



Government of **Western Australia**  
Department of **Mines, Industry Regulation and Safety**  
**Consumer Protection**



# **Consultation Regulatory Impact Statement**

**Future regulation of Western Australia's  
accident towing industry**

August 2020



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# MESSAGE FROM THE COMMISSIONER

## **Future regulation of Western Australia's accident towing industry**

I am pleased to release this Consultation Regulatory Impact Statement (CRIS). Serious concerns about the conduct of some accident towing operators has resulted in strong calls for industry reforms from industry participants, insurers and the wider community. This paper considers whether there is a need to increase regulation of the accident towing industry and, if so, what those reforms might look like.

Following an accident, drivers are often vulnerable as a result of being in shock and distressed. Given their infrequent involvement in accidents, they are also likely to have limited access to information to make informed decisions and may be unaware of their legal rights and requirements under their insurance contacts.

Key concerns about the industry centre around unscrupulous tactics and the unsafe conduct of some tow truck drivers at the scene of accidents; price gouging with the charging of excessive towing and storage fees; and possible criminal activity and links to organised crime.

These concerns have been highlighted in the media with reports of crash chasing involving unsafe driving; physical altercations between tow truck drivers competing to secure tow jobs; and the recent alleged assault of an accident victim by a tow truck operator.

In addition, insurers have reported that price gouging has resulted in towing fees charged in Western Australia being two to three times higher than equivalent tows in other jurisdictions. As a result, insurers are increasingly refusing to pay the cost of towing and storing accident damaged vehicles where they assess the charges as unreasonable. This leaves many drivers having to foot a proportion of the bill, despite being fully insured.

Anecdotally, Western Australia is seen as a lucrative prospect for new market entrants particularly as there is no price regulation. While competition in the marketplace is good, unethical practices on the part of some participants makes it very difficult for ethical operators to compete. For example, the recently reported case of towing operators securing towing jobs by making corrupt payments to public officers in exchange for accident information.

I encourage everyone with an interest in the accident towing industry to take the time to consider this paper and provide their feedback. This is your opportunity to have your say in guiding future decisions about how best to regulate the accident towing industry. This feedback will ultimately pave the way for industry reforms which protect consumers and, at the same time, maintain the commercial viability of the accident towing industry.

Lanie Chopping

**COMMISSIONER FOR CONSUMER PROTECTION**

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## ABBREVIATIONS USED IN THIS PAPER

The following is a summary of abbreviations used in this paper.

<b>ABBREVIATION</b>	<b>MEANING</b>
<b>ACLWA</b>	Australian Consumer Law (WA)
<b>Commissioner</b>	Commissioner for Consumer Protection
<b>CRIS</b>	Consultation Regulatory Impact Statement
<b>Consumer Protection</b>	The Department of Mines, Industry Regulation and Safety Consumer Protection Division (Consumer Protection)
<b>DoT</b>	Department of Transport
<b>DRIS</b>	Decision Regulatory Impact Statement
<b>ICA</b>	Insurance Council of Australia
<b>ICWA</b>	Insurance Commission of Western Australia
<b>RAC</b>	Royal Automobile Club
<b>RT Act</b>	<i>Road Traffic (Vehicles) Act 2012 (WA)</i>
<b>RT Regulations</b>	Road Traffic (Vehicles) Regulations 2014 (WA)
<b>Voluntary Code</b>	Voluntary Industry Code of Conduct

# PART 1: INTRODUCTION

## CONTEXT

Western Australia's accident towing industry plays an important role in the state's transport system. The safe and quick removal of vehicles from the scene of accidents is important in limiting traffic congestion and ensuring the safety of road users.

For the purposes of this paper, towing services comprise three main categories: accident towing, breakdown towing and trade towing. The focus of this report is predominantly on light vehicle accident towing and touches on roadside breakdown towing given that similar issues may apply.

The towing industry in Western Australia (WA) is regulated principally by the Department of Transport (DoT) under the Road Traffic (Vehicles) Regulations 2014 (WA) (RT Regulations) which fall under the *Road Traffic (Vehicles) Act 2012 (WA)* (RT Act). The RT Regulations contain vehicle specifications as well as conduct provisions and associated penalties intended to protect consumers involved in accidents from unfair and intimidating behaviour. Towing services are not subject to price regulation.

Following a vehicle accident, drivers are often highly vulnerable and the likelihood of consumer detriment occurring is considered high. Serious concerns have been raised by stakeholders over a number of years about the accident towing industry including poor conduct, price gouging and possible criminal activity and links to organised crime. These concerns have been highlighted in the media.

In regard to concerns about price gouging, IbisWorld has reported that towing operators in WA charge clients higher prices for services as compared to other jurisdictions, making the market attractive for new entrants.<sup>1</sup> IbisWorld noted that this is likely to be due to the lack of price regulation in WA.

In addition, insurers have reported that towing fees charged in WA are often two to three times higher than for equivalent tows in other jurisdiction. In response, insurers are increasingly refusing to pay the cost of towing and storing accident damaged vehicles on the basis that the charges are considered unreasonable. This leaves many drivers having to pay a proportion of the bill, despite being fully insured.

As a result, there have been strong calls for industry reforms from a range of stakeholders including industry participants, insurers and the wider community. In response, consideration is being given to whether there is a need to introduce regulatory reforms which would bring WA into line with most other jurisdictions.

Given that many of the issues raised relate to the accident towing industry's interactions with consumers, the Department of Mines, Industry Safety and Industry Regulation – Consumer Protection Division (Consumer Protection) is leading this initiative at this stage. In the event that regulatory intervention is supported, it is likely that industry specific, stand-alone legislation will be required.

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<sup>1</sup> IbisWorld Industry Report *Towing Services in Australia*, Report OD5416, April 2019, page 16.

## **PURPOSE**

The purpose of this paper is to encourage and obtain stakeholder feedback about options to regulate the accident towing industry. The information gathered will assist in assessing the various options and formulating recommendations for reform for consideration by the Government.

## **TWO STAGE PROCESS**

The Government is committed to a regulatory impact assessment program that considers the fundamental question of whether regulatory action is required or if policy objectives can be achieved by alternate measures, with lower costs for business and the community. A key focus of this program is to weigh up the potential costs of regulation against the potential benefits.

This work is being progressed in two stages:

Stage 1, current stage. The release of this Consultation Regulatory Impact Statement (CRIS) is the main focus of this stage. Your feedback in response to the CRIS will assist the Government in deciding whether reforms are needed and, if so, the shape of those reforms. In particular, Consumer Protection is seeking feedback as to the potential costs and benefits of the various options presented. Feedback from stakeholders about the viability of the options presented in the CRIS will inform the next stage of the process.

Stage 2, final stage. This stage will include the preparation of a Decision Regulatory Impact Statement (DRIS) and will address the outcomes of consultation with stakeholders, analyse the impacts of the various options and make recommendations to the Government regarding the preferred options for reform. The DRIS will be published on the Department's website once the Government's decision is made public.

## **WHAT THIS PAPER COVERS**

This paper provides information about: how to have your say; a brief snapshot of the towing industry in Australia; current regulation of the industry in WA and other jurisdictions; preliminary consultation; the problem to be addressed; objectives and options for reform; and the estimated cost of regulating the industry.

## **OPTIONS**

Options considered include making no change, introducing an industry-led voluntary code of conduct as well as three options proposing increased regulation including occupational licensing of the accident towing industry. These options vary in terms of scope and extent of regulation.

Elements in common across all three regulatory options include:

- regulation of accident towing businesses and drivers through an occupational licensing scheme;
- regulation of maximum accident towing and storage fees;
- prohibition on the payment of spotters' fees;
- provision of advice and conciliation services by government;
- enhanced protections and remedies available to consumers; and
- provision for penalties and legal sanctions.

The estimated cost of regulating the accident towing industry as well as industry compliance costs are provided in Part 5 of this paper. Consistent with government policy, regulatory services would need to be funded through licensing fees on the basis of full cost recovery. These funds would be used to meet the cost of administering the legislation and performing the various functions under the legislation.

Estimated licensing fees referred to in Part 5 of this paper were based on initial estimates of government costs associated with implementing each of the options under consideration. This work was based on an assessment of how the options would be applied in practice.

The estimated costs may vary once more accurate data on the size of the industry becomes available.<sup>2</sup> A modelling tool has been developed to enable adjustments to be readily made in the event that underlying assumptions or the mix of regulatory strategies selected change over the course of advancing this initiative. The current consultative process will enable further evidence to be collected from stakeholders about the likely costs associated with each of the options. This will in turn facilitate detailed evaluation of each option for the next stage of the regulatory impact assessment process.

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<sup>2</sup> Tow truck data provided by the Department of Transport did not include flatbed type vehicles with a tilt tray commonly used to tow vehicles from the scene of accidents.



## PART 2: HOW TO HAVE YOUR SAY

The closing date for submissions is: **Tuesday, 22 September 2020.**

You are welcome to:

- write a short email or letter outlining your views;
- respond to questions presented in the CRIS; and/or
- respond to a short [online survey](#).

Please feel free to focus only on those areas that are important and relevant to you. You are also welcome to suggest alternative options for addressing issues. When providing your input, please let us know if you are a member of the accident towing industry, insurance industry or a consumer.

It would be helpful if you could include the reasons behind your suggestions and any information you may have such as the associated costs, as this will help Consumer Protection to better understand your viewpoint and will also assist in identifying the most suitable options for reform.

### WHERE TO SEND SUBMISSIONS

Submissions can be mailed to:

Accident Towing Consultation  
Department of Mines, Industry Regulation and Safety  
Consumer Protection Division  
Legislation and Policy  
Locked Bag 100  
EAST PERTH WA 6892

Or sent via email to:

[consultations@dmirs.wa.gov.au](mailto:consultations@dmirs.wa.gov.au)

### INFORMATION PROVIDED MAY BECOME PUBLIC

After the consultation period concludes, all responses received may be made publicly available on Consumer Protection's website. Please note that because your feedback forms part of a public consultation process, the Government may quote from your comments in future publications.

If you prefer your name to remain confidential, please clearly indicate this in your submission. As submissions made in response to this paper may be subject to freedom of information requests, please do not include any personal or confidential information that you do not wish to become available to the public.

### REVIEW UPDATES

You can keep up to date with progress by visiting [Consumer Protection's website](#).

## PART 3: BACKGROUND

### INDUSTRY SNAPSHOT

The following provides a brief snapshot of the Australian towing industry. The industry comprises approximately 2,600 businesses providing employment for over 3,000 people and generates annual revenue of around \$441 million.<sup>3</sup>

Table 1 below identifies the estimated number of towing businesses operating in each jurisdiction across Australia.<sup>4</sup> Based on this data, it is estimated that there are 263 (10.1 per cent) towing businesses based in WA.

**Table 1: Towing industry business locations 2018-2019**

BUSINESS LOCATIONS	NUMBER (%)
Western Australia	263 (10.1%)
South Australia	187 (7.2%)
Victoria	632 (24.3%)
New South Wales	840 (32.3%)
Tasmania	65 (2.5%)
Queensland	541 (20.8%)
Northern Territory	39 (1.5%)
Australian Capital Territory	33 (1.3%)
<b>TOTAL</b>	<b>2,600 (100%)</b>

The towing industry is highly fragmented and is dominated by small businesses that service local areas. Many businesses are owner operated and do not directly employ staff. Larger providers of towing services often have contracts with local councils, law enforcement agencies, motor vehicle insurance providers, motor vehicle dealers or state automobile clubs (roadside assistance).

While the towing industry is more highly concentrated in capital cities, towing businesses are also situated throughout regional areas, with the exception of remote areas, where mechanics or other agencies often provide towing assistance across a broad region.

The Australian towing industry delivers a range of services which can be grouped into five main categories as outlined below.

<sup>3</sup> IBISWorld Industry Report Towing Services in Australia, Report OD5416, April 2019, page 16.

<sup>4</sup> Ibid.

## Accident towing

Accident towing involves towing vehicles from the scene of accidents.

## Trade towing

Trade towing largely involves providing non-accident towing services including towing broken-down motor vehicles.

## Law enforcement towing

Law enforcement towing involves contractors engaged by the police and local governments towing away vehicles that have violated parking or road laws. For example, vehicles that have parked illegally in on-road parking spaces or vehicles driven by repeat offenders or unlicensed drivers can often be towed and impounded by law enforcement agencies.

## Carpark or limited access towing

Car park or limited-access towing generally involves towing vehicles that are parked illegally in privately owned car parks, particularly multi-level and underground car parks. Vehicles that are illegally parked in customer-only or reserved spaces, and also those remaining in car parks after hours, can often be towed away or immobilised, for example wheel clamping. Private car park operators often engage towing service providers to tow away illegally parked cars.

The WA Government intends banning the practice of wheel clamping in WA, with amendments to the *Road Traffic Act 1974* (WA) due to be considered by the Parliament during 2020.<sup>5</sup> The amendments, once passed, will prohibit wheel clamping and other means of vehicle immobilisation as a tool for private parking enforcement. These amendments will bring WA into line with other jurisdictions.<sup>6</sup>

## Machinery and equipment towing

The towing industry provides services to construction companies, contractors, municipalities and leasing companies that require towing of equipment such as tractors or construction machinery. The industry does not cover services related to the long-distance transport of heavy machinery, buildings or other equipment that requires large, customised, heavy duty transportation equipment.

## Demand for towing services

Demand for towing services stem from the following sources:

- **Consumers** requiring services to move vehicles that have broken down or been involved in an accident. Consumers are the industry's main market and demand.
- **Motor vehicle dealers** requiring towing services to move vehicles between dealers and to and from manufacturers.
- **Insurers** requiring towing services for customers, usually when they have been involved in an accident.

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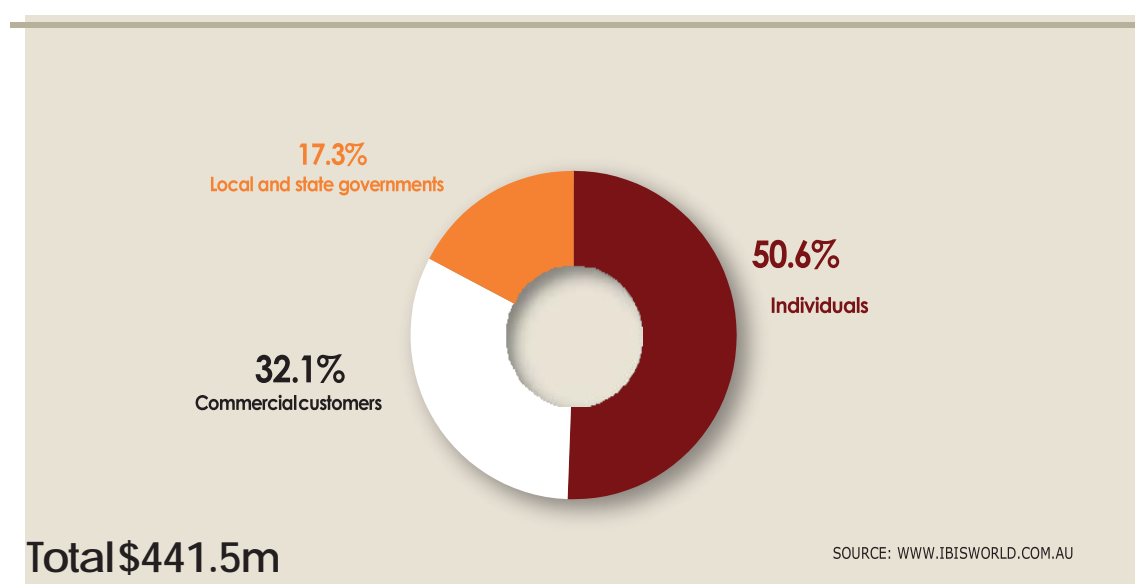
<sup>5</sup> Road Traffic Amendment (Immobilisation, Towing and Detention of Vehicles) Bill 2020 (WA).

<sup>6</sup> Vehicle immobilisation is explicitly prohibited in the Northern Territory, New South Wales, Victoria and Queensland. Although there is no explicit ban in Tasmania or the Australian Capital Territory, other legal mechanisms limit the use of vehicle immobilisation devices.

- **Public administration and safety** such as government bodies and agencies requiring towing services to remove illegally parked or unregistered vehicles.
- **Motor vehicle repair shops** requiring towing services to assist in moving clients' cars.
- **Parking services** including private car park operators engaging towing services providers to tow away illegally parked cars.

Private vehicle owners generate the highest demand for towing industry services representing 50.6 per cent of the market. Individuals typically require industry services when their car breaks down or when they have had an accident. In these cases, the fee for service is often paid directly by the vehicle owner's insurer. Figure 2 below presents the industry's three main sources of demand for its services.<sup>7</sup>

**Figure 2: Market segmentation 2018-2019**



### Consumer services relevant to accident towing

The following describes the main accident-related towing services accessed by consumers:

- **Accident towing:** Towing a damaged vehicle from an accident scene to the initial destination requested by the vehicle owner (for example an insurance assessment centre, smash repairer, or the owner's home or business).
- **Vehicle storage:** Storing a vehicle in the operator's holding yard until it can be towed to the requested destination.
- **Subsequent towing:** Towing a vehicle from the operator's holding yard to the requested destination.
- **Vehicle salvage:** Moving an accident-damaged vehicle to a position where it can be towed.

<sup>7</sup> Note: It is not possible to isolate accident towing specifically as it straddles both breakdown and accident towing.

## WA'S TOWING INDUSTRY

WA's accident towing industry plays an important part in the state's transport system and can impact the safety and efficiency of the road network. The tow truck industry provides services to the public, government bodies and commercial organisations.

It is not clear as to how many accident tows are provided each year in WA as compared to trade towing services. By way of comparison, in New South Wales, the number of trade towing services are likely to be around eight times higher than the number of accident towing services.

Towing businesses are dispersed across WA broadly in line with population numbers and vehicle concentration. Remote areas tend to rely on services offered by mechanics or other agencies rather than towing operators.

### Size of WA's towing industry

Complete data in relation to the size and number of participants in the towing industry is not available. Table 2 below presents data provided by DoT in regard to the number of licensed tow trucks. This data is incomplete in that DoT's licensing register only identifies the number of vehicles with the body code 'tow truck'. This category does not include flatbed vehicles with a tilt tray which are commonly used in the towing industry and should be factored into any estimates of the scale of the industry.<sup>8</sup>

**Table 2: Towing industry data (Department of Transport)**

Date	Number of licensed tow trucks <sup>9</sup>
December 2014	613
December 2015	662
December 2016	673
December 2017	715
December 2018	749
December 2019	711

### Current regulation

The towing industry in WA is regulated principally by DoT under the RT Regulations which fall under the RT Act. This arrangement is consistent with arrangements in South Australia, Victoria and Queensland. In New South Wales, the Department of Finance, Services and Innovation (which includes New South Wales Fair Trading) is responsible for administrative functions associated with the regulation of tow trucks.

<sup>8</sup> Proposed amendments to the RT Regulations currently being advanced by DoT will address this issue by amending classifications for tow trucks and introducing new classes for tilt tray tow trucks.

<sup>9</sup> Excludes flatbed type vehicles with a tilt tray which are often used for towing vehicles.

The RT Act and RT Regulations cover:

- Types of vehicles to be licensed as tow trucks for the purposes of registration and use of such vehicles on the road.
- Specification and equipment requirements for vehicles used on the road as tow trucks (for example, dimension requirements of tow trucks, lights and warning devices, cranes and their use by operators including load and lifting requirements).
- Authority to Tow Form requirements which include:
  - authority provided by a driver of a vehicle to tow a vehicle from the scene of an accident; and
  - authority provided by the Commissioner of Main Roads or Police to tow an articulated vehicle;
  - oral authority provided by the Commissioner of Main Roads on behalf of the driver to tow vehicles from the scene of an accident or breakdown, or from the place of the vehicle's abandonment, as a means of reducing obstruction or danger to safety of persons or property.
- The legislation also includes a number of requirements specific to interactions between tow truck drivers and consumers following an accident. For example, the RT Regulations:
  - include a requirement to provide motorists with an Authority to Tow Form disclosing prescribed information prior to towing a vehicle from an accident; and
  - provide for offences and penalties in relation to conduct and associated penalties intended to protect consumers from unfair and intimidatory behaviour. For example, it is an offence if a tow truck operator causes or induces a consumer to sign an Authority to Tow Form by using unfair means such as falsely advising drivers that they are the insurer's contracted towers. Penalties apply for such conduct but concerns have been raised that the level of penalties are not acting as a sufficient deterrent.

Towing services in WA are not currently subject to price regulation.

### Australian Consumer Law

The Australian Consumer Law (WA) (ACLWA) provides a general safety net for consumer purchases of goods and services.<sup>10</sup> Under the ACLWA, services must be delivered with due care and skill, be fit for any disclosed purpose and, if the contract for services does not set a time frame, be completed within a reasonable time.<sup>11</sup> The ACLWA provides consumers with remedies if goods or services fail to meet a guarantee.<sup>12</sup>

The ACLWA contains generic provisions that guard against undue harassment or coercion in connection with the supply or possible supply of goods or services. The ACLWA also includes provisions to guard against engaging in conduct that is misleading or deceptive or making false or misleading representations. The ACLWA does not regulate pricing for the supply of goods or services.

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<sup>10</sup> The ACLWA, which commenced on 1 January 2011, introduced uniform, national consumer protection legislation. The ACL replaced Part V of the *Trade Practices Act 1974* (Cth) and the *Fair Trading Act 1987* (WA) and was implemented by the *Competition and Consumer Act 2010* (Cth) and the *Fair Trading Act 2010* (WA).

<sup>11</sup> ACLWA – sections 60, 61 and 62.

<sup>12</sup> ACLWA – part 5-4.

Under the ACLWA, consumers dissatisfied with towing services are able to lodge complaints with Consumer Protection in relation to misleading or deceptive conduct, unconscionable conduct and services not being provided with due care and skill.

The number of phone enquiries and complaints is relatively low as Consumer Protection does not directly regulate the industry and therefore has very limited jurisdiction. In regard to the issue of price gouging, insurers would in many cases meet the cost of towing and storing an accident damaged vehicle and, as a result, concerns in this regard are unlikely to be raised with Consumer Protection. Complaints about insurers, for example, refusing to pay for the full cost of towing an accident damaged vehicle, are dealt with by the Australian Financial Complaints Authority.

### Phone enquiries

There has been a marked increase in phone enquiries received by Consumer Protection in relation to the tow truck industry over the past two financial years. The number of enquiries for 2019/20 financial year totaled 78 which was a 55 per cent increase on the number of enquiries (43) received in the 2018/19 financial year. Around half of phone enquiries over the two financial years related to excessive fees or refusal to release a vehicle from storage until paid in full.

There appears to have also been a significant increase in phone enquiries relating to disputes between insurers and towing operators with one enquiry recorded for 2018/19 and six enquiries recorded for 2019/20. These disputes may possibly reflect situations where insurers are refusing to pay the full towing and storage costs on the basis of assessing them as unreasonably high.

The data does not explicitly indicate whether phone enquiries were related to accidents, however, of the 121 enquiries received over the two-year period, 55 enquiries (45 per cent) specifically mentioned a motor vehicle accident as the cause for requiring the services of a tow truck. A number of other enquiries (36 per cent) did not disclose the reason why a tow truck was required. This does not discount that an accident occurred but rather that it was not specifically referenced during the phone enquiry.

### Complaints

The number of formal complaints lodged with Consumer Protection were similar for the past two financial years, with 13 in 2018/19 and 15 in the 2019/20 financial year. Around half of complaints over the two financial years related to excessive fees or fees not being disclosed or being misleading.

Of the 28 complaints received, the majority (61 per cent) did not disclose the reason they required a tow truck. Ten complaints (36 per cent), however, made reference to a motor vehicle accident as the cause of needing a towing service.

Consumer Protection has found that issues relating to excessive fees are often linked to towing operators becoming aware that an insurance company may be covering the towing costs. In most circumstances, the towing company refuses to reduce the charge and the consumer is advised to seek legal advice and pursue the issue accordingly.

## PROPOSED AMENDMENTS

The following amendments are being advanced.

### Proposed Regulation amendments

DoT has commenced work to amend the RT Regulations. It is anticipated that these amendments will commence during 2020 and follow public and industry consultation undertaken by DoT in 2017 including consideration of material developed by the Tow Truck Technical Advisory Committee which comprised government and industry stakeholders.

The proposed changes primarily focus on technical vehicle standards for the safe towing of vehicles but also include changes relevant to consumers accessing towing services following an accident. For example, tow truck operators will be required to provide the maximum towing and storage fee payable in the Authority to Tow Form that must be signed and given to the consumer before a vehicle is towed. The level of fees will, however, still be at the discretion of the towing operator.

It is understood that DoT is also reviewing penalty provisions provided for in Part 12 of the RT Regulations in response to concerns that they do not represent a sufficient deterrent or reflect the seriousness of respective breaches.<sup>13</sup>

The current penalty for a first offence is \$100 and \$200 for a second or subsequent offence. DoT is also considering the option of issuing infringement notices by enforcement officers as this would avoid the need for offenders to appear in court on simple uncontested matters.

### Proposed amendments to the *Road Traffic Act 1974 (WA)*

DoT is also responsible for progressing amendments to the *Road Traffic Act 1974 (WA)*.<sup>14</sup> The amendments, once passed, will prohibit wheel clamping and other means of vehicle immobilisation as a tool for private parking enforcement.

The proposed amendments will regulate the ways in which vehicles that are parked without authorisation can be towed from private parking areas. This will include specified signage requirements and a fixed maximum fee which can be charged by the towing operator for the release of the vehicle. The legislation will be administered and enforced by DoT.

The proposed amendments are specific to the towing of vehicles from private property and will not be impacted by the proposed options for reform presented in this CRIS. Reforms under consideration are specific to accident towing of light vehicles and possibly roadside breakdown towing. Proposed reforms will not apply to the towing of vehicles from private property.

## OTHER JURISDICTIONS

The Australian towing industry is subject to regulation which varies in level and scope across jurisdictions. Regulation tends to be more stringent in relation to businesses providing accident towing as opposed to non-accident towing.

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<sup>13</sup> Regulation 422(1) of the Road Traffic (Vehicles) Regulations 2014 (WA).

<sup>14</sup> Road Traffic Amendment (Immobilisation, Towing and Detention of Vehicles) Bill 2020 (WA).



Most jurisdictions have occupational licensing schemes in place; regulate maximum fees for towing and storage services; ban touting for repair business; and ban the payment of accident spotters' fees. Some jurisdictions also have an accident roster system in place.

The Northern Territory, Victoria, Queensland and South Australia limit regulation to accident towing whereas New South Wales regulates accident towing as well as trade towing. Victoria, New South Wales, Queensland and South Australia set maximum towing and/or storage fees.

Victoria's towing industry is the most highly regulated and includes a combination of:<sup>15</sup>

- licensing and accreditation requirements which apply to business operators, depots, depot managers, drivers and driver assistants;
- setting maximum towing and storage fees;
- an accident roster system;
- limits on the number of tow truck licences issued;
- prohibiting touting for repairs; and
- scope within the legislation to strengthen a range of requirements, subject to consultation with stakeholders for example, specifying qualifications.

Tasmania's and WA's towing industries are the least regulated.

Appendix 1 provides an overview of the regulation of the towing industry across jurisdictions.

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<sup>15</sup> *Accident Towing Services Act 2007* (Victoria).

## PART 4: THE PROBLEM

### DEFINING THE PROBLEM

The key policy issue to be resolved is whether the towing industry in WA is currently sufficiently regulated to protect consumers when dealing with businesses providing accident towing and storage services.

There are concerns that the current conduct and behaviour aspects of tow truck regulation contained in the RT Act and RT Regulations may not:

- sufficiently address issues occurring in today's marketplace; and
- appropriately balance the interests of consumers and insurers against the interests of the towing industry.

Following a motor vehicle accident, drivers are often vulnerable due to being in shock and distressed. They are also likely to have limited access to information to make informed decisions and are not generally aware of their rights or specific requirements under their insurance contracts. The likelihood of consumer detriment occurring is therefore considered high.

Serious concerns have been raised by stakeholders over a number of years specifically in relation to accident towing and the poor conduct of some tow truck drivers at the scene of accidents.

#### Price gouging case study

The following case study provides an example of a recent issue dealt with by Consumer Protection resulting in consumer detriment due to price gouging and unscrupulous tactics on the part of the towing operator. It also highlights the need for drivers to be aware that their insurance policy may only cover reasonable towing and storage fees.

#### **Case study: Carnapping**

Jeremy was involved in an accident. He tried to ring his insurer to find out what he should do but couldn't get through to speak to anyone. In the meantime, a tow truck turned up and the driver offered to give him a tow. Jeremy agreed, signed an Authority to Tow Form without having the chance to read it properly. His car was towed to a storage yard.

Jeremy contacted his insurer to arrange for his car to be moved from the storage yard and repaired. The insurer refused to commence the claims process as it was not willing to pay for the towing and storage costs of \$1,900 stating that the policy only covered reasonable towing and storage costs.

The towing company refused to release the car until the fees were paid in full. After four days of trying to negotiate, Jeremy felt he had no choice but to pay in full given the mounting \$80 per day storage costs. Jeremy reluctantly paid the towing company and the insurer later agreed to pay half of his costs.

## Concerns raised during initial consultation

Consumer Protection conducted a series of preliminary meetings with a range of key government stakeholders including the Department of Transport, WA Police, Main Roads, Road Safety Commission and Insurance Commission of WA.<sup>16</sup> The purpose of these meetings was to alert key stakeholders to the Department's work in this area and to ensure that any major issues of concern were identified.

Agencies consulted noted a general deterioration in the conduct of tow truck operators involved in accident towing and possible links to organised crime. The issues raised consistently centred around:

- Price gouging with the charging of excessive towing and storage fees compared to charges applicable in other jurisdictions for equivalent services.<sup>17</sup> There is a concern that operators are exploiting the emotional state of drivers, pressure to clear the accident scene quickly and limited choice of operators at the site of the accident.
- Consumers (or insurers) being required to pay excessive fees to secure the release of vehicles from storage facilities.
- Unscrupulous tactics and unsafe conduct (for example, smash chasing) on the part of drivers at the scene of accidents including harassment and deceptive standover tactics designed to trick drivers into signing incomplete forms.
- Authority to Tow Forms not being completed as required under the RT Regulations.<sup>18</sup> For example, information such as where the damaged vehicle is to be towed, the tow truck's number plate, and name and address of the tow truck driver.
- Intimidation and assault of tow truck operators by other operators in order to secure tow.
- Commission deals between tow truck operators and smash repairers so as to 'capture' jobs involving not-at-fault drivers.
- Possible criminal activity and links to organised crime.

## Economics and Industry Standing Committee Inquiry

The Legislative Assembly's Economics and Industry Standing Committee conducted an inquiry into WA's smash repair industry in 2018. The Committee noted in its November 2018 report titled: *Western Australia's Smash Repair Industry: Structural Challenges*, that issues raised by stakeholders regarding tow trucks were outside its terms of reference but nevertheless raised the topic with several witnesses and made the following finding:

*Western Australia is one of just two States that does not regulate the behaviour of the tow truck industry, particularly in regard to the fees and charges made to tow vehicles from car crashes. Evidence suggests that there is a case for the regulation of the State's tow truck industry. (Finding 23)<sup>19</sup>*

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<sup>16</sup> The Insurance Commission of Western Australia (ICWA) is a statutory corporation and Government Trading Enterprise owned by the Western Australian Government and is the State's insurer providing injury insurance to motorists and self-insurance to government. RiskCover is one of ICWA's insurance divisions.

<sup>17</sup> Many insurers meet the cost of towing and storing accident damaged vehicles but have indicated that this may be having a wider impact on consumers through higher insurance premiums. Some insurance policies specify that the insurer will only pay the reasonable cost of towing the vehicle from the scene of an incident to the nearest approved repairer.

<sup>18</sup> Road Traffic (Vehicles) Regulation 2014 (WA)

<sup>19</sup> Parliament of Western Australia, Economics and Industry Standing Committee Report Number 4, Western Australia's Smash Repair Industry: Structural Challenges, November 2019, page 54. Available at: ([https://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/E42B32CD30D7C2D7482583510017DC20/\\$file/EISC%20Report%20No.4%20November%202018%20Website.pdf](https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/E42B32CD30D7C2D7482583510017DC20/$file/EISC%20Report%20No.4%20November%202018%20Website.pdf)). Accessed 1 July 2020.

The following excerpt from a submission provided to the inquiry by the Insurance Commission of WA highlights the issue of price gouging.<sup>20</sup>

*“Some operators have demanded payment of over \$1,200 (inclusive of an additional yard fee) when the reasonable towing price range is \$400 to \$500. Insurers or consumers are required to then pay the higher fee to release their vehicle.*

*RiskCover has received copies of Authority to Tow Forms that do not have all the required particulars such as the tow truck's number plate, name and address of the tow truck driver and the cost of towing.”*

In the context of questionable business practices, RiskCover made the following comments relevant to price gouging.

*There are two practices to the detriment of consumers that occur.*

*The first is when a driver from a nominated tow-truck company is sent out and provides the owner of the damaged vehicle an “Authority to Tow Form” with the price section left blank. The motorist has no clue about the cost and the tow-truck company can later charge a significantly higher fee as it has possession of the vehicle.*

*The second is when tow trucks arrive opportunistically at a crash scene and compete for the work. The first to arrive at the scene typically gets to tow the vehicle to a yard and then charges a high fee for its release. There are no set regulated towing rates in WA for breakdown and/or crash towing, and there is considerable variation in fees between towing operators.”*

Several industry participants also made submissions to the inquiry, raising issues of concern about unscrupulous practices in the towing industry and calling for industry reforms.<sup>21</sup>

### Concerns raised in the media

Media coverage in recent years has also highlighted poor conduct in the accident towing industry.

A 2018 Choice article about accident towing noted that, ‘most states have tightened things up, but Western Australia really is the ‘wild west’ of accident towing, with no regulation of fees and allegations of overcharging’.<sup>22</sup>

A news article published in July 2019:<sup>23</sup>

- Noted the involvement of a WA Police communications officer receiving over \$16,000 in corrupt payments for information about accidents.
- Quoted a police representative as saying “Our officers regularly turn up to crashes and people say they have been threatened of standover tactics used”.

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Alice Richard, Towing the line, Choice, 25 October 2018.

<sup>23</sup> Gary Adshead, WA Today, *Tow truck cowboys caught out amid an industry rife with corruption*, 22 July 2019. Available at <https://www.watoday.com.au/national/western-australia/wa-tow-truck-cowboys-caught-out-amid-an-industry-rife-with-corruption-20190722-p529oh.html>. Accessed 1 July 2020.

- Made reference to a Parliamentary inquiry into the smash repair industry hearing evidence of extortion in the towing industry.
- Made reference to a motorist’s dashcam video which captured a tow truck ignoring a red light while racing a rival company to reach a crash scene first.
- Noted aggressive tow truck drivers forcing motorists to sign towing approval forms just minutes after they have been in a crash.

A West Australian newspaper article published in May 2019 included a statement by AAAC (WA’s largest towing operator) that “criminal elements are often directly involved in the operation of towing services with the ability to launder large sums of money an easy opportunity”.<sup>24</sup> A June 2020 article reported a tow truck business operator who was also a member of an outlaw motorcycle gang being charged following an alleged violent assault on a crash victim.<sup>25</sup>

The altercation related to the tow truck driver pressuring the driver to use his service despite the victim making arrangements via his insurer to tow his crashed vehicle. The police noted that “a more senior representative of the tow truck business was called to the scene, who then started taking photos of the crash victim’s family”.

In response to the incident, a police representative was quoted as saying:

*“the intimidation of, and assault on a crash victim is unacceptable...to see the gratuitous violence that is commonplace between outlaw motorcycle gang members be extended to a member of the public is of great concern to police”.*

### WA attractive to new entrants

In regard to concerns about price gouging, IbisWorld has reported that towing operators in WA charge clients higher prices for services, making the market attractive for new entrants and noted that this is likely to be due to the lack of price regulation in WA.<sup>26</sup>

### Summary of issues of concern

Table 3 below provides a summary of key issues of concern and provides examples.

**Table 3: Key issues of concern**

ISSUE	EXAMPLE
Price gouging	Currently no limits on the cost of tow truck fees. Excessive fees being charged in circumstances where consumers are highly vulnerable. Insurers or consumers being required to pay high fees to secure release of vehicles.

<sup>24</sup> Olga de Moeller, *Taken for a ride by tow trucks*, The West Australian, 12 May 2019. (Available at: <https://thewest.com.au/lifestyle/motoring/taken-for-a-ride-by-tow-trucks-ng-b881195609z>). Accessed 1 July 2020.

<sup>25</sup> Daryna Zadvirna, The West Australian, *Rebels bikie and tow truck boss ‘assaulted’ man after Kardinya crash, police allege*, Monday, 29 June 2020. (Available at: <https://thewest.com.au/news/crime/rebels-bikie-and-tow-truck-boss-assaulted-man-after-kardinya-crash-police-allege-ng-b881593039z>). Accessed 1 July 2020.

<sup>26</sup> IBISWorld Industry Report *Towing Services in Australia*, Report OD5416, April 2019, page 16.

ISSUE	EXAMPLE
	<p>Excessive towing and storage fees may be having a wider impact on consumers through higher insurance premiums.</p> <p>Large disparities in fees for similar towing tasks.</p> <p><b>Examples</b></p> <ul style="list-style-type: none"> <li>• Some operators demanding payment of over \$1,200 (inclusive of an additional yard fee) when the reasonable towing price range was \$400 to \$500.</li> <li>• WA towing company charging \$1,599 for work which would cost \$251 in NSW and \$207 in Victoria.</li> <li>• WA towing company charging \$3,888 for work which would cost \$1,555 in NSW.</li> <li>• RiskCover reported that it frequently receives accounts for metropolitan towing services where there is a cost difference of up to 500 per cent between towing operators for equivalent towing services (RiskCover Agency Bulletin February 2017).</li> <li>• Two rates applying for the same tow job, with the insurer charged \$2,043 and the owner of the other (uninsured) vehicle involved in the accident charged \$1,230. <sup>27</sup> Rogue tow truck operators charging customers (often tourists hiring rental vehicles) up to \$1,500 per tow and \$100 per day to store vehicles.</li> </ul>
<p><b>Poor conduct on the part of tow truck drivers</b></p>	<p>Reports of accident victims being assaulted by tow truck operator vying to secure the towing job.</p> <p>Interfering with consumers being treated by ambulance officers in order to secure consumer's signature on Authority to Tow Form.</p> <p>Standover tactics to secure a signed Authority to Tow Form.</p>
<p><b>Unscrupulous industry practices/corrupt payments</b></p>	<p>Crash victims being tricked into signing incomplete towing authorities.</p> <p>Commission deals with smash repairers to 'capture' jobs from not-at-fault drivers. For example, some cases involve extremely high storage fees totalling thousands of dollars.</p> <p>Payment of inducements including cash and drugs, to public servants in return for accident tip-offs. For example, a police communications staff member recently pleaded guilty to receiving \$16,000 in payments.</p> <p>Authority to Tow Forms not being completed as required under the Regulations for example, information such as the tow truck's number plate, name and address of the tow truck driver and the cost of towing. Maximum penalty of \$200 for breaches of this nature is not considered an adequate deterrent.</p>
<p><b>Safety concerns</b></p>	<p>Unsafe driving (crash chasing) on the part of drivers competing to reach an accident scene. <sup>28</sup></p>

<sup>27</sup> Faulkner, Kerry. "Special Report: WA's accident towing industry amongst worst in Australia." Perth Now, 30 March 2016.

<sup>28</sup> Note: Tow truck drivers are subject to general laws which are intended to prevent dangerous driving and violent or intimidating behaviour. Tow truck drivers committing offences when travelling to accident scenes are subject to the same provisions and penalties as other motorists.

ISSUE	EXAMPLE
	Physical altercations between tow truck drivers at the scene of accidents as a result of vying for the same tow job. <sup>29</sup>
<b>Links to criminal activity and organised crime.</b>	DoT advises this is becoming an increasingly significant issue since the tightening of regulation in QLD resulting in drivers/businesses relocating to WA.  Recent alleged assault of accident victim by tow truck operator with links to an outlaw motorcycle gang.

## OBJECTIVES FOR REFORM

The policy objective is to achieve a regulatory framework which provides appropriate protections for consumers in their dealings with towing service providers while maintaining the commercial viability of the tow truck industry.

### Specific objectives

The specific objectives for reforming the accident towing industry are to:

- ensure that accident towing service providers are of appropriate character and act with integrity given the vulnerability of drivers and passengers following involvement in an accident;
- prevent unscrupulous, dishonest and unlawful behaviour at the scene of accidents;
- eliminate criminal elements from the industry;
- protect the industry’s reputable tow truck drivers and operators;
- address the issue of excessive and inflated charges for accident towing services and associated services, for example, vehicle storage fees;
- address safety concerns caused by the practice of crash chasing; and
- address the issue of spotter’s fees and steering business to repairers in return for commissions.

## WHEN IS INTERVENTION JUSTIFIED?

Government intervention is considered justifiable in a range of circumstances.<sup>30</sup> In the case of the towing industry, intervention may be justifiable on the basis of apparent regulatory failure, information asymmetry and market failure. The following provides further detail.

### Regulatory failure

Although the towing industry is regulated to some extent, current regulation may no longer be sufficient to address the issues causing concern. This is most likely due to difficulties in enforcing the current legislation and responding to consumer complaints.

Regulatory failure appears to be resulting in unintended consequences for consumers and insurers. This has likely resulted in increased direct costs for accident towing services and increased indirect costs passed on to consumers through insurance premiums.

<sup>29</sup> Ibid.

<sup>30</sup> WA Department of Treasury, *Regulatory Impact Assessment Guidelines*, July 2010, pages 4-5.

## Information asymmetry

Following an accident, consumers are not generally in a position to make informed decisions that are in their best interests as they are often:

- distressed and vulnerable;
- not well informed about their rights and insurer's requirements; and
- not aware of costs for towing services due to not frequently using these services.

As a result, information asymmetry (the differences in the level of information known to consumers and industry members) is common in these circumstances and consumers are at significant risk of being charged excessive fees for accident towing and storage services. This has resulted in poor outcomes for consumers and insurers. Regulatory approaches such as mandatory disclosure requirements and price regulation may assist in addressing information asymmetry.

## Market failure

Generally speaking, the rationale for price regulation of any service is the existence of market failures that prevent prices being set to reflect efficient costs. The charging of excessive towing and storage fees indicates market failure to establish reasonable market driven fees, leaving motorists vulnerable to exploitation.

Following an accident, drivers do not have the opportunity to shop around and in many instances are unlikely to be aware of their rights and their insurer's requirements. As a result, the risk of anti-competitive conduct through charging excessive fees for accident towing and storage services is considered high.

Government intervention to address this issue may be justified in order to constrain abuse of market power and ensure that consumers are not exploited.

## DISCUSSION: OCCUPATIONAL LICENSING AND PRICE REGULATION

Occupational licensing and price regulation are two key elements under consideration. It is acknowledged that both impose a regulatory burden on business, with compliance costs likely to be passed on to consumers. Occupational licensing schemes can also limit competition by restricting entry into the market. This can reduce choice for consumers and impact on labour mobility.

Occupational licensing schemes can benefit consumers by addressing certain market failures such as differences in the level of information known to consumers and industry members. In addition, benefits can also accrue for public safety and crime prevention.

Occupational licensing seeks to reduce risks to consumers by requiring that goods and services are supplied by suitably skilled and reputable providers. In addition, licensing regimes can:

- impose specific conditions and requirements on licence holders;
- specify the tasks that a licensee can undertake;
- set standards of behaviour or conduct; and
- provide sanctions for breach of requirements.



The Productivity Commission has noted that, compared to reliance on the general law, licensing can be targeted at identified problems in a specific industry and increase consumer confidence in the operation of the industry.

The Productivity Commission states that licensing is most likely to confer net benefits where:

- the potential consumer detriment from making a poor choice is significant;
- the costs of obtaining product information are high; and/or
- verification of quality by the consumer or other third parties is difficult.<sup>31</sup>

Based on the criteria identified by the Productivity Commission, it appears that the introduction of occupational licensing may be justified and may be a suitable option for addressing problems associated with accident towing.

### New South Wales' review

Of interest, in the context of considering occupational licensing reforms, is an independent review of New South Wales' tow truck licensing and accreditation scheme. The review was undertaken by the New South Wales Independent Pricing and Regulatory Tribunal in 2014.<sup>32</sup>

The review determined that ongoing licensing and accreditation was necessary in New South Wales 'to ensure good industry performance and to protect consumers'. In particular, the review found it was important that operators and drivers meet the suitability requirements of the scheme to keep 'undesirable persons out of the industry'.

### REGULATORY TOOLS

Table 4 below lists a range of regulatory tools which could be used to regulate the industry. This list draws on measures in place in other jurisdictions. Should reforms proceed, the choice of regulatory tools will need to be considered in the context of the broad objectives for reform and will also need to deliver a proportionate response to the problems to be overcome.

**Table 4: Regulatory tools**

ASPECT OF REGULATION	OPTIONS/ REGULATORY TOOLS
What types of towing activities should be regulated?	<ul style="list-style-type: none"> <li>○ Accident towing.</li> <li>○ Roadside breakdown towing.</li> <li>○ Trade towing (towing other than accident and roadside breakdown towing, for example, clearway towing, impounded vehicle towing).</li> </ul>
Who should be licensed/ accredited?	<ul style="list-style-type: none"> <li>○ Business operators.</li> <li>○ Depot operators.</li> <li>○ Tow truck drivers.</li> <li>○ Tow truck driver assistants.</li> </ul>

<sup>31</sup> Productivity Commission 2008, *Review of Australia's Consumer Policy Framework*, Final Report, Canberra, Volume 2, page 93.

<sup>32</sup> Independent Pricing and Regulatory Tribunal (IPART) NSW 2014, 'Review of tow truck fees and licensing in NSW', Transport – Final Report December 2014, page 35.

ASPECT OF REGULATION	OPTIONS/ REGULATORY TOOLS
What criteria should be used for assessing applicants?	<ul style="list-style-type: none"> <li>○ Probity requirements.</li> <li>○ Qualification requirements.</li> <li>○ Sufficient resources requirements.</li> </ul>
Should specific premises requirements be imposed?	<ul style="list-style-type: none"> <li>○ Authorisation/accreditation of depots involved in providing towing services (option to restrict to accident towing services).</li> </ul>
Should fees charged for towing services be regulated?	<ul style="list-style-type: none"> <li>○ Setting of maximum accident towing fees within prescribed areas.</li> <li>○ Setting of maximum storage fees per 24 hours.</li> <li>○ Setting of maximum fees for towing from private property.</li> </ul>
What specific consumer protections should be provided?	<ul style="list-style-type: none"> <li>○ Conduct requirements.</li> <li>○ Consumers to be provided with written Authority to Tow Form at accident scene.</li> <li>○ Consumers to be allowed to nominate the accident tow destination (up to for example, 125 kilometres away).</li> <li>○ Complaints handling procedures.</li> <li>○ Scope to lodge complaints with regulator.</li> <li>○ Redress measures.</li> </ul>
What compliance mechanisms and penalties are needed?	<ul style="list-style-type: none"> <li>○ Record keeping and reporting requirements.</li> <li>○ Penalties for breaches.</li> </ul>

## PART 5: OPTIONS

This part of the paper presents five options for consideration. The options range from retaining the status quo, through to introducing laws to comprehensively regulate the industry.

- Option 1: Retain the status quo (no change to current requirements).
- Option 2: Self-regulation in the form of a voluntary industry code of conduct.
- Option 3: Regulatory intervention: **Minimal level** of regulation of accident towing and consumer protection measures limited to the greater metropolitan area of Perth.
- Option 4: Regulatory intervention: **Medium level** of regulation of accident towing and consumer protection measures extending to the greater metropolitan area of Perth as well as some regional areas.
- Option 5: Regulatory intervention: **High level** of regulation of accident towing and breakdown towing across WA.

## OPTION 1: STATUS QUO

Under this option, no changes would be made to the current regulation. The accident towing industry would continue to be subject to a combination of existing regulation administered by the DoT as well as the Australian Consumer Law which is administered by the Consumer Protection.

This option would have no regulatory impact however, problems identified are likely to continue.

The benefits and disadvantages of Option 1 for industry, consumers and government are summarised in Table 5 below.

**Table 5: Benefits and disadvantages**

	Potential benefits	Potential disadvantages
<b>Option 1</b> <b>No change</b> Maintain the current regulatory requirements and level of enforcement.	<b>Industry</b> <ul style="list-style-type: none"> <li>• Status quo maintained.</li> <li>• No additional compliance costs for industry.</li> <li>• Minimal barriers to entry.</li> </ul> <b>Consumers</b> <ul style="list-style-type: none"> <li>• No change.</li> </ul> <b>Government</b> <ul style="list-style-type: none"> <li>• No additional resourcing or regulation required.</li> </ul>	<b>Industry</b> <ul style="list-style-type: none"> <li>• Continued reputational damage to industry due to rogue operators/drivers.</li> <li>• Concerns about links to criminal activities not addressed.</li> <li>• Concerns negatively impacting industry not addressed including unethical tactics on the part of some industry participants.</li> </ul> <b>Consumers</b> <ul style="list-style-type: none"> <li>• Continued negative impacts on consumers and limited avenues for recourse.</li> <li>• Higher insurance premiums due to price gouging increasing costs for insurers being passed on to consumers.</li> </ul> <b>Government</b> <ul style="list-style-type: none"> <li>• Ongoing calls for increased regulation of the industry given serious conduct and safety issues of concern to the community.</li> </ul>

## OPTION 2: VOLUNTARY INDUSTRY CODE OF CONDUCT

Under this option, a voluntary industry-led code of conduct (voluntary code) would be introduced rather than specific legislation. The voluntary code would be developed and maintained by industry, with the aim of helping industry members improve business practices and meet their regulatory obligations. Voluntary codes of conduct usually set out specific standards of conduct for an industry including dispute resolution and how to deal with its members and customers.

A voluntary code is a form of industry self-regulation which only applies to members of the industry which have signed up to the code. They are generally non-legislative and aim to complement existing laws and set out specific standards of conduct and may include complaint handling procedures and sanctions. They also provide flexibility to address market concerns and meet changing needs.

Self-regulation is considered appropriate when the problem is not considered significant or the problem can be fixed by the market itself.

### Other jurisdictions

No jurisdictions have been identified which have a voluntary code in place which directly applies to accident towing services.

Voluntary codes come at a cost to business which may in turn be passed on to consumers. Government administration costs are lower as voluntary codes are developed and administered by business. The cost of implementing a voluntary code is difficult to assess, but is likely to be higher than Option 1 and lower than Options 3, 4 and 5.

The benefits and disadvantages of Option 2 for industry, consumers and government are outlined in Table 6 below.

**Table 6: Option 2: Benefits and disadvantages**

	Potential benefits	Potential disadvantages
<b>Option 2</b> Voluntary code of conduct developed and administered by industry.	<b>Industry</b> <ul style="list-style-type: none"> <li>• Can choose whether or not to sign up to the code.</li> <li>• Enhanced industry reputation and business practices for signatories to the code.</li> <li>• Minimal barriers to entry.</li> <li>• Flexible and can readily be changed in response to market needs.</li> </ul> <b>Consumers</b> <ul style="list-style-type: none"> <li>• Improved protections if dealing with signatories to the code.</li> </ul>	<b>Industry</b> <ul style="list-style-type: none"> <li>• Development, implementation and administration of a code will come at a cost to signatories.</li> <li>• Coverage of code is limited to signatories.</li> <li>• Difficult to enforce as no legal sanctions and incentive to comply.</li> <li>• Inconsistent coverage of the industry due to code being voluntary.</li> <li>• Concerns unlikely to be fully addressed including unethical tactics on the part of some industry participants.</li> </ul>

	Potential benefits	Potential disadvantages
	<ul style="list-style-type: none"> <li>Access to complaints resolution processes if dealing with a code signatory.</li> </ul> <p><b>Government</b></p> <ul style="list-style-type: none"> <li>No additional resourcing required.</li> <li>Costs are lower as voluntary codes are developed and administered by business.</li> </ul>	<p><b>Consumers</b></p> <ul style="list-style-type: none"> <li>Avenues for recourse will remain limited depending on whether operator is signatory to the code and quality of complaints resolution processes.</li> <li>Due to voluntary nature of the code, negative impact on vulnerable consumers likely to continue.</li> </ul> <p><b>Government</b></p> <ul style="list-style-type: none"> <li>Ongoing calls for increased regulation of the industry given serious conduct and safety issues of concern to the community likely to continue.</li> </ul>

## OPTIONS 3, 4 AND 5: REGULATORY INTERVENTION THROUGH LICENSING OF ACCIDENT TOWING INDUSTRY

### Options 3, 4 and 5

Under Options 3, 4 and 5 the Government would legislate to, as a minimum for all options, establish a licensing regime for industry participants along with the regulation of maximum accident towing and storage fees. The extent and scope of the activities regulated would vary across the options.

Table 7 below summarises the scope of regulation under Options 3, 4 and 5.

**Table 7: Options 3, 4 and 5 description**

OPTION	DESCRIPTION
<b>Option 3:</b>	Minimal level of regulation of accident towing and consumer protection measures limited to the greater metropolitan area of Perth.
<b>Option 4:</b>	Medium level of regulation of accident towing and consumer protection measures extending to the greater metropolitan area of Perth as well as some regional areas.
<b>Option 5:</b>	High level of regulation including accident towing and breakdown towing applicable across WA.

Options 3, 4 and 5 vary depending on:

- the proposed mix of regulatory tools selected;
- the stringency in applying the specific regulatory tools;

- who the regulatory tools will apply to; and
- the geographic locations in which the regulatory tools will apply (e.g. selected areas or state-wide).

Depending on input received from stakeholders, there is scope to vary the specific regulatory elements which make up Options 3, 4 and 5.

Table 8 below summarises the mix of regulatory elements proposed for Options 3, 4 and 5. All of the options would require industry participants to be licensed or registered.

**Table 8: Key elements of Options 3, 4 and 5**

ELEMENT	OPTION 3 MINIMAL LEVEL OF REGULATION (Similar to arrangements in place in NSW)	OPTION 4 MEDIUM LEVEL OF REGULATION (Similar to arrangements in place in QLD).	OPTION 5 HIGH LEVEL OF REGULATION (Similar to arrangements in place in Victoria).
Accident towing of light vehicles	✓	✓	✓
Breakdown towing of light vehicles	X	X	✓
Trade towing	X	X	X
Areas of WA to be regulated	Greater metropolitan area of Perth.	Greater metropolitan area of Perth and major regional centres.	State-wide.
Towing business operator to be licensed (three yearly)	✓	✓	✓
Tow truck driver to be licensed (three yearly)	✓	✓	✓
Tow truck depot premises to be registered (three yearly)	X	✓	✓
Depot managers to be licensed (three yearly)	X	X	✓
Driver assistants to be licensed (three yearly)	X <sup>33</sup>	X <sup>34</sup>	✓
Licensing criteria to apply to applicants <sup>35</sup>	For business operators and drivers: Probity checks to include National Police Certificate.	For business operators: Probity checks to include National Police Certificate and criminal association check.  For drivers: Probity check to include National Police Certificate.	For business operators and depot managers: Probity checks to include National Police Certificate and criminal association check.  For drivers: Probity checks to include National Police Certificate and traffic offences.
Price regulation towing and storage fees	✓	✓	✓

<sup>33</sup> Driver assistant/person accompanying driver will not be required to be certified/registered **but will be** required to operate under the supervision of a licensed driver.

<sup>34</sup> Driver assistant/person accompanying driver will not be required to be certified/registered **but will be** required to operate under the supervision of a licensed driver.

<sup>35</sup> Probity checks refer to criteria used to assess whether a licence applicant is a fit and proper person to hold a licence.

ELEMENT	OPTION 3 MINIMAL LEVEL OF REGULATION (Similar to arrangements in place in NSW)	OPTION 4 MEDIUM LEVEL OF REGULATION (Similar to arrangements in place in QLD).	OPTION 5 HIGH LEVEL OF REGULATION (Similar to arrangements in place in Victoria).
Mandatory Industry Code of Practice	X	X	✓
Written Authority to Tow Form <sup>36</sup>	✓	✓	✓
Advice and conciliation services to assist consumer in the resolution of disputes.	✓	✓	✓
Penalty provisions to be supported by pro-active compliance, monitoring, investigation and enforcement.	✓	✓	✓
Towing roster system	X	X	X
Towing licence plates	X	X	X
Accident spotting prohibited	✓	✓	✓

Elements in common across Options 3, 4 and 5 include:

- regulation of accident towing businesses and drivers through an occupational licensing scheme including probity checks to assess whether a licence applicant is a fit and proper person to hold a licence; <sup>37</sup>
- regulation of maximum accident towing and storage fees;
- prohibition on the payment of spotters' fees and commissions paid by repairers to towing businesses;
- provision of advice and conciliation services by government;
- enhanced protections and remedies available to consumers; and
- provision for penalties and legal sanctions.

### **Mandatory code of practice**

The option of introducing a mandatory code of practice is referred to under Option 5. New South Wales and the Northern Territory have mandatory codes of practice in place. <sup>38 39</sup> Mandatory codes vary from voluntary codes in that they can be enforced on all businesses in a specified industry and are generally prescribed in regulations.

<sup>36</sup> Obtaining a written Authority to Tow Form is already a requirement under the Road Traffic (Vehicles) Regulations 2014 (WA) but may require enhancements to provide improved consumer protections.

<sup>37</sup> Probity checks would apply to individuals, firms and body corporates. For example, in the case of a body corporate, all individuals involved in the management or conduct of the body corporate would be required to meet probity requirements.

<sup>38</sup> NSW Tow Truck Industry Code of Practice October 2017.

<sup>39</sup> Fair Trading (Tow Truck Operators Code of Practice) Regulations 1996 (NT).



The New South Wales mandatory code applies to all tow truck operator licence holders, certified tow truck drivers, and other employees of tow truck operators. Sanctions can be attached to conditions in a mandatory code by making reference to the code in regulations and creating associated offences and penalties for breaching the code. Victoria's *Accident Towing Services Act 2007* (VIC) provides for the introduction of a mandatory code of practice but one is yet to be implemented.<sup>40</sup>

### Financial modelling

Options 3, 4 and 5 would be new responsibilities and jurisdiction for the Government. Consistent with government policy, regulatory services in relation to the towing industry would need to be funded through licensing fees on the basis of full cost recovery. These funds would be used to meet the cost of administering the legislation and performing the various functions under the legislation.

Preliminary financial modelling was completed by consultants to assist in determining the likely costs to industry and government of implementing reforms. The consultants drew on two key documents which set out the framework for cost allocation and setting of fees and charges for services provided by government:

- Public Sector Commissioner's Circular Costing and Pricing Government Services (2016); and
- Costing and Pricing Government Services: Guidelines for Use by Agencies in the Western Australian Public Sector (April 2015).

The guidelines state that *'unless Government approves otherwise, prices should be set at levels that reflect the full costs of providing the services'*. For this reason, the consultants focussed on identifying the full cost of service provision for government in developing proposed licensing fees.

These cost estimates took into account costs associated with:

- processing licence applications;
- audit and enforcement;
- legal services such as providing legal advice and undertaking prosecutions;
- providing advice to industry and consumers and dealing with complaints;
- policy development, implementation and evaluation;
- delivering industry education campaigns; and
- matters being dealt with by the State Administrative Tribunal.

The financial modelling also drew on data from New South Wales and Victoria to estimate the likely size of the industry operating in WA. The model was therefore developed to be as flexible as possible so that adjustments can be made in the event that underlying assumptions or the mix of regulatory strategies selected change over the course of advancing this initiative.

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<sup>40</sup> Section 205, *Accident Towing Services Act 2007* (VIC).

The consultants also considered:

- (based on benchmarking with existing fees in other Australian jurisdictions), maximum amounts to be charged by the towing industry for providing:
  - towing of accident damaged vehicles;
  - storing accident damaged vehicles; and
- the costs to industry of complying with the proposed regulatory options.

### Estimated cost of regulation

Table 9 below identifies the total estimated cost of implementing Options 3, 4 and 5 over a 10-year period to achieve full cost recovery. The approach of estimating costs over a 10 year period is consistent with the Regulatory Burden Measurement Framework which recommends costing proposal over a 10 year period.<sup>41</sup>

**Table 9: Estimated cost of implementing Options 3, 4 and 5**

OPTION	ESTIMATED TOTAL COST YEARS 0 TO 10
Option 3	\$7.3 million
Option 4	\$8.3 million
Option 5	\$8.9 million

### Estimated licensing fees

Table 10 below presents a summary of the estimated three yearly licensing fees under Options 3, 4 and 5. In regard to business licensing, fees applicable to Option 5 are lower by comparison to Options 3 and 4 due to economies of scale in regulating the industry.

Weightings were applied to fairly allocate costs between individuals (such as drivers) and businesses depending on the likely cost of regulating industry participants. For example, a weighting of one was applied to tow truck drivers, whereas a weighting of 10 was applied to an accident towing business operating six or more tow trucks.

**Table 10: Summary of estimated licensing fees (three-year licensing period)**

Category of licence	OPTION 3	OPTION 4	OPTION 5
Tow Truck drivers	\$915	\$834	\$565
Tow Truck assistants	N/A	N/A	\$565

<sup>41</sup> Department of Prime Minister and Cabinet, *Regulatory Burden Measurement Framework, Guidance Note*, February 2016.

Category of licence	OPTION 3	OPTION 4	OPTION 5
Vehicle Storage Depot sites	N/A	\$3,682	\$2,408
Managers of Vehicle Storage Depots	N/A	N/A	\$565
Tow Truck companies: Small (1 truck)	\$1,736	\$1,580	\$1,054
Tow Truck companies: Medium (2 to 5 trucks)	\$4,827	\$4,383	\$2,860
Tow Truck companies: Large (6 plus trucks)	\$7,918	\$7,185	\$4,665

Business licensing fees presented in Table 10 above were based on a tiered approach, whereby larger businesses pay higher fees than smaller businesses. Other approaches were considered including charging:

- a flat licensing fee, with all businesses paying the same fee; and
- an activity based fee, for example, setting the fee based on the number of accident tows completed each year.

These approaches were assessed against specific criteria and the tiered approach was identified as the best option.<sup>42</sup>

An estimated 50 per cent of businesses were classed as 'small', 40 per cent were classed as 'medium' and 10 per cent were classed as 'large'. These numbers were estimated for WA using New South Wales' data which identifies the number of tow trucks per business.<sup>43</sup>

### **Benchmarking licensing fees with other jurisdictions**

The proposed licensing fees were benchmarked against licensing fees applicable in other Australian jurisdictions assuming three year licensing periods. Apart from licensing fees proposed for tow truck drivers, the proposed fees aligned reasonably well with the fees applicable in Queensland and New South Wales (for the Sydney metropolitan area). The proposed licensing fees for individual drivers were considered to be high when compared to other jurisdictions.<sup>44</sup> Further consideration of these costs will be undertaken following consultation with industry.

<sup>42</sup> Criteria used to assess these options included whether they: represented equitable and fair sharing of costs among users; minimised administrative burden (simplicity), provided funding stability, ensured transparency and ease of understanding; and promoted/encouraged appropriate behaviours. The tiered approach was the only approach to meet all of the criteria. Fees were weighted on the basis of larger operators taking more time in terms of the regulator's compliance and enforcement activities (for example auditing Authority to Tow Form forms, reviewing towing charges applied and ensuring tow truck drivers are accredited).

<sup>43</sup> Independent Pricing and Regulatory Tribunal (IPART) NSW 2014, 'Review of tow truck fees and licensing in NSW', Transport – Final Report December 2014, page 62.

<sup>44</sup> Licensing fees applicable in other jurisdictions may not be based on a full cost recovery model.

### **Accident towing business licensing**

Under Options 3, 4 and 5, three yearly licensing fees for tow truck businesses involved in accident towing are estimated to be likely to range from \$1,054 to \$7,918 depending on the size of the business and the specific regulatory option selected.

### **Individual tow truck driver licensing fees**

Under Options 3, 4 and 5, three yearly licensing fees for individual tow truck drivers are estimated to range from \$565 to \$915 depending on the specific regulatory option selected.

### **Tow truck assistants licensing fees**

Option 5 proposes three yearly licensing fees for tow truck driver assistants. The three-yearly licensing fees are estimated to be around \$565.

### **Depot managers licensing fees**

Option 5 proposes three yearly licensing fees for depot managers. The three-yearly licensing fees are estimated to be around \$565.

### **Vehicle storage depot sites licensing fees**

Options 4 and 5 propose three yearly licensing fees for tow truck depots involved in storing accident damaged vehicles. The licensing fees are estimated to be likely to range from \$2,408 under Option 5 to \$3,682 under Option 4 depending on the specific regulatory option selected.

## **Towing and storage fees**

### **Maximum towing fees**

Options 3, 4 and 5 propose a maximum towing fee of \$254, assuming an average tow time of two hours and 15 minutes. This fee is based on benchmarking against fees in place in other jurisdictions.<sup>45</sup>

### **Maximum storage fees**

Based on benchmarking with Victoria, New South Wales, Queensland and South Australia in relation to maximum storage fees, the consultants proposed a maximum fee for storing accident damaged vehicles of \$25 per day.

### **Further consultation**

The estimated licensing and maximum towing and storage fees provide a useful starting point for discussions with stakeholders as part of the regulatory impact assessment process.

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<sup>45</sup> Maximum towing fees set by VIC, NSW, QLD and SA cannot be directly compared as each jurisdiction makes different underlying assumptions in setting maximum towing fees. In order to be able to compare like with like, the consultants applied a simple average tow was defined as being 18 kilometres in tow distance and 57 per cent of jobs occurring outside business hours. This definition is based on the definition for a simple average tow identified during the recent review of Victoria's fees and charges (Essential Services Commission *Review of Accident Towing and Storage Fees - Final Report, December 2018*, Page 34).

It is, however, acknowledged that further consultation will be required to ascertain whether these amounts are appropriate in the WA context.

### Estimated compliance costs for industry

Under Options 3, 4 and 5, the total estimated compliance costs for industry ranges from \$195,279 to \$304,254 per year depending on the extent of regulatory intervention (for example, maintaining records for audit purposes and time taken to apply for a licence). This excludes payment of licensing fees.

Table 11 below presents estimated compliance costs for industry for Options 3, 4 and 5.

**Table 11: Total annual estimated cost of compliance for industry (excluding licensing fees) <sup>46</sup>**

	Option 3	Option 4	Option 5
<b>Licence application process</b>	\$62,107	\$71,974	\$119,956
<b>Authority to Tow Form</b>	\$97,543	\$108,913	\$126,866
<b>Inspections</b>	\$35,629	\$39,884	\$57,432
<b>Total</b>	<b>\$195,279</b>	<b>\$220,770</b>	<b>\$304,254</b>

#### Licence application process

Industry compliance costs presented in Table 11 above, include an estimate of the time taken to apply for a licence. In estimating the time per application, consideration was given to the amount of time that it would take an individual to download, print and complete the necessary forms, as well as supplying required information such as providing a photograph, photo identification, and mailing or submitting this application as well as the time to separately obtain a National Police Clearance Check.

The value of time has assumed that each individual, either a driver or assistant, will complete this process. The hourly rate of \$35.91 is based on the award weekly wage, with salary on-costs of 14.6 per cent and overheads of \$5,000 per annum included. <sup>47</sup> The estimated total cost of completing the licensing application process is driven by the likely number of applications under Options 3, 4 and 5.

<sup>46</sup> The number of accident towing businesses was estimated to be 204 under Option 3, 228 under Option 4 and 348 under Option 5.

<sup>47</sup> Government of Western Australia – Department of Mines, Industry Regulation and Safety – WA Award Summary: Metal Trades (General) Award 1 July 2019 (Engineering Tradesperson Special Class - Level I) (Available at [https://www.commerce.wa.gov.au/sites/default/files/atoms/files/metal\\_trades\\_general\\_award\\_0719.pdf](https://www.commerce.wa.gov.au/sites/default/files/atoms/files/metal_trades_general_award_0719.pdf)). Accessed 23 July 2020.

## Authority to Tow Forms

Although not fully scoped at this point, it is anticipated that Options 3, 4 and 5 will include enhancements to the Authority to Tow Form to provide improved consumer protections. The costings presented in Table 11 above, reflect an estimated time cost to complete the enhanced form and provide a copy to the driver, less the time already spent completing the current Authority to Tow Form. The estimate is calculated based on an increase of 20 minutes per form. This is considered to be a high estimate of time involved and may be less depending on the outcome of consultation.

It is assumed that the information required on the Authority to Tow Form will be the same under reform Options 3, 4 and 5. The differences in estimated costs is due to the larger number of tows given Options 4 and 5 will cover a larger geographical area.

## Inspections

Industry compliance costs presented in Table 11 above include an estimate of the cost to industry of government inspections. It is envisaged that these inspections would be carried out in a similar manner to the auditing of smash repair businesses or car sale yards – where government employees visit a random group each year.

The value of time estimate has assumed that three hours of a staff member’s time will be taken. This may be a manager or a senior staff member. The number of inspections is based on each tow truck and vehicle storage business being visited once every 15 months. This estimate is based on the target inspection rate of Consumer Protection’s audit and compliance.

## Benefits and disadvantages

The benefits and disadvantages of Options 3, 4 and 5 for industry, consumers and government are outlined in Table 12 below.

**Table 12: Options 3, 4 and 5: Benefits and disadvantages**

	Potential benefits	Potential disadvantages
<b>Option 3 – Minimal level of regulation limited to the greater metropolitan area of Perth.</b>	<p><b>Industry</b></p> <ul style="list-style-type: none"> <li>• Evens the playing field for towing industry participants.</li> <li>• Improved reputation and confidence in the industry as unsuitable persons prevented from operating in the industry.</li> <li>• Least costly regulatory option.</li> </ul> <p><b>Consumers</b></p> <ul style="list-style-type: none"> <li>• Reduced risk of consumer detriment in greater metropolitan area.</li> </ul>	<p><b>Industry</b></p> <ul style="list-style-type: none"> <li>• Introduces barriers to entry and costs associated with licensing and compliance for businesses and drivers operating in the greater metropolitan area.</li> <li>• Reduced profits as a result of towing and storage fees being regulated – may impact viability of some businesses.</li> </ul>

	Potential benefits	Potential disadvantages
Option 4 – Medium level of regulation extending to the greater metropolitan area of Perth as well as some larger regional areas.	<ul style="list-style-type: none"> <li>• Reduced towing and storage fees due to price regulation.</li> <li>• Reduced motor vehicle insurance premiums.</li> </ul> <p><b>Government</b></p> <ul style="list-style-type: none"> <li>• Calls for industry regulation met.</li> <li>• Improved road safety.</li> <li>• Lowest cost option.</li> </ul>	<p><b>Consumers</b></p> <ul style="list-style-type: none"> <li>• Increased compliance costs and reduced competition may result in costs being passed on to consumers.</li> <li>• Coverage limited to consumers in greater metropolitan area of Perth – risk of consumer detriment in regional areas.</li> </ul> <p><b>Government</b></p> <ul style="list-style-type: none"> <li>• Additional costs - resources required to administer new occupational licensing function.</li> </ul>
	<p><b>Industry</b></p> <ul style="list-style-type: none"> <li>• Evens the playing field for towing industry participants.</li> <li>• Improved reputation and confidence in the industry as unsuitable persons prevented from operating in the industry.</li> </ul> <p><b>Consumers</b></p> <ul style="list-style-type: none"> <li>• Reduced risk of consumer detriment in greater metropolitan area and in major regional areas.</li> <li>• Reduced towing and storage fees due to price regulation.</li> <li>• Reduced motor vehicle insurance premiums.</li> </ul> <p><b>Government</b></p> <ul style="list-style-type: none"> <li>• Calls for industry regulation met.</li> <li>• Improved road safety.</li> <li>• Medium cost option.</li> </ul>	<p><b>Industry</b></p> <ul style="list-style-type: none"> <li>• Introduces barriers to entry and increased compliance costs for businesses and drivers operating in the greater metropolitan area and some regional areas.</li> <li>• Mid-cost regulatory option.</li> <li>• Reduced income as a result of towing and storage fees being regulated – may impact viability of some businesses.</li> </ul> <p><b>Consumers</b></p> <ul style="list-style-type: none"> <li>• Increased compliance costs and reduced competition may result in costs being passed on to consumers.</li> <li>• Coverage limited to greater metropolitan area of Perth and major regional areas.</li> </ul> <p><b>Government</b></p> <ul style="list-style-type: none"> <li>• Additional costs - resources required to administer new occupational licensing function.</li> </ul>

	Potential benefits	Potential disadvantages
<p><b>Option 5 –</b></p> <p>High level of regulation covering accident towing and breakdown towing applicable across WA.</p>	<p><b>Industry</b></p> <ul style="list-style-type: none"> <li>• Evens the playing field for the towing industry.</li> <li>• Improved reputation and confidence in the industry as unsuitable persons prevented from operating in the industry.</li> </ul> <p><b>Consumers</b></p> <ul style="list-style-type: none"> <li>• Reduced risk of consumer detriment state-wide.</li> <li>• Reduced towing and storage fees due to price regulation.</li> <li>• Reduced motor vehicle insurance premiums.</li> </ul> <p><b>Government</b></p> <ul style="list-style-type: none"> <li>• Calls for industry regulation met.</li> <li>• Improved road safety.</li> </ul>	<p><b>Industry</b></p> <ul style="list-style-type: none"> <li>• Introduces barriers to entry and increased compliance costs for businesses, depot managers, drivers and driver assistants across the state.</li> <li>• Highest cost regulatory option.</li> <li>• Reduced income as a result of towing and storage fees being regulated – may impact viability of some businesses.</li> </ul> <p><b>Consumers</b></p> <ul style="list-style-type: none"> <li>• Increased compliance costs and reduced competition may result in costs being passed on to consumers.</li> <li>• State-wide coverage.</li> </ul> <p><b>Government</b></p> <ul style="list-style-type: none"> <li>• Additional costs - resources required to administer new occupational licensing function.</li> <li>• Highest cost option.</li> </ul>

## PREFERRED OPTION

Subject to further consultation, given the nature of the concerns and risk to consumers there appears to be a strong case for increased regulation through licensing of the tow truck industry. Based on a preliminary assessment, intervention through either of Options 3, 4 or 5 is identified as the most likely to meet the objectives for reform.

### Reasons

Options 3, 4 or 5 are likely to deliver improved consumer protections for drivers involved in accidents and are likely to reduce the risk of consumer detriment due to licensing of industry participants, and not being required to pay excessive fees for accident towing services due to price regulation. Options 3, 4 or 5 would also bring WA into line with most other jurisdictions and are likely to be more effective than self-regulation due to the availability of legal sanctions.

Option 1 (status quo) is not preferred as it is unlikely to meet the objectives for reform or address the serious issues of concern raised by the community and industry.

Option 2 (voluntary code) is not preferred as it is unlikely to meet the objectives for reform or address the serious issues of concern raised by the community and industry for the following key reasons:



- Given the poor conduct history and nature of the industry, may not provide sufficient incentive to deliver improvements.
- It is unlikely to deliver consistency across the industry due to participation in the code being purely voluntary.
- Voluntary codes are better suited to situations where consumers have time to shop around.

In the event regulatory intervention through licensing is supported, establishing industry specific, stand-alone legislation will be required. Such an approach would be consistent with approaches taken in Victoria, New South Wales, Queensland and South Australia.

## PART 6: QUESTIONS

You are welcome to provide your views by responding to some or all of the questions presented below.

Please feel free to focus only on those areas that are important and relevant to you. You are also welcome to suggest alternative options for addressing issues of concern. When making your submission, please let us know if you are a member of the accident towing industry, insurance industry or a consumer.

It would be helpful if you could also include the reasons behind your suggestions and any information you may have such as the associated costs, as this will help to better understand your viewpoint and will also assist in identifying the most suitable options for reform.

	QUESTION
QUESTION 1	<i>Have you had an experience with a towing business, driver or other participant in the towing industry that you wish to share?</i>
QUESTION 2	<i>Do you support the introduction of an industry-led and managed voluntary code of conduct and why?</i>
QUESTION 3	<i>Do you think increased regulation of the accident towing industry is necessary and why?</i>
QUESTION 4	<i>If you support increased regulation, which option do you prefer and why?</i>
QUESTION 5	<i>Can you suggest any other options?</i>
QUESTION 6	<i>Do you think that any of the options will lead to unintended consequences? If so, please provide details.</i>

QUESTION 7	<i>Do you support licensing of accident towing businesses, drivers, driver assistants and depot managers and why?</i>
QUESTION 8	<i>Do you support the introduction of maximum fees for accident towing and storage of damaged vehicles and why?</i>
QUESTION 9	<i>Do you support state-wide regulation of the accident towing industry or do you think it should be limited to the metropolitan area or the metropolitan area plus larger regional areas and why?</i>
QUESTION 10	<i>Do you support the regulation of both accident towing and roadside breakdown towing and why?</i>

Submissions can be sent:

by email to:

[consultations@dmirs.wa.gov.au](mailto:consultations@dmirs.wa.gov.au)

or by mail to:

Accident Towing Consultation  
 Department of Mines, Industry Regulation and Safety  
 Consumer Protection Division  
 Legislation and Policy  
 Locked Bag 100  
 EAST PERTH WA 6892

## APPENDIX 1 – TOWING INDUSTRY REGULATION ACROSS AUSTRALIA

	VIC	NSW	QLD	SA	NT	WA
<b>Legislation</b>	<i>Accident Towing Services Act 2007</i> (Vic)	<i>Tow Truck Industry Act 1998</i> (NSW)	<i>Tow Truck Act 1973</i> (Qld)	<i>Motor Vehicles Act 1959</i> (SA)	<i>Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations</i> (NT)	<i>Road Traffic (Vehicles) Regulations 2014</i> which fall under the <i>Road Traffic (Vehicles) Act 2012</i> (WA)
<b>Administered by</b>	VicRoads	Department of Finance, Services and Innovation (which includes NSW Fair Trading)	Department of Transport and Main Roads	Department of Planning, Transport and Infrastructure	Department of the Attorney-General and Justice (Commissioner for Consumer Affairs)	Department of Transport
<b>Type of towing activity regulated</b>	Accident towing	Accident towing and trade towing	Accident towing <sup>48</sup>	Accident towing	Accident towing	Accident Towing
<b>Licensing/ accreditation</b>	Depots Operators Depot Managers Drivers Person accompanying driver	Operators Drivers	Operators Drivers Driver assistants	Drivers of all types of tow trucks within greater metro area of Adelaide  Registration of premises	N/A	N/A
<b>Maximum fees</b>	Yes	Yes	Yes	Yes	No	No
<b>Wheel clamping prohibited</b>	Yes	Yes	Yes	Yes	No	No
<b>Accident roster system</b>	Yes	No	No	No	Yes	No

<sup>48</sup> Towing of unauthorised vehicles from private property also regulated as of April 2018.

	VIC	NSW	QLD	SA	NT	WA
<b>Authority to Tow Form to be signed by consumer and copy provided prior to tow</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Threats, harassment and coercion and related conduct prohibited</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Accident spotters fees prohibited</b>	Yes	Yes	Yes	Yes	Yes	No
<b>Mandatory Industry Code of Practice</b>	No, but scope under legislation to introduce.	Yes	No	No	No	No
<b>Other</b>	Touting for repairs prohibited.  Scope in Regulations to strengthen range of requirements, subject to consultation with stakeholders for example, specifying qualifications.	Tow Truck Industry Code of Practice. Code is enforced by NSW Fair Trading with scope to appeal disciplinary action to NSW Civil and Administrative Tribunal.	Nil.	Drop or spotters fees prohibited.	Accident spotting (alerting a tow truck driver to an accident) and touting for repairs are prohibited.	Technical standards for tow trucks to be licensed for use on roads.  Conduct provisions to protect consumers from unfair practices. 'Authority to Tow Form' to be completed.

**Consumer Protection** | Department of Mines, Industry  
Regulation and Safety

**1300 304 054**

8.30 am – 5.00 pm Mon, Tue, Wed and Fri

9.00 am – 5.00 pm Thurs

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