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Western Australia Accident Towing Consultation
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Consultation on Future regulation of Western Australia's accident towing industry – ICA submission

The Insurance Council of Australia appreciates the opportunity to provide a submission to the consultation on the future regulation of Western Australia's (WA) accident towing industry (August 2020).

The Insurance Council of Australia¹ (ICA) is the representative body for the general insurance industry in Australia. Our members provide a range of insurance products including motor vehicle insurance and compulsory third-party insurance.

The ICA supports initiatives which will enhance the effectiveness of the regulation of tow truck businesses in WA. Reforms to the tow truck industry (accident and breakdown towing) will improve the experience for motorists, insurers and WA consumers.

Towing is an important part of the state's transport system and therefore a well-functioning, reformed tow truck industry can contribute to a safe and efficient road network.

To ensure a well reformed tow truck industry in WA, the ICA supports:

- prescribed maximum rates for accident towing and storage;
- adopting a medium level of regulation of light vehicle accident and breakdown towing, storage facilities and consumer protection measures extending to the greater metropolitan area of Perth as well as some regional areas (option 4);

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent approximately 95 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. June 2019 Australian Prudential Regulation Authority statistics show that the general insurance industry generates gross written premium of \$48.4 billion per annum and has total assets of \$128.4 billion. The industry employs approximately 60,000 people and on average pays out about \$151.4 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

- a fit and proper person requirement for tow truck operators and tow truck drivers via licensing;
- the introduction of laws prohibiting poor and coercive behaviour by tow truck operators and drivers with monitoring, enforcement and penalties for breach/non-compliance;
- setting minimum required standards of compliance for tow truck and storage operators.

Options for Reform:

To identify the most suitable option for WA, the ICA and its members have considered relevant experiences in other jurisdictions.

We note the Consultation RIS (at page 26) outlines three regulatory options (option 3, 4 and 5) within which it describes option 3 (minimum level regulation) as similar to the New South Wales (NSW) towing regulatory regime and option 4 (medium level regulation) as similar to Queensland.

It is the view of the ICA and our members that Queensland currently has a far lower level of regulation of the accident towing industry compared to NSW. Therefore, a more accurate categorisation would be to equate option 4 (medium level of regulation) with the current towing regulatory arrangements in NSW.

The ICA has identified the NSW tow truck regulatory models as the most suitable and effective that could be replicated in WA.

The ICA therefore recommends a medium level of regulation of accident and breakdown towing of light vehicles, storage facilities and consumer protection measures extending to the greater metropolitan area of Perth as well as some regional areas (option 4).

In NSW and Victoria, the introduction of a system of maximum accident and breakdown towing and storage fees has helped ensure motorists are no longer subject to excessive accident and breakdown towing fees. Similar regulated fee structures could be easily replicated in WA.

A NSW style towing system would be the best mechanism to protect consumers, while also ensuring fees are set at a level that allows accident and breakdown towing operators to recover the costs of providing these services, together with a reasonable profit margin to ensure their ongoing profitability and viability.

Implementing a system of maximum accident and breakdown towing and storage fees would also help to address the vulnerability of consumers at the time of requiring accident and breakdown towing. Motorists are often injured or distressed following an accident. In addition, there is also often pressure to have their vehicles removed from an accident scene and most motorists are unlikely to have a good understanding of what a fair and reasonable towing and storage fee would be. Setting maximum towing and storage fees would provide a level of

consumer protection to consumers at the accident scene when they are most vulnerable. Setting maximum fees is also important for insurers as it removes potential conflict between insurers and towing operators which helps to speed up the repair process and gives certainty around the cost of a tow. This may also translate into lower insurance premiums for motorists.

While the Victorian regulatory model has the highest level of regulation, is effective in many areas and has achieved good outcomes for consumers, it does have some shortcomings. These include arbitrary pricing boundaries created throughout the state which results in different fees being charged depending on the location a vehicle is towed from. The Victorian model also provides for transfer of licences which has the effect of artificially inflating the value of these licences.

A NSW style system of maximum towing and storage fees, which provides consistent pricing across metro and main operating hubs, would avoid some of the inadequacies of the current Victorian model.

We note the Consultation RIS also includes the option of industry self-regulation through a voluntary industry code of conduct (option 2). The ICA does not support self-regulation through a voluntary code of conduct. Our members' experience across multiple jurisdictions is that the problems and poor practices presently within the WA towing industry cannot be effectively managed through the use of a voluntary code.

Fit and Proper Person

The ICA supports the introduction of a fit and proper person test (including police probity tests) for tow truck operators and tow truck drivers as part of the WA towing regulatory regime.

It is well documented that the existing lack of accident and breakdown towing regulation in WA has led to a number of unscrupulous business operators (including those with possible links to organised crime) entering the industry and a deterioration in standards of conduct and behaviour by some tow truck operators.

We understand poor behaviour experienced by consumers includes threats and intimidation at accident scenes by truck operators, placing undue pressure on them to sign vague and open-ended towing authorisation forms that do not disclose towing and storage fees.

Similarly, it is common practice for some operators to refuse to release vehicles from holding yards until vehicle owners and insurers agree to pay exorbitant towing and storage fees. It is not uncommon for these fees to be in the thousands of dollars. These practices are not only exploitative but also cause significant delays in repairs to vehicles, further inconveniencing vehicle owners. To assist in addressing these problems there should be laws that prohibit threats, harassment and coercion and related conduct backed up with appropriate monitoring, enforcement and penalties.

At the time of issuing a tow truck operator licence, similar to what occurs in NSW and Victoria, authorities should conduct a criminal record check to determine whether the operator is a fit and proper person. For those with existing licences, a licence renewal process should be adopted when the reforms are implemented.

In addition, transparency of licence ownership by tow truck operators could be improved through the publishing of the identity of licence-holders on the relevant WA government website.

The ICA recommends that all accredited and licensed tow truck drivers in WA carry their tow truck drivers licence at all times and be required to display their licence prior to a motorist signing any towing authority.

Maximum all-inclusive towing and storage rates

To avoid inflated and exorbitant costs, it is recommended that the maximum towing and storage rates be regulated through a price schedule. The schedule could cover not just accident and breakdown towing fees but also subsequent, related cost including storage, 2nd tow and salvage (including hitching, unhitching). This will avoid hidden costs in the towing fee and ensure there is transparency for the benefit of motorists, government, towing operators and insurers. It will also give the public confidence in the towing industry. These maximum rates can be reviewed regularly and adjusted to reflect inflation. The ICA believes that the towing and storage fees determined should enable accident and breakdown towing services to be provided in a safe, efficient and timely manner.

In addition, the payment of accident and breakdown spotters' fees, touting for repair business and other after sales services (such as replacement vehicles) should also be banned, with appropriate monitoring, enforcement and penalties in place for operators involved in these practices.

Minimum standard of compliance for tow trucks

Requiring tow truck and storage operators to abide by minimum standards of compliance, ensuring a fit and proper person check is undertaken and application and enforcement of appropriate penalties will ensure standards of professionalism and behaviour in the industry, while also protecting consumers at a time of vulnerability.

We trust this feedback on proposed reforms of WA's tow truck industry is of assistance.

ICA would be pleased to discuss this submission and details of the reforms with you further and provide any additional information that may assist.

If you have any queries please contact Neha Chopra, Policy Advisor, Consumer Outcomes via email nchopra@insurancecouncil.com.au or phone (02) 9253 5165.

Yours sincerely



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