivity.
* The aforementioned reforms have led to a reduction in accident towing fees. This KPI seeks to measure whether permitting double tows, GPS notification and electronic authority to tow have improved the productivity of accident tow operators and led to a reduction in accident towing fees.
* Surveyed drivers/owners that have had their accident damaged vehicle towed are satisfied with the information provided in VicRoads SMS text messages and factsheets. This KPI seeks to measure the effectiveness of the content and means of dissemination of consumer information to the driver/owner involved in the accident.
* Improvements to the approval rate for applications to alter the depot. This KPI seeks to measure the effectiveness of Guidelines on the process, assessment methodology and approval criteria.

### Plan

The Department would undertake a detailed cost and benefits business case for the use of GPS, electronic authority to tows and double tows to show whether the introduction of these measures are superior to the current regulations and make recommendations to the responsible Minister.

In particular, the Department will assess the following matters:

* the need for a GPS systems introduction and the type of GPS system required for effective communication between the RACV Accident Allocation Centre and accident tow trucks, the associated cost, and any privacy issues;
* the software modifications that need to be undertaken and the associated costs to enable the RACV Accident Allocation Centre to collect the information in the authority to tow from the driver/owner, insurer or Police at the time a request is made for an accident tow truck;
* the communication equipment required in the tow truck, the associated costs and the communication protocols between the RACV Accident Allocation Centre, rostered tow truck drivers, Police, insurers and the driver/owner of the accident damaged motor vehicle;
* the practicality of permitting double tows during peak-hour, off-peak periods and Police requested accident tows and the business rules that would need to be developed;
* the authorisation procedures to be used by the RACV Accident Allocation Centre to allow a double tow including software modifications and the associated costs;
* the possibility of SMS text message (consumer rights) to be sent to the driver/owner of the accident damaged motor vehicle, who should be messaging the accident victim (privacy concerns), the type of languages that should be provided and whether visual presentation of the key messages can be developed;
* annual tow truck licence fees; and,
* investigation into website that allows interested parties to know an accident has occurred and potentially lists the accident towing operator to registration plate

In addition, The Department will seek further feedback on the need for, and the content of, written guidance on the process, methodology and approval criteria for applications to alter a depot.

### Consultation Plan

The following stakeholders will be consulted in respect to the business case for the use of GPS, electronic authority tows and double tows (RACV Accident Allocation Centre, VACC, Victoria Police, CALC, accident tow truck operators and insurers). These stakeholders have a critical role to play in the consideration and potential design of a modern, effective and efficient accident allocation system.

### Timing

The evaluation would be planned to commence following the re-making of the regulations and be completed by December 2020.

### Responsible Agency

The Department of Transport

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APPENDIX 1: Calculations

## Estimated cost on the restriction of multiple tows

The Melbourne controlled area accident towing charges 2018/19 from Table 5 were used to calculate the costs associated with towing during business hours and after-hours. This involves adding the base fee and the per km fee for an average 15 km tow, and the after hours surcharge for after hours tows.

Business hours: $221.40 base fee (incl first 8km) + $24.50 for additional 7km ($3.50 per km) = $245.90 towing charge. The 6,240 additional tows is multiplied by $245.90 =$1,534,416.

After hours: $221.40 base fee + $24.50 for additional 7 km + $75.60 (after-hours surcharge) = $321.50 towing charge. The 7,800 additional tows is multiplied by $321.50 = $2,507,700.

## Estimated greenhouse gas emissions arising from the restriction on multiple tows

The Department used the Department of the Environment and Energy (DEE), “National Greenhouse Account Factors -Australian National Greenhouse Accounts”, July 2018 to calculate total greenhouse emissions. The Australian National Greenhouse Accounts provide a formula for calculating total greenhouse emissions in the transport sector as well as the energy content factor for the fuel used and the emission factor for each gas type (carbon-dioxide, methane and nitrous oxide).

The formula for determining the emissions of each gas type involves multiplying the quantity of fuel by the energy content factor of the fuel type and multiplying the emission factor for each gas type. The sum of this calculation is divided by 1000.

Diesel is the common fuel type for tow trucks and has an energy content factor of 38.6 and the following emission factors; 69.9 for carbon-dioxide, 0.1 for methane and 0.5 for nitrous oxide.

For accident tows conducted during business hours, the amount of diesel fuel consumed was calculated by multiplying 6,240 tows by 30 km average tow trip (15 km to the towing destination and 15 km return trip to the depot) =187,200km/5km per litre (average fuel consumption) = 37,440 litres fuel consumption.

With the quantity of diesel fuel used, the formula was applied to calculate carbon-dioxide CO2-e for business hour tows**:** 37\*38.6\*69.9/1000= 99.83 CO2-e and similarly for methane: 37\*38.6\*0.1/1000 = 0.14 CO2-e and for nitrous oxide: 37\*38.6\*0.5/ 1000 =0.71 CO2-e. The emissions for each greenhouse gas was summed to determine the total greenhouse emissions: 99.83 +0.14+0.71 = 100.68 CO2-e.

For accident tows conducted during after-hours, the amount of diesel fuel consumed was calculated by multiplying 7,800 tows \* 30 km average tow trip =234,000km /5 km per litre = 46,800 litres fuel consumption.

With the quantity of diesel fuel used, the formula was applied to calculate carbon-dioxide CO2-e for after hour tows: 47\*38.6\*69.9/ 1000 = 126.81 CO2-e and similarly for methane: 47\*38.6\*0.1/1000 =0.18 CO2-e and for nitrous oxide: 47\*38.6\*0.5/1000 = 0.91 CO2-e. The emissions for each greenhouse gas was summed to determine the total greenhouse emissions: 126.81 +0.18 + 1.62 = 127.90 CO2-e.

## Traffic Congestion Costs

The Department used the Bureau of Infrastructure, Transport and Regional Economics (BITRE), “Traffic and congestion cost trends for Australian capital cities” report (Nov 2015) and road transport research to calculate the potential traffic congestion costs attributable to road accidents.

The BITRE report estimated traffic congestion costs for Melbourne in the order of $4.6 billion. Road transport research has attributed 25% of traffic congestion on major roads. This equates to $1.150 billion. For the 52,000 road accidents involving a tow truck in the Melbourne Controlled Area, this equates to an average traffic congestion cost of $22,115 per road accident.

The Department has applied a simple methodology to calculate the potential traffic congestion costs attributable to the Accident Towing Services Regulations. The cost of a paper-based authorisation to tow a damaged vehicle involves the extra time taken to prepare the authorisation compared with a more efficient electronic authorisation process. The additional time involved in the paper-based authorisation results in a longer clearance time of the road accident scene and hence a longer time to restore normal traffic conditions.

Using the BITRE costs, the Department has calculated the total congestion cost attributable to the regulations by dividing the cost per accident $22,115 by the average road accident clearance time of 90 minutes. This equates to a congestion cost of $246 per minute. This is then multiplied by the number of avoidable minutes for a particular task. For example, the five minutes taken for the accident tow truck driver and the driver/owner of the damaged vehicle to complete and sign a paper based authority to tow would result in a cost of $1,230 per accident ($246 multiplied by 5 minutes). Applying the $1,230 cost per accident to the 52,000 road accidents results in a total traffic congestion cost of $63,960,000 per annum.

The Department acknowledges this is not a precise calculation but is provided in the RIS to demonstrate that several minutes of a less efficient process in the regulations can have a significant cost to other motorists, the economy and the community.

## Accident Towing Operators

There is no industry data on accident towing operator’s salaries. In lieu of this information, the costs are based on Private sector full-time adult average weekly ordinary time earnings (Australian Bureau of Statistics, Average Weekly Earnings, Australia, May 2018, 6302.0) - $1544.10 per week.

Using the formula in the Department of Treasury and Finance Victorian Guide to Regulation, $1544.10 per week equates to an annual salary of $80,293 and is divided by 1672 hours = $48.02 multiplied by 1.1785 (oncost multiplier) and multiplied by 1.5 (overheads multiplier) = $84.89 hourly rate.

## Accident Tow Truck Drivers

The cost of tow truck drivers to comply with the various options were based on the wage rates in “The Vehicle Manufacturing, Repair, Services and Retail Award 2010” and the on-cost and overhead multipliers outlined in DTF’s Victorian Guide to Regulation. It should be noted that this is a minimum hourly rate.

Accident tow truck operators use a variety of approaches to attract accident tow truck drivers who invariably are on call 24/7. Some operators pay a proportion of the towing fee. Some operators pay above the award while other operators pay the award rate. There is no industry data on the number of accident tow operators that utilise the different payment methods for their tow truck drivers. Accordingly, the Department has relied on the wage rates provided in the 2018 edition of the Award to calculate the hourly cost.

The Award prescribes a minimum average hourly rate of $28.75 after factoring in the hourly rates for weekend work. This equates to $1,092.50 per week and an annual salary of $56,810. This is divided by 1672 hours = $33.98 and multiplied by 1.1785 (on cost multiplier) and multiplied by 1.5 (overhead multiplier) =$60.06 hourly rate.

## Drivers/owners of accident damaged motor vehicles

In respect to the costs incurred by drivers/owners of accident damaged motor vehicles, there is no industry data on average costs. In lieu of this information, the costs are based on “Private sector full-time adult average weekly ordinary time earnings”, Australian Bureau of Statistics, Average Weekly Earnings, Australia, May 2018, (6302.0) - $1544.10 per week.

Using the formula in the Department of Treasury and Finance (DTF) Victorian Guide to Regulation, $1544.10 per week equates to an annual salary of $80,293.20 and is divided by 1672 hours = $48.02.

Given that there is no data on the number of drivers/owners who were using their motor vehicle for business or work purposes, the Department has erred on the conservative side and has treated all drivers/owners involved in a road accident as using their motor vehicle for private purposes. Accordingly, the hourly rate of $48.02 excludes the oncost and overheads multipliers.

The following calculations were undertaken for each of the segments in section 6.

## Section 6.2 Alteration of Specified Depot

The cost to accident towing operators to prepare an application to alter a specified depot was calculated by multiplying their hourly rate of $84.89 by 4 hours = $339.56 for Option 1 and $84.89 by 3 hours = $254.67 for applications not requiring a written statement from a municipal council in Option 2.

The cost to local councils to check whether the proposed location of the depot was compliant with its planning policies and to prepare a letter of support was calculated in the following way. A planning officer (class 7B) annual salary of $95,527.64/1672 hours = $57.13 per hour and is multiplied by 1.20 on cost multiplier and multiplied by 1.5 (overhead multiplier) = $102.84 hourly rate.

## Section 6.3 Specified Depot

No cost calculations.

## Section 6.4 Vehicle Specification & Equipment

The cost of an accident tow truck driver to clean of debris and glass from the road accident scene was calculated by dividing the hourly rate of $60 by 5 minutes = $5.00.

## Section 6.5 Allocation Response Time and Notification of Arrival and Departure

Option 1 – Costs

The cost of a mobile phone call varies considerably depending on the type of plan used by an accident tow truck driver. It is common for telecommunication service providers to charge a flagfall (connection fee) of $1 for making a call and at least $1 per minute talk time. Accordingly, the Department has estimated a call upon arrival would cost $2 for one minute and for a call upon departure $3 for two minutes; a total of $5.

The cost of an accident tow truck driver making calls upon arrival was calculated by dividing their hourly rate of $60/1 minute = $1 and for calls upon departure, $60/2 minutes = $2.

The total notification costs to accident tow truck drivers is the summed mobile phone costs and their time making the calls: $5 +$1 +$2 = $8 per tow.

The cost of the accident allocation centre involved calculating the average cost per allocation. The contract with the RACV is about $1.5 million per annum and was divided by 52,000 allocations = $28.85 per allocation. The Department has estimated about six minutes is spent by call centre staff per allocation. So, $28.85 per allocation divided by 6 minutes = $4.81 per minute.

Option 2

Costs

The GPS notification costs was calculated by dividing the number of allocations by the number of tow trucks, 52,000/212 = 245 average number of tow allocations per tow truck. The cost of the GPS was divided by the average number of tow allocation per tow truck, $500/245 = $2.04 and for top range GPS, $8,000/245 = $32.65.

Benefits

The avoidable traffic congestion costs was calculated in the following manner: traffic congestion cost per minute $246 multiplied by the 3 minutes spent by the accident tow truck driver =$738 per accident multiplied by 52,000 accidents = $38,376,000.

**Section 6.6 Double Tow**

**Average Daily and Annual Tow Truck Utilisation Rates**

The calculation for the estimated cost savings of double tows is the same as described in section 1 of this Appendix.

Similarly, the calculation for the estimated reduction in greenhouse gas emissions is the same as described in section 2 of this Appendix.

**Section 6.7 Authorities to Tow**

The cost of an accident tow truck driver to prepare an authority to tow form was calculated by dividing their hourly rate of $60 by 5 minutes = $5 per tow and multiplying by the 72,000 tows = $360,000.

The cost to the driver/owner of a damaged vehicle to participate in the preparation of an authority to tow form was calculated by dividing their estimated hourly rate of $48.02 by 5 minutes = $4 per tow and multiplying by the 72,000 tows = $288,000.

Traffic congestion costs was calculated in the following manner: traffic congestion cost per minute $246 multiplied by the 5 minutes spent by the accident tow truck driver =$1,230 per accident multiplied by 52,000 accidents = $63,960,000.

**Section 6.8 Consumer Information**

Option 1

The cost of an accident tow truck driver to wait for driver/owner to read VicRoads Information Pamphlet was calculated by dividing their hourly rate of $60 by 4 minutes = $4 per tow and multiplying by the 72,000 tows = $288,000.

The cost to the driver/owner of a damaged vehicle to read VicRoads Information Pamphlet was calculated by dividing their estimated hourly rate of $48.02 by 4 minutes = $3.20 per tow and multiplying by the 72,000 tows = $230,400.

Traffic congestion costs was calculated in the following manner: traffic congestion cost per minute $246 multiplied by the 4 minutes spent by the driver/owner reading VicRoads Information Pamphlet =$984 per accident multiplied by 52,000 accidents = $51,168,000.

Option 2

The cost of an accident tow truck driver to wait for driver/owner to read VicRoads additional consumer information was calculated by dividing their hourly rate of $60 by 30 seconds= $0.50 per tow and multiplying by the 72,000 tows = $36,000.

The cost to the driver/owner of a damaged vehicle to read VicRoads additional consumer information was calculated by dividing their estimated hourly rate of $48.02 by 30 seconds = $0.40 per tow and multiplying by the 72,000 tows = $28,800.

Traffic congestion costs was calculated in the following manner: traffic congestion cost per minute $246 multiplied by the 30 seconds spent by the driver/owner reading VicRoads Information Pamphlet =$123 per accident multiplied by 52,000 accidents = $6,396,000.

**Section 6.9 Record Keeping**

No cost calculations.

**Section 6.10 Electronic Records**

Option 2

Costs

The cost per tow was calculated by dividing the annual equipment costs of $1,650 by the average number of tows per tow truck.

For the Melbourne Controlled Area, 52,000 tows divided by 212 tow trucks provides 245 average tows per tow truck. So, $1650 divided by 245 = $6.73 per tow and $349,960 for the 52,000 tows.

For the Geelong Self-Management Area, 2000 tows divided by 9 tow trucks provides 222 average tows per tow truck. So, $1650 divided by 222 = $7.43 per tow and $14,860 for the 2,000 tows.

For the unregulated area, 18,000 tows divided by 235 tow trucks provides 77 average tows per tow truck. So, $1650 divided by 77 = $21.43 per tow and $385,740 for the 18,000 tows.

Benefits

The cost savings to an accident tow truck driver was calculated by dividing their hourly rate of $60 by 1 minutes = $1 per tow and multiplying by the 72,000 tows = $72,000.

Due to the absence of industry data, the cost savings to depot staff was calculated using Private sector full-time adult average weekly ordinary time earnings (Australian Bureau of Statistics, Average Weekly Earnings, Australia, May 2018, 6302.0). The same hourly rate of $84.89 as described in section 4 of this Appendix was divided by 2 minutes = $2.82 per tow or $203,040 for the 72,000 tows.

The cost saving to the driver/owner of a damaged vehicle was calculated by dividing their estimated hourly rate of $48.02 by 1 minute = $0.80 per tow and multiplying by the 72,000 tows = $57,600.

The avoidable traffic congestion costs was calculated in the following manner: traffic congestion cost per minute $246 multiplied by 1 minute less spent by the accident tow truck driver =$246 per accident multiplied by 52,000 accidents = $12,792,000.

Option 3

Costs

The cost of tow truck equipment would be the same as option 1: $6.73 per tow and $349,960 for the 52,000 tows.

The Department has estimated the software modifications required would cost about $500,000 and this would add $9.60 per allocation ($500,000/52,000) and $3.20 per allocation depreciated over three years. On an annualised basis, the total cost would be $3.20 multiplied by 52,000 allocations = $166,400.

The cost of accident allocation centre call staff was calculated by using the rates in the Private sector full-time adult average weekly ordinary time earnings (Australian Bureau of Statistics, Average Weekly Earnings, Australia, May 2018, 6302.0) and the $84.89 hourly rate as described in section 4 of this Appendix. Accordingly, the call centre staff hourly rate of $84.89 was divided by 5 minutes = $7.05 per allocation and $366,600 for the $52,000. This is only an estimate as VicRoads would need to renegotiate the contract with the RACV.

Benefits

The cost savings to an accident tow truck driver was calculated by dividing their hourly rate of $60 by 5 minutes = $5 per tow and multiplying by the 52,000 tows = $260,000.

The cost savings to depot staff was calculated by dividing their hourly rate of $84.89 by 2 minutes = $2.82 and multiplying by the 52,000 tows = $146,640.

The cost saving to the driver/owner of a damaged vehicle was calculated by dividing their estimated hourly rate of $48.02 by 5 minutes = $4.00 per tow and multiplying by the 52,000 tows = $208,000.

The avoidable traffic congestion costs was calculated in the following manner: traffic congestion cost per minute $246 multiplied by 5 minutes less spent by the accident tow truck driver =$1,230 per accident multiplied by 52,000 accidents = $63,960,000.

Authorised by the Hon. Jaala Pulford MP

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1. The Department’s estimation based on accident allocation data and an average value of $40,000 per motor vehicle. [↑](#footnote-ref-1)
2. Transport Accident Commission <http://www.tac.vic.gov.au/road-safety/statistics>. The latest data for claims involving hospitalisation is 2017. [↑](#footnote-ref-2)
3. Industry Commission, “Vehicle and Recreational Marine Craft Repair and Insurance Industries”, Report No. 43, 15 March 1995, Australian Government Publishing Service, Canberra, p 153 [↑](#footnote-ref-3)
4. Victoria Legislative Assembly 2007, Parliamentary Debates, 19 April, p. 1151-52 (Tim Pallas, Minister for Roads and Ports). [↑](#footnote-ref-4)
5. Bureau of Infrastructure, Transport and Regional Economics, “Traffic and congestion cost trends for Australian capital cities” Information Sheet 74, Department of Infrastructure and Regional Development, Australian Government, November 2015 [↑](#footnote-ref-5)
6. Raduan bin Kabit. M, Charles.P, Ferreira. L, Hojati.A.T, “Examination of traffic incident records and development of a rapid incident response plan”, Australasian Transport Research Forum 2011 Proceedings, Adelaide, Australia, p 1 [↑](#footnote-ref-6)
7. RACV Accident Allocation Centre [↑](#footnote-ref-7)
8. Advice provided by the Accident Allocation Centre [↑](#footnote-ref-8)
9. The rate was calculated using the midpoint of 80 to 110 complaints i.e 95 complaints divided by the total number of accident tows. [↑](#footnote-ref-9)
10. Industry Commission, “Vehicle and Recreational Marine Craft Repair and Insurance Industries”, Report No. 43, 15 March 1995, Australian Government Publishing Service, Canberra, p 162 [↑](#footnote-ref-10)
11. Essential Services Commission, “Accident Towing Regulation” Final Report, 2015, p 75 [↑](#footnote-ref-11)
12. Based on analysis of Victoria Police road accident crash data [↑](#footnote-ref-12)
13. Ambulance Victoria’s Performance 2018/19 Quarter 1 (1 July to 30 September 2018), www. ambulance.vic.gov.au [↑](#footnote-ref-13)
14. http://www.mfb.vic.gov.au/About-Us/Our-Performance.html [↑](#footnote-ref-14)
15. Note: The Melbourne Controlled Area is larger than the Melbourne Fire Brigade’s region. 35 of the 45 accident towing depots are located within the Melbourne Fire Brigade’s region. [↑](#footnote-ref-15)
16. Essential Services Commission, “Review of Accident Towing and Storage Fees” Draft Report, Vol 2, Detailed Reasons and Methodology, March 2010 p 25 [↑](#footnote-ref-16)
17. Business-hours $245.90 towing fee ($221.40 base (incl first 8km)+ $24.50 for additional 7km ($3.50 per km). After hours $321.50 towing fee ($221.40 base fee + $24.50 for additional 7 km +$75.60 (after-hours surcharge) [↑](#footnote-ref-17)
18. Department of the Environment and Energy, “National Greenhouse Account Factors”, Australian Government, July 2018, p15-17: Emissions of carbon dioxide =(84x38.6x69.9)/1000 = 226.64 CO2-e. Emissions of methane =(84x38.6x0.1)/1000 = 0.32 CO2-e. Emissions of nitrous oxide = (84x38.6x0.5)/1000 =1.62 CO2-e. [↑](#footnote-ref-18)
19. Essential Services Commission, Accident Towing Regulation, Draft Report, p 95 [↑](#footnote-ref-19)
20. Ibid, p 102 [↑](#footnote-ref-20)
21. Ibid, p104 [↑](#footnote-ref-21)
22. Private sector full-time adult average weekly ordinary time earnings (Australian Bureau of Statistics, Average Weekly Earnings, Australia, May 2018, 6302.0). Includes oncosts and overheads. [↑](#footnote-ref-22)
23. Private sector full-time adult average weekly ordinary time earnings (Australian Bureau of Statistics, Average Weekly Earnings, Australia, May 2018, 6302.0) [↑](#footnote-ref-23)
24. Based on the Essential Service Commission “Review of Accident Towing and Storage Fees” Draft Report, Vol 2, Detailed Reasons and Methodology, March 2010, p 22 (Parts $1852, Repairs and Maintenance $3394 and Tyres $1565 = $6811 adjusted to $7,500 for 2017. [↑](#footnote-ref-24)
25. GPS cost per tow calculation: $500 divided by 245 average number of allocations per tow truck =$2.04 and $8,000 divided by 245 average number of allocations per tow truck = $32.65. [↑](#footnote-ref-25)
26. 105 tow trucks \*$200,000 = $21 million. [↑](#footnote-ref-26)
27. There are 1,430 accredited tow truck drivers for 469 licensed accident tow trucks in Victoria or 3 drivers for each licensed accident tow truck. [↑](#footnote-ref-27)
28. EFT calculation is based on 105 tow trucks \* 22.5 average tows per tow truck = 2,362 tows per month\*1.5 hours per tow =3,544 hours per month\*12= 42,528 hours per annum/1672 hours per EFT tow truck driver = 25 EFT tow truck drivers. [↑](#footnote-ref-28)
29. Essential Services Commission, “Review of Accident Towing and Storage Fees” Draft Report, Vol 2, Detailed Reasons and Methodology, March 2010 p 25 [↑](#footnote-ref-29)
30. Business-hours $240 towing fee ($216.20 base (incl first 8km)+ $23.80 for additional 7km ($3.40 per km). After hours $313.80 towing fee ($216.20 base fee + $23.80+$73.80 (after-hours surcharge) [↑](#footnote-ref-30)
31. Based on tow truck driver wage rates in “The Vehicle Manufacturing, Repair, Services and Retail Award 2010” and on-costs and overheads. [↑](#footnote-ref-31)
32. Based on Private sector full-time adult average weekly ordinary time earnings (Australian Bureau of Statistics, Average Weekly Earnings, Australia, May 2018, 6302.0) - $1544.10 per week ($48.02 per hour or $0.80 per minute) [↑](#footnote-ref-32)
33. Based on tow truck driver wage rates in “The Vehicle Manufacturing, Repair, Services and Retail Award 2010” and on-costs and overheads. [↑](#footnote-ref-33)
34. Based on Private sector full-time adult average weekly ordinary time earnings (Australian Bureau of Statistics, Average Weekly Earnings, Australia, May 2018, 6302.0) - $1544.10 per week ($48.02 per hour or $0.80 per minute) [↑](#footnote-ref-34)
35. Traffic congestion cost of 246 per minute \*4 minutes = $984 per road accident \*52,000 road accidents = $51.168 million. Note: congestion costs are not available for road accidents outside the Melbourne Controlled Area. [↑](#footnote-ref-35)
36. Essential Services Commission Victoria, Accident Towing Regulation – Final Report, p 124 [↑](#footnote-ref-36)
37. Independent Pricing and Regulatory Tribunal NSW, “Review of tow truck fees and licensing in NSW, Transport – Final Report, December 2014, p 181-187. [↑](#footnote-ref-37)
38. Based on tow truck driver wage rates in “The Vehicle Manufacturing, Repair, Services and Retail Award 2010” and on-costs and overheads. [↑](#footnote-ref-38)
39. Based on Private sector full-time adult average weekly ordinary time earnings (Australian Bureau of Statistics, Average Weekly Earnings, Australia, May 2018, 6302.0) - $1544.10 per week ($48.02 per hour or $0.80 per minute) [↑](#footnote-ref-39)
40. Traffic congestion cost of 246 per minute \*0.5 minute = $123 per road accident \*52,000 road accidents = $6,396,000. [↑](#footnote-ref-40)
41. Traffic congestion cost of 246 per minute \*4 minutes = $984 per road accident \*32,000 road accidents = $31.5 million. Note: congestion costs are not available for road accidents outside the Melbourne Controlled Area. [↑](#footnote-ref-41)
42. A ‘designated road’ under the Act means the Link Road, the Extension Road, Eastlink, the Peninsula Link Freeway, any freeway within the meaning of the Road Management Act 2004 and any road that has been declared under section 119A of the Road Management Act 2004 to be road to which that section applies. [↑](#footnote-ref-42)
43. Transport Legislation Amendment (Hoon Boating and Other Amendments) Act No 93, 2009 Section 35(2)(b) [↑](#footnote-ref-43)
44. Accident Towing Services Amendment (Licence Fees) Regulations 2010, No 63, Regulation 13A [↑](#footnote-ref-44)
45. Fee units are based on 2019/20. The value of a fee unit for this financial year is $14.81. [↑](#footnote-ref-45)
46. Annual tow truck licence fee $1038.62 minus $154.85 (regulatory costs) = $883.77. [↑](#footnote-ref-46)
47. $1.5 m divided by 52,000 accident allocations (2018) = $28.85 [↑](#footnote-ref-47)
48. Annual tow truck licence fee contribution to accident allocation centre – 25% of $28.85 = $7.21. The balance of $21.64 is funded by the tax payer. [↑](#footnote-ref-48)
49. Cost of Accident Allocation Centre - $1,500,000 divided by 421 licences = $3,562.95 [↑](#footnote-ref-49)