



Insurance Commission  
of Western Australia

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Hon Jessica Shaw MLA  
Chair  
Economics and Industry Standing Committee  
Parliament House  
Harvest Terrace  
WEST PERTH WA 6005

Dear Ms Shaw

## **INQUIRY INTO WA'S AUTOMOTIVE SMASH REPAIR INDUSTRY**

### **About the Insurance Commission**

The Insurance Commission of Western Australia (Insurance Commission) is the sole underwriter of motor injury insurance in WA. A motor injury insurance policy is issued by the Department of Transport, on behalf of the Insurance Commission, for 2.9 million insured vehicles driven by approximately 1.8 million insured drivers.

Each year, the Insurance Commission receives approximately 10,000 motor injury insurance claims from vehicle crashes, which are managed by our Motor Injury Insurance Division. The motor injury insurance policy does not cover vehicle property damage or tow truck expenses, as insurance products for that cover are purchased from private insurers.

The Insurance Commission's other main insurance Division is known as RiskCover, and is the Government's self-insurer.

### **RiskCover**

The Insurance Commission, via its RiskCover Division, is responsible for managing and administering the self-insurance arrangements for 110 State Government public authorities. RiskCover provides cover for damage to motor vehicles owned or leased by public authorities and each public authority is responsible for choosing a smash repairer to repair their damaged vehicles.

From 1 July 2017 to 31 May 2018, RiskCover received 2,260 new motor vehicle damage claims from government public authorities and paid \$6.3 million to smash repairers and associated parties involved in the repair of the vehicle.

### **Terms of Reference 1 - Automotive smash repair work and whether it is being carried out to adequate safety and quality standards in Western Australia**

RiskCover engages skilled motor vehicle assessors to authorise and assess each vehicle and its repairs, including the final invoice. These assessors are engaged through a competitive tender process.

Motor vehicle assessors ensure repairers are licensed in accordance with relevant legislation. Repairers are required to have suitable expertise, equipment and workshop premises to conduct repairs in a timely, safe and secure manner. RiskCover requires repairers use new replacement parts rather than second-hand parts.

Motor vehicle assessors report that overall, the quality of repairs on Government vehicles are good.

**Terms of Reference 2 - The current Motor Vehicle Insurance and Repair Industry Code of Conduct, its governance structure and dispute resolution mechanisms and whether it is effective at regulating the relationship between repairers and insurers, and in serving consumer interests**

Neither the Insurance Commission nor RiskCover are signatories to the Motor Vehicle Insurance and Repair Industry Code of Conduct. Signatories to the Code are typically smash repairers and private motor vehicle insurers.

**Terms of Reference 3 - Consumer choice, consumer protection and consumer knowledge in respect of contracts and repairs under insurance policies**

See response to Terms of Reference 4 for comments on consumer protection.

**Terms of Reference 4 - The business practices of insurers, and repairers, including vertical integration in the market, the transparency of those business practises and implications for consumers**

The Insurance Commission has generally observed good business practices for those smash repairers working on Government vehicles insured by RiskCover.

Some smash repairers have a vertical business model that includes vehicle towing services. The Insurance Commission is aware of business practices of some tow-truck operators that are to the detriment of consumers.

While the majority of RiskCover's motor vehicle damage claims do not require towing services, examples of these practices are provided below.

*Business Practices*

Typically following a vehicle crash, a driver will call the vehicle fleet emergency number and a tow truck is dispatched. There are two practices to the detriment of consumers that occur.

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

The second is when tow trucks arrive opportunistically at a crash scene and compete for the work as the first to arrive at the crash scene usually gets the tow. The successful tow truck will tow the vehicle to a yard, and then charge a high fee for the vehicle to be released. For example, 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.

These issues were also highlighted by AAAC Towing and Thornlie Towing in submissions to this Committee's Inquiry.

Similar practices have also occurred in New South Wales. The Sydney Morning Herald on 17 May 2015 published an article titled "Thousands of NSW motorists are having cars captured in an elaborate ransom scam worth millions of dollars."

The time of an accident is stressful, costly and often painful, and many consumers are vulnerable. The practice by some tow-truck operators of having consumers sign an Authority to Tow Form with a blank price field and then charging an unreasonable fee to release the vehicle, does not protect the consumer or meet community expectations.

#### *Inadequate Documentation*

Regulation 419(1) of the Road Traffic (Vehicles) Regulations 2014 (WA) requires that the driver of a tow truck must not tow or salvage any vehicle from the scene of an accident until the driver has completed in duplicate a statement containing the particulars set out in that provision.

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. It is possible forms without those details are not valid due to non-compliance with the abovementioned Regulation.

#### *Price Differences*

There are no set or regulated towing rates in WA for breakdown and/or crash towing, and there is considerable variation in fees between towing operators.

Fees are charged differently for crash and breakdown towing. For example, the fees to tow a crashed vehicle from the CBD to Osborne Park range from \$300 to \$1,500. The Insurance Commission understands that higher fees are charged when the crash may be insurable as the towing operator believes the insurer is able to pay a higher price than the consumer in non-insurable crashes.

The Insurance Commission is aware that towing operators may also add creative costs to their invoices, such as hook fees, tilt tray required fees, yard-in fees, yard-out fees, additional kilometre fees, storage fees and second tow fees.

Queensland, New South Wales and Victoria have legislation that:

- regulates fees for accident towing;
- prevents paying incentives to accident informants (spotters); and
- disallows incentives payments from smash repairers to tow-truck operators.

#### *Touting*

It is understood that some towing operators refer to themselves as 'Crash Chasers'. The operators use social media and the internet to advertise for work. The Insurance Commission has seen advertisements offering payment of a \$200 spotter fee to the public and those insured who 'call-in crashes'. The Crash Chasers' practice is to 'sit-off' on freeways or close by, and monitor crash communications.

The Insurance Commission is not aware of any law in WA that prevents Crash Chasers receiving spotter fees when calling-in crashes to tow-truck operators and crash repairers. Queensland, New South Wales and Victoria have such legislation in place. Similar provisions could be introduced in WA.

Touting for work following a crash by some law firms was also reported recently by the ABC on 24 June 2018 in an article “After the horrific crash that killed her son, lawyers’ marketers wouldn’t stop calling Susan”. The ABC reported a practice of some law firms who pay for client referrals from cold calling consumers to ask them if they had been in a crash and to encourage them to make a claim via a particular legal firm.

Some law firms or third parties obtained users’ private medical information and then contacted them to encourage lodgement of motor insurance claims. Again, the ABC published an article on this practice on 26 June 2018 titled “Medical appointment booking app HealthEngine sharing clients’ personal information with lawyers.”

## **Work Completed, Proposed or Possible**

### *Legislative Changes*

In mid-2016, an intergovernmental working group comprising the Department of Transport (DoT), Department of Commerce, the WA Police Force and the Insurance Commission was formed to address these issues.

The group proposed a review of the Road Traffic (Vehicles) Regulations 2014 to address the issues.

In late 2017, the DoT issued a consultation reported titled ‘Tow Truck Regulations – Proposed Updates’. Page 14 of the report states that:

*“DoT is aware of regular complaints regarding customers not realising the extent of the fees, ensuing in protracted consumer complaints.*

*To reflect contemporary customer service practice, it is proposed to require the fee structure to form part of the mandatory information recorded on the tow truck drivers’ statement.”*

The Insurance Commission supports the practice of making it mandatory for tow-truck operators to record the fee structure on towing contract information signed by the customer.

The Insurance Commission also draws the attention of the Economics and Industry Standing Committee to recent changes of Consumer Law to protect consumers from unfair terms in standard form contracts. The law applies to contracts entered into on or after 12 November 2016, and sets examples of various terms that may be unfair to consumers.

### *Pricing Transparency*

It is noted there is a competitive towing market in WA. However, the practice of not disclosing the towing price at the point of the tow does not benefit the consumer.

The Insurance Commission therefore supports changes to disclose pricing to protect consumers.

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

There are examples of pricing structures in Queensland, New South Wales and Victoria.

### *Consumer Notification*

In 2016, the Insurance Commission advised the Consumer Protection Division of the Department of Commerce, of the abovementioned business practices. Although the Consumer Protection Division is not directly responsible for the regulation of the towing industry, it is responsible for administering Consumer Law which contains provisions that provide a safety net to all consumers acquiring goods and services, including services such as towing. Consumers are entitled to expect services to be provided with due care and skill, and without misleading representation.

In 2017, the RiskCover Division of the Insurance Commission advised public authorities insured by RiskCover of the abovementioned practices. The purpose of the advice was to inform insured motorists to be alert to the practices.

In 2017, RiskCover issued glove box driver information cards to two Department of Finance appointed Fleet Managers to be placed in vehicles managed by them to ensure drivers were aware of the steps that should be taken following a crash. This included advice not to sign blank towing forms.

### *Offences*

Page 14 of the DoT Report referred to above states that:

*"DoT proposed to review the penalty provisions contained in Road Traffic (Vehicles) Regulations 2014, Part 12 during 2017/18. The penalties for breaching the regulations have not kept pace with the consumer price index, and it is proposed to increase penalties to reflect current community standards. This would provide a realistic deterrent to offending and demonstrate the seriousness of breaches."*

The Insurance Commission supports the DoT proposal to increase penalties for breaching regulations in circumstances to the detriment of consumers.

The Insurance Commission welcomes efforts to further protect consumers and insurers from the abovementioned practices, and welcomes the opportunity to work with others to achieve that outcome.

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

Sincerely



Kane Blackman  
**COMMISSION SECRETARY**