

VACC Submission

Industry Response to the Essential Services Commission, Accident Towing Regulation, Draft Recommendations (September 2015)

November 2015



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Section 1

The Victorian Automobile Chamber of Commerce (VACC) is Victoria's peak retail automotive industry association, representing the interests of more than 5,000 members in over 20 retail automotive sectors (including towing) that employ over 50,000 Victorians. VACC represents a significant proportion of accident tow truck operators in Victoria.

VACC welcomes the opportunity to make a submission to the Essential Services Commission's Draft Report on accident towing regulation.

Executive Summary

VACC finds the Essential Services Commission (ESC) has not undertaken a balanced assessment of the problems raised to fully understand the extent and nature of individual issues related to towing operations. In many cases, the problems raised appear to be isolated cases relative to the estimated 62,000 accident tows conducted per annum in Victoria and, in balance, these should not dictate a system wide review.

VACC expects a full cost benefit analysis to be undertaken by the ESC in order to justify its recommendations to the Minister for Roads and Roads Safety. This is critical in respect to the ESC recommending any changes to the current fee setting regime when, in the opinion of VACC, the ESC has failed to undertake proper due diligence on this matter. The ESC must provide the Minister with recommendations based on accurate and reasonable assessments of the real costs incurred by tow operators if the current success of the Accident Towing system in Victoria is to be maintained or enhanced further.

VACC believes that mandatory disclosure prior to signing any agreement with a body repairer will address the cause of the problems documented in the Draft Report and will be far more effective than the ESC recommendations 5 - 7. These recommendations only provide minimal information at the accident scene, and restrict consumer choice in where a driver can have their vehicle towed. The ESC proposed solutions are poorly targeted and detract from the objectives of a system-wide review.

VACC recommends permitting (with appropriate rules) the use of multiple tows with a single tow truck. The RACV Accident Allocation Centre currently makes discretionary decisions to allocate multiple tows to a single tow truck (mostly in the early hours of the morning) when there is no other tow operator available and/or cannot meet the 30-minute response time.

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

VACC supports the notion, that repair consumers are properly informed about a contract of repair. To this end, our solution is for VACC and Consumer Affairs Victoria (CAV) to work with body repairers and insurers to address the issue of proper mandatory disclosure.

Good regulatory design requires a regulation to be commensurate with the size of the problem, targeted at the source of the problem and effective in achieving the policy objective. Bad regulation invariably is poorly targeted, fails to achieve the policy objective and punishes the 99 per cent of regulated entities and other affected parties that are not the cause of the problem but still need to comply with the regulation.

The ESC recommendations will not be relevant to an estimated 99 per cent of tow operators, other emergency service personnel and motorists involved in an accident. Yet they will be subject to additional red tape and delays at the accident scene as a result of these recommendations. Motorists will also be denied the right to choose where they want to have their damaged vehicle towed and will need to organise a second tow at their cost if they want to use their preferred repairer.

The one per cent of motorists involved in an accident will not receive the required consumer protection with the recommended minimal information at the accident scene and will be subject to restrictions on towing destinations. These motorists deserve better protection than what is being offered and we urge the ESC to give serious reconsideration to this matter to find an effective solution that benefits consumers.

A key objective of the accident allocation system is to provide safe, orderly and efficient allocation of tow trucks to all accident victims within the Melbourne controlled and self-management areas. Government has declared that tow truck operators must respond and attend the accident scene within 30 minutes. This is the service standard accident victims and other motorists affected by the accident expect will be delivered. With a limited number of licensed tow truck operators in the Melbourne controlled and self-management areas, VACC concludes there is really no alternative for Government other than to ensure the size and boundaries of allocation zones and the location of depots within these allocation zones serve the entire area and the community.

The cities of Stonnington and Port Phillip are geographically substantial and have not approved any new tow depots for many years. These areas of Melbourne are also high density accident zones. These accident towing black spots further argue against the ESC's recommendation for VicRoads to consider proximity-based allocations. Proximity-based allocations would negatively disrupt a system that is currently working very well.

Allowing licensed tow truck operators to move depots and licences without VicRoads approval will lead to over-servicing in areas with higher volumes of accidents and under-servicing in areas with lower volumes of accidents. The ESC has acknowledged that this may occur within the proposed recommendations. This is not the purpose of a planned approach with the accident allocation scheme and this proposal should be removed from the recommendations the ESC makes to the Minister for Roads and Roads Safety.

Section 2

Industry Based Concerns Arising from a Review of the ESC's Draft Recommendations

Accident towing – a heavily regulated sector

Accident towing is a heavily regulated sector in Victoria and one that has provided positive industry and public services. VACC does not support additional regulation introduced to address isolated incidents that end up penalising the majority of accident tow operators who comply with the existing regulatory framework.

The accident towing industry provides a safe, orderly and efficient service to Victorian motorists that meet the objectives of the Accident Towing Services Act 2007. The industry consistently meets the required performance and service standards, has minimal complaints from the public, and maintains a high level of compliance with the regulations. This high level of compliance is reflected in the extremely low rate of complaints on towing issues and in limited discussions between towing operators and government on matters of non-compliance.

A compelling evidenced based case has not been met

In VACC's previous submission, VACC argued that a compelling evidence-based case needed to be made for any regulatory change and expect any issues of concern raised during the course of the review would be subject to detailed analysis to determine the extent of the problem.

VACC does not believe the ESC has undertaken a balanced and detailed analysis to determine the extent of the problems raised in the Draft Report to support the case for many of its recommendations. In particular, the issues surrounding third-party body repairs (not-at-fault drivers), the towing fees for the unregulated and self-management areas and the operation of the allocation schemes in the Melbourne controlled and self-management areas appear to be informed by insurer interests, and to the potential detriment of drivers involved in an accident.

Adding to red tape

VACC is not opposed to change that improves the accident towing service. However, any proposed changes to a heavily regulated sector need to be effective in fixing any perceived problems, without adding more administrative red tape than is already present in the system. In this regard, the ESC's proposal to impose more consumer warnings at the scene of the accident further complicates the accident scene. This makes the work of police, paramedics, firefighters and tow truck drivers even more difficult and is to the detriment of motorists.

Accident scenes – often a crisis situation

VACC believes the accident scene should be treated as a crisis situation and only involve emergency services personnel (police, ambulance, fire brigade, tow truck driver) with the priority to assist accident victims, safely clear the accident scene and restore the roadway to enable traffic flow.

The proposed consumer warnings on third-party body repair will be only relevant to a tiny percentage of accident drivers, yet all drivers will need to read, comprehend and answer several questions before they provide an authorisation to the tow truck driver to tow their vehicle. This will only lead to unnecessary traffic congestion for other motorists waiting for the accident scene to be cleared. This may cause the accident driver to make hasty decisions under the duress of the accident scene. In reality, what happens is Victoria Police will take control of the emergency situation and demand the smashed vehicle is towed out of the accident scene.

Hidden on-costs and the impact on essential service provision and the community not considered

It is estimated that an average three-minute extension to clearing accident scenes, as a consequence of introducing an additional ESC ‘warning’ to accident drivers (p116, ESC Draft Report, September 2015), may result in an additional net 3,000 hours of attendance by all essential service workers at accident scenes across Victoria, in any one year. When it is considered that paramedics alone are required to meet strict 20-minute KPI standards for entry/exit of road accident scenes, the delays they would incur could amount to the equivalent of them attending 9,000 extra road accident scenes per year. The impact to staff resourcing, service provision and the community alone is enormous and not considered by the ESC in making this recommendation.

VACC argues strongly that any additional delays imposed at an accident scene will be largely detrimental to individuals involved in an accident, to road users and to Victoria’s essential service providers.

VACC encourages the ESC to consider that consumer warnings about a matter unrelated to the accident scene is not a practicable solution in a crisis situation with several emergency services attending to accident victims who may be in shock, distress or injured.

ESC’s recommendations restrict consumer choice

In respect to the towing destination, it is unclear what the ESC’s rationale is for restricting consumer choice by limiting where a driver’s damaged vehicle can be towed. This is likely to cause considerable angst particularly for vehicle owners who want to have their damaged vehicle towed to their repairer of choice, and may result in vehicle owners undertaking two tows on separate days to deliver their damaged vehicle to their repairer. Commonsense and the rights of vehicle owners need to prevail so that they can have their damaged vehicle towed wherever they choose. This position should be clarified on the existing roadside advice provided by VicRoads for tow operators.

VACC Tow Operator members and operators more generally, are cognisant that touting and entering into any type of vehicle repair agreement at an accident scene is an offence under the Accident Towing Services Regulations. If this is occurring, VACC recommends that organisations such as the Consumer Law Action Centre (CALC) should be making representations on behalf of its clients to VicRoads who should be taking appropriate action. The Regulations already provide sanctions for this type of behaviour.

The ESC further states, *'community organisations such as CALC and Legal Aid often become involved when a not-at-fault repair arrangement is litigated. For example, Footscray Legal Service states it handles one such case per week'* (p107, ESC Draft Report, September 2015).

VACC is informed by the Footscray Legal Service website which states that it assists clients in dispute with insurance companies. The Footscray Legal Service *"assists clients who are **in a dispute with an insurance company** for the non-payment of claims, or the payment of debts. **Most of our clients are uninsured drivers."***

It is the informed view of VACC, that the ESC is not making a reasonable and accurate representation of the situation and the nature of consumer complaints as described in the ESC Draft Report.

VACC makes it explicit that these litigations cited by the ESC, are directed predominantly at insurers and only in some isolated, unfrequented situations, caused by a minority of tow operators behaving inappropriately. VACC reiterates its view that CALC and The Footscray Legal Service, or any other party should make representation to VicRoads with a view to VicRoads taking appropriate action, where required, and within the existing regulatory framework.

VACC estimates that from the 62,000 accident tows conducted per annum across Victoria, less than one in ten of vehicles damaged find their way into an independent vehicle body repairer's workshop. The majority of vehicles that are repaired are done so through their vehicles' insurer. This is due to the fact that about 80 per cent of drivers have car insurance and IAG and Suncorp channel their customer's body repair work through their established preferred body repair networks, or own smart shops. In some cases, damaged vehicles are repaired in a body repair shop that is vertically integrated with the insurer. The insurance industry has a firm control over the body repair industry. This is in contrast to the claim from insurers, 'IAG suggests that while accident towing is the transportation of a damaged vehicle from the scene of an accident to another location, in reality, it is the allocation of valuable body repair work rather than towing' (p102, ESC Draft Report, September 2015). The negative impact of insurers on the body repair industry ought to be fully explored by the Victorian and Federal Government for investigation and report.

VACC is as equally concerned as the ESC about the issues raised by consumer groups in relation to documented consumer detriment associated with third-party not-at-fault driver body repairs and the associated services provided.

If the ESC is genuinely concerned about Government providing adequate consumer protection, VACC believes that full and frank disclosure about the potential liabilities that a not-at-fault driver may incur should be provided to the driver before they agree to sign any agreement with a body repairer, or a towing operator. The disclosure would include matters relating to the potential liability of the not-at-fault driver where the vehicle body repairer (hereafter referred to as 'body repairer') is unable to fully recover the costs of the repair and any other associated services. The disclosure should also advise the not-at-fault driver of the legal implications of signing an authority to act. A key requirement is to include any reference to steering and vertical integration because the customer has the right to know that the insurer is directing them to a repairer they part own, i.e. through a joint venture. The disclosure statement would provide a comprehensive list of important matters to enable the driver to make an informed decision and would be more extensive than the ESC's recommendation 5.

VACC believes that by mandatory disclosure prior to signing any agreement with a body repairer will address the cause of the problems documented in the Draft Report and be far more effective than the ESC's recommendations 5 - 7. These recommendations only provide minimal information at the accident scene and restrict consumer choice in where a driver can have their vehicle towed. These proposed solutions are poorly targeted away from the source of the problem.

VACC recommends permitting (with appropriate rules) the use of multiple tows with a single tow truck. The RACV Accident Allocation Centre currently makes discretionary decisions to allocate multiple tows to a single tow truck (mostly in the early hours of the morning) when there is no other tow operator available and/or cannot meet the 30-minute response time.

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

Good regulatory design requires regulation to be commensurate with the size of the problem, targeted at the source of the problem and effective in achieving the policy objective. Bad regulation invariably is poorly targeted, fails to achieve the policy objective and punishes the 99 per cent of regulated entities and other affected parties that are not the cause of the problem, but still need to comply with the regulation.

In this case, the ESC recommendations will not be relevant to an estimated 99 per cent of tow operators, other emergency service personnel and motorists involved in an accident. Yet they will be subject to additional red tape and delays at the accident scene as a result of these recommendations. Motorists will also be denied the right to choose where they want to have their damaged vehicle towed and will need to organise a second tow at their cost if they want to use their own preferred repairer.

Price regulation demands proper due diligence

It is suggested that the ESC's recommendation to introduce price notification for the unregulated area is to enable VicRoads to mediate complaints from insurers and motorists about prices charged, and in particular where they are greater than the tow operator's published fees. It also enables the Government to monitor towing fees.

However, the ESC has not produced any evidence that tow operators in the unregulated area are charging different fees to different customers. VACC understands from VicRoads that there have been minimal complaints regarding the cost of towing and typically from uninsured drivers. It is unclear to VACC, and its towing operator members, where the advantage of publishing towing fees appears, where pricing in unregulated areas can be highly variable due to the specific conditions of an accident.

Fees charges in unregulated areas are based on the actual running costs with the business of towing. VACC's earlier submission clearly articulates this through its analysis of actual towing costs as opposed to preferred costs based on a simple calculus. Issues of timing, the complexity of the tow, distance and time needed to engage with officials at the accident scene are just some of the considerations that impact pricing for towing operations. The recommendation for the notification of towing fees in regional areas is not supported by VACC as there are no advantages to the consumer or the regulator. It is possible however, that the notification of fees has the potential to reflect poorly or disadvantage operators in the future who have legitimate running costs that sit above the medium range.

In respect to the ESC's recommendation to introduce price regulation in the self-management area, VACC believes the ESC has misrepresented the Geelong operators by only assessing their revenue and not their costs. VACC has provided a cost analysis that shows that the Geelong operators are not fully recovering their costs from accident tows and in some cases it is likely other trade towing is supplementing this work.

ESC's proximity-based calculations are flawed

The ESC has recommended proximity-based allocations, which is where the accident tow would be allocated to the depot closest to the accident scene. The ESC's estimation that the total distance of accident tows would decline from 801,786 kilometers to 481,145 kilometers or a 40 per cent reduction is not supported by VACC as it fails to take into consideration operational realities in the industry. Given the nature of towing and other work carried out by the towing operator, it is not the case that tow vehicles are always located at the depot. In many instances operators have the capacity to locate tow trucks at their residence or at their business premises, which may also be close to their residence. In these cases the tow operator is able to quickly mobilise their operations when allocated to an accident scene. In many cases the location of the tow truck may be closer to the accident scene than if the tow truck was parked at the depot, which in effect means it can be at the accident scene quicker.

The cities of Stonnington and Port Phillip are geographically substantial and have not approved any new tow depots for many years. These areas of Melbourne are also high density accident zones. These accident towing black spots further argue against the ESC's recommendation for VicRoads to consider proximity based allocations. Proximity-based allocations would negatively disrupt a system that is currently working very well.

Moving to a rigid proximity based allocation system could lead to tow operators traveling further than needed and may increase the time required to reach an accident scene.

The ESC assumed improvements to response and clearance times, and the reduced congestion for other road users are predicated on false assumptions about how the industry actually works.

Transparency in setting boundaries is required by VicRoads

A key objective of the accident allocation system is to provide safe, orderly and efficient allocation of tow trucks to all accident victims within the Melbourne controlled and Geelong self-management areas. Government has declared that tow truck operators must respond and attend the accident scene within 30 minutes. This is the service standard accident victims and other motorists affected by the accident expect will be delivered. With a limited number of licensed tow truck operators in the Melbourne controlled and self-management areas, there is really no alternative for Government other than to ensure the size and boundaries of allocation zones and the location of depots within these allocation zones serve the entire area and the motoring community.

Allowing licensed tow truck operators to move depots and licences without VicRoads approval will potentially lead to over-servicing in areas with higher volumes of accidents and under-servicing in areas with lower volumes of accidents.

It would seem more practicable that VicRoads publish the requirements and criteria approval for the relocation of depots and the methodology it uses to define the boundaries for the allocation zones. The requirements, criteria approval and methodologies, should be drafted for public comment prior to any further recommendation being made on this issue.

The publication of these matters would ensure the community across the Melbourne controlled area continues to receive an efficient accident towing service and also provides certainty to tow truck operators seeking to move depots and/or licences to other allocation zones.

VACC believes the ESC has not provided sufficient evidence to support a position that current regulations, zoning and pricing for towing operations in Victoria are failing. Where examples of issues have been raised they appear to be limited in number and do not represent any level of market failure or widespread consumer discontent. The draft report provided by the ESC appears to have moved away from its original brief and has become overly focused on relationships between towing operators and vehicle repairers and further to this, their relationship with insurers. Even on this count, there is no evidence presented that demonstrates there is endemic or even localised issues.

VACC observes that many of the examples raised in the Draft Report from the ESC appear to be isolated incidents, relative to the estimated 62,000 accident tows conducted each year in Victoria. VACC would encourage the ESC to consider the matters presented in this response and to limit any further unnecessary disruption to an effective and tested accident towing system. In keeping with reports generated on strong data sets, VACC would expect a full cost benefit analysis is undertaken by the ESC in its final report to justify its recommendations to Government.

Section 3

VACC's Recommendations to the ESC

ESC Recommendation 1:

The accident allocation scheme should continue to operate in the controlled area.

VACC Response to Recommendation 1:

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

ESC Recommendation 2:

In the controlled area, VicRoads should at least every three years analyse allocations and adjust allocation zone boundaries to more closely match a proximity-based allocation scheme. The long term aim should be to allocate accident tows based on proximity — that is, the tow would be allocated to the depot nearest to the accident with a licensed tow truck ready for dispatch.

VACC Response to Recommendation 2:

- 2.1 VACC does not support this recommendation. The ESC's estimation that the total distance of accident tows would decline from 801,786 kilometers to 481,145 kilometers or a 40 per cent reduction is incorrect as tow trucks and drivers are not sitting around idle at a depot waiting for a call. The tow truck does not normally depart from the depot upon receiving an accident allocation.
- 2.2 Hence, the claimed improvements to response and clearance times, and the reduced congestion for other road users are predicated on false assumptions about how the industry actually works.
- 2.3 VACC is supportive of any efforts to improve response and clearance times as this helps to reduce tow operator's costs. VACC reiterates the accident allocation rules need to be improved. VACC raised two specific issues in its first submission and would expect these to be given serious consideration and not lightly dismissed in the ESC's final report.
- 2.4 The first issue is to ensure that tow truck operators know their position in the allocation queue. The benefits of knowing their position enables tow truck operators to plan and schedule other towing work, improving the utilisation of their tow trucks and reducing their operating costs.
- 2.5 The second issue is to permit (with appropriate rules) the use of multiple tows with a single tow truck. The RACV Accident Allocation Centre currently makes discretionary decisions to allocate multiple tows to a single tow truck (mostly in the early hours of the morning) when there is no other tow operator available and/or cannot meet the 30-minute response time.

ESC Recommendation 3:

The requirement for VicRoads to approve depot relocations and movement of licences to different depots within the controlled, self-management and unregulated areas should be removed. The requirement to link a licence to a specific depot should also be removed.

VACC Response to Recommendation 3:

- 3.1 VACC does not support this recommendation. A key objective of the accident allocation system is to provide safe, orderly and efficient allocation of tow trucks to all accident victims within the Melbourne controlled and self-management areas. Government has declared that tow truck operators must respond and attend the accident scene within 30 minutes. This is the service standard that accident victims and other motorists affected by the accident in terms of congestion expect will be delivered. With a limited number of licensed tow truck operators in the Melbourne controlled and self-management areas, there is really no alternative for Government other than to ensure the size and boundaries of allocation zones and the location of depots within these allocation zones serves the entire area and the community.
- 3.2 Allowing licensed tow truck operators to move depots and licences without VicRoads approval will lead to over-servicing in areas with higher volumes of accidents and under-servicing in areas with lower volumes of accidents. The ESC has acknowledged that this may occur with the proposed deregulation. This is not the purpose of a planned approach with the accident allocation scheme.
- 3.3 A better approach would be for VicRoads to publish the requirements and criteria approval for the relocation of depots and the methodology it uses to define the boundaries for the allocation zones. The requirements, criteria approval and methodologies should be drafted for public comment prior to a final decision. The publication of these matters would ensure the community across the Melbourne controlled area continues to receive an efficient accident towing service, and also provide certainty to tow truck operators seeking to move depots and/or licences to other allocation zones.

ESC Recommendation 4:

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

VACC Response to Recommendation 4:

- 4.1 VACC supports the recommendation that accident allocations in the unregulated area should continue to be unregulated.

ESC Recommendation 5:

VicRoads should amend the Authority to Tow docket to include a new page of warnings that must be signed by the driver or vehicle owner before an accident tow is performed. VicRoads should also amend its 'Towing from an accident scene: your rights' factsheet to emphasize existing warnings and include a recommendation that the driver's or other party's insurer be contacted (if relevant).

VACC Response to Recommendation 5:

- 5.1 VACC opposes the recommendation to include warnings related to third party body repair, which must be signed by the driver before the accident tow docket is signed. The proposed warnings and requirements to answer questions prior to signing is impractical given that the accident scene is a crisis situation, with drivers mostly in shock, distressed and/or injured. Further, the proposal that either the Authority to Tow or the VicRoads literature should be amended to include additional warnings is indicative of a negative view of tow truck operators, which many in the industry find offensive.
- 5.2 VACC would like to suggest as an alternative approach to target the source of the problem; that is, at the body repair shop (whether affiliated or non-affiliated with the tow truck operator). VACC acknowledges consumer detriment is significant if it does occur, where a not-at-fault driver's body repairer is unable to fully recover all of the costs for the body repair and associated services.
- 5.3 VACC believes that full and frank disclosure of the obligations involved in entering into a third-party body repair recovery agreement, authority to act agreement and so forth, would be a better alternative and would address the lack of awareness of not-at-fault drivers. The lack of awareness appears to be the cause of the problem and should be addressed with disclosure prior to entering into agreements. This would allow the not-at-fault driver to make an informed decision.
- 5.4 VACC recommends that any additional advisory material provided to drivers should not be provided at the accident scene, as this has the capacity to compromise the decision making of the driver and would further slowdown the removal of the vehicle to a depot or another place directed by the driver. It should also be fair and balanced without the unnecessarily negative language, which was included in the ESC Draft Report example (p116, ESC Draft Report, September 2015).

ESC Recommendation 6:

VicRoads should work with insurers to encourage, and appropriately support the development of an industry education campaign to educate drivers about what to do at an accident scene.

VACC Response to Recommendation 6:

- 6.1 VACC believes the development of an industry education campaign to educate drivers is a matter more for Consumer Affairs Victoria (CAV) working with the insurance and tow truck industry. It must be remembered that insurance companies are businesses seeking to make a profit for their shareholders. They are not consumer advocates and they should not be given that role by the ESC. Insurance companies and tow truck operators should, as stakeholders in the industry, both have an input into any material produced by CAV.
- 6.2 CAV already provides information on accident towing on its website. However, VACC believes most consumers lack an understanding of their rights and obligations in respect to all types of body repairs. As the ESC may be aware, the NSW Parliamentary

Committee Inquiry into the Body Repair Industry heard consumer evidence mostly against the way insurer's push their preferred repairer schemes onto their policy-holders (even where the policy-holder has a right to choose their repairer) and also that the commercial arrangements insurers enter into with preferred repairers may be impacting the quality of repairs (specifically the safety of the vehicle). Consumers complained to the Committee of steering practices (a form of touting) by insurers.

- 6.3 The ESC should consider whether there is a broader role for CAV to provide balanced information on its website regarding, the rights and obligations of consumers in respect to body repairs.

ESC Recommendation 7:

VicRoads should limit the locations to which an accident-damaged vehicle can be towed. The authority to tow docket should list the following options for tow destinations: a location instructed by the owner's insurer; a location instructed by the at-fault driver's insurer; the owner's home (or the home of a friend or family member); or storing the vehicle at the tow operator's licensed depot awaiting further instructions.

VACC Response to Recommendation 7:

- 7.1 VACC opposes the recommendation to restrict consumer choice by limiting the locations to which an accident-damaged vehicle can be towed.
- 7.2 VACC is equally concerned as the ESC, about the issues raised by consumer groups in relation to the documented consumer detriment associated with third-party not-at-fault driver body repairs.
- 7.3 If the ESC is genuinely concerned about Government providing adequate consumer protection, VACC believes that full and frank disclosure about the potential liabilities that a not-at-fault driver may incur should be provided to the driver, before they agree to sign any agreement with a body repairer. The disclosure would include matters relating to the potential liability of the not-at-fault driver where the body repairer is unable to fully recover the costs of the repair and any other associated services. The disclosure should also advise the not-at-fault driver of the legal implications of signing an authority to act. A key requirement is to include any reference to steering and vertical integration because the customer has the right to know that the insurer is directing them to a repairer they part own. The disclosure statement would provide a comprehensive list of important matters to enable the driver to make an informed decision and would be more extensive than the ESC's Recommendation 5.
- 7.4 VACC believes that mandatory disclosure prior to signing any agreement with a body repairer will address the cause of the problems documented in the Draft Report and be far more effective than the ESC's recommendations 5 - 7. These recommendations only provide minimal information at the accident scene, education and restrict consumer choice in where a driver can have their vehicle towed. These proposed solutions are poorly targeted away from the source of the problem.

- 7.5 VACC recommends permitting (with appropriate rules) the use of multiple tows with a single tow truck. The RACV Accident Allocation Centre currently makes discretionary decisions to allocate multiple tows to a single tow truck (mostly in the early hours of the morning) when there is no other tow operator available and/or cannot meet the 30-minute response time.
- 7.6 VACC encourages ESC to mandate the requirement that an authority to tow be required to be signed by an owner for the removal of the vehicle from its first place of storage to any next address. This reform is in the accident driver's best interest because they will know where and when their vehicle is moved. It also provides the consumer with the opportunity to remove personal items and reduce adverse consequences if their vehicle is lost (e.g., removed from a repairer's facility and sent to a holding yard without the insurer informing the vehicles owner).
- 7.7 VACC supports the notion, that repair consumers are properly informed about a contract of repair. To this end, our solution is for VACC and CAV to work with body repairers and insurers to address the issue of proper mandatory disclosure.
- 7.8 Good regulatory design requires a regulation to be commensurate with the size of the problem, targeted at the source of the problem and effective in achieving the policy objective. Bad regulation invariably is poorly targeted, fails to achieve the policy objective and punishes the 99 per cent of regulated entities and other affected parties that are not the cause of the problem, but still need to comply with the regulation.
- 7.9 In this case, the ESC recommendations will not be relevant to about 99 per cent of tow operators, other emergency service personnel and motorists involved in an accident. Yet they will be subject to red tape and delays at the accident scene as a result of these recommendations. These motorists will also be denied the right to choose wherever they want to have their damaged vehicle towed and will need to organise a second tow at their cost, if they want to use their preferred repairer. The one per cent of motorists involved in an accident will not receive the required consumer protection with the recommended minimal information at the accident scene and restrictions on towing destinations. These motorists deserve better protection than what is being offered and we urge the ESC to give serious reconsideration to this matter to find an effective solution that truly benefits consumers.

ESC Recommendation 8:

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

VACC Response to Recommendation 8:

- 8.1 VACC supports the recommendation that the Minister for Roads and Road Safety should continue to set regular vehicle accident towing and storage fees in the controlled area. However, while outside the scope of this review, VACC is concerned at the large disparity between rates evident between tow operators in the Melbourne controlled area compared to their counterparts in the Sydney metropolitan area. Traffic density and operating costs are now comparable and given forecasts that the population base in Melbourne will eventually exceed Sydney, a

review of the real cost associated with the delivery of services to the controlled area in Melbourne, needs to be considered in future periodic pricing reviews. In particular, VACC believes the ESC needs to reconsider its costing methodology and consider the approach taken by the NSW IPART in its report on accident towing fees.

ESC Recommendation 9:

A fee notification regime applying to regular vehicle accident towing and storage fees should be implemented for the unregulated area. The regime should involve:

- *Operators having to notify VicRoads of their accident towing fees*
- *VicRoads publishing all notified fees on its website*
- *Operators permitted only to charge up to their published, notified fees and*
- *VicRoads publishing an annual report on notified fees.*

VicRoads should also consider collecting data on the overall towing fees charged by operators in the controlled, self-management and unregulated areas.

VACC Response to Recommendation 9:

- 9.1 VACC does not support the recommended fee notification on the grounds that it is likely to be used by insurers only. The ESC has not produced any evidence of public complaints regarding towing costs. VACC understands that VicRoads receives a handful of complaints, mostly from uninsured drivers. The small number of complaints would appear a minor irritant, rather than a significant problem given the estimated 62,000 accident tows conducted each year.
- 9.2 VACC also believes the ESC has under-estimated the administrative costs to VicRoads and the compliance costs to the 140 operators in the unregulated area and the 110 operators in the Melbourne controlled and Geelong self-management area.
- 9.3 Any concerns regarding the fees charged within the unregulated area would seem to be a resourcing issue for VicRoads. It would seem logical to address the issues and make improvements, where appropriate, before introducing further regulation in the form of price notification.
- 9.4 If the Government wishes to monitor towing fees in the unregulated area, VACC believes the Government should consider a lower cost option that enables the collection of price information but applies the user pays principle. An annual survey of all tow operators could be undertaken where VicRoads or the ESC conducts the survey by phone or email and collates the information. In this way, the cost is being borne predominately by Government who would be the main beneficiary of price monitoring. This option would also reduce the time and effort for tow operators in providing prices compared with a more formalised arrangement under a price notification scheme.

ESC Recommendation 10:

VicRoads should establish the primary purpose of the controlled area boundary, namely, whether it is intended to reflect the underlying market for accident towing services (market based) or whether its purpose is to reflect a geographic area defining metropolitan Melbourne (geographic based). If market based, then VicRoads should begin collecting relevant data to inform future realignments of the boundary. If geographic based, VicRoads should establish its preferred means for defining and amending 'metropolitan Melbourne'.

VACC Response to Recommendation 10:

- 10.1 VACC recommends VicRoads should not alter the boundaries given the system is working very well within the controlled area. The primary purpose of the controlled area boundary is intended to reflect a geographic area defining metropolitan Melbourne (geographic based) and should remain so. The existing boundary and zones in the Melbourne controlled areas are appropriate and should be maintained. It also makes clear the delineation of the self-management area of Geelong and regional and rural Victoria. This is a key success factor in creating a vastly improved regulatory framework for towing operations compared to past regimes.
- 10.2 VACC believes greater transparency is required in the method(s) used to define and amend the boundaries and allocation zones. In this regard, VicRoads should publish draft method(s) for defining and amending boundaries and allocation zones for public comment before making a final decision.
- 10.3 VACC recommends the ESC ask VicRoads to use and make clear their use of Government census geographic based classifications from the ABS, either the Melbourne Urban Centre Locality (UCL), Melbourne Significant Urban Area (SUA) or Greater Capital City Statistical Areas (GCCSAs). None of these include Geelong within their boundary. VACC understands the GCCSA is the broadest geographical boundary designed to represent the functional extent of each of the eight state and territory capital cities. They replace the current Capital City Statistical Divisions and will provide a stable definition for these cities which will be used for the output of a range of social and economic survey data.

ESC Recommendation 11.1:

The accident allocation scheme should continue to operate in the self-management area.

VACC Response to Recommendation 11.1:

- 11.1.1 VACC supports the recommendation that the accident allocation scheme should continue to operate in the self-management area.

ESC Recommendation 11.2:

VicRoads should require self-management area operators to identify and implement improvements to the scheme, with proximity-based allocations providing the benchmark for any improvements.

If operators are unable to achieve sufficient improvements, VicRoads should amend the terms and conditions applying to the self-management area to progressively move towards proximity-based allocations.

VACC Response to Recommendation 11.2:

11.2.1 Since inception of the self-management area of Geelong, the licence holders in the self-management area of Geelong have worked diligently with VicRoads to introduce a professional operational management system for the area. A comprehensive terms and conditions agreement, covering all facets of operational management was implemented successfully and guides performance management assessments made by VicRoads (Attachment A).

11.2.2 More recently, and at the sole discretion and expense of the licence holders in the self-management area of Geelong, a set of four continuous improvement items extend service standards and performance expectations (Attachment C). They are: 1) Protecting the personal information and privacy of the public; 2) pilot system and implementation of Victoria Police authority to tow books; 3) clarification of area boundary process by allocation phone operators; and 4) owner's name, phone number and details of vehicle for after-hours and remote areas.

11.2.3 VACC recommends that the accident allocation scheme should continue to operate in the self-management area. VACC opposes the recommended proximity-based allocation for the self-management area of Geelong on the same grounds as outlined in our response to Recommendation 2. Moreover, VACC recommends the self-management area of Geelong, as defined by VicRoads for the purposes of the Act, be upheld (Attachment B).

ESC Recommendation 12:

The Minister for Roads should set accident towing and storage fees in the self-management area.

VACC Response to Recommendation 12:

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

ESC Recommendation 13:

The self-management area boundary remains appropriate in terms of defining the region where the self-management area allocation scheme applies.

VACC Response to Recommendation 13:

- 13.1 VACC supports the recommendation to retain the self-management area boundary. VACC does not believe it is necessary to amend the boundary at several points where it cuts through intersections. This would appear to reflect concerns by adjoining tow operators about missing out on a greater number of accident allocations on one side of the intersection. Unless there is evidence that this has resulted in violence amongst tow operators and distress to accident victims, VACC recommends VicRoads use appropriate published guidelines and standards to determine the boundaries of the self-management area of Geelong.
- 13.2 VicRoads should consider reviewing, and as necessary, amending the boundary where it cuts through intersections.

ESC Recommendation 14:

Heavy vehicle accident towing and storage fees should continue to be subject to the current “reasonableness” requirement in the Accident Towing Services Act 2007 only. The allocation of heavy vehicle accident tows should continue to be unregulated.

VACC Response to Recommendation 14:

- 14.1 VACC supports the recommendation that the heavy vehicle accident towing and storage fees continue to be subject to the current “reasonableness” requirement in the Accident Towing Services Act 2007.
- 14.2 VACC supports the recommendation that the allocation of heavy vehicle accident tows continue to be unregulated.

Section 4

Specific Issues

Section 4 outlines the specific issues in the preparation of our submission from an Accident Tow Operations perspective and the use of industry identified issues as the platform to formulate a cohesive response to ESC Draft Report.

1. Accident allocations – Improving the existing scheme (Recommendation 2)

- 1.1 The ESC has recommended proximity-based allocations where the accident tow would be allocated to the depot closest to the accident scene. This proposition would be a feasible option if accident towing operated similarly to the fire brigade, where fire trucks and personnel are located at the fire station waiting to respond to a call.
- 1.2 However, accident tow trucks are rarely found in the depot other than when they are delivering an accident vehicle for temporary storage. As noted by the ESC, accident tow operators undertake other towing activities such as trade towing. As a result, accident tow trucks are invariably on the road. After business hours, it is common practice that the tow truck is parked outside the driver's home.
- 1.3 In most cases, the depot upon receiving an allocation from the RACV Accident Allocation Centre will identify which of its accident tow trucks is closest to the accident scene. Some tow operators have their tow trucks equipped with GPS and can quickly identify the most appropriate tow truck that is available to send to the accident. In other cases, tow operators without GPS will know the area and approximate location of the tow truck and will communicate with the driver to ensure that the tow truck is empty and can accept the allocation.
- 1.4 In view of this, the ESC's estimation that the total distance of accident tows would decline from 801,786 kilometers to 481,145 kilometers or a 40 per cent reduction is incorrect as tow trucks and drivers are not sitting around idle at a depot waiting for a call. Or put succinctly, the tow truck does not normally depart from the depot upon receiving an accident allocation.
- 1.5 Hence, the claimed improvements to response and clearance times, and the reduced congestion for other road users are predicated on false assumptions about how the industry actually works.
- 1.6 Under the proposed proximity-based allocation system, an allocation job could be allocated to a depot that is nearest to the accident scene, but its available tow trucks may be further away than another depot within the allocation zone, and may have an available tow truck closer to the scene. Hence, the proposed proximity-based allocation system is unlikely to deliver the benefits claimed by the ESC.
- 1.7 The ESC has acknowledged that such a move to a proximity based allocation system would advantage about half the depots to the detriment to the other half of the depots. The ESC needs to appreciate that VicRoads has established the allocation zones and the location of depots, and some of its previous decisions on depot

relocations have probably been inappropriate. The cost of VicRoads decisions should not be borne by the accident tow truck industry.

- 1.8 While the ESC does not recommend an immediate move to proximity-based allocations, VACC believes that the intent of VicRoads is to define the boundaries of allocation zone and the location of depots on a proximity based basis. However, over time, with the change in the location of accidents and the absence of published guidelines to decide these matters it has become difficult for VicRoads to plan and administer future amendments to the boundaries of allocation zones. Accordingly, VACC recommends the publication of appropriate guidelines.
- 1.9 VACC is supportive of any efforts to improve response and clearance times as this helps to reduce tow operator's costs. VACC reiterates the accident allocation rules need to be improved. VACC raised two specific issues in its first submission and would expect these to be given serious consideration in the ESC's final report.
- 1.10 The first issue is to ensure that tow truck operators know their position in the allocation queue. The benefits of knowing their position enables tow truck operators to plan and schedule other towing work, improving the utilisation of their tow trucks and reducing their operating costs. There is an issue of procedural transparency, and the capacity to raise industry and service provider productivity, in this argument and it should be acted upon.
- 1.11 The second issue is to permit (with appropriate rules) the use of multiple tows with a single tow truck. The RACV Accident Allocation Centre currently makes discretionary decisions to allocate multiple tows to a single tow truck (mostly in the early hours of the morning) when there is no other tow operator available and/or cannot meet the 30-minute response time.

2. Accident allocations – Restrictions on licences (Recommendation 3)

- 2.1 The ESC has recommended 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.
- 2.2 A key objective of the accident allocation system is to provide safe, orderly and efficient allocation of tow trucks to all accident victims within the Melbourne controlled and self-management areas. Government has declared that tow truck operators must respond and attend the accident scene within 30 minutes. This is the service standard accident victims and other motorists affected by the accident in terms of congestion expect will be delivered.
- 2.3 With a limited number of licensed tow truck operators in the Melbourne controlled and self-management areas, there is really no alternative for Government other than to ensure the size and boundaries of allocation zones and the location of depots within these allocation zones serves the entire area and the community.

- 2.4 Allowing licensed tow truck operators to move depots and licences without VicRoads approval will lead to over-servicing in areas with higher volumes of accidents and under-servicing in areas with lower volumes of accidents. The ESC has acknowledged that this may occur with the proposed deregulation.
- 2.5 Furthermore, the cities of Stonnington and Port Phillip are geographically substantial and have not approved any new tow depots for many years. These areas of Melbourne are also high density accident zones. These accident towing black spots further argue against the ESC's recommendation for VicRoads to consider proximity based allocations. Proximity-based allocations would negatively disrupt a system that is currently working very well.
- 2.6 It would seem more practicable that VicRoads publish the requirements and criteria approval for the relocation of depots and the methodology it uses to define the boundaries for the allocation zones. The requirements, criteria approval and methodologies should be drafted for public comment prior to a final decision. The publication of these matters would ensure the community across the Melbourne controlled area continues to receive an efficient accident towing service and also provide certainty to tow truck operators seeking to move depots and/or licences to other allocation zones.

3. Improving consumer outcomes (Recommendations 5, 6 & 7)

- 3.1 The ESC has not demonstrated the true extent of the problem (consumer detriment) associated with third-party body repairs. VACC acknowledges the significance of the consumer detriment that can be caused but is unaware, like the ESC, of the extent of the problem. This means it is not possible to design a response that is commensurate with the size of the problem in order to find an effective resolution.
- 3.2 The nature of the problem is that not-at-fault drivers are unaware of the obligations associated with entering into a third party body repair agreement and authority to act agreement with a body repair recovery business that will seek in the first instance to fully recover the expenses involved in undertaking the body repair and associated services (e.g. providing a free hire car to the not-at-fault driver). If full or partial recovery cannot be claimed from the at-fault driver or the at-fault driver's insurer, the not-at-fault driver bears the liability (i.e. the amount that cannot be recovered). However, the body repairer also faces risks if the not-at-fault driver is unable to pay for the body repairs.
- 3.4 The ESC has acknowledged 'it is difficult to gauge the extent of the problem' (p95, ESC Draft Report, September 2015), but has only provided anecdotal evidence from the Consumer Action Law Centre (CALC) and the Footscray Legal Centre.
- 3.5 CALC stated in correspondence with Commission staff that: "some consumers who are 'not at fault' (are) being asked to have their vehicle towed by tow trucks drivers. At the accident scene, they are asked to sign paperwork to facilitate this. Unbeknownst to them, this paperwork may be providing a repairer with authority to store and repair a vehicle, and also an authority to a lawyer to seek recovery of costs from an 'at fault driver'. The driver may be told that the repairer is quick or cheap, or that it has a free hire car. In other cases, we've heard that drivers are told that this

is a better option than involving insurance companies, because claiming may impact no-claim bonuses” (p103, ESC Draft Report, September 2015).

- 3.6 Touting and entering into any type of body repair agreement at the accident scene is an offence under the Accident Towing Services Regulations. If this is occurring as alleged, CALC should be making representations on behalf of its clients to VicRoads; and taking appropriate action. The Regulations already provide sanctions for this type of behaviour.
- 3.7 The ESC further states “community organisations such as CALC and Legal Aid often become involved when a not-at-fault repair arrangement is litigated. For example, Footscray Legal Service states it handles one such case per week” (p107, ESC Draft Report, September 2015).
- 3.8 However, the Footscray Legal Service website states it assists clients in dispute with insurance companies; it “assists clients who are in a dispute with an insurance company for the non-payment of claims or the payment of debts. Most of our clients are uninsured drivers.” The clinic has been successful in getting a significant number of waivers for debts; the biggest single waiver being \$23,522.10 to date. The amount of debts saved for the period from March 2007 to June 2010 totals at \$386,958.27.
- 3.9 It would appear given the claims from CALC and other legal aid organisations, that it is possible for the ESC to quantify the extent of the problem. That is to determine the number of not-at-fault driver cases involved in third-party body repair recovery arrangements and the number of cases as a proportion of total third party body repairs where the not-at-fault driver was liable for part or the whole of the repairs and associated services. These organisations would be able to provide the range and average amount of liability incurred by not-at-fault drivers. It would also be useful to ascertain the proportion of instances related to accident towing linked body repairs and those cases that are unrelated to accident towing. This data would put into perspective the size of the problem relative to the body repair market.
- 3.10 Of the estimated 62,000 accident tows conducted per annum across Victoria, accident tow operators obtain about one body repair out of 10 accident tows. This is due to the fact that about 80 per cent of drivers have car insurance and IAG and Suncorp channel their customer’s body repair work through their established preferred body repair networks, and in some cases, their own body repair centers. The insurance industry has a firm control over the body repair industry. This is in contrast to the unjustified claim from insurers, ‘IAG suggests that while accident towing is the transportation of a damaged vehicle from the scene of an accident to another location, in reality, it is the allocation of valuable body repair work rather than towing’ (p102, ESC Draft Report, September 2015).
- 3.11 Of the 62,000 accident tows, a high proportion of the body vehicles will be written-off while many will be repaired by the insurer’s preferred repairer network. Accident tow operators currently secure about 6,200 or 10 per cent body repair work from accident tows. Some of these will be for uninsured drivers, insured at-fault drivers who have the right to choose their repairer and insured not-at-fault drivers. Most accident tow operators that are about to undertake body repairs for an insured not-at-fault driver, inform the insurer, and the insurer sends their assessor to agree on

the repair cost. Based on Suncorp's submission, it would seem the issue is confined to four body repairers affiliated with accident towing. This would suggest the volume of body repairs undertaken for not-at-fault drivers is low, relative to the total number of body repairs undertaken across the industry.

- 3.12 Accordingly, Suncorp concedes, "third party repair networks" which take advantage of drivers "are a small subset of the broader body repair industry". However, Suncorp argues that the "repairers and towing operators engaging in this practice are introducing significant costs and risks to Victorian consumers" (p104, ESC Draft Report, September 2015).
- 3.13 The insurers claim that repair costs from these third-party repair networks are significantly higher than the average claim. Suncorp states the repair costs were 96 to 283 per cent higher than the average claim (p105, ESC Draft Report, September 2015). However, Suncorp did not disclose the number of above average claims relative to the total number of third-party claims to demonstrate if this is a widespread practice.
- 3.14 It is noteworthy that IAG provides a much lower estimation: "more than 40 per cent higher than what it defined as the fair market rate" (p105-106, ESC Draft Report, September 2015).
- 3.15 The ESC should note there are risks to making these comparisons. Firstly, an insurer's preferred repairer networks operate on a high volume basis (and in some cases, the preferred repairer is paid the same amount regardless of the cost of the body repair in return for an agreed volume of work). The insurer's commercial arrangements with their preferred body repair networks will not necessarily reflect the actual cost of a body repair undertaken by an independent body repairer (whether affiliated or non-affiliated with accident towing). Accordingly, the cost comparison is not comparable.
- 3.16 The impact of these alleged unreasonable costs on insurance premiums needs to be considered given that there are an estimated 250,000 body repair claims per annum at an average cost of \$3,000. This equates to \$750 million in insurance claims. If third party claims are in the order of \$10 million, this represents about one per cent of total insurance claims. This is not likely to have a significant effect on insurance premiums as suggested by the insurers. We have used the figure of \$10 million, rather than tens of millions of dollars asserted by Suncorp given that IAG provided a much lower estimation of above average repair costs.
- 3.17 VACC argues that various remedies under the Accident Towing Services Act and Regulations and the Australian Competition and Consumer Act are costly for not-at-fault drivers. However, there are two types of not-at-fault drivers at risk (insured and uninsured). Insurers can look after themselves, if they believe they are being fleeced financially on a body repair job. Suncorp in its May 2015 submission to the ESC, stated that it challenged demands from a solicitor acting on behalf of three not-at-fault consumers. Suncorp reviewed the repair work and negotiated the following outcomes:
- Driver 1 Original demand \$10, 982.14 Settlement \$0.00 Reduction \$10,982.14
 - Driver 2 Original demand \$15,385.20 Settlement \$6,800 Reduction \$8,585.20
 - Driver 3 Original demand \$28,585.70 Settlement \$25,159.30 Reduction \$3,426.40

- 3.18 As a result, Suncorp received a \$22,000 reduction “through minor negotiation over the phone”. It is disappointing the ESC decided to not disclose this example from Suncorp’s submission in the Draft Report as a case study to demonstrate the capacity of insurers to resolve these issues by negotiation, rather than to resort to legal redress.
- 3.19 It seems absurd for the ESC to imply that insurers do not have the wherewithal to initiate legal proceedings against a third party body repairer, particularly in respect to alleged unconscionable conduct, misleading or deceptive conduct and/or unfair contract terms.
- 3.20 This leaves uninsured not-at-fault drivers at the greatest risk. However, organisations such as CALC and Legal Aid are also capable of instigating legal proceedings under Australian Consumer Law. It should also be noted that Consumer Affairs Victoria (CAV) has coercive powers (the use of enforceable undertakings) that it can impose on any business, particularly for those businesses who are repeat offenders.
- 3.21 It would seem that there appears to be only a handful of body repairers involved in third-party body repair recovery work that is of issue, the application of existing laws (Australian Consumer Law) that can be exercised by CAV, or any other party would appear a more sensible approach. This approach is targeted at the source of the problem, rather than imposing more regulation that is not relevant to most drivers involved in an accident, or reflective of the high standards of accident tow operators that have body repair operations.
- 3.22 Notwithstanding the absence of evidence-based research on the extent of the problem, the ESC feels obligated to recommend government intervention, albeit a light-handed approach.
- 3.23 However, even a light-handed approach needs to be effective in achieving the policy objective. The ESC recommendation to provide warnings about third party body repairs prior to a driver signing an authorisation to tow document, does not take into account the fact that drivers involved in an accident are invariably in shock, distressed and/or injured and are unlikely to fully comprehend what they are reading and agreeing to prior to signing the authorisation to tow. In addition, drivers from a non-English speaking background, or with intellectual disabilities, or have difficulty reading, or are inebriated or drug-affected, are unlikely to understand the warnings.
- 3.24 One could argue vulnerable drivers are likely to be faced with the same issues with the authorisation to tow document. However, the key information in the current authorisation to tow document involves the cost (in numbers) which most vulnerable persons are able to comprehend. A tow truck driver can also gesture with a pen to sign the document. The greatest challenge for tow truck drivers, particularly with drivers that cannot speak English, is to obtain the desired towing location. In these cases, the police are likely to intervene and request that the vehicle be removed from the accident scene to restore normal traffic flow. They are also likely to encourage the driver to nominate the tow truck driver’s depot where the driver cannot communicate another location.

- 3.25 Putting aside the aforementioned limitations of the recommended warnings, VACC believes that the accident scene, and the towing that needs to be undertaken, needs to be separated from the body repair issues that the ESC is attempting to resolve. Providing distressed and injured drivers with warnings in addition to the existing VicRoads brochure on driver's rights in regards to accident towing, is only going to delay the removal of the smashed vehicle and lead to unnecessary congestion. The ESC should be aware that Victoria Police give clear instructions to tow truck drivers to quickly remove the vehicle to enable the road to be cleared. In most cases, drivers will probably not even read the warnings, quickly circle yes or no to the required questions and sign the authorisation to tow. In any case, the warnings are not relevant to most drivers involved in an accident.
- 3.26 VACC would like to suggest as an alternative approach to target the source of the problem; that is, at the body repair shop (whether affiliated or non-affiliated with the tow truck operator). VACC acknowledges consumer detriment is significant, if it does occur, where a not-at-fault driver's body repairer is unable to fully recover all of the costs for the body repair and associated services.
- 3.27 VACC believes that full and frank disclosure of the risks and potential financial obligations involved in entering into a third-party body repair recovery agreement, authority to act agreement and so forth would be a better alternative and would address the lack of awareness of not-at-fault drivers. The lack of awareness appears to be the cause of the problem and should be addressed with disclosure prior to entering into agreements. This would allow the not-at-fault driver to make an informed decision. Reiterating, VACC supports the notion, that repair consumers are properly informed about a contract of repair. To this end, our solution is for VACC and CAV to work with body repairers and insurers to address the issue of proper mandatory disclosure.
- 3.28 In view of the unlikely effectiveness of the proposed warnings and relevance to most drivers involved in an accident, VACC believes the ESC's recommendation for VicRoads to work with insurers to encourage the development of an industry education campaign to educate drivers is a matter more for CAV working with the insurance and tow truck industry. It must be remembered that insurance companies are businesses seeking to make a profit for their shareholders. They are not consumer advocates and they should not be given that role by the ESC. Insurance companies and tow truck operators should, as stakeholders in the industry, both have an input into any material produced by CAV.
- 3.29 On a related point, VACC believes most consumers lack an understanding of their rights and obligations in respect to all types of body repairs. As the ESC may be aware, the NSW Parliamentary Committee Inquiry into the Motor Vehicle Repair Industry (July 2014) heard consumer evidence mostly against the way insurer's push their preferred repairer schemes onto their policy-holders (even where the policy-holder has a right to choose their repairer). They also heard that the commercial arrangements insurers enter into with preferred repairers may be impacting the quality of repairs (specifically the safety of the vehicle). Consumers complained to the Committee of steering practices (a form of touting) by insurers. The Committee considered anti-steering legislation that exists in the United States, as a means of addressing this behaviour, but decided not to recommend this approach.

- 3.30 VACC does not raise this matter to denigrate the insurers, rather to bring to the ESC's attention that both sides (some insurers and some body repairers) from time to time, stretch the boundaries of what is in the best interests of the consumer. Generally, the majority of businesses from the insurance and tow truck industries do the right thing.
- 3.31 The NSW Parliamentary Committee Report (July 2014) observed that body repair is a complex matter that most consumers do not understand, and that greater transparency is required to ensure the equitable handling of vehicle owner's body repairs. The NSW Parliamentary Committee recommended a number of initiatives to improve transparency and to also resolve disputes between vehicle owners, insurers and body repairers. These initiatives include digital photography of every aspect of a body repair and an industry agreed process for determining reasonable time and reasonable rates for every type of body repair.
- 3.32 VACC believes that the development of these initiatives is more likely in the long-term to address the causes of disputes between vehicle owners, insurers, tow truck operators and body repairers.
- 3.33 Adequate disclosure about rights and obligations depending on your fault status, and appropriate time and cost rate benchmarks and protections (digital photography of the repairs) are more likely to enable a dispute to be resolved. At the moment, disputes are settled on a negotiation basis (what each party is willing to bear) rather than on fact (how long does it really take and how much does it really cost).
- 3.34 Accordingly, VACC believes the insurer and body repair industries need to show leadership on this issue and collaborate with government to provide in plain language a consumer's rights and obligations. This is so regardless of the type of body repair, as well as develops the aforementioned initiatives to enable expeditious resolution of disputes. It is also required to reduce attempts by some players from both sides manipulating consumers for their own ends to the detriment of both industries and the community.
- 3.35 In relation to Recommendation 7, the ESC has not provided any rationale or evidence for limiting the locations to which an accident-damaged vehicle can be towed. This is a restriction on consumer choice. The owner should be allowed to have their damaged vehicle towed to any location they so desire. This is not a matter for Government.

4. Fee regulation – Melbourne controlled area (Recommendation 8)

- 4.1 VACC supports the ESC recommendation that the Minister for Roads and Road Safety should continue to set regular vehicle accident towing and storage fees in the controlled area. However, while the level of the towing and storage fees are outside the scope of this review, VACC believes the ESC needs to reconsider its costing methodology and consider the approach taken by the NSW IPART in its report on accident towing fees.

5. Fee regulation – Unregulated areas (Recommendation 9)

- 5.1 VACC agrees with the ESC's conclusion that accident tow operators in the unregulated area have lower tow truck utilisation rates and hence higher average costs. Utilisation rates and costs will vary significantly depending on the number of accidents where a tow operator is located. Accordingly, it is difficult to apply a uniform price regulation scheme similar to the Melbourne controlled area.
- 5.2 Notwithstanding the acknowledgement of lower utilisation rates and above average costs, the ESC has recommended price notification as a light-handed approach. It would seem the purpose of price notification is to enable VicRoads to mediate complaints from insurers and uninsured motorists about prices charged being greater than the tow operator's published fees and for the Government to monitor towing fees.
- 5.3 However, the ESC has not produced any evidence that tow operators in the unregulated area are charging different fees to different customers. If this were the case, insurers would quickly identify inconsistent charging by tow operators for similar type towing jobs. While uninsured motorists are at greater risk of not knowing what the tow operator normally charges, word-of-mouth is a powerful deterrent particularly in regional centers and townships to prevent the different treatment of different types of customers. VACC understands from VicRoads that there have been only a handful of complaints regarding the cost of towing, mostly from uninsured drivers.
- 5.4 The monitoring of fees is not likely to assist Government with determining whether a tow operator's fees are excessive. The Government would still need to know the utilisation rates, and operating costs of the individual operator concerned, to determine whether the published prices resulted in an excessive rate of return.
- 5.5 Insurers have better resources than Government to monitor towing fees, in particular to quickly identify any significant price increases by an individual tow operator that appear greater than the industry standard.
- 5.6 In respect to motorists that have to pay for the tow fees, VicRoads also has the powers to inspect a tow operator's records (including authorisation to tow and invoices). This power would enable VicRoads to identify any different treatment of customers in respect to towing fees. For example, charging a base fee, km rate, storage fee or salvage fee to insured motorists, and occasionally charging a higher set of the aforementioned fees to an unsuspecting uninsured driver, that the tow operator believes he or she may take advantage.
- 5.7 Even if VicRoads published towing fees on its website, it is unlikely that many insurers or uninsured drivers would access the website. Insurers already know the tow fees charged by tow operators. Insured drivers are not interested in the cost of towing because their insurer pays for the tow. This leaves about 20 per cent of motorists who are uninsured that may benefit from the website. VicRoads would need to spend considerable funds to target, promote and inform uninsured drivers about the website. However, the principle of 'use it or lose it' is likely to apply to such a website, due to the infrequent nature of accidents. Given the small handful of public complaints about towing fees, the published tow fees section of the VicRoads website would be rarely visited.

- 5.8 The ESC has assumed the publication of tow fees would impose a relatively low cost to Government. However, in addition to collecting the tow fees from each individual tow operator across the State, VicRoads would need to establish a section on its website and design the section to enable amendment to towing fees for 140 tow operators from the unregulated areas that will occur at different times of the year. VicRoads from time to time will make human errors and publish incorrect towing fees (that could be higher or lower than the actual towing fees submitted). This will cause problems for the tow operator and motorists unless VicRoads establishes a system where it requires each tow operator to verify the submitted prices before it publishes the prices on its website. This task alone would double the administrative time and cost to each tow operator and to VicRoads.
- 5.9 If the Government wishes to monitor towing fees in the unregulated area, VACC believes the Government should consider a lower cost option that enables the collection of price information but applies the user pays principle. An annual survey of all tow operators could be undertaken where VicRoads conducts the survey by phone or email and collates the information. In this way, the cost is being borne predominately by Government who would be the main beneficiary of price monitoring. This option would also reduce the time and effort for tow operators in providing prices compared with a more formalized arrangement under a price notification scheme.
- 5.10 The costs of either of the above are still likely to be substantial and a business case would need to be made to justify whether Government's scarce resources should be allocated to the establishment of such a system.
- 5.11 The ESC should also take into account the publication of the price notification scheme on VicRoads website could have unintended adverse effects of price convergence over a period of time. That is, tow operators become the main users of the VicRoads website and individual tow operators compare their towing fees with other tow operators within their vicinity. Where substantial differences exist, a tow operator with lower tow fees may increase their tow fees (even over a number of years) to be more in line with the tow operator charging higher tow fees.
- 5.12 VACC met with IAG representatives, and it would appear insurers are frustrated with the lack of resources within VicRoads to investigate their complaints and perhaps with the uncertainty surrounding the robustness of the criteria for challenging the reasonableness of the towing fees charged.
- 5.13 Any concerns regarding the fees charged within the unregulated area would seem to be a resourcing issue and the appropriateness/effectiveness of the criteria for determining whether towing fees are reasonable. It would seem logical to address these issues and make improvements, where appropriate, before introducing further regulation in the form of price notification that would appear to have little benefit to insurers and motorists.
- 5.14 Adequate resourcing can be simply resolved provided the Government and VicRoads believe the reallocation of resources can be justified. The appropriateness and effectiveness of the criteria for determining the reasonableness of towing fees perhaps should be reviewed. VACC notes the criteria does not explicitly take into account the utilisation rates and the associated costs of individual tow operators that would be necessary to ensure a fair evaluation.

- 5.15 In view of the above analysis, VACC does not believe the proposed price notification scheme will benefit insurers or uninsured drivers. The compliance cost to tow operators and the administrative cost to Government with the price notification scheme, is likely to exceed the benefits given that there are only a handful of public complaints regarding towing costs.**
- 5.16 Accordingly, the price notification scheme would seem a significant cost to Government and business to deal with a relatively minor irritant. VACC believes a survey of towing fees by VicRoads or the ESC would be a more efficient low cost option to Government and tow operators that would still achieve the ESC's desired outcome of price monitoring.
- 5.17 However, to ensure sound policy analysis and to enable Government or make an informed decision, the ESC should undertake a quantitative cost benefit analysis of the price notification scheme and VACC's suggested price monitoring scheme before making its final recommendation.

6. Area boundaries - Controlled area (Recommendation 10)

- 6.1 The ESC has recommended that VicRoads should establish the primary purpose of the controlled area boundary, namely, whether it is intended to reflect the underlying market for accident towing services (market based) or whether its purpose is to reflect a geographic area defining metropolitan Melbourne (geographic based). If market based, then VicRoads should begin collecting relevant data to inform future realignments of the boundary. If geographic based, VicRoads should establish its preferred means for defining and amending 'metropolitan Melbourne'.
- 6.2 In terms of defining and amending 'metropolitan Melbourne' it is likely that VicRoads will need to draw upon a market-based (number of accidents) and geographical based methodologies (population growth in peri-urban areas) using ABS data and local government boundaries. The ESC has not analysed whether there is a positive correlation between the number of accidents and population growth. VACC would assume that this is likely to be the case although there are likely to be other factors including whether the quality of the road network in peri-urban areas has kept pace with rapid population growth, the number of licensed tow operators servicing these areas and the ability of these operators to respond to an accident in a timely manner.
- 6.3 VACC recommends the ESC instructs VicRoads to use and make clear to the towing industry the use of Government census geographic based classifications from the ABS, either the Melbourne Urban Centre Locality (UCL), Melbourne Significant Urban Area (SUA) or Greater Capital City Statistical Areas (GCCSAs). None of these include Geelong within their boundary. VACC understands the GCCSA is the broadest geographical boundary designed to represent the functional extent of each of the eight state and territory capital cities. They replace the current Capital City Statistical Divisions and will provide a stable definition for these cities which will be used for the output of a range of social and economic survey data.

- 6.3 In the interim, VACC recommends VicRoads should not alter the boundaries because the system is working very well within the controlled area. The primary purpose of the controlled area boundary is intended to reflect a geographic area defining metropolitan Melbourne (geographic based) and should remain so. The existing boundary and zones in the Melbourne controlled areas are appropriate and should be maintained. It also makes clear the delineation of the self-management area (SMA) and regional and rural Victoria. This has been a key success factor in creating a vastly improved regulatory framework for towing operations compared to past regimes.
- 6.4 If boundaries are amended at any time, VACC recommends industry is fully consulted and a transition period is included as part of the boundary changing process so tow operators do their best to adjust to new operating conditions.

7. Accident allocations – Self-management area (Recommendation 11)

- 7.1 VACC supports the ESC recommendation that the accident allocation scheme should continue to operate in the self-management area. However, it does not support the recommended proximity-based allocation system for the self-management area for the same reasons outlined above in respect to the Melbourne controlled area.

8. Fee regulation - Self-management area (Recommendation 12)

- 8.1 The ESC provides an unbalanced assessment of the self-management area of Geelong by only providing revenue data. A balanced assessment requires an analysis of the costs and the revenue, not just comparative accident towing revenue per tow truck.
- 8.2 The ESC states ‘with their level of activity and an average accident towing fee of \$593, operators in the self-management area are earning revenue of \$150,000 per year from each truck. The corresponding figures for the controlled and unregulated areas are \$79,000 and \$41,000 per year from each truck, respectively’ (p171, ESC Draft Report, September 2015).
- 8.3 Using revenue or costs per tow truck is a meaningless indicator of the actual costs and revenue obtained by the tow operators in the self-management area. Revenue is dependent on the number of licences associated with the tow truck. This determines the total amount of accident allocations available to a licensed tow truck. The number of allocations per tow truck will determine the utilisation of the tow truck for accident tow work.
- 8.4 The ESC should note that their methodology for estimating revenue projections over-estimates the amount of revenue obtained by each of the five operators. The ESC methodology involved simply dividing the number of accident allocations by the number of licensed trucks (1,750 allocations by 7 trucks equates to 250 allocations per tow truck).

- 8.5 This methodology will be always inaccurate due to the different number of licences and the number of trucks held by each of the operators.
- 8.6 In actual fact, the number of allocations ranges from 70 to 420 allocations per tow truck, with most of the operators having about 210 allocations per tow truck. This equates to about 4 tows per week per tow truck.
- 8.7 Using the average tow time of 1.5 hours from previous ESC reports (from depot to accident scene to tow destination), the actual utilisation time for accident tows is 6 hours per week (4 tows by 1.5 hours or 312 hours per annum).
- 8.8 The low level of accident tow truck utilisation has a significant impact on the hourly cost to provide the service as shown below.
- Tow truck ($\$60,000 \div 312$ hours per annum) Hourly rate \$192
 - Driver (30 per cent of \$593 average fee = \$178) Hourly rate \$119
 - Overheads ($\$100,000$ rent and business operating costs for 2 trucks@312 hours = 624 hours. Hence $\$100,000 \div 624$ hours) Hourly rate \$160
 - Total hourly rate \$471.
- 8.9 Hence the cost to perform the average accident allocation job is \$746 comprising \$706 for the truck, driver and overheads ($\$471 @ 1.5$ hours and about \$40 in fixed costs (allocation charge per tow job paid to the Geelong self-management allocation centre)).
- 8.10 As stated in the Draft Report, the average tow fee in the self-management area is \$593. Some of the operators incur bad debts up to 10 per cent of tow jobs or \$59 (where owners abandon low value vehicles and refuse to pay for the towing and storage fees). Accordingly, the net revenue after taking into account bad debts is \$534 for the average tow job. This results in an operating loss of \$212 per tow job ($\746 costs - $\$534$ revenue).
- 8.11 The hourly costs can decline to a small degree with increased tow truck utilisation by undertaking trade towing. Most of the operators utilise their accident tow trucks for about two hours per week per tow truck. This will only reduce the hourly rate by about \$50, not enough to offset the operating loss per accident tow job.
- 8.12 Clearly, the operators in the self-management area rely on securing body repair work from accident tows to offset the operating loss incurred in providing the accident towing service.
- 8.13 It should be noted accident tow operators in the self-management area have limited opportunities to access the trade tow market. The ESC believes that trade towing is less urgent and less time dependent compared to accident towing. However, trade towing in most cases is no less urgent than any other business service.
- 8.14 Trade towing includes towing new vehicles to motor car dealerships, construction machinery and equipment, tows between repair centers, break-down towing, and towing abandoned and stolen vehicles.

- 8.15 Most trade towing is now done on a contracted basis. For example, National Towing (unlicensed operator) has an exclusive contract with RACV to provide break-down towing services to its members in Melbourne. Other unlicensed tow operators have contracts with car manufacturers to tow new vehicles to motor car dealerships. Similarly, insurers will enter into contracts with tow operators to move a vehicle between repair centers. The Victoria Police and local councils also have contracts for abandoned and stolen vehicles. To service these contracted services, a tow operator needs to have dedicated tow trucks to service the contract and to deliver on time.
- 8.16 Most trade towing occurs during business hours which are when about 75 per cent of accident allocations occur. Hence, it is difficult for a licensed tow operator to service a trade towing contract with a licensed tow truck.
- 8.17 To participate in accident towing and contracted trade towing, a tow operator needs to have at least one tow truck for accident tows and usually more than one tow truck for contracted trade towing. While the tow trucks used for trade towing may have a reasonable level of utilisation, the tow truck for accident towing will always have a lower utilisation due to the stand-by nature of servicing accident towing.
- 8.18 As a result of the contracted trade towing market, it is difficult for licensed tow operators to increase the utilisation of their licensed tow truck by a great deal due to the small market of non-contracted trade towing.
- 8.19 The non-contracted trade towing market is very competitive and includes a lot of owner-operators that do not have a business premises- just a tow truck and a mobile phone. These owner-operators provide trade towing services as low as \$60 (base fee) due to the absence of the overheads experienced in the regulated accident towing market.
- 8.20 The ESC needs to appreciate most of the trade towing market is undertaken by contracted tow operators (mostly unlicensed) and licensed accident tow operators find it difficult to compete for non-contracted trade towing with the unlicensed owner-operators.
- 8.21 Where licensed tow operators undertake contract trade towing, they still need dedicated unlicensed tow trucks to service the contract. As a result, it will be always difficult to achieve a high level of utilisation for a licensed tow truck.
- 8.22 In view of the analysis of the actual costs for the self-management area and the limited opportunities for trade towing, VACC believes the ESC has misrepresented the operators in the self-management and not made a compelling case for price regulation.

9. Area boundaries – Self-management area (Recommendation 13)

- 9.1 The same comments we have made in the above section on ‘Area boundaries - controlled area’ apply to the self-management area.
- 9.2 The ESC has made recommendations to specific issues relating to the current boundaries of the self-management area where the tow operator outside part of the self-management area receives less tow jobs due to where the boundary is marked on the road. In this case, the location of the boundary currently results in more accidents on the side of the self-management area. However, this may not be always the case in the future. The boundary is likely to be based on local government boundary lines that commonly split the boundary on either side of the road.
- 9.3 VACC does not believe the ESC should recommend changes to the current boundaries of the self-management area based on any individual tow operator’s desire to take advantage of the number of accidents that are literally on the other side of the boundary.

Reference

Accident Towing Regulation Draft Report, Essential Services Commission, September 2015

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Attachment A

SELF-MANAGEMENT AREA OF GEELONG TERMS AND CONDITIONS

Appointment and duties of the Allocation Manager

1. Within 30 days after the date of this notice, the licence holders in the self-management area of Geelong (the **Licence Holders**) must appoint a person (the **Allocation Manager**) to be the manager of the Allocation Body on their behalf.
2. The Allocation Manager must ensure that the Allocation Body meets its obligations under these terms and conditions.

Appointment and duties of the Allocation Body

3. The Allocation Manager, with majority agreement from the Licence Holders, must appoint a corporation to operate as an allocation body (the **Allocation Body**) for the self-management area of Geelong (the **Area**).
4. The Allocation Body will be responsible for the creation of a road accident scene allocation roster (the **Roster**).
5. The Allocation Body must keep the Roster and record the details of each regular tow truck licence that has been allocated a place on the Roster.

Duties of an Allocation Officer

6. The Allocation Body must ensure that there is a person available at all times to perform the functions of an allocation officer (the **Allocation Officer**) for the Allocation Body.
7. The Allocation Officer must ensure that each authorisation is recorded, including the name and contact details of the person requesting the tow, as soon as the information is available.
8. The Allocation Officer must allocate a job number to each authorisation given.
9. The Allocation Officer must match each allocated job number with the details of the accident damaged vehicle, as soon as that information is available to the Allocation Officer.

Roster fee

10. The Allocation Manager may charge each Licence Holder a monthly fee (the **Roster Fee**) which represents that Licence Holder's share of the reasonable monthly costs incurred by the Allocation Manager and the Allocation Body in managing the Area.

Creation of allocation roster entitlements on the self-management roster

11. Each regular tow truck licence entitles the Licence Holder to one place on the Roster provided that:
 - (a) the licence conditions specify operation in the Area;
 - (b) the licence has a specified depot in the Area; and
 - (c) the Licence Holder is no more than one month in arrears in paying the Roster Fee to the Allocation Body for that licence.

Any application for variation to tow truck licence conditions must be made to VicRoads.

Removal or suspension from the roster

12. At the request of VicRoads, the Allocation Body must remove an allocation from the Roster if:
- (a) the relevant tow truck licence is cancelled or suspended; or
 - (b) the licence holder requests that the allocated place be removed; or
 - (c) the relevant depot is not in the Area or does not meet the requirements of a specified depot under regulation 16 of the *Accident Towing Services Regulations 2008*.

Authorisation to attend an accident scene

13. An Allocation Officer may make an allocation if:
- (a) a request has been received by the Allocation Body to remove an accident-damaged motor vehicle from a road accident scene in the Area; or
 - (b) a previous authorisation by the Allocation Body to remove an accident-damaged motor vehicle from a road accident scene in the Area has been cancelled, and the accident-damaged vehicle is still awaiting towing.
14. An allocation is made by contacting the holder of the place on the Roster who is next entitled to an allocation and offering that person an authorisation and:
- (a) if that person accepts the authorisation, authorising the person to attend the road accident scene and offer to tow an accident-damaged motor vehicle from the scene; or
 - (b) if the person refuses or is unable to accept the authorisation, offering the authorisation to the person whose place on the Roster is next entitled to an allocation.
15. Each authorisation is only given for one accident-damaged motor vehicle.
16. If a tow truck with authorisation to tow an accident-damaged motor vehicle is unable to tow the vehicle because the accident scene is not reasonably able to be located, or because the vehicle has departed the accident scene before the tow truck arrives, that tow truck will receive an allocation credit. When the Roster is prepared for the following month, each allocation credit will entitle that tow truck to one additional place on the Roster.

Substitute tow truck

17. A Licence Holder who has been authorised to cause a rostered tow truck to attend a road accident scene may substitute for that vehicle another tow truck which is licensed for the Area, by notifying the Allocation Body of the substitution. If a substitute tow truck attends, the substitute tow truck is taken to be a rostered tow truck. A Licence Holder may not substitute a tow truck which is not licensed for the Area.

Operation outside the Area

18. A License Holder may only cause a rostered tow truck to attend a road accident scene outside the Area if:
- (a) Victoria Police have requested the Allocation Body to provide a tow truck to the road accident scene; and

- (b) the Allocation Body has asked the Licence Holder to cause a rostered tow truck to attend that road accident scene.

Cancellation of an authorisation

19. The Allocation Officer may cancel an authorisation if the holder of a place on the road accident scene roster is:
 - (a) unable to cause the rostered tow truck to attend the road accident scene within a reasonable period (generally 30 minutes from the time of allocation unless unusual circumstances apply); or
 - (b) is otherwise unable to fulfil the authorisation.
20. If an authorisation is cancelled, the Allocation Officer must notify one of the following people accordingly:
 - (a) the relevant licence holder for the rostered tow truck; or
 - (b) a person employed at the specified depot for the rostered tow truck; or
 - (c) the driver of the rostered tow truck.
21. If an authorisation is cancelled, and the Allocation Officer (in his or her own discretion) considers that there were good reasons for the allocated tow truck being unable to undertake the job, the Allocation Officer may issue an allocation credit to that tow truck.

Dispute resolution

22. If a Licence Holder has a complaint or dispute about allocations, the Roster, or other matters connected with the management of the Area, the Licence Holder should first notify the Allocation Manager. The Allocation Manager has 14 days from the date of notification to use all reasonable endeavours to resolve the dispute.
23. If the Licence Holder does not consider the dispute to be resolved after that 14 days period, he or she may call a meeting of all Licence Holders to resolve the dispute. Each party involved in the dispute will present his or her case to the meeting of the Licence Holders, and the Licence Holders will use all reasonable endeavours to resolve the dispute in a way that is satisfactory to the parties, having regard to the need to protect the reasonable livelihood of each individual Licence Holder.
24. If the dispute continues to be unresolved following the meeting of the Licence Holders, the Licence Holder who commenced dispute proceedings may contact VicRoads, setting out the details of the dispute. If VicRoads considers that the matter is sufficiently serious, it may revoke its declaration of the Geelong self-managed area.

Resignation or termination of appointments

25. The Allocation Manager must provide the Licence Holders with 30 days written notice if he or she intends to resign from the role.
26. By majority vote, the Licence Holders may vote to remove the Allocation Manager from the role, and if the motion passes the Allocation Manager must cease performing the role within 7 days or any other period agreed with the Licence Holders.
27. Within 30 days after the receipt of the Allocation Manager's written resignation or the passage of a vote removing the Allocation Manager, the Licence Holders must appoint a new Allocation Manager.

28. The Allocation Body must provide the Licence Holders with 60 days written notice if it resolves to cease performing the role.
29. By majority vote, the Licence Holders may vote to remove the Allocation Body from the role, and if the motion passes the Allocation Body must cease performing the role within 7 days or any other period agreed with the Licence Holders.
30. Within 60 days after the receipt of the Allocation Body's written resignation or the passage of a vote removing the Allocation Body, the Allocation Manager must appoint a new Allocation Body, with majority agreement from the Licence Holders.

Attachment B

Accident Towing Services Act 2007

DECLARATION OF SELF-MANAGEMENT AREA

1. Purpose

The purpose of this notice is to declare the area known as the ‘Self-management area of Geelong’ as a ‘self-management area’ for the purposes of the *Accident Towing Services Act 2007*, and specify the terms and conditions on which the self-management area is to be managed.

2. Authorising Provision

This notice is made under section 52 of the *Accident Towing Services Act 2007*. Section 52 provides that VicRoads may, by notice published in the Government Gazette, declare an area to be a self-management area, and must specify the terms and conditions on which the self-management area is to be managed.

3. Commencement

This notice comes into operation on the day on which it is published in the Victoria Government Gazette.

4. Declaration

I, David Shelton, delegate of VicRoads, declare, pursuant to section 52 of the *Accident Towing Services Act 2007*, that the ‘self-management area of Geelong’, as defined below, is a ‘self-management area’ for the purposes of that Act, subject to substantial compliance with the attached terms and conditions—

The ‘self-management area of Geelong’ is the area firstly bound by a notional line drawn from the coastline at the Little River, along the western bank of the Little River to its intersection with Kirk Bridge Road, west along Kirk Bridge Road until Little River Ripley Road, west along Little River Ripley Road until its intersection with Geelong-Bacchus Marsh Road, south along Geelong-Bacchus Marsh Road to its intersection with Granite Road, west along Granite Road to its intersection with Staughton Vale Road; west to the intersection of Geelong-Ballan Road and Clarkes Road; south along Clarkes Road; Loves Lane until its intersection with Lynch Road; east along Lynch Road to its intersection with Hargreaves Road; south along Hargreaves Road to its intersection with Thompson Road; west along Thompson Road, Perdrisat Road and Lower Plains Road; south at Shelford-Meredith Road to its intersection with Shelford-Bannockburn Road; east along Shelford-Bannockburn Road to its intersection with Bakers Lane; south along Bakers Lane to its intersection with Common Road; south-east along Common Road to its intersection with Hamilton Highway; then in a straight line south-east to the intersection of Gnarwarre Road and Mt Pollock Road; east along Gnarwarre Road and Barabool Road to its intersection with Hendy Main Road; south along Hendy Main Road to its intersection with the Princes Highway; west along the Princes Highway for 500 metres and then returning east along the same road to the intersection with Hendry Main Road; south along Hendy Main Road to its intersection with Cape Otway Road; east along Cape Otway Road to its

intersection with Mt Duneed Road; east along Mt Duneed Road, Lower Duneed Road and Barwon Heads Road to its intersection with Staceys Road; then in a straight line north-east to the intersection of Princess Street and Andersons Road; north along Princess Street , Clifton Springs Road and Beacon Point Road to the coastline at Clifton Springs and the coastline from Clifton Springs to the Little River.

The line drawn above is deemed to be drawn twenty metres beyond and parallel to the right hand edge of the road.

Dated

2012

DAVID SHELTON
Executive Director
Road Safety & Network Access
VicRoads

Attachment C

Improvement Procedures Implemented in the Geelong Self-Management Area 2015

1. Protecting the personal information and privacy of the public

For numerous reasons we have found this to be a serious issue in Geelong. This was instigated to protect the public because we became aware that insurance companies were utilising the system for valuable information on not at fault consumers. Another problem was when the Authority to Tow was signed by a police member, supposedly family members would call for information so that they could try and have access to the vehicle without consent from the owner. In addition, some vehicles are involved in criminal activity creating further issues. An affiliated drug addict, dealer or crook is trying to obtain the location of the vehicle for its possessions.

Solution:

The Allocation Centre Operator is to take all the callers information and pass it on to the respective tow operator. The tow operator will then do the due diligence on the caller. He will then notify the owner of the vehicle for consent to disclose the information.

2. Pilot System and Implementation of Victoria Police Authority to Tow Books

Early in 2015 the Geelong Allocation Centre Members were notified by Victoria Police that they intend to try a Pilot System in which the tow operators carry the "Victoria Police Authority to Tow Report Books" This was instigated because the previous system was antiquated, inefficient and quite costly for Victoria Police. Tow operators on the other hand were often left in limbo and forever chasing up Police Authority Towing Forms. They would either be lost through the fax system, not completed by the police member in charge, or forgotten about as the responsible police member was allocated a job of higher priority on that day. The system, if successful would be rolled out throughout the state.

Solution:

The Tow operators are to carry the Victoria Police Authority to Tow Books. The Leading Victoria Police Member is to fill in the book at the accident scene informing the Tow Operator the circumstances behind the accident, the reason why the vehicle has been towed, the owners particulars, if it has been involved in criminal activity, if it is a fatality, where the vehicle is to go and if the owner of the vehicle provided consent to tow. This process provides clear directions to Victoria Police and the tow operator as to what the next course of action is to take place in relation to the releasing of the vehicle. This process saves Victoria Police a tremendous amount of time and money as it would prevent them from being harassed by the owners of the vehicles, towing operators chasing instructions on what to release and too who and more importantly the accumulation of unnecessary storage costs when the police are responsible for costs.

This pilot process was successful and subsequently has been released in the Geelong Self-Managed Area and is being released throughout the state.

3. Clarification of Area Boundary Process by Allocation Phone Operators

This concern was brought to the attention of the Geelong Allocation Accident Manager in which a Melbourne Allocation phone operator had refused to send a tow operator to an accident scene because he assumed that it was out of the Geelong Self-Managed Area. This infuriated the frightened consumer as they were stranded in a remote area in the dark and they did not know who to call to retrieve them.

Solution

A process was devised to make sure that this would never happen again. The process was implemented on the basis that “Under no circumstances are there to be no trucks dispatched”. If a call is received through the Geelong Allocation Centre, a tow truck must be dispatched. Either through the Self-Managed Area or the Unallocated Area.

If the Area boundary becomes in question, the phone operator is to call the Geelong Accident Allocation Manager or the Assistant Allocation Manager should the Manager not be contactable. Either of them has a clear understanding of the boundaries and they also carry the phone numbers of all the tow operators in the Self-Managed Area and the adjacent Unallocated Areas. They will take control of the call and make a decision on what is to follow. If it is within the Geelong Self-Managed Area boundaries, he will allocate the job to the next tow operator on the list or should the accident fall outside the boundaries, it will be the Accident Allocation Managers duty to contact the tow operator in the Unallocated Area and give them clear instructions and directions about the accident. This process insures that the end consumer is attended to quickly, efficiently and more importantly ensures their safety.

4. Owner’s name, phone number and details of vehicle for A/H and remote areas

Geelong is becoming quite a volatile area for towing operators and their drivers. There is not a tow truck driver in the Geelong Self-Managed Area that has not had a close encounter of some sort. With an ice epidemic quite prevalent, this process was implemented purely for the safety of the tow truck drivers who venture out all through the hours of the night, dealing with all walks of life in quite isolated areas.

Solution:

There have been many calls to attend accident scenes in isolated areas and to protect the safety of the tow truck driver a basic process was implemented. This process is only followed after midnight if the call is a single car accident from the public and not from Victoria Police or an insurance company. It is the duty of the phone operator to obtain the owner’s particulars, phone number, and registration number on the vehicle, make and model. They will also inform the caller that the towing operator will call them to legitimise the accident scene. After the tow operator has called the consumer, he will then notify the Allocation Centre on his findings. This is a quick and easy process that insures peace of mind for all concerned.