



Insurance Commission
of Western Australia

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Accident Towing Consultation
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Dear Ms Chopping

DEPARTMENT OF MINES, INDUSTRY REGULATION AND SAFETY – CONSULTATION REGULATORY IMPACT STATEMENT ON FUTURE REGULATION OF WESTERN AUSTRALIA’S ACCIDENT TOWING INDUSTRY

I refer to the Department of Mines, Industry Regulation and Safety’s (**DMIRSS**) invitation to provide comment on the abovementioned consultation regulatory impact statement (**C-RIS**).

In 2018, the Insurance Commission of Western Australia (**Insurance Commission**) provided advice to the Department of Transport on its proposal to amend the Road Traffic (Vehicles) Regulations 2014 to prohibit towing practices that were to the detriment of consumers. In the same year, the Insurance Commission lodged a submission to the Economics and Industry Standing Committee Inquiry into WA’s Automotive Smash Repair Industry, which recommended changes to protect consumers from poor tow truck operator practices.

Two years later, DMIRS has asked the Insurance Commission to respond within 28 days to its C-RIS on similar issues. The reason for that delay is unclear, as is the limited timeframe in which to prepare a submission to respond to the C-RIS.

The following information sets out our responses to the requested matters.

ABOUT THE INSURANCE COMMISSION

The Insurance Commission provides motor injury insurance to almost two million Western Australian motorists for their 2.9 million insured vehicles, as well as providing insurance cover for damage to motor vehicles owned or leased by public authorities.

In 2019-20, the Insurance Commission received 2,122 new motor vehicle claims from public authorities, and paid \$8.36 million in claims payments associated with those claims. \$4.5 million of those payments related to towage, smash repairs, and damage to windscreens and windows. It is through our involvement in these claims that the Insurance Commission has regular exposure to the accident towing industry.

RESPONSE TO THE DISCUSSION PAPER

The Insurance Commission agrees that additional regulation is required to protect consumers engaging with accident towing and storage services.

The question is the extent to which that additional regulation is necessary.

It is important that any regulatory changes be effective, protect consumers, and promote a competitive towing industry market.

The Insurance Commission views price regulation as an effective means of addressing the underlying incentives that cause many of the undesirable behaviours within the accident towing industry that have been described in the C-RIS. Existing penalties that deal with criminality could also be strengthened to better respond to the behaviour of those tow truck operators that operate outside the law.

The C-RIS suggests a variety of licensing regimes could be implemented. The administration of those regimes would impose a significant cost burden directly on the industry, and then indirectly on consumers. Considerable care would need to be taken to ensure that the licensing regime did not significantly drive up the cost of providing accident towing and storage services, while regulation was also being implemented to drive down the price of those services. That risk could undermine the viability and feasibility of tow-truck operators continuing to provide necessary services to the public.

The proposed licensing regimes would also see Government officers become responsible for conducting character tests of tow truck and smash repair workers, and assessing their performance.

Further work would need to be undertaken to demonstrate that any benefits derived from those regimes would justify the cost and the need for those activities.

The Insurance Commission recommends a combination of discrete regulatory elements that would be lower cost and as effective as any of the options proposed in the C-RIS. Those elements should apply State-wide, rather than being limited to specific areas of Western Australia (as proposed by Options 3 and 4).

The regulatory elements that the Insurance Commission recommends are addressed below.

Price Regulation of Towing and Storage Fees

As identified in the C-RIS, there are currently no set regulated towing rates in Western Australia for breakdown and/or accident towing or vehicle storage.

The Insurance Commission understands that this has resulted in it becoming common practice for tow-truck operators to charge excessive towing and storage fees compared to charges applicable in other jurisdictions for equivalent services. The current arrangements have also allowed tow-truck operators the ability to add miscellaneous costs to their invoices, such as hook fees, tilt tray required fees, yard-in fees, yard-out fees, additional kilometre fees, storage fees and second tow fees.

The Insurance Commission has previously identified two circumstances in which tow-truck operators use the lack of regulated towing rates to routinely take advantage of consumers.

The first is when a nominated tow truck company is sent out to a crash scene, and the tow truck operator provides the driver of the damaged vehicle with an authority to tow form with the price section left blank. The consumer therefore has no understanding of the cost of the towing service and the towing operator can later seek to charge a significantly higher fee, along with various miscellaneous, as it has possession of the vehicle.

The second is when tow trucks arrive opportunistically at a crash scene and compete for the work, as it is the first to arrive at the crash scene that usually gets the tow. The successful tow truck operator will tow the vehicle to a yard, and then charge a high fee for the vehicle to be released. Consumers (or insurers) are then required to pay the higher vehicle to release their vehicle.

The Insurance Commission supports the implementation of maximum towing and storage fees to resolve these issues. Maximum towing and storage fees would remove the unfettered discretion of tow-truck operators to set prices, and would protect consumers from being charged unreasonable fees for those services.

If a fee schedule were introduced in Western Australia, it should set the maximum fees for tow-truck services such as accident towing, after hours surcharge, salvage activity and storage.

The C-RIS identifies that equivalent pricing arrangements already exist in Queensland, New South Wales and Victoria and could be readily adopted.

Written Authority to Tow Form

Regulation 419(1) of the Road Traffic (Vehicles) Regulations 2014 (WA) (**RT Regulations**) prescribes the particulars a tow truck operator must include in a form that is signed by the driver of the vehicle that is to be towed from the scene of an accident.

The way in which regulation 419(1) is currently framed leaves scope for tow truck operators to choose to include or not include things such as the cost of towing and storage services in the Authority to Tow form. If the costs are stated, there is no requirement for them to be clearly identified. Regulation 419(1) also does not prohibit tow truck operators from including any additional contractual terms or conditions.

This effectively gives tow truck operators discretion to charge any price they see fit, to include any contractual terms they desire (including the miscellaneous fees described above).

The Insurance Commission supports amending regulation 419(1) of the RT Regulations to prescribe additional particulars that must be provided to the consumer. Those additional particulars should include the price of the tow and any storage fees, the fee structure (including the maximum towing and storage fees allowable).

The RT Regulations should also be amended to prescribe standard contractual terms and conditions that are included in the form by default.

Penalty Provisions and Offences

Provisions 419 and 422 of the RT Regulations already contain penalty provisions intended to protect consumers against the unscrupulous behaviours identified in the C-RIS. This means prosecuting authorities such as the Western Australian Police Force already have the power to sanction such behaviours where it is clear an offence has been committed.

The C-RIS does not identify other behaviours that should also be sanctioned.

In late 2017, the DoT issued a consultation report titled 'Tow Truck Regulations – Proposed Updates'. In that report the DoT proposed to increase penalties so that they 'provide a realistic deterrent to offending and demonstrate the seriousness of breaches'.

The Insurance Commission supports the DoT's proposal to increase penalties for tow truck operators who breach the existing regulations to ensure that they act as a sufficient deterrent.

Mandatory Industry Code of Practice

The C-RIS proposes that a mandatory Industry Code of Practice specific to the accident towing industry could be introduced.

The Insurance Commission considers that the introduction of such a Code has merit provided there is a penalty provision and/or offence for breaching the Code.

The Code could set out what behaviour is acceptable and unacceptable. This would be a low-cost approach to prescribe minimum standards for people operating in the industry rather than introduce a licensing regime.

The types of standards and responsibilities that could be contained in such a Code include service standards for tow truck operators, a robust process for complaints and dispute resolution, and systems and processes to ensure those in charge of monitoring and enforcing the Code are able to apply corrective measures in response to a Code breach.

Advice and Conciliation Services to Assist Consumer in the Resolution of Disputes

It appears that DMIRS already has the mandate to deal with consumers who have been subject to unfair terms and conditions across a broad range of industries. As stated on its website, the DMIRS is responsible for promoting fair trading and consumer protection in Western Australia by providing information and advice to consumers about their rights and responsibilities, helping consumers to resolve disputes, and investigating complaints about unfair trading practices.

It not clear what additional advice and conciliation services are necessary. Consumers would benefit far more from the introduction of fixed and transparent fees according to a schedule than they would from the additional provision of such services.

Prohibition on Accident Spotting Fees

The Insurance Commission supports a prohibition on the payment of accident spotters' fees as it supports the behaviours that this new regulation is intended to address. The prohibition would prevent people from providing tow truck operators with information or

advice as to the occurrence of an accident, or the presence of a motor vehicle that may require towing, in exchange for a fee. Legislative provisions similar to those that already exist in Queensland, New South Wales and Victoria could be introduced in Western Australia.

Licensing Regime

The Insurance Commission does not support the proposed implementation of a regime to license towing business operators, tow truck drivers, depot managers and driver assistance.

Introducing a licensing regime may not change the behaviour of tow-truck operators in any material way, particularly if the other measures recommended by the Insurance Commission were introduced (at low or no cost). However, it is clear that it would impose a significant cost impact on the accident towing industry, which would inevitably (and quite reasonably) be passed on to consumers.

The C-RIS repeatedly highlights that the primary problem to be resolved is that some tow truck operators routinely charge unreasonable prices for towing and storage services, and that consumers are unable to avoid paying those fees because they are unable to retrieve their vehicles unless they do so, and the fees often escalate if they delay.

The Insurance Commission considers that much of the perverse behaviour practised by tow truck operators could be eliminated by introducing price regulation and using existing regulation with increased penalties to demonstrate the seriousness of those offences to the community.

Funding of Regulatory Services

The Insurance Commission does not see that the cost of implementing price regulation, amending the requirements of the Authority to Tow Form, and increasing penalties for existing offences, would be material.

Law enforcement officials such as the Western Australian Police are already in a position where they can enforce existing penalty provisions where an offence has been committed.

Enforcement of existing offences that are already undertaken by DMIRS and others will be made easier, which should have the effect of reducing costs.

Please do not hesitate to contact the Insurance Commission if you require further information on this submission.

Sincerely



Kane Blackman
COMMISSION SECRETARY