CRIMINAL JUSTICE
COMMISSION

REPORT ON AN INVESTIGATION INTO THE TOW TRUCK AND SMASH REPAIR INDUSTRIES

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Dear Sirs

In accordance with Section 26 of the *Criminal Justice Act 1989*, the Commission hereby furnishes to each of you its Report on an investigation into the tow truck and smash repair industries.

Yours faithfully

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CHAPTER 1 – INTRODUCTION

1.1 OPERATION SPOT

In July 1989, the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (Fitzgerald Inquiry) received confidential information that a person involved in the towing industry was paying police in return for information about the location of traffic accidents. It was alleged that the person used a mobile phone and that the police involved in the scheme would telephone this mobile number before the details of the traffic accident were broadcast over the police radio network. It was alleged that by this means the trucks associated with this person arrived at, or were on their way to, accident scenes before details of the accident were announced over the police radio.

The conduct alleged could have constituted the offence of official corruption. Furthermore, it is an offence against s. 23(1)(a) of the *Tow-truck Act 1973* for a person to give or to receive an amount of money in consideration of the furnishing of information about the occurrence of a road accident, where the information is given and received for the purpose of obtaining an authority to tow a damaged motor vehicle. Such consideration (in the order of $20 to $40) is known in the towing industry as a "spot fee" or "spotter's fee".

The Commission of Inquiry commenced an operation codenamed Operation Spot. The investigation concentrated upon the analysis of telephone calls emanating from several numbers in the Police Service in the month of November 1989. There was also limited analysis of information pertaining to certain accounts held by serving police officers. Both lines of inquiry proved inconclusive although the telephone analysis raised a suspicion that several tow truck operators received favourable treatment over the other available operators in the Brisbane area. The investigation, however, failed to identify any specific tow truck operator as being involved in any scheme to pay serving police officers for traffic accident information.

In September 1989, certain administrative changes occurred within the Police Service which, in the Commission's view, substantially limited the opportunities for behaviour of the kind under

investigation. In these circumstances, Operation Spot was terminated.

On 13 August 1990, the Chairman of the Criminal Justice Commission (CJC), Sir Max Bingham QC, advised the Commissioner of Police that the resources of the CJC could no longer be directed towards the continuation of Operation Spot. The Chairman alerted the Commissioner in general terms to the opportunities for malpractice available in the Police Operations Centre.

1.2 OPERATION SPOT II

In March 1991, Operation Spot II was commenced when Superintendent Darcy Buckley of the Queensland Police Service (QPS) complained to the Commission that he believed the practice of notifying a particular tow truck proprietor in return for spot fees was still being carried on by a named police officer. Superintendent Buckley's principal concern was the influence that the activities of this police officer might have on junior officers.

The objectives of Operation Spot II were to:

a) take up where Operation Spot had concluded to see if further evidence could be obtained

b) try to identify any principals in the towing industry who were involved in making corrupt payments to police

c) obtain evidence of other illegal practices within the tow truck industry, which were said to be widespread and of an organised nature.

Because of the lack of direct evidence, it was decided to interview selected members of the tow truck, panel beating and insurance industries. These initial inquiries during 1991 revealed a depressed economic climate in the towing and smash repair industries. The depressed economic climate was generally attributed to:

- the general economy
- an excessive supply of tow trucks servicing the Brisbane area

- the reduction in the number of traffic accidents due to long dry spells, road improvements, increased traffic penalties, random breath testing and red light cameras.

It was said that these factors led to extreme rivalry and competitiveness among tow truck drivers in securing accident work.

Interviews conducted with the various persons engaged in the towing and smash repair industries gave rise to a large quantity of information (considered to be generally reliable) relating to the following conduct:

- widespread breaches of the *Tow-truck Act*, in the form of payment of "drop fees", that is, a payment or benefit (in addition to the usual towing fees[1]) given by smash repairers to tow truck drivers in return for the securing of smash work by the repairer

- stand-over tactics employed by tow truck industry representatives in their business dealings with spare parts suppliers

- stand-over tactics employed within the tow truck industry by tow truck drivers and operators against their competitors

- widespread breaches of the *Tow-truck Act* in the form of payment of spotters fees by tow truck entities, in return for traffic accident information.

In addition, financial analysts attached to the Commission conducted a review of certain accounts held by police officers and an account associated with a person involved in the towing industry. Detailed analysis revealed transactions on those accounts suggesting that the accounts may have been used to pay spot fees to police officers.

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[1] The usual towing fees are referred to in this report as the prescribed tow fees. They are not prescribed by legislation but are the usual fees charged throughout the industry. The report uses the expression 'prescribed tow fees' as it was used during the Commission's hearings to distinguish these lawful payments from drop fees which are also referred to in the industry as "slings". Some witnesses referred to these payments as 'repair commissions' and 'incentives'.

In June 1992, the Commission decided to conduct investigative hearings under s. 2.17 (now s. 25) of the *Criminal Justice Act 1989*. The investigative hearings had particular reference to the following matters:

(a) the payment to members of the Police Service and other persons, by persons and/or entities engaged in the smash repair and towing industries, of spot fees in return for information or advice as to the occurrence of road traffic accidents in the greater Brisbane area, in contravention of the *Tow-truck Act 1973*;

(b) the payment, by persons and/or entities engaged in the smash repair industry, to persons and/or entities engaged in the Towing industry of drop fees in return for the persons or entities first mentioned obtaining the work of repairing damaged motor vehicles, in contravention of the *Tow-truck Act 1973*;

(c) improper approaches by persons and/or entities engaged in the towing industry to motor dealers to obtain towing business, such approaches being accompanied by threats that persons and/or entities engaged in the smash repair industry would withdraw their custom in spare parts from the motor dealers if they did not favour the persons or entities first mentioned when using towing services;

(d) possible official misconduct, in connection with the smash repair and towing industries, by persons employed in units of public administration.

It was determined that the investigative hearings would begin with the taking of evidence from a random selection of repairers who were in business throughout the Brisbane area. It was considered appropriate to begin with repairers who were suspected (on the basis of the Commission's preliminary inquiries) to have paid substantial sums of money to members of the tow truck industry in order to secure smash repair work (drop fees), this being in contravention of the *Tow-truck Act*. Accordingly, in July 1992, approximately 48 summonses were issued to repairers to give evidence and produce documents under s. 3.6 (now s. 74) of the *Criminal Justice Act*. (See Chapter 2).

On the first day of the Commission's hearings, Counsel for two of the witnesses summoned to appear that day challenged the

Commission's jurisdiction to conduct the investigation. Those witnesses and another person involved in the towing industry subsequently made applications to the Supreme Court under s. 2.25 (now s. 34) of the *Criminal Justice Act* (see Chapter 3). The Commission postponed most of its investigations pending the outcome of the application.

Ryan J, who ultimately heard and dismissed the applications, delivered judgment in the matter on 6 January 1993. The Commission then proceeded to examine witnesses at investigative hearings. (See Chapter 4).

1.3 THE TOW TRUCK INDUSTRY

1.3.1 Towing Activity

Towing operations within the Brisbane area can be categorised as:

- clearway towing
- accident towing
- trade towing including breakdown towing.

Clearway towing involves the towing of illegally parked vehicles from major arterial roads and inner city streets during peak hour traffic. This form of towing is not covered by the *Tow-truck Act* and *Regulations*, nor is it subject to any procedures laid down by the Department of Transport. In recent years the Police Service has developed procedures which make a distinction between clearway towing on the one hand and the towing of other illegally parked vehicles (for example, vehicles in No Standing Zones) on the other hand. These procedures are examined in Chapter 5. The Department of Transport estimated that, as at July 1993, the level of clearway towing activity was 680 tows per annum[2]. Data obtained from the Police Communications Centre indicate that tow-

[2] Department of Transport Issues Paper, 'Regulation of the Tow Truck Industry in Queensland', July 1993.

away activity for the Brisbane area is as high as 384 police directed tows per quarter (February to April 1993).

The Officer-in-Charge of the Police Communications Centre estimated that, allowing for a "quiet" month such as January, police-directed tows occur at the rate of 1,500 tows per annum. These can be categorised as follows:

- Clearway and 'No Standing' zone towing - 1,200 per annum (approximately)

- vehicle recoveries and stolen vehicle towing - 300 per annum (approximately).

Accident towing is governed by the *Tow-truck Act 1973* and the *Tow-truck Regulations 1988*. The term 'incident' is defined in the *Tow-truck Regulations* as 'a collision or impact (however caused) occurring on a road or resulting in damage to a motor vehicle and includes a collision or impact (however caused) occurring off a road and resulting in damage to a motor vehicle where immediately before the collision or impact the motor vehicle had been travelling on a road'. It is police procedure that police attend motor vehicle incidents where there is injury or death, or where the estimated vehicle or property damage exceeds $2,500. The observation is made in the Department of Transport's Issues Paper that in practice, accidents involving injury or death receive priority.

Tow truck operators obtain information about 'incidents' by:

- a call from the Police Communications Centre as a result of a request from the police who attend the incident scene

- a direct call from the driver of a damaged vehicle

- using scanners, at the tow truck base or in the tow truck itself, to intercept police broadcasts or broadcasts of other emergency services

- receiving information from spotters

- waiting at well known trouble spots.

Department of Transport statistics for the 1991–92 financial year reveal that the number of traffic incidents attended by police in the greater Brisbane area and adjacent Moreton district totalled 8,763 compared with 6,569 for the rest of Queensland for the same period. The Department of Transport therefore recognises that accident towing in the Brisbane and Moreton districts is highly competitive. The Department of Transport estimated that, as at July 1993, there were 54,000 incident tows in Queensland per annum[3]. This form of towing activity became the main focus of the Commission's investigations.

It is not possible to accurately determine from QPS data the number of traffic accidents attended by police annually. The QPS advised the Commission that in the 1992 calendar year, 29,416 traffic incidents were reported to police. However, many of these incidents were not recorded by police by way of an official report where there was no personal injury, or where property damage fell below $2,500. In the case of traffic accidents involving personal injury and/or property damage in excess of $2,500, the QPS advised that such data were held at each individual police station and were not readily available.

Trade towing is towing of vehicles other than towing from the accident scene and clearway and other police authorised towing. It includes:

- the towing of vehicles from a tow truck operator's holding yard to a repairer (known as the second tow) or from one repairer to another

- the towing of vehicles on behalf of motor vehicle retailers for mechanical or other repair, or simply as a form of vehicle transportation

- breakdown towing.

Breakdown towing is a service provided primarily by RACQ towing contractors. The Department of Transport, in its Issues Paper of July 1993, estimated breakdown

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[3] Ibid.

towing activity at 80,000 per annum, with the RACQ accounting for 69,600 tows per annum.

There are no procedures for trade towing laid down by the Department of Transport or the Police Service. Such towing is not covered by the *Tow-truck Act* and *Regulations*.

There is limited information available as to the volume of trade towing. However, the Department of Transport, in its Issues Paper of July 1993, estimated the level of trade towing (excluding breakdown towing) at 70,000 tows per annum. This form of towing activity became relevant to the Commission's investigation of allegations of the use of stand-over tactics by persons connected with a towing organisation against spare parts suppliers.

1.3.2 Towing Entities

In the Brisbane area, the larger towing entities include:

- Ready Towing (inner Northside)
- Telford Towing (outer Northside)
- Yellow Towing (inner Southside)
- Harvey/Highland Towing (outer Southside)
- Trend Towing (South-West)
- Bayside Towing (South-East).

These entities operate between six trucks and 40 trucks. Smaller entities include:

- Alderley Auto Towing (Northside)
- Western Suburbs Towing (Toowong)
- John Lyons Towing (inner Southside)
- Phill Campbell Towing (South-East)

- P & M Motors Towing (South-East).

Many repairers own tow trucks and place their trucks with the fleets of the larger tow truck operators. For example:

- Manual Body Works and Col Shipstone Smash Repairs own trucks which comprise part of the fleet of Ready Towing

- Domroy's Smash Repairs have owned trucks which, from time to time, have comprised part of the Yellow Towing fleet

- The Spray Shop owns a truck which was in the fleet of Economy Towing Service and now comprises part of the fleet of Harvey/Highland Towing.

Other repairers also trade as tow truck operators. For example:

- the proprietors of Trend Auto Repairs operate Trend Towing

- the proprietor of John Lyons Smash Repairs operates John Lyons Towing.

A very small number of the smaller towing operators own and operate their own tow trucks and gave evidence that they have no business connection at all with repairers. Some examples are Western Suburbs Towing and Alderley Auto Towing.

1.4 THE *TOW-TRUCK ACT 1973*

The substantive provisions of the Act have not been amended since it was passed. The *Tow-truck Regulations* were most recently amended in 1988.

In introducing the Tow-truck Bill, the then Minister for Transport, the Honourable K W Hooper, said:

> The purpose of this Bill is to provide a measure of control over the activities of unscrupulous tow truck operators who prey on

> unfortunate motorists involved in accidents. The object of this Bill is to stamp out the unsolicited and unwarranted, snide tactics and practices of an undesirable minority element now operating tow trucks. (Hansard, 29 March 1973, pp. 3423–3424).

The *Tow–truck Act* provides for the licensing of tow truck:

- operators
- drivers
- drivers' assistants.

The *Tow–truck Regulations* provide for:

- towing procedures
- the issuing of towing authorities
- holding yards
- tow truck specifications.

The *Tow–truck Act* and *Regulations* are administered by the Director–General of Transport and are enforceable by police officers and authorised officers of the Department of Transport.

The *Tow–truck Act* and *Regulations* are specifically limited to towing from 'incidents', the rationale being (at least partly) that a vehicle owner, having been involved in an accident, is in a disadvantageous position so far as making an informed and reasoned choice about towing services.

One of the main strategies of the legislation is to require that an individual, partnership or company hold a licence to operate a tow truck business (ss. 5–12 inclusive).

Another important feature of the legislation is that an Authority to Tow must be completed and signed by the owner or person responsible for a damaged vehicle before a tow truck driver or tow truck driver's assistant can take control of that damaged vehicle. {s. 12(2)(e)}. Section 12 provides (in part) as follows:

Conditions of licence

(1) Every licence shall be subject to the performance and observance by the holder thereof of the provisions of this Act with respect to the licence or to the tow-truck or tow-trucks to which the licence relates and of the conditions particularised in the licence or affixed thereto.

(2) Without limiting the generality of the provisions of subsection (1), it shall be a condition of every licence –

.....

(e) that a person shall not on a road tow a damaged motor vehicle (not being a motor vehicle that is owned by the holder of the licence) by means of any tow-truck to which the licence relates unless he has obtained the consent of the owner thereof, the owner's agent or an authorised officer to remove that motor vehicle and a duly signed towing authority relating to that motor vehicle dealt with as prescribed;

(f) that a person shall not obtain or attempt to obtain a signature on a form of towing authority unless there has first been entered on that form the full address of the place to which the motor vehicle the subject of the towing authority will be towed and, where any business is carried on in that place, the name of the business;

.....

(i) that a person shall not tow a damaged motor vehicle from the scene of an incident by means of any tow-truck to which the licence relates to a place other than the place referred to in paragraph (f);

(j) that where a motor vehicle has been towed to the place referred to in paragraph (f), a person shall not, except to return the motor vehicle to the registered owner thereof or his agent authorised in writing, remove the motor vehicle to another place without the written authority of that owner or agent given after the motor vehicle has been towed to the place from which it is to be removed;

(k) that where a damaged motor vehicle has been towed to a place where it is under the control of the holder of the licence, a person shall not refuse to deliver the motor vehicle to the registered owner thereof or his agent duly authorised in writing on request by the owner or his agent after payment of reasonable charges for the towing and storing of the motor vehicle, and where repair work has been authorised by the owner or his agent, for that repair work, has been made or tendered;

.....

(m) that a person shall not obtain or attempt to obtain at the scene of an accident authority for the towing of a damaged motor vehicle by means of any tow-truck to which the licence relates unless he is the driver of the tow-truck having the authority express or implied of the holder of the licence, his servants or agents;

(n) that the holder of the licence shall not, unless he is the holder of a driver's certificate, obtain or attempt to obtain any authority referred to in paragraph (e);

.....

Sections 13–19 (inclusive) of the Act provide that a person seeking to drive a tow truck or to assist a tow truck driver on or about the tow truck, is required to be the holder of a certificate which is renewable at 12 month intervals.

Sections 22–27 (inclusive) of the Act provide for various offences which might be committed by a person operating a tow truck at an accident scene. Section 23 is most relevant to the Commission's inquiry. That section provides as follows:

Consideration for obtaining certain information or work.

1) A person –

a) Shall not for the purpose of obtaining a towing authority or enabling any other person to obtain a towing authority, give or receive or agree to

give or receive any valuable thing in consideration of the furnishing of information or advice as to the occurrence of an incident or the presence of a damaged motor vehicle on a road;

b) Shall not give or agree or offer to give any valuable thing in consideration of the obtaining for himself or any other person of the work of repairing a damage motor vehicle;

or

c) Shall not receive or agree or offer to receive any valuable thing in consideration of the obtaining from any other person of the work of repairing a damaged motor vehicle.

(2) In this section "valuable thing" includes any money, loan, office, place, employment, benefit or advantage and any commission or rebate payment in excess of actual value of goods or service, deduction or percentage, bonus or discount or any forbearance to demand any money or monies worth or valuable thing, but does not include any reasonable charge in respect of the towing, salvage or storage of a damaged motor vehicle.

Section 23(1)(a) prohibits the payment of spot fees in return for traffic accident information. Sections 23(1)(b) and (c) prohibit drop fees. Both the payment and the receipt of such benefits are proscribed by the Act.

It became apparent from preliminary investigations that the payment and receipt of spot fees and drop fees were endemic in the smash repair and tow truck industries. The Police Service and the Department of Transport had had little success in gathering evidence of these types of breaches of the *Tow-truck Act* using conventional methods of investigation. The investigative hearings conducted by the Commission, together with use of its power to require the production of documents, proved to be an effective method for gathering evidence of the commission of these offences.

The major focus for the Commission's investigations was:

- the payment of spot fees to police

- widespread and organised payment and receipt of drop fees in contravention of the *Tow-truck Act*.

1.5 THE SMASH REPAIR INDUSTRY

The Department of Transport estimates that there are approximately 1,322 repairers in Queensland, who employ an average of three persons. The Department notes that repairers have a direct involvement in the tow truck industry, firstly by simply repairing damaged motor vehicles which require towing and secondly, in many cases, in their ownership of tow trucks. Although the Department has the responsibility of maintaining all of the relevant records in relation to tow trucks which perform accident towing, it frankly acknowledges that it does not know the exact number of tow trucks owned by repairers. While some tow trucks are owned by repairers and registered in their name, others are owned by repairers but registered in the name of licensed tow truck operators and the true ownership of an individual vehicle is not discoverable by any search of Departmental records.

The Department points out that while some repairers are also registered tow truck operators, since there are approximately 368 tow trucks registered to perform accident towing and 1,322 repairers, the majority of repairers do not own a tow truck registered to perform accident work. Commission investigations revealed that these repairers obtained a flow of repair work by the following methods:

- From a well established client base, whether the vehicle is delivered by the client or by a tow truck at the client's direction.

- By receiving a substantial proportion of 'drive-in' accident work from new clients (that is, damaged vehicles that can still be driven).

- By receiving 'drive in' accident work directed to the repairer by an insurance company for which the repairer is a selected or approved repairer.

- By quoting on damaged vehicles stored in a nearby holding yard registered under the *Tow-truck Regulations* in the

name of a towing entity but in fact owned or leased by the repairer.

- By quoting on damaged vehicles stored in a holding yard registered in the name of a towing entity. In many cases these yards are owned or leased by an opposition repairer. The opportunity to quote on the repair will usually arise from the repairer's status as a selected or approved repairer for a particular insurance company.

From the above, it can be seen that a repairer will quote on repair work at:

- the tow truck operator's registered holding yard (though, as mentioned, these are most commonly owned or leased by a repairer)
- the vehicle owner's premises
- the repairer's workshop
- an insurance company quotation centre (particularly in the case of AAMI).

In those cases where the damaged vehicle is located at a tow truck operator's holding yard, the vehicle is towed from that yard to the premises of the repairer approved by the insurer or vehicle owner to perform the repair. This is known as the 'second tow'.

The Commission's investigation necessarily examined the relationships which exist between certain repairers and certain tow truck entities. Two important aspects of these relationships are:

- the true ownership of certain tow trucks and the connection between such ownership and the destinations to which damaged vehicles were towed during the 1990–91 period by those trucks, such destinations being recorded in tow authority books required to be kept pursuant to the *Tow-truck Act*;
- the extent to which, in some areas, selected repairers for particular insurers failed to receive any significant volume of repair work from tow trucks because they did not own

or operate a tow truck and/or because they did not pay drop fees.[4]

1.6 Accident Towing as a Proportion of Towing Activity

Accident towing is the type of towing activity which brings together the tow truck operators, the repairers, the Police Service, the Department of Transport and the public. It is the type of activity which has formed the major focus for the CJC inquiry. It is estimated that accident towing accounts for only 20% of total towing activity. However, that 20% represents an inordinately high proportion of the total value of towing and smash repair work. A vehicle involved in an accident and requiring a tow will have particular value to the towing and smash repair industries because:

- the prescribed towing fees (bolstered in many cases by illegal payments) payable are significantly higher than in the other types of towing activity

- the value of the repair work (both labour and parts) on such a vehicle is usually significantly higher than the value of repair work on a damaged vehicle which is still able to be driven.

Accident towing therefore occupies a significant place in the smash repair and towing industries.

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[4] Smash repairers in Queensland are not subject to any regulation, except to the extent that s.23(1)(b) proscribes generally the giving of a benefit in return for obtaining the work of repairing a damaged motor vehicle.

CHAPTER 2 – JURISDICTION

2.1 THE *CRIMINAL JUSTICE ACT 1989*

During the course of the Commission's investigation, the *Criminal Justice Act 1989* was reprinted and its sections renumbered. References in this report to the Act are generally to the sections as reprinted. However, where sections of the Act are referred to in quotations (from judgments or otherwise), the numbering which then existed is used and the corresponding section in the Act as reprinted is shown in a footnote.

Section 21(1)(b) of the Act provides as follows:

> The Commission shall discharge such functions in the administration of criminal justice as, in the Commission's opinion, are not appropriate to be discharged, or cannot be effectively discharged, by the Police Service or other agencies of the State.

Section 23 of the Act, so far as it is relevant, provides as follows:

> The responsibilities of the Commission include –
>
> .....
>
> (f) in discharge of such functions in the administration of criminal justice as, in the Commission's opinion, are not appropriate to be discharged, or cannot be effectively discharged by the Police Service or other agencies of the State undertaking –
>
> ...
>
> (iii) investigation of official misconduct in units of public administration;
>
> (iv) investigation of organised or major crime.
>
> .....
>
> (l) taking such action as the Commission considers to be necessary or desirable in respect of such matters as, in

the Commission's opinion, are pertinent to the administration of criminal justice.

Sections 29(1) & (2) of the Act provide as follows:

> The Official Misconduct Division is the investigative unit within the Commission.
>
> It will operate of its own initiative, as well as in response to complaint or information received concerning misconduct.

Section 29(3) of the Act, so far as it is relevant, provides as follows:

> It is the function of the Division –
>
> (a) to investigate the incidence of official misconduct generally in the State;
>
> (b) to further the investigative work carried out on behalf of the Commission of Inquiry continued in being by the Commissions of Inquiry Continuation Act 1989;
>
> .....
>
> (d) to investigate cases of –
>
> (i) alleged or suspected misconduct by members of the Police Service; or
>
> (ii) alleged or suspected official misconduct by persons holding appointments in other units of public administration,
>
> that come to its notice from any source, including by complaint or information from an anonymous source;
>
> (e) to offer and render advice or assistance, by way of education or liaison, to law enforcement agencies, units of public administration, companies and institutions, auditors and other persons concerning the detection and prevention of official misconduct;

(g) to report as prescribed in relation to its investigations;

(h) to perform such duties on behalf of the Commission as the Chairman directs.

Section 32(1) defines 'official misconduct' as follows:

(a) conduct of a person, whether or not he holds an appointment in a unit of public administration, that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or of any person holding an appointment therein;

(b) conduct of a person while he holds or held an appointment in a unit of public administration –

(i) that constitutes or involves the discharge of his functions or exercise of his powers or authority, as the holder of the appointment, in a manner that is not honest or is not impartial;

or

(ii) that constitutes or involves a breach of the trust placed in him by reason of his holding the appointment in a unit of public administration;

or

(c) conduct that involves the misuse by any person of information or material that he has acquired in or in connexion with the discharge of his functions or exercise of his powers or authority as the holder of an appointment in a unit of public administration, whether the misuse is for the benefit of himself or another person,

and in any such case, constitutes or could constitute –

(d) in the case of conduct of a person who is the holder of an appointment in the unit of public administration, a criminal offence, or a disciplinary breach that provides reasonable grounds for termination of the person's services in the unit of public administration;

(e) in the case of any other person, a criminal offence.

Section 33(1)(a) requires the Director of the Official Misconduct Division to report on:

> every investigation carried out by the Division (other than by or on behalf of the Complaints Section).

In this instance the investigation was not carried out by or on behalf of the Complaints Section.

Section 33(2) requires the Director to report to the Chairperson and also empowers the Chairperson to authorise that the report be disseminated to:

> such 1 or more of the following as the Chairperson considers appropriate –
>
> (a) the Director of Prosecutions, or other appropriate prosecuting authority, with a view to such prosecution proceedings as the Director of Prosecutions or other authority considers warranted; and
>
> (b) the Executive Director of the Commission with a view to a Misconduct Tribunal exercising jurisdiction in respect of the matter to which the report relates; and
>
> ...
>
> (g) in a case to which paragraphs (c), (d) and (f) do not apply – the appropriate principal officer in a unit of public administration, with a view to disciplinary action being taken in respect of the matter to which the report relates.

2.2 Suspected Payment of Spot Fees to Police and Other Persons. (Terms of Reference No. 1)

Operation Spot II was commenced after a senior police officer alleged that members of the QPS were receiving spot fees from tow truck drivers or entities in return for the supply of traffic accident information. Such allegations, if proved, could constitute misconduct under s. 29(3)(d)(i) of the *Criminal Justice Act* and official misconduct under s. 32.

Therefore, the Official Misconduct Division clearly had jurisdiction to investigate the allegations under s. 29(3)(d)(i). Furthermore, similar allegations had previously been investigated by the Commission of Inquiry conducted by Mr G E Fitzgerald QC. The Official Misconduct Division had already carried on that investigative work during Operation Spot. However, the fresh complaint that such conduct was continuing, made it imperative that further investigations be carried out. Section 29(3)(b) therefore provided a further jurisdictional basis for the investigation.

The allegations of receipt of spot fees by other persons were included in the terms of reference of the investigative hearing. The Commission held information, considered reliable, that payments of spot fees were commonly made to persons such as taxi drivers and proprietors of service stations and corner stores. These payments were said to be widespread. The payments were commonly $20–$30. They were said to be made by the tow truck driver or operator who was successful in obtaining a smash tow as a result of the information provided by the "spotter". Such allegations, if proved, would establish that breaches of s. 23 of the *Tow-truck Act* were widespread and organised. In those circumstances, the same considerations as to jurisdiction applied in relation to the investigation of allegations of payments of spot fees as to the investigation of allegations of payments of drop fees (see 2.3 below).

2.3 SUSPECTED PAYMENT OF DROP FEES BY SMASH REPAIRERS TO PERSONS/ENTITIES INVOLVED IN TOWING. (TERMS OF REFERENCE NO. 2).

Prior to the commencement of the 'Spot II' investigative hearings, the Commission held reliable information that some repairers reluctantly paid drop fees to tow truck drivers in order to attract repair work from the tow truck operators. The Commission's investigators noted a general reluctance on the part of repairers to speak out about drop fees for fear of reprisals from some elements of the towing industry. The Commission also held reliable information that payments of drop fees may have been organised by some elements of the tow truck industry.

On 27 July 1992, Sir Max Bingham QC, Chairman of the CJC signed a record of the Commission's determination that the

investigation was an investigation of organised crime which could not appropriately be discharged or which could not effectively be discharged by the Police Service or other agencies of the State of Queensland. He directed the Official Misconduct Division pursuant to section 2.20(2)(i)[5] of the *Criminal Justice Act 1989* to undertake the investigation on behalf of the Commission.

This determination was of particular relevance to the investigation of Terms of Reference Nos. 2 and 3.

Section 23 of the *Tow-truck Act* proscribes the giving and receiving of spot fees and drop fees.

A person who contravenes or fails to comply with any provision of the *Tow-truck Act* commits an offence against the Act (s. 40(1)). An offender is liable to a fine, which may be recovered by way of summary proceedings before a Magistrates Court (s. 40(3) and s. 40(4)). The court may order that in default of payment of a fine, the offender be imprisoned (see ss. 161, 163 and 163A of the *Justices Act 1886*). The offences are criminal in nature because the *Justices Act* authorises imprisonment in the last resort (see *Michel v. Medical Board of Queensland* (1942) St.R.Qd. 1 at pp. 33, 36 and *Queensland Law Society Inc v. A Solicitor* (1989) 2 Qd.R. 331 at p. 336). The Commission had information that these offences were being committed widely and on an organised basis in such a way as to effectively oblige repairers to make such payments if they wanted to remain in business. In some cases the payment of drop fees was part of a cosy arrangement between a towing operator and a repairer. In other cases, the pressure applied to repairers to pay drop fees was tantamount to extortion[6] as they

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[5] Now s.29(3)(h)

[6] S.415 of *The Criminal Code* provides that:

Demanding property, benefit of performance of services with threats. Any person who with intent to extort or gain any property or benefit or the performance of services from any person –

...

(b) orally demands without reasonable or probable cause –

(i) any property or benefit or the performance of services from any person; or

knew that failure to make such payments would drastically reduce their flow of lucrative repair work. The Commission was therefore of the opinion that the matter involved the investigation of organised crime.

It fell to the Commission to determine whether or not the investigation was a function in the administration of criminal justice which was not appropriate to be discharged, or could not be effectively discharged, by the Police Service or by some other agency of the State of Queensland. The investigation was challenged by way of an application under s. 34 of the *Criminal Justice Act* (see Chapter 3) by Trevor Frederick Cripps Bryant, Domenico D'Alessandro and Matthew John Ready. The applications were heard by Ryan J in the Supreme Court, Brisbane and all were dismissed. His Honour said:

> The investigation is into the activities of persons and entities engaged in the tow truck industries. That investigation will fall within the responsibilities of the Commission if, in terms of section 2.15[7] of the *Criminal Justice Act*, it is an investigation of Official Misconduct in units of public administration, or an investigation of organised or major crime. The Commission is not authorised by the Act to conduct investigations into the activities of persons and entities engaged in the tow truck industries except so far as the investigations are of the kind specified in section 2.15 or section 2.20[8]. (See re *Bryant, D'Alessandro and Ready*, O.S. 758, 770 and 894 of 1992 (unreported) at p. 24).

His Honour then ruled that the investigation was within the Commission's jurisdiction as no basis had been established for questioning the Commission's opinion that the investigation was an investigation of organised crime which is not appropriate to be

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(ii) that anything be done or omitted to be done or be procured by any person,

with threats of injury or detriment of any kind to be caused to that person or any other person or to the public or any member or members of the public or to property, by the offender or any other person, if the demand is not complied with

is guilty of a crime and is liable to imprisonment for fourteen years.

7 Now ss. 23.

8 Now ss. 23 and 29.

discharged, or which cannot effectively be discharged by the Police Service or another agency of the State.

The Commission had information that the Department of Transport was aware of the widespread payment of spot fees and drop fees in breach of s. 23 of the *Tow-truck Act*, but no person had ever been prosecuted for giving or receiving such payments, with one possible exception in 1984. This was relevant to the Commission's assessment that the investigation was one that could not be effectively undertaken and was not appropriate to be undertaken, by the Department or by the Police Service.

It was also a relevant consideration in determining this issue that members of the QPS were believed to be in a corrupt relationship with persons in the towing industry and that the members alleged conduct, if substantiated, could constitute official misconduct.

A further possible basis for the Commission's jurisdiction is provided by section 23(l) of the *Criminal Justice Act* which states that one of the responsibilities of the Commission is to take 'such action as the Commission considers to be necessary or desirable in respect of such matters as, in the Commission's opinion, are pertinent to the administration of criminal justice'. Evidence existed that widespread offences were being committed against s. 23 of the *Tow-truck Act* and that no appropriate enforcement action in relation to those offences had been taken. This was a matter which could rightly be regarded as 'pertinent to the administration of criminal justice' and justifying the Commission's investigation.

2.4 Allegations of Improper Approaches by Persons Engaged in Towing Towards Motor Spare Parts Dealers, Accompanied by Threats of Detriment. (Terms of Reference No. 3)

Prior to the commencement of the Spot II investigative hearings, the Commission obtained information that some elements in the towing industry were responsible for exerting pressure on spare parts suppliers, with threats of detriment to their business if they did not allocate their 'trade towing' work to a particular towing entity. Such information raised the question whether organised stand-over tactics were being employed by elements within the towing industry against another section of the motor industry.

Such allegations, if proved, could constitute a breach of s. 415 of the *Criminal Code* (Extortion) and could constitute either organised crime or major crime or both.

2.5 Possible Official Misconduct by Persons Employed in Units of Public Administration (Terms of Reference No. 4).

The Commission's investigations prior to the commencement of the Spot II investigative hearings revealed allegations of widespread breaches of the *Tow-truck Act*. Persons engaged in the tow truck and smash repair industries claimed that they had made numerous complaints to the Department of Transport concerning breaches of the Act and that no action, or no effective action, was forthcoming from the Department. Several of those persons expressed a lack of confidence in the Department's willingness or ability to investigate and prosecute breaches of the Act. In the light of allegations that police officers had a corrupt association with persons in the towing industry and in the light of a perceived lack of enforcement of the relevant provisions of the Act, administered by the Director-General of Transport, the Commission considered it necessary to determine whether there was any evidence of official misconduct by persons employed within the Department. Investigation of suspected official misconduct by persons holding appointments in units of public administration falls within the functions and responsibilities of the Commission (ss. 23(f)(iii) and 29(3)(d)(ii) of the *Criminal Justice Act*).

2.6 The Question of the Sufficiency of Evidence and the Purpose of the Report

The very nature of an inquiry under the Act raises the question as to the degree of satisfaction which should be attained before it is safe for the Commission to conclude that any of the allegations the subject of inquiry had been established. The Act is silent on the degree of satisfaction required.

However, assistance can be obtained from a consideration of the statutory purpose of a report such as this. Upon completion of this investigation, the Director of the Official Misconduct Division, in compliance with s. 33 of the Act made a report to the Chairperson.

The Act in s. 33(2) provides that the Chairperson may take such action in relation to a report received in this way from the Director of the Official Misconduct Division as he considers desirable including, but not limited to, authorising that the report be forwarded to:

- the Director of Prosecutions, or other appropriate prosecuting authority, with a view to the prosecution of such criminal charges as the Director of Prosecutions or other authority considers warranted

- the Executive Director of the Commission with a view to proceedings before a Misconduct Tribunal in relation to a disciplinary charge or charges of official misconduct; or

- the appropriate principal officer of a unit of public administration with a view to disciplinary action being taken in respect of the matter to which the report relates.

Section 33 of the Act, therefore, requires that regard be had not only to the existence of evidence but also to its sufficiency for certain purposes. It would not be appropriate for a report to be made to any of the abovementioned authorities, if, whatever evidence there may be of the commission of a criminal offence, official misconduct, misconduct or other disciplinary breach, that evidence, when considered in light of all of the evidence, would be insufficient to establish a prima facie case in a prosecution of criminal charges or, as the case may be, disciplinary proceedings.

Therefore, in considering whether to report to the Director of Prosecutions (for example) with a view to the prosecution of criminal charges, the Commission must be mindful of the sufficiency of the evidence and make some assessment of its weight and reliability in light of the standard required to establish guilt in criminal proceedings, namely beyond reasonable doubt.

Similarly, in considering whether to make a report for the purpose of disciplinary action, the Commission must be mindful of the sufficiency of the evidence and make some assessment of its weight and reliability in light of the standard of proof in disciplinary proceedings, namely, on the balance of probabilities, a standard which varies according to the gravity of the finding to be made. This standard is often called the *Briginshaw* principle or the standard of *reasonable satisfaction* and in applying it the Commission adopts the statement of Sir Owen Dixon in

Briginshaw v. Briginshaw (1938) 60 CLR 336 at pp. 361–362 where he stated:

> Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether an issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect references ...

Therefore, when considering whether the report should be referred to a Misconduct Tribunal or to the principal officers of units of public administration in which certain officers are employed, the Commission considered that it had to be satisfied at least to the *Briginshaw* standard that there was sufficient evidence to warrant the taking of disciplinary action.

Quite apart from the referral of the report to the bodies referred to above the Chairperson is authorised by s. 33 to take any action he considers desirable. In this case he has chosen to refer the report to the Commission constituted by himself and four part-time Commissioners.

The Commission has determined that pursuant to s. 26 of the Act a copy of the report shall be forwarded to the Chairperson of the Parliamentary Criminal Justice Committee, the Speaker of the Legislative Assembly and the Minister for Justice and Attorney-General.

Section 93 of the Act requires the Commission to include in each of its reports its recommendations and an objective summary of all matters of which it is aware that support, oppose, or are otherwise relevant to its recommendations.

The section also authorises the CJC to include in a report any comments it may have on those matters. The CJC has applied the standard of reasonable satisfaction in making such comments and reaching conclusions for the purposes of this report.

2.7 PROCEDURAL FAIRNESS

The Commission is required by s. 22 of the *Criminal Justice Act* to:

> At all times act independently, impartially, fairly and in the public interest.

As the hearings conducted by the Commission were in camera, the Commission was concerned to ensure that it complied with the requirements of procedural fairness before the report was released. Therefore, the Commission forwarded to each person the subject of a possible adverse finding in the report, while it was in draft form, a Notice of Possible Adverse Findings, together with sections of the draft report relevant to each of those persons. The Notice invited each person to furnish any submission or information considered relevant to the possible findings within a specified period. The Commission also forwarded relevant sections of the draft report to each person who, although not the subject of a possible adverse finding, was nevertheless referred to in the draft report in a way which could reasonably be considered to be adverse to that person. Each of those persons was also invited to furnish any submission or information considered relevant to such references.[9] The CJC carefully considered every submission received before finalising its report. Most of those submissions suggested only minor amendments to the report and, where appropriate, these changes were made. However, several significant amendments were made as a result of, or partly as a result of, submissions received.

All of the submissions received by the CJC are reproduced in Appendix 2 to this report.[10] In some cases, passages have been omitted from those submissions. Where this has occurred, the reason for doing so is given in a footnote added to the submission.

It will be noted that a submission was furnished by Mark Ready and Mathew Ready Junior on behalf of Hexlawn Pty Ltd, trading

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9 Appendix 1 lists the persons invited to furnish such submissions.

10 Because of amendments made to the report after submissions were invited (in some cases, as a result of those submissions), some passages of the draft report referred to in several submissions do not appear in the final version of the report or do not appear at the same page.

as Ready Towing, its employees and associated drivers. The submission stated that the group maintained its apprehension of bias on the part of the Commission. This was one of the grounds of the application to the Supreme Court challenging the Commission's investigation and was rejected by Ryan J. (see Chapter 3).

It will also be observed that the Ready Towing group's submission disputes comments adverse to the group contained in the draft report forwarded for their comment. The submission also asserted that the group had not had the benefit of testing the truth of the evidence given. However, each of the persons to whom a notice was sent gave evidence at the investigative hearings of the Commission during which they were given the opportunity to respond to allegations made against them. Where those persons have denied the allegations, their denials are stated in the report together with any explanation given by them. In addition, the conclusions in the report are generally based on matters admitted or not disputed by those persons in the course of their evidence.

In compiling the report the Commission was mindful of its responsibility under s. 21(2) of the Act to present a fair view of all submissions and recommendations made to it, whether such submissions and recommendations were supportive of, or contrary to, the Commission's recommendations on the matter. This responsibility is substantially reiterated in s. 93, referred to in paragraph 2.6.

CHAPTER 3 – LEGAL CHALLENGE

3.1 APPLICATION FOR A STAY OF PROCEEDINGS, 27 JULY 1992

On 27 July 1992, the first of the return dates for the many summonses issued in respect of the repairers, Mr R Greenwood QC, instructed by Messrs Maxwell Mead and Young, Solicitors, appeared for Trevor Frederick Cripps Bryant, then the proprietor of Brisbane Smash Repairs. Bryant was the first witness to be called in the investigative hearings.

Firstly, Mr Greenwood applied for a stay of the investigative hearing on the basis that the description of the nature of the investigation contained in Schedule I of the summons to Mr Bryant was of its nature, and in its description, outside the jurisdiction of the Commission. He submitted that an investigation into breaches of the *Tow-truck Act 1973* involved an investigation into the commission of simple offences, which investigation could be effectively discharged by the Department of Transport (and/or the Crown Law Office), being the agency described by law to assist in the policing of the Act.

Secondly, Mr Greenwood submitted that as a matter of general policy considerations, the investigative hearing was misconceived. In the course of this second submission, Mr Greenwood announced that he and his instructing solicitors acted not only for Mr Bryant, but also for another proposed witness named D'Alessandro together with a number of 'other operators who have been summonsed before this Commission in this matter'. Mr Greenwood also announced that he had instructions to appear for a Mr Ready, 'probably the largest operator in his calling in the city.' He indicated that Mr Ready was in a position to substantiate allegations that certain members of the QPS had received bribes in connection with towing operations. He indicated that Mr Ready had volunteered information to a police officer attached to the CJC and that he was prepared to co-operate with the Commission and would welcome a proper investigation into those allegations. Mr Greenwood submitted that the Commission should concern itself with Mr Ready's allegations of police corruption and not the investigation as described in the Schedule to the Summons.

Thirdly, Mr Greenwood submitted that the Commission, if it continued the investigation in its present form, would be seen as demonstrating a real or perceived bias against certain unnamed persons.

Counsel Assisting the Commission, Mr Devlin, raised the question as to whether Mr Greenwood ought to be permitted to appear for more than one witness summonsed to the investigative hearing.

The Deputy Director of the Official Misconduct Division, Mr D J Bevan, the officer authorised by the Chairperson of the CJC to conduct the investigative hearing under s. 25(2)(d) of the *Criminal Justice Act*, ruled as follows:

1. That the investigation was within the powers and functions of the Commission.

2. That Mr Greenwood's submission as to bias on the part of the Commission in the way that it went about its investigative hearings was unfounded.

3. That it was inappropriate for Mr Greenwood or his instructing solicitor to appear for any witness other than Mr Bryant at any future investigative hearing in relation to the current matter.

Mr Greenwood then announced that he held instructions to institute an application to review Mr Bevan's decision under s. 34 of the *Criminal Justice Act*.

Mr Bevan adjourned the investigative hearing to Monday 3 August 1992, to enable legal proceedings to be instituted. In the result, the bulk of the investigative hearings did not resume until January 1993, after judgment in the matter was received. (Two witnesses were examined in December 1992 because of their imminent departure from Queensland).

3.2 Applications to Supreme Court, 31 July and 7 September 1992

On 31 July 1992, Domenico D'Alessandro and Trevor Frederick Cripps Bryant instituted separate proceedings under s. 34 of the *Criminal Justice Act*, in the Supreme Court at Brisbane. In the

case of D'Alessandro, his application was that the Director of the Official Misconduct Division cease or not proceed with the investigation unless the Applicant were permitted to appear by counsel or solicitor of his choice. In the case of Bryant, his application was brought on two bases:

- that the investigation was not within the functions of the Commission, in that breaches of the *Tow-truck Act* could be effectively investigated by the Department of Transport and the Crown Law Office;

- that the Commission and individuals within the Commission were affected by bias because of previous dealings with Mathew John Ready.

A further application under s. 34 was commenced by Mathew John Ready on 7 September 1992 and was subsequently joined with the applications of Bryant and D'Alessandro. The Ready application was in similar terms to the Bryant application.

Section 34 provides as follows:

> **34 Judicial review of Division's activities.** A person who claims –
>
> (a) that an investigation by the Official Misconduct Division is being conducted unfairly;
>
> or
>
> (b) that the complaint or information on which an investigation by the Official Misconduct Division is being, or is about to be, conducted does not warrant an investigation,
>
> may make application to a Judge of the Supreme Court for an order in the nature of a mandatory or restrictive injunction addressed to the Director of the Official Misconduct Division.

The matter came on for hearing before Byrne J on 7 August 1992. An order was sought on behalf of Bryant and D'Alessandro that:

> The Director of the Official Misconduct Division cease, or alternatively, not proceed with an investigation numbered 24 of 1992 .....

Solicitor for the Applicants, Robert David Butler, deposed that a full hearing of the matter would take one day and that he would be asking the Court to make interim orders in respect of further investigations. In a further affidavit the Applicant, D'Alessandro swore that legal fees were to be paid from a fund 'established by several people required to attend by summonses expressed in the same terms'. Later investigation revealed that Mathew John Ready Senior, then employed as the Operations Manager of Combined Towing Service, organised a number of repairers, who owned trucks operated as part of the Combined Towing fleet, to contribute to a fund to pay for the legal expenses of the Applicants Bryant and D'Alessandro.

Byrne J ordered that the parties exchange affidavit material and outlines of argument by certain specified dates throughout August and that the matter be heard speedily.

On 11 August 1992, an affidavit was filed at the Supreme Court, Brisbane, which was sworn by Mathew John Ready Senior. Mr Ready was not then an Applicant in the action of Bryant and D'Alessandro. Mr Ready deposed as follows:

> I am concerned this investigative hearing is an attempt to discredit me and the business known as Combined Towing and I have no faith that the hearing will be conducted fairly because of a history of events which cause me to strongly doubt the impartiality of the Criminal Justice Commission.

Mr Ready deposed that he had previously arranged for numerous drivers to be sent to the CJC where statements could be taken in relation to corrupt practices within the towing industry. He deposed that such corruption included the payment to police of monies by towing operators. Mr Ready deposed that he understood that these drivers were left with the impression that representatives of the CJC were not greatly interested in corrupt payments to police when the allegations were that such corrupt payments were made by towing operators other than the Ready group. Mr Ready deposed that he had never been informed by any person connected with the CJC as to the results of his complaints.

Mr Ready deposed that he had engaged a solicitor and counsel to represent him in the CJC investigation of the tow truck industry, and that the same solicitor and barrister were acting for several persons associated with Combined Towing who had been

summonsed to attend at the investigative hearing. Mr Ready continued:

> A proposed plan is that each tow truck operator will contribute some money to the extent they are able to pay for legal expenses and I will contribute some funds. Combined Towing and each operator is dependent upon the endorsement of the major insurance companies. Our commercial survival is dependent on our good name and despite the expense we feel it is necessary to have representation at the hearing so that any finding that might be contemplated may be influenced and answered by submissions by such legal representatives. It is beyond the resources of any individual tow truck operator to pay for such representation. I reject any suggestion that there has been collusion and that information might be conveyed from in camera hearings by the common legal representatives.

Mr Ready deposed as to his belief that the CJC was not able to fairly investigate any matter in which he was involved, including Combined Towing. His stated reasons were:

- That the Commission and some members of the Parliamentary Criminal Justice Committee wished to discredit him. Mr Ready alleged that, as a result of contact between himself and the Criminal Justice Commission arising out of an alleged fabrication of evidence against him (Ready) by police officers named Huey and Farrah in 1981, the Commission had acted with bias towards him. He asserted that:

  > Every attempt to expose Huey in particular has been thwarted by the Commission.

  Mr Ready deposed that he feared that improper methods might be used to discredit him, because he believed that the Commission wished to justify its continued protection of Huey, 'and that is most efficiently done by discrediting me'.

- Mr Ready believed that Counsel assisting the investigative hearing, Mr Devlin, had the capacity to intimidate possible witnesses. (This claim was abandoned by the Applicant at the interlocutory stage).

On 11 August 1992, Particulars of Claim were served on the Commission by the solicitors acting for the Applicant, Bryant. These Particulars of Claim raised the following allegations:

1. Bias on the part of the officer constituting the investigative hearing, Mr D J Bevan, and other senior officers of the Criminal Justice Commission including the Chairman.

2. That the Criminal Justice Commission is unable to conduct the proposed investigation according to law.

3. That the Commission as constituted by Mr Bevan had no jurisdiction to conduct an investigative hearing as proposed.

On 21 August 1992, pursuant to the order of Byrne J dated 7 August 1992, the Applicant Bryant sought leave to deliver interrogatories to the Commission. On that day, the Applicant was not in a position to deliver draft interrogatories. The Judge in Chambers (White J) ordered that draft interrogatories be delivered by Wednesday 26 August 1992. The Commission objected to the answering of most of the interrogatories.

On Friday 27 August 1992, the application for discovery and the application for leave to deliver interrogatories came before Helman A J, Judge in Chambers.

On 1 September 1992, Helman A J delivered judgement in the application for leave to deliver interrogatories. Part of that judgment reads:

> The application here is for the review of the conduct of an investigation by an investigative body. It is in the nature of things that such a body, unlike a court of law, will have had information and reports communicated to it confidentially, and will have made confidential investigations about such information. It is also no doubt the case that officers of the Commission will have formed opinions about aspects of those investigations. The Commission's undoubted duty is to go about its work fairly, but it must always be remembered that it is not a court of law and the distinction between its functions and that of a court of law must be borne in mind when deciding where the public interest lies. It is clearly in the public interest, I think, that information supplied to the Commission, investigations carried out by the Commission, and opinions formed by its officers in the course of investigations remain confidential – at

least until it becomes necessary for the Commission in the discharge of its statutory obligations to make something public.

In this case, the presiding officer has sworn to the details of his past dealings with any complaints concerning Mr Ready, and no allegation is made as to any direct bias against the Applicant. If discovery of all the documents sought here were ordered, the public interest could well be affected in two ways, in my view; the investigation could be irreparably prejudiced, and the ability of the Commission to investigate other matters might be affected, because confidence in the confidentiality of communications to and within the Commission will be undermined.

His Honour ordered that the respondent make discovery to the Applicant of any written complaints made to it by Mathew John Ready, and any records made of oral complaints made to it by Mathew John Ready, and any documents setting out the Commission's responses to such complaints given pursuant to s. 33(4) of the *Criminal Justice Act*. His Honour gave leave to the Applicant to deliver interrogatories in so far as they related to the complaints to the Commission by Mathew John Ready. In other respects, His Honour did not require the respondent to answer certain interrogatories because in his view, to require answers to those interrogatories would be injurious to the public interest. His Honour also ruled that further interrogatories were oppressive.

The substantive application came on for hearing, pursuant to the order of Byrne J for a speedy trial, on Wednesday 9 September 1992. The matter was heard by Ryan J at the Supreme Court Brisbane. Counsel for the Applicants sought to join three separate applications under s. 34 of the *Criminal Justice Act*. Those actions were as follows:

OS number 758 of 1992 – Application by Trevor Frederick Cripps Bryant;

OS number 770 of 1992 – Application by Domenico D'Alessandro;

OS number 894 of 1992 – Application by Mathew John Ready.

The last application in the name of Mathew John Ready was commenced by summons on 7 September 1992. The Applicant in that matter also sought an order 'that the Director of the Official

Misconduct Division cease, or alternatively not proceed with, (the) investigation'. The application was in similar terms to that of Bryant. The affidavit of Gordon Lyle Harris, a senior constable of police suspended from duty, was filed in this matter. The affidavit set out some of the circumstances under which Senior Constable Harris and another police officer, Detective Sergeant Reynolds, took out summonses against then Superintendent John William Huey in respect of allegations made by Mathew John Ready. The affidavit referred to a large body of material already before the Supreme Court, having been filed in three proceedings already in progress between Harris and the CJC.

It was proposed by Ryan J, with the consent of the parties, that all three applications by Bryant, D'Alessandro and Ready be heard together and that His Honour would receive all of the material to be relied upon and all written arguments by 29 September 1992.

3.3 JUDGMENT OF RYAN J, 6 JANUARY 1993

His Honour delivered judgement in the three applications on 6 January 1993. His Honour dismissed the applications and ordered that the Applicants pay the costs of the applications to be taxed.

His Honour first considered the application of D'Alessandro that the Director cease or not proceed with the investigation unless D'Alessandro were permitted to appear by counsel or solicitor of his choice. After referring to several relevant authorities, Ryan J concluded (at p.20):

> It was, I consider, reasonable for the Commission to conclude that representation by the same legal practitioners of witnesses who were to be separately examined in a closed hearing about a matter which was claimed in the reference to involve organised crime could lead to a situation where information obtained from one witness may be disclosed to another and thereby interfere with the conduct of the investigation. I can see nothing to suggest that this decision was not made bona fide. I consider that the matter placed before me by the Commission, ... is sufficient to justify the exclusion. Accordingly, I consider that Mr Bevan did not err in directing that Mr D'Alessandro was not entitled to be represented by the same counsel and solicitors as appeared for Mr Bryant.

His Honour then considered the Applicants' objection that the Commission had embarked upon a hearing which had a 'borderline' jurisdictional basis. The Applicants had submitted that the Commission should have formed the opinion that the investigation of breaches of the *Tow-truck Act* could and should be able to be effectively discharged by the Department of Transport, being the agency prescribed by law to assist in the policing of the *Tow-truck Act* and by the Crown Law Office. The Applicants had attacked the opinion of the Commission, pursuant to s. 23(f) of the *Criminal Justice Act*, that the investigation was 'an investigation of organised crime which is not appropriate to be discharged or which cannot effectively be discharged by the Police Service or other agencies of the State .....'. His Honour concluded (at p. 24):

> Nothing has been put before me which would lead me to think that the opinion of the Commission should be questioned. It is not enough for the Applicants simply to say that the investigation of offences against the *Tow-truck Act* may be carried out by the relevant departments.
>
> The submission that the Commission was engaged in an investigation into the conduct of private individuals and entities rather than official misconduct by public officers is not sustainable. The investigation is into the activities of persons and entities engaged in the tow truck industries. That investigation will fall within the responsibilities of the Commission if, in terms of s. 2.15[11] of the *Criminal Justice Act*, it is an investigation of official misconduct in units of public administration, or an investigation of organised or major crime. The Commission is not authorised by the Act to conduct investigations into the activities of persons and entities engaged in the tow truck industries except so far as the investigations are of the kind specified in s. 2.15 or s. 2.20[12]. The latter provision makes it the function of the Official Misconduct Division, which is the investigative unit within the Commission, to investigate cases of:
>
> (i) alleged or suspected misconduct by members of the police service; or
>
> (ii) alleged or suspected official misconduct by persons holding appointment in other units of public administration,

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11 Now s.23.

12 Now ss.23 & 29.

> that come to its notice from any source, including by complaints or information from an anonymous source.
>
> Subject to understanding the investigation as being limited to matters specified in ss. 2.15 or 2.20[13], it is no ground for suggesting that it falls outside jurisdiction that it will investigate the activities of private individuals or entities.

His Honour then proceeded to consider the principal submission of the Applicants, that the investigative hearing conducted by the Commission was not independent, impartial and/or fair. His Honour took the view that the critical question was whether there was any breach of the rules of natural justice. His Honour said that only if such a breach was made out, would the Court have to consider whether the Commission should be prevented from performing its statutory functions. This allegation that the Commission was acting out of bias against Mr Ready, called for an examination of the 'Huey' material which the Applicants placed before the Court. His Honour concluded (at page 40):

> The starting point must be a consideration of the question whether the Commission or any of its members tried to protect Huey. The material placed before me shows that in 1983 Huey was discharged by a Magistrate at the committal stage, and that the Crown did not proceed further against him. That was many years before the establishment of the Criminal Justice Commission. Subsequently, when in 1989 Rapp[14] sought to have proceedings taken against Huey, the Chairman of the Criminal Justice Commission expressed the view that as the allegations had been investigated and shown to be without foundation, the Commission's resources should not be expended in reconsidering them. I find nothing in this to indicate bias on the part of the Chairman or any member of the Commission. No reason is given for challenging Sir Max's stated view that Huey was the best man for the position in the Brisbane Task Force, unless it can properly be said that he should not have given the position to a person who had been charged with offences but in respect to whom investigations had concluded that action was not warranted. It is an action which may be questioned on grounds of prudence, but not on the basis of bias.

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13 Ibid.

14 William Rapp is a former officer of the QPS who, in 1989, made a complaint to the Fitzgerald Commission of Inquiry concerning alleged unlawful conduct of the then Superintendent John William Huey.

In relation to the complaint made against Huey by Reynolds and supported by Harris, it appears that it was the Director of Prosecutions, and not the Criminal Justice Commission, who determined that no action should be taken against Huey. The letter from the Commission dated 13 November 1990 gives no reason to think that it had regard to any improper considerations in making the decisions it announced.

I am unable to see anything in the action by Sir Max Bingham in relation to Channel 7 allegations and those of Mr Butler which suggests bias on the part of the Commission or any of its members.

Nor am I able to see anything which suggests that the Criminal Justice Commission was responsible for any punitive transfer of Harris or punitive demotion of Reynolds.....

The action of the Commission in investigating the disclosure of the Huey diaries by Harris and recommending that he be charged was claimed by the Applicants to indicate an intention by the Commission to vilify Harris. The relevance of this is said to be the connection between Harris and Ready. I am not prepared to conclude that the investigation by the Commission of Harris's acts in disclosing the diaries was done for any improper reason. The Official Misconduct Division has the function of investigating alleged or suspected misconduct by members of the Police Service. At the time when the investigation was carried out, it had the function of investigating all cases of alleged or suspected misconduct by members of the Police Force.

I do not think that any inference can be drawn that the tow truck investigation could have been effectively carried out by the Police Force because police were involved in their investigations, and in particular that police from another State were used to investigate allegations made by employees of a television station.

I conclude that there is no evidence that investigation number 24 of 1992 is being conducted unfairly.

I dismiss the applications, and order the Applicants to pay the respondent's costs to be taxed.

3.4 INVESTIGATIVE HEARINGS RECOMMENCED, 27 JANUARY 1993

Investigative hearings recommenced on 27 January 1993. The hearings occupied 25 sitting days and involved the examination of 98 witnesses. The hearings concluded on 6 July 1993. All hearings were conducted *in camera* pursuant to s. 90(2) *Criminal Justice Act*. They were also subject to a non-publication order under s. 88 of the Act. Such orders were considered to be in the public interest, on the following grounds:

(1) the subject matter of the Inquiry

(2) the possibility that the investigation could be prejudiced by premature disclosure of information

(3) premature disclosure could unfairly affect the reputations of witnesses or persons named in evidence, particularly as the evidence to be received was of unknown reliability

(4) disclosure of evidence might prejudice possible future criminal proceedings.

The terms of the non-publication order recognised the Commission's obligations to report in accordance with the *Criminal Justice Act*.

CHAPTER 4 – INVESTIGATIVE HEARINGS AND RELATED INQUIRIES

4.1 INVESTIGATIVE HEARINGS – CLASSES OF WITNESSES CALLED

4.1.1 Smash Repairers

A random selection of 48 repairers was first made in June 1992. When the investigative hearing resumed in January 1993, summonses were issued under s. 74 of the *Criminal Justice Act* in respect of a smaller number of repairers. Forty-two smash repairers gave evidence at the hearings. They were associated with 39 smash repair businesses (17 Northside, 22 Southside). A number of these repairers were also involved in the towing industry.

At the same time as they were summonsed to give evidence, most repairers were required to produce their books of account for the 1990–91 financial year. Commission investigators believed that financial analysis of these books of account would reveal whether certain repairers were paying drop fees, in addition to the payment of the prescribed tow fees fixed by the various insurance companies as the appropriate fee for the 'first tow' and 'second tow' of an accident vehicle.

As a further step in the investigation, police officers attached to the CJC required major tow truck entities to produce their books of Tow Authorities for the 1990–91 period, pursuant to regulation 44 of the *Tow-truck Regulations*. These duplicate books, once completed, are required to be kept by the tow truck operator pursuant to regulation 31 of the *Tow-truck Regulations*. The duplicate Tow Authority books were produced by the following tow truck entities:

- Alderley Auto Towing
- Humphreys Towing
- Trend Towing

- Telford Towing
- Bayside Towing
- Harvey/Highland Towing
- Ready Towing
- Combined Towing
- Yellow Towing.

A computer analysis was then performed in relation to these Tow Authority books. This analysis determined a pattern of delivery of repair work to various panel shops, or their associated holding yards by individual tow truck drivers. For the most part, the holding yards associated with many of the repairers already selected at random proved to be the major destinations for the repair work as shown by the Tow Authority books. Where the holding yards of some repairers not already under Summons were identified as frequent destinations of damaged vehicles, these repairers were also summonsed to give evidence.

4.1.2 Tow Truck Drivers

The Commission then examined on oath a selection of tow truck drivers, with the selection being influenced by the volume of accident towing work revealed by the Tow Authority books which had been analysed by computer. The following table shows the number of drivers examined from the various towing entities:

Towing Entity	Location	Number of Witnesses currently or previously employed by the entity (within the previous 5 years)
Ando's Towing	Northside	3
Alderley Auto Towing	Northside	5

Humphreys Towing	Southside	5
Trend Towing	Southside	3
Telford Towing	Northside	2
Economy Towing	Southside	6
Harvey/Highland Towing	Southside	3
Ready Towing	Northside	15
Combined Towing	Northside/ Southside	8
Yellow Towing	Northside/ Southside	10
Budget Towing	Southside	3
Western Suburbs Towing	Northside	3
Centenary Towing	Northside	3

Many drivers had worked for a number of entities over the previous five years. They are counted for each towing entity they drove for during that period as they were examined about the business practices of each towing entity they drove for.

Thirty–two former or current tow truck drivers gave evidence or supplied a signed statement. Some proprietors and managers of towing entities also drove tow trucks from time to time and each held a tow truck driver's certificate at the time of the hearings. These witnesses are not included in the above figures as they are included in the 'tow truck proprietors/managers' category.

4.1.3 Tow Truck Proprietors/Managers

The Commission then proceeded to the examination of former and current tow truck proprietors/managers. Twenty–five witnesses were examined representing the management of 17 towing entities which had carried on

business at some time in the previous five years. Many entities are currently trading. These witnesses were selected as a result of their being described in evidence by tow truck drivers as having been their employers. Past or present proprietors/managers of the following towing entities were examined:

Towing Entity	Location
Albion/Active	Northside
John Lyons	Southside
Domroy's	Southside
B & M	Southside
Yellow/Combined	Southside
Humphreys	Southside
Budget/Gabba	Southside
Trend	Southside
Bayside	Southside
Harvey/Highland	Southside
Alderley	Northside
Centenary	Northside
Economy	Southside
Ready/Combined	Northside
Telford	Northside
Western Suburbs	Northside
Ando's	Northside

4.1.4 Police Spot Fees

The Commission examined four current or former police officers. A fifth (former) police officer applied to be excused from attendance on medical grounds. The activities of a former police officer, now deceased, were also investigated.

4.1.5 RACQ Witnesses

The Commission received evidence from senior executives employed by RACQ Insurance. This evidence was relevant to a number of separate issues pertaining to the organisation of the smash repair and towing industries.

4.1.6 Spare Parts Allegation (Term of Reference No. 3)

The Commission received evidence from six witnesses representing five spare parts suppliers who received approaches from one or more representatives of a towing entity.

4.1.7 Police re: Tow-Aways

The Commission examined six serving police officers concerning allegations of favouritism in the allocation of 'No Standing' and 'Clearway' towing to towing entities.

4.2 WRITTEN SUBMISSIONS

The Commission invited and received written submissions on suggested reforms to the smash repair and towing industries. This was in addition to evidence obtained by inviting each witness called (where relevant) to express his/her opinion on the issue of reform. Written submissions on various aspects of the terms of reference of the Commission's inquiry were received from:

- Motor Traders' Association of Queensland;
- the major motor insurers: FAI, AAMI, Suncorp and RACQ Insurance (joint submission);
- The Department of Transport in the form of the Tow Truck Issues Paper, published in July 1993.

In addition, the Commission had access to police reports on aspects of the towing industry.

4.3 DEPARTMENT OF TRANSPORT

The Commission invited and received a summary of the enforcement activities carried out by the Department of Transport, with particular reference to enforcement activity under the *Tow-truck Act* and *Regulations*.

As mentioned, the Commission also received a copy of the Tow Truck Issues Paper, published in July 1993.

The Commission's investigators have had the opportunity to meet with and interview officers within the Road Transport and Traffic Division of the Department and to inspect the facilities available to the Department in its enforcement activities. The Commission's investigators have had on going contact with senior officers of the Department to enable them to reach an understanding of the Department's role in enforcement of the *Tow-truck Act*. The Department adopted a co-operative approach at all times and the Commission acknowledges the assistance provided by officers of the Department.

4.4 INSURANCE COMPANIES

The Commission has taken the opportunity to obtain the views of the four major motor insurers operating within Queensland – RACQ Insurance, FAI, Suncorp and AAMI. A joint submission was received, followed by a meeting with representatives of the major insurers, at which they elaborated on their submission. Their proposals have been taken into account in the formulation of recommendations set out in Chapter 9 of this report.

The Commission acknowledges the co-operation afforded to it by the motor insurers, particularly RACQ Insurance which provided relevant information to the Commission on request without the Commission needing to rely on its compulsory powers. The insurers recognised that the Commission's investigation presented a unique opportunity to systematically examine the effectiveness of the current legislative regime in regulating the towing industry. As major stakeholders in the motor industry, the major motor insurers have acknowledged the need to develop a co-operative approach to legislative reform. This co-operative approach has been of considerable assistance to the Commission in discharging its investigative and reporting functions.

4.5 POLICE PROCEDURES

4.5.1 Police Procedures re: Traffic Accident Information

Allegations of police corruption gave rise to Operation Spot in 1989–90. A renewal of these allegations in 1991 gave rise to Spot II. This phase of the investigation awaited the receiving of evidence from various participants in the smash repair and tow truck industries. Some direct evidence suggesting corrupt dealings between tow truck operators and police was obtained during the earlier phases of evidence. It was also possible to identify persons in the smash repair and tow truck industries who, as a result of their relationships with certain police, were suspected of having the opportunity to make payments to police for accident information. The earlier investigative hearings also gathered evidence as to how an 'early warning system' could be organised at street level.

Early attempts to restrict the Commission to the investigation of allegations of police corruption, and no other alleged unlawful practices within the smash repair/towing industry, proved to be unsuccessful. As discussed in Chapter 3, Ryan J, in *re Bryant, D'Alessandro and Ready*, upheld the right of the Commission to proceed with its investigations as it considered appropriate, so long as it did so fairly in the discharge of its functions and responsibilities laid down by the *Criminal Justice Act*.

In order to effectively investigate claims of police corruption, it became necessary to appreciate the way in which a particular area of the QPS operated and how the method of operation changed in 1990.

The Commission acknowledges the assistance given by senior officers attached to that area. The Commission's investigators had the opportunity to inspect the current facility and to obtain evidence and information relevant to the modes of operation of the facility prior to computerisation in 1990.

4.5.2 Police Procedures re Tow-Aways

The Commission's investigations raised allegations of police favouritism in the allocation of tow-aways from Clearways and No Standing zones. This required the Commission to obtain a clear understanding of police procedures in these areas. Senior officers from the Police Traffic Branch assisted the Commission in this task. During this process, concerns were raised in relation to some aspects of police procedures and the opportunity for misconduct by Traffic Police. These concerns will be addressed in Chapters 5 and 9 of this report.

4.5.3 Police Experience at Accident Scenes

The Commission also had the benefit of a report from Sergeant G B Crack of the Logan District Traffic Accident Investigation Squad. He has had 16 years experience in this work. The report highlighted problems that police called to major traffic accidents encounter with tow truck drivers. These problems were:

- 6–10 tow trucks attending a scene
- destruction of evidence (for example, tyre marks) by arriving tow trucks
- tow trucks obstructing traffic
- claims of bias and corruption made by tow truck drivers against police who order tow trucks to leave the scene
- obstruction of ambulance personnel by tow truck drivers
- racing to scenes
- threats of violence by a group of tow truck drivers from the same company, against a lone rival tow truck driver who attends the scene.

This report, together with a significant amount of evidence from witnesses, assisted the Commission in understanding

the difficulties created at accident scenes by some tow truck drivers.

4.6 Sunshine Coast and Beenleigh District Tow Truck Roster Systems

In late 1991, tow truck operators in the Sunshine Coast region formed a co-operative tow truck roster system. The Commission obtained regular reports from that co-operative, through the North Coast Region of the QPS. The Commission obtained further information about the system from stakeholders, in the course of its investigation.

Similarly, information was obtained about the operation of another co-operative tow truck roster in the Beenleigh District. This scheme commenced in 1992.

Both of these schemes are considered in detail in Chapter 9.

4.7 Tow Truck Regulation Interstate (NSW, Victoria and South Australia)

All stakeholders in the smash repair/tow truck industries were keenly aware of the legislative regimes in force in the towing industries of Victoria and South Australia. Opinions are divided as to which system is the more workable system and as to which features of each system are desirable features for inclusion in any new legislative or industry controlled regime in Queensland.

The Commission has been supplied with a number of papers prepared by various stakeholders relating to the Victorian and South Australian regimes. There is more limited information available in relation to the New South Wales tow truck regime. Most stakeholders preferred to focus their comments upon the South Australian and Victorian models.

These papers are considered in detail in Chapter 9 of this report.

CHAPTER 5 – EVIDENCE RELATING TO TERMS OF REFERENCE NO. 1

> The payment to members of the Police Service and other persons, by persons and/or entities engaged in the Smash Repair and Towing industries of a valuable consideration (spot fees) in return for information or advice as to the occurrence of road traffic accidents in the greater Brisbane area, in contravention of the *Tow-truck Act 1973*.

This chapter also deals with other allegations of favouritism by police officers to particular tow truck operators and drivers in connection with the allocation of police authorised towing of:

- damaged vehicles from accident scenes; and
- unlawfully parked vehicles.

Although these allegations fit within Term of Reference No. 4, they are dealt with here as they relate specifically to police officers.

5.1 PAYMENTS OF SPOT FEES GENERALLY

To be competitive in the tow truck industry, tow truck operators and drivers establish methods of obtaining early warning about traffic accidents, ideally from a source not available to competitors. One common method is to maintain a network of spotters (strategically placed persons who are able to provide early warning of traffic accidents). Spotters include taxi drivers and persons who reside or work near accident-prone locations – for example, a shop owner near a busy intersection. Public officers such as ambulance officers and police officers may also be well placed to act as spotters. A spotter who provides information to a tow truck operator or driver which results in the driver obtaining the tow job is typically paid $20 to $40. Examples of the importance of spotters include tow truck drivers recruiting spotters as part of their normal work duties and the use of computers to maintain spotter information. One driver gave evidence that he paid up to $400 per week in spotters' fees. The practice of paying spotters is a breach of s. 23 of the *Tow-truck Act 1973* and, although known to be a common practice, is extremely difficult to enforce. Complaints about spotters to the Department of Transport are rare and convictions are virtually unknown.

5.2 PAYMENTS OF SPOT FEES TO POLICE

5.2.1 Events Leading to CJC Involvement

In about July 1989 information was provided to the Fitzgerald Commission of Inquiry that a number of police officers were being paid spot fees by a person involved in the towing industry. On or about 10 August 1989 Operation Spot commenced to investigate the allegations. The investigation was commenced by the Fitzgerald Inquiry and continued by the CJC. Considerable investigative resources were applied to Operation Spot. However, on 26 July 1990 the operation was terminated because of a lack of admissible evidence. Whilst some suspicious evidence had been obtained, the matter was difficult to investigate and circumstances had changed during the period of the operation. In particular, procedural changes and updated technology were thought to have lessened the chances of police being able to act as spotters. The Commission's concerns arising out of the operation were passed to the Commissioner of Police for attention.

In March 1991, Superintendent Buckley further complained to the CJC that he had information that certain police officers were still involved in illegally passing information to a towing organisation. Although the fresh complaint did not provide direct evidence, the Commission decided to conduct a further investigation into the complaint. This investigation was named Operation Spot II.

5.2.2 CJC Investigation

The Commission's investigation was based principally on two investigative strategies. The first strategy involved extensive financial analysis of certain accounts of several police officers and ex-police officers and persons involved in the towing industry. That analysis showed suspicious inter-relationships between transactions on the various accounts. Secondly, the Commission summoned several witnesses to give evidence at its investigative hearings who were believed to be able to provide relevant evidence concerning the investigation.

5.2.3 Conclusion

The Director of the Official Misconduct Division furnished a report to the Chairperson of the Commission in relation to the investigation. Pursuant to s. 33(2)(a) of the *Criminal Justice Act 1989*, the Chairperson authorised that the report be furnished to the Director of Prosecutions with a view to such prosecution proceedings as he considered warranted. The Director of Prosecutions subsequently advised that criminal proceedings should be initiated. The Commission cannot report further in respect of its investigation until criminal proceedings are finalised.

5.2.4 Current Situation Concerning Early Warning in the Industry

Obtaining accident tow work is an extremely competitive business for tow truck drivers and they use all available means to win work, including spotters, scanning emergency radio communications, listening to CB radio communications, parking near accident prone locations and driving quickly to accident scenes. In this climate, all avenues for early warning of traffic accidents are explored and tow truck drivers themselves are very knowledgeable about the performance of competitors in responding to incidents.

Several tow truck drivers gave evidence that, prior to 1990, it was obvious that one towing operator had a distinct advantage in responding to incidents within their area of operation. It was commonly rumoured in the industry that that towing operator had a spotter within the QPS.

The Commission's investigation did not reveal that, as at the time of its hearings, there was any suspiciously rapid response by any particular operator suggesting that police officers were providing traffic accident information.

5.3 Other Alleged Favouritism by Police

5.3.1 Accident Towing

During the Commission's investigative hearing, many towing operators and drivers alleged favouritism by some police to an opposition towing organisation or driver. Typical allegations were that police took control at accident scenes and directed that a particular tow truck driver or operator attend or advised drivers involved in accidents to select a particular tow truck operator. Other allegations of favouritism related to situations where the driver or owner was not in a position to select a towing operator such as in the case of located stolen vehicles, abandoned vehicles or where the driver was injured.

In general, many of those making the allegations were unable to specify the names of officers or particulars of the incidents.

Benefits said to be given to police officers allegedly involved in such favouritism included spray painting, panel and mechanical repairs to private vehicles, provision of parts and accessories from damaged vehicles and hospitality, including by way of hosting police functions or providing assistance in catering for functions.

Some of the allegations of police corruption pre-dated 1987, and some witnesses said that police corruption appeared to have died out in recent years. Other allegations were based only upon industry rumour and were impossible to effectively investigate. In relation to further complaints of police favouritism, allegedly based on the observations of rival tow truck drivers, there was no evidence of, and no likelihood of obtaining evidence of, benefits conferred on police officers in return for their alleged favouritism. Such allegations were therefore not capable of being further investigated with any prospect of success though persons about whom such allegations were made were given the opportunity to respond to them. These witnesses denied any impropriety.

It is probably inevitable that over a period of time where police and tow truck drivers come into contact at the

scenes of accidents, police will form favourable and unfavourable impressions of the various tow truck drivers and operators and that allegations of bias will be made against the police. The difficulty is in sorting out the speculative allegations and those of substance.

5.3.2 Evidence of Favouritism at the Hearings

Four tow truck drivers, all employed or previously employed by rival tow truck operators, alleged that police showed favouritism to Western Suburbs Towing. Apart from resorting to rumours in the industry about Western Suburbs, the direct evidence offered by the drivers was:

- That the proprietor of Western Suburbs Towing was observed sitting in a police vehicle talking to police, or otherwise adopting a friendly attitude to police.

- That on one occasion a police officer, when speaking on the police radio, was heard to assert that Western Suburbs Towing was affiliated with the RACQ when this was not the case. The police officer was not identified.

- That motor cycle police in particular favour Western Suburbs Towing in awarding 'tow–aways'.

A driver employed by Western Suburbs Towing rejected any suggestion of police favouritism towards that operator's trucks. He said that he had witnessed instances at accident scenes where police had rejected the first tow truck on the scene on suspicion that it sped to the scene and then appeared to select other trucks at random to tow the vehicles from the scene. As to tow–aways, the Western Suburbs driver described the police allocation of tows as 'first in best dressed'. He said that in his experience the second truck to arrive at a tow–away was instructed by the police officer to move on.

The proprietor of Western Suburbs Towing, Scott Pace, also responded to these allegations of police favouritism. Firstly, he pointed out that his business had won the tender for the towing of all police vehicles in the area of Brisbane

south of the Brisbane River. He said that Western Suburbs Towing won the police contract over Budget Towing and continued:

> ... they approached us and they gave us a go for a month ... we run pretty clean trucks, and clean uniforms and things, and that's obviously what they liked, and they've been with us ever since.

As to police authorised tow-aways of unlawfully parked vehicles, Pace considered that his business suffered because of the advantages enjoyed by Telford Towing in relation to such towing:

> ... for a company that's closer to the city, we should be doing better than what we really are ....

As to Western Suburbs Towing's relationship with the Toowong Police, Pace said:

> ... there is no favours done for the police. It's a straight working relationship. If they want a decent towing company in this area, they know that there's one towing company.

Pace acknowledged that in the past he had socialised with police at events such as send-offs, but not recently, 'because ... there's so many allegations going around about us that we've had to be very careful about where we step and what we do'.

Pace denied having any improper relationship with any police officer and the Commission did not obtain any evidence that he had been involved in any corrupt conduct.

Another tow truck driver alleged that police at various stations were friendly with particular towing operators. He alleged that these operators, to his knowledge, attended social functions, particular at Christmas, organised by the police. He alleged that the trucks of these operators were then favoured by police at accident scenes. He was then asked:

> Q: But apart from the practice, if you like, of the tow truck operators getting together with the police at

Christmas, you cannot point to any other specific information about benefits going to police?

A: Nothing I can prove ... You know, like, there's a lot of hearsay out there. You hear a lot of towies talking all the time, but a lot of towies talk crap too.

Allegations of police favouritism in the area of tow-aways were made by some tow truck drivers against Telford Towing. This is dealt with later in this chapter, at 5.4.

5.3.3 Other Evidence of Favouritism - Complaints of Mathew Ready Senior

On 24 February 1991 Mathew John Ready Senior complained to Acting Inspector B M Nolan of the North Brisbane Region that three of his tow trucks arrived at the scene of a traffic accident at Chermside on that day and had been ordered to leave the scene by Sergeant 2/c K R Stemm of North Brisbane District Traffic Branch. Ready alleged that Stemm threatened to book them if they did not leave and would not let the tow truck drivers speak to the drivers of the damaged vehicles as he had arranged for a truck from Telford Towing to attend.

Acting Inspector Nolan furnished a report to his District Officer about the incident.

On 28 February Nolan contacted Ready and offered to take an official complaint from him for forwarding to the CJC but Ready declined saying that he would personally bring up the incident at an interview he intended to arrange between the CJC and himself. That material was referred by the QPS to the Commission by letter of 19 March 1991.

This was one of several incidents raised by Mr Ready when interviewed by an officer of the Commission in December 1991.

Sergeant Kevin Ronald Stemm, of the Brisbane Central Traffic Branch, gave evidence to the Commission in relation to this incident which he said involved threatening behaviour by three Ready Towing drivers towards a lone Telford Towing driver. Sergeant Stemm told the Commission that he attended the traffic accident which had

occurred near the Aspley Hypermarket. The driver of the severely damaged car was taken away to be breath tested but, before she was taken away, she was told that the vehicle would have to be towed. She nominated Telford Towing. Sergeant Stemm said that he called on the radio for a Telford tow truck to attend the accident scene. Sergeant Stemm said that several minutes before the Telford truck arrived, three Ready Towing tow trucks arrived at the scene. Stemm said that he advised these drivers that Telford Towing was to obtain the tow because they had already been summoned by radio. Stemm said that the drivers told him that if they did not obtain the tow they would make a complaint to the CJC about him. Stemm said that he told the drivers that they could do what they liked, but that Telford had the tow.

Stemm said that shortly after this conversation, a Telford truck arrived and the driver commenced to hook the vehicle up. Stemm said that the three Ready Towing drivers stood between the Telford tow truck and the damaged car in an attempt to obstruct the Telford driver from connecting the vehicle to the tow truck. They also engaged in verbal abuse of the Telford driver.

Ready's version is not so dissimilar to Stemm's version. If indeed Stemm had summoned a tow truck from Telford Towing upon the request of the driver of the damaged vehicle, it was quite proper not to allow the Ready Towing trucks to tow that vehicle.

An officer of the Commission recently contacted the driver of the damaged vehicle who confirmed that she had in fact advised the police officer she wanted Telford Towing to tow her vehicle. She explained that she had been involved in an accident on an earlier occasion and her vehicle had been towed by Telford Towing. As she had been satisfied with their service she wanted to use them again.

She said she could not recall whether a Telford Towing truck was at the scene when she advised the police officer of her choice or whether she asked the officer to call Telford Towing for her. Whatever the situation, she confirmed that the choice was hers and no pressure was applied to her by the police officer to use Telford Towing.

This case demonstrates how easily incorrect perceptions can arise in the towing industry that police officers are in a corrupt relationship with, or at least favouring, particular towing operators.

Other complaints by Mr Ready Senior were referred by the QPS to the Commission by letter dated 25 March 1991. The material received included three facsimiles sent by Ready to Police Headquarters on 11 February 1991. In the first facsimile, Ready requested a meeting with a Commissioned Officer to outline evidence to support complaints against a group of six or seven Traffic police including Sergeant R G Waters and Sergeant Stemm. The complaints allege:

- harassment of Ready Towing drivers at traffic accident scenes
- the issuing of traffic offence notices to Ready Towing drivers for offences that had not been committed
- that the biased conduct was for the purpose of obtaining towing work for two small towing firms who operated two trucks each.

The second facsimile, though sent on 11 February 1991, is dated 29 September 1983 and complained that an officer at Mobile Patrols was guilty of harassment as follows:

- continually patrolling past Ready's residence and parking outside
- issuing parking offence notices without just cause to Ready's vehicles parked outside
- parking outside Ready's drivers' homes and following them to and from their 'call outs'
- frequently stopping and checking Ready Towing trucks, particularly those driven by D G Cottingham.

Also in the facsimile dated 29 September 1983, Ready alleged continual harassment of Ready Towing staff by

Stemm and Waters and another officer over the previous two years. He said that time and again one officer had taken towing work off Ready Towing drivers, often against the wishes of the car owners, to give the jobs to a rival towing operator whose proprietor was alleged by Ready to be a close associate of the three officers. Ready referred to an earlier complaint against Waters and Stemm investigated by Inspectors Mawn and Seib.

This earlier complaint is the subject of the third facsimile, which is dated 26 September 1982, and alleged that Waters, Stemm and a third officer were favouring the abovementioned towing proprietor in allocating towing. Ready's allegations included the following:

- the arrest of Ready Towing drivers on false charges
- persistent harassment of Ready Towing drivers
- conspiracy by the officers to issue on-the-spot traffic offence notices to Ready Towing drivers operating in the area in which the rival operator carried on business
- attempts to intimidate other officers to favour the rival operator.

Because of the age of the complaints made in the documents of 26 September 1982 and 29 September 1983, the Commission did not investigate these matters.

On 30 April 1991 an investigator of the Commission contacted Ready by telephone to arrange an interview in relation to his allegations. Ready told him he needed time to gather documents and said that he would contact the Commission on 1 May to arrange an appointment. He did not do so. By letter dated 31 October 1991 the Commission wrote to Ready asking him his intentions in relation to his complaint.

By letter dated 3 December 1991, Ready wrote to the Commission listing instances of improper conduct by police in relation to his drivers. Ready provided details of complaints by Combined Towing drivers, John Charles Ready Junior, John Francis Noden, Laurie James Ferguson,

Paul Joseph McCahon, Colin Lloyd Charles, Peter Wayne Anderson, Brian Harper and Wayne Kernot.

Ready alleged that the police were assisting or protecting Western Suburbs Towing, Telford Towing and John Lyons Towing.

He made the following specific allegations:

1. Noden and Ferguson were issued with traffic offence notices for parking outside the Windmill Cafe at 2.30 a.m. in early 1991. Ferguson was parked in a no standing zone but other vehicles similarly parked were not booked. Constable J D Wilkins (now Senior Constable) of the Traffic Branch issued the ticket.

2. In early 1991, Ferguson attended a traffic accident at Milton and obtained the signature of one of the vehicle owners to tow the vehicle. A police officer arrived and directed Ferguson to leave the scene and destroyed the towing authority. The officer assisted the vehicle owner to rectify a smashed mudguard and allowed the unit to drive away. Ferguson alleges there was considerable damage to the front end of the vehicle and the vehicle was unroadworthy and should not have been driven away.

3. McCahon was issued with a traffic offence notice on 24 January 1991 for disobeying a stop sign. He says he stopped at the sign and when he arrived at the traffic accident ten or 15 minutes later, a police officer issued him with the traffic offence notice.

4. McCahon also says that he has been directed away from tow away areas in the city several times, particularly by Constable Wilkins.

5. John Ready Junior has received several parking notices for parking his vehicle outside his residence at Marquis Street, Greenslopes on the footpath. He said it was dangerous to park on the roadway because Marquis Street is the entrance to the

freeway and the lane closest to the footpath is actually used by traffic to travel onto the freeway.

The Commission's investigator interviewed Anderson, Ferguson, Harper, Noden, McCahon and John Charles Ready Junior, in addition to Mathew Ready Senior. He then recommended that the matters be further pursued during the Commission's investigative hearings into the towing industry.

In relation to allegation 1, the Commission's investigator did subsequently interview Constable Wilkins, the officer who issued the traffic offence notice, who denied any impropriety. In the absence of some evidence corroborating the complainant's claim that the notice was issued as part of a campaign against Ready Towing drivers, the allegation was not substantiated.

In relation to allegation 2, the Commission considered that there was little prospect of substantiating the claim that the vehicle concerned was unroadworthy and that the police officer knew this and improperly allowed the driver to drive it away. Therefore, the Commission did not further investigate the allegation.

In relation to allegation 3, the Commission's inquiries revealed that the traffic offence notice was not issued by any of the officers named by Mr Mathew Ready Senior in his complaints. The Commission did not investigate the matter further as there was little prospect of substantiating the claim that the notice was improperly issued.

The Commission did not investigate allegation 4 as there was no reasonable prospect of substantiating any impropriety.

The decisions in relation to allegations 2, 3 and 4 are in accordance with the criteria applied by the Commission in determining whether to investigate complaints. Particularly in cases where complainants dispute traffic offence notices, it is the Commission's view that, in the absence of some evidence corroborating the complainant's version, the issues should be left to the court to resolve. The Commission will review such matters if a court criticises the police officer in the course of hearing the matter.

In relation to allegation 5, in the period 10 February 1991 to 3 March 1991, John Ready was issued with four traffic offence notices by three officers for parking on the footpath in Marquis Street. In each case the fine was $5.00. Two of the tickets were issued by Constable Wilkins. Ready maintained that he had received these parking tickets as a result of an argument with Constable Wilkins in Elizabeth Street, Brisbane in January 1991 following which he was directed away from the scene. The Commission's investigator interviewed several of John Ready's neighbours in Marquis Street, Greenslopes, who also regularly parked on the footpath. They maintained that they never received traffic offence notices for parking there and that it is dangerous to park on the roadway as the lane nearest to the footpath is used by traffic to enter the South-East Freeway. The Commission's investigator subsequently interviewed Wilkins and one of the other two officers who had issued the notices to Ready. (Wilkins was also the officer who issued the traffic offence notice to Ferguson (allegation 1) and was questioned about that matter.) They denied discriminating against Ready and maintained that, had other vehicles been parked on the footpath, traffic offence notices would have been issued in respect of them also. The police officers denied targeting either John Ready Junior or Ready Towing drivers in general. They said they had issued traffic offence notices to tow truck drivers driving for other towing entities. Wilkins said that although he knew Ready by sight he did not know he lived in Marquis Street or that he was the owner of the vehicle unlawfully parked. He said that during the relevant period, as an officer of the Traffic Branch, he had issued approximately 150 traffic offence notices each month.

Unfortunately, it was not possible to do a computer search of other traffic offence notices issued to residents of Marquis Street. However, a manual search for the period January to March 1991, which included the period within which Ready was issued with the notices, revealed that only one other notice for a parking offence was issued in relation to a vehicle parked on the footpath in Marquis Street.

After receiving the traffic offence notices, Ready made a complaint to an Inspector at Upper Mount Gravatt Police Station and the notices were passed to the Inspector who in

turn passed them on to a Superintendent for further investigation. Several of those notices expired as a result of effluxion of time.

Although the evidence indicated that Ready received several parking offence notices over a period in which only one other person in his street received a similar notice, there was no evidence to suggest the notices were not issued lawfully. Therefore, the evidence did not support any criminal charge or disciplinary charge of misconduct against any of the officers involved.

Complaint of Mark Ready

Mark Ready complained of biased treatment of Ready Towing/Combined Towing drivers by a police officer who attended at an accident at Taringa on 12 September 1991. His complaint arrived at the Commission on 30 October 1991. Mark Ready said that a Ready Towing driver attended the accident on 12 September 1991 at Taringa and obtained an authority to tow one of the vehicles, a light truck. Scott Pace of Western Suburbs Towing arrived and spoke to police officers there. The police officer approached the Ready Towing driver and told him his truck did not have the capacity to tow the vehicle and that Department of Transport officers would be attending to clarify the loading capacity. Department of Transport officers arrived and confirmed that the Ready Towing truck did not have the required capacity. Mark Ready complained that his driver was not given the opportunity to arrange for Ready Towing/Combined Towing to send a larger tow truck. He alleges that the police officer asked Pace 'to arrange a tow truck of his choice for the owner' and that Pace requested Barnes Auto Towing, a company Pace did a lot of work for. Ready also alleged that Pace would have received a commission for calling out that operator.

Inspector J W Kickbusch attended the scene on 12 September 1991 while all parties were still present. He was the Duty Officer for the Brisbane Central District at the time. While at the scene he spoke to all of the parties and recorded his conversations on tape. He confirmed with the officers from the Department of Transport that the Ready Towing trucks did not have the required capacity.

He was advised by one of the Transport officers that that officer had instructed the first driver from Ready Towing to cancel the towing authority, that a second driver from Ready Towing arrived at the scene and it had been confirmed that his truck also did not have the required capacity. The Transport officer had therefore instructed both drivers to leave the scene. The Transport officer also confirmed that the police officer had spoken to the owner of the light truck and, with his consent, made arrangements for an independent towing operator to attend, namely Barnes Auto. Inspector Kickbusch also spoke to the driver of the light truck who confirmed he was 'quite happy' for Barnes Auto to tow his vehicle.

The police officer concerned furnished a full report at the direction of Inspector Kickbusch. He said that a Ready Towing driver and a Western Suburbs towing driver were at the accident when he and another police officer arrived and that the Western Suburbs driver, Scott Pace, told him that the Ready Towing truck did not have the required capacity to tow the light truck. Pace also told him that he had contacted the Department of Transport and that officers were on their way. The police officer said he advised the Ready Towing driver of this. When the Transport officers arrived, they confirmed that the Ready Towing truck did not have the required capacity. The Ready Towing driver was permitted to call another Ready Towing truck but when it arrived (about half an hour later) it too did not have the required capacity. The police officer said that Pace told them that another towing operator could not tow the light truck while the towing authority previously signed by the light truck driver for the Ready Towing driver was in existence. The police officer and the Transport officers discussed the matter and the authority was then cancelled with the approval of the driver of the light truck. The police officer said that the Transport officers requested the tow truck drivers to leave the scene and when the Ready Towing drivers refused to leave, the police officer directed them to do so. The police officer said that the driver of the light truck did not care which company towed his vehicle and Barnes Towing was agreed upon. The police officer considered this to be appropriate as Barnes Auto was independent of Ready Towing and Western Suburbs Towing. He said he called Police Operations via the police

radio and requested Barnes Towing to attend, stressing that a class 2 truck was needed.

On 30 October 1991 Inspector Kickbusch took a formal complaint from Mark Charles Ready in relation to this matter.

This matter has not been further investigated by either the QPS or the Commission. On the material available to the Commission, no further investigation of the matter is warranted. Mark Ready's assertion that his driver was not permitted to call another Ready Towing truck is not borne out by the evidence. Furthermore, his assertion that Scott Pace would have received a commission from Barnes Auto Towing seems most unlikely in circumstances where Barnes Auto was summoned by the police officer via Police Operations. The evidence did not support the allegation that the police officers, the officers of the Department of Transport or Scott Pace had acted improperly in relation to this incident.

5.3.4 Evidence of Police Officers Relevant to Complaints by Ready Towing

Evidence taken from police officers relevant to allegations of victimisation of Ready Towing drivers is summarised at 5.4.2. Some admitted favouring other towing operators over Ready Towing and gave reasons for this.

5.3.5 Possible Reasons for Police Favouritism in Allocating Accident Towing

Where a vehicle requires towing it is generally the person in control of the vehicle who chooses a tow truck service. It was alleged that police often influence such persons in their choice of tower. When no driver or owner of the vehicle is present, or the driver is too drunk or badly injured to authorise the vehicle's towing, police may authorise the towing of the vehicle. Many of the complaints received relate to alleged favouritism by police in such situations. In relation to police authorised tows, in some areas a roster exists so that the work is shared equitably among towing organisations in the area. In one case (Sunshine Coast) the roster is administered by a

towing operator and in another case (Beenleigh) it is operated by a security company. These rostering arrangements appear to be working well, though it should be noted that police authorised tows account for a minority of tows from accident scenes (15% to 20% on the Sunshine Coast, 10% in the Beenleigh area). These schemes are discussed in detail in Chapter 9.

Much of the alleged favouritism by police is probably the result of a police establishment and tow truck operator sharing a common territory. This may give rise to regular work place association, some social interchange and perhaps knowledge of and respect for the operator's expertise in the removal of vehicles and security of stored vehicles. These relationships may develop over a long time where local police are not transferred out of the area. Inevitably the relationships tend to be carried on by new officers transferred to the area.

In several cases, officers at the Traffic Branch who gave evidence showed a distinct dislike for Ready Towing. This dislike is probably historical and probably stems from a poor personal relationship between a former Superintendent of Traffic, and the Manager of Ready Towing, Mathew Ready Senior, who is the father of Mathew Ready and Mark Ready, the directors of Hexlawn Pty Ltd trading as Ready Towing.

5.3.6 Evidence of Benefits to Police (other than spot fees)

The evidence of Frederick Theo Harvey of Harvey/Highland Towing best demonstrates the way in which benefits (in the form of entertainment and food and drink) are given to local police by towing operators:

> ...since I was 18, I have had a relationship with the Police Force in the towing game. I've met a lot of good fellows, a lot of bad fellows. I have Christmas parties. I have a drink with the police like I would an insurance assessor or anybody in my trade, yes.

Mr Harvey said that over the years he had done 'minor' jobs for police on their private motor vehicles:

> ...That happens with a lot of people I know, in different trades.

Mr Harvey said that he had made his business premises available for a police 'send-off', when an officer or officers left on transfer to another station. He said that it attracted 50–60 police from around the district. He said that he would have contributed some of the beer that was consumed, 'a couple of kegs'. Mr Harvey described it as 'a bit of PR work'. Mr Harvey also admitted that every Christmas he would arrange for cartons of beer to be delivered to police stations. He said he might deliver up to four cartons, depending on the size of the station, though not to an individual officer:

> They sit back and have a beer at Christmas time.

Evidence received by the Commission from towing operators and drivers indicates that these forms of hospitality towards police, especially at Christmas time, are long-standing practices in the industry. It is clear that such hospitality is not restricted to police, but will be extended to Ambulance, Fire Brigade and other related services. In general, these benefits are not given to individual police officers, although according to other evidence, individual officers may ask for panel work to be performed on their private motor cars in expectation that it will be done without charge or at a reduced price. One operator, Lance Leu of Budget Towing, said that his workshop used to open for business on Saturday mornings and that on a few occasions he was aware that police officers had made arrangements with his foreman to use his workshop to work on their own cars:

> The deal was, if they wanted to work on their car they'd bring their car down and one or two cartons of beer...the foreman...used to help them...they'd all have a couple of beers and work on the car.

Scott Pace, the proprietor of Western Suburbs Towing, also acknowledged that he has provided cartons of beer to local police stations at Christmas time:

> Just a carton of beer for every station in this area, and that includes Indooroopilly, Toowong ... and Torwood

> police station ... Last Christmas we did give a carton, and we also gave that to our better clients like Brisbane BMW, Centenary Mazda, the good clients.

Similar evidence was received that another towing operator provided kegs and cartons of beer to police stations in the relevant area. In some cases, drivers had to contribute significant amounts for Christmas parties attended by large numbers of police. Evidence was also given that such practices had been less frequent since the Commission was established.

One driver also alleged that in years gone by, at the request of police, he had removed tyres from wrecks and swapped batteries for the benefit of police. He said that these activities occurred some years ago. He said that he could not name specific police who asked these favours of him.

Wendy McLune, from Trend Towing, told the Commission that a Christmas party is held for 'everybody that we deal with for the whole year'. She said that she and her husband would be invited to the local police function and they would then reciprocate:

> It's not an alcohol binge. Its a barbecue and it's held at 5 o'clock on a Friday afternoon and they're invited with their wives.

5.3.7 Conclusion

The Commission is satisfied on the evidence it obtained that some police officers favour particular towing operators and drivers when authorising towing of vehicles from accidents.

The Commission is satisfied that tow truck operators have given benefits to some police stations and in some cases to individual police officers. Because of the small value of the benefits, the age of many of the alleged events and the lack of particulars, the Commission did not pursue these matters. The evidence also indicated that such practices have diminished in recent years.

Clearly the appropriateness of tow truck operators providing such benefits depends on the value of the

benefits and the motives and expectations of the persons providing them. The QPS Code of Conduct now prohibits officers from receiving any benefit other than incidental gifts, customary hospitality, or other benefits of nominal value. Some of the examples given by witnesses to the Commission involved benefits which do not comply with the Code of Conduct. For example, providing free of charge the venue and kegs of beer for a police function is not a benefit of nominal value. The provision of such benefits by a towing operator will inevitably lead to the operator's competitors complaining that the police are in the operator's pocket or, at the very least, that they unfairly favour that operator when allocating towing. Such incidents also appear to be in breach of the requirement in the Code of Conduct that officers avoid situations in which the acceptance of a benefit or potential benefit could create a real, potential or apparent conflict of interest with their official duties.

5.4 TOWAWAYS – ALLEGATIONS OF FAVOURITISM AND POSSIBLE CORRUPTION

5.4.1 The Towaway System

Police have power under s. 44 of the *Traffic Act* to seize and remove motor vehicles where they obstruct other road users, for example, vehicles illegally parked during peak hours. In most situations, where a police officer decides to have an unattended vehicle towed away he must first obtain the permission of a commissioned police officer who may or may not attend the actual situation. This administrative requirement is placed on police by GI.8.17(c) of the Police General Instructions and Commissioners Circular 40/86. An exception to this is in the case of removal of vehicles from clearways as, presumably, the number of vehicles requiring removal is substantial and such a requirement would cause undue delays and hence an intolerable situation for peak hour road users.

The Traffic Branch has been responsible for attending to illegal parking in clearways. A former officer of the Traffic Branch gave evidence that prior to 1984 all towing companies attended to clearway towing but in that year a

Superintendent at the Traffic Branch directed that only four companies be used by police, those being Lyons Towing, John Lyons Towing, Pullens Towing and Budget Towing. The former officer gave evidence that he believed that this directive was aimed at excluding Ready Towing from clearway work because of previous litigation involving Mathew Ready Senior and the Superintendent.

After the departure of that Superintendent from the Traffic Branch in 1986 the restriction on the number of towing companies performing towaway work ceased. At the time of the CJC investigative hearings, all towing operators were entitled to compete for this work.

Many allegations were made of traffic police favouritism in awarding clearway towing work. Matthew Ready Senior alleged that Telford Towing, Western Suburbs Towing and John Lyons Towing had received preferential treatment from Traffic Branch police officers and that this situation had existed since about 1984. Ready said that he suspected a corrupt relationship between the former Superintendent of the Traffic Branch and a tow truck operator. He admitted he had no direct evidence of this but said he formed this opinion as a result of his own observations and rumour in the industry.

The Commission was furnished with some support for the allegations of preferential treatment in the form of a QPS computer printout of the allocation of police directed tows showing a significant imbalance in favour of Telford Towing. The figures for a three month period in 1993 were:

Telford Towing	165
Western Suburbs Towing	67
Ready Towing	43
Alderley Auto Towing	27
John Lyons Towing	25

These figures take on greater significance when regard is had to the fact that Ready Towing has many more tow trucks than the other operators listed, although not all of Ready Towing trucks are available for such towing.

Indeed, much of the alleged favouritism was directed toward a particular driver with Telford Towing, David Barnbaum, commonly known in the industry as 'Barney'.

5.4.2 Evidence Before the Commission Relating to Clearway Towing

The Commission summoned several police officers to give evidence on this issue. They were all officers of the Brisbane Central Traffic Branch and were involved in allocating clearway towing.

Sergeant Russell Waters

Sergeant Waters is attached to the Brisbane Central Traffic Branch and his duties include removal of vehicles from clearways. He stated that he had no improper relationship with any tow truck operator including David Barnbaum, though he has maintained a 'low key' friendship with Barnbaum for some 15 years. Sergeant Waters said that he met Barnbaum through a mutual association with the University of Queensland. Waters said that he had never received any benefit of any kind from Barnbaum. Waters told the Commission that Barnbaum, in his opinion, specialised in clearway towing and attended much more regularly than other operators both morning and evening. Also Barnbaum assigned two or three trucks to clearway towing on all occasions. He also said that Barnbaum had a holding yard at Fortitude Valley which was close to the city and therefore convenient for persons who had vehicles towed away. The close holding yard also gave Barnbaum a fast return time. Barnbaum also had superior expertise in unlocking parked vehicles prior to towing which meant that there was less chance of damage to the vehicle. Waters said that when allocating such towing he felt he had a responsibility to the vehicle's owner to have regard to those matters as well as to the security of stored vehicles. He also expressed his belief that Ready Towing drivers were more likely to make complaints about police.

Constable Darren Stevenson

Stevenson has been a member of the Brisbane Central Traffic Branch for over 2½ years. In that posting he has

been involved in clearway towing. He stated that he had no favouritism toward Telford or other towing operators. He stated that Barnbaum was more regularly in attendance for clearway towing than other operators and was better at unlocking locked vehicles than other tow truck drivers.

Sergeant Kevin Stemm

Stemm has been involved in traffic duties most of his police career, including the previous five years in the Brisbane Central Traffic Branch. He currently performs duties in relation to clearway towing. He admitted that he favoured drivers of other towing operators over Ready Towing drivers because of such factors as security of stored vehicles and the conduct of drivers at the scenes of accidents.

Senior Constable Tony Doyle

Senior Constable Doyle has also been involved in clearway towing as part of his police duties with the Brisbane Central Traffic Branch. He stated that Barnbaum attended clearway towing every morning and afternoon and was always the most available operator to attend to clearway vehicle removal. Doyle said that he has, at times, directed a tow truck to move on when it has been sitting next to an illegally parked vehicle awaiting the tow. He stated that it was common for tow trucks to follow police on clearway patrol in pursuit of tow work. He told the Commission that he knew that police have been previously investigated because of complaints by Ready Towing and Yellow Towing. As a result, he said that he avoided these towing operators if possible:

> I don't wish to be investigated for any matter, so I try to steer away from companies that lead to trouble.

David Barnbaum

Barnbaum said that he was a subcontractor for Telford Towing. He denied that he had any improper relationship with any police officer and said he had never provided any benefit or gift to a police officer. He said that clearway towing constituted 30 to 50 percent of his work and he attributed this success to attending clearway areas with

monotonous regularity by despatching three to four trucks to clearways on a daily basis in preference to other towing work. Barnbaum said he did not concentrate on smash work and did very little of it. He said that he has a holding yard at Fortitude Valley which is convenient for owners and his clearway towing operations.

5.4.3 Conclusion

The evidence given during the hearings and other evidence obtained during the Commission's investigation of a complaint made by Mathew Ready Senior in 1991 showed that some police officers favoured Telford Towing and Western Suburbs Towing over Ready Towing in relation to towaway towing. This was admitted by some police officers.

A vehicle removed from a "no standing" zone or clearway must usually be forcibly entered and placed in storage for some time without the consent of the owner. Police generally expressed the opinion that it was part of their duty to ensure that the interests of the owners of such vehicles were carefully considered in relation to possible damage to their vehicle, security arrangements and ease of recovery. The officers expressed the opinion that some tow truck drivers and operators met these requirements better than others. The validity of this opinion would no doubt be contested by the operators who are not favoured by police.

The evidence explained why allegations of corruption on the part of police in allocating towaways had arisen but there was insufficient evidence to substantiate corrupt conduct by any person.

With clearway towing and other situations in which police authorise the towing of vehicles, police usually have discretion in selecting a tow truck operator. This provides an opportunity for corruption or favouritism and gives rise to perceptions that such conduct is occurring. If two operators who are equally competent and reliable attend to police-directed towing, the police must make a fair choice which would usually be to give the tow to the first tow truck to arrive at the scene. Suggestions have been made

that a roster would lead to greater fairness but evidence has also been received that this is problematic for police and causes delays and inconvenience for the public. Roster systems and other options are discussed in Chapter 9.

5.4.4 Future Concerns on Police Towaways

Some police are critical of the present situation where the consent of a senior officer is required before they have authority to remove a vehicle except in relation to clearway towaways. This causes delays and possibly disruption to other road users as the senior officer may need to attend the scene before giving authority. The senior officer has to be satisfied that removal is necessary but the decision to select a tow truck operator is usually left to the officer who located the offending vehicle. This is a matter of QPS policy and should be reviewed to determine whether intervention by senior officers is appropriate. This issue is discussed further at 9.7.2.

CHAPTER 6 – EVIDENCE RELATING TO TERMS OF REFERENCE NO. 2

The payment by persons and/or entities engaged in the Smash Repair industry, to persons and/or entities engaged in the Towing industry of a valuable consideration (drop fees) in return for the persons or entities first mentioned obtaining the work of repairing damaged motor vehicles in contravention of the *Tow-truck Act 1973*.

6.1 THE *TOW-TRUCK ACT 1973*

Section 23 of the *Tow-truck Act* relevantly provides as follows:

> Consideration for obtaining certain information or work.
>
> (1) A person –
>
> ....
>
> (b) shall not give or agree or offer to give any valuable thing in consideration of the obtaining for himself or any other person of the work of repairing a damaged motor vehicle;
>
> or
>
> (c) shall not receive or agree or offer to receive any valuable thing in consideration of the obtaining for any other person of the work of repairing a damaged motor vehicle.
>
> (2) "Valuable thing" includes any money, loan, office, place, employment, benefit or advantage and any commission or rebate payment in excess of actual value of goods or service, deduction or percentage, bonus or discount or any forbearance to demand any money or monies worth or valuable thing, but does not include any reasonable charge in respect of the towing, salvage or storage of a damaged motor vehicle.

6.2 DROP FEES

In the case of a damaged vehicle which requires towing to its place of repair, the cost of the towing service (usually a first and a second tow) is generally paid initially by the repairer. The repairer then includes this cost item in the final account which is forwarded to the insurer for payment. In general, towing entities and insurers have agreed upon an appropriate fee which will be levied by the towing entity and which will automatically be paid by the insurer. The first and second tow fees, fixed by such an agreement, are not uniform among the towing entities, but they are generally within $10–$20 of each other. A typical first and second tow fee is in the order of $160 and $40 respectively. The drop fee or sling is usually an additional amount of $100 attaching to the first tow fee.

It was generally stated in evidence by participants in the smash repair/tow truck industry that drop fees, along with spot fees, have been part of those industries for many years. The payment of a drop fee or sling is made by a repairer to a tow truck operator where the repairer obtains approval to repair a vehicle as a result of:

- the tow truck driver towing the vehicle to a holding yard associated with or close to the repairer's business as a result of which that repairer has the first opportunity to quote for the repair work; or

- the tow truck driver convincing the driver of the damaged vehicle to use that repairer and towing the vehicle directly to that repairer.

Drop fees are not ordinarily payable when the tow truck operator delivers a vehicle directly to the repairer's panel shop as a result of a specific direction by the owner of the damaged vehicle to the tow truck operator to take the vehicle to the specified repairer. In those circumstances, it is likely that the vehicle owner is an existing client of the repairer. The repairer will feel no obligation to pay a drop fee to the tow truck operator in respect of an existing client.

The payment of a drop fee is commonly made in circumstances where the driver of a damaged vehicle has expressed no preference at all for the vehicle to be repaired by a specific repairer. The tow truck driver will usually ascertain the vehicle owner's residential and business address. The tow truck driver will then suggest the

delivery of the damaged vehicle to a panel shop or a holding yard associated with a panel shop known to give a drop fee for the introduction of a new client. That panel shop or holding yard will sometimes, but not in all cases, be located close to the vehicle owner's home or business. The registered holding yard system is explained in more detail at 6.3.

In many cases, the towing unit is owned by a repairer who has made the truck available to the tow truck operator as part of the operator's fleet. Of the arrangements of this nature referred to in evidence before the Commission, only one had been reduced to writing by the parties. The true ownership of many tow trucks is hidden from public scrutiny. This feature of the administration of the *Tow-truck Act* by the Department of Transport is examined at 6.4.

The driver in charge of a tow truck owned by a panel shop but running under the name of a towing entity, has several very good reasons for persuading the owner of the damaged vehicle to agree to the vehicle being deposited at that panel shop or at the holding yard associated with or close to that panel shop:

- The tow truck driver is acting in accordance with the wishes of the driver's true master, the repairer, to secure damaged vehicles upon which the repairer will have first opportunity to quote. The first opportunity to quote is of great commercial advantage because of the 'one quote' system operated by three of the four major insurers. The repairer's expectation will be even higher where that repairer also provides a holding yard to the tow truck operator with whom the repairer's truck is placed. We will refer to this holding yard as the 'home' holding yard.

- Several repairers gave evidence that, where vehicles were deposited at a holding yard associated with a competitor, they have often had considerable difficulty gaining access to the holding yard to quote on the vehicle, even where they were selected repairers for the relevant insurer. They also said that where they were successful in securing the repair, they often had difficulty in again gaining access to the competitor's holding yard to have the vehicle removed to their panel shops to commence the repair. For example, the repairer associated with the holding yard may 'have difficulty' in making a staff member available to unlock the yard and tie up the guard dog and the tow truck driver may

have seen to it that the damaged motor vehicle now finds itself parked behind a number of other damaged vehicles. The tow truck driver may purport to be unavailable for some period of time to perform the second tow to the panel shop of the opposition repairer who has won the repair.

- Quite apart from the expectations of the repairer, the tow truck driver has been handed a valuable tow truck by the repairer. The tow truck driver feels under an obligation to persuade the vehicle owner to allow the damaged vehicle to be stored in the 'home' holding yard. The tow truck driver knows that this will commence a chain of events which is likely to result in the 'home' panel shop obtaining approval to repair the vehicle.

- The tow truck driver knows that if damaged vehicles are consistently delivered to holding yards other than the 'home' holding yard, the repairer will examine the driver's Tow Authority Book and demand an explanation. The repairer will suspect that the tow truck driver is receiving a drop fee from some other repairer.

- The repairer will pay the driver a drop fee. In recent years, the drop fee has been calculated at the rate of $100 per drop on significant repair work. The repairer and the driver operate on a tacit agreement that smaller repair jobs requiring a tow will attract no drop fee or a reduced drop fee according to the value of the repair. In some cases the drop fee is paid directly to the driver when the damaged vehicle is dropped to the repairer or to the 'home' holding yard. The payment of the drop fee at this early stage is an indication of how confident the repairer is of winning the repair job from the insurer. In other cases, the payment of the drop fee to the driver is deferred until the repairer receives approval from the insurer or the vehicle's owner to carry out the repair.

The Commission elected to examine the payment of drop fees in the period 1990 to 1993. At the commencement of investigative hearings the Commission held intelligence which suggested that the payment of drop fees was occurring on a widespread and organised scale. The Commission investigators reasoned that such payments, if they were occurring on an organised scale, would usually be reflected in the books of account of the repairers because they would ordinarily be regarded as a business expense for taxation

purposes, regardless of any illegality attaching to the payments by reason of s. 23 of the *Tow-truck Act*. An analysis of repairers' books of account for the 1990–91 financial year revealed that the majority of repairers who paid drop fees did so in the form of cheques drawn on their business accounts. In many cases, a payment of $100 appeared in the books of account as a separate cheque, being the next cheque in sequence to a cheque issued to the tow truck driver or tow truck entity in payment of the prescribed tow fee. Sometimes the $100 drop fee was simply added to the cheque for the prescribed tow fee. For example, a first and second tow fee for $240 was included in a single payment to the towing entity of $340.

The prescribed tow fee is included in the ordinary costs of a motor vehicle repair. It is specifically itemised and paid by the insurer who authorised the repair. On the other hand, the drop fee is not an authorised payment and therefore is never paid directly by the insurer. The repairer must therefore absorb the cost of the drop fee or hide it in the overall costs of the repair of the motor vehicle. In the latter case, the illegal drop fee becomes a hidden impost upon the insurer and, eventually, upon the motoring public. The repairer is able to cover this hidden impost in a number of ways. These are discussed at 6.5.1.

These various methods of disguising this extra cost have not always passed the scrutiny of the insurance assessors. On the other hand, some methods are very difficult to detect.

One of the four major insurers, AAMI, estimates that the annual cost of motor vehicle repairs is $2.1 billion. AAMI identifies three practices which it says significantly add to that repair bill:

- the payment of drop fees, or the subsidising of the tow truck industry in various forms
- the provision of free loan cars supplied to clients by repairers
- the practice of the repairer paying the amount of the insurance excess to the client in order to win the repair job.

AAMI's spokespersons argue that the cost of these practices is built into the quote for the job and that by establishing its own independent assessment centre, AAMI has eliminated the opportunity for such practices. They say that they have saved 30%

on the cost of repairs and therefore argue that such practices cost the Australian motoring public (and their insurers) millions of dollars annually.

The Commission did not receive evidence that the practice of repairers paying the insurance excess was carried on in Queensland. There was some evidence that free loan cars are on offer by some repairers and that some tow truck operators and repairers actively employ this practice to attract clients. The Commission, however, did obtain extensive evidence that the first-mentioned practice, particularly the payment of drop fees, was prevalent in some areas of Brisbane.

This global estimate by AAMI spokespersons gains some support from the financial analysis of the books of account of two repairers who engaged in systematic payment of drop fees to tow truck drivers:

SMASH REPAIRER "A"

MONTH	IDENTIFIED 'LEGITIMATE' TOWING FEES - TOTAL FOR MONTH	IDENTIFIED DROP FEES - TOTAL FOR MONTH
Feb. 1991	$ 4,070	$ 1,560
Mar. 1991	$ 3,130	$ 1,000
Apr. 1991	$ 4,365	$ 1,500
May 1991	$ 6,800	$ 2,500
June 1991	$ 2,760	$ 1,500

SMASH REPAIRER "B"

MONTH	IDENTIFIED 'LEGITIMATE' TOWING FEES - TOTAL FOR MONTH	IDENTIFIED DROP FEES - TOTAL FOR MONTH
Feb. 1991	$ 2,600	$ 1,100
Mar. 1991	$ 1,670	$ 1,000
Apr. 1991	$ 1,680	$ 400
May 1991	$ 2,070	$ 400
June 1991	$ 1,980	$ 1,100

Other major insurers, apart from AAMI, simply acknowledge that payment of drop fees in particular is prevalent. They say that because it is difficult to detect, its cost to the community is difficult to quantify.

The Department of Transport, in its Issues Paper dated July 1993, at page 24, argues that:

> Direct financial returns from towing do not justify the current level of activity or investment in the industry. The figures strongly suggest that towing is not in itself a viable business. This is also consistent with the common observation that accidents are generally attended by many more tow trucks than are required. In the absence of some other form of return the number of tow trucks and drivers would normally fall until the revenue per truck reached a level at which operators were receiving an adequate return on their investment. That this has not happened is evidence that towing operators derive significant returns from some source other than towing. It is widely acknowledged in the industry that drop fees (secret commissions paid by vehicle repairers to towing operators to secure possession of a vehicle for the purposes of obtaining the repair work) are common practice. The current rate for drop fees is alleged to range from $100 per $5000 to 10% of repairs required to the vehicle.

In Appendix 3 to the Issues Paper the Department provided a number of calculations in order to demonstrate that the 368 registered tow trucks in Queensland are generating an unprofitable return on capital. This largely theoretical exercise gains significant support from those tow truck proprietors who admitted to the Commission that they organised, engaged in, encouraged, or at least acquiesced to the receipt of drop fees by their drivers. These proprietors (and many of their drivers) expressed the opinion that they could not survive in the tow truck industry without receiving drop fees. Other proprietors, and their drivers, who denied receiving drop fees and against whom no such evidence was obtained, disagreed with that assessment. However, many of the latter class of tow truck proprietors operated their own panel shop and holding yard. Therefore, they operated in a system in which the payment of drop fees was not required. It is proposed to examine this difference in approach later in this Chapter. It is first necessary to understand how the current regime of registered holding yards operates in the Brisbane area.

6.3 REGISTERED HOLDING YARDS

Section 12 of the *Tow-truck Act* provides as follows:

> Conditions of Licence.
>
> (1) Every licence shall be subject to the performance and observance by the holder thereof of the provisions of this Act with respect to the licence or to the tow-truck or tow-trucks to which the licence relates and of the conditions particularised in the licence or affixed thereto.
>
> (2) Without limiting the generality of the provisions of subsection (1), it shall be a condition of every licence –
>
> .....
>
> (f) that a person shall not obtain or attempt to obtain a signature on a form of towing authority unless there has first been entered on that form the full address of the place to which the motor vehicle the subject of the towing authority will be towed and where any business is carried on in that place, the name of the business;
>
> .....
>
> (i) that a person shall not tow a damaged motor vehicle from the scene of an incident by means of any tow truck to which the licence relates to a place other than the place referred to in paragraph (f);
>
> (j) that where a motor vehicle has been towed to the place referred to in paragraph (f), a person shall not, except to return the motor vehicle to the registered owner thereof or his agent authorised in writing, remove the motor vehicle to another place without the written authority of that owner or agent given after the motor vehicle has been towed to the place from which it is to be removed;
>
> (k) that where a damaged motor vehicle has been towed to a place where it is under the control of the holder of the licence, a person shall not refuse to deliver the motor vehicle to the registered owner thereof or his agent duly authorised in writing on request by the owner or his agent after payment of reasonable charges for the towing and storing of the motor vehicle, and where repair work

has been authorised by the owner or his agent, for that repair work, has been made or tendered;

.....

Section 43 of the *Tow-truck Act* provides for the making of regulations not inconsistent with the Act in relation to, inter alia:

> (o) premises or places to which tow truck operators deliver or cause to be delivered motor vehicles towed by the tow truck they operate and the use of those premises or places by those operators and the towing of motor vehicles thereto;

Regulation 16 of the *Tow-truck Regulations, 1988* provides, inter alia, that the Director-General of Transport may require the holder of a licence to operate a tow truck to 'provide a holding yard as a place of safe storage.' The Regulations define the term 'holding yard' as meaning:

> Premises which are owned or leased solely by the licence holder, have town planning approval from the Local Authority and comprise an area or areas, at ground level, each of which is enclosed by a boundary fence or wall which has lockable gates or doors and is:
>
> (i) of sound structure;
>
> (ii) securely fastened at ground level;
>
> and
>
> (iii) not less than 2.1m in height from the ground;
>
> or
>
> (iv) in the opinion of the Director-General is adequate to prevent the entry of unauthorised persons and the unauthorised removal of vehicles or goods.

Regulation 44 permits an officer authorised under the *Tow-truck Act* to enter and inspect holding yards maintained by a tow truck operator and to issue a notice to repair, modify or alter the holding yard to particular specifications within a specified time frame.

The existing legislative regime was intended to provide for an orderly procedure for the safe removal and storage of damaged vehicles and their contents until a decision is made, whether by an

insurer or the owner of the vehicle, as to where the vehicle is to be repaired. The legislative regime appears to contemplate a system of registered holding yards tied directly to licensed tow truck operators, being independent of the smash repair industry. The vast majority of these registered holding yards are, however, owned or leased by repairers. A high proportion of the holding yards are the subject of nominal or non-existent lease payments by the tow truck operators to the repairers. Where a repairer has made a secure holding yard available to a tow truck operator under these arrangements, that repairer has done so in the expectation that the use of the holding yard by the operator will generate a flow of smash work to the particular repairer. Some repairers expressed indignation at having to pay drop fees in addition to the commercial advantage already provided to the tow truck operator, namely, the provision of a secure holding yard for the storage of damaged vehicles by the tow truck operator at a nominal or non-existent rent.

The Department of Transport does not keep a central register of approved holding yards. The details of these yards are kept on the files relating to the individual licensed tow truck operators. The emphasis has been on maintaining security of yards. The Department does not know, in most cases, the identity of the registered proprietor of each holding yard. The Department is therefore not in a position to assess the extent to which holding yards are owned by repairers and made available to tow truck operators on advantageous terms.

The holding yard system significantly underpins the existing legislative regime for the towing and storage of damaged motor vehicles. The system is inadequate and requires significant reform. Where the licensed tow truck operator is also a repairer, the registered holding yard is invariably located adjacent to the repair shop. The smash repairer/tow truck operator almost invariably has the first opportunity to quote on the repair of vehicles delivered to the holding yard. Unless the motor vehicle owner or the motor vehicle insurer specifically requests another repairer to provide a quote for the repair of the vehicle, there is a high likelihood that the repairer authorised to conduct the repair on the vehicle will be the repairer who is the true owner or controller of the registered holding yard to which the vehicle was first delivered. It should be pointed out that, often a second tow fee will still be charged as part of the repair cost, irrespective of the distance which the vehicle has to be taken after repair approval is known. In other words, a second tow fee will be charged even if the vehicle is towed (or

even pushed) from the holding yard into the panel shop located 50m away or across the road. In such cases there is no cost advantage to the consumer whose vehicle is towed from the accident scene to a holding yard located adjacent to the repairer who eventually carries out the repair.

In the case of the licensed tow truck operator who is not involved in the smash repair industry, the practice has been for the operator to secure the use of holding yards owned by and adjacent to repairers. If a tow truck operator does own the holding yard, the likelihood is that write-offs are stored there. The Commission found that no more than a handful of registered holding yards were owned by licensed tow truck operators.

One tow truck operator and one repairer estimated that there was a 60% to 70% chance that a vehicle towed to a holding yard owned by a particular repairer would be repaired by that repairer. Another repairer told the Commission that, by providing loan cars to clients, he retained up to 95% of the vehicles which were delivered into his holding yard.

This is indicative of the extent of the commercial advantage of repairers owning holding yards.

6.4 Licensed Tow Trucks, Licensed Tow Truck Operators and Certified Tow Truck Drivers

6.4.1 Licensed Tow Trucks

Like all motor vehicles, tow trucks must be registered annually under the *Transport Infrastructure (Roads) Act 1991*. However, to carry out towing from accident scenes, a tow truck must be licensed under the *Tow-truck Act*. In fact, a separate licence is not issued for each truck. The tow truck operator's licence specifies all the trucks that the operator is authorised to use for accident towing.

The main purpose of licensing tow trucks is to ensure proper standards of safety.

The Department confirmed that the main role of their enforcement officers with regard to tow trucks has been in:

- ensuring that operators, drivers and assistants are duly licensed and comply with the requirements of the Act

- ensuring that tow trucks are of the requisite standard

- investigating complaints received from the public against tow truck drivers and investigating complaints by tow truck drivers against other tow truck drivers.

The enforcement activities of the Department will be canvassed in more detail in Chapter 8.

In its Issues Paper published in July 1993, the Department reported that there were 368 licensed tow trucks in Queensland.

However, its records do not contain details of the true ownership of all tow trucks. This is because, prior to 1991, the Department insisted that tow trucks be registered in the name of the licensed tow truck operator. In many cases this meant that the true ownership of tow trucks was unknown to the Department. The Department realised this and in late 1991 allowed tow trucks to be registered in the true owner's name where the owner was not a licensed tow truck operator. However, this is not mandatory. Therefore, the Department's records do not show the extent to which repairers have become directly involved in the tow truck industry by way of owning interests in tow trucks.

The Commission heard evidence that, in some cases, repairers purchased and equipped tow trucks at significant expense and simply passed the trucks across to tow truck operators without creating any record of the repairer's interest in the vehicle. It is highly desirable that the Department's records show the true ownership of each tow truck as well as the identity of the licensed tow truck operator. Such information is necessary to formulate effective policies for regulating the two industries.

6.4.2 Licensed Tow Truck Operators

Section 5 of the *Tow-truck Act* prohibits a person from operating a tow truck 'unless it is licensed and he is the holder of the licence'. Section 6(2) empowers the Director-General to cause inquiries to be made as to the fame and character of a prospective licensee and to grant a licence if he considers that the person is a 'fit and proper' person to hold a licence. Tow truck operators' licences are renewable annually. Section 12 of the Act sets out a range of conditions under which a licensed tow truck operator is required to operate, in particular:

- compliance with the provisions of any Act relating to design, construction and serviceability of the tow trucks licensed to operate under the tow truck operator's licence
- the proper completion of tow authority forms, showing the address to which the vehicle is to be towed
- the obtaining of any subsequent authority to move the vehicle to another location
- the taking of all reasonable precautions to prevent further loss or damage to the vehicle while under the tow truck operator's control
- the operation of tow trucks only by those who hold drivers' or assistants' certificates.

In its Issues Paper, the Department reports that as at July 1993 there were 175 licensed tow truck operators. An individual or a body corporate may obtain such a licence which authorises the holder to carry on the business of towing.

6.4.3 Certified Tow Truck Drivers and Assistants

Section 13 of the Act prohibits a person from operating a tow truck unless the person holds a tow truck driver's certificate. A person cannot be employed on or about a tow truck unless the person at least holds a tow truck assistant's certificate.

Once again, the Director-General is empowered to make inquiries as to the fame and character of each applicant, and may grant a certificate if satisfied that the applicant is a 'fit and proper person' to hold the certificate applied for (Section 14).

The drivers' and assistants' certificates are renewed annually if the Director-General is satisfied that the applicant has complied with the Act and continues to be a 'fit and proper person' (Section 17).

The driver's certificate can only be held by a person who also holds a current motor drivers' licence under the *Traffic Act* (Section 18).

The Department was criticised by some witnesses for its failure to refuse applications for tow truck drivers' licences on the basis that the applicant was not a fit and proper person. This matter will be considered in more detail in Chapter 8.

In its Issues Paper, the Department reports that as at July 1993 there were 1,092 certified tow truck drivers and 202 certified tow truck drivers' assistants.

6.5 Why the Payment of Drop Fees is Not in the Public Interest

Some stakeholders in the smash repair and tow truck industries, and some officers in the Department of Transport, have expressed the opinion that there should not be a prohibition against the payment and receipt of drop fees as currently exists in s. 23 of the *Tow-truck Act*. They argue that ordinary market forces will bring stability to the industry. A second argument, and one favoured by some officers in the Department, is that it is pointless having a law

which cannot be properly enforced. Furthermore, it has been said that such breaches are victimless. The repairer conferring the benefit will not complain having secured lucrative repair work. The tow truck driver obtaining the benefit will not complain for obvious reasons. The insurers and the consumer do not complain because the payment of drop fees, by its nature, is a secret payment and difficult to detect.

In answer to these arguments the Commission, on the basis of its investigation, makes the following observations:

1. Drop fees can become a hidden cost to the insurer (or to the owner in the case of uninsured vehicles) and ultimately to the motoring public.

2. Drop fees play a significant role in ensuring that the allocation of repairs occurs according to which tow truck secures the tow. This creates a 'non-level playing field' in that repairers who refuse to pay drop fees obtain less accident towing work.

3. Where some repairers pay drop fees, those who do not may be pressured by either tow truck drivers or business exigency to also make such payments.

4. A regime is created whereby pressure can be applied by a tow truck operator upon repairers to finance and run a tow truck with that operator in order to compete effectively in the lucrative smash repair market.

5. Drop fees contribute to the maintenance of an over supply of tow trucks in the industry, leading to a greater likelihood that trucks will race each other to accident scenes and create safety problems when they get there.

6. There is a greater incentive for pressure to be applied to the motorist by tow truck drivers at accident scenes to have the vehicle towed to a particular holding yard or repairer.

7. There is more competition among tow truck drivers at the scene of accidents to tow repairable vehicles rather than "write-offs" for which no drop fees will be paid.

Each of these observations will now be considered in detail.

6.5.1 Hidden Costs to the Insurer and to the Motoring Public

Reference has previously been made to the estimates of the cost of drop fees to the motoring public. Extensive financial analysis of books of account produced by repairers indicates that the payment of drop fees by large Northside repairers to towing entities was endemic and entrenched during the 1990–91 financial year. The payment of drop fees by these repairers continued until early September 1991. This cut–off in activity coincided with the issue of a circular by the RACQ dated 29 August 1991, (Appendix 3) reinforcing that such practices were prohibited. The circumstances leading to the issue of this circular will be examined in detail later in this chapter. Thereafter, the repairers who had previously paid drop fees on a regular basis commenced to make payments which purported to be payments for the day–to–day maintenance of certain tow trucks. Several repairers and tow truck drivers admitted that such maintenance payments were calculated at exactly the same rate, that is, $100 for each damaged vehicle towed in and for which the repairer received repair approval. Some repairers admitted to paying more under this scheme than they did when they paid drop fees by cash or cheque.

By virtue of this switch to "maintenance" payments, the repairers continued to subsidise the tow truck operations in order to attract the more lucrative smash repair work from tow trucks. The evidence obtained by the Commission indicated that this change in arrangements occurred as a result of a meeting at the office of Manual Body Works after the issue of the RACQ circular. It was attended by the following persons:

- Emmanuel Kennedy–Cerruto – Manual Body Works
- Col Shipstone – Shipstone Smash Repairs
- Vaughan Pappin – Nundah Smash Repairs
- Kev Jones – Kev Jones Smash Repairs

- Gary Strathdee – Kedron Smash Repairs
- Mathew Ready Senior – Ready Towing
- Mathew Ready Junior – Ready Towing
- Mark Ready – Ready Towing

Kennedy–Cerruto said in evidence that 'one of the Readys' said that "incentives" were no longer to be paid. The meeting proceeded to discuss the commencement of 'maintenance' payments for tow trucks. Kennedy–Cerruto said that the meeting was organised by 'one of the Readys'.

Mark Ready said in evidence that the change to the 'maintenance' payments was 'worked out in discussion between all of us' at that meeting because the smash repairers 'were worried that if they continued to pay their own drivers an incentive fee, the RACQ might take action against them'.

Drop fees, whether paid by cash or cheque or disguised as maintenance payments, cannot form an item in the cost of the repair which is ultimately paid by the insurer. The only cost for towing services which is itemised as part of the cost of the repair is the payment of the prescribed fee for the first tow associated with the delivery of the vehicle to a holding yard and the second tow for its removal to the repair shop for the commencement of the repair job.

The repairer may simply absorb these costs and thus reduce the profit. Several repairers gave evidence to this effect. However, the Commission also received evidence that these costs could be surreptitiously passed on to the insurer or owner in a number of ways, although it should be noted that the Commission did not obtain evidence that any particular repairer engaged in these practices:

(1) The repairer would include the amount in the costs of the labour content for a particular repair job. The figure chosen would not be so large as to attract the adverse attention of the insurance assessor. The repairer would then see to it that the repair job was completed in a substantially reduced

time, but not subsequently acknowledge any reduced cost for the labour content.

(2) The repairer would include in the quote the cost of a new spare part. A second-hand or inferior part would then be used. Such a substitution would be discovered by an assessor only if the assessor conducted a spot check of the vehicle during the repair process. In the ordinary course of events, once the repair was completed, the use of an inferior part would not be discovered.

(3) The repairer would quote for the use of quality paint, but would complete the job with inferior paint. Again, the use of inferior paints would not be easily discovered.

(4) The repairer would include in the quote a repair item which in fact did not need any repair. The assessor might more readily pick up such a thing, but some witnesses suggested that such activity does occur.

Reference has previously been made to the estimate, by AAMI, of the cost to the motoring public occasioned by the payment of drop fees and other practices carried on by repairers. Other insurers find it difficult to estimate the cost of drop fees on the community. From time to time, where the insurer suspects that a drop fee has been paid, it has the sanction of withdrawing its approval for the conduct of that repair. In the ordinary course of business, however, insurers cannot obtain any hard evidence about the payment of drop fees by repairers. This Commission had to make extensive use of its investigative powers to obtain such evidence.

6.5.2 Allocation of Repairs According to Which Truck Secures the Tow - the "non-level playing field"

The repairer who refuses to pay drop fees and chooses not to become involved in the running of a tow truck is, under the current legislative regime, placed at an immediate and significant disadvantage in competing for a share of that

proportion of smash repair work which comes from tow trucks. The Commission's investigations revealed that many repairers felt very strongly about the issue of the non–level playing field. They expressed the opinion that the industry was badly in need of reform. On the other hand, those repairers who freely admitted to the payment of drop fees and subsidising the running of tow trucks, invariably expressed the opinion that there was nothing wrong with the way the industry was currently organised and regulated.

In an attempt to test the non–level playing field assertion, the Commission examined two localities in each of which two repairers operated within a short distance of each other. In each locality one repairer had a direct interest in tow trucks and his competitor did not.

Example 1 – Nundah/Chermside Area

Nundah Smash Repairs and Watkins Smash Repairs

Vaughan William Pappin is a director of Banmax Pty Ltd, trading as Nundah Smash Repairs and Chermside Bodyworks. Nundah Smash Repairs is located at 1525 Sandgate Road, Nundah. He has a property at the rear of those premises in which he stores vehicles for the purpose of his smash repair business. However, it is not a registered holding yard for the purposes of the *Tow–truck Act*. He said in evidence that he used other premises in Nundah Street, Nundah as a holding yard. The Commission understands from other evidence that these are the premises used by Ready Towing at 41 Nundah Street. Mathew James Ready and Mark Charles Ready are the registered proprietors of those premises. Chermside Bodyworks is located at 179 Kitchener Road Kedron, with a holding yard at 181 Kitchener Road Kedron. Only Chermside Body Works, which commenced in 1991, is a selected RACQ Insurance repairer.

Over the last five years, Mr Pappin has run between two and four trucks with Ready Towing. Since July 1990, Ready Towing has been the approved RACQ towing contractor for this area of the northern suburbs. Mr Pappin said he had two classes of drivers. The first class comprised drivers he employed and provided with tow

trucks. Mr Pappin said he paid those drivers on a weekly basis according to how many vehicles they towed. The second class comprised drivers provided by Ready Towing to drive Pappin's trucks. Mr Pappin used to pay those drivers for each damaged vehicle they delivered to him. He said he paid the Ready Towing drivers by cheque, which they took back to the Ready Towing office. In relation to the drivers he actually employed, Mr Pappin said that for a period, in addition to the prescribed towing fees, he also paid them up to $100 for each vehicle they towed for which he received repair approval. He referred to these payments as incentives. Mr Pappin said in evidence that he never paid incentives to a driver who didn't work for him. He said the amount of the incentive payment varied with the value of the repair work. The drivers he personally employed were paid by him by way of a cheque made out to them or to cash. Mr Pappin said that in approximately January 1991 he made a decision to purchase new tow trucks and this decision prompted his further decision to change his method of paying his drivers so that he would no longer pay the incentives but would pay for the day-to-day maintenance of the tow trucks such as fuel and replacement of tyres. In a subsequent written submission to the Commission Mr Pappin explained that there was a transition period after he made that decision during which his new trucks did not incur any significant maintenance costs and during which he continued to pay his drivers the $100 amounts. He was adamant in both his evidence and in his written submission that he ceased paying these $100 amounts before the RACQ circular dated 29 August 1991 was issued. In his written submission he said that one of the reasons he changed his method of payment of his drivers was his concern that he was operating outside the letter of the law at a time when he was expanding his business with corresponding financial risks. He said that drop fees were condoned by the Department of Transport and major insurance companies during the period covered by the Commission's inquiry.

Discussions between officers of the Commission and representatives of the Department of Transport and the major insurance companies revealed that both the Department and the insurance companies were well aware that drop fees were paid to tow truck drivers. However,

the prevalence of payments could only be revealed by an investigation of the kind undertaken by the Commission.

Financial analysis of the books of account of Nundah Smash Repairs produced to the Commission showed a consistent pattern of payment of the $100 amounts until at least 10 April 1991. The records of the business produced to the Commission were incomplete in that Mr Pappin did not provide towing invoices for the period 24 May 1991 to 30 June 1991. Therefore, for this period, the Commission could not compare the cheque butts of Nundah Smash Repairs with the towing invoices and could not ascertain whether the cheque butts related to the $100 payments. However, one further payment by cheque dated 29 July 1991 was detected which was believed to include a drop fee of $100. Mr Pappin said in his written submission to the Commission that he believed that this payment would have been made to an owner driver, that is, a driver who owned and drove his own tow truck.

Donald Walter Rosentreter is a Director of G D Watkins and Co Pty Ltd, trading as Watkins Smash Repairs. His panel shop is located at Aspinall Street, Nundah, about two kilometres from Nundah Smash Repairs. G D Watkins and Co is an RACQ Insurance selected repairer. It has been a selected repairer since the scheme began. Mr Rosentreter has been associated with the company since 1970 and has been in control of it since 1976.

Mr Rosentreter stated that he has had no financial involvement with the tow truck industry and refuses to pay drop fees. In 1990–91 only five vehicles were delivered to him by tow trucks. Rosentreter says that most of these would have been private jobs, not involving an insurer at all. He said that although he is a selected repairer for RACQ Insurance, and although Ready Towing is the approved RACQ towing contractor for the area, he has not received any work from them.

The Commission obtained the incident books of Ready Towing which provided the locations to which Ready Towing drivers towed vehicles in the period December 1989 to June 1991. Computer analysis of those books showed that during that period 39 vehicles were towed to Nundah Smash Repairs and only one vehicle was towed to

Watkins Smash Repairs. This analysis supported Mr Rosentreter's assertion that, as he does not own a tow truck, he is not able to compete effectively for that percentage of repair work which is towed by tow trucks. It should be noted, however, that figures provided by RACQ Insurance to the Commission showing the value of repairs carried out by Nundah Smash Repairs and paid for by RACQ Insurance did not show that Nundah Smash Repairs received any significant volume of RACQ Insurance work, whether towed-in or driven-in. It therefore follows that the great majority of these 39 vehicles were not insured with RACQ Insurance.

In a written submission to the Commission, Mr Pappin stressed other factors by way of explanation for the differing amounts of towed in work received by his businesses and Rosentreter's. He said that his businesses were much larger than Rosentreter's and that he provided his clients with loan cars and other services not supplied by his competitors. However, he also acknowledged that he expected to be favoured with repair work towed by his trucks:

> In simple terms, because I made a considerable financial investment in the towing industry, am I to be adversely criticised because I have favoured my own businesses with towed smash work. Surely I am entitled to a fair return on my investment?

Mr Pappin gave evidence on 28 January 1993 of the benefit his repair businesses derived from his association with towing. He said that, as at that time, of 35 repair jobs received by his businesses in an average week, about eight of them were towed in by tow trucks. The eight jobs represent the major proportion of his turnover because they tend to be the larger repair jobs. He said that, on average, about 7½ of the eight towed in vehicles are towed by his drivers in his trucks. The other portion is towed by other Ready Towing trucks and the trucks of other towing operators.

Colin Johnson, the Chief Assessor for RACQ Insurance, agreed in evidence with the general proposition that repairers who owned tow trucks and premises used by towing operators as holding yards obtained an advantage

over those repairers who were not involved in the towing industry. However, he said he could not recall receiving any complaints from G D Watkins and Co about the unfairness of having to compete for business on a non-level playing field. Mr Johnson also commented that some selected repairers received more towed-in work simply because they were larger. He stated that RACQ Insurance sometimes compensated for the fact that one of its approved repairers received less towed-in work by referring more drive-in work to that repairer.

As mentioned above, at the request of the CJC, RACQ Insurance supplied annual figures for the payment of claims in respect of repair work performed by each repairer for 1990, 1991 and 1992. Those figures showed that Nundah Smash Repairs did not receive any significant volume of repair work paid for by RACQ Insurance but G D Watkins did. Furthermore, the figures for both repairers did not distinguish drive-in work from towed-in work and therefore they were not relevant to Mr Rosentreter's claim that he received very little towed-in work.

Example 2 - Enoggera Area

Grove Body Works and Powell's Body Works

Neil Douglas Scott is the proprietor of Fulcote Pty Ltd, trading as Grove Body Works, at 105 Pickering Street, Enoggera. The business also owns a holding yard operated by Ready Towing at 45 Pickering Street, Enoggera. He has been associated with Grove Body Works for 18½ years, 11 years as the proprietor of the business. Grove Body Works is a selected repairer for FAI and Suncorp. Scott gave evidence that he paid some drop fees in 1988, but did not pay any more drop fees until early 1991. He recommenced paying drop fees to attract work to his panel shop. In the first half of 1991, he also commenced to run a tow truck with the Ready Towing fleet. Scott paid $14,000 for the purchase of an existing truck in the Ready system and entered into an agreement with Lloyd Ziebell, a Ready Towing driver. Both Scott and Ziebell frankly admitted that the terms of the agreement were that Ziebell was to maintain and fuel the vehicle and in return for the use of the vehicle Ziebell would try to get as much smash work as he could to the Grove Body Works (Ready

Towing) holding yard. Ziebell received the prescribed first and second tow fees and a drop fee (which Scott described as a 'commission') of $100 per vehicle. Scott paid drop fees to the driver until about September 1991, when he spoke to a Detective from the CJC. Thereafter he commenced to pay the driver's radio fees, due to Ready Towing, at the rate of $200 per week.

Brett James Maclarn is a Director of Flintberg Pty Ltd, trading as Powell's Body Works at 55 Pickering Street, Enoggera. As mentioned above, the Ready Towing registered holding yard at 45 Pickering Street is owned by Grove Body Works. Mr Maclarn has conducted his business since 1986 and has been a RACQ Insurance selected repairer since that time. He has no involvement in the ownership or operation of tow trucks. Mr Maclarn told the Commission that the only business he gets off the back of a tow truck is when the driver of the damaged vehicle has specifically requested it be towed to his premises. He said that he does not willingly pay drop fees to secure work from tow trucks because he does not consider it to be the proper thing to do. He told the Commission that over the years he had received very few jobs from tow trucks, especially from the approved RACQ towing contractor for the area, Ready Towing. Maclarn maintained that, according to his own observations, Grove Body Works and Kassulke Smash Repairs (a selected RACQ repairer located at Everton Hills) receive a large volume of RACQ Insurance repair work. Maclarn said that he commenced paying drop fees in February 1993 because he was desperate for work. At that time he noticed that smash repair work was being towed out of his area to Kassulke Smash Repairs at Everton Hills and to Kedron Smash Repairs. The proprietors of both of those businesses admit to systematic payment of drop fees to Ready Towing drivers. Kedron Smash Repairs has had a long involvement in the ownership of tow trucks running under the Ready Towing banner. Maclarn told the Commission that in early 1991 he was approached by a driver who was with Ready Towing with the proposition that he (Maclarn) should 'work in closely' with Ready Towing and should pay drop fees. Maclarn declined to become involved at that stage. Maclarn said that from then on no damaged vehicles were delivered to his premises by Ready Towing drivers.

Computer analysis of the Ready Towing/Combined Towing incident books for approximately eighteen months from December 1989 was inconclusive because both Powell's Body Works and Grove Body Works are located in Pickering Street, Enoggera. Of the entries in the incident books supplied by Ready Towing/Combined Towing, 166 made reference to that street, but did not specify which business received the vehicle. It is likely, however, that most of those entries related to deliveries to the Grove Body Works holding yard, because it was a registered holding yard of Ready Towing.

As mentioned, Colin Johnson agreed that the current system favoured repairers directly involved in towing. He recalled that his organisation did direct repair work to Powell's Body Works when it became aware that Powell's was short of work. Mr Johnson told the Commission that the work would be obtained by RACQ Insurance from other holding yards and other RACQ Insurance selected repairers. He said that this was done, with the consent of the client, in the ordinary course of business. He did concede, however, that securing the client's consent to moving the vehicle away from the holding yard of the first repairer was often made difficult where:

- the tow truck driver has convinced the client that the first smash repairer is the best repairer

- the tow truck driver has told the client that the first smash repairer will make a replacement car available to the client

- the first smash repairer is already in a good relationship with the client and may have already promised to repair the vehicle immediately.

Mr Johnson also suggested that annual RACQ Insurance figures would not show an imbalance in the total value of RACQ Insurance repairs performed by, for example, Grove Body Works and Powell's Body Works. Annual figures later provided to the CJC by RACQ Insurance arguably supported Mr Johnson in this regard and did not indicate that Mr Maclarn's business was at a commercial disadvantage when compared with Mr Scott's business because of Maclarn not having a direct interest in tow

trucks. However, once again the figures were inconclusive as they did not distinguish the value of towed in repairs from drive-in repairs.

Mark Ready was given the opportunity to comment upon the proposition that smash repairers who owned and operated tow trucks received significantly more towed-in smash repair work. He made the following points:

- Some smash repairers are larger than others and therefore have a greater capacity to perform the work.

- Once the vehicle arrives at the towing entity's holding yard, 'we have no further authority or deliberation on where the vehicle goes ... All I can do is make the decision, if the owner doesn't request the vehicle to go anywhere else, ... we tell her ... we'll take the vehicle to the closest holding yard ... '; however, he also acknowledged that only one holding yard operated by Ready Towing was not owned or leased by a smash repairer. The business card used by Ready Towing when it amalgamated with Southside operator Yellow Towing to form Combined Towing in 1991 - 1992 showed that there were 8 Ready Towing holding yards on the Northside.

- The smaller smash repairers would not need a tow truck 'to pull in the amount of business they would require'.

Notwithstanding the inconclusive figures provided by RACQ Insurance, it is logical that, other factors being equal (for example size of operation, established client base and location), a repairer who also has a towing business will obtain more towed repair work than rival repairers without towing businesses. The Commission obtained evidence that an increasing number of tow trucks are owned by repairers who operate them as "loss-leaders" for repair work (see 6.5.4). That is, the towing business does not make a profit but this is off-set by an increased supply of towed smash repair work. The driver of a truck owned by a repairer is expected to favour that repairer with work, whether the driver is employed by the repairer or an

associated towing operator. The only way a rival repairer can compete is by offering the driver a drop fee but the driver knows acceptance of the payment may result in dismissal if the repairer who owns the truck learns of the payment.

It is quite lawful for repairers to have towing interests but whether this is desirable for the two industries is a decision that needs to be made by government (see 9.5).

6.5.3 Discussions Between Repairers and Tow Truck Operators/Drivers About Drop Fees

A number of repairers gave evidence that, at one time or another, they had refused to be involved in the payment of drop fees, as a result of which tow truck drivers or operators had attempted to induce them to so do. Some said that they had paid drop fees out of desperation to ensure a flow of work for their panel shop. A very small proportion of repairers admitted to initiating approaches to tow truck operators, with offers to pay drop fees in return for the delivery of repair work.

On the other hand, the evidence of some tow truck operators on this point was that repairers were continually telephoning the tow truck proprietors, offering to pay drop fees in return for work. Mathew John Ready Senior, in his evidence to the investigative hearings, said:

> They were knocking on your door, trying to pay you. You hadn't had to go out and force them to pay you. They propositioned you day and night ... I've never experienced in my lifetime ever, that I can ever recall, having any trouble with commissions, because they were forced upon you. They were lining up, queues of them, wanting to get in the system.

Although this account by Mathew Ready Senior is supported by his sons, Mark and Mathew Junior, no other tow truck proprietor ascribed such conduct to repairers. However, a representative of one Southside repairer admitted approaching Yellow Towing in early 1991 and offering to pay drop fees. One Northside repairer admitted having contacted Ready Towing to offer to pay drop fees but only after he had earlier refused to pay. Two other

Northside repairers gave evidence that they refused to pay but later paid drop fees to Ready Towing drivers because they were desperate for work. The evidence indicated that the tow truck drivers and operators have been the party more likely to seek the payment of drop fees. Many repairers gave evidence that once they refused to pay a drop fee to a tow truck driver, they expected to receive, and did receive, very little repair work from that driver or operator.

Since 1990, drop fee practices have varied according to the locality and the identity of the major tow truck operators working there.

Sixteen Southside repairers gave evidence. Six said that they paid drop fees begrudgingly, sporadically, and only when they could not avoid doing so. Two further repairers admitted that they reached an agreement to pay drop fees regularly with drivers or operators associated with two separate towing entities. A further three repairers admitted that they paid benefits to their own drivers, but not to anyone else. The remaining Southside repairers declared that they refused to get involved in the payment of drop fees.

Examination of the Southside repairers' books of account tended to confirm this evidence. Evidence by tow truck drivers also confirmed this evidence.

Fourteen Northside repairers gave evidence to the hearings. Ten gave evidence of payment of drop fees to tow truck drivers on an organised basis. As mentioned above, three other repairers said that, at first, they refused to pay drop fees but later paid them to Ready Towing because their panel shops were not getting sufficient towed in repair work. One Northside panel shop proprietor gave evidence that he steadfastly refused to pay drop fees.

Examination of the Northside repairers' books of account tended to confirm their evidence. The evidence was further confirmed by tow truck drivers who nominated the repairers who paid them drop fees.

A number of the Southside repairers gave evidence that the payment of drop fees on the Southside became more

organised after the merger of Yellow Towing and Ready Towing to form Combined Towing.

Graham Arthur Baxter of Buranda Motor Body Works gave evidence that for a period the business also operated two tow trucks under the name Buranda Towing. He said that in October 1990 the business purchased premises in Sword Street, Buranda which were used as a holding yard. Some time after October 1990, the trucks were placed in the Yellow Towing fleet. Baxter said that when Ready Towing became associated with Yellow Towing he met with Mathew Ready Junior and Mark Ready and agreed to affiliate with them and to make the holding yard available to Combined Towing. During these negotiations, Baxter said that the Ready brothers told him that their drivers would expect 'repair commissions' and that if Buranda Body Works did not pay them, they would not get any work. He said that soon after the Combined Towing merger, several Combined Towing drivers from the Northside dropped damaged vehicles for repair and expected to be paid 'repair commissions'. Baxter said that he only paid these drivers on a few occasions and that when he refused to make further payments, these drivers did not deliver any more vehicles to him. He said that Buranda Body Works took the view that the provision of their holding yard for use by Combined Towing should have been a sufficient benefit to Combined Towing and that they should not have to pay drop fees to the Combined drivers on a regular basis. Baxter acknowledged that he had paid 'repair commissions' to his own drivers from time to time before his trucks joined the Combined Towing fleet. He said he had done so begrudgingly when work was in short supply to keep the business running.

Mark Ready said he could not recall such a discussion with any smash repairer. In relation to Buranda Body Works, Mr Ready said that this smash repairer was already paying "commissions" to its drivers when its truck was placed in the Combined Towing fleet and that Combined Towing simply continued the arrangements.

Raymond John Darwen is the proprietor of Darwen Smash Repairs Pty Ltd trading at 41 Vulture Street, West End. Darwen told the Commission that he purchased a tow truck in August 1991 from the Ready family. Darwen dealt with

Mark Ready over this purchase and he ran the truck for a short time with Albion 24 Hr. Towing Pty Limited. (Mark Ready, Kevin Jones and Colin Shipstone are registered as directors of that company and Mathew Ready Junior as secretary.) Darwen said that he arranged with Mark Ready that he would get the truck up to scratch and obtain a holding yard so that vehicles could be towed to it. Ready Towing was to provide a driver and Darwen said that Mark Ready told him that, in respect of work dropped to his holding yard, a 'bonus' would be payable. (Mark Ready acknowledged in evidence that he may have had such a conversation with a repairer.) At the time of this conversation with Mark Ready, Darwen said he was ignorant as to the provisions of the *Tow-truck Act*. During the short time that the truck ran with Albion 24 Hr. Towing Pty Limited, no smash work was brought in by the truck, so the payment of a 'bonus' never arose. Darwen said he withdrew from the arrangement because he thought he 'was going to get exploited'. He said that he had never previously or subsequently paid a drop fee to a tow truck driver during his 11 years in the industry.

Mervyn John Hull, the proprietor of Dick Porter Body Works Pty Ltd, trading at Montague Road, South Brisbane, told the Commission that in about 1990 he purchased a tow truck and ran it with Humphreys Towing Southside for about twelve months. Hull admitted that during this period he provided up to $80 per "drop" as his way of putting something towards the running of his tow truck with Humphreys. Humphreys otherwise maintained, fuelled and staffed the tow truck. This arrangement ceased when Humphreys Towing Southside lost the RACQ contract to Yellow Towing. Hull told the Commission that early in 1992, after the Combined Towing merger, he was approached by Mark Ready and his cousin John Ready Junior. They sought the use of Dick Porter's holding yard at West End. Hull told the Commission that they also wanted him to purchase Gabba Towing for $30,000. (In a subsequent statement Hull said that John Ready Junior did most of the talking.) The deal included a tow truck which Hull estimated to be worth $15,000. (At this time, Hull had sold the tow truck which previously ran with Humphreys Towing.) Hull said that the other terms of the proposition were that he pay $200 per week radio fees and

pay $100 for each vehicle which was dropped off to the holding yard owned by Dick Porter's Body Works.

In relation to the suggestion that he purchase Gabba Towing, Hull said that John Ready Junior told him that if he acquired that towing business's name, 'that would be another one out of the way'. The suggestion was that Dick Porter's Body Works could run a tow truck with Combined Towing while retaining the name Gabba Towing. Hull gave evidence that he took the view that Combined Towing was attempting to line its own pockets. He said his business could not afford to accept the proposition. On his estimate that the truck was worth $15,000, Hull considered that he was being asked to pay an additional $15,000 for a business name. Hull said John Ready also told him that if he joined their selected smash repairers in the system and went with their rulings he, like everybody else in the system, would be fed by it.

Hull gave evidence that prior to the Combined Towing merger, the Southside was well served by a competitive towing industry. At that time, it was made up of Gabba Towing, Yellow Towing, Economy Towing, Humphreys Towing and John Lyons Towing. Hull commented, 'Everybody was happy ... there was enough work to go around for everybody.' By 1992, the only towing entities left in the inner Southside were Yellow/Combined Towing and John Lyons Towing.

Hull told the Commission that he did not agree to join the system and, therefore, his business did not get fed from that system. He said that as a result of his decision the drivers of Yellow Towing/Combined Towing did not deliver smash work to his business even though his repair business was a selected repairer for RACQ Insurance and Yellow Towing held the RACQ towing contract for the relevant area. Hull admitted to the Commission that, subsequently, he did pay several drop fees as a matter of survival when drivers from Combined Towing asked for them.

John Ready Junior said in evidence that the offer to purchase Gabba Towing was made to a number of repairers including Domroy Smash Repairs and Mervyn Hull of Dick Porter's Body Works. Ready said he was present for

some of these meetings but could not accurately recall what was said. Ready agreed that a smash repairer could get into the system by purchasing a truck and paying the radio fees of $200 per week to Combined Towing. However, he said that the system did not necessarily involve repairers paying their drivers drop fees at the rate of $100 for each damaged vehicle. He said that this was a matter negotiated by the smash repairers with their drivers and that:

> some drivers got slings, some drivers had their radio fees paid, some drivers had their fuel accounts paid.

Mark Charles Ready told the Commission that he could not recall having such conversations with any repairer. However, he agreed that, in negotiations with repairers about providing tow trucks to the Ready Towing or Combined Towing fleet, depending on the context, he could have told them that he could not guarantee the drivers would drop work to the smash repairers unless they paid the drop fee or incentive.

In relation to the small number of damaged vehicles delivered by Combined Towing drivers to the holding yard associated with Dick Porter's Body Works, Ready stated that vehicles were not delivered there because the security on that holding yard was not very good and under the Combined Towing system then in force, the owner/drivers with Combined Towing were responsible for the vehicles that they towed. They were required to pay for any theft or breakages. Ready told the Commission that quite a few of the Yellow Towing drivers said that they did not want to take any damaged cars to that holding yard if they were going to be responsible for anything that went missing out of the cars after hours. Ready told the Commission that Combined Towing did not reduce to writing its concerns about lack of security at the Dick Porter's Body Works holding yard but he and his brother Mathew made their concerns known to representatives of RACQ Insurance during a meeting. He acknowledged that they were told by the RACQ Insurance representatives to deliver vehicles to that holding yard and that the insurer would be liable for any claim for lost property while the car was stored in that yard.

In relation to this issue, Mr Hull told the Commission that in the last five years, he had had one theft from a motor vehicle stored in his holding yard. This theft occurred in January 1990, over 12 months prior to the commencement of Combined Towing.

Joanne Lee Lingenberg gave evidence that she was the office manager for Yellow Towing, a business owned by Taxi Combined Systems Pty Ltd. She said that she had held that position since Yellow Towing obtained the RACQ service contract in November 1989 and had been employed by the company for 17 years. Yellow Towing was the approved RACQ towing contractor for certain areas on the Southside of Brisbane. She said that in April/May 1991 negotiations were conducted between Yellow Towing and Ready Towing with a view to amalgamating certain aspects of the two businesses under the name Combined Towing. She continued to work for Yellow Towing after Combined Towing commenced operations. She told the Commission that in about July 1991 Mathew Ready Senior, the Operations Manager for Combined Towing, showed her a 'smash card' for Combined Towing. ('Smash cards' are business cards that tow truck drivers hand out at accidents to the drivers of damaged vehicles.) Lingenberg said the smash card had just been printed and included a number of addresses of holding yards associated with various repairers. Lingenberg said Ready told her that, of the repairers whose addresses appeared on the card, only two did not pay drop fees. One of those two was Dick Porter's Body Works. Ready told her that most of the drivers try to take their work to the panel shops associated with these holding yards, more so than to other panel shops, because they were 'looked after' and because some of the trucks were owned by the panel shops. Ready also told her that the drivers got extra money for dropping off cars to those addresses rather than taking them somewhere else.

Mathew Ready Senior told the Commission that he could not recall any such conversation in relation to the Combined Towing 'smash card'. This card is discussed in greater detail at 6.8.1.

A former driver for Combined Towing furnished a sworn statement to the Commission in which he also referred to the Combined Towing smash card. He stated that on one

occasion Mark Ready, in the presence of Bill Parker of Yellow Towing and Mathew Ready Junior, referred to the Combined Towing smash card and told him that only two yards listed on the card did not pay drop fees for repair work.

This conversation was denied in evidence by Mr Parker, Mark Ready and Mathew Ready Junior.

Financial analysis of the books of account of the repairers associated with the holding yards on the smash card showed that only two of those smash repairers did not regularly pay drop fees to Combined Towing drivers.

At one stage in his evidence, Mark Ready denied ever suggesting to panel shop owners that incentive payments ought to be paid to tow truck drivers. He stated that he received calls from panel shops on a weekly basis in which the panel shop proprietors sought to pay incentives in return for the delivery of work. He said, 'I wouldn't have to tell them to pay them. They want to do it.' Ready said that during conversations with panel shop owners about the placing of a tow truck in the Ready Towing fleet, the panel shop owners have asked him how much they were required to pay the tow truck drivers by way of drop fees. Ready said that his response was, 'Pay them as least as possible and don't worry about making them out to be kings or queens in tow trucks. They're just tow truck drivers.' However, at another stage he acknowledged that he may have said to several panel beaters that drop fees were part of the Ready Towing system.

As to Ready Towing's activities on the Southside, Mark Ready said that most of the panel shops referred to were already dealing with, or employing drivers who belonged to, Yellow Towing before the amalgamation. He said that the various repairers were employing their own tow truck drivers and it was up to the repairers what they paid their drivers:

> It didn't particularly bother me because I thought if there was any action to be taken the Transport Department would have taken it.

Mathew John Ready Senior also did not accept any suggestion that he played any role in expanding or systematising the payment of drop fees on the Southside. His basis for denying such conduct was that the majority of Yellow Towing drivers were employed by panel shops, or were owner–drivers, and that the payment of drop fees would not have resulted in any benefit to Ready Towing.

6.5.4 The Maintenance of an Over Supply of Tow Trucks in the Industry

The major motor vehicle insurers, in a joint submission to the Commission, agree with the Department of Transport in its assessment that there is an over supply of tow trucks, 'earning too little income to make them a viable stand alone business'. The insurers point out that an increasing number of tow trucks are 'owned and operated by repairers as loss–leaders for repair work'.

Where the tow truck is owned by a repairer (whether the truck runs under the repairer's name or under the name of a towing entity) the truck may be simply run at a loss and the loss is hopefully offset by the receipt of a greater volume of lucrative smash repair work. Smash repairers are not, of course, prohibited from owning and operating tow trucks. Some repairers, especially since the RACQ's circular of 29 August 1991, have developed a system of making payments to their drivers which they contend are not in breach of s. 23 of the *Tow–truck Act*. Prior to August 1991, these same repairers paid drop fees at the rate of $100 per drop. These payments were usually in cheque form. At that time, the driver who drove the repairer's tow truck usually paid for its fuel and routine maintenance. The driver usually had a tacit agreement with the repairer that a different arrangement would apply to a major repair on the truck, such as the replacement of a differential, motor or gear box. The repairer would usually agree to pay 50% or 100% of the cost of a major repair. The tow truck driver usually paid weekly radio fees to the organiser of the tow truck fleet.

After August 1991, many of the repairers who previously operated the undisguised drop fee system began to assume responsibility for the payment of the day to day

maintenance of the tow trucks or commenced paying their driver's weekly radio fees to the tow truck fleet operator. The payment of undisguised drop fees almost disappeared. Some changes to the method of payment of benefits to tow-truck drivers were merely cosmetic, however. The Directors of Halhella Pty Ltd trading as Mick Young's Smash Repairs (Milton) placed a tow truck with Ready Towing in August 1992. In December 1992, the repairer entered into an agreement with a Ready Towing driver, Max Pedersen, that Pedersen would be credited with an amount additional to the prescribed tow fee, for each damaged vehicle dropped to Mick Young's Smash Repairs by Pedersen for which the repairer received repair approval. Predictably, the additional payment was calculated at $100 per vehicle. A written 'Contractor's Agreement' between Mick Young's Smash Repairs and Pedersen provided for an arrangement whereby Pedersen could accumulate these payments of $100, to be set off against the purchase price of the tow truck which was $50,000. Pedersen was granted an option to purchase the tow truck when he had accumulated sufficient $100 'credits'. As part of the practical operation of the scheme, these 'credits' were recorded in a book which was kept for this purpose. An examination of the book, however, revealed that such amounts did not accumulate to any significant sum. Pedersen was issued a Mick Young's cheque from time to time for the amount of the accumulated credit.

In fact, one of the directors of Halhella Pty Ltd, trading as Mick Young's Smash Repairs, gave evidence to the Commission on 28 January 1993 that no amount had accumulated in relation to Pederson's purchase of the truck.

He also gave evidence that Mick Young's Smash Repairs paid for the purchase and outfitting of the tow truck, the full maintenance costs of the vehicle, as well as the weekly radio fee of $205 to Ready Towing. This arrangement stands as the clearest example of a repairer owning and operating a tow truck as a loss-leader to attract smash repair work.

Max Pedersen conceded in evidence that this arrangement meant that he was required to drop as many damaged vehicles as possible to Mick Young's Smash Repairs.

Pedersen had previously driven a Ready Towing truck owned by Manual Body Works from some time in 1990 until August 1992. For most of that period he was a 100% driver – that is, he received all of the towing fees generated by the truck. He said that he also received drop fees in the form of an undisguised $100 payment per vehicle and paid all expenses relating to the truck. After the issue of the RACQ Circular in August 1991, he did not receive any drop fees for several months. Thereafter, the payment of benefits from Manual Body Works resumed. The benefits were still calculated at the rate of $100 per vehicle, but were made in the form of payment of various accounts Pedersen presented to Manual's. These accounts related to the purchase of fuel, parts or truck maintenance. Thus the books of Manual Body Works no longer showed undisguised payments of drop fees. They now showed payments in favour of petrol stations and mechanical workshops. The proprietor of Manual Body Works, Mr Kennedy–Cerruto, also stated that sometimes he paid the tow truck driver's weekly radio fee to Ready Towing.

The Department of Transport, in its Issues Paper at page 24, has described arrangements such as those described above as a process of 'legally internalising drop fees'. Whatever the description, the result for the Department, the insurers and the consumer is that there are more tow trucks operating in the Brisbane area than market forces would ordinarily dictate. In many cases, the cost of running tow trucks is heavily subsidised by repairers, whether by way of 'internalised' drop fees or benefits (which the repairers regard, rightly or wrongly, as not being in breach of s. 23 of the *Tow–truck Act*) or by way of direct payment of undisguised drop fees.

The evidence given by the repairers and the tow truck drivers was that these additional payments were only paid if the repairer received authority to repair a damaged vehicle. In other words they were paid on a different basis to the prescribed towing fee which was paid regardless of the destination to which the vehicle was towed. The tow truck driver, whether employed by the repairer or not, is encouraged by these payments:

- to persuade the owner of the vehicle to authorise the vehicle to be towed directly to the associated smash repairer; or

- to influence the eventual choice of repairer by delivering the vehicle to the holding yard connected with the associated smash repairer.

These appear to be the very evils at which s. 23(1)(b) and (c) of the *Tow-truck Act* is directed.

6.5.5 Pressure Applied to Motorists at Accident Scenes

All stakeholders in the smash repair and tow truck industries agreed in evidence:

- That it was common for tow truck drivers to apply pressure to the drivers of damaged motor vehicles at accident scenes to persuade the motorist to sign the tow authority.

- That the first tow truck to an accident scene was likely to secure the most lucrative tow from that scene, although there were some exceptions to this 'first in, best dressed' rule.

- That, in general, too many tow trucks attended accident scenes.

- That some tow truck drivers engaged in unconscionable conduct to convince the motorist not to give the tow to the first tow truck driver on the scene. Numerous witnesses gave evidence of the practice among some tow truck drivers of "sledging" other drivers in order to cause the motor vehicle owner to withdraw the signed authority to tow in favour of another tow truck.

In light of the foregoing evidence, the Commission did not feel it necessary to call evidence from members of the general public to gauge the extent to which unconscionable conduct was engaged in by tow truck drivers. Furthermore, such behaviour was peripheral to the principal issues

investigated. The evidence of persons involved in the smash repair and towing industries together with reports in the media, indicates that there is considerable public disquiet about the conduct of some tow truck drivers at accident scenes.

Many witnesses agreed in evidence that there were a number of features of the current organisation of the smash repair and towing industries which significantly exacerbate the problem of misbehaviour by tow truck drivers at accident scenes. These major features are:

- the payment of drop fees by some smash repairers which make it all the more lucrative for a tow truck driver to win the tow of repairable vehicles

- the ownership of tow trucks by repairers which places added pressure on the tow truck driver to convince the owner of the damaged vehicle to use the repairer who owns the truck; in effect, the tow truck driver who drives a truck owned by a repairer becomes that repairer's representative at the scene of the accident unbeknown in most cases to the driver of the damaged vehicle

- the lack of accountability on the part of tow truck operators for the conduct of their drivers

- the absence of effective enforcement by Department of Transport inspectors at accident scenes, directed at discovering evidence of misconduct by tow truck drivers or discouraging such misconduct.

A driver involved in a serious traffic incident is not in a position to make an informed choice as to a preferred smash repairer, or, for that matter, a preferred tow truck. The Commission heard evidence from a number of tow truck drivers who, no doubt, conducted themselves quite properly at accident scenes in the normal course of events. However, the Commission also saw and heard evidence from a number of tow truck drivers who undoubtedly were prepared to conduct themselves improperly and dishonestly at accident scenes to secure the tow.

To be effective, any legislative regime regulating the towing and smash repair industries must eliminate, as far as possible, the major factors contributing to misconduct at accident scenes.

6.5.6 The Failure or Reluctance to Tow Unremunerative Smash Work

The Department of Transport in its Issues Paper (at p.25) maintains:

> Anecdotal evidence suggests that competition for repair work has a significant influence on the behaviour of towing operators at accident scenes. Consistent with this, tow truck operators will seek to tow the more seriously damaged and more valuable vehicles, despite the fact that this has no influence on the towing fee which may be charged.

Several witnesses spoke of the unattractiveness of towing early model motor vehicles, 'third party work' and 'write-offs'. 'Third party work' is the term given in the towing and smash repair industries to the repair of a damaged, uninsured vehicle which was not at fault in a collision with an insured vehicle. Such vehicles, not being comprehensively insured, are more likely to be early model vehicles and relatively unattractive repair propositions for a repairer. Furthermore, there is likely to be some delay before approval is given for the repair while liability is being settled by the owner and the other party's insurer. Similarly, a vehicle which is 'written off' by the insurer does not become the subject of a repair and is therefore of no value to a repairer.

This type of smash work was clearly regarded by the tow truck drivers and the repairers as being work that nobody wanted. Thus, the contest at an accident scene involving a late model vehicle and an early model vehicle is to secure the vehicle which will give rise to a large insurance claim.

The contest is promoted by two factors. Firstly, a tow truck driver driving a truck owned by a repairer knows of the repairer's expectation that the tow truck driver will provide a supply of remunerative smash work. Secondly, a tow truck driver who is used to obtaining drop fees knows

that a drop fee will not be paid for a "write off" or for a vehicle which is not an attractive repair proposition.

6.5.7 Internalised Drop Fees

Mark Charles Ready and his father Mathew John Ready Senior, both from Ready Towing, gave evidence that each individual repairer associated with Ready Towing employed the drivers to drive the trucks which were owned by them. They referred to the repairers as the 'tow truck operators'. In fact, the majority of these repairers, during the relevant period, were not licensed tow truck operators under s. 5 of the *Tow-truck Act*. Ready Towing was recorded as the licensed tow truck operator of many of the tow trucks owned by repairers.

The Commission did receive some evidence, however, that some repairers at one time or another held a tow truck operator's licence and employed their own drivers directly. One of these repairers admitted that he paid amounts of money by way of bonuses to his drivers if they brought in damaged cars for which the repair shop later obtained repair approval. Another repairer said that his driver was only paid if he brought in smash work, but that when he did, he was paid amounts of money over and above the prescribed tow fee. Both repairers considered that such 'internal' arrangements with a direct employee of the repair business were not in breach of the *Tow-truck Act* and could not be described as drop fees. Several other repairers and tow truck operators expressed the same view.

While it can be argued that this type of arrangement is akin to the payment of legitimate commissions to employees, as explained at 6.5, such arrangements may create hidden imposts, to be met by the insurers and, ultimately, by the motoring public. It is unlikely that all repairers will simply absorb additional payments to tow truck drivers and not build them into the repair quotation. Secondly, where the tow truck driver is employed by a repairer and is remunerated upon a commission basis, the motorist is more likely to be subjected to undue pressure by the tow truck driver at the accident scene to have the car towed to that repairer or at least to the holding yard associated with that repairer.

There is every reason to believe that after this investigation has been completed, the undisguised payment of drop fees will again reach significant proportions unless there is fundamental reform of the industry. There is a strong perception among all stakeholders in the industry that the detection of drop fees and enforcement of the laws relating to drop fees are almost impossible.

6.6 READY TOWING - NORTHSIDE

In 1990, Robert Eugene Franklin controlled businesses which held the RACQ approved towing contracts for a very large portion of the Northside of Brisbane.

Active Towing Service, which Franklin controlled in partnership with his wife, was the RACQ towing contractor for the North-Western segment of the city from Ashgrove to Albany Creek. It was formerly known as Enoggera Towing.

Franklin also owned shares in and was a director of Albion 24 Hr. Towing Pty Limited, which was the approved RACQ towing contractor for the North-Eastern segment of the city from Cabbage Tree Creek to Webster Road, Chermside. The other shareholders in Albion 24 Hr. Towing Pty Limited were Kevin Jones and Colin Shipstone (who were also directors) and their wives. Jones is the proprietor of Kev Jones Smash Repairs and Shipstone is the proprietor of Col Shipstone Smash Repairs. Franklin had been brought in initially by Jones and Shipstone to run the towing side of their business and had eventually purchased a share of Albion 24 Hr. Towing Pty Limited.

Some time in 1990, Franklin decided to sell his towing businesses. Prior to the eventual sale, Franklin was approached by Kevin Jones with the proposition that he sell his share of Albion 24 Hr. Towing Pty Limited back to Jones and Shipstone. Franklin eventually received information that there was a proposal to sell the business to members of the Ready family who operated under the name Ready Towing. For some years, Ready Towing, which was not then an approved RACQ towing contractor, had been a fierce competitor of Albion 24 Hr. Towing Pty Limited and Active Towing Service throughout their RACQ designated areas.

Franklin was initially concerned at the prospect that Ready Towing would take over Albion 24 Hr. Towing Pty Limited and Active Towing Service because he did not think that this would be immediately acceptable to the RACQ. Several years earlier, Ready Towing had been involved in a bitter court action against the RACQ. Franklin discussed his concerns with two senior members of the RACQ who indicated that the RACQ was not opposed to Ready Towing taking over from Albion 24 Hr. Towing Pty Limited and Active Towing Service as the approved RACQ contractor for the Northside. One senior executive with the RACQ expressed the view, 'that it was better to have the Readys inside the RACQ than outside'.

Franklin proceeded to negotiate with Mark Charles Ready for the sale of his towing interests. He said the cheques he received were drawn on the account of Hexlawn Pty Ltd. The directors of Hexlawn Pty Ltd are Mark Ready and Mathew John Ready Junior. They settled on a purchase price of $280,000. The major assets of Albion 24 Hr. Towing Pty Limited and Active Towing Service were seven tow trucks with an approximate total value of $130,000. All but one of the trucks were unencumbered. A quantity of radio and office equipment was also included in the sale.

Franklin resigned his RACQ service contracts at 4.00 p.m. on 19 July 1990. Mark Ready and Mathew Ready Junior, representing Hexlawn Pty Ltd trading as Ready Towing, signed RACQ service contracts for the same RACQ areas on the same day.

Following the sale, Mark Ready was registered as the principal of the business Active Towing Service and he and his brother, Mathew John Ready, became joint directors with Shipstone and Jones of Albion 24 Hr. Towing Pty Limited. The brothers each acquired 10 of the 48 shares in the company.

The Ready brothers then set about financing the purchase of Franklin's towing interests. Four of the trucks were sold wholly or partly to repairers. These trucks immediately commenced to operate in Ready Towing, although, as mentioned earlier, one was purchased by repairer, Raymond John Darwen, who withdrew from the arrangement within two or three months. Darwen gave evidence that his negotiations with Mark Ready involved the refurbishing of the truck and making available a holding yard. Ready Towing was to provide a driver and, in respect of smash work dropped to Darwen's holding yard, Ready told Darwen that 'a

bonus was payable'. Mr Ready acknowledged in evidence that such a conversation may have taken place.

Two of the three remaining tow trucks were sold to existing Ready Towing drivers. The other truck was purchased by John Charles Ready Senior of Economy Towing on the Southside.

Three of the seven tow trucks previously owned by Albion 24 Hr. Towing Pty Limited and Active Towing Service became immediately associated with three of the repairers who, on their own admission, were already associated with Ready Towing and involved in the systematic payment of drop fees to Ready Towing drivers. Those repairers were:

- Manual Body Works
- Kedron Smash Repairs
- Nundah Smash Repairs.

Kedron Smash Repairs bought its truck in partnership with a tow truck driver named Glen Fien, who already drove for Ready Towing.

As a result of these transactions, Jones and Shipstone surrendered to Ready Towing their interests in the trucks owned by Albion 24 Hr. Towing Pty Limited. Furthermore, each was asked to provide an additional $25,000 to assist the financing of the purchase of Active Towing Service and Franklin's interest in Albion 24 Hr. Towing Pty Limited. Jones said that he has since been repaid $20,000. The only consideration received by Jones and Shipstone for surrendering their interests in those trucks was the prospect of an increased supply of repair work. They regarded Ready Towing as an efficient operator in obtaining smash repair towing work. Albion 24 Hr. Towing Pty Limited had been losing more and more of this work to Ready Towing, even though Albion 24 Hr. Towing Pty Limited had the benefit of the RACQ 'light'. Jones and Shipstone anticipated that they would get more smash repair work if they were associated with Ready Towing.

In fact, Shipstone purchased two more tow trucks in 1991 which became part of the Ready Towing fleet. Jones purchased another truck for $25,000 in early 1992 which also became part of the fleet.

Mr Pappin of Nundah Smash Repairs said in evidence that his company (Banmax Pty Ltd) invested $50,000 to assist Mark Ready and Mathew Ready Junior to purchase Franklin's towing interests. He said that this was to his advantage as it allowed him to have the RACQ signs on his tow trucks.

The evidence indicates that the purchase of Franklin's towing interests was financed almost entirely by the following repairers:

- Kev Jones Smash Repairs
- Col Shipstone Smash Repairs
- Kedron Smash Repairs
- Manual Body Works
- Nundah Smash Repairs
- Darwen's Smash Repairs (which later withdrew its tow trucks from Ready Towing).

In a written submission to the Commission Mr Pappin provided his account of the arrangements between the repairers and Ready Towing as follows:

> To summarise the actual situation that transpired in what for convenience sake I term as 'rationalisation of the towing/smash repair industries in 1990/91' is – that myself and a group of like–minded and progressive thinking smash repairers on the Northside of Brisbane considered that the changes to the smash repair industry that were occurring in Sydney and Melbourne would inevitably flow on to Brisbane. The main thrust of these changes were that research in the industry had shown that larger and better equipped panel shops were able to provide a faster turn around of smashed vehicles, provide a better and more caring approach to vehicle owners and more efficient and streamlined service in dealings with insurance companies. Some firms in the south now employ in excess of 60 staff, with capital investments commensurate with the premises and equipment needed. Central to the success of such ventures was the operation of firm owned tow trucks. Our research had shown that these larger operations were well received by insurance companies, assessors and the public.

> As a result our group in Brisbane decided to expand our operations, based on the interstate experience. For each of us that included revising or commencing a tow truck operation. Part of that included the need for affiliation with an established towing service, who could provide two-way radio and other facilities. Ready Towing was selected for our purposes.
>
> ...
>
> The consequent 'expansion of the Ready Towing Fleet' was not part of a push by the management of Ready Towing (in fact, Hexlawn Pty Ltd), to expand its control over towing in the Brisbane area' – but rather was a tactical business decision taken by a group of businessmen, all acting in their own long term interests, to increase the size and through that the potential of their smash repair businesses. The only benefits that accrued to 'Ready Towing' (Hexlawn Pty Ltd) were financial and accrued to them only because of the decision our group had taken to use their facilities. 'Ready Towing' (Hexlawn Pty Ltd) could never be conceived as controlling towing in the Brisbane area!
>
> ...

The proprietors of the first five repairers on the list referred to above admitted becoming involved in the payment of drop fees on an organised basis after the acquisition of Albion 24 Hr. Towing Pty Limited and Active Towing Service by Ready Towing in July 1990. Kev Jones's evidence was that he did not commence paying drop fees immediately Ready Towing took over Albion 24 Hr. Towing Pty Limited and Active Towing Service as he had obtained an assurance from Mark Ready and Mathew Ready Junior during negotiations that drop fees or commissions would not be required.

The evidence showed that, as a result of these arrangements, Ready Towing favoured a small circle of repairers who had financial interests in tow trucks which they made available to Ready Towing under conditions which included the payment of drop fees to the drivers of these trucks. In his written submission to the Commission, Mr Pappin disputed this conclusion on the basis that account had not been taken of the 'actual separation of business interests that exist in Ready Towing' (see Appendix 2).

Under the Ready Towing business arrangements with repairers, drop fees were paid to the following classes of drivers:

- to Ready Towing drivers who owned their own trucks and who kept all income earned by trucks including drop fees (referred to as 100% drivers)

- to Ready Towing drivers who drove trucks owned or managed by one or other of the proprietors of Ready Towing who shared half of all income earned by the trucks, including drop fees (referred to as 50/50 drivers)

- to drivers of trucks recorded by the Department of Transport as tow trucks operated by Ready Towing but owned by repairers who –

  - purported to be the employers of the drivers; and

  - paid the drivers drop fees and represented the drop fees to be part of the salary package of the drivers.

There were considerable benefits to Ready Towing in bringing about a substantial expansion in its fleet of trucks. Firstly, every tow truck which joined Ready Towing was required to pay weekly radio fees in the order of $200. Secondly, a number of the Ready Towing trucks were owned or controlled by members of the Ready family who received half the earnings of the truck, either directly or, in the case of Mark and Mathew Junior, through their interest in Hexlawn Pty Ltd. Mark Ready said in evidence that the other half went to the 50/50 drivers. At the end of each week, the 50/50 drivers were required to meet with him for the purpose of calculating their 50% share of the earnings of the truck. This calculation would involve splitting up all amounts of money earned by the truck, that is, prescribed tow fees and drop fees. Mark Ready said he would deduct the prescribed amount for tax from the driver's 50% share and hand the balance to the driver in the form of a cheque, or in the form of cash if the banks had closed for the day. He said he would then arrange for the banking of the 50% earned by Hexlawn Pty Ltd. Thus, Hexlawn Pty Ltd was actively sharing in the receipt of drop fees by these 50/50 drivers.

Mathew Ready Senior was asked to comment on the fairness of the close relationship between Ready Towing and Manual Body Works, Col Shipstone Smash Repairs, Kev Jones Smash Repairs, Kedron Smash Repairs and Nundah Smash Repairs, to which he replied:

I can answer that quite easily. If you look back on the history of towing, the big companies – the really big companies, they're like dinosaurs now; they're gone. Barnes Auto, number one, the biggest in Queensland; Pullens – the original Pullens, down the gurgler. The original towing companies that were just towing companies. Barnes Auto was not a repairer. Pullens were never repairers – not the original Pullens; not the Billy H Pullen – the original Pullens; the two biggest companies in Queensland, and we were never repairers, and Barnes Auto didn't learn in time and nor did Pullens, but people like Buranda Smash, John Lyons Smash, and all these companies that are in fact are panel beaters and ran tow trucks, they created an artificial wage structure and an artificial price structure in the industry purely because – you probably had the evidence already before; I'm wasting my time telling you – but Buranda, their system up until two years ago when they – a new system now, probably the same – they bought the trucks, gave the trucks to people that would drive them, told those people to keep all the money. They maintained those trucks; they purchase them; they pay every – every living expense on the truck – plus give them $100 commission for any repair job they got. So basically, if you're a towing company and just a towing company, you couldn't possibly compete. You couldn't keep your trucks on the road; you couldn't pay your drivers to compete with those people that were giving them – those drivers pull two tows and get $600 clear in their hand. They don't pay any petrol; they don't pay any – they don't – truck's free; they get the commission in their hand, so companies like Barnes Auto, they couldn't adapt. They just went like dinosaurs. The only way we only adapted our business – and all we are really is managers. We adapt to the business that we'll manage these panel beaters trucks. Shipstone and Jones were long in the business before they came with us – many, many years as towing operators. So was Manual Body Works. He brought a truck and operated out and to start on his own. So Kedron Smash and these fellows – fellows like CMI, fellows like Trevor Bryant; he had his own truck; he was with Ando's Towing and he's with some other towing – two other companies before us. We come along as managing; we could see that we had to either align ourselves with panel beaters; they can – they can supply the trucks like they were doing before we came along, same as what Lyons is doing now.

The circumstances under which Jones and Shipstone commenced to pay drop fees to Ready Towing drivers require some examination. As mentioned, Jones told the Commission that during negotiations with Mark Ready and Mathew Ready Junior, he and Shipstone were told that Ready Towing would keep their workshops full of work and there would be no requirement to pay commissions or

drop fees to Ready Towing drivers. However, Jones stated that shortly after the Ready Towing take-over in July 1990, he noticed that Shipstone was obtaining a disproportionately high share of the smash work delivered to their joint holding yard at Earle Street, Windsor. Jones said that prior to their association with Ready Towing, he and Shipstone had shared equally in the distribution of smash work from that holding yard. Jones said he discovered that Shipstone was paying drop fees to tow truck drivers. Shipstone told Jones that he had recently had a conversation with Emmanuel Kennedy-Cerruto ('Manual') from Manual Body Works. Shipstone had told Kennedy-Cerruto of the agreement that he and Jones had with the Readys that no drop fees would be required. Shipstone told Jones that Kennedy-Cerruto laughed when he heard of the agreement and had said to Shipstone, 'If you don't pay the money, you don't get the work.'[15]

Jones said that, after he confronted Shipstone about his paying drop fees, he (Jones) attended a meeting in the Ready Towing premises located behind Nundah Smash Repairs. The meeting was attended by Shipstone, Vaughan Pappin of Nundah Smash Repairs, Mark Ready, Mathew Ready Junior and Yvonne Ready, the wife of Mathew Ready Senior. Jones told the Commission that during this meeting he referred to the agreement prior to the takeover that drop fees would not be required. Jones described this as a matter of principle. Jones stated that Shipstone acknowledged that he was paying drop fees by telling the meeting, 'You can't bank principles.' Jones said that members of the Ready family gave the following response, 'That's the way it is. You don't have to pay drop fees but we can't guarantee that the drivers are going to drop you work.'

In relation to this alleged conversation, Mark Ready said that, although he did not recall making such a statement, he did not deny making it. He said that if he did say it, it would have been in the context:

> If you're employing drivers who are going to be offered incentive commissions or rebates from other panel shops, how can you trust the driver to take work back to you if he's going to be offered by other panel shops an incentive fee?

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[15] Although this alleged comment was not put to Mr Kennedy-Cerruto during his evidence, this section of the report was forwarded to him for his comments and he did not furnish any response in relation to the comment. He also admitted in evidence that he paid drop fees to Ready Towing drivers.

Mathew Ready Junior recalled a meeting at Ready Towing's office attended by Jones and Shipstone but said he could not recall this conversation.

Jones said that as a result of the meeting he commenced to pay drop fees, though he maintained that he did so reluctantly. Jones also maintained that he made several complaints to the RACQ about the payment of drop fees. Eventually he was shown the RACQ circular which was issued on 29 August 1991. He was shown this document by Barry Green, the General Manager of RACQ Insurance. Jones said that Mr Green told him that the letter would be going out very shortly and that it would solve the problem of drop fees. Jones told the Commission that between four and six weeks after the issue of the RACQ circular, he discussed it with Vaughan Pappin of Nundah Smash Repairs. Pappin told him that he had budgeted a certain amount for drop fees and that he would pay the drop fees, although he might find different ways of doing so, that is, less obvious ways. Pappin told the Commission that he did change the way in which he remunerated his tow truck drivers in 1991 but it was before the issue of the RACQ circular and the circular itself had nothing to do with the changes he made.

Jones said he did not reduce any of his complaints about the payment of drop fees to writing. He said that he did not make any complaint to the Department of Transport about the payment of drop fees because he regarded that as being a waste of time. Jones said that he had between four and six meetings with the RACQ, in which the problem of drop fees was raised.

For his part, Colin Shipstone said in evidence that until the takeover of Albion 24 Hr. Towing Pty Limited and Action Towing, he had never paid drop fees. He told the Commission that he commenced to pay them about three months after the July 1990 takeover in order to get repair work from Ready Towing tow trucks. He said that although he passed over to Ready Towing the tow trucks of Albion 24 Hr. Towing Pty Limited in which he had an interest, he did not receive a lot of smash work as a result of that arrangement. He decided that he would have to pay drop fees to attract more smash work. Shipstone recalled having a discussion with Yvonne Ready, Mark Ready and Mathew Ready Junior about three months after the takeover. He discussed with the Readys the prospect of receiving more smash work. During the discussion he made it clear to the Readys that he wished to commence paying drop fees. Shipstone recalled that Mark Ready and Mathew Ready

Junior appeared to agree with him that the payment of drop fees was necessary. Shipstone recalled Yvonne Ready telling him that he was making a rod for his own back by deciding to pay drop fees. In about October 1990, Shipstone commenced to pay drop fees at the rate of $100 per vehicle. He paid the drop fees by cheque, adding the $100 amount to each cheque for the prescribed tow fee and making the cheque out to Ready Towing.

An analysis of the books of account of Kev Jones Smash Repairs and Col Shipstone Smash Repairs supports their evidence of the circumstances which led to their paying drop fees. The analysis shows that they did not commence paying drop fees immediately Ready Towing took over Albion 24 Hr. Towing Pty Limited and Active Towing Service in July 1990 but commenced to pay drop fees in October 1990. They continued to pay undisguised drop fees until about August/September 1991, when the RACQ Circular was distributed. Shipstone admitted that thereafter he commenced to pay fuel bills and truck maintenance bills for his tow truck drivers. He had not hitherto paid such amounts. He said that he did this after attending the meeting between certain repairers and Ready Towing representatives at Manual Body Works following the issue of the RACQ Circular.

Jones admitted attending such a meeting and changing his method of paying the additional benefit to tow truck drivers, but said the two events were not connected.

Mark Charles Ready responded to Kevin Jones's account of events in the following manner:

> Mr Jones and Mr Shipstone – I informed both of them, when they asked me about drop fees – I informed both of those people not to pay drop fees to drivers, that the work – seeing that they were partners in the business of Albion Towing, that the work would flow into their holding yards, and they became agitated with each other, because, apparently, it wasn't a very happy relationship between the two of them, anyway. That one would get the better of the other, and they, themselves, commenced paying drop fees, against our wishes that we'd stated to them ... you see, it's very hard to try and stop a system where – whereby you can tell panel beaters not to pay it, and then the other panel beaters go around offering their drivers the same incentive. How can I stop it?

Later in his evidence, while replying to the suggestion that he actively contributed to a system involving the payment of drop fees, Mark Ready said:

> The only statements I ever made to panel beaters was that if you have to pay the driver, don't pay the driver any more than $100 or don't pay them any more than what they're worth.

He said that he was attempting to limit the amount of drop fees as some tow truck drivers were asking for drop fees in the order of $300.

Ready said he considered that the payment of drop fees was none of his business where the repairer owned the tow truck and employed the driver:

> ... it was up to the panel shop owner how he paid that driver or what – what arrangement he came to with that driver.

He agreed that for his part he was quite happy to accept drop fees. He justified taking the payment on the basis that it paid the running costs of his tow truck – fuel, maintenance and spotter's fees:

> ... for a tow truck driver operating a towing business, the cost of running the business wouldn't be worth it for the hours they put in for the standard – the current towing fee, so, thereby, if the – if it's illegal to pay the driver – or immoral or unethical to pay the driver $100 per job, then if the tow truck – if the panel shop owner owns the tow truck and employs the tow truck driver, then it would be in his – his business to maintain the tow truck.

Mark Ready insisted that he did not actively encourage the drop fee system. He insisted that he tried to stop it, especially when the RACQ Circular was issued in August 1991.

He said that he did not know whether the $100 drop fee was passed on to the insurer by the panel shop.

6.7 THE GROWTH OF DROP FEE PAYMENTS – NORTHSIDE

6.7.1 Direct Involvement of Ready Towing in Drop Fees

From the early 1980s, Manual Body Works at Breakfast Creek owned a tow truck which was part of the fleet of Ready Towing. That truck was driven on occasions by Mathew John Ready Senior, particularly in the early 1980s. Manual Body Works was the first repairer to place a tow truck with Ready Towing. Mr Ready Senior managed that truck on behalf of Manual Body Works.

When Ready Towing took over Albion 24 Hr. Towing Pty Limited and Active Towing Service in July 1990, Mr Ready Senior was still driving and managing a truck owned by Manual Smash Repair. Mr Ready and his sons Mathew and Mark said in evidence that Mr Ready played no role in that take–over and had no managerial role in Ready Towing. However, within a year he became Operations Manager for Combined Towing. When that occurred, Mr Ready Senior arranged for other drivers (50/50 drivers) to drive the truck on behalf of Manual Body Works and Ready Towing. The driver of that truck, since early 1992, was Terry Joughin. According to Emmanuel Kennedy–Cerruto, the proprietor of Manual Body Works, Joughin brought to Manual Body Works a lot more smash work than other tow truck drivers. He brought in between three and five damaged motor vehicles per week. Because of the volume of work being brought in by Joughin, Kennedy–Cerruto said that it became necessary to keep a book which recorded the incentives owing in respect of vehicles towed in. This was the only truck in respect of which Mr Kennedy–Cerruto kept a book. Both Joughin and Kennedy–Cerruto regarded this truck as being the property of Mathew Ready Senior.

Mr Kennedy–Cerruto said in evidence that the incentive was $100 per repair. Joughin told the Commission that he never received any part of any incentive payment. He did not collect any tow fees directly from Kennedy–Cerruto. He told the Commission that once Manual Body Works got repair approval for a job dropped to his 'home' holding yard, Mathew Ready Senior would pick up the tow money.

Mr Ready Senior told the Commission that between 1980 and May 1993, he was involved in driving and managing a tow truck on behalf of Manual Body Works, and was paid at the rate of 50% of the earnings of the truck for the management function he performed. He admitted that over the years he was paid 'commissions' by Manual Body Works for delivering good smash repair work.

The evidence of Joughin and Mr Kennedy-Cerruto about the payment of drop fees for this truck is supported by financial analysis of the books of account of Manual Body Works for the 1990-91 financial year.

Terry Joughin also dropped smash work to Brisbane Smash Repairs at Breakfast Creek. The proprietor of that business at that time was Trevor Frederick Cripps Bryant. Bryant told the Commission that he paid drop fees directly to Mathew John Ready Senior for vehicles delivered by Terry Joughin. Mr Ready confirmed this in evidence to the Commission.

Sjeff Kanters also drove the Manual Body Works tow truck on behalf of Ready Towing for 14 months prior to Joughin. Kanters told the hearings that he did not pick up many cheques in respect of payments to Ready Towing. He did not receive any drop fees from Manual Body Works. He only received 50% of the prescribed tow fee. Since Kennedy-Cerruto admitted paying drop fees and Mathew Ready Senior admitted receiving drop fees in respect of that truck, it is probable that, while Kanters was driving it, Ready received the full drop fee along with 50% of the prescribed tow fee. This section of the Commission's report (while it was in draft form) was furnished to Mr Ready Senior for his comment and no submission was received disputing this conclusion. Kanters appeared to have no reason for lying about this as he admitted to the Commission that he did receive drop fees from Trevor Bryant of Brisbane Smash Repairs. Kanters said in relation to Brisbane Smash Repairs that $100 was added to each cheque issued for the prescribed tow fee. Kanters said he would submit the cheque containing the drop fee to the Ready Towing office and at the end of the week he would receive 50% of the prescribed tow fees plus the full drop fee payment of $100, representing the drop fee. In this

instance, Ready Towing handled drop fees, though they were passed back to Kanters in full.

On 29 August 1991, the RACQ issued a circular to its selected smash repairers and approved towing contractors which pointed out that the payment of drop fees was in breach of s. 23 of the *Tow-truck Act 1973*. The RACQ advised as follows:

> It has come to our attention that some selected repairers have given, or agreed to offer or to give money in consideration of obtaining the work of repairing damaged motor vehicles. These are commonly referred to as drop fees.
>
> It has also come to our attention that some towing operators have insisted that repairers pay an amount of money (over and above the amount of money which can be legitimately charged for a tow) stating that if the money is not paid then the damaged vehicle will not be delivered to their premises.

The RACQ circular continued:

> Let it be understood by all persons who may be involved in these illegal practices that this organisation is totally opposed to the payment of and receipt of drop fees and will not countenance such practices.
>
> If we receive any information which suggests that any firm which carries our signs is involved in any illegal activities – or indeed is involved in anything other than sound ethical business practice, then as circumstances dictate: if the matter is one where alleged breach of the law is concerned the matter will be handed to the appropriate authorities for further investigation ...

This RACQ circular was published as a result of a complaint from a Southside repairer.

Combined Towing issued its own circular to repairers and tow truck drivers, repeating the warnings issued by the RACQ (see Appendix 4). The author of that document was Mark Ready. It was circulated in early September 1991 and read (in part):

> Let it be understood by all persons involved in such illegal practices that this organisation is totally opposed to the payment or receipt of drop fees and will not countenance such practices.
>
> If we discover any information to suggest that any employee is involved in any of the aforementioned illegal activities or indeed involved in anything other than sound ethical business practices, then as the circumstances dictate, if the matter is one where alleged breaches of the law is concerned, the matter will be handed to the appropriate authority for further investigation.
>
> We will also take whatever action we feel is necessary such as the termination of employment of the employee in question or the referral to the relevant authority of information regarding the repairer's attempts to corrupt any of our employees.

Evidence was given that Mr Ready Senior did not comply with the terms of that warning. He continued to collect cash drop fees from Trevor and Aura Bryant of Brisbane Smash Repairs. Mr and Mrs Bryant gave evidence that these payments continued unabated until at least October 1992, when the business folded.

Mr Ready Senior gave the following evidence on this issue:

> Q: After the receipt of the RACQ letter on 29 August 1991, after the stern letter sent out by Combined Towing, I am suggesting to you that you continue to receive cash payments over and above the prescribed tow fee from Brisbane Smash, what do you say to that?
>
> A: Yes, I might have with him because I don't know what he gave – he paid me for. He gave me – it was always cash and I didn't worry much about him. He was never doing (inaudible) ... no.
>
> Q: Well, what, did you decide that it was worthwhile chancing your arm, did you?
>
> A: Chancing my what?

Q: Well with RACQ? What if they were to find out about you receiving these extra payments?

A: Yes, you're probably quite right there. I know I got cash off Trevor (Bryant). Just what it was for, I couldn't tell you. ... I know that I didn't even keep track of what he owed me. I think he left owing me a lot of money in the end.

Q: Well, I have put it fairly and squarely to you and you seem to accept that there were payments in cash over and above the prescribed tow fee that you received from him after the RACQ letter; is that right?

A: Yes. I think, possibly, it would have with him.

Q: All right. And, of course, that is in the teeth of this – this statement:

"If the matter is one where alleged breaches of the law is concerned, the matter will be handed to the appropriate authority for further investigation."

You know, the sternest possible reference to people associated with Ready Towing accepting drop fees and yet you continued to accept them on occasions?

A: Yes, very, very limited occasions. That's – it was a case of really being forced upon me because he was a battler there.

In relation to the final answer, Aura Bryant told the Commission that between February 1991 and October 1992 she paid drop fees to Mathew Ready Senior personally on 15 to 20 occasions. She said that payments to him continued after the issue of the RACQ Circular on 29 August 1991. Mrs Bryant discussed the RACQ Circular with Mr Ready after she had also received the Combined Towing circular. She asked Ready why they had received the RACQ letter. Ready replied that the RACQ and Queensland Transport were querying the practice of drivers demanding drop fees from panel shops. Ready told her not to worry about the RACQ letter. She also referred Ready to the circular received from his own organisation. Ready

told her that the circular was just a standard procedure to make things look good and to show that they was doing their job by backing the RACQ in their investigations. This conversation occurred within a week of the issue of both circulars. It occurred on an occasion when Ready had called in to Brisbane Smash Repairs to collect a drop fee which had been generated by Terry Joughin. Mrs Bryant said she specifically recalled the occasion of the visit because she remarked to Ready that it was ironic that they were receiving letters in these terms and yet he was coming in to collect his drop fee. To this Mr Ready replied in words to the effect, 'Oh, that's the way it is.'

Financial investigations of the books of Brisbane Smash Repairs reveal that from September 1991 to October 1992 payments, which could be positively identified as drop fees, were made totalling $20,900 to the following tow truck drivers with Ready Towing/Combined Towing at that time:

NAME	DESCRIPTION GIVEN IN EVIDENCE AS TO HIS RELATIONSHIP WITH READY TOWING
Mathew John Ready Senior	'Manager' of Manual Body Works truck
Alan Charles	100% owner/driver - Ready Towing/Combined Towing
Brian Harper	100% driver of Domroy's Smash Repairs truck for Yellow Towing/Combined Towing
Robbie Adams	50% driver of CMI Smash Repairs truck for Ready Towing/Combined Towing
Peter Anderson	100% owner/driver for Ready Towing/Combined Towing

Max Pedersen	100% driver of Manual Body Works truck for Ready Towing/Combined Towing
Sjeff Kanters	50% driver of Manual Body Works truck for Ready Towing/Combined Towing
John Ready Junior	100% driver of Buranda Body Works truck for Yellow Towing/Combined Towing
Steve Walker	100% owner/driver for Ready Towing/Combined Towing

Mrs Bryant told the Commission that in her view Brisbane Smash Repairs went broke because they were required to pay drop fees. She estimates that the business paid between $50,000 and $70,000 in drop fees over a two year period. The financial analysis tends to support her estimate.

The evidence indicated that Brisbane Smash Repairs was the only Northside repairer that paid drop fees in cash as well as cheques. The Bryants said that financial records were falsified by them to conceal the purpose of cheques for drop fee payments.

6.7.2 Initial Response to CJC Investigation

In July 1992, the CJC issued over 40 summonses to smash repairers in Brisbane to attend and give evidence at investigative hearings. The summonses showed, on their face, that one of the subjects of interest to the Commission was the payment and receipt of drop fees in contravention of the *Tow-truck Act*. Mr and Mrs Bryant attended a meeting at the Breakfast Creek Hotel at which these summonses were discussed. Those who attended that meeting were Mathew Ready Senior, Alan Charles, Emmanuel Kennedy-Cerruto and his wife Joanne. Mrs

Bryant stated that, during the meeting, Mathew Ready Senior told the group that he would be organising a legal challenge to the investigation. (The legal challenge is dealt with in Chapter 3.) Mrs Bryant said that after the meeting she commenced to falsify her books of account by falsely describing on the cheque butts the purpose of payment of cheques for drop fees. During the investigation Mrs Bryant identified these payments to officers of the Commission.

Trevor Bryant told the Commission of conversations with Alan Charles and Mathew Ready Senior following the issue of the RACQ and Combined Towing circulars in August/September 1991. Alan Charles told Bryant that, because Brisbane Smash Repairs was not a selected RACQ repairer, it didn't matter if drop fees were paid. Mr Ready told him not to pay drop fees for a while and to keep things 'toned down a bit'. Mr Bryant said that within a month, Mr Ready was again calling at Brisbane Smash Repairs to pick up his slings (drop fees) as usual. Mr Bryant recalled that in the two or three months following the issue of the two circulars, payments of drop fees stopped, except for payments to Alan Charles and Mr Ready. The payments then resumed to the other Ready Towing drivers previously mentioned. Mr Bryant's recollection of the Breakfast Creek Hotel meeting substantially accords with his wife's recollection. He also recalled that during discussions with Mr Ready, Alan Charles and the repairers, it was decided that the term drop fees should not be used and instead the term 'incentive' or 'truck maintenance' or a similar term should be used.

Mr Ready told the Commission that he did attend a meeting at the Breakfast Creek Hotel which was also attended by Mr Kennedy-Cerruto and his wife, Trevor Bryant and his wife and Alan Charles. Mr Ready said that there was discussion about the CJC summonses and about the repairers having to produce their financial records and whether they would have to disclose the payment of commissions. Mr Ready could not remember the exact conversation. He said:

> ... my only advice to them was that they've got little or no choice in that respect, they've seen the Fitzgerald Inquiry and they'd be obliged to answer any questions that were put to them. ... And that my personal opinion

was that there is nothing to fear, because there was nothing wrong in how they carried their business on. ... I said, well, quite clearly in essence that I don't think you've got much to worry about, and merely that in most cases you fellows have been paying commissions up until some time in '91 and you just explain how you went on from there by paying the maintenance on trucks. That's roughly what I recall of the conversation.

Mr Ready said he could not recall saying that the term drop fee or sling should not be used or that those called to the Inquiry should use the word 'incentive' because it was a neutral word which did not suggest any breach of the law. He said he would not have used the word "incentive" as he had always referred to such payments as "commissions".

6.7.3 Change to 'Maintenance' Payments

After the issue of the RACQ and Ready Towing/Combined Towing circulars in August/ September 1991, the proprietors of the five Northside repairers associated with Ready Towing (Col Shipstone, Kevin Jones, Vaughan Pappin, Emmanuel Kennedy–Cerruto and Gary Strathdee) met to discuss a change in the way that payments would be made to drivers. This meeting was held in the office of Manual Body Works at Breakfast Creek. Mr Kennedy–Cerruto told the Commission at first that he did not recall such a meeting:

Q: Has there ever been a change in the way in which you pay this incentive payment?

A: Yes.

Q: What was the nature of the change?

A: Well, they'd just bring in accounts and that and we just pay fuel accounts; all that sort of stuff.

Q: Pay fuel, telephone?

A: Anything.

Q: What brought that about, Mr Cerruto?

A: I wouldn't have a – I don't know what brought it about.

Q: Do you want me to jog your memory?

A: Well, you can – you can if you want to.

Q: Did you attend a meeting in your own office with some smash repairers?

A: That's correct.

Q: What happened at that meeting?

A: That's right. They say that there was going to be no more commissions paid or incentives paid.

Mr Kennedy–Cerruto eventually recalled that the meeting in his office was attended by Col Shipstone, Kevin Jones and Vaughan Pappin.

Gary Strathdee of Kedron Smash Repairs told the Commission that he also attended this meeting. Both Strathdee and Kennedy–Cerruto stated that the meeting was also attended by:

- Mathew John Ready Senior
- Mark Charles Ready
- Mathew John Ready Junior.

Mr Kennedy–Cerruto said that at the meeting one of the members of the Ready family announced that the incentive amounts of $100 per tow were no longer to be paid. Mr Kennedy–Cerruto recalled that as a result of the meeting, he commenced to pay tow truck drivers in the form of payments for their various personal expenses, but these payments were still calculated at the rate of $100 per damaged vehicle dropped to the holding yard he made available to Ready Towing and for which he received repair approval. Mr Kennedy–Cerruto said that he did not organise the meeting, but that one of the Ready family got in touch with him. He said he did not know why those repairers referred to above were the only repairers to attend

the meeting, except that they were all selected RACQ Insurance repairers. However, no other Northside RACQ Insurance selected repairers attended the meeting and no representatives of other towing entities attended the meeting.

Kevin Samuel Jones, the proprietor of Kev Jones Smash Repairs, stated that he attended the meeting at the office of Manual Body Works soon after the RACQ circular was issued. He said the meeting was called by the Readys. He recalled being told by one of the Readys that there were to be no more drop fees. He did not recall any discussion about substituting the payment of maintenance fees and telephone bills for the payment of drop fees, but he acknowledged that he stopped paying drop fees and started paying drivers' fuel bills and telephone bills after the issue of the RACQ Circular in August 1991.

Colin Lionel Shipstone, the proprietor of Col Shipstone Smash Repairs, also told the Commission that as a result of receiving the RACQ Circular, he stopped paying drop fees to drivers. He said he got around it by commencing to pay fuel bills and other kinds of bills for the drivers. He had not hitherto paid fuel and maintenance bills. He recalled attending a meeting at Manual Body Works at which the RACQ and Combined Towing circulars were discussed. He told the Commission that at the meeting it was decided to pay no more drop fees and to commence paying fuel bills, maintenance on trucks, telephone bills etc. He said that he continued to calculate the payment of these bills at the rate of $100 per damaged vehicle dropped to his holding yard which was used by Ready Towing. These amounts were accumulated and paid monthly to the tow truck drivers.

Gary Robert Strathdee, the proprietor of Kedron Smash Repairs, admitted paying drop fees on a regular basis until he received the RACQ circular. After that time, he arranged with his drivers that he would pay fuel and maintenance bills for their trucks. Prior to that arrangement being made, the drivers themselves had been required to pay their fuel and maintenance bills. Strathdee attended the meeting at Manual Body Works at which these arrangements were discussed with Messrs Jones, Shipstone, Pappin and members of the Ready family.

Vaughan William Pappin, proprietor of Nundah Smash Repairs and Chermside Smash Repairs, said in evidence that he stopped paying drop fees earlier in 1991 and provided other forms of incentives for his drivers, such as the payment of the drivers' telephone bills or fuel bills. He did not acknowledge that he changed his procedures directly as a result of any meeting at Manual Body Works.

Mathew John Ready Senior said he did not specifically recall the meeting at Manual Body Works but acknowledged that the topic of a change in the payment of benefits to drivers was discussed with panel shops' proprietors at one time or another. Mr Ready also accepted that there was a change in the payment of benefits to drivers occasioned by the issue of the RACQ circular in August 1991 and that the change involved the payment of maintenance on trucks.

Mr Ready said he did not obtain any legal opinion about the new arrangement as he did not see any reason to get an opinion. Mr Ready stated that he had not revealed the new arrangements to the RACQ as he did not see any reason for doing so.

Mr Ready said that he did not make a formal submission to the Transport Department about the new maintenance payments system. Again, he did not see any reason to do so. He did say, however, that he had a conversation with an officer of the Department to whom he revealed the system and that the officer didn't say it was illegal. That officer acknowledged to an officer of the Commission that such a conversation might have taken place.

Mark Charles Ready told the Commission that he participated in the meeting at Manual Body Works. He said that the repairers who attended the meeting were worried that if they continued to pay their own drivers the 'incentive' fee, the RACQ Insurance might take action against them. He said that a system was worked out during that meeting whereby the repairers would pay their own truck maintenance and fuel bills. Mark Ready agreed that the new arrangement was not checked with the RACQ. He said he did not think it was necessary. He said he did not consider it immoral or unethical or illegal to enter into the new maintenance arrangements because the repairers

were towing entities in their own right. They owned their trucks and had the authority to employ or sack drivers and to pay for the maintenance of their own trucks as they wished.

In relation to the suggestion that persons associated with Ready Towing had been instrumental in actively promoting the payment of drop fees by repairers, Mathew Ready Senior replied:

> ... If anything, Ready Towing has been instrumental in keeping the lid on it, and I do not know of any towing company or panel combined towing company that does not practise exactly the commission basis and on a much larger scale, and it's in our interest to try and keep the lid on it, because otherwise it will wind up like southern states. We have panel beaters propositioning drivers, offering them fifteen, twenty, twenty five percent, and that's detrimental in the long term to our business if it escalates out of control. And I'd go so far to say – is that if – when the Queensland Government first foresaw in the early 70s – if they had have bit the bullet then and kept panel beaters out of the industry, we wouldn't have this today. But on the question you put to me regarding anyone from our organisation – my sons or myself – propositioning panel beaters, I'm sick of taking phone calls. I dodge the phone calls of people wanting to get into the system, because we just can't accommodate them. And when you are saying we proposition people, we don't want them. Why would we proposition them? But we do get people that say, 'What is your system?' and we've never hidden the fact of what the system is. Why hide the fact? The world knows what the system is, and they know what the panel beaters, like Shipstone, Jones, Kedron, Nundah – how they work, and if they want to be told, we tell them again. But we still can't accommodate them.

Mark Ready also gave evidence that the arrangements entered into by Ready Towing in respect of drop fees had the effect of reducing the amounts which some repairers had been paying.

6.7.4 Some Definitions of Drop Fees

During the CJC hearings, some witnesses gave differing interpretations of the term drop fee. The term was used in the RACQ Circular dated 29 August 1991.

Robert Wessling, the proprietor of Telford Towing Service and Rode Smash Repairs, gave the following description:

> Well, from what I can understand it's that if a towing operator will give – if you're the owner of a panel shop, the only way that the towing operator would give you work was if you paid him either $100 or $200 per job for a good job.

Donald Rosentreter, the proprietor of Watkins Smash Repairs, gave the following description:

> I would imagine it's paying for your tow, percentage of the repair.
>
> Q: Buying the work off the back of the truck?
>
> A: Mm.

Alan Roy Olive, a partner in Domroy Smash Repairs at Moorooka, gave the following evidence on this subject:

> See the word drop fee is a word that it is almost like a four–letter word, sort of thing...you know, some call it – some would want to call it different words. You know, to me a drop fee – and this is my understanding of it – if you had a tow truck and you came around to me and said, "OK, on the back of my truck is a job there. Do you want it? It's going to cost you money," that's a drop fee. But my understanding is that the guy is working for you – if he's working for you he's working for you, dropping (work from) your truck. I really can't understand that as being a drop fee. So you're using the word drop fee and when I'm answering that I feel like I'm answering a wrong sort of question.

Mr Olive was drawing the distinction between the payment of extra amounts of money to a tow truck driver employed directly by the repairer on the one hand and the payments

of extra sums of money by the repairer to other tow truck drivers.

Gary Strathdee of Kedron Smash Repairs admitted paying drop fees to Ready Towing drivers regularly. He told the hearings that the term drop fee or sling had been around for a long time. He said that he first heard the terms back in 1984. He said:

> A: That means if they drop a vehicle off, they get a fee – an incentive fee.
>
> Q: The tow truck operator?
>
> A: Yes.
>
> Q: And is that a fee over and above the prescribed towing fee that is passed on to the insurer?
>
> A: Yes – yes, sir.

Tow truck drivers tended to be more brief in their description of what a drop fee meant to them. Shaun Ames gave the following brief description:

> A drop fee is – well, to my knowledge, is money that a panel beater pays you for bringing work to his shop.

Paul McCahon gave the following description:

> It means you get paid for a job, if you drop a job off.

Robbie Adams put the following gloss on the term drop fee:

> It's just for – for information towards a job, I suppose...it's just what was paid when a job was dropped off to a smash repairer.

Steve Walker, a close associate of the principals of Ready Towing, gave the following description:

> Well, there's two ways you can look at it. There's one way, if you take a car to a panel shop and you demand the money; it's a more of a – an extortionist way. The

other way is if you take a car to a holding yard and let the panel beater win it himself.

Walker told the Commission that he first saw evidence of the collection of drop fees when he first started in the towing industry in 1973. He said that in those days a first and second tow attracted a total fee of $40 and the drop fee was in the order of $50. He said that the availability of drop fees was common knowledge 'around the town' back in the early 1970s.

Alan Charles, another long-term Ready Towing driver, told the Commission hearings that he was not familiar with the term 'drop fee' or 'sling', but was familiar with the term 'commission'. Charles was asked what the term 'commission' meant. He replied as follows:

> That meant to me that a panel beater would give you $100, sometimes $80 for every job they got that you brought into his shop.

Charles said that he first heard the term 'commission' used straight after he started in the industry in about 1984.

Colin Charles, the son of Alan Charles, said that he first heard the term drop fee or sling when he started work in the towing industry four or five years ago. When asked what the term meant to him, Colin Charles said:

> Getting paid commissions on a vehicle.

In evidence to the hearings, Mark Charles Ready, a principal of Ready Towing, was asked the following questions:

Q: What does the term drop fee or sling mean to you?

A: I don't know. It doesn't mean anything to me.

Q: Right. Well, you do not know what the drivers were talking about at the time that you heard these descriptions, drop fees and slings?

A: They were talking about money.

Q: Money in exchange for what?

A: For repairs.

Q: The selling of jobs?

A: Well...

Q: To smash repairers?

A: Not really.

Q: No?

A: Mm.

Q: Money for repairs. Well, perhaps you had better explain what your understanding was?

The witness claimed privilege against self-incrimination and was directed to answer the question:

A: See, there's been a lot of misunderstanding by this inquiry. Whether it's intentionally by the investigators or not, I don't know, or the panel beaters, but the word drop fee and sling, I know what you're referring to – I think I know what you're referring to them as but they're not the terms I've ever heard used before this inquiry began. They've always been known as commissions or rebates insofar as that, well, in our position we towed the vehicles back to a holding yard. Right? We don't tell the people who should repair their car; we don't tell the people where to take their car. If they have their own repairer, the car is taken to their own repairer at their request, and if they want their vehicle taken to Timbuktu, that's where it's taken to, and if they don't have anywhere to take the vehicle, then we take the vehicle back to our holding depot and the insurance companies and the assessors and the panel shops have the last say on where the vehicles go to. So if the holding yard is at Albion and the car is insured either Suncorp, FAI, RACQ or any of the major insurance companies, they simply refer the owner or the panel shop that

> they endorse that is closest to that holding yard, to quote the vehicle, and they assess the vehicle and they decide where the vehicle is going to. In respect to a commission paid on the job, it's more as an incentive by the owner of the tow truck to its employee that, at the accident scene, he looks for the better car. There may be a HQ Holden and a brand new Commodore and it would be in the interests of the driver to tow the Commodore back to the holding yard and, that way, the repairer may get the job or may get the job...but the repairer pays it as an incentive for you to look for the better car.

Later in his evidence Mark Ready agreed, firstly, that in the case of the owner of a damaged car who stipulated a particular panel shop, a drop fee was not payable at all by the repairer . In such cases, the vehicle owner was probably an existing client of the repairer. Mr Ready then said in evidence that such a situation arose in 30% of cases, but in the other 70% no preference for a repairer was expressed by the vehicle owner and in that situation the tow truck driver was able to choose the holding yard to which the damaged vehicle would be taken. The following proposition was then put to him:

> Q: I am saying that the position is that, once a vehicle in that position – not in any way an existing client of anybody – is ready for towing ... the vehicle is deposited in a holding yard close to either the panel shop that owns the truck ... and runs it with Readys, or a holding yard close to another friendly panel shop, if you like, who also runs a truck with Readys, let us say, in an area more suitable to the client?
>
> A: Probably closer to their home or to their work.
>
> Q: Exactly so ... and, once that panel shop, in your circle of panel shops, achieves approval for the repair, an incentive payment of $100 per car is payable. Now what do you say to that?
>
> A: That's true.

(Evidence of the extent of the commercial advantage a repairer has over competitors where a damaged vehicle is

delivered to the holding yard associated with that repairer is summarised at 6.3).

It was then put to Mark Ready that he was responsible for systematising the payment of these incentives after the takeover of Albion 24 Hr. Towing Pty Limited and Active Towing Service in July 1990 to which he replied:

> Well, the system was already in place, long before I even came into towing.
>
> Q: A system, was it? Who organised it?
>
> A: I wouldn't have a clue. It was throughout the industry.

Later in his evidence, Mark Ready was shown a copy of the Combined Towing circular which was sent out after the issue of the RACQ Circular on 29 August 1991. Mark Ready, said he was the author of the document. He said in evidence that he used the term drop fee in the circular to refer to the practice of tow truck drivers demanding to be paid a drop fee after the owner of the damaged vehicle had already expressed a clear preference for a particular repairer. He told the Commission that he regarded this particular practice to be abhorrent. He told the Commission that in his view the demanding of a drop fee in those circumstances was to be distinguished from the practice of towing a vehicle back to a holding yard and obtaining an incentive or commission payment (in addition to the prescribed tow fee) after the repairer associated with that holding yard received approval to conduct the repair from the insurer. He said:

> There is a difference between those, in my mind there is a difference between those two things.

In his evidence to the Commission, Mathew John Ready Senior also drew a distinction between the receipt of commissions and the receipt of a drop fee by a tow truck driver. He admitted that he received commissions as a tow truck driver, but he said that he had never received drop fees. He told the Commission that in his opinion the receipt of an amount of money over and above the

prescribed tow fee by a tow truck driver, if that amount of money can be described as a 'commission', was quite legal.

> I think it's quite legal; I still think it is.

Mr Ready Senior said that he did not concur with the RACQ Circular when it was issued on 29 August 1991. He did not raise this matter with the RACQ, however:

> I don't get the chance to talk to the RACQ; I don't deal with them. My sons do, but – but I think there's quite a difference if I could debate it with them; there's a big difference, and some towing companies, I agree, do what I call a sling – operate a sling system, which is totally wrong. And a commission system is totally different again.

Later in his evidence, Mr Ready Senior was given the opportunity to fully explain the distinction between drop fees and commissions. Ready said that a drop fee or sling occurred in circumstances where the tow truck driver took unfair advantage of the owner of the damaged vehicle by recommending a particular repairer and towing the vehicle to that specific repairer. On the other hand, a commission is the term given to the receipt of money from a repairer who operates in close proximity to a holding yard where the vehicle is first delivered by the tow truck driver. A commission is a payment in return for a 'lead' given to the repairer by the tow truck driver. A repairer is given a 'lead' by a tow truck driver in circumstances where the tow truck driver knows that the insurance company will recommend the repairer in close proximity to the holding yard. That repairer is likely to be approved for the job by being given the opportunity to give the first quote (and often the only quote) for the repair of the damaged motor vehicle located in the nearby holding yard.

It is noted that Mr Ready Senior's explanation of the distinction between drop fees and commissions did not accord with the explanation of his son, Mark Ready.

Notwithstanding the evidence of Mathew Ready Senior and Mark Ready, the RACQ circular was clearly directed at both of the following practices:

- Selected repairers giving or agreeing to offer or give 'money in consideration of obtaining the work of repairing damaged motor vehicles'. (The circular itself says that these are commonly referred to as 'drop fees'.)

- Towing operators insisting that if repairers do not pay an amount of money, additional to the usual towing fees, damaged vehicles will not be delivered to the repairer's premises.

Mathew Ready Senior told the Commission that, although he regarded the first of the two practices as being a legal practice, he did not receive legal advice on the matter. He also said that he urged his sons to take up the issue with the RACQ in order to put the view that the taking of 'commissions' for 'leads' did not amount to a breach of the Act. As far as he was concerned, it was up to his sons to make such approaches to the RACQ. As mentioned earlier, Mr Ready said he had a conversation about the practice with an officer of the Department of Transport who 'didn't say it was illegal'.

Mathew Ready Junior was also asked about his understanding of the term drop fee or sling:

Q: Under what circumstances did you first hear the term drop fee or sling?

A: I don't know. It was already – all round the industry that – most panel beaters, if you give them a lead on a job, would always give you some sort of reward.

Q: ...I take it from your answer, then, that the term meant to you a payment over and over the prescribed tow fee, the one paid by the insurer...

A: Well, the way I understood it is: a car was towed into a holding yard, and some panel beater was given a lead and he managed to get the job, he always, you know, give you something...it wasn't always money but it was something.

Q: All right. Some benefit? Something of benefit to you?

A: You could say that.

Later in his evidence, Mathew Ready Junior said that he had never taken a sling, but he had received some reward for taking a car to a holding yard and 'giving the panel beater a lead in some cases'. He was then asked to define the term sling:

> Well, what I call a sling is years ago, in New South Wales, they used to have to have two books when you went to an accident scene; one was to sign the tow up and the next one was to sign a form giving authority to start repairs on a vehicle. Now, if you had that signed and took it to a panel beater and put the car straight in his shop that way he could start the car straight away, I'd say that would be a sling...the way I operated was: I took it back to a holding yard and I give the panel beater a lead and he had to chase it up. If the insurance company wanted him to do the job and the owner was happy ... for him to do the job, he got the job.

The *Tow-truck Act* sought to create a regime in which tow truck operators conducted their own holding yards which they would register with the Department of Transport. It does not appear to have been in contemplation that these registered holding yards would in fact be owned by repairers and leased to tow truck operators at little or no cost. Numerous repairers frankly admitted in evidence that in return for making some of their commercial space available to a tow truck operator to be used as a registered holding yard (often for no charge), the repairers expected to obtain a flow of repair work from the yard. Thus the original scheme of the Act with regard to holding yards has been substantially eroded.

6.8 COMBINED TOWING APRIL 1991 TO SEPTEMBER 1992

In the period April to June 1991, negotiations took place for the merger of Yellow Towing and Ready Towing to form Combined Towing. This merger continued until September 1992. The merger effectively united a number of RACQ towing areas on both sides of the Brisbane River. Ready Towing's RACQ area took in

all areas north of the river to Albany Creek and Cabbage Tree Creek, west to Ferny Grove and east to Moreton Bay. Its southern boundary adjoined the Yellow Towing area which extended from Toowong, north of the river to Moggill. On the Southside, Yellow Towing's RACQ area was bordered by the river between Colmslie and Fairfield and extended out to Carina Heights and Holland Park. Therefore, Combined Towing controlled a large part of Brisbane's RACQ areas.

On the Northside of Brisbane, the only opposition to Ready Towing for the two or three years before the merger had been Franklin's towing operations (which Ready Towing took over in July 1990) and Alderley Auto Towing. Brian Sheppard, the proprietor of Alderley Auto Towing, told the Commission that competition from Ready Towing had been so strong that by 1991 he was in the process of withdrawing almost entirely from smash towing.

On the Southside, the RACQ approved contractor, Yellow Towing, traded in opposition to the smaller operators, John Lyons Towing, Economy Towing and Humphreys/Pullens Towing. (Lance Leu of Gabba/Budget Towing was in the process of selling his business. The sale occurred in July 1991.) One Southside towing operator said that Yellow Towing was not a strong competitor for smash repair work until its amalgamation with Ready Towing.

The RACQ did not officially recognise any formal merger of the two RACQ approved towing contractors, Ready Towing and Yellow Towing. The RACQ continued to deal with the entities Yellow Towing and Ready Towing in their own right. The RACQ, however, did not oppose the merger which, according to the principals of Yellow Towing and Ready Towing, was for the purpose of creating a more efficient communications and accounting system. To some extent those things did occur. However, the partnership was not a happy one and it dissolved in about September 1992.

6.8.1 The Growth of Drop Fee Payments - Southside

William David Kitchin, Claims Manager with RACQ Insurance, told the Commission that, in about July 1990, when Ready Towing became the approved RACQ towing contractor in lieu of Albion 24 Hr. Towing Pty Limited and Active Towing Service, he had a conversation with Mark Ready and Mathew Ready Junior. He pointed to a map of the Brisbane River and told them that the river was the Rubicon and it was not to be crossed. By at least June 1991, the Rubicon had been crossed and Ready Towing was operating on the Southside of the river as a result of its partnership with Yellow Towing.

This partnership was sanctioned by the General Manager of RACQ Insurance, Alan Barry Green, over the objection of Mr Kitchin, who was then the Claims Manager. Mr Green explained his position on the merger as follows:

> Ford and Parker from Yellow Cabs and the Readys got together to have a combined control room. Neil Ford told me about it, and I said, "Well, there's nothing much I can do about that. It's a commercial decision of yours. Personally," I said to Neil, "I don't think it's a good idea," and Neil said to me, "Well, at least we can keep an eye on them."
>
> Q: Yes, keep an eye on them, but, of course, at that point they were really restricted to the Northside?
>
> A: Yes.
>
> Q: ... and were not competing at all for Southside?
>
> A: I should point out that when they were having this Combined Towing as a control room I did say to them..., "You stay in your areas." Even with Combined, Yellow tow trucks stayed in Yellow's area; Ready tow trucks stayed in Ready's area.

Mr Green said that he did not become aware that this directive was not adhered to, because during part of 1991 and the first half of 1992 he performed the duties of Chief

Executive of the RACQ during absences of Mr Noel Mason through illness.

Mr Kitchin's account of the merger was as follows:

> I expressed disquiet to Mr Green, and he said, "Well, it made logistical sense to combine with Yellow to maximise a resource", and the merger went ahead.

Several Southside repairers said that in the period of the merger they had discussions with the principals of Ready Towing about the proposal that each repairer would purchase a tow truck, place it in the Combined Towing fleet, pay weekly radio fees and pay drop fees at the rate of $100 per job. Reference has already been made to the evidence of Ray Darwen, Mervyn Hull, Graham Baxter, and Joanne Lingenberg (at 6.5.3). Alan Roy Olive of Domroy Smash Repairs and Steven Economides of Executive Panel and Paint and Gabba Smash Repairs also gave evidence that they placed their tow trucks with Combined Towing during the period of the merger and paid their own drivers an amount of $100 (in addition to the prescribed towing fee) for each damaged vehicle they received. However, they said they did not enter into any discussion about this arrangement with the representatives of Ready Towing. They each regarded their arrangements with their drivers as an internal matter and as not being in breach of the *Tow-truck Act*. Mr Olive said that he had similar arrangements with his drivers before his truck joined the Combined Towing fleet. Mr Olive's partner in Domroy Smash Repairs, Domenico D'Alessandro, became the second Applicant in the legal challenge to the CJC's investigation after Trevor Bryant of Brisbane Smash Repairs. Mr Economides said that, at the request of Mathew Ready Senior, he contributed $4,000 to the fighting fund for the legal challenge 'so as not to upset the applecart'.

Joanne Lingenberg, the Office Manager of Yellow Towing, told the Commission that in the several months leading up to 1 July 1991, she dealt particularly with Mark Ready in the arrangements in preparation for the merger. Lingenberg became aware of the existence of the new Combined Towing 'business cards' at about the time of the official commencement of the merger on 1 July 1991.

(The first cards were actually printed for Combined Towing in April/May 1991). As mentioned (at 6.5.3), Lingenberg said she was told by Mathew Ready Senior, in reference to the 'smash card', that only two repairers whose holding yards appeared on the 'smash card' did not pay drop fees. (Mr Ready denied saying this.)

There were several addresses which Lingenberg said were erroneously included on the first Combined Towing smash card. Excluding those addresses, the remaining businesses which, according to Ms Lingenberg, were said by Mathew Ready Senior to be paying drop fees were:

- Manual Body Works (Breakfast Creek)
- Chermside Smash Repairs
- Grove Body Works (Enoggera)
- Kassulke's Smash Repairs (Everton Hills)
- Kedron Smash Repairs
- Spectrum Body Works (Northgate)
- Nundah Smash Repairs
- Col Shipstone Smash Repairs (Windsor)
- Buranda Body Works
- Southside Ford (Buranda)
- Domroy Smash Repairs (Moorooka)
- Apex Smash Repairs (Milton).

The Commission's investigations, including financial analysis, confirmed that all of these businesses did pay drop fees at the time of the conversation alleged by Lingenberg. The proprietors of those businesses also admitted in evidence that they had paid drop fees.

Lingenberg told the Commission that her involvement with the payment and receipt of drop fees by tow truck drivers

commenced at the time of the Combined Towing merger. She said she was not very happy about it. She denied arranging drop fees at any time prior to the merger. (In a written submission later furnished to the Commission, she acknowledged she was aware that some Yellow Towing drivers had private arrangements with some panel shops whereby drop fees were paid.) Lingenberg said that she had a number of conversations with Mathew Ready Senior on the same topic over a period of time.

Notwithstanding Lingenberg's evidence of the time of commencement of her own involvement with drop fees, one former Yellow Towing driver and the manager of Southside Ford Panel Shop told the Commission that some Yellow Towing drivers received drop fees before the merger with Ready Towing. Financial analysis of the books of account of Southside Ford Panel Shop confirmed that from at least February 1991, Southside Ford Panel Shop paid drop fees weekly to Yellow Towing drivers. This was well before the merger of Yellow Towing and Ready Towing and is discussed in greater detail at 6.9.5.

A number of tow truck drivers who drove for Combined Towing gave evidence that they received their first drop fees when they were driving under the Combined Towing banner.

Several rival tow truck operators on the Southside gave evidence that they saw the merger as an attempt to create a monopoly for towing services throughout the Brisbane area.

In June 1991, to counter the amalgamation of Ready Towing and Yellow Towing, several towing operators who were not RACQ approved towers jointly funded the establishment and running of a 24 hour radio room at Economy Towing's premises at 75 Taylor Street, Bulimba. Thomas Andrew of Economy Towing said that the radio room operated for only 6 to 8 months. Scanners were monitored 24 hours a day and any information intercepted about traffic accidents was relayed to all drivers in the system via pagers. Towing operators on both the Northside and Southside of Brisbane contributed towards the radio room.

6.9 Involvement of Other Towers in Drop Fees

6.9.1 Albion 24 Hr. Towing Pty Limited (to July 1990)

As mentioned earlier, Albion 24 Hr. Towing Pty Limited was the approved RACQ towing contractor for the North-Eastern segment of Brisbane until July 1990. The smash repairers Kevin Jones and Colin Shipstone were shareholders in the business along with tow truck operator Robert Eugene Franklin. Franklin said he instructed his tow truck drivers that they would be sacked immediately if they were caught taking drop fees. Franklin did not have any arrangements with Jones or Shipstone for payment of drop fees or other benefits. Franklin paid ordinary commercial rent on a shed (holding yard) owned by Jones and Shipstone, and later by Jones in his own right. Franklin operated two other holding yards at Lutwyche and Stafford. Jones and Shipstone benefited substantially from the flow of work to Franklin's holding yards. Jones and Shipstone confirmed in their evidence that the payment of drop fees was not part of any arrangements with Franklin. As mentioned, Jones and Shipstone commenced to pay drop fees about three months after Ready Towing took over Franklin's RACQ approved towing operations.

6.9.2 Alderley Auto Towing

Alderley Auto Towing operated on the Northside of Brisbane in opposition to Ready Towing. The proprietor of the business, Brian Laurence Sheppard, employed his drivers on wages and commission for after hours work. Sheppard said he took the view that he did not favour the payment of drop fees to his drivers, but if a panel shop decided to pay 'an appreciation' to a driver, that was a matter between the driver and the panel shop. Sheppard named two repairers in the northern suburbs area who, to his knowledge, paid drop fees to his drivers.

Sheppard has a holding yard at 242 South Pine Road, Enoggera. It is located next to Graham's Smash Repairs. Sheppard said he did not have any arrangement with Graham's Smash Repairs relating to the payment of drop fees. Computer analysis of the books of account of

Graham's Smash Repairs revealed no evidence of payment of drop fees.

Computer analysis of Alderley Auto Towing Tow Authority Books showed the delivery of several damaged vehicles to another repairer at Everton Hills. Sheppard denied having any arrangement with that repairer to pay drop fees, but he was aware that the proprietor did pay some drop fees to some of his drivers.

Sheppard denied that he shared in any benefits received by his drivers. Sheppard did admit, however, that he did receive some cheques for towing services which included a $100 drop fee. He would bank such cheques into his business bank account and at the end of each week he would give the particular driver his wages and the extra amount which the driver had received from the repairer by way of a drop fee. He told the Commission that he tolerated the payment of drop fees to his drivers because his drivers often heard stories from other drivers about the receipt of drop fees and he found it difficult to retain tow truck drivers in his business.

Sheppard denied an allegation made by another witness that he told his drivers about the several panel shops in the northern suburbs area which were prepared to pay drop fees.

The proprietor of Graham's Smash Repairs, Ronald Crane, confirmed that his business did not have any arrangement with Alderley Auto Towing to pay drop fees, despite the fact that the Alderley Auto Towing holding yard was located next door. He told the Commission that in April or May 1992 he received his first request for payment of a drop fee and that this request came from a Ready Towing driver. This request was refused. Shortly after this incident, Mr Crane and his partner considered purchasing a tow truck in order to increase their flow of smash work. Crane's partner was against the idea. Because there was a shortage of work, Crane sought a meeting with Mark Ready and Mathew Ready Junior. Crane told them that Graham's Smash Repairs was prepared to pay drop fees. One of the brothers replied, 'We'll put it around the boys.' This conversation is denied by both Mark Ready and Mathew Ready Junior. Notwithstanding this conversation,

Crane said that Graham's Smash Repairs did not pay drop fees to Ready Towing, although it did receive several smash repairs from them in the following months.

6.9.3 Telford Towing Service

Telford Towing Service is the approved RACQ towing contractor for an area on the North-Eastern outskirts of Brisbane. Robert Charles Wessling is the proprietor of Telford Towing, located at Virginia, and Rode Smash Repairs also located at Virginia. He has operated his repair and towing businesses from the Virginia area since about 1986. He has been the approved RACQ towing contractor for that area since about 1990.

Telford Towing services the area from Deagon to Burpengary and west to Dayboro and Mount Mee. Because of the size of the area and the distances involved, many clients are reluctant for their vehicles to be taken to the Telford Towing holding yard at Virginia. Mr Wessling acknowledged that he would prefer to be able to tow damaged vehicles to his Virginia holding yard so that he is in a better position to furnish a quote for the repair job on behalf of his repair business. However, Mr Wessling insisted that his drivers did not place undue pressure on the owner of a damaged motor vehicle to obtain authority to tow the vehicle to the Virginia holding yard.

Mr Wessling denied that he had any arrangement with his drivers for the payment of drop fees. He gave one example of a complaint from another repairer that one of his drivers had demanded a drop fee. He told the Commission that he followed up that complaint and the repairer withdrew the allegation.

Several former drivers for Telford Towing told the Commission that they did not receive drop fees while they drove for Telford.

6.9.4 Centenary Towing/Yellow Towing - Toowong to Moggill

For a period Centenary Towing was the approved RACQ towing contractor for the North-Western part of Brisbane, from Toowong to Moggill. It lost the RACQ endorsement in January 1991. The evidence obtained by the Commission indicated that one repairer at Milton (Mick Young's Smash Repairs) gave drop fees to Centenary drivers from time to time, but not regularly. This was acknowledged by drivers and one of the proprietors of Mick Young's Smash Repairs, Francis Roy McDonnell, who admitted paying drop fees to a Centenary Towing driver from July 1990 to January 1991. McDonnell also told the Commission that he received smash work from Western Suburbs Towing of Toowong, but had never paid drop fees to anyone associated with that entity.

McDonnell said that in 1992 he purchased a reconditioned tow truck. In August 1992 that truck commenced operating as part of the Ready Towing fleet, driven by Max Pedersen. McDonnell bought a second truck in November 1992 which also operated as part of that fleet. McDonnell said that during 1992 he paid drop fees to the drivers of his tow trucks and to several other Ready Towing drivers. McDonnell said he paid drop fees over a six month period in 1992. He said that up to that time Mick Young's Smash Repairs had not had dealings with tow trucks on that basis. He said that it was 'standard knowledge that you pay a drop fee ... to tow truck drivers'.

McDonnell said that he did not pay drop fees to any other tow truck driver. Another tow truck driver previously associated with Centenary Towing, Peter Wilson, said that he was aware that Mick Young's Smash Repairs paid drop fees of $100 to Centenary drivers 'now and again', but not on a regular basis.

The owner of Centenary Towing was Noel Patrick Humphreys. During most of the period that Centenary Towing was the approved RACQ contractor for the North-Western segment of Brisbane, Humphreys was the proprietor of a repair business located a short distance from the boundary of his towing area, just across the Brisbane

Yellow Towing's Office Manager, Joanne Lingenberg, told the Commission that, because owner drivers were in a position to deal directly with the repairers, their earnings did not necessarily come through the Yellow Towing office. Therefore, Yellow Towing was not always in a position to know if a driver was receiving drop fees. Lingenberg said that the Yellow Towing policy was that, if a driver was found to have accepted a drop fee, he would have been sacked.

Lingenberg's evidence on this issue was not supported by other evidence received by the Commission and, in a written submission later furnished to the Commission, Lingenberg indicated that her evidence about the attitude of the management of Yellow Towing to drop fees related to the period after the RACQ circular had been issued in August 1991. She said that before this circular she considered drop fees to be part of private arrangements between tow truck drivers and repairers and did not think drivers would be disciplined for receiving them. After the circular, she assumed that the management of Yellow Towing would have frowned on drop fees.

Taxi Combined Systems Pty Ltd, which traded as Yellow Towing, also had a close association with the Southside Ford Panel Shop which was located adjacent to the Yellow Towing holding yard at Longland Street, East Brisbane. The Southside Ford Panel Shop commenced operations in 1990. Prior to that the premises were occupied by Humphreys Smash Repairs which had an associated towing business. From 1990 to 1992, Christopher Nessell was the manager of the Southside Ford Panel Shop. He gave evidence that before Southside Ford took over the shop from Humphreys, there was a standing arrangement with Humphreys tow truck drivers that the repair shop would pay a drop fee of $80 for each damaged vehicle. Nessell said that when Southside Ford took over the panel shop in 1990 he kept the drop fee arrangements going with the Humphreys tow truck drivers. He said he had no conversation about the subject with Humphreys himself.

(According to Ronald Bevin Allen, Mr Humphreys was no longer operating Humphreys Towing on the Southside by 1990. Allen said that he took over this portion of the operations of Humphreys Towing in 1989 although the

towing licence and the RACQ contract were still in Humphreys's name and he did not commence making lease payments until 1990. When Humphreys lost his RACQ contract in January 1991, the RACQ area in which Allen operated was taken over by Yellow Towing. Allen denied that he was paid drop fees by Humphreys Smash Repairs.)

Mr Humphreys explained the $80 payments referred to by Nessell differently. He said that to subsidise his tow truck business he required his repair shops to pay a second towing fee of $60 or $80 even if vehicles were moved to his repair shop from his adjacent holding yard. The managers of his repair shops then tried to recover as much of the second towing fee as possible from the relevant insurers. Usually the insurers would agree to pay only $20 or $30 though they sometimes paid more. Humphreys said that he always paid the cost of running his trucks but his manner of paying his drivers varied. Sometimes he paid them wages and sometimes he paid them 40% of the total of the first and second towing fees.

The connection between Southside Ford Panel Shop and Humphreys Towing was severed when Humphreys' RACQ towing area was taken over by Yellow Towing. Nessell said that as the panel shop was running out of work he went to see Joanne Lingenberg of Yellow Towing, explained the situation to her and offered to pay drop fees to Yellow Towing drivers calculated on the basis of 10% of the repair bill up to a maximum of $100 per vehicle. He said that Lingenberg replied that she would tell the drivers. Following this conversation, smash repair work started to arrive at Southside Ford Panel Shop. Nessell said that the panel shop started paying drop fees to Yellow Towing drivers in January or February of 1991. This was before the amalgamation of Yellow Towing and Ready Towing.

Nessell said that when the amalgamation occurred, smash repair work delivered by Yellow Towing vehicles to Southside Ford dropped off and Nessell thought that the management of Ready Towing was directing the work to panel shops associated with Ready Towing/Combined Towing even though Southside Ford Panel Shop was still prepared to pay drop fees. He said that when the RACQ circular was issued in August 1991, the management of

Tow truck drivers who work for Gabba/Budget Towing confirmed that the payment of drop fees was not part of Mr Leu's business operation.

6.9.8 Economy Towing Service

John Charles Ready Senior, the brother of Mathew Ready Senior, was the proprietor of Economy Towing Service from 30 June 1991 until mid-1992 when it merged with Bayside Towing. Prior to that, from 1985 to 1991, John Ready Senior managed the business, but the licensed tow truck operator was his son-in-law, Thomas Patrick Andrew. John Ready Senior is now the Operations Manager for Bayside Towing, which is the authorised RACQ towing contractor for the Bayside area.

Mr Andrew told the Commission that, although he held the tow truck operator's licence for Economy Towing from 1985, he did not play any part in the business until 1990. During the 1985-1990 period he held a full-time job in a nursery/landscaping business.

Economy Towing operated throughout the inner southern suburbs in opposition to John Lyons' Towing, Gabba/Budget Towing and Yellow/Combined Towing. It obtained the use of a holding yard owned by Balmoral Body Works at Taylor Street, Bulimba. The holding yard was made available to Economy Towing rent free, the repairer's motive being to obtain some of the smash work which was brought into the holding yard by Economy Towing trucks.

As mentioned earlier, the proprietor of Balmoral Body Works, Colin Brookes, told the Commission that he paid a few drop fees to Economy Towing drivers back in 1988. He said that he stopped the practice when he formed the view that it was not economical. Brookes said that in more recent times Economy drivers had asked him for a drop fee, but he had refused. He said that the flow of smash work would disappear for a while after such a refusal, but deliveries would eventually resume.

According to one Economy Towing driver, Douglas Carkeet, John Ready Senior, as the manager of Economy

Towing, tolerated the receipt of drop fees by his drivers. Carkeet told the Commission that it was apparent to him that other drivers regularly received drop fees.

Carkeet told the Commission that he informed John Ready Senior about an offer from a repairer to pay him drop fees. Carkeet said that John Ready left it to his own discretion as to whether he would accept them. Carkeet stated that during his period driving with Economy Towing, he noticed that other Economy Towing drivers appeared to earn significantly more money than he, even though during some weeks they did not perform as many tows as he. He learned in general conversation with these drivers that they were picking up drop fees. This driver described Ready's attitude as follows:

> It's your discretion, you do what you want to do.

Ready himself simply stated in evidence that he gave no instruction at all to his drivers about drop fees.

Another Economy Towing driver, Craig Carpenter, told the Commission that John Ready explained to him that if he delivered damaged vehicles to certain holding yards in the metropolitan area, the nearby repairer would almost always pay a drop fee if he received the repair approval for the motor vehicle. Carpenter said that he did receive some drop fees and shared in the drop fees 50/50 with John Ready.

In his evidence to the Commission, John Charles Ready Senior, although admitting that he handled cheques which sometimes contained drop fees at the weekly 'settling' with the drivers, denied that he retained 50% of the drop fees. He also denied ever receiving drop fees directly from any repairer or sharing in such fees.

6.9.9 Phill Campbell's Towing

Phillip Alexander Campbell, operating as Phill Campbell's Towing, is an independent towing operator in the Capalaba area. He is also the proprietor of Campbell's Smash Repairs. Mr Campbell told the Commission that he had never paid drop fees to the driver of his own tow truck.

However, he said that he did reach an agreement with John Ready Senior of Economy Towing that he would pay a drop fee of $100 per car dropped to his panel shop for which he received repair approval. He also made a holding yard available to Economy Towing for a period. He said he continued this practice until Economy Towing merged with Bayside Towing and became the RACQ contractor for the area. Mr Campbell then became the opposition tower to Bayside Towing. The practice of paying drop fees then stopped.

Campbell alleged that at one time he included John Ready Senior on his payroll as an employee in order to conceal the payment of drop fees to Ready. Ready denied in evidence that this was the purpose of his being employed by Campbell and said that the arrangement was a lawful one to pay him wages in return for his answering telephones after hours.

Ready was provided with this section of the report (in draft form) for his comment and made no submission to the Commission.

6.9.10 Trend Towing

Graham Thomas McLune and Wendy Anne McLune are the proprietors of Trend Towing and Auto Repairs at Rocklea. Trend Towing has been the RACQ approved towing contractor for the area from Annerley to Rocklea since about 1982. This RACQ towing area includes the Chelmer/Graceville area.

Evidence from the proprietors themselves and from a number of tow truck drivers employed by Trend Towing at one time or another confirms that the payment of drop fees is not part of the business of Trend Towing and Auto Repairs. This is another example where the close relationship between the smash repair business and the towing business precludes the payment of drop fees to Trend Towing's drivers by other smash repairers.

The proprietors maintain that they do not run their towing business at a loss in order to provide work for their smash repair business. Mrs McLune gave evidence that the Trend

drivers are paid wages and do not receive any incentive payment for delivering damaged vehicles to the Trend holding yard. Mrs McLune stated that sometimes the towing business runs at a profit and on other occasions the smash repair business runs at a profit. Mrs McLune informed the Commission that the Trend drivers are forbidden to receive drop fees.

6.9.11 Harvey/Highland Towing

Frederick Theo Harvey is a shareholder in companies which operate Holden Smash Repairs at Salisbury and Harvey/Highland Towing at Mount Gravatt, Woodridge and Park Ridge. Mr Harvey has been an approved RACQ towing contractor for 16 years. His RACQ area extended from Moorooka to Jimboomba.

Mr Harvey's towing business currently runs about 22 tow trucks. Approximately half of these trucks are owned by repairers. Mr Harvey gave evidence that he actively opposed the receipt of drop fees by his tow truck drivers. This evidence was generally confirmed by the evidence of tow truck drivers who worked for Harvey/Highland Towing at one time or another in recent years. Mr Harvey said that he keeps an eye on whether particular tow truck drivers take damaged cars to particular repairers on a regular basis. This would indicate to him that drop fees may be paid by that repairer.

Harvey/Highland Towing is yet another example of a close relationship between a smash repair business and a towing business, indicating that the payment of drop fees to tow truck drivers by other repairers would not be acceptable to the towing operator. Mr Harvey said he has allowed his fleet of tow trucks to expand to include trucks owned by repairers in the expectation that some of the smash work will find its way back to his own smash repair business.

Harvey told the Commission that it was possible to notice if his drivers were receiving drop fees from other repairers:

You've got to keep an eye on that all the time, especially when I got into the contract drivers[17] ....The only way we notice it is if particular drivers are going to particular shops regularly, and what insurance companies. And you can generally sit back and have a guess what's happening and readjust it.

Q: Giving him his marching orders?

A: Well, normally.

Harvey said that he and his partner did try paying an 'incentive' to a particularly good smash driver to discourage him from receiving drop fees from other panel shops, '...but after a while it didn't make any difference, so we got rid of him'.

6.9.12 Bayside Towing

Rodney Keith Ward is the proprietor of Miller Ward Pty Ltd trading as The Body Shop at Tingalpa. He also owns Bayside Towing. He has been an approved RACQ towing contractor for the Bayside area since about 1987. His towing business recently amalgamated with P & M Towing, which held the RACQ service contract for the Capalaba area. John Charles Ready Senior now manages this combined RACQ area on behalf of Bayside Towing.

Mr Ward instructed his tow truck drivers that if they accepted a drop fee they would be dismissed. He said he makes regular checks of Tow Authority Books to detect any receipt of drop fees. Mr Ward believes that he would soon hear about it if one of his drivers was asking for a drop fee. The evidence of tow truck drivers who have worked for Bayside Towing tends to confirm his evidence.

6.9.13 P & M Towing

William David Muir is a Director of P & M Motor Body Repairers Pty Ltd trading as P & M Body Works and P & M Body Repairers. For 15 years he has also been the proprietor of P & M Motors Towing. He has been the

[17] A contract driver is one who drives a truck owned by a third party.

RACQ approved towing contractor at Capalaba for four years.

Mr Muir told the Commission that he had never been involved in the payment of drop fees to his drivers. He paid all his drivers wages. Mr Muir operated on the basis that all damaged vehicles were delivered to his holding yard at Capalaba. He estimated that he would ultimately receive repair approval on 90% of damaged vehicles delivered to the yard by his tow trucks. Once again, the relationship between towing entity and repairer is such that the payment of a drop fee to the drivers by other repairers would not be tolerated.

6.9.14 Ando's Towing

Ando's Towing operated on the Northside in 1989–90, in opposition to Ready Towing and Albion 24 Hr. Towing Pty Limited. The business was owned by Peter Anderson but the trucks were owned by a smash repairer, Combined Motor Industries Pty Ltd, at Hudson Road, Albion. Ando's Towing also operated from those premises. Anderson received all of the towing fees from the trucks as well as $100 for each damaged vehicle delivered to Combined Motor Industries. This was confirmed by Donald Santa, the director of Combined Motor Industries. Anderson told the Commission that the repairers associated with Ready Towing would not pay drop fees to other towing companies. According to Anderson, apart from Combined Motor Industries, the only other Northside repairer to pay drop fees to drivers for Ando's Towing was Brisbane Smash Repairs.

6.9.15 Domroy Smash Repairs Towing

Domroy Smash Repairs at Moorooka has been involved in tow trucks for 10 years. The repair business has, over that period, run its trucks under its own name and under the names of Highland Towing, Economy Towing Service, Combined Towing and lastly, Yellow Towing. One of the partners in Domroy Smash Repairs, Alan Roy Olive, said that, since 1989, Domroy's have paid their own drivers 'incentives' for smash work delivered to their holding yard. He regarded these payments as not being unlawful, because

they were internal payments to an employee. Olive admitted to making rare payments of drop fees to other tow truck drivers not employed by Domroy's but said that these arrangements were made directly with the drivers and not the towing operators. He said that he paid these amounts reluctantly and only to attract repair work.

6.10 CONCLUSIONS

The evidence obtained by the Commission during the course of the investigation supported the following conclusions in relation to Term of Reference No. 2:

- For many years the payment of drop fees has been a common practice in the towing industry and the smash repair industry.

- When Hexlawn Pty Ltd trading as Ready Towing took over Albion 24 Hr. Towing Pty Limited and Active Towing Service in July 1990, the takeover was substantially financed by the proprietors of five Northside smash repairers, Kev Jones Smash Repairs, Col Shipstone Smash Repairs, Kedron Smash Repairs, Manual Body Works and Nundah Smash Repairs.

- By the time the takeover had been finalised all of these repairers held interests in tow trucks which operated in the Ready Towing fleet, whether as a result of prior interests held in those trucks or as a result of the financial assistance they provided for the takeover.

- The payment of drop fees by these smash repairers to the drivers of their trucks was, or soon became, an established part of the arrangements between the smash repairers and those drivers to the knowledge of the management of Ready Towing.

- These smash repairers also paid drop fees regularly to other drivers from Ready Towing to the knowledge of the management of Ready Towing.

- Other smash repairers on the Northside also paid drop fees to Ready Towing drivers to the knowledge of the management of Ready Towing.

- The directors of Hexlawn Pty Ltd, Mark Ready and Mathew John Ready Junior, benefited from the payment of drop fees either by receiving them personally as tow truck drivers or through their interest in Hexlawn Pty Ltd by taking half of the drop fee payments from the 50/50 drivers.

- When Ready Towing and Yellow Towing amalgamated to form Combined Towing, Mark Ready invited several Southside smash repairers to place trucks in the Combined Towing fleet under arrangements similar to those existing between Ready Towing and the five Northside repairers.

- Several of those Southside smash repairers said that during these discussions with Mark Ready, he told them that drop fees would be payable. Although Mark Ready said he could not recall specific conversations with these repairers, he acknowledged that he may have said words to that effect.

- As a result of the RACQ circular on 29 August 1991, four of the abovementioned Northside smash repairers and the management of Ready Towing stopped paying and receiving drop fees in cash and by cheque and agreed upon a system that involved the repairers making payments (generally calculated at the same rate of $100 per vehicle) towards truck maintenance or other business expenses of the tow truck drivers.[18]

- Notwithstanding the circular issued by the management of Ready Towing in September 1991 (albeit under the letterhead of Combined Towing) reiterating the warnings contained in the RACQ circular:

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[18] Mr Pappin, the proprietor of Nundah Smash Repairs and Chermside Smash Repairs maintained that he did not change his method of paying his drivers as a result of the RACQ memorandum. He said that he had commenced changing over to maintenance payments well before 29 August 1991 for the reasons mentioned in paragraph 6.5.2.

- Mathew Ready Senior, one of the persons responsible for issuing the circular, continued to personally collect drop fees from at least one repairer

- the management of Ready Towing participated in the meeting with repairers (referred to above) at which alternative arrangements for paying drop fees were discussed.

- Drop fees have been an integral part of the Ready Towing business arrangements.

- Although there was evidence that some other tow truck operators did not object to their drivers obtaining drop fees the evidence did not indicate that those operators actively encouraged smash repairers to make such payments.

The numerous breaches of s. 23(1)(b) and (c) of the *Tow-truck Act*, relating to the payment and receipt of drop fees, disclosed by the evidence were not referred to the Director of Prosecutions or any other prosecuting agency for consideration of prosecution proceedings as the period within which those proceedings could be initiated had expired.

This report does not provide details of one aspect of the Commission's investigation which was referred to the Director of Prosecutions by way of a separate report under s. 33(2)(a) of the *Criminal Justice Act* for consideration of possible prosecution proceedings.

As stated in 2.7, the Commission afforded to each person the subject of a possible adverse finding or otherwise adversely referred to in the report (while it was in draft form) a notice of possible adverse findings which included relevant sections of the draft report. Each person was given the opportunity to comment on the findings and sections relevant to them. A joint submission dated 20 July 1994 was received by the Commission from the Directors of Hexlawn Pty Ltd trading as Ready Towing, its employees and associated drivers. That submission, and others received by the CJC, are reproduced in Appendix 2 to this report. The submission from Hexlawn Pty Ltd referred largely to matters which the Commission did not consider relevant to the issues the subject of its investigation and this report. One passage has been omitted by the Commission because the matter referred to is the

subject of criminal proceedings. The only other passage considered to be of substantial relevance reads:

> The Commission's preliminary findings cause us concern in that they encapsulate any adverse statements from persons who would benefit through damaging Ready Towing's reputation and seem to ignore positive independent statements where Ready Towing has brought stability and regulated price control in the towing industry to the benefit of the public and their insurance companies.

6.11 COMMENTS

- Drop fees inflate the income available from towing and have contributed to the over-supply of tow trucks in the Brisbane area and the problems thereby created.

- The current holding yard system is not genuinely independent. In the majority of cases each yard is closely connected with a particular repairer and the tow truck driver knows that by delivering the vehicle to the yard there is a high probability that the associated repairer will obtain approval for the repair and that a drop fee will be paid. Therefore, the current holding yard system facilitates the payment of drop fees.

CHAPTER 7 – EVIDENCE RELATING TO TERMS OF REFERENCE NO. 3

Improper approaches by persons and/or entities engaged in the towing industry to motor dealers to obtain towing business, such approaches being accompanied by threats that persons and/or entities engaged in the Smash Repair industry will withdraw their custom in spare parts from the motor dealers if they did not favour the persons or entities first mentioned when using towing services.

7.1 SMASH REPAIRERS, TOW TRUCK PROPRIETORS AND SPARE PARTS DEALERS.

The smash repair, tow truck and spare parts supply industries are closely related. As shown in Chapter 6, the Commission's investigation has established that, in recent years, there has been a particularly close nexus between the smash repair industry and towing industry. Many tow trucks which from their markings appear to the public to be associated with a particular towing organisation are owned by repairers. Some repairers 'place' their tow truck or trucks with a particular towing organisation under arrangements outlined elsewhere in the report (see 1.3.2). In other cases, towing businesses such as John Lyons Towing, Fischle Towing and Phill Campbell Towing, are directly owned by entities that are also involved in repair. This class of tow truck operator is much smaller and independent of the larger RACQ approved towing organisations. These smaller operators are affiliated with the Motor Traders' Association of Queensland (MTA–Q). Few towing organisations are independent of repairers; Alderley Towing is an example of such an operator. The interests of tow truck operators who manage or run tow trucks owned by repairers are therefore closely related to those of the repairers. Primarily, the objective is to obtain a supply of repair work for the associated repairer.

Smash repairers purchase spare parts as required for the repair of vehicles. Those repairers with tow trucks generally use more spare parts because they have access to the best repair work – namely, damaged vehicles which require towing from accidents. A number of experienced repairers told the Commission that a vehicle which required towing would also require up to three times the volume of spare parts that a 'drive–in' repair job would require.

Motor dealers franchised to sell particular makes of vehicles are generally the suppliers of spare parts to the smash repair industry for that make of vehicle. Dealers in spare parts compete with one another to obtain the business of repairers. An individual repairer may require, each month, spare parts to the value of several thousand dollars in order to conduct repairs to a particular popular make of vehicle (for example, Ford Falcons). On the other hand, a Ford spare parts supplier, because it deals with a large number of repairers, may supply Ford spare parts to the value of $200,000 per month.

7.1.1 Trade Towing

Trade towing (see 1.3) includes the towing of vehicles on behalf of motor vehicle retailers for mechanical or other repair, or simply as a form of vehicle transportation. The cost of a trade tow is typically $30–$40. Motor dealers also require trade towing from time to time where company owned vehicles or clients' vehicles need towing to a workshop, usually for mechanical reasons. This type of towing is not of significant volume and a number of dealers said it amounted to fewer than 10 vehicles per month.

Michael Kelly, formerly the General Manager of Southside Ford, told the Commission that his business paid between $200–$500 per month for trade towing, whereas one spare parts client alone would spend up to $35,000 per month.

Kevin Lee, General Manager at Byrne Ford, described Byrne Ford's volume of monthly trade towing custom as 'virtually nothing; about 15 cars a month ... '. By contrast, Mr Lee said that six large panel shops could account for $200,000 in monthly spare parts sales.

Trade towing is a significant part of the business of towing organisations and some large towing operators (including Ready Towing) have a portion of their fleet devoted solely to it. On the other hand, trade towing is of little interest to repairers generally. Tow trucks owned by repairers are usually assigned to the pursuit of repair work.

7.1.2 Allegations of Impropriety

During the course of Operation Spot II, complaints were made to the Commission that spare parts dealers were being threatened by persons associated with Combined Towing. The substance of the complaints was that these persons were telling dealers that if they did not give their trade towing work to Combined Towing, certain repairers presently dealing with those dealers would withdraw their custom in favour of another dealer who was prepared to give trade work to Combined Towing.

Complaints of this nature suggested that serious criminal offences of demanding a benefit by oral threats (section 415(b) of *The Criminal Code*) may have been committed and the matter was further investigated in the Commission's Investigative Hearings.

7.2 Evidence Given at the Investigative Hearing

Michael Kelly

Kelly, at the time, was the General Manager of Southside Ford which controlled seven automotive dealerships. Southside Ford required trade towing from time to time and this had been satisfactorily performed by John Lyons Towing for many years. The cost of trade towing ranged from $200–$500 per month. In contrast the seven automotive outlets had combined sales of about $250,000 per month in spare parts to repairers.

Kelly gave evidence that, on or about 26 March 1992, he received a visit from Alan Charles who said that he represented Combined Towing. Charles said that he was aware that Southside Ford's trade work was attended to by John Lyons Towing. Charles stated that Combined Towing wanted Southside Ford's trade towing. Charles explained that the tow trucks in the Combined Towing fleet were owned by repairers and a number of these repairers purchased their parts from Southside Ford and associated organisations. He said that if Southside Ford did not give its trade towing to Combined Towing, those repairers would remove their spare parts business. Charles also explained that if Southside Ford did give their trade towing to Combined Towing and other parts

suppliers did not, then Southside Ford might pick up the spare parts custom of the repairers associated with Combined Towing. Charles provided Kelly with a handwritten list which identified repairers who purchased spare parts from Southside Ford and associated dealers.

Kelly said that Charles did not offer a better or cheaper towing service than the present contractor, John Lyons Towing. Kelly said he was told by Charles that he wanted to get John Lyons Towing, Western Suburbs Towing and Telford Towing out of the industry.

Kelly said that Charles had an aggressive attitude during the visit and Kelly became angry himself because of the threatening nature of the approach.

A short time after Charles departed, Kelly had a number of telephone conversations with Neil Ford, the proprietor of Yellow Towing, who Kelly knew was one of the principals of Combined Towing. Ford said he would fix things up. A short time later he received a phone call from a person who stated that he was Mathew Ready and he apologised for Charles' manner. Kelly said he also contacted Steve Economides, one of Southside Ford's clients, and discussed the approach and Economides told Kelly that he was part of the Combined Towing group and felt that Combined Towing should have Southside Ford's trade work.[19] Mr Kelly said that this statement caused him some concern but that nothing ever happened, that is, none of the smash repairers withdrew their custom.

Kelly said that he had been in the motor industry for about 30 years and had not received an approach of this nature before.

Paul Ferris

Ferris is the Service Manager for Centenary Motors, located at Taringa. He stated that Centenary Motors required trade towing of breakdown vehicles at the rate of about one to two vehicles per week. This service was carried out by Western Suburbs Towing. Centenary Motors also sold spare parts to a number of repairers.

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[19] Mr Economides gave evidence that he recalled the conversation with Kelly. Economides said he did not agree with the manner in which the approaches were made, as reported to him by Kelly.

Ferris said that, around the end of March 1992, he received a visit from a person, not previously known to him, who said he was from Combined Towing:

> ... he was representing a group of panel shops who bought parts off us and would like tows in return.

Ferris said he cut the conversation short as he felt the trade towing work available was insignificant. Ferris told the person that he would give them the trade tow work, but he told the Commission that he had no intention of doing so. He said he regarded the approach as a form of blackmail at the time.

Kevin William Lee

Lee is the General Manager of Byrne Ford, a motor dealer, and has been involved in the motor industry for about 30 years. Byrne Ford is involved in the sale of spare parts to repairers. Mr Lee said that Byrne Ford required trade towing in their business operations at the rate of about 15 vehicles per month. Prior to December 1991, trade towing was carried out by Telford Towing.

Sometime in December 1991, Lee received a telephone call from a person who identified himself as Mark Ready and asked for all of Byrne Ford's trade towing. Ready said that should it not be provided, Ready would take steps which would result in repairers on the Northside withdrawing their spare parts sales from Byrne Ford. Ready also said that Combined Towing would provide a better service. Lee told Ready that he would look into the situation.

At this time, Lee was happy with the service supplied by Telford Towing. Lee said that he was aware, from information received from representatives who serviced Byrne Ford's repairer clients, that a number of client repairers owned tow trucks which were part of the fleet of Ready Towing/Combined Towing.

Lee was concerned about spare parts sales and in response to the call issued an instruction to the Service Department to give some work to Combined Towing.

During his career in the industry Lee said he had never previously received an approach of this nature.

After providing part of their trade tow work to Combined Towing, Lee said they stopped using them because of poor service and reverted to using Telford Towing only.

Sometime in early April 1992 Lee said he was further approached on the subject by Mathew Ready Senior and a meeting took place on or about 11 April 1992. Those in attendance included Lee himself, his Spare Parts Manager Matthew Roberts, Mathew Ready Senior, Vaughan Pappin of Nundah Smash Repairs and Col Shipstone of Col Shipstone Smash Repairs. Nundah Smash Repairs and Col Shipstone Smash Repairs were substantial clients of Byrne Ford. Ready told Lee that the repairers had done business with Byrne Ford over many years and, to ensure continued business, Byrne Ford should give Combined Towing all the towing business available. Lee said that he felt that the repairers were embarrassed at being present.

Lee said the volume of sales of spare parts then being supplied by Byrne Ford to repairers associated with Combined Towing could have been around $200,000 per month.

Lee viewed the meeting as a commercial approach and a request for reciprocal business with a 'slight innuendo' associated with it. Lee said he did not appreciate, as a business person, being told where to place business and felt entitled to place business in the best interests of the organisation.

Following this meeting Byrne Ford shared trade towing work between Telford Towing and Combined Towing (which was then in operation).

Robert John Wallbridge

Wallbridge is the Spare Parts Manager for Bryan Byrt Ford which is situated at Mount Gravatt and is involved in the sale of spare parts to repairers. Wallbridge said that in early 1992 his parts representatives were actively trying to find new repair clients, particularly on the Northside of Brisbane in the face of opposition from other Ford dealers who were moving to the Southside. Bryan Byrt at this time had very little business on the Northside.

Wallbridge said that Bryan Byrt made some use of trade towing services but favoured no particular tow truck operator.

Wallbridge said that as a result of an earlier phone conversation he had a meeting with a person referred to as Ray Charles (identified by other evidence as Alan Charles) and Trevor Bryant on 19 March 1992. Also present was Bryan Byrt's sales representative, Allan Vine. Charles said he represented towing interests and Bryant was the proprietor of Brisbane Smash Repairs. Charles said that he was aware that Bryan Byrt's representatives had been active on the Northside and he produced a list showing Bryan Byrt's repairer clients and the clients of other Ford dealers. Wallbridge said the essence of the meeting was that if Bryan Byrt's trade towing was directed to Charles' towing organisation, the repairer clients on the list would be instructed to purchase their Ford parts from Bryan Byrt. Conversely if Bryan Byrt did not take up the offer, it stood a chance of losing its existing clients. Wallbridge was told that Bryan Byrt was the first Ford dealer to be approached with the proposition.

Bryant told Wallbridge that he had previously dealt with Bryan Byrt Ford but had stopped in favour of another dealer because of some service problems. Both Charles and Bryant said that Brisbane Smash Repairs would recommence buying parts from Bryan Byrt if the towing interests they represented were given Bryan Byrt's trade towing.

Wallbridge said he told them that he did not control towing in the company, but he would see the person involved. Wallbridge thought the offer was a great opportunity, in view of the fact that parts sales were down and he was trying to expand business with repairers. He regarded the meeting as a normal commercial approach. The tenor of the approach was clearly different from that of the approaches to the other spare parts dealers.

Trevor Bryant

Bryant conducted a repair business named Brisbane Smash Repairs at Breakfast Creek and also owned a tow truck. Alan Charles drove that tow truck as part of the Combined Towing/Ready Towing fleet. Bryant said that Charles spent considerable time at the office of Brisbane Smash Repairs. In early 1992 Charles took time off from his driving to make approaches for Ready Towing to obtain trade towing work from motor dealers. Charles spent considerable time on the telephone at Brisbane Smash Repairs making inquiries with other repairers and motor dealers. Bryant said that Mathew Ready Senior also spoke to him about these approaches. Ready told Bryant that approaches were going to be

made to motor dealers to exchange trade towing work for spare parts sales. Ready asked Bryant if Brisbane Smash Repairs would change spare parts suppliers if his existing supplier did not allocate its trade work to Ready Towing.

Trevor Bryant said that on one occasion he accompanied Alan Charles to Bryan Byrt Ford at Upper Mount Gravatt where a meeting took place with the spare parts manager. Bryant said that Charles was straightforward in his approach and showed the Manager the list containing the names of the smash repairers associated with Ready Towing and the spare parts dealers from whom they purchased their supplies. Bryant said that Charles told the Manager that 'if they didn't get the full support of their trade work' the repairers on the list currently purchasing from Bryan Byrt would change their supplier.

Bryant said that the Bryan Byrt representatives made very little comment throughout the presentation. At the end of the meeting, a spare parts account was opened for Bryant's business.

At this time Bryant obtained his Ford parts from Q Ford at Springwood and was happy with the arrangement. Bryant said that because of his reliance on Charles and other Ready Towing tow truck drivers for his supply of repair work, he felt it was necessary to change his supplier to Bryan Byrt Ford. On one occasion a number of parts were delivered by Q Ford when Charles was present. Charles became very angry about the situation and threw the parts back onto the delivery vehicle and ordered the driver to take them away. Bryant told the Commission that he did not support Alan Charles in these approaches, '... but we didn't have any choice with it'. Bryant said he felt that if he did not go along with the approaches, '... they'd take my driver away'. Bryant said he regarded the approaches by Charles as amounting to blackmail.

Peter George Boys

Boys is the Assistant Service Manager of Armstrong Holden at Woolloongabba. He has been in the motor industry for about 21 years. Boys said that on 28 March 1992 he received a visit from a person who represented Combined Towing. This person produced a list of motor dealers including Armstrong Holden and some of the names of the repairers were highlighted. The caller told him that the names highlighted were the clients of Armstrong Holden and that Combined Towing wanted their (Armstrong Holden's) trade towing. The caller said that if Armstrong Holden did not

comply, the repairers on the list would not buy spare parts from Armstrong Holden.

Boys said he was not impressed by the way the person conducted business and cut the conversation as short as possible. He subsequently had discussions with management about it. As a result of the approach a spare parts representative spoke with client repairers to ensure that their business relationship with Armstrong Holden was unaffected.

Allan Barry Green

Green was the General Manager of RACQ Insurance since 1982. He was responsible for the allocation of the RACQ selected repairer status and approved towing contractor status to repairers and tow truck operators respectively. Green said that he was advised by another member of the RACQ that persons associated with Combined Towing were making threatening approaches to spare parts dealers. Green said that he telephoned Mark Ready and told him that in his opinion the approaches were a breach of the *Trade Practices Act* and they were 'not on'.

7.3 The Evidence of Persons from Combined Towing

Mathew John Ready Senior

Ready has been involved in the Towing industry since 1975. In June 1991 he was the Operations Manager of Combined Towing and was later the Manager of Ready Towing. Ready said that he was aware that spare parts dealers gave their towing work to repairers who owned tow trucks and purchased parts from them. His difficulty was that Ready Towing did not have a panel shop and Ready Towing was getting little work from the dealers. Ready said he decided to bring to the attention of the dealers that some of the biggest repairers in Brisbane were in his co-operative in that they owned trucks which were part of the Combined Towing fleet. Ready drew up a list showing the repairers in his co-operative and where they purchased parts so that the dealers could clearly see that the co-operative was a valued customer and should get reciprocal towing work. That list contained the names of nine Northside and eight Southside repairers. Ready said he arranged

for one of Ready Towing's drivers, Alan Charles, to make approaches to spare parts dealers.

Ready said that after Charles approached Mike Kelly of Southside Ford he received a complaint from Kelly who was 'quite heated' and told Ready that he did not like Charles' attitude. Ready said that Kelly told him that Charles had intimated that if Southside Ford did not give their trade work to Combined Towing, the associated smash repairers might buy their parts elsewhere. Ready said he told Kelly that Charles had put the proposition in the wrong way and that what they were saying to Kelly was:

> We're asking you to support us if we're supporting you.

Ready also said he told Kelly that Neil Ford (one of the proprietors of Yellow Towing), a friend of Kelly's, knew of the approaches.[20] Ready said that he told Kelly that Combined Towing was delivering considerable work to the holding yard adjacent to the Southside Ford Panel Shop and owned by Southside Ford, but that Southside Ford Panel Shop was being 'out-quoted' by John Lyons Smash Repairs who was taking the work out of the yard. Ready said he told Kelly that his association with Lyons was a 'strange association' in that Southside Ford was giving Lyons its trade tow work and losing repair work to John Lyons Smash Repairs at the same time.

Ready denied any impropriety in the approaches and said that the intention was to let the spare parts suppliers know that major repairers like Kev Jones Smash Repairs, Col Shipstone Smash Repairs, Manual Body Works and Nundah Smash Repairs were in the business of towing and that these repairers were buying parts from the suppliers.

He said he regarded the approaches as 'a valid commercial exercise'.

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[20] In a written submission furnished to the Commission by Mr Ford through his legal representatives, he advised that he recalled having three or four conversations with Mr Kelly and personally visiting him over this incident. He said that he advised Mr Kelly Yellow Cabs would not be shifting its spare parts account from Southside Ford regardless of whether or not Southside Ford used Combined Towing and that he regretted the approaches made to Mr Kelly. He then contacted Mathew Ready Senior and requested that he apologise to Mr Kelly. Ford said that he advised Mr Ready that 'if he was going to adopt this approach, then he was to stay away from all Yellow Towing customers'.

Mark Charles Ready and Mathew Ready Junior

Mark Ready has been involved in towing since 1986. He and his brother Mathew are Directors of Hexlawn Pty Ltd trading as Ready Towing.

Ready said that he and his brother asked their father, who was the Operations Manager of Combined Towing at the time, to employ someone to go around and speak to spare parts dealers about reciprocal towing business for the smash repairers associated with Combined Towing who purchased spare parts from the dealers. He said his father got tow truck driver Alan Charles to make the approaches. Mark Ready said that he had contacted some of the repairers involved to find out where they purchased their parts. He said he had no knowledge of what Charles said to the dealers and regarded the approaches as normal business practice. He said that none of the panel shops associated with Combined Towing expressed reservations about the approaches as far as he knew.

Mathew Ready Junior gave evidence that he had heard of the approaches but played no part in making them.

Alan David Charles

Charles said that he had been a part time and full time tow truck driver since about 1984 and that he was presently an owner–driver with Ready Towing.

Charles acknowledged that he approached spare parts suppliers with a view to Combined Towing obtaining the suppliers' trade towing. He said that he had been called into the office by Mathew Ready Senior and his sons, Mark and Mathew Junior. He said that he was told by Mr Ready Senior to go around to the spare parts dealers and tell them that the panel beaters who owned tow trucks in the Combined Towing group would withdraw their spare parts custom unless the dealers gave Combined Towing some of their trade work. Charles said he contacted the panel beaters associated with Combined Towing and made a list of the spare parts dealers from whom the panel beaters purchased parts. Charles said that, to the best of his memory, he told each of the smash repairers what he intended to do and that none of them expressed any reservation. He said that he believed Mr Ready Senior had previously spoken to the smash repairers about the proposal also. Charles said that Combined Towing paid him $700 a week for two weeks to make the approaches to the spare parts dealers.

Charles said he approached about a dozen spare parts suppliers including about five or six of the large ones. He also approached garages, cab companies and other people. Of the larger spare parts suppliers, Charles said he approached Southside Ford, Westmore, Byrne Ford, Brian Byrt Ford, Armstrong Holden, Southside Toyota and Metro Nissan. When asked what sort of reception he received from the persons associated with the spare parts dealers to whom he put the proposition, he replied:

> Well, I got a very – as you might imagine, I got a very cool reception; not a very warm reception at all.

William Charles Parker

Parker is the General Manager of Yellow Cabs and Yellow Towing. He said that in July 1991 Yellow Towing merged with Ready Towing to form Combined Towing. Parker said the purpose of the merger was to cut running costs by using a common radio room. Yellow Towing was to look after the accounting and Ready Towing was to look after the day to day operational control. After being involved with Ready Towing for several months, Parker said that he and the directors of the company decided to dissolve the relationship for a number of reasons.

Parker said that one incident of concern was a complaint by Southside Ford that someone from Ready Towing had demanded that Southside Ford provide Combined Towing with its trade towing or a number of repairers would collectively stop purchasing parts from Southside Ford.

Parker said that at that time Yellow Cabs purchased about $30,000 in parts from Southside Ford monthly and Yellow Towing had been trying to get access to Southside Ford's trade towing for some time. They had not achieved this and had never demanded it by using threats.

7.4 The Evidence of Smash Repairers

Graham Arthur Baxter

Baxter is the proprietor of Buranda Body Works, which had tow trucks with Combined Towing. Buranda Body Works was one of the repairers on the list prepared by Alan Charles which was shown

to some spare parts dealers. Baxter said he received a telephone call from Alan Charles who sought information on his spare parts suppliers. Baxter said that, when he inquired as to his reasons, Charles told him that he was doing up a list and enough repairers purchased spare parts from the same dealer, they might be able to get a better discount. Baxter said he thought at the time that it was a good idea. However, he later heard from a number of sources in the spare parts industry that the approaches made were improper and caused very negative reactions.

Emmanuel Kennedy-Cerruto

Kennedy-Cerruto is the proprietor of Manual Body Works and had tow trucks with Ready Towing/Combined Towing at the relevant time. He said he was aware that Alan Charles was going around talking to spare parts dealers and that he received a call from the Manager of Byrne Ford asking if he was closing his account with them, to which he replied that he was not. He said he once attended a meeting at Byrne Ford with a number of other repairers, including Col Shipstone and Vaughan Pappin, and Mathew Ready Senior. At that meeting, Ready told the manager that Ready Towing was not getting its fair share of Byrne Ford's towing.

The name "Manual Body Works" was included on the list of repairers referred to previously. Kennedy-Cerruto told the Commission that he only attended the meeting at Byrne Ford because Mathew Ready Senior asked him to. He regarded it as a waste of time because he did not intend to change his spare parts suppliers.

Donald Santa

Santa conducted a smash repair business, Combined Motor Industries, which owned two tow trucks which were part of the Ready Towing fleet at the time. However, at the time of giving evidence Combined Motor Industries was no longer operating and Santa said he was driving a tow truck in the Ready Towing fleet.

Santa's repair business was included on the list of repairers referred to previously. He said he became aware of the approaches to spare parts dealers but could not recollect supplying information about his parts suppliers to Ready Towing and he did not know how the author of the document obtained those details. He said he did not personally agree with the approaches.

Colin Lionel Shipstone

Shipstone is the proprietor of Col Shipstone Smash Repairs and has two tow trucks with Ready Towing. Shipstone said he was aware of the approaches to spare parts dealers and participated in an approach to Byrne Ford.

Shipstone said that the effect of the discussion was that those present sought reciprocal business for their tow trucks or they would buy their spare parts elsewhere. Shipstone recalled that the meeting with Byrne Ford was attended by Mathew Ready Senior, Emmanuel Kennedy-Cerruto (Manual Body Works) and Vaughan Pappin. He said Ready did most of the talking.

The name of Shipstone's repair business was included on the list of repairers referred to previously.

Joanne Lee Lingenberg

Lingenberg was employed by Yellow Towing and when it merged with Ready Towing, she worked in the common operations centre and office. She said that she heard Mathew Ready Senior talking on the phone to spare parts suppliers on a couple of occasions about obtaining their trade towing. She recalls one of these conversations becoming quite heated.

Neil Douglas Scott

Scott is the proprietor of Grove Body Works and has a tow truck operating with Ready Towing. He said that he received a phone call from Alan Charles who sought information about his spare parts suppliers. He said that he did not support the approaches being made and did not even know of them until after they were made. He said he had no intention of changing his parts suppliers.

Gary Robert Strathdee

Strathdee is the director of Kedron Smash Repairs and has a tow truck in the Ready Towing fleet. Strathdee said he had a conversation with Mark Ready who sought information about his spare parts suppliers. Ready told him that it was in his interests to ensure that the local Ford and Holden dealers used his truck for trade towing work. Strathdee said he did not like the idea and was upset that Ready Towing should be able to tell him whom he should buy parts from. He also said he had a conversation with

Byrne Ford and told them he would have nothing to do with the approach and would continue to deal with them.

Several other repairers and tow truck drivers gave evidence that they had heard of the approaches but had no direct knowledge of them.

7.5 SUMMARY

In March/April 1992 Combined Towing was by far the largest tow truck operator in Brisbane. It constituted an amalgamation of Ready Towing on the Northside and Yellow Towing on the Southside. The approaches to the spare parts industry were made by Combined Towing driver Alan Charles, and to a lesser extent by members of the Ready family connected with the management of Ready Towing/Combined Towing. The origin of the approaches, from evidence, was a request by the Directors of Ready Towing - Mark Ready and Mathew Ready Junior.

Combined Towing virtually had a monopoly on smash towing in its RACQ zones of operation. Telford Towing operated in an RACQ zone adjacent to a Ready Towing RACQ zone and therefore was not in competition for smash towing. However, Telford Towing was in competition for non-RACQ trade towing. Independent operators John Lyons Towing, Western Suburbs Towing and Economy Towing Service were in opposition in all respects with Combined Towing and Lyons mentioned in evidence that his towing operation relied on trade towing clients for survival. The evidence of Kelly of Southside Ford suggests that a reason for the approach was to put John Lyons Towing, Western Suburbs Towing and Telford Towing out of business.

Smash repairers who gave evidence and who had trucks in the Combined Towing/Ready Towing fleet generally stated they did not agree with the approaches and did not intend to change their spare parts suppliers in any case.

All but one of the witnesses representing the spare parts dealers said that they considered the approaches to be improper. In fact, spare parts sales of several hundred thousand dollars per month were used to try to obtain trade towing, the value of which was much smaller.

Those involved in making the approaches denied any impropriety and said that they were a normal commercial transaction to obtain reciprocal business.

7.6 CONCLUSION

The approaches were made or sanctioned by the management of Ready Towing to increase Combined Towing's share of towing in the Brisbane area. In the Commission's view there was insufficient evidence to warrant referring a report on this aspect of its investigation to the Director of Prosecutions under s. 33(2)(a) of the *Criminal Justice Act* for consideration of possible criminal proceedings for offences against s. 415(b) of *The Criminal Code* (demanding benefit by oral threats).

During its investigation, the Commission sought the advice of the Trade Practices Commission in relation to the applicability of provisions of the *Trade Practices Act* to the approaches made to the spare parts supplier. The Trade Practices Commission advised:

- the alleged conduct, if proved, could be characterised as an attempted collective boycott of the spare parts suppliers, and therefore a breach of s. 45 of the *Trade Practices Act*

- as the alleged conduct occurred some time ago, was short lived, never put into effect and there was nothing to suggest it would be repeated, the Trade Practices Commission in accordance with its usual policy would not pursue the matter

- any fresh allegation that similar conduct is occurring would be vigorously pursued by the Trade Practices Commission.

CHAPTER 8 – EVIDENCE RELATING TO TERMS OF REFERENCE NO. 4

Possible official misconduct in connection with the smash repair and towing industries by persons employed in units of public administration.

8.1 No Evidence of Official Misconduct

In addition to the evidence of the widespread payment of spotter's fees and drop fees, the Commission also received evidence of the following types of improper behaviour by tow truck operators and drivers:

- racing to scenes of accidents
- obstructing traffic at scenes of accidents
- standover tactics against other tow truck drivers at scenes of accidents
- pressure, including by way of false representations, applied to motorists to sign the towing authority.

Furthermore, the Commission received evidence from repairers of the following types of complaints about the conduct of tow truck operators and drivers:

- A repairer, having received approval for the repair of a vehicle in a holding yard controlled by a towing operator associated with a rival repairer, would experience considerable delay before the towing operator delivered the vehicle for repairs
- Tow truck drivers, to persuade the owners of damaged vehicles to use a particular repairer, would make false statements about the quality of work of other repairers or tell the owner that a particular repairer has gone out of business

- Tow truck drivers at the scenes of accidents would tell the owners of damaged vehicles that rival repairers have criminal convictions or are otherwise undesirable persons.

The *Tow-truck Act* imposes responsibility for administering and enforcing the Act on the Director-General of Transport.

In light of the evidence obtained by the Commission of extensive breaches of the Act, it was necessary for the Commission to consider whether misconduct by any officer of the Department contributed to or hindered the detection of such breaches.

The evidence shows that there has been no effective action by the Department of Transport to deter persons from paying or receiving drop fees and spotters fees.

Furthermore, it is likely that the widespread payment of drop fees and other breaches of provisions of the *Tow-truck Act* by some tow truck operators and by some repairers have been, to some degree, assisted by the perception that the Department is unlikely to launch any prosecution action, even if evidence of such breaches were to be obtained. The amount of enforcement activity has a direct relationship to the prioritising by the Department of its tow truck enforcement activities among its many responsibilities and to the allocation of available resources.

However, the Commission has found no evidence of official misconduct by persons employed in the Department of Transport.

8.2 CURRENT ENFORCEMENT ACTIVITIES

The establishment of Department of Transport enforcement officers has undergone considerable change since 1988. At about that time, the establishment was as follows:

- Eight Transport Inspectors with investigative duties
- 45 Motor Vehicle Inspectors with motor vehicle inspection duties throughout Queensland
- 54 Weighbridge staff

- Weight of Loads Inspectors employed by the Main Roads Department

- A squad of police on secondment to the Department of Transport.

In December 1988 the weighbridges on the outskirts of Brisbane were closed and personnel were given the opportunity of becoming Inspectors.

In March 1990, the Main Roads Department amalgamated with the Department of Transport and some of the Weight of Load Inspectors became Transport Inspectors.

The above arrangements had the effect that as at 1 January 1990 the total establishment of enforcement officers available to the Department of Transport throughout Queensland was as follows:

- 43 Motor Vehicle Inspectors

- 94 Transport Inspectors (now increased to 97).

It is readily appreciated that the duties of the Motor Vehicle Inspectors in relation to tow trucks are restricted to the inspection and certification of tow trucks as being of a roadworthy standard so as to comply with licensing requirements. These examinations are conducted annually.

In terms of the remaining 97 'on road' Transport Inspectors, these officers have a wide range of responsibilities in relation to enforcement of Acts and Regulations, having nothing whatever to do with the tow truck industry. A smaller number of Transport Inspectors based in the Brisbane area carry out some regular duties in relation to enforcement of the *Tow-truck Act* and *Regulations*.

The Department estimates that 5% of its time and resources is spent on the enforcement of the *Tow-truck Act* and *Regulations*.

The Department was able to provide the following statistics for the Brisbane area, in relation to the tow truck industry:

NUMBER OF COMPLAINTS

1990 – 32
1991 – 74
1992 – 89

A handful of complaints was received in relation to tow truck activity on the Gold and Sunshine Coasts. The Department says that very few complaints about tow trucks are received from other areas of Queensland.

The Department also reports that in the calendar years 1991 and 1992, 1,248 intercepts of tow trucks were conducted in the Brisbane area. Tow truck drivers and operators asserted in evidence that the vast bulk of these interceptions were concerned with mechanical examinations of tow trucks, checking documentation and standard of dress of drivers. They complained that Transport Department officers were concerned with these 'lesser' issues rather than with the larger issues such as improper conduct at accident scenes. These criticisms will be briefly summarised and considered at section 8.3 of this chapter.

Enforcement action may be taken against a tow truck driver/assistant/operator in one of three ways:

- By way of complaint and summons in the Magistrates Court for an offence against the *Tow-truck Act 1973*, pursuant to s. 40 of the Act.

- On and from 1 March 1993, by way of the issue of penalty infringement notices (PINS), which are in the nature of on-the-spot fines, for certain offences against the Act.

- By way of 'show cause' proceedings taken by the Director-General of Transport under Regulation 23 of the *Tow-truck Regulations, 1988*. The Director-General may, after inquiry and after considering any representations by the certificate/licence holder, cancel or suspend the licence or certificate for a specified period.

The Department furnished to the Commission all available data relating to enforcement action it has taken for breaches of the Act since 1989. The tables below reveal the nature and scope of that enforcement action. In that period, no action has been taken in

respect of breaches of s. 23 of the Act, for paying or receiving drop fees or spotters fees.

TABLE A TYPES OF CHARGES PREFERRED BY COMPLAINT AND SUMMONS

	1989	1990	1991	1992	1993	1994
Dress and Conduct and other breaches of Regulation 40	5	5	3	5	8	5
Unserviceable Tow Truck			1		2	1
Tow Authority Offences & like offences	15	8	7	3	8	8
Unlicensed Tow Truck/Fail to Produce Certificate/Riding without Certificate etc.	6	8	4	2	2	7
Making False Statements/ Refusing to answer questions	1		1		2	3
Obstruct Accident Scene			2	1		
Unauthorised Advertising	1	1				
Charge Unreasonable Fee			1			1
Miscellaneous/Offence not adequately identified as to type	3		2		3	5
TOTAL	31	22	21	11	25	30

TABLE B CHARGES PREFERRED – OUTCOME

	1989	1990	1991	1992	1993	1994
Total No. of Charges Preferred (Approximate only)	31	22	21	11	25	30
Warned	31	17	13	5	NIL	NIL
Convicted by a Court	NIL	4	5	3	20	4
Result Not Known	NIL	1	1	2	3	25
Withdrawn/Dismissed	NIL	NIL	2	1	2	1

TABLE C TYPES OF CHARGES – PINS

CHARGE:	MAR '93 – MAR '94
Dress and Conduct and other breaches of Regulation 40	8
Unserviceable Tow Truck	4
Tow Authority Offences & Like Offences	11
Unlicensed Tow Truck/Fail to Produce Certificate/ Riding without Certificate	31
Making False Statements/Refusing to Answer Questions	–
Obstruct Accident Scene	–
Unauthorised Advertising	–
Charge Unreasonable Fee	1
Miscellaneous	2
TOTAL:	57

TABLE D PINs ISSUED MARCH 1993 TO MARCH 1994 – OUTCOME

Total No. of PINs issued March 1993 – March 1994	Fines Paid	Prosecuted for Failure to Pay Fine by Due Date	Still Active	Cancelled
57	34	19	3	1

8.3 CRITICISMS OF THE DEPARTMENT BY WITNESSES

Almost all witnesses called before the Commission's investigative hearings were asked to express opinions about the way in which the Department of Transport operated in the area of enforcement of the *Tow-truck Act*. They were first asked to provide any information about misconduct by persons employed in the Department.

No witness was able to provide any information or allegation amounting to an allegation of official misconduct by any employee of the Department.

The criticisms and comments of repairers were somewhat limited, since the repairers have no direct involvement in the administration of the *Tow-truck Act*. However, repairers did express some views on the matter, including:

- suspicion as to the influence of certain entities connected with the towing and insurance industries on decisions made by the Department in relation to towing matters
- lack of response from the Department to complaints made by smash repairers
- a tendency in the Department to engage in enforcement of trivial matters relating to towing.

Tow truck drivers and operators were, by contrast, more vocal about the performance of the Department in relation to enforcement of the *Tow-truck Act*.

The following comments and criticisms from tow truck operators and drivers are listed in order of their prevalence among the witnesses:

- Transport Inspectors should maintain a more frequent presence at accident scenes.
- Transport Inspectors tend to concentrate on trivial enforcement matters.
- Not all Transport Inspectors appeared to be fully conversant with the legislation relating to towing, or with towing issues generally. Transport Inspectors who have such knowledge tend to move on to other areas of the Department.
- Department officers generally conduct themselves fairly.
- Transport Inspectors tend to be unresponsive to complaints by one tow truck driver against another.
- There should be more scrutiny of applicants for licences and certificates under the *Tow-truck Act*, and more supervision of frequent offenders.
- Some Transport Inspectors tend to be arbitrary and inflexible in their approach and such conduct could become more prevalent with the introduction of the 'on-the-spot fine' (Penalty Infringement Notice) system.
- The Department had been ineffectual in dealing with the larger issues relevant to the towing industry.
- The Department suffered from lack of resources in the area of enforcement of the *Tow-truck Act*.
- The methods of investigation by Transport Inspectors are not effective.

By far the most persistent criticism among the witnesses was the perceived need for Transport Inspectors to be more proactive by attending accident scenes and supervising the conduct of tow truck drivers and assistants in the field. It was suggested by one witness that an efficient and effective method of proactive enforcement would be for Transport Inspectors to regularly question the drivers

of damaged vehicles at accident scenes to ascertain whether undue pressure had been applied to secure an authority to tow. It was suggested that random investigations would deter unscrupulous tow truck drivers from such conduct.

As indicated by Tables A and C above, Transport Inspectors have tended to concentrate on licensing breaches and improper management of the required paperwork (such as Tow Authority Books).

The category "Dress and Conduct" is significantly represented in both Table A and Table C. This category is comprised of breaches of Regulation 40 of the *Tow-truck Regulations, 1988*. Regulation 40(1)(b) requires any licence or certificate holder to:

> ... conduct himself in an orderly manner and with civility and propriety.

However, the data provided by the Department of Transport did not always specify which paragraph of Regulation 40 had been breached.

The data show that for 1989–1994 there were:

- 6 identifiable charges of failure to comply with minimum dress [Regulation 40(1)(a)]
- 13 identifiable charges of misconduct prosecuted by complaint and summons [Regulation 40(1)(b)]
- 6 identifiable charges of failure to comply with other provisions of Regulation 40
- 6 charges of failure to comply with unspecified provisions of Regulation 40.

The data show that for March 1993–March 1994 Penalty Infringement Notices were issued in respect of:

- 2 breaches for failure to comply with minimum dress [Regulation 40(1)(a)]
- 2 breaches for misconduct [Regulation 40(1)(b)]

- 4 breaches for failure to comply with other provisions of Regulation 40.

Enforcement action in relation to misconduct has been instituted at an average rate of two matters per year. This figure seems low in view of the evidence given to the Commission by tow truck operators and drivers that misconduct on the part of drivers at accident scenes is prevalent and appeared to be the issue of greatest concern to them within the industry.

However, it is the Commission's view that proactive methods of investigation and more effective enforcement strategies only address the symptoms and not the root causes. The Commission considers that the following are significant causes of improper conduct by tow truck drivers at the scenes of accidents:

- the payment of drop fees, which
  - has contributed to the over-supply of tow trucks in Brisbane
  - means that there is a greater incentive for pressure to be applied to motorists by tow truck drivers to have the damaged vehicle towed to a particular holding yard or smash repairer
  - leads to greater competition among tow truck drivers at accident scenes to secure the towing of repairable vehicles rather than "write-offs" for which no drop fee would be payable
- inadequate vetting procedures as a result of which licences and certificates under the *Tow-truck Act* are issued to persons who are not fit to hold them.

Many of the criticisms of the Department related to the perceived lack of resources devoted to the towing industry. However, even if further resources are dedicated to regulating the towing industry, there are certain types of misconduct which Department officers will have difficulty in investigating. For example, it is unlikely that officers would be able to obtain evidence of the payment of drop fees without access to the powers used by the Commission during its investigation.

Secondly, the Department receives many complaints by one tow truck driver against another where the only evidence is the word of the complainant. The Department appears to have adopted the not unreasonable approach of seeking corroboration for the account of a complainant tow truck driver before it will institute proceedings based upon the complaint.

Another problem for the Department is that, on the evidence obtained by the Commission, there is undoubtedly a percentage of tow truck drivers who persistently engage in conduct which, if proved against them, should render them liable to cancellation or suspension of their certificates. Some concern was expressed by witnesses that such action is not taken often enough by the Department. When breach action is taken, drivers often manage to gain an acquittal. In the case of those who do lose their licences, or have them suspended, they sometimes gain readmission to the industry within a short time.

8.4 Evidence of Stand-Over Tactics in the Towing Industry and the Department's Role

The Commission received evidence from several witnesses of stand-over tactics being used against them by persons connected with a rival towing operator. None of these witnesses had complained to the Department of Transport despite the seriousness of the allegations and despite the fact that, had the allegations been substantiated, disciplinary action would have been warranted under Regulation 23 of the *Tow-truck Regulations, 1988*.

The Commission does not make any criticism of the Department in relation to these matters (three of which are detailed below) but simply observes that persons within the industry and members of the public will not complain about improper conduct unless they are confident that the Department has both the capacity and the will to effectively investigate such conduct and take appropriate disciplinary action.

Threats to Towing Operator A

At one time Towing Operator A had a fleet of four tow trucks. He told the Commission that in recent years his business had suffered significantly in the face of opposition from the RACQ approved towing contractor for the area. He said that in recent years he has

received threatening messages and telephone calls from persons associated with the towing industry. He says that he no longer performs accident towing, partly as a result of these threats.

A told the Commission that in recent years he had received telephone calls in the early hours of the morning to tell him that his son was dead. In mid-1992 he received another telephone call in which he was told that the person was going to rape his wife and burn his trucks. He said he recognised the voice of one of the callers as that of a former employee who was driving a rival operator's tow truck at the time. The call occurred soon after A had secured a tow at an accident scene as a result of the owner of the damaged vehicle specifically asking A to perform the tow.

A told the Commission that in April/May 1993, he was in the process of selling his trucks. A driver for a rival operator was reported to A as having said to an acquaintance of A's, 'You want to tell that bloke (that is, the proposed purchaser of A's trucks) to get out of the deal or his trucks will be burned.' This matter was reported to the police, but A had no expectation that anything could be done about the threat. A said that he purchased a tape recorder in order to tape any threatening telephone calls he received. However, these calls came without warning and he was never able to tape record them. He gave details of the calls which particularly stood out in his memory but said he had received numerous other threatening calls in recent years.

A's evidence was supported by another tow truck driver who described briefly to the Commission an incident which he witnessed at an accident scene involving A and drivers of a rival operator:

> ... they've just about ran over the top of him with their threats and allegations and whatever else, so – but, you know, you can't – what can you do about it?...I have been at an accident and heard some of the things said to him which, if it was me, it would be provocation and I'd probably be fronting up for something else ... that his wife's a – you know, a slut and, you know, he strips cars in the yard and all this sort of stuff, to customers. You know, it's just – I think it's – those sort of things the industry doesn't need and hasn't needed ever.

Threats to Smash Repairer B

B told the Commission of an incident in which a towing operator engaged in threatening behaviour. B said that in mid-1992 an existing corporate client advised him of the involvement of one of their vehicles in a traffic accident. His client asked him to organise a tow truck. B contacted a towing operator and a truck arrived at the accident scene at about the same time as the driver of a rival towing operator arrived. B told the Commission that subsequently, that driver rang him and asked him why that driver's company had not been called to the accident scene. B replied that his client had asked him to organise a tow truck and he had done so. B alleged that the driver then said:

> You'll never get another tow out of any [of our trucks] and you'll never get another quote out of our holding yard.

B said that he subsequently received several further telephone calls from that driver repeating that threat. B said he was also advised by his client that the rival towing driver who attended the scene engaged in heavy-handed tactics to encourage the tow truck driver summoned by B to leave the scene of the accident.

The driver alleged to have made these threats categorically denied having made them.

Threats to Towing Operator C

C gave evidence that he had obtained authority to tow a damaged vehicle and that drivers of a rival towing operator had disputed his right to do so. He said that soon after the incident he received a threat over the telephone from a person whose voice he recognised as that of a driver for the rival operator. The caller told him that he was 'as good as dead'.

8.5 Tow Truck Appeal Tribunal

The Tow Truck Appeal Tribunal was established under Part VI of the *Tow-truck Act*. The Board is constituted by a Stipendiary Magistrate, a nominee of the Director-General of Transport and a licence holder nominated by the Minister. The primary function of the Appeals Board is to hear and determine appeals against decisions of the Director-General including refusals to grant or

renew licences, conditions imposed upon licensees, cancellation or suspension of licences.

Wendy Anne McLune is the proprietor, with her husband, of Trend Towing and Auto Repairs at Rocklea. For the 12 months prior to her giving evidence to the Commission, she was a member of the Tow Truck Appeal Tribunal.

Mrs McLune expressed surprise that during those 12 months the Appeals Board had considered only three appeals against cancellation and a fourth appeal was listed for hearing. Mrs McLune expressed the opinion that this low level of activity by the Appeals Board bore no relationship to the volume of reliable information she received as a tow truck proprietor concerning misconduct by tow truck drivers. Mrs McLune also commented that in one case where the Board cancelled a licence, the Director-General later restored the licence to the unsuccessful appellant. Mrs McLune questioned whether the Tribunal was being utilised effectively.

Mrs McClune's criticisms were consistent with the views expressed by many witnesses that there is insufficient regulation and enforcement by the Department within the towing industry.

Conclusions

The Commission's investigation revealed no evidence that any officer of the Department of Transport has been guilty of official misconduct in respect of the Department's administration of the *Tow-truck Act*.

However, the evidence supported the conclusion that the Department had not effectively enforced the provisions of the Act in relation to the behaviour of tow truck drivers at the scenes of accidents and the payment and receipt of drop fees and spotters fees.

CHAPTER 9 – RECOMMENDATIONS

The Department of Transport Issues Paper published in July 1993 suggests (at p. 21) that the current legislative regime appeared to be 'addressing the symptom rather than the cause'. The Department observed that the current *Tow-truck Act* prohibits a range of undesirable conduct by tow truck drivers and their assistants, but there is no regulation of the industry so as to remove the cause for such objectionable behaviour. Towards the conclusion of the Issues Paper, the Department raised a number of possible legislative measures for consideration and later submission. The major suggestions were:

- replacing the current regime of licensing operators, drivers and drivers' assistants with a regime which places a clear onus on operators for the behaviour of their drivers and other agents

- continuing to expand the use of penalty infringement notices, which were introduced on 1 March 1993

- accreditation of tow truck drivers and assistants, according to a national standard

- introducing an allocation scheme for accident towing

- breaking the nexus between towing entities and smash repairers by:

  - prohibiting vehicle repairers from owning and operating tow trucks

  - creating independent holding yards.

- fixing by legislation the maximum accident towing fee, storage fees and release fees

- regulating clearway towing by appointing a towing entity for a set period after tenders have been called; alternatively transferring clearway towing responsibility to the Brisbane City Council.

It will be convenient to examine each of these suggested reforms in the light of the evidence obtained by the Commission during its investigation and in the light of submissions made to the Commission by various stakeholders and, where appropriate, make recommendations on the issues.

9.1 PLACING THE ONUS ON TOWING OPERATORS/ABOLISHING TOW TRUCK DRIVERS AND DRIVERS' ASSISTANTS' CERTIFICATES

Evidence was obtained by the Commission that some tow truck operators at least knowingly acquiesced in their driver's receiving drop fees.

In the unlikely event that the Department of Transport obtained evidence of such conduct by a tow truck driver, there exists no effective sanction available to the Director–General in the *Tow–truck Act* against the tow truck operator.

It should be observed that a number of other tow truck operators expressed their complete opposition to the payment of drop fees by repairers to their tow truck drivers. However, most of these tow truck operators are also in the business of smash repair. Their tow truck holding yards are adjacent to their repair workshops. Their complete opposition to the payment of drop fees is as much due to ordinary commercial considerations as to proscription of such behaviour in the Act. Tow truck operators who are also repairers expect their drivers to deliver damaged vehicles to their repair workshop or to their own holding yards so that they are likely to obtain approval to repair the vehicles. In fairness, however, it should be acknowledged that some tow truck operators/smash repairers strongly objected to the payment of drop fees for the simple reason that it is an illegal practice and it is perceived by them as creating many difficulties within the tow truck and smash repair industries.

This report has already examined how the availability of drop fees exacerbates abusive, coercive and otherwise improper behaviour by tow truck drivers at accident scenes. During its investigations, the Commission obtained a significant quantity of anecdotal evidence to suggest that several identified tow truck drivers habitually engaged in such conduct at accident scenes to secure the lucrative smash tows. In one particular case, the Commission heard evidence from the employer of one such tow truck driver. The employer is a repairer who admitted providing a number of 'incentives' to the tow truck driver. The employer also indicated that he was at least aware of his employee's bad behaviour prior to employing him. The employer told the Commission that he warned his employee that if he received complaints of such behaviour he would cease their relationship. The employer claimed

that he was unaware of recent episodes of bad behaviour by his employee. The employer's evidence nevertheless suggested a lack of concern about the tow truck driver's behaviour, so long as the flow of repair work was maintained.

A superficially attractive proposition is that legislation should make tow truck operators liable for breaches committed by their drivers. It has been suggested that this would result in a significant improvement in the conduct of tow truck drivers at accident scenes.

The Department of Transport Issues Paper suggested that imposing this responsibility on tow truck operators would be so effective that it could be accompanied by the abolition of tow truck drivers' and assistants' certificates. The Issues Paper (at p.27) makes the following observations:

> The need to licence all persons associated with towing must be questioned. Currently, both tow truck drivers and tow truck drivers' assistants require a licence or certificate, however behaviour problems persist within the industry. The involvement of Government in the assessment of industry personnel and in attempting to control behaviour has generally not been successful and in fact may have encouraged operators to abrogate their responsibilities for the conduct of their staff. The extent of this licensing also imposes significant costs on both Government and industry. It would be appropriate for the onus for the conduct of towing operations and the behaviour of persons employed or contracted to rest with the tow truck operator. This responsibility of the operator for the conduct of the towing operation would need to be clearly established in legislation and be accompanied by significant penalties given the economic incentives for operators to engage in and encourage undesirable behaviour. In addition to placing responsibility for towing operations with those who have the greatest ability to influence practices and behaviour within the industry, this approach would also substantially reduce costs by removing the need to licence drivers and assistants.

A response to the Issues Paper from the QPS dated September 1993, submitted that current legislation dealing with the licensing of operators, drivers and drivers' assistants should be retained and that the operators or owners of tow trucks should additionally be made responsible for the conduct of their tow truck drivers. The QPS response makes this observation:

> To abolish the licensing of tow truck drivers and assistants ... would inevitably result in the employment of undesirables within

> the industry. It may be somewhat difficult, if not impossible, to place a 'clear legal onus' on operators/owners for the activities of their drivers/assistants, when such persons would be acting contrary to the instructions of their employer, as undoubtedly the evidence would inevitably reveal in given circumstances alleging offences involving any such 'onus'.

The QPS response calls for the introduction of 'strict and effective provisions for cancellation and/or suspension of licences and certificates for licensees who cannot conduct themselves in the required manner'.

The QPS response has highlighted a significant practical difficulty standing in the way of any attempt by the legislature to place an onus on tow truck operators/owners for the conduct of their drivers. It is unlikely that the legislature would agree to making the operator's liability for the tow truck drivers' misconduct absolute. It would be more usual for any provision imposing liability on operators to include a defence where the operator establishes that reasonable measures were taken to ensure that the drivers obeyed the law. Another legislative option would be to impose a duty on operators to take all reasonable measures to ensure that their drivers obey the law.

However, it is likely that if either of these options is used, the operators/owners will simply issue instructions or a code of conduct for their drivers replete with warnings and admonitions to their drivers to act properly at accident scenes. Such documents might be issued on a monthly basis. In the event that a driver were to be prosecuted for improper conduct, the operator/owner could produce those documents to persuade the court that he/she should not be made liable for the unauthorised conduct of the driver. The operator/owner may nevertheless encourage the driver to engage in improper conduct while presenting the facade of an operator/owner genuinely concerned about maintaining proper practices within the industry. A clear example of such hypocritical conduct is to be found in the issuing of the circular by Ready Towing/Combined Towing in September 1991, referring to the RACQ Circular dated 29 August 1991 and giving stern warnings to its drivers not to accept drop fees. The then Operations Manager of Ready Towing/Combined Towing, Mathew John Ready Senior, admitted that after the issue of that circular he continued to accept drop fees personally from at least one repairer.

Therefore, although the Commission agrees that tow truck operators should be liable for their drivers' misconduct, the Commission also supports the retention of a certification scheme for drivers. The abolition of the certification scheme may result in a greater number of undesirable persons entering the industry.

The joint submission of the **Major Motor Vehicle Insurers** (at p .7) also addressed the issue of the stricter licensing of tow truck operators:

> ... We believe the operator needs to be accountable for the proper operation of their trucks. They also need to be reputable business people themselves and if they are corporately linked to other people this also needs to be known. By licensing them these aims are achieved. In New South Wales the Executive Officer of the Tow Truck Industry Council believes the single issue which allows them to best exercise control and influence over the Towing Industry in that State, is the fact that they licence operators as well as drivers.

The major insurers submit that a licensed towing operator must own and have registered in the operator's own name each truck which performs accident towing work. This recommendation is integral to their recommendation for an allocation scheme, which will be examined later in this chapter. The major insurers also submit that:

> All offences detected against drivers should also be an offence by the towing operator. This will assist in ensuring the operators are accountable for the operation of their vehicles and for the behaviour of their drivers.

The major insurers suggest that a demerit points system would assist in this area of enforcement. The demerit points system is considered at 9.2.

RECOMMENDATION

The Commission recommends that:

- tow truck operators be liable for breaches committed by their tow truck drivers of the *Tow-truck Act, Regulations* and any Code of Practice which may be issued and for other breaches relating to their performance of duties (for example, an offence of speeding committed while racing to an accident scene)

- tow truck drivers and tow truck drivers' assistants continue to be required to obtain certificates.

9.2 THE CONTINUED USE OF PENALTY INFRINGEMENT NOTICES/THE DEMERIT POINTS SYSTEM

On and from 1 March 1993 departmental inspectors and police were empowered to issue 'on-the-spot fines' (or penalty infringement notices) for a prescribed list of towing offences under the *Tow-truck Act*. Eighty-seven offences under the *Tow-truck Act* and *Regulations* became the subject of on-the-spot fines. A further five offences against the Regulations were added in July 1993. Offences against the Act carry a penalty for a first offence of $120 and for the second offence of $150. Offences against the Regulations carry penalties of $75 and $100.

Enforcement by the Department of Transport has been explored in detail in Chapter 8. All stakeholders, including the Department, agree that enforcement of the Act is significantly under-resourced. That chapter provides details of the use of penalty infringement notices by the Department from March 1993 to March 1994. The use of such notices appears to be a cost effective method of enforcement but the qualification was expressed in Chapter 8 that officers in using the notices tend to focus on licence and dress violations rather than the behaviour of drivers on their way to and at accident scenes.

It should be noted that there is currently no demerit point system in operation in relation to towing. The joint submission of the **Major Insurers** (at p. 8) argues that:

> A demerit points system should be introduced, again with owner/driver liability, incorporating automatic suspension of licence after a set number of infringement points. With limited tow enforcement as compared to the total towing activity, it is important to have a demerit system as an incentive for operators and drivers to self-regulate. Victoria is currently considering the introduction of such a system. .

A new legislative regime might well consider the incorporation of a demerit points system for certified drivers and drivers' assistants. The Commission obtained evidence suggesting that a minority of tow truck drivers engaged in repetitive breaches of the Act, particularly at accident scenes. Under s. 21 of that Act, the

Director–General may cancel or suspend a driver's or assistant's certificate in the event that the certificate holder is convicted of an offence against the Act or fails to comply with any condition of the certificate, or if the Director–General is of the opinion that the holder is not a fit and proper person to continue to hold the certificate. The Commission observed in Chapter 8 that proceedings under s. 21 of the Act are cumbersome, infrequent and often unsuccessful. A demerit points system would provide greater incentive for tow truck drivers and assistants to comply with the provisions of the *Tow–truck Act* and *Regulations*, with the ultimate sanction being automatic cancellation or suspension of the certificate in the event of persistent breaches of the Act and Regulations, as is now the case for ordinary motor vehicle drivers' licences.

The suggestion by the major insurers is also taken up in the initial response to the Issues Paper from the QPS. The QPS calls for strict and effective provisions for the cancellation and/or suspension of licences and certificates 'for licensees who cannot conduct themselves in the required manner'. Although the QPS did not specifically address the demerit points proposal, it does acknowledge a need for a more efficient means for dealing with persistent offenders against the Act.

The submission by the major insurers suggests that operator/owners should also be subject to the demerit points system. The Commission agrees with this suggestion particularly if it is implemented in conjunction with imposing a duty on operators to ensure their drivers obey the law. The fact that a tow truck driver's or assistant's certificate has been cancelled or suspended as a result of incurring sufficient demerit points should be grounds for requiring the operator to show cause why the operator's licence should not be suspended or cancelled.

RECOMMENDATION

The Commission recommends that:

- provided no significant problems are encountered with the penalty infringement notices system, the system be continued and operated in conjunction with a demerit points system for certified drivers and drivers' assistants

- accumulation of the prescribed demerit points result in automatic suspension or cancellation of certificates with an appropriate appeal mechanism

- cancellation or suspension of a tow truck driver's or assistant's certificate be grounds for requiring the tow truck operator to show cause why the operator's licence should not be suspended or cancelled with an appropriate appeal mechanism.

9.3 Accreditation of Tow Truck Drivers and Assistants to a National Standard

The Commission's investigations establish that almost anyone can become a tow truck driver. The representative of one tow truck operator argued strongly before the Commission that an accreditation course for existing tow truck drivers/assistants and new drivers/assistants should be implemented. The witness pointed out that a national accreditation scheme for taxi drivers, involving 28 hours of study, is in the process of formulation in Queensland. It is understood that details of the taxi drivers' accreditation course have been submitted to the Department of Transport for evaluation.

In its Issues Paper (at p. 22), the Department referred to a number of issues relating to the quality of towing services, 'where there may be a need to protect consumers, particularly in relation to accident towing'. The key qualitative concern is said to be the competence of a towing operator to have a vehicle towed without further damaging it. The Department further observes:

> Current licensing requirements do not address the skills of tow truck drivers to attach and move vehicles in a manner which does not cause further damage or to deal effectively and efficiently with clients. The Department, in close consultation with industry has been examining options for the development of training programmes in these areas. The South Australian Automotive Industry Training Board has been drafting a set of standards for the establishment of a national training scheme for tow truck drivers. The standards are to be submitted to the National Training Council for discussion between the State Council members. After a decision is made on the standards a national curriculum will be developed.

The Department suggested, however, that it does not necessarily have a responsibility in making such training mandatory. The Department argues:

> The role of Government is to set appropriate performance standards for industry and monitor industry performance against those standards. In addition, the aggrieved vehicle owners have access to a range of consumer protection mechanisms if they believe the quality of the towing service they receive is inadequate. It is not clear from the limited information currently available that skill related standards...are a major problem. Industry could take significant steps to address these concerns about the quality of towing services without the need for Government regulation. The Tow Truck Industry Review Council is the obvious body to lead and co–ordinate the industry's efforts in this respect, particularly in representing the industry's interests in the development of national competency standards.

The evidence gathered by this Commission demonstrates that the towing industry at operator/owner level has been unable or unwilling to regulate itself. The perception among many witnesses who gave evidence to the Commission was that the industry was at the mercy of a minority of unscrupulous operators. These operators were widely believed to engage in, or to condone their drivers engaging in, improper activity but the perception has been that it would be impossible to obtain concrete evidence of such improper or illegal behaviour. It is trite to observe that, without any requirement for qualifications beyond the holding of the required class of motor vehicle driver's licence, the towing industry is prone to attract persons of dubious background. The Commission is at pains to point out that such persons are in a minority, but their unscrupulous behaviour has brought discredit upon the entire industry. The same comments may be made about the smash repair industry where again there are no formal qualifications required in order to commence in the business of a repairer.

In relation to the issue of self–regulation by the towing industry, the QPS response to the Issues Paper was:

> Being mindful of past experiences and occurrences involving activities of tow truck operators/drivers prior and subsequent to the introduction of the *Tow–truck Act 1973*, it becomes evident that the tow truck industry, with some minor exceptions such as the self–enforcing scheme operating on the North Coast and

> regional areas, is not able to effectively and efficiently control the activities of tow truck operators/drivers in all areas without the assistance of some form of Government regulation intended to protect users of tow truck services and members of the tow truck industry, with road safety and public safety at the pinnacle of any such regulation ... given the fact that the issue of road and public safety is of primary importance in regulating the conduct of towing activities, it is suggested that any legislation/regulation should at least aim to ensure that, irrespective of the location of operation, the operators and drivers are fit and proper as well as competent persons and that all tow trucks are of a standard consistent with these aims.

The issue of accreditation of drivers and assistants was not addressed by the submission of the major insurers, nor was it addressed by the MTA–Q submission.

The Commission makes the observation that an accreditation scheme focussing on towing competence may discourage some persons who are not fit and proper to be drivers and assistants from entering the industry. However, the Commission makes no recommendation on the issue as it is of little relevance to the terms of reference.

9.4 Introduction of an Allocation Scheme for Accident Towing

9.4.1 Submissions From Stakeholders

During its investigative hearings, the Commission asked all stakeholders for an expression of opinion about the introduction of an allocation scheme for accident towing. A majority of witnesses favoured the introduction of some form of allocation in the greater Brisbane area, though some witnesses strongly opposed such a scheme.

The Department of Transport Issues Paper (at pp. 23, 24) examined various aspects of this proposal. Firstly, the Department observed that the MTA–Q support a scheme along similar lines to the allocation scheme currently operating in South Australia. Secondly, the Department noted that two towing associations oppose the introduction of an allocation scheme and suggest that the current regime simply requires modification. The Department indicated

that the RACQ entertained reservations about some aspects of the allocation scheme such as enforcement, audit mechanisms and equitable entry arrangements.

The Department suggested that an allocation scheme would reduce the incidence of tow trucks speeding to, and creating traffic hazards at, accident scenes and improper behaviour at accident scenes. The Department suggested that such a scheme would reduce the operating costs of towing operators by reducing the number of trucks in the industry.

The Department pointed to some significant disadvantages, being:

- the removal of competition within the industry
- an increase in response times
- the imposition of significant administrative costs
- the need for Government to determine the level of supply of tow trucks in the industry
- the creation of goodwill value in tow truck licences/allocated roster positions.

The Department pointed out that a full analysis of an allocation system is necessary.

The joint submission of **Major Insurers** strongly supported an allocation scheme for the greater Brisbane area and its surrounding districts. The major insurers suggest that the scheme should, to be effective, have the following features:

- the scene of an accident should be defined as being two kms from the place of impact[21]

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[21] Under the Victorian legislation it is an offence for a tow truck operator to attend the scene of an accident in the area to which the allocation system applies, or to tow or attempt to tow a damaged vehicle from an accident scene unless the operator has received authorisation from the allocation centre and been given a job number. The accident scene is defined at anywhere within a two km radius of the point of impact. In South Australia the accident scene is defined as anywhere within 200 m of the impact. According to the Major Insurers, as a result of this, cars in South Australia are sometimes pushed or driven more

- trucks on the allocation scheme should be readily identifiable by the displaying of 'TOW' plates, similar to plates currently used in the taxi industry

- trucks directed from the roster to the accident scene should only be considered to have performed an allocated tow if they succeed in towing a disabled vehicle

- an allocation roster should be drawn up on the basis of 30 tows per month per truck

- the allocation scheme should apply to accident towing only

- a system of zones should be employed

- regulation of towing fees should be a feature of an allocation system

- legislation should include an offence for making hoax calls to the allocation centre that an accident has occurred

- the running of the allocation scheme should be put to tender among Government agencies, the Police Service, insurers or other stakeholders with the required capacity to administer such a scheme.

The MTA–Q submission favoured a roster system based upon the South Australian model. The proposal suggested the establishment of a tow truck roster in each of a number of zones. It was envisaged that the 'Accident Towing Director', a police officer, would receive towing requests and would despatch tow trucks as required. Operators on the roster would be required to maintain permanent premises and holding yards within the boundaries of each zone.

The QPS response to the Department of Transport Issues Paper suggested that although both the South Australian and Victorian allocation schemes are 'not without faults',

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than 200 m from the point of impact and then towed by a non–authorised tow truck.

the South Australian model should be given favourable consideration. The response also suggested that the Victorian model has two particularly good features, those being in relation to the licensing of tow trucks and to a zonal system.

In a previous report to the Superintendent of the Police Communications Centre, dated February 1992, Inspector A Sgroi, the author of the September 1993 QPS response to the Issues Paper, went into more detail about allocation schemes. In the February 1992 document, Inspector Sgroi pointed out that allegations were not infrequently levelled against police by some persons in the tow truck industry that they favoured particular tow truck operators. Inspector Sgroi pointed out that police also complained from time to time about the behaviour of tow truck drivers and assistants at scenes of traffic accidents. He argued that these complaints and allegations are time consuming to investigate and he generally supported the proposal for a tow truck allocation scheme.

Inspector Sgroi pointed out that a roster system for tow truck operators was implemented and conducted in the greater Brisbane area from 1982 to 1985. The system was initiated at the request of representatives of the tow truck industry. The metropolitan area was divided into zones and a list of available operators for each zone was made available to the Police Operations Centre. When a tow truck was required, the relevant list for that particular zone was consulted and the next listed tow truck operator was contacted and assigned the towing job. Inspector Sgroi said that the system operated effectively until complaints were made by smaller towing operators against larger operators who, according to the smaller operators, were receiving the majority of assignments from the Police Operations Centre. The system required that each licensed tow truck for each particular zone was allocated a towing job in turn. This presumably gave a numerical imbalance to the larger tow truck fleets involved in each zone. Other complaints related to certain operators losing a turn when for various reasons they were not contactable or unable to attend the accident scene. Another problem was that the size of some of the zones was too large, causing some operators to travel long distances to attend accident scenes. Eventually, some tow truck operators commenced to attend

the scene irrespective of their position on the roster and without their attendance having been requested by the Police Operations Centre. This resulted in disagreements between tow truck drivers. Against this background, the roster system was discontinued.

Inspector Sgroi pointed out in his February 1992 report that a roster system had been in operation in the area from Caloundra to Gympie since December 1991. The allocation scheme had received the approval of the QPS and was being overseen by the Regional Assistant Commissioner for the North Coast Region. A feature of the North Coast scheme is that a tow truck operator was elected to run the roster. Inspector Sgroi indicated that in its first few months of operation the scheme appeared to be working well. Inspector Sgroi pointed out that because the co-ordinator of the roster was an experienced tow truck operator, he was able to respond to individual calls by reference to the capability of each tow truck operator and the area in which each operator primarily worked. Inspector Sgroi did acknowledge that the system was workable because of the small number of tow trucks operating in the entire Sunshine Coast/Gympie area. This allocation scheme is considered in further detail in 9.4.2.

Inspector Sgroi has studied the South Australian scheme which appears to be favoured by many stakeholders. The allocation scheme has been in force since 1984. The essential features of the South Australian model are as follows:

- An Accident Towing Roster Review Committee (the 'Committee'), through a 'Registrar', is responsible for the administration of the accident towing roster scheme.

- The Commissioner of Police is responsible for receiving all requests for tow truck services arising from scenes of accidents.

- Various zones are declared and altered by the responsible Minister upon the recommendation of the Committee.

- The Registrar prepares a general accident towing roster for a stated period for each zone.

- The rosters are made available to the Police Communications Centre, which receives all requests through a specially dedicated telephone number. A direction is then given to the tow truck operator next listed on the roster for the relevant zone. This constitutes that operator's turn on the roster. A towing direction previously given may be cancelled if the officer in charge of the Police Communications Centre is of the opinion that there may be undue delay in the attendance of the rostered tow truck operator, or if for some reason the tow truck does not have the required capacity to tow the disabled vehicle.

- Operators' premises are registered, with the approval of the Registrar, for use for purposes associated with the scheme.

- All complaints or reports concerning the administration or operation of the scheme are directed to the Registrar. No liability attaches to an employee of the Registrar, or to the Commissioner of Police, for acts or omissions in good faith and in the performance of powers, duties or functions conferred by the regulations establishing the accident towing roster.

- The accident towing roster regulations provide for the agreement in writing by the tow truck operator to perform and accept the duties required of that operator.

- The regulations also provide for the disciplining of tow truck operators for specific breaches of the arrangements. The operator may be reprimanded, the number of positions held on the roster may be reduced in respect of that operator, or the operator may be permanently removed from a roster.

Although Inspector Sgroi reported in 1992 that the South Australian system was 'operating efficiently and with minimal complaints received', this Commission received

some suggestions from witnesses to the effect that the payment of drop fees is still prevalent in South Australia. This raises the important question as to whether an allocation scheme alone will break the nexus between tow truck operators and repairers so as to minimise or stamp out the payment and receipt of drop fees.

The **MTA–Q** submission made an additional observation. The submission argued that:

> A system that allows the development of a virtual monopoly situation of an industry segment to the detriment of individual competing operators is unacceptable.

The evidence obtained by this Commission supports this important observation. The successful creation of a virtual monopoly on the inner Northside of Brisbane by Ready Towing after July 1990 significantly contributed to an upswing in organised drop fee payments. Several repairers on both the Northside and Southside of Brisbane gave evidence that they paid drop fees reluctantly in the belief that they could not otherwise survive in business. Tow truck operators and drivers should not be in a position to exert this kind of pressure on repairers. An allocation scheme would do nothing to address this problem and, depending on the manner in which places on the roster are awarded, may even exacerbate the problem.

The **Major Insurers** (at pp. 3–5 of their submission) generally endorsed the Victorian and South Australian roster systems. The major insurers suggest that the Southern schemes:

> ... work efficiently, they have stamped out behaviour problems at the scene, have aided Road Safety and generally reduced the political focus on accident towing. The roster system rid both States in a short time of the very problems facing Queensland at the current time.

The joint submission went on to consider in detail two problems still facing the Victorian and South Australian systems, namely, over–supply of trucks and insufficient enforcement.

The major insurers say that there are 376 trucks on the Victorian allocation system and that with the fall in the accident rate, they receive only 6.8 tows per truck per month. The South Australian average is 13.7 tows per month.[22] The major insurers say that stakeholders in both States agree that there is an over-supply of trucks and that this has been the case since the inception of each roster scheme. Since the allocation system attracts a market value to trucks on the system, the Government is reluctant to decrease the number of trucks on the system, thereby removing their market value. There is some suggestion that such a move would be open to legal challenge. The major insurers say that the over-supply of trucks leads to the following problems:

- Larger operators place some of their trucks 'on blocks' and utilise, say, five trucks in the operation of 10 allocated places on the roster.

- Tow trucks are not viable to run as a separate business and as a consequence they are often owned by smash repairers.

- Where some tow trucks are independently owned, income from the truck is supplemented by the collection of drop fees.

- In an over-supplied market, spotters fees are offered, and pirating of damaged vehicles also takes place (that is, the damaged vehicle is towed away before the rostered towing operator arrives at the scene).

- A sub-contractor is sometimes employed to run a number of trucks for several different operators with positions on the roster. In South Australia where there are rules governing the number of staff required to be employed per position on the roster,

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[22] Information was received by the Commission from an officer of the South Australian Road Transport Agency Towing Authority that when the roster commenced in October 1984 the number of roster places was calculated on the basis of an anticipated 16 tows per month. That figure has never been reached and therefore the number of places has not been increased. The average number of tows per month was 12.5 as at May 1994.

sub-contractors are used to avoid the actual tow truck owner having to employ and pay the required staff.

The major insurers then examined the question of insufficient enforcement in the southern States. They say that in South Australia there are two enforcement officers who receive approximately 40 complaints per annum arising from 11,000 accident tows. The State Director of Public Prosecutions launches approximately 10 prosecutions per year. South Australian tow truck laws allow for fines of up to $5,000, but magistrates are awarding penalties of the order of $200 per conviction.

Towing enforcement in Victoria is under the auspices of Vic Roads. Towing enforcement is said to take a low priority. There is no specific staff member allocated to towing enforcement duties. The Vic Roads enforcement team of approximately 100 metropolitan staff detected 53 offences for the 1991-92 financial year from a total of 30,000 allocated tows. Thirty-seven of these offences resulted in on-the-spot fines. Vic Roads staff occasionally attend accident scenes proactively.

The major insurers say that the towing industry in both jurisdictions has asked for more enforcement effort from Government. Lack of enforcement has allowed abuse of the allocation system to occur. In New South Wales, where no allocation system is in place, there have also been requests from the towing industry for more enforcement activity by Government.

In the opinion of this Commission, the introduction of an allocation scheme will produce the following positive results:

- Tow truck drivers and assistants will be less likely to engage in unlawful and improper conduct at accident scenes. Distressed drivers of damaged motor vehicles are likely to receive better treatment as a result.

- Tow trucks will be less likely to race to accident scenes and there will be fewer trucks at scenes creating a traffic hazard.

- There will be a reduced population of tow trucks, resulting in greater cost efficiency in the industry.

- Entry to an allocation scheme could be conditional upon accreditation of tow truck drivers and assistants.

- Entry to an allocation scheme may place a greater onus upon the tow truck operator to ensure that drivers and assistants act within the law.

- Enforcement activities may be more efficiently performed.

- Spot fees (including spot fees to police) will be eliminated except in the case of pirating of damaged vehicles.

However, the Commission also recognises that an allocation scheme has the following problems:

- It will have little or no effect on the payment and receipt of drop fees. Therefore, repairers who do not pay drop fees will continue to be at a disadvantage in relation to the repair of vehicles towed from accidents.

- Even if it is accompanied by rigid requirements for tow truck operators to declare the true ownership of tow trucks and holding yards, repairers who have no interests in tow trucks or holding yards will continue to be at a disadvantage.

- It is likely to lead to a less efficient system by increasing response times.

- It is difficult to devise a formula for allocating roster places to existing operators in a manner that is both equitable and commercially viable.

- It will create a significant value in obtaining a place on the allocation roster. This 'goodwill' value will be akin to the value presently attached to the acquisition of a taxi-cab licence. For example, in Victoria, the value of a licence with a place on the

roster is currently estimated to be approximately $85,000.

- If it requires the participation of the QPS, claims of bias and corruption may be made against police by tow truck operators and drivers.

- If it is run privately the scheme may fall into the hands of an unscrupulous operator who uses it to his/her own commercial advantage.

- There are significant costs associated with its implementation. For example, the charge to Vic Roads of the Victorian scheme is $340,000. In South Australia the cost of running the roster is approximately $150,000 of which the government meets approximately $90,000.

One of the most significant bodies of evidence received by the Commission was that relating to drop fees and the disadvantageous position of repairers who refuse to pay them. As mentioned above, an allocation scheme addresses the problem of spotters' fees but not drop fees. Drop fee payments are the more insidious problem for the industry and for the public (except where public officers receive spotters' fees).

As discussed in 9.5, even if an allocation scheme is introduced, it must be supported by a system of genuinely independent holding yards.

9.4.2 The Sunshine Coast Allocation Scheme

The Sunshine Coast Region Towing Association was formed in October 1991, with the aim of improving the operation of a tow truck roster system. In November 1991, Clayton's Towing Service was appointed to supervise the operation of the tow truck roster system for a trial period of three months. Mr Bill Clayton, the principal of Clayton's Towing Service, has continued to perform the role of Roster Co-ordinator since that time.

There are some 14 tow truck operators in the Sunshine Coast region. As at August 1993, only one towing

operator had chosen to remain outside the system. That towing contractor made that choice because he did not ordinarily attend traffic accidents.

The Sunshine Coast region was broken into seven areas, stretching from Donnybrook Overpass in the south to a point on the Bruce Highway just north of Pomona. The region stretches to Kenilworth west of the Bruce Highway and includes the coastal strip from Caloundra to Noosa Heads.

Mr Clayton operates the rostering system in respect of each of the seven areas. A number of towing entities have been allotted to each area. In the Maroochydore area they are numbered 1 to 6. Mr Clayton allocates tows on the roster system only where tows have been requested by members of the QPS. When such a request is received, Mr Clayton allocates the tow in rotational order from 1 to 6.

Tow work subject to the roster includes:

(1) Damaged vehicles where the driver is dead or injured and therefore unable to sign a tow authority.

(2) Vehicles which are stolen or abandoned.

(3) Vehicles involved in a traffic accident where the driver is under the influence of liquor to the extent that he cannot make a decision in order to sign a tow authority. This is a comparatively rare occurrence.

(4) Instances where the driver does not know any tow company and seeks police assistance.

Mr Clayton estimates that 10% to 15% of accident towing in the Sunshine Coast area is processed through the roster system. As to the other 85–90% of accident towing, the tow truck operators still obtain this business in the usual way, that is, by being the first on the scene as a result of scanning the police radio, spotter information or the like.

Mr Clayton advised the CJC that since the inception of the scheme, only rarely have tow truck drivers attended an

accident which would normally go to roster and attempted to have the driver sign a tow authority. Any breaches of the roster agreement are dealt with at a monthly meeting of the Association, where any complaints are addressed. In the event that a breach of the roster agreement is proved to the satisfaction of the meeting, it is resolved that the operator is excluded from the roster for two consecutive rotations after the complaint is finalised. If a third offence is proved against the same operator, the operator is summoned to a meeting of the Association. As at August 1993, the third breach procedure has been invoked on only one occasion.

The CJC has monitored the progress of the roster system since its inception. It has received minutes of the monthly meeting of the Association and it has also had the benefit of regular reports from the Sunshine Coast District of the Police Service.

Prior to October 1991, the roster system employed in the region was a more informal system and was based at Maroochydore Police Station. The operation of the system had attracted claims of favouritism by the police towards individual tow truck operators. The roster system operated by Mr Clayton since 1991 has reduced the incidence of disputation among tow truck operators at accident scenes. It has also reduced complaints of favouritism made against police officers by tow truck operators.

Mr Clayton, as co-ordinator, receives a fee of $5 for each tow he allocates. He told the CJC that the fee is not commensurate with the work undertaken. However, he is prepared to act as co-ordinator for the sake of peace in the towing industry.

A significant change to the organisation of the roster scheme occurred in February 1994. From that time, the rostered work was to be distributed according to the size of each towing fleet rather than according to the number of entities seeking entrance to the roster. This new system was approved at the December 1993 meeting of the Association and has been introduced for a trial period.

Mr Clayton estimates that 20 to 30 tows are rostered each month for the Sunshine Coast region.

The Sunshine Coast roster system appears to have operated satisfactorily since October 1991 even though the operation of the roster system by a tow truck operator whose business has places on the roster exposes that operator to claims of favouritism. However, the Sunshine Coast system includes the procedure whereby any complaints can be scrutinised by the participants at monthly meetings.

The Sunshine Coast system does not deal with the possibility that a vehicle owner can be pressured into signing a tow authority by the first tow truck operator on the scene. The first tow truck operator to arrive has an added incentive for applying pressure to the vehicle owner: the operator knows that if the owner does not express a preference for a particular tow truck, it will become a rostered tow and that operator will lose the tow altogether.

This self-regulatory system appears to have significantly reduced the incidence of complaints of favouritism against police. However, the system presupposes that an officer attending an accident is familiar with the details of the roster scheme. In December 1993, a tow truck operator complained about an irregular allocation of a tow by an officer and it emerged during the discussion that the police officer may not have known how the roster system worked.

It remains to be seen whether the system will work satisfactorily now that places on the allocation are determined by fleet size rather than by the number of entities participating in the towing industry in the region. This variation of the roster system may result in an undue advantage being given to the larger towing fleets.

It is significant that, according to Mr Clayton's estimate, 85-90% of accident towing in the Sunshine Coast area continues to be unregulated. Nevertheless, the system appears to operate satisfactorily for a region in which there are approximately 20 tow truck operators. The Brisbane area represents a more complex towing market and the self-regulatory scheme employed on the Sunshine Coast may be inadequate in securing reform of the towing industry in Brisbane.

9.4.3 The Beenleigh Allocation Scheme

The Beenleigh Allocation Scheme was initiated in 1992 by the QPS because of persistent claims by tow truck operators that police were favouring the opposition operator. The Beenleigh district has been divided into a number of sectors (similar to the Sunshine Coast) and, by agreement within the industry, various operators are assigned to a roster for each sector. If the driver of the damaged vehicle makes his/her own choice of towing operator, the roster arrangement does not operate. If, however, the driver (through injury or absence from the scene) is not available to make a choice, the police officer present is required to contact the Communications Co-ordinator ('Comco') and request a police authorised tow. Comco then identifies the sector in which the vehicle is located and contacts the co-ordinator of the roster (Instant Security, a security firm) who then allocates the tow from the roster.

For the month of January 1994, 52 tows were allocated by this system. A representative of Instant Security advised that there have been a couple of disputes where the location has straddled two sectors. Places on each roster are awarded to each towing operator and the size of the fleet of trucks is irrelevant.

The principal of a large towing operator in the area, Fred Harvey of Harvey/Highland Towing Service, was critical of the roster system for the following reasons:

- it discriminates against larger operators
- it creates unnecessary delays when rostered trucks are summoned in circumstances where other trucks are available.

On the positive side, Mr Harvey says the scheme has reduced disputes in the industry.

RECOMMENDATIONS

While recognising the cost and other problems associated with the implementation of any allocation scheme, the Commission is of the

view that the benefits of an allocation scheme to the public, particularly having regard to public safety and to reducing the opportunities for corruption in the public sector, substantially outweigh the disadvantages. However, the Commission's principal recommendation is that relating to independent holding yards (see 9.5) and it is possible that the introduction of such holding yards will indirectly lead to a reduction in undesirable behaviour of the kind which an allocation scheme would be expected to reduce. The most obvious way in which this would occur would be that independent holding yards will render it uneconomical for the over–supply of tow trucks in the industry to be maintained. The Commission has already stated that it believes over–supply is substantially propped up by the drop fee payment system.

The Commission also believes that implementation of its other recommendations will substantially reduce inappropriate behaviour of drivers and assistants. These recommendations are that:

- the use of penalty infringement notices be extended and operated in conjunction with a demerit points system as the basis of suspending and cancelling licences and certificates

- operators be made liable for breaches of drivers connected with the performance of their towing duties

- maximum towing fees be prescribed.

Therefore, the Commission recommends that, provided its other recommendations are implemented, an allocation scheme for accident towing not be introduced at this time for the Brisbane area. The Department of Transport should monitor the effect of implementing these recommendations over a period (perhaps two years) and then assess whether an allocation scheme is warranted. In the event that an allocation scheme is introduced, the Commission recommends that:

- the Department of Transport carefully consider the framework for any such scheme in consultation with other interest groups

- the allocation scheme not be controlled by the QPS

- problems encountered in Victoria and South Australia in operating allocation schemes be heeded in devising the scheme.

(In relation to police authorised towing, see 9.7).

9.5 Breaking the Nexus Between Towing Entities and Smash Repairers

The intention of the legislature in framing the *Tow-truck Act* appears to have been that tow truck operators and drivers not be involved in determining which repairer wins repair approval. The Act attempts to give effect to this intention by requiring tow truck operators to operate their own holding yards and by prohibiting the payment of benefits by repairers in return for obtaining the work of repairing damaged vehicles. This intention has been largely subverted by three factors:

- the trend towards repairers making premises available to towing operators for use as holding yards for little or no rent

- the trend towards repairers purchasing tow trucks which then join the fleet of a towing operator; these arrangements are further complicated where the repairer purports to be the employer of the drivers who drive the repairer's tow truck

- the failure to deter repairers from paying drop fees.

In the Department of Transport Issues Paper (at p. 25) the conclusion was expressed, in the Commission's view correctly, that competition for repair work is one of the key factors driving 'over-vigorous' competition in the towing industry. The Department suggests that:

> ... It may be desirable to address the problem by breaking this nexus between the securing of the tow and the allocation of the repair work.

The Department suggested that one option would be to prohibit vehicle repairers from owning and operating tow trucks. The Department rightly concluded that this would probably encourage the emergence of elaborate corporate structures to conceal the financial involvement of repairers in the ownership of tow trucks. This Commission obtained evidence that the true ownership of

some tow trucks by repairers has already been concealed from the authorities.

The Department's second option was:

> ... to require all accident tows to be taken to an independently operated holding yard, from which repair work would be allocated either by the insurer or owner after a specified period of time had elapsed.

This is a novel approach as independent holding yards do not operate in other Australian States.

The Department suggested that an arrangement of this nature would prevent the allocation of the tow being determinative of the allocation of the repair work. Several witnesses gave evidence to the Commission suggesting that, in approximately 70% of cases, the allocation of the tow also determines which repairer will obtain the repair because the tow truck driver:

- recommends (with varying degrees of persuasiveness) a repairer to the vehicle owner;

  or

- delivers the damaged vehicle to the holding yard associated with a particular repairer.

The Department suggested that a scheme of independently operated holding yards would have the following beneficial effects:

- it would remove the incentive for vehicle repairers to operate or own tow trucks
- it would eliminate drop fees
- it would reduce, over a period of time, the number of trucks to a level consistent with a reasonable return on the capital invested in the industry
- it would assist owners and insurers in obtaining a number of quotes on repair work.

In the Commission's view, a further benefit would be that all repairers would have a reasonable opportunity to submit quotes on

vehicles which are towed from accidents. That is, a repairer who is not associated with a towing operator would no longer be at a disadvantage.

The Department suggested that the success of such a scheme would depend upon the genuine independence of the holding yard from the relevant industries. It suggested that a detailed and rigorous examination of the costs involved in establishing such a scheme should be carried out.

Many witnesses were asked for their opinion about a proposal to introduce independent holding yards into the towing and smash repair system. Very few witnesses, whether repairers or tow truck operators or drivers, expressed strong disagreement with such a scheme.

The **MTA-Q** submission did not specifically address the question of independent holding yards. It observed that towing operators participating in an allocation scheme should be required to maintain permanent premises and holding yards within the allocation zone. In the Commission's opinion, such a requirement would not go far enough in eliminating improper conduct by tow truck drivers, especially in relation to the payment and receipt of drop fees and improper behaviour at accident scenes.

The QPS also did not address the question of independent holding yards in its submission of September 1993 in response to the Department of Transport Issues Paper.

The joint submission of the **Major Insurers** opposed the concept of independent or State Government controlled holding yards (at p. 5), describing it as 'dangerously counter-productive':

> Whilst we understand the rationale behind Government considering Holding Yards, we believe it is too prescriptive a method by Government to deal with a problem that arises basically from the capture of the vehicle. That 'capture' is exacerbated by the collection of vehicles in one place. It is our belief that the nexus simply shifts from the accident scene to the holding yards, but is magnified. We support Government legislating for an Allocation System at the scene of the accident, but after that we believe the process should be deregulated.
>
> Instead of legislating for Holding Yards we suggest a regulation making it an offence of failing to release a vehicle. There would also need to be an offence created of failing to obtain a written

> authority from the owner or agent of a vehicle prior to commencing repairs. In this way we believe the need for holding yards is obviated and the problem not exacerbated. Insurers in the discharge of their obligations should be able to have the car removed from a Panel Shop and towed, with the concurrence of the owner, to obtain quotes and effect repairs.
>
> We believe this is a more viable option than holding yards which would be costly and difficult to administer, a cost which would be borne by Insurers and passed on in additional costs to motorists.

As to the major insurers' criticism that such an arrangement would be 'too prescriptive', the observation should be made that, although the owner of the damaged motor vehicle may be compelled to surrender the vehicle for a short period, it would also afford many owners an opportunity to recover from the trauma of the accident and to make an informed choice about the repair of the vehicle, presumably in consultation with the Insurer. This would exclude any influence from a tow truck driver with a vested interest in having the damaged vehicle taken to a particular repairer or to a holding yard associated with a particular repairer. The arrangement would also ensure that an efficient repairer, with no business association with any tow truck operator, would have a reasonable opportunity to furnish a competitive quotation for the repair of the vehicle. Such a requirement, if it operated for a limited time, say, 24 hours, would produce significant advantages for the vehicle owner, outweighing any disadvantage occasioned by the owner's temporary loss of control of the motor vehicle.

As to the alternative suggestion that there should be regulations creating offences of 'failing to release a vehicle' and 'failing to obtain a written authority ... prior to commencing repairs', one of these matters is already addressed in the *Tow-truck Act*. Section 12(2)(k) provides that it shall be a condition of every licence:

> that where a damaged motor vehicle has been towed to a place where it is under the control of the holder of the licence, a person shall not refuse to deliver the motor vehicle to the registered owner thereof or his agent duly authorised in writing on request by the owner or his agent after payment of reasonable charges for the towing and storing of the motor vehicle, and where repair work has been authorised by the owner or his agent, for that repair work, has been made or tendered;

The joint submission of the **Major Insurers** suggests that the insurers themselves and their clients have had significant difficulty in obtaining the release of damaged motor vehicles from holding yards in cases where they have indicated that they wish the vehicle to be repaired by an unrelated, rival repairer. The submission also suggests that tow truck operators and their related repairers combine to commence the repair of damaged vehicles as soon as possible to prevent the vehicle owner making an informed choice of repairer in consultation with the insurer. In the first instance, data obtained from the Department of Transport indicate that since August 1988 there have been no prosecutions for breaches of s. 12(2)(k) of the *Tow-truck Act*. There is nothing to suggest that the creation of the offences proposed by the **Major Insurers** would bring about any significant change in the behaviour of certain tow truck operators and their related repairers. In the second instance, a legislative requirement that a written authority be signed by the owner or the insurer prior to repairs being commenced is in reality a prescription placed upon the smash repair industry and not the towing industry. The proposed legislative measure may itself be criticised for being too prescriptive upon industry.

As to the criticism of the **Major Insurers** that a system of independent holding yards would be costly and difficult to administer, these are obviously matters for the Department to consider in detail. However, consideration could be given to a flexible system of approved holding yards, some of which could be run by independent operators (that is, independent of the towing and smash repair industries) and some by the insurers, individually or jointly. The Commission noted that AAMI already operates its own assessment centres (which are akin to holding yards) to which all AAMI insured vehicles towed from accidents in the Brisbane area are required to be delivered. Another major insurer is also considering establishing assessment centres.

The AAMI system involves obtaining two quotes which is fairer for repairers than the system used by other insurers involving one quote from an approved repairer.

The Commission heard evidence which suggested that from time to time unscrupulous towing operators have charged unreasonable storage fees and have demanded the payment of these fees prior to the release of any vehicle. The charging of unreasonable fees was often linked to a decision by the insurer and/or the owner of the vehicle to have it repaired by a repairer who had no association

with the towing operator. Section 12(2)(r) of the *Tow-truck Act* provides that it shall be a condition of every licence:

> that the holder of the licence shall not charge a sum other than a reasonable sum for the towing, salvage or storage of a motor vehicle.

Department of Transport data indicate that there have been no proceedings for an offence against this section since August 1988. If it is the case that unreasonable towing, salvage or storage fees have been charged by unscrupulous tow truck operators, such costs have apparently been borne by the insurers or owners without any enforcement action being taken by the Department. In any event, regulation of storage fees (see 9.6) would contain the cost of storage at an independent holding yard to a reasonable level.

The argument may be raised by those who support the existing holding yard system that having holding yards in close proximity to repairers results in savings in towing costs for the motorist. However, as mentioned at 6.3, a second towing fee of $40 is generally charged for moving the vehicle from the holding yard to the repairer's premises no matter how close the two premises are to each other.

The CJC's major concern with the proposal of the **Major Insurers** is that its implementation may have no effect on the payment of drop fees. The Commission has already expressed the view that the payment of drop fees is the most significant misconduct occurring within the tow truck and smash repair industries. The Commission heard evidence that, in some cases, the arrangement whereby drop fees have been paid has been a cosy one between repairer and tow truck operator ensuring that the repairer is favoured with a good supply of repair work. In other cases, repairers have felt compelled to pay drop fees to survive in business.

The concept of independent holding yards is, in the Commission's view, the most efficient way of substantially eradicating the payment of drop fees and attaining fairer towing and smash repair industries.

The Commission has formed this view after evaluating the evidence and the various submissions it received.

However, it is not the function of this Commission to provide a definitive model for holding yards. That is the function of the Department of Transport in consultation with other interest groups. It may be that a working party should consider the framework of any system as the Commission recognises that numerous significant issues need to be addressed. For example, should it be mandatory for a damaged vehicle to be delivered to an independent holding yard only where it is comprehensively insured or should it also be mandatory where:

- a vehicle is so badly damaged that it is not worth repairing
- a damaged vehicle is not comprehensively insured
- a vehicle, not comprehensively insured, is involved in an accident with an "at fault" vehicle that is either comprehensively insured or has third party property cover
- a vehicle is not seriously damaged and the owner does not want it repaired or does not want it repaired immediately
- the owner or driver directs that it be taken to a place other than an independent holding yard
- the vehicle is a company fleet vehicle and the company has an agreement with a smash repairer for the repair of all fleet vehicles?

The Commission makes the observation that any exceptions to the requirement that damaged vehicles be towed to independent holding yards will open up opportunities for tow truck drivers to recommend particular repairers and then seek drop fees. This would certainly be the case if all vehicles that are not comprehensively insured were exempted from the requirement. Figures were not available for the percentage of vehicles in this category but the Commission has received advice that the percentage is considerable. The Commission also received evidence that some repairers were prepared to pay a drop fee of $100 on a repair of $1000. Although this evidence related to 1991, it shows that repairers are willing to pay drop fees on repairs of relatively small value. Clearly, many damaged vehicles not comprehensively insured will still be sufficiently lucrative repair propositions to attract a drop fee. The disadvantage for the owner of a vehicle delivered to an independent holding yard is that the owner loses control of the vehicle for a period. Furthermore, if the

owner is already a client of a repairer, the owner will be unable to direct that the vehicle be towed directly to that repairer. The owner will therefore incur a second towing fee which is generally $40 at present. However, if the Commission's recommendation for prescribing maximum towing fees is followed, it is likely that the current first towing fee of $160 will drop as it is substantially higher than the fee in other States. Therefore, the cost to the vehicle owner of the mandatory second tow from the holding yard will be offset by the reduced cost of the first tow.

The system will not lead to additional costs for the motorist whose vehicle is at present taken to the holding yard of a tow truck operator. As mentioned, a second towing fee is generally charged for moving the vehicle from the holding yard to the repairer's premises regardless of their proximity.

Finally, the Commission recognises that the insurer pays the repair bill in most cases. Therefore, it considers it appropriate that insurers be given the option of establishing their own holding yards, either individually or collectively. One consequence of this may be that insurers gain greater control over the smash repair industry. This could result in inequities within the industry particularly if the insurers are unduly restrictive in their selection of repairers to quote on and carry out repairs. The situation should be monitored by the Department of Transport.

RECOMMENDATION

The Commission therefore recommends that:

- a system of holding yards, independent of towing operators and smash repairers, be established
- the system be trialled in the Brisbane area
- tow truck drivers be required by law to tow any vehicle, that requires towing from the scene of an accident, directly to an independent holding yard
- the Department of Transport be responsible for the public tendering of contracts to operate independent holdings yards
- the Department of Transport, in consultation with interest groups, determine:

- whether there should be any exceptions to the requirement that damaged vehicles be towed to independent holding yards (for example, where the owner/driver requests otherwise or where vehicles are not comprehensively insured or not worth repairing ("write-offs")

- the period for which vehicles must remain in independent holding yards and the conditions for their release

- the tender specifications

- the number of independent holding yards required for any particular area

- insurers (individually or jointly) be given the option of maintaining their own holding yards for damaged vehicles insured by them.

9.6 Fixing by Legislation the Maximum Fees for Accident Towing/Storage/Release of Vehicles

This Commission received some evidence on the issue of storage and release fees charged by tow truck operators. Such evidence was incidental to the main issues being investigated. As to towing fees, the Commission has been interested to establish the level of towing fees so as to obtain evidence of payment of drop fees by repairers to tow truck drivers and operators.

The Department of Transport Issues Paper (at p. 26) indicated that the current maximum accident towing fee has been set by agreement within the industry at $160. Some insurers have negotiated a slightly lower fee. The Department observed that the maximum towing fees in the southern States are all set at 'well below' the current fee in Queensland.

The Department argued that the fixing of maximum fees for towing and related services:

> reflects a concern that tow truck operators may seek to take advantage of situations where the vehicle owners physical or

> emotional state prevents fair and effective negotiation, as will often be the case at an accident scene.

The Department also observed that:

> Controls on towing and associated fees are particularly important in a regulatory environment which restricts the potential for price competition, as would be the case with an allocation scheme.

The Department said that storage fees, unlike towing fees, have not been set by industry agreement. The Department referred to instances where the imposition of storage fees and their associated paperwork, 'were used to discourage and forestall the removal of the vehicles from tow truck operators' holding yards.' The Department also referred to instances where, 'operators of holding yards have used delaying tactics, such as not accepting cheques or trying to obtain verbal/written confirmation with the vehicle owner before the vehicle is released. These types of delays can reduce the efficiency of a towing operation and increase overall costs to the industry through the wastage of time and resources'.

The Department observed:

> These practices are not in the spirit of the legislation and are used as a means of exercising control over damaged vehicles when such control is unwarranted. By forestalling the movement of vehicles once they are being towed to an operator's holding yard or repair premises, some operators are trying to retain control of the vehicle and hence the repair through this inconvenience and potential removal cost.

The joint submission of the **Major Insurers** says that the towing fee for a first tow in the southern States is in the region of $95 compared to $160 in Queensland. The **Major Insurers** support a legislated maximum towing fee which they say is similar to New South Wales, in the order of $100 for the first tow. They suggest that fees should be reviewed annually. They also favour the Government regulating storage fees in line with those in operation in Victoria.

The QPS supported generally the proposal for legislation to fix maximum fees and to provide penalties for charging above the maximum.

Though such proposed legislation would be prescriptive, any future legislative regime which incorporated an independent holding yard

scheme would necessarily regulate storage fees. Holdings yards would be so located as to make the setting of maximum towing fees both practicable and reasonable.

RECOMMENDATION

The Commission recommends that with the introduction of an independent holding yard scheme, maximum fees for accident towing and storage should be prescribed by legislation or by the department.

9.7 Regulation of Clearway Towing and Other Police Authorised Towing

9.7.1 Clearway Towing

The Department pointed out in its Issues Paper (at pp. 27–28) that clearway towing is not covered by the *Tow-truck Act* and that the current method for the allocation of clearway towing by police 'clearly has potential for anti-competitive behaviour'. This Commission would observe additionally that the current system has the potential for corrupt arrangements to be entered into between police officers and tow truck operators.

As mentioned at 5.4, a number of persons in the towing industry alleged during the hearings that certain traffic police were favouring a particular towing operator over other towing operators when it came to the allocation of clearway towing. Computer records supplied by the QPS at least confirmed that this towing operator performed a significantly higher number of clearway tow-aways than any other towing operator. However, the evidence did not establish corruption or other misconduct by any police officer or by any towing operator.

The Department of Transport Issues Paper suggested that clearway towing should be allocated at regular intervals by competitive tender. Alternatively, it suggested that the responsibility for organising clearway towing in the Brisbane area should be transferred to the Brisbane City Council.

The Department also addressed some mechanical aspects of the present organisation of clearway towing, such as the setting of clearway towing fees and the collection of towing fees and parking fines by the Department. This Commission is not concerned with these mechanical matters.

The QPS in its response to the Issues Paper dated September 1993 favoured the suggestion that the responsibility for clearway towing be transferred to the Local Authority. In the Commission's view, if this happens, council officers may be accused of bias and corruption in allocating clearway towing work unless the Local Authority lets the work out to tender or acquires its own tow trucks to carry out the work.

9.7.2 Other Police Authorised Tow-Aways

Police procedures presently require that, except in the case of clearway towing, unlawfully parked vehicles (for example those parked in no-standing zones or otherwise obstructing traffic) cannot be towed away without the authority of a commissioned officer. This often requires an Inspector of Police to actually attend the scene to assess whether removal of the offending vehicle is warranted.

No doubt this procedure was introduced to ensure that police do not arbitrarily direct that vehicles be towed away simply because they are parked where they should not be. Removal of the vehicle must be justified on some other basis such as obstructing traffic flow or vehicular access to private property.

However, the present procedures result in an unnecessary imposition on the limited time of commissioned officers. It seems to the Commission that this discretion could properly be exercised by police of lower ranks if appropriate guidelines are issued by the Commissioner of Police.

Although the involvement of a commissioned officer does provide some additional check to possible bias on the part of police in choosing a towing operator to tow unlawfully parked vehicles in such situations, allegations will

inevitably arise whenever police officers have to make the choice. For most practical purposes, the same considerations apply to this category of tow-aways as to clearway tow-aways.

9.7.3 Options for Police Authorised Tow-Aways

As mentioned in 9.7.1 the Department of Transport Issues Paper suggested that clearway towing should be allocated at regular intervals by competitive tender or alternatively that the responsibility for organising clearway towing should be transferred to Brisbane City Council. At least for the Brisbane City Council's area, these options would be equally applicable to the towing of other unlawfully parked vehicles.

However, consideration also needs to be given to the option of a roster system for all towing of unlawfully parked vehicles. At 9.4.1 the report lists the problems associated with an allocation scheme for accident towing. Some of the problems listed there will have a greater effect in relation to any roster system for the towing of unlawfully parked vehicles. For example, because of the practice of tow truck drivers and operators intercepting police broadcasts and following police patrolling for unlawfully parked vehicles, a tow truck is usually available in a very short space of time to perform such tow-aways. It is mentioned in 9.4.1 that an allocation scheme for accident towing is likely to lead to a less efficient system by increasing response times. This problem becomes magnified in any allocation scheme for the towing of unlawfully parked vehicles. Not only in the case of clearway tow-aways but also in many other cases of unlawfully parked vehicles which require towing, the speed of the towing service is vital to prevent congestion of traffic or to remove a vehicle parked in such a way as to endanger other road users.

Secondly, there are considerable costs associated with the establishment and running of an allocation scheme. A scheme applying only to the towing of unlawfully parked vehicles will have the same administrative costs as a scheme for accident towing. However, the value of towing involved with the towing of unlawfully parked vehicles

would be unlikely to make the allocation scheme cost effective.

Thirdly, it is difficult to devise an equitable system for allocating places on the roster.

Finally, if an allocation scheme is operated by the QPS claims of bias against police will continue.

RECOMMENDATION

To reduce allegations of, and opportunities for, corrupt or biased behaviour by police in allocating clearway tow-aways and the towing of other illegally parked vehicles, the Commission recommends that:

- In the Brisbane area, such towing be carried out by the tow truck operator who has been awarded the contract by public tender to undertake such towing for a specified period and zone.

- A working party comprised of representatives of the Department of Transport, the QPS, the Brisbane City Council, the towing industry and the motoring public be established to determine the specifications of the tender with particular reference to:

    - the number of contracts that need to be let for the Brisbane area and the number of zones into which the area should be divided

    - the term of the contracts; there is a strong argument that such contracts should be short term (that is, for no longer than, say, twelve months) to enable every towing operator to tender for such towing work on a regular basis

    - the location and operation of storage yards in which vehicles will be held; vehicles should be moved the shortest distance possible to avoid unnecessary inconvenience

    - fees for storage

- the option of towing unlawfully parked vehicles to nearby streets where they will not pose a traffic problem and then applying wheel clamps.

- Any towing operator who wins a contract not be permitted to advertise that fact in any way. Failure to prohibit such advertising will lead to the successful tenderers gaining a significant commercial advantage over their rivals in much the same way as approved RACQ towing operators presently have over their rivals.

- Unless the principal responsibility for the towing of unlawfully parked vehicles in the Brisbane area is transferred to Brisbane City Council, the Department of Transport be responsible for letting the tenders. This measure will prevent allegations of bias and corruption being made against police officers who actually authorise such towing.

- The specifications should also ensure that the motorists' vehicles are moved the shortest distance possible to avoid unnecessary inconvenience, that they are stored in a place of safety and that storage fees are reasonable and do not exceed a figure set in the contract.

- The contract scheme be trialled in the Brisbane Local Authority area for twelve months and then evaluated with a view to its continuation in the Brisbane area and extension to other areas of the State, if appropriate

9.7.4 Police Authorised Towing From Accident Scenes Etc.

As mentioned at 9.4.2, the Sunshine Coast roster system covers the following towing work:

(1) damaged vehicles where the driver is dead or injured and therefore unable to sign a tow authority

(2) vehicles which are stolen or abandoned

(3) vehicles involved in a traffic accident where the driver is under the influence of liquor to the extent that he cannot make a decision in order to sign a tow authority

(4) instances where the driver does not know any towing company and seeks police assistance.

To this list can be added vehicles seized by police as exhibits or for forensic examination.

These five towing categories are referred to in this paragraph as 'police authorised accident towing'.

Although such towing accounts for only a small proportion of accident towing (10–15% on the Sunshine Coast) it covers the situations in which police are most likely to engage in, or be accused of, corrupt or biased behaviour in their interaction with the towing industry. As mentioned earlier, the Commission's investigations did not reveal sufficient evidence to warrant criminal or disciplinary action being considered against any police officer in relation to the allocation of such towing. However, the Commission is satisfied that some officers routinely favoured particular towing operators and were biased against others. Some officers offered what appeared to be plausible explanations for their attitudes and, in the absence of evidence of some corrupt benefit passing to a particular officer, it is difficult to prove that those attitudes were not honestly held.

The fact remains that these types of allegations are numerous and have been made consistently for many years. The Commission has even received fresh allegations of police favouring particular towing operators since its investigative hearings concluded. Therefore the Commission is strongly of the view that a system should be put in place to remove the opportunities for favouritism by police in allocating such work and to protect them from allegations of favouritism.

The Commission has considered two options. The first is that an allocation or roster scheme be introduced for police authorised accident towing. The second is that this towing be contracted out by way of public tender either in

conjunction with the contract to perform police authorised tow-aways of unlawfully parked vehicles for a particular zone or as a separate contract for police authorised accident towing.

Reference has already been made to the problems associated with allocation systems. Reference was also made earlier in this chapter to Inspector Sgroi's analysis of problems associated with the roster system introduced in the Brisbane area from 1982 to 1985. Obviously those devising any new roster system should have regard to the earlier experience in Brisbane as well as the models operating on the Sunshine Coast and at Beenleigh and in other states. Although the systems on the Sunshine Coast and at Beenleigh appear to be operating satisfactorily, there is no certainty that either of those systems could be adapted successfully to meet the requirements of the Brisbane area. If an allocation system were to be considered for the Brisbane area the following issues would need to be considered:

- How would positions be allocated to the roster? For example, if each operator is entitled to only one place on the roster, larger operators are at a disadvantage. This is a point made by Mr Harvey in relation to the roster operating in the Beenleigh District. On the other hand, if the operator is given a place on the roster for each licensed tow truck, this will discriminate against the smaller operators, particularly as not all tow trucks perform accident towing work.

- The size of the zones should be such that a reasonable response time can be expected.

- Consistent failure to respond to calls within the prescribed response time should result in either removal or suspension of the operator's trucks from the roster.

- Because the roster will relate to only a small proportion of accident towing, its cost effectiveness may be problematic.

- Who should operate the roster? It is strongly recommended that the QPS not be responsible for controlling the roster and that the system in operation in Victoria whereby the operation of the roster is put out to public tender is to be preferred.

The problems associated with the implementation and running of any roster system, particularly for only a small proportion of accident towing work, lead the Commission to favour the option that such towing be contracted out to towing operators on a zonal basis. As mentioned above, such towing work could be included in the contract for police authorised towing of unlawfully parked vehicles for a particular zone. However, if it is thought that this will result in too great a commercial advantage for the successful operator in each zone, police authorised accident towing could be the subject of a separate contract in each zone. The Commission believes that the contract system would be more cost effective than an allocation scheme and far simpler to administer. Any contractor who consistently failed to respond to calls within a reasonable time would be unlikely to win the tender when it is again advertised. As recommended in relation to the contract for police authorised towing of unlawfully parked vehicles, such contracts should be for a maximum of twelve months.

The Commission's recommendation that contractors for tow-away work not be permitted to advertise that they have won the contract applies with even greater force to police authorised accident towing. A contractor would have a significant and unfair commercial advantage if allowed to advertise that he/she is the contract tower for police authorised accident towing for a particular zone. Even without such advertising, it is possible that over a period of time the successful tenderer will come to be recognised as the tower used by the QPS and therefore have a commercial advantage. To at least some extent, the unfairness of such a situation will be balanced by ensuring that contracts are short term. However, this is a matter which should be the subject of review by both the QPS and the Department of Transport. If it becomes apparent that such contractors have gained an unfair commercial advantage the system should be reviewed and an allocation scheme reconsidered as an alternative.

One situation where the police authorised accident towing contractor could be at a significant advantage is where the driver of a damaged vehicle does not know any towing company and seeks police assistance. The Commission does not have access to figures showing the proportion of accident towing situations in which police advice is sought. However, it would be reasonable to expect that such advice would be sought frequently by motorists. It would be impracticable to recommend that police be forbidden from providing any information to motorists about tow truck operators operating in the area. However, the Commissioner of Police should issue a direction to police that if they are asked by a motorist to provide information about towing operators at an accident scene the following rules will apply:

- the officer will advise the motorist that QPS policy is that officers are not to make any recommendation as to which towing operator should be chosen

- if the driver requests the name of a towing operator, the officer will provide the names of at least two operators in the area and the officer will record those names, the name and address of the driver and the name of the operator chosen by the driver in the officer's official police notebook

- the officer must not advise the motorist that a particular operator is the police authorised towing contractor for that zone.

Any contract for police authorised accident towing should also be subject to the condition that it can be revoked if evidence is obtained that the operator has provided any individual officer or group of officers with any benefit of such a nature that the officer is in breach of s. 6.2.1 of the *Queensland Police Service Code of Conduct* which prohibits officers from receiving any benefit:

> other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer [of the benefit] is pursuant to an enforceable contract or property right of the officer as a private individual

> other than as provided for as part of their terms and conditions of employment, in respect of services performed, whether during working hours or not, in connection with their duties.

It is relevant here to also refer to s. 6.2.2, which provides that:

> Officers should avoid situations in which the acceptance of a benefit or potential benefit could create a real, potential or apparent conflict of interest with their official duties.

As in the case of the contracts for police authorised towing of unlawfully parked vehicles, the Commission believes that the Department of Transport and not the QPS should be responsible for the tendering process.

Finally, because of problems identified by the Commission's investigation in relation to the previous operation of the Police Communications Room, regular rotation of officers should take place to reduce the opportunities for improper relationships developing between officers stationed there and persons in the towing industry. The Commission understands that some positions will soon be filled by civilians after appropriate training has been completed. It may be difficult to rotate the limited number of civilian personnel. If this is the case the QPS must ensure that safeguards are in place to limit the opportunities for corrupt or biased conduct in relation to persons in the towing industry.

RECOMMENDATION

The Commission recommends that:

- police authorised accident towing be contracted out to towing operators on a zonal basis
- such contracts not apply to cases where the driver of the damaged vehicle does not know any towing operator and seeks the advice of a police officer
- such contracts be short term (that is, for no longer than, say, 12 months)

- consideration be given to whether contracts for such work in a particular zone should be amalgamated with contracts for police authorised towing of unlawfully parked vehicles; in considering the issue regard should be had to the extent of the commercial advantage which will be enjoyed by a contractor performing the two categories of towing work

- police officers be required to use the contractor for police authorised accident towing except in emergency situations where the contractor is not available within a reasonable time and that a record be maintained at police stations of any such emergency situations

- contracts be subject to the condition that contractors not be permitted to advertise the fact that they have won such contracts and not be permitted to state that fact where they are competing for non–contract accident towing

- the Commissioner of Police issue directions to officers regulating the advice they are permitted to give to motorists at the scenes of accidents concerning the towing contractor for the relevant zone and other towing operators operating within the zone

- contracts be subject to the condition that they can be revoked if evidence is obtained that the contractor has provided any benefit to an officer or group of officers of such a nature that the officer is in breach of the Police Service Code of Conduct

- the Department of Transport and not the QPS be responsible for the tendering process

- the Commissioner of Police ensure that there is regular rotation of police officers through the Police Communications Room.

9.8 FUTURE INDUSTRY INVOLVEMENT

The Department (at p. 30 of the Issues Paper) suggested that the Tow Truck Industry Review Council should be recognised as the representative body for the towing industry and as the formal consultative link between the Minister, the Department and the tow

truck industry. The TTIRC currently comprises six members nominated by:

- Insurance Council of Australia
- Department of Transport
- RACQ – representing the motoring public
- Queensland Towing Association – representing independent tow truck operators
- Auto Recovery Association – representing RACQ tow truck operators
- MTA–Q – representing motor traders and repairers.

The Department sees a role for the TTIRC in developing the national competency standards for tow truck drivers. If the TTIRC does take responsibility for establishing such standards, it is difficult to see why the achievement of such standards by existing and intending certified tow truck drivers should not become a pre–condition of the future issue or renewal of tow truck drivers' and assistants' certificates.

During its investigations, the Commission has become aware of a perception within the Department and among some of the stakeholders that some persons with towing interests have exercised significant influence for their own commercial benefit over certain policy advisory groups. Now that the unlawful and improper activities of some tow truck operators have been exposed by the Commission's investigations, it is to be hoped that such advisory groups will be made up of representatives of the tow truck industry who seek to uphold the highest principles within the industry.

The QPS agreed with the suggestions made by the Department in the Issues Paper concerning future industry involvement.

The **Major Insurers** (at p. 7 of their submission) suggested that a towing advisory committee include only one representative body on behalf of the towing industry and a representative of the QPS. However, given the evidence obtained by this Commission of unlawful conduct involving elements of the towing industry and elements of the smash repair industry, it is considered that

representation of the smash repair industry on the committee is also desirable.

The Commission makes no specific recommendation in relation to which body should represent the towing industry. However, it is clear that regulation and reform of the towing industry (whether it be imposed by government or by the industry itself) will be facilitated by the establishment or recognition of an appropriate body to represent the industry.

9.9 ENFORCEMENT BY DEPARTMENT OF TRANSPORT

The Commission's hearings revealed widespread concern in the towing and smash repair industries about improper practices in those industries and the perceived lack of effective enforcement action by the Department of Transport. Undoubtedly, some of those practices have also given rise to concern among the motoring public.

Regardless of the other recommendations made in this chapter for reform of the towing industry, the CJC recommends that the Department of Transport review its enforcement operations for the towing industry in relation to:

- the effectiveness of its enforcement strategies with particular reference to:
  - the screening of applicants for licences and certificates to ensure that only fit and proper persons hold such licences and certificates;
  - the proactive supervision of accident scenes, to identify and discourage inappropriate behaviour by tow truck drivers.
- the sufficiency of resources devoted to enforcement.
- the sufficiency of penalties in the *Tow-truck Act* and *Regulations*, particularly to deter repeat offenders.

APPENDICES

APPENDIX 1

(Refer to 2.7)

LIST OF PERSONS INVITED TO FURNISH SUBMISSIONS TO THE CJC

(These persons were selected on the basis that each:

- **was the subject of a possible adverse finding in the report while it was in draft form; or**
- **was referred to in the draft report in a way which could reasonably be considered to be adverse to the person.)**

Mr M J Ready Senior
Mr M J Ready Junior
Mr M C Ready
Mr N D Ford
Mr C L Shipstone
Mr K S Jones
Mr G R Strathdee
Mr V W Pappin
Mr E Cerruto-Kennedy
Mr A D Charles
Mr M Pederson
Mr S Walker
Mr B Harper
Mr R Adams
Mr T Joughin
Mr S Kanters
Mr D Barnbaum
Ms J Scott
Mr R Wessling
Mr S Pace
Mr M Young
Mr J L Lingenberg
Mr P Anderson
Mr R Darwen
Mr L Leu
Mr J Ready Junior
Mr J Ready Senior
Mr A B Green
Mr J Lyons
Mr N D Scott
Mr T Andrew
Mr N P Humphreys
Mr F T Harvey

APPENDIX 2
(Refer to 2.7)

COPIES OF SUBMISSIONS MADE TO THE CJC BY, OR ON BEHALF OF, PERSONS LISTED IN APPENDIX 1

(Note:

- **In some cases, passages have been omitted from those submissions. Where this has occurred, the reason for doing so is given in a footnote added to the submission.**

- **Because of amendments made to the report after submissions were invited (in some cases, as a result of those submissions), some passages of the draft report referred to in several submissions do not appear in the final version of the report or do not appear at the same page.**

- **Where a submission specifies a page or paragraph of the draft report, the corresponding page or paragraph of the final report has been inserted in the submission.)**

Your Reference:201/49/01/001 DJB:lmt

20th July, 1994.

Mr Commissioner Bevan,
Official Misconduct Division,
Criminal Justice Commission,
557 Coronation Drive,
TOOWONG. QLD. 4066.

Dear Sir,

RE: INQUIRY BY CRIMINAL JUSTICE COMMISSION INTO THE TOW TRUCK AND SMASH REPAIR INDUSTRIES.

This submission is prepared for and on behalf of the Directors of Hexlawn Pty. Ltd. trading as Ready Towing, its employees and associated drivers.

Ready Towing still maintains its apprehension of perceived bias because of the importance of the discreditation of Matthew John Ready Snr. in relation to the cover up of the investigation into John William Huey, former Superintendent of Police. *

It is noted that the Criminal Justice Commission in its Annual Report 1991/92 listed public investigative hearing No. 15/91 as a hearing into the Channel 7 allegations and that such hearing is continuing. In the Annual Report of the Commission, 1992/93 it is noted that there is no mention of any outcome concerning that public investigative hearing. In fact, Matthew John Ready Snr. who obviously should have been a principle witness in such public investigatory hearing, has never been spoken to by any officer of the Commission, concerning such public inquiry into the fabrication of evidence against Matthew John Ready Snr.

As a result of this perceived apprehension of bias, Supreme Court action was taken and injunctive relief was sought. Ryan J. found in favour of the Commission and in so doing allowed this hearing to continue. At page 41 of his judgment dated 6th January, 1993, His Honour stated:

> "In relation to the complaint against Huey by Reynolds and supported by Harris, it appears that it was the Director of Prosecutions, and not the Criminal Justice Commission, who determined that no action should be taken against Huey."

* This submission and supporting material was considered by Ryan J during the hearing of the Applications to the Supreme Court challenging the Commission's investigation. His Honour concluded that there was no evidence of bias on the part of the Commission and no evidence that the investigation was being conducted unfairly and dismissed the Applications (see Chapter 3).

This judgment was not appealed as the Commission may well appreciate that the parties involved do not have the financial resources of Mr Ainsworth.

Yet we believe it appropriate to inform the Commission that this finding of fact, with respect to His Honour, is erroneous. At the Supreme Court hearing the Plaintiffs sought the production of the Director of Prosecutions Memorandum of Advice to the Attorney General re Huey, dated 27 August, 1990. The Criminal Justice Commission opposed the production of this Report claiming privilege upon same. The Commission was successful in its privilege argument.

On the 29th August, 1990 the Attorney General informed Parliament that:

> "The matter is now legally closed. All relevant parties have now been advised that the Crown does not intend to bring any further prosecutions in respect of these matters."

The Director of Prosecutions Report related to criminal offences and not offences of official misconduct as were reported to the Commission on the 2nd July, 1990. Superintendent Huey did not retire from the Police Force until the 18th September, 1990. The Criminal Justice Commission chose not to investigate Huey on the complaints of official misconduct and by such failure Superintendent Huey was allowed to retire receiving full superannuation benefits, including public contribution.

The offences of Official Misconduct are properly within the jurisdiction of the Criminal Justice Commission, and in particular the Official Misconduct Division of the Commission. The Director of Prosecutions has no jurisdiction concerning official misconduct and his Memorandum of Advice did in no way whatsoever exonerate Superintendent Huey from offences of official misconduct. From what has subsequently become public knowledge through Hansard, it is apparent that the Director's Memorandum of Advice in fact confirms offences of official misconduct.

It is noted with respect, that the initial complaints made to the Criminal Justice Commission, were made to Mr David Bevan, then of the Complaints Section of the Official Misconduct Division and now Commissioner of this Inquiry.

In the dissenting Report, No. 21 of the Parliamentary Criminal Justice Committee The Honourable Neil Turner, MLA, Deputy Chairman of the Committee said:

> "I consider that if allegations against former Superintendent Huey are proved the people of Queensland will form a view that there has been a cover up at the highest levels of the administration of justice (the Criminal Justice Commission, the Government and some of

the most senior members of the legal profession in Queensland)."

In the Chairman's Foreword at Page (iv) of Report No. 21 is included a letter, from The Honourable Dean Wells, Minister for Justice, Attorney-General and Minister for the Arts, addressed to the Chairman, Mr Ken Davies, MP. This letter discusses why privilege attaches to the abovementioned Memorandum of Advice from the Director of Prosecutions to the Attorney General dated 27th August, 1990.

The Attorney General is the responsible Minister for the Criminal Justice Commission and Mr Davies is Chairman of the Commission's supervisory Committee. Mr Davies published with approval this letter of the Attorney General where it stated:

> "It is a matter of fundamental principle that if a person is the beneficiary of a determination by a prosecutor not to prosecute that such a person should not subsequently have the contents of such a document aired to their detriment in public. A prosecutor's opinion is a unique document. It is a document which concentrates into a small compass everything negative to the person which can be found in order to make an assessment as to whether legal action should be commenced against that person. The mustering of all the adverse facts about a persons life makes almost every opinion as to whether a prosecution should be brought highly defamatory if it were not covered by legal professional privilege. It would be an oppressive detriment to place on any person who was innocent unless proven guilty to release any prosecutorial opinion about them.
>
> I say any person, and my remarks do not apply particularly to Huey, although they encompass him by encompassing everyone. The principle of equal justice requires that all citizens should be treated equally by the law. If I were to release the Huey Opinion or allow multiple copies of it to be made I would have to do that with respect to every prosecutorial opinion and thus put the reputations and peace of mind of every citizen whose affairs had ever been considered by prosecutor in jeopardy."

This current investigative hearing has found no evidence to support criminal, simple or misconduct offences against any person associated with Ready Towing. Yet, in the preliminary material referred by the Commission it is apparent that adverse comments affecting the reputation of such persons is intended to be released. Such adverse comments are disputed and if released will cause considerable damage both to reputation and financially.

Counsel assisting this Inquiry has been strongly criticised by Mr Justice de Jersey in the case of The Queen v Falzon, (1990) Qd.R 436. Although not specifically named, Mr Ralph Devlin who was one of those responsible for the way in which a person called Wallace was questioned by Fitzgerald Commissioner Officers, summarised by His Honour in the following way:

> "..... I now record some more particular examples of the methods of the inquiry officers at those three interviews. Early in the piece Wallace was told, "You are either with them or with us", implying, of course, that the inquiry position as to what had occurred was the only acceptable one. Then followed many threats as to what might occur if Wallace did not co-operate. "Your future is on the line", he was told. He was told that he would be publicly revealed as a police informant. It was said that if he did not co-operate, by implication in involving the allegedly corrupt police, he would commit perjury in any contrary evidence he gave at the inquiry, and he was told he would get ten years gaol for conspiracy. He was told if he failed to co-operate, the law would come down on him like a ton of bricks and that he would sit out the rest of his life inside. There were many other attempts to instil fear such as by revelation of him as a police informant and by raising the prospect more generally that people in the Mackay area may wish to cause him physical harm. There was other intimidation and insult.
>
> His repeated denials of involvement in crime and corruption were persistently branded as lies. Mention was made of their being tested by a barrage from twenty barristers presumably meaning from the inquiry. A major theme was that the inquiry officers had such a strong case against him, which, of course, he had denied, that he should implicate the police to save himself. It was put to him as being a matter of mere commonsense, that being guilty himself as they so strongly contended he was, he should try to cast some of the blame onto other people. Other particular people in whom the inquiry staff were interested and who were mentioned during the interviews, were not only Marlin, but this accused as well. The interviews were generally characterised by persistent gruelling questioning, often course and interspersed with insults. During all of this, apparently, Wallace was not in good health." *

These allegations were subject of complaint to the Minister of Police who referred this matter to the Criminal Justice Commission. In a letter dated 22nd November, 1990 to Messrs. Macrossan and Amiet from Sir Max Bingham, Q.C., then Chairman, said:

> "The Commission of Inquiry conducted by Mr Fitzgerald, Q.C. was not a "unit of public administration" at the times of the alleged misconduct referred to in the

* In respect of proceedings before the Supreme Court challenging the Commission's investigation, Mathew Ready Senior deposed that he believed that Mr Devlin had the capacity to intimidate potential witnesses. This claim was abandoned at the interlocutory stage of proceedings by the Applicants. (See Chapter 3).

abovementioned correspondence. Consequently, this Commission has no jurisdiction to investigate those matters.

However, because of the nature of the allegations made and having regard to s.2.15(1) of the Act, the Commission has considered and assessed those matters.

Please be advised that the Commission had determined that there is no evidence of official misconduct on the part of Mr Devlin or any other person against whom allegations have been made in your letter to the Minister for Police.

Accordingly, the Commission will take no further action concerning those complaints."

One can only express surprise at these findings when compared with His Honour's summary. These Devlin interviews were tape recorded and although stenuously objected to by the Crown, were played in Court. Regardless of such surprise, Counsel assisting this Inquiry has had the benefit from this Commission of having his reputation protected.

We concur with the Attorney General that it would be an oppressive detriment to place on any person who was innocent unless proven guilty to release any prosecutorial opinion about them. The principle of equal justice requires that all citizens should be treated equally by the law.

During this Inquiry, we have not had the benefit of testing the truth of the evidence called. To have been present, if allowed, and legally represented during this Inquiry would have been financially prohibitive and would have caused certain insolvency.

**

The Commission's preliminary findings cause us concern in that they encapsulate any adverse statements from persons who would benefit through damaging Ready Towing's reputation and seem to ignore positive independent statements where Ready Towing has brought stability and regulated price control in the towing industry to the benefit of the public and their insurance companies.

*

* This paragraph has been omitted as it referred to a matter in respect of which prosecution proceedings have been instituted on the advice of the Director of Prosecutions. Thos proceedings do not involve any person associated with Hexlawn Pty Ltd trading as Ready Towing.

** The findings referred to, as amended, appear at 6.10 and 7.6

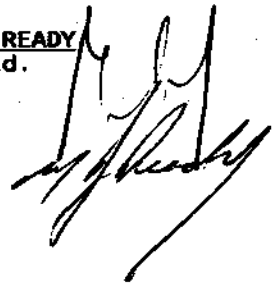
Section 22 of the Criminal Justice Act, 1989 states:

> "The Commission must at all times act independently, impartially, fairly and in the public interest."

In conclusion, it is submitted that this hearing has the authority and indeed the obligation to recommend and cause prosecution for provable offences. No person associated with Ready Towing has been recommended for such prosecution. Therefore, it is unthinkable that equal justice should apply to Counsel assisting this Inquiry, or former Superintendent Huey, who undeniably fabricated evidence against Matthew John Ready Snr., when such justice is to be denied to any person associated with the Ready's. Such publication could hardly be considered as impartial, fair or in the public interest.

Yours faithfully,

MATTHEW READY, JNR. and MARK READY
Directors of Hexlawn Pty. Ltd.
trading as Ready Towing



21st July 1994

Criminal Justice Commission
PO Box 137
BRISBANE ALBERT STREET QLD 4003

Attn: Mr P.M. Le Grand, Director
Official Misconduct Division

Dear Sir

RE: INQUIRY BY CRIMINAL JUSTICE COMMISSION INTO THE TOW TRUCK AND SMASH REPAIR INDUSTRIES

Thank you for your report and attachments of 7th July 1994 concerning your findings and report on the above captioned Inquiry. It is noted therein that by virtue of Section 22 of the Act, the Commission must at all times act independently, impartially, fairly and in the public interest. Having regard to those terms, I have perused this document and accept your offer to respond to your Findings, and the summary of information upon which the Commission intends to rely in making such findings, as follows.

Neither document presents as an accurate or definitive piece on the actual situation that exists in the Tow Truck and Smash Repair Industries. I feel qualified to make that statement on the basis of my extensive research into both the smash repair industry and the tow truck industry, prior to the expansion programme I undertook in 1990/91. Then, in deciding to expand my business, and in view of the considerable capital investments and risks associated with that expansion, I studied the then existing system in Brisbane (and indeed Queensland) of the tow truck/repairer relationship, and compared that to similar operations in other states of Australia. I also noted that attempts at reviewing and changing systems of smash repairer owned tow truck operations, particularly in New South Wales and Victoria, had been tried and failed. In both States the previous "status quo" remained. I also have the benefit of 17 years experience in the smash repair industry in Brisbane. [See 6.5.2 and 6.6]

As it transpired I was not given an opportunity to present quite a deal of relevant information pertinent to the terms of reference of your enquiry, while giving evidence before your Commission. I had hoped that the benefits of my research may have assisted your Commission in the revision of the now defunct Transport Act. I am now particularly concerned that your report shows a lack of understanding of many aspects of the industry and that any views contrary to yours you disregard

in your findings concerning the future shape of the industry.

A perusal of the evidence that I did give, all as a result of questioning by officers of your Commission, will show a tendency to achieve a required or preconceived result, rather than impartially and fairly endeavouring to obtain, in the public interest, any and all evidence pertinent to your terms of reference. It is a fact that to obtain factual information one must ask the right questions. I regret that my interrogators did not have that ability.

2. While I am only privy to that part of your report that you say concerns evidence against me and any adverse findings that you allege arising from that, I am concerned that the issue of "drop fees" is presented only in a fashion quite clearly designed to show smash repairers/tow truck operators in a poor light. The actual situation is that "drop fees", while being contrary to existing Queensland Legislation, were in fact condoned by the Transport Department, major insurance companies and other, during the period covered by your Inquiry. That "tacit approval" of this practice by these responsible authorities would, if the right questions were asked of them by your Commission, be found to be directly related to the fact that this "system" was the best in the circumstances. Indeed, in conversations with the representatives of most major insurance companies, I have been advised that since the rationalisation of towing operations in the north side of Brisbane, (that is referred to by your Commission as Ready Towing), that towing services provided have been perfectly satisfactory to the needs of their companies and persons insured through them, and an improvement on the previous situation. I am left to wonder why there is not one favourable reference to me on any of these issues.

As to your reference to my attempts to disguise "drop fees" by way of payments in another fashion, I would consider such considerations outside the terms of reference of this enquiry, and indeed outside the scope of matters that are properly the concern of the CJC. In that regard I refer you to the legal arguments put to your Commission by legal counsel, Mr Butler, prior to the taking of evidence. Those arguments were concerned with the differences between criminal activity and business practices. Your Commissioner agreed that business practices disclosing no criminal activity/intent were outside the jurisdiction of the CJC. Does it not follow that any references to "business practices" of that type in your report or findings are not matters for your consideration when making findings in this matter?

The references in your findings that I changed my method of payment of "drop fees" were as a result of a memorandum from the RACQ is not factual.* All questions of me regarding this matter took a certain course, hardly impartial. And, notwithstanding the answers I did give, your report disregards that evidence when making your findings. To accomplish this, your report alleges that "records of the businesses were incomplete". I deny that allegation. A complete set of records, as per your summons and attachments, were provided by me to your Commission. [See pg. 98]

* See footnote at pg. 175

Alterations to the method of payment of the "drop fee" arose from (amongst other considerations) a concern that at a time when I was about to try to expand my business, with the attendant financial risks, I was still operating outside the "letter of the law" - even if a "sanctioned" breach of that law. An analogy could be drawn in changing the payments in the way I did, with that of tax accountants minimising ones tax, after alterations to the tax laws. Or indeed with the action of Mss Goss, Burns, Gibbs and Wells, in filing nil travel allowance returns to negate a CJC recommendation on the publications of travel and travel allowance details. (Source Sunday Mail).

3. I am concerned that references to "Ready Towing" in your report and findings do not present an accurate description of that business as it is constructed. As now written any references to "Ready Towing" attaches to all the participants in "Ready Towing" as per your report. The operation of my tow trucks is completely independent of the principals of HEXLAWN PTY LTD commonly known as "Ready Towing". My drivers are controlled by me and I take responsibility for their actions. I take no responsibility for the actions of any of the other drivers or owners of tow trucks that carry the "Ready Towing" logo. I say this even though any proven misconduct by any person using "Ready Towing" vehicles would reflect upon the reputation of that company name generally.

I therefore object to being linked, by way of phrases like "the abovementioned smash repairers" and consequently to activities alleged to have been committed by persons (invariably unidentified) from "Ready Towing".

*

I contend that for you to be seen to be acting fairly in these matters I expect the following:-

* These passages have been omitted in fairness to Mr Pappin as they referred to certain allegations and intended findings which were omitted from the final version of the report.

(a) That you clearly define the separation of individual interests and responsibilities, that actually exist in "Ready Towing". [See 6.6]

(b) That when finally reporting on the sole allegation against me (above) you clearly state that it is not confirmed by other witnesses or enquiry. Further, I would be pleased to know what enquiries were undertaken to confirm the allegation prior to it's inclusion in the report. *

(c) That notice is taken of the possible motives of the witness ROSENTRESET and despite the avenues of complaint open to him, on the evidence of the RACQ, he never complained until "found by your Commission".

4. There are numerous aspects to the "unlevel playing field" ignored in your reported considerations of this matter. They are far too numerous to list here, but some of the more important include:- [See 6.5.2]

(a) While I have no record available to me of the costs to me of maintaining my tow truck operation during the period under review (1990/91) those records are held by you, such expenses for 1993/94 would relate proportionally to those times and would serve as an indication of the amounts involved. That total shows as $101,243 (approx).

(b) To retain the RACQ business (including smash towing) I must provide a tow truck that operates solely on breakdown work. That truck runs at a loss of approximately $15,000 a year.

(c) On the Commission's calculations of $100 per tow, based on my outgoings for 1993/94, I would have been expected to tow 1,022 vehicles. In fact we towed 457, non write off and repairable vehicles.

(d) It is a fact that it does not cost and did not in 1990/91 cost any more to the insurance company to have an RACQ vehicle repaired at one of my businesses than at G.D. WATKINS, whether drop fees or the present incentive system applied. Those costs are absorbed by my company at no cost to either the insurer or the insured driver.

The only persons "hurt" by my provision of towing services, that incidentally provide a fast and efficient service to clear our roads of damaged vehicles, is myself. Unfortunately no questions on these aspects were put to me by the Commission. Conversely neither were the complainants of the "unlevel playing field" asked about their preparedness to commit the amounts of money mentioned to "flatten the ground". It is my submission that your arguments regarding the "unlevel playing field" are flawed, being based on incomplete and inaccurate information and the evidence of disgruntled competitors over-taken by progress in their industry.

Despite the aforegoing it remains to be said however that all the matters mentioned are within the ambit of "business practices", and are therefore outside the interest and

* As a result of Mr Pappin's submission the "allegation" was omitted from the final version of the report.

responsibility of the CJC and should not, as was ruled, be included in the report.

SCHEDULE 1
FINDINGS

Para 6.10 sub para 1.
In a spirit of fairness this finding would go on to state "The common practice of drop fees" was condoned by the Department of Transport, the department concerned with enforcement of the Act, and by other concerned agencies such as Insurance Companies etc.

Para 6.10 sub para 2. [Amended partly because of Mr Pappin's submission]
I object to this finding in that it improperly represents the true construction of "Ready Towing". When "Ready Towing" is referred to in later findings it conveys the impression that all the mentioned businesses are guilty by association in any alleged misconduct or illegal activity. This is not supported by the evidence of which I am aware.

Para 6.10 [See subpara 10 - footnote at pg. 175]
sub para 7 is totally incorrect on a number of grounds, not the least of which are set out in my paragraph 2 (above). In addition I never received nor do I believe was I ever sent the RACQ memorandum of 29 August 1991. As previously stated and reaffirmed here, I had already begun to convert to incentive payments before that time for the reasons stated in my paragraph 2 (above). In addition in the period between the leasing of my new vehicles (January 1991) and 29 August 1991, I had numerous discussions with members of the RACQ staff in the normal course of my business dealings on a day to day basis. During those conversations I outlined some of my plans for expansion, including the arrangements under which my tow trucks were then operating. It may be that some or all of such conversations were known to the person ultimately responsible for formulating the memorandum in issue, or the substance of those conversations were relayed to that person by other officers. In any event the RACQ did not obviously see the need to send that document to my business. That this information did not come under your notice is directly due to the fact that during questioning by Mr Devlin at this or some other point I asked could I ask questions or make statements that I believed would clarify some issue. I was informed by Mr Devlin that my answers were to be confined to the questions asked by the Commission. A perusal of the transcript of my evidence will verify this fact.

Para 6.10 sub para 10.*
Totally unrepresentative of the actual situation that prevailed. Amongst other things (a) "Ready Towing" is not sufficiently defined; (b) The growth of "Ready Towing" was not substantially facilitated by "drop fees" but rather by the influx of capital made by a number of persons, all of whom

* See subpara 12 - again amended partly because of Mr Pappin's submission. See also 6.11, subpara 1.

retained the right of control and responsibility for drivers in their employ; (c) I believe that an examination of Transport Department records for the period following upon the growth of "Ready Towing" would show an actual reduction of the number of tow trucks operating on the north side of Brisbane.

FINDINGS

Para 7.5 sub para 1.*
In view of the finding in your paragraph 6.10, it would, when read in conjunction with this paragraph, indicate that myself or business under my control were involved in the activities mentioned. I deny that allegation and state that it cannot be supported by the evidence of which I am aware.

Para 7.5 [Omitted from final report]
sub para 2 is totally false in representing the accurate situation. Once again "Ready Towing" is not defined as to its actual construction and division of control and responsibility. In the first instance I made no such approaches (as per your para 7.5 sub para 1). Neither can I be shown to have adopted such measures to achieve a goal. The actual situation in regards to my involvement in expanding my business was neither immoral, unethical or illegal. I repeat that these matters relate solely to business practice, and as such are outside the province of the CJC.

YOUR REPORT [See now pp. 97-101)

Page 88 para 1
As you argue in this paragraph on the basis of figures for 1990/91 you should not include in that argument the impression that the holding yard at 181 Kitchener Road, Kedron was owned by me at that time. This was not the case - however you may not be aware of that fact as I was not questioned about either property in evidence. This particularly when your witness ROSENTRETER later refers to observing "good repair jobs" in that yard. Further throughout example 1, whoever compiled this report chops and changes from year to year and makes a comparison in one instance of my figures, current at the time of my giving evidence, with those of G.D. WATKINS for 1990/91. While such a comparison supports the outcome you may require, it does not represent the true situation.

Page 88 para 2
At lines 13 and 14 your report states I paid drivers by cheque or cash. That is incorrect and not in accord with the viva voce and documentary evidence as all payments were made by cheque and proper records kept. The inclusion of the word "cash" may be associated in the mind of someone reading the report as supporting some underhanded practice. All my dealings were open and above board.

Page 88 para 2
In lines 19 through 27 the Commission again attempts to support an argument denying truthful statements made by me concerning the decision to change my business practice in relation to "drop fees". The move to new tow trucks in January 1991 represents the first step in progressively changing my

* Amended partly because of Mr Pappin's submission - see now 7.6

payments. Contrary to the Commission's stated view of my records, they do support my position, in that the lease payment for each vehicle became the first outgoing in my new system. The fact that new trucks did not immediately begin showing maintenance costs is then used as a basis for denying my statements of fact regarding my intention to change from the "drop fee" system. My records do show that on the first occasion maintenance costs were incurred they were paid by my company. The reason the Commission was able to find a "consistent pattern of payments of undisguised $100 "drop fees" until 19 April 1991 was because in this transition period my drivers had to be paid a wage consistent with the hours they worked. In any event April 1991 is long before 29 August 1991.

Page 88/89
The last line in para 2 on page 88 and the first two lines on 89 indicate (a) The records supplied by me to the Commission were incomplete. I completely deny that allegation. To the best of my knowledge all the requested documents in my possession were supplied to the Commission. I feel that it is significant that I was not questioned at any time in relation to the manner in which my records were kept, or as to the abbreviations and codes used to identify various payments made. Neither was I recalled when this alleged incompleteness of my records was discovered. Is that considered acting fairly when the Commission goes on to use these facts to question a truthful statement made by me, to discredit my evidence and generally use this alleged incorrect information as the basis for your findings in 6.10 and 7.5. (b) The further "drop fee" discovered for 29 July 1991 would (without the benefit of my records being before me) relate to the payment to an owner driver. I would argue that this supports my position rather than yours. Even disregarding all of my statements once again 29 July is before 29 August each year.

Page 89
Paragraphs 2-3 and 4 on this page are a complete nonsense. Paragraph 2 details questions to ROSENTRETER as to circumstances in the 1990/91 financial year. Paragraph 3 refers to an answer given by me to a question that as near as I can recall - "currently how many vehicles would be towed to your holding yard?" I replied "Well we repair about 35 cars a week and about 8 of them would be towed in." Now the word currently was understood to mean at the time I was sitting in the witness box i.e. 1993 and answered accordingly. In paragraph 2 ROSENTRETER states he received no towed work from "Ready Towing" in 1990/91. Well neither did I - at either of the two businesses I then operated viz Nundah Smash Repairs or Wavell Body Repairs. Then in paragraph 3 it states - amongst other things - that despite incomplete records there were 36 deliveries of vehicles to Nundah Smash Repairs and Chermside Body Works compared to one delivery to G.D. WATKINS - in the period covered by the available records. As it is written paragraph 3 clearly shows an "unlevel playing field", when in fact it is incorrect, being made on incompatible data, on figures three years apart and in using incorrectly named companies.

[See pp. 97-101]

Page 89/90 [See pp. 97-101]
Para 5 on page 89 and continuing on page 90 there are quite a number of untrue statements and errors of fact, (a) "Ready Towing" never towed RACQ work to Nundah Smash Repairs. Nundah Smash Repairs was not and is not an RACQ repairer. (b) It would be impossible for ROSENTRETER to do a quote at the Nundah Smash Repair holding yard at Nundah Street. Nundah Smash Repairs never did and does not have a holding yard at Nundah Street. ROSENTRETER may well have seen what he considers "lucrative smash repair work" at Nundah Smash premises, but without supplying details of each vehicle seen it would be impossible to state how that vehicle came to be there. In any case any vehicle in that "private area" would have been there either at the direction of the owner of the smashed vehicle or the insurance company involved. It was not a "holding yard" within the meaning of the Transport Act and therefore not directly accessible to towed vehicles. None of the mentioned vehicles seen would have been RACQ vehicles and therefore should not be included in this comparison. ROSENTRETER'S allegations concerning Chermside Body Works should not be included in a 1990/91 comparison. (d)

*

On the one occasion it came to my notice that an employee of mine had been in breach of the Transport Act - prior to his employment by me - he was sacked on the very day I was made aware of that information.

*

Page 90
The analysis of records on para 2 of page 90 is that analysis referred to above that compares ROSENTRETER'S 1991 figures with my 1993 figures. Following upon that it is unfair to make the finding that "ROSENTRETER is not able to compete fairly for that percentage of smash repair work which is towed by tow trucks".

Page 90
It is perhaps significant that the evidence in paragraph 3 on page 90 - that of Colin JOHNSON, Chief Assessor for RACQ Insurance - is not expanded upon, nor supported by any other favourable evidence that may have been presented. It is impossible for me to believe that in view of the amount of favourable comment I have received concerning the "rationalisation" of the towing operation on the north side of Brisbane, that none of the persons making those comments to me did not repeat them before your Commission. They of course support the contra view to your allegation of the "unlevel playing field". To select just one aspect of paragraph 3 "some selected repairers received more towed in work simply because they were larger" - then in following paragraphs you justify this argument by comparing "chalk with cheese", i.e. a business with 31 employees and approximately $400,000 in equipment, with one employing 4 and with $100,00 in equipment (my estimate

* This "allegation" referred to at pg. 4 of Mr Pappin's submission was omitted from the Report as a result of his submission.

only) - this in support of your premise on an "unlevel playing field". In addition my business provides clients with loan cars (8 in number) and other services designed to attract custom - services not supplied by many of my competitors.

Page 91 [See pp. 97-101]
The example headed "REPAIRER 1990" could not possibly relate to RACQ repair work, in that it apportions an amount of $117,915.23 to Nundah Smash Repairs, when that business did not in 1990 do RACQ work. That fact then makes a nonsense of the paragraph immediately following. In paragraph 2 of page 91 - that goes on to report on 1991 figures - your analysis of records is considered "inconclusive as a combined total was provided for the value of repairs paid by RACQ Insurance and carried out by Nundah Smash Repairs and Chermside Body Works" - is also a complete nonsense in that Nundah Smash Repairs did not do RACQ work in 1991. *

In furtherance of my assertion that in the period under review i.e. 1990/1991, the RACQ, who the Commission use in the examples of the "unlevel playing field", in fact had quite a number of measures in place to ensure equity in the distribution of towed smash work. For instance, when a business under my control, to wit Wavell Body Repairs, became Chermside Body Works in 1991, my premises and equipment were comparable in size to G.D. WATKINS (ROSENTRETER). When I was granted official RACQ repair status it was stipulated by the RACQ in an official statement that the amount of work I would be permitted to have towed to my workshop would be decided on the basis of my ability to do that work quickly and on the stated policy aim of the RACQ "to be fair to other RACQ repairers in the area". My towing records for the period under review will show numerous instances of RACQ insured vehicles being towed to other RACQ approved repairers, AT THE DIRECTION OF THE RACQ. That these vehicles were not towed to G.D. WATKINS should be a matter of dispute between G.D. WATKINS and the RACQ and not made to appear an unfair advantage to Chermside Body Works, on the basis that I owned tow trucks operating in the area. Further, Chermside Body Works was and is in the Stafford area in relation to the demarcations that the RACQ make concerning the distribution of their work. G.D. WATKINS is in the Nundah area - another reason where a comparison of these businesses in an endeavour to prove an "unlevel playing field" is invalid. It is only since my new premises at Kitchener Road, Kedron have come on line, that my share of RACQ towed smash work has increased with the PERMISSION OF THE RACQ. Such increase is directly related to my capacity to quickly turn around jobs. This is achieved through a considerable financial investment in premises, equipment and wages.

The RACQ was and is the strictest controller of towed smash work of all the insurance companies with whom I have dealings. It is unfair to the RACQ and myself that the actual situation as to the distribution of towed smash work in 1990/91 is not accurately presented in your report.

Page 106 [Now pg. 116]
In relation to the paragraphs on page 106, I don't feel I can

* As a result of Mr Pappin's submission, these figures were checked and found to be inaccurate. The report was amended accordingly.

let them stand unchallenged, on the basis that (a) The term misbehaviour is not defined. (b) I totally deny any allegations of "misbehaviour" on behalf of any of my drivers. (c) The findings in subparagraphs 1 and 2 could not "significantly exacerbate the problem of misbehaviour" on the part of my drivers - given the code of conduct instructions under which they operate. (d) I was not questioned on the allegations during my evidence. Had I been, I would have denied them on the basis of (c) above. (e) In fact I have never had any complaints about my drivers from the Transport Department, Police, insured persons, insurance companies or other interested persons.

Page 113 [See now. pg. 124]
Paragraph 2 "The evidence showed ..." It is impossible to comprehend how evidence before the Commission could possibly support the conclusions drawn in this paragraph. Again no notice is taken of the actual separation of business interests that exist in "Ready Towing", particularly as they relate to me. In simple terms, because I made a considerable financial investment in the towing industry, am I to be adversely criticised because I have favoured my own businesses with towed smash work. Surely I am entitled to a fair return on my investment? I would refer once again to my assertion that business practices disclosing no criminal activity are outside the province of the CJC.

Page 161 to 163 [See now pp. 174-176]
These findings under the paras 6.10 are mainly repetitious of those in 6.10 marked Schedule 1 and are objected to on the grounds outlined above.

SUMMARY

To summarise the actual situation that transpired in what for convenience sake I term as "rationalisation of the towing/smash repair industries in 1990/91" is - that myself and a group of like-minded and progressive thinking smash repairers on the north side of Brisbane considered that the changes to the smash repair industry that were occurring in Sydney and Melbourne would inevitably flow on to Brisbane. The main thrust of these changes were that research in the industry had shown that larger and better equipped panel shops were able to provide a faster turn around of smashed vehicles, provide a better and more caring approach to vehicle owners and more efficient and streamlined service in dealings with insurance companies. Some firms in the south now employ in excess of 60 staff, with capital investments commensurate with the premises and equipment needed. Central to the success of such ventures was the operation of firm owned tow trucks. Our research had shown that these larger operations were well received by insurance companies, assessors and the public.

As a result our group in Brisbane decided to expand our operations, based on the interstate experience. For each of us that included revising or commencing a tow truck operation. Part of that included the need for affiliation with an established towing service, who could provide two-way radio and other facilities. Ready Towing was selected for our purposes.

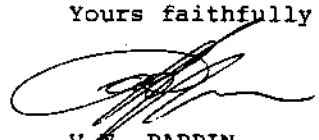
In achieving our expansion in the towing industry we did not use "almost extortion", "heavy handed business tactics" or "manifestly undesirable conduct". That certainly on the part of my drivers and myself and any of my associates in the expansion of business programme associated with Ready Towing was not part of our brief and was not condoned or included in our business operation. The consequent "expansion of the Ready Towing Fleet" was not part of a push by the management of Ready Towing (in fact, HEXLAWN PTY LTD), to expand its control over towing in the Brisbane area" - but rather was a tactical business decision taken by a group of businessmen, all acting in their own long term interests, to increase the size and through that the potential of their smash repair businesses. The only benefits that accrued to "Ready Towing" (HEXLAWN PTY LTD) were financial and accrued to them only because of the decision our group had taken to use their facilities. "Ready Towing" (HEXLAWN PTY LTD) could never be conceived as controlling towing in the Brisbane area!

Quite clearly the true facts in this matter relate only to a tactical business decision made by certain smash repairers. That decision might as easily been taken by one of our business competitors, the complainants to your Commission of the "unlevel playing field" and then only if they were prepared to venture the capital. The smash repair industry is really only following the "Big is Better" approach occurring in quite a number of Australian industries - and indeed world wide. No doubt during the rationalisation of those industries people were hurt by, and aggrieved by, decisions taken. They are not benefitted by the might of the CJC fighting on their behalf and putting an improper and incorrect construction on what simply is a tactical business decision.

In conclusion I submit that in view of the errors, incorrect assumptions, unfair comparisons and misinterpretations of my business records - that are outlined above - that the section of your report that was supplied to me is not a fair representation of the tow truck/smash repair industry, particularly as it relates to my operations. As the facts of your report suffer from these deficiencies, and because you rely on those incorrect facts in making your findings, then it follows that your findings are flawed.

Should you not take cognizance of the matters raised in this submission, I of course reserve my rights to challenge any flawed adverse findings you may make, at another time, and in other places.

Yours faithfully



V.W. PAPPIN
MANAGING DIRECTOR
BANMAX PTY LTD

See FAX 14/0070 33

Partners-
P.A. Murrell F.I.A.A., A.R.I.N.A., A.A.I.E.
D.B. Stephenson B.Com., LL.B.

Associates:
H.P. Brodenck LL.B.

Murrell Stephenson

• SOLICITORS AND ATTORNEYS •

19th Floor, Commonwealth Bank Building,
Cnr Queen & Edward Streets, Brisbane, 4000
G.P.O. Box 2247, Brisbane 4001

Telephone: (07) 221 5205
Fax No.: (07) 229 2443
Ausdoc DX173

RECEIVED
21 JUL 1994
D. EGAN

Your Ref: 201/49/01/001 DJB:LMT
Our Ref: PM:HPB:GS:94070562

( ) Sensitive
( ) Confidential
( ) Restricted
( ) Unclassified

18th July 1994

The Deputy Director
Official Misconduct Division
Criminal Justice Commission
PO Box 137
Albert Street
BRISBANE QLD 4002

FACSIMILE SENT
DATE 20/7/94 AT 3:53pm

Dear Sirs,

Re: Inquiry by Criminal Justice Commission into the Tow Truck and Smash Repairs Industries
Our client:- Joanne Lee Lingenberg

We advise that we act for Ms JL Lingenberg in respect of the above matter.

Our client has perused the information provided you to her and has asked us to comment on her behalf.

Before commenting on specific provisions of the Sections of the report, you should be aware that on both occasions on which our client gave evidence to your Commission (and particularly on the first occasion) our client was suffering from post-traumatic depression. [Information of a personal nature]

We believe that your Commission is aware of the background incidents which gave rise to the depression so there is little point in going to that detail again here. However, it does mean that our client was in a far from ideal mental state when giving evidence at the hearing and the evidence which she gave should be considered in the light of this.

.../2

The Deputy Director
Official Misconduct Division
Criminal Justice Commission 18th July 1994

The second general comment we would make was that our client was in a very arkward position. On the one hand she was responsible to Mr Ford and Mr Parker of Taxi Combined Systems - as regards to finances which were processed through that company - and on the other hand, she was for the most part under the day to day operational control of Mr Mathew Ready senior and she worked out of their offices. She was a diligent, hard working employee placed in a very difficult and stressful situation. The impact of the Inquiry on her, coming on top of the previous incidents has had a very devastating impact on her.

*

In relation to page 143 of the draft report, it would certainly be fair to say that our client was aware that drop fees were being paid by the proprietors of some panel shops to some drivers. Even pre-dating our client's involvement with Combined Towing, our client was aware that within the towing industry generally some drivers received occasional drop fees from some panel shops. She was aware of this simply because the matter came up occasionally in conversations she had from time to time with various tow truck drivers or in conversations she overheard between tow truck drivers.

[See pp. 155-157 & 162-166]

* The section of the draft report to which this part of the submission referred was removed from the final report. Therefore, this part of the submission has been removed to avoid any unnecessary reference to persons whose interests could have been adversely affected by being named therein.

The Deputy Director
Official Misconduct Division
Criminal Justice Commission 18th July 1994

The drivers did not appear to be aware of the fact that they were doing anything which was wrong and in the days prior to the memorandum from RACQ Insurance, she had no reason to think that there was anything particularly wrong with these private arrangements between some tow truck drivers and some panel shops.

In relation to the mention of the Yellow Taxi Depot (Woodridge) on page 143, as far as our client is aware there has never been a panel shop on that site nor were drop fees ever paid by that depot. That depot was never in fact a registered holding yard for vehicles. She believes that whilst it may have appeared on earlier versions of the "Smash Card", it was deleted from later versions of that Card. [See now pg.156]

In relation to pages 152-154 of the draft report, it is important to bear in mind our client's state of knowledge at two periods of time - the first was before she became aware of memorandum from RACQ in respect of drop fees and the second period is after our client became aware of that memorandum. [See pp. 164-166]

Prior to the RACQ memorandum coming to our client's knowledge, she had no reason to think that a driver may be disciplined or dismissed because of what essentially saw as a private arrangement between a driver and a panel shop.

In respect of the period after she became aware of the RACQ memorandum, she did become aware that there was a problem with drop fees. When she states that she thought that a driver who took drop fees would be dismissed, she was assuming that that would be the attitude of Mr Ford or Mr Parker in respect of drivers originating from the Yellow Cab Fleet. She was aware that Mr Ready seemed to have a different view on these matters and she was under Mr Ready's control.

In relation to the statement by Mr Nessel , our client concedes it may well be that the payments from Southside Ford did commence in February 1991 rather then somewhat later in the year as our client indicated in her earlier evidence. She does not have any independent recollection of when the payments commenced. [See pg.166]

Our client cannot actually recall being advised by Mr Nessel at his meeting with her that drop fees were being paid by Southside Ford to some of the Yellow Towing drivers.

The Deputy Director
Official Misconduct Division
Criminal Justice Commission

18th July 1994

To the best of our client's recollection, Mr Nessel was on very good terms with one the drivers in the Yellow Towing Fleet and her understanding was that the arrangements between the drivers and Southside Ford were negotiated originally between Mr Nessel and this particular driver. It is possible Mr Nessel may have advised her of the arrangement when he came to meet with her but our client's best recollection of the matter is that the primary reason for his visit to her was for the purpose of arranging for the registration of the Southside Ford panel shop as a registered holding yard.

Our client, as we said at the outset, was under considerable strain at the time she gave evidence and she does not have an ideal recollection of these events. If her recollection of dates or conversations is vague, it is an innocent mistake. There has been no attempt by our client to mislead the Commission and we trust that the above remarks with clarify some of the statements attributed to our client in the draft report.

Yours faithfully,
MURRELL STEPHENSON

Per:

Partners-
P.A. Murrell F.I.A.A., A.R.I.N.A., A.A.I.E.
D.B. Stephenson B.Com., LL.B.

Associates:
H.P. Broderick LL.B.

Murrell Stephenson

• SOLICITORS AND ATTORNEYS •

Telephone: (07) 221 6205
Fax No.: (07) 229 2443
Ausdoc DX173

19th Floor, Commonwealth Bank Building,
Cnr Queen & Edward Streets, Brisbane, 4000
G.P.O. Box 2247, Brisbane 4001.

Your Ref: 201/49/01/001 DJB:lmt
Our Ref: PM:HPB:NC:94070562

14th July 1994

The Director
Official Misconduct Division
Criminal Justice Commission
PO Box 137
Albert Street
BRISBANE QLD 4002

Dear Sir,

Re: Enquiry by Criminal Justice Commission into the Tow Truck & Smash Repair Industries
Our Client: N D Ford

We refer to the above matter and to your letter of 7th July 1994 and confirm that we are the Solicitors for Mr Ford.

It would be fair to say that our client is in general agreement with most of the information set out in Schedules 1 and 2 but there are a couple of factual errors in the material and an ambiguity which our client would like to bring to the Commission's attention.

In Notice No. 94/1 being a Notice to our client of possible adverse findings, it is stated that our client "gave evidence at the Commission's hearing". Your records would show that Mr Ford did not in fact give evidence.

In Schedule 2 at page 143, it is stated in the penultimate paragraph that the Commission's investigations confirmed that a number of businesses named in the preceding paragraph did pay drop fees. One of the businesses so named is "Yellow Taxi Depot (Woodridge)". There is no panel beating shop at the Yellow Taxi Depot at Woodridge and it has never paid drop fees. We believe the entity to which the Commission is referring is the "Yellow Cabs Panel Shop" referred to elsewhere in Schedule 2. [See now pg.156]

.../2

The Director
Official Misconduct Division
Criminal Justice Commission 14th July 1994

Our client would also like to expand on some comments made by Mr Michael Kelly on page 167 of Schedule 2 where Mr Kelly indicates that he had a number of telephone conversations with our client and that our client indicated to Mr Kelly that our client "would fix things up". [See now pp. 179-180]

Our client can recall having three or four conversations with Mr Kelly and at one stage he also made a personal visit to Mr Kelly over this incident.

In those conversations Mr Ford advised Mr Kelly as follows:-

(a) Southside Ford did not have to use Combined Towing if it did not wish to. It was a commercial decision for Mr Kelly and Southside Ford;

(b) Yellow Cabs would not be shifting its spare parts account from Southside Ford regardless of whether or not Southside Ford used Combined Towing;

(c) Our client regretted the approaches made to Mr Kelly and that our client would contact Mr Matthew Ready Snr. and get him to apologize to Mr Kelly.

Our client then did contact Mr Ready in respect of this matter and requested that Mr Ready apologize to Mr Kelly. During the course of that conversation, our client also advised Mr Ready that if he was going to adopt this approach, then he was to stay away from all "Yellow Towing" customers. Our client never received any further complaints from Yellow Towing customers.

Other than the above, our client has no problems with the information in Schedule 2. Our client can certainly confirm that the Ready interests had operational control of the Combined Towing venture during its relatively short existence. As you correctly state, the partnership was not a happy one and our client suffered a not inconsiderable financial loss in extricating himself from the partnership. [See 6.8]

We now return Schedules 1 and 2 to you as required by your notice.

Yours faithfully,
MURRELL STEPHENSON

Per:

3380M/13-14(14)

Kerin & Co.
LAWYERS

Our Ref: 93-9037

Stephen Kerin

21 July 1994

Mr Commissioner Bevan
Official Misconduct Division
Criminal Justice Commission
557 Coronation Drive
TOOWONG 4066

Dear Sir

Re: **INQUIRY BY CRIMINAL JUSTICE COMMISSION INTO THE TOW TRUCK AND SMASH REPAIR INDUSTRIES**

I act on behalf of Mr Alan David Charles and have to hand your letter of 7 July 1994 and enclosures addressed to my client.

It is noted at 7.5 of your findings that it was the Commission's view that the evidence before the Commission did not substantiate any criminal offence to the required standard of proof. [See now 7.6]

You then make the finding, in my submission, without foundation, that *

The release of such finding will damage the reputation of the operators of Ready Towing and in particular my client, Mr Charles.

Should such a finding be released it will inherently prejudice my client in his business dealings and damage his reputation without any effective right of reply.

The unfairness of this position is compounded by the fact that my client did not have the benefit of testing the truth of allegations made against him by cross examination. Further it is noted that the exact allegations made against my client by other witnesses were not put to my client in full in cross examination by Counsel assisting the enquiry.

The obvious unfairness of his position is self evident.

I refer in particular to the evidence given by Mr Michael Kelly, who at the relevant time was General Manager of Southside Ford. Mr Kelly is reported to have given evidence that my client had an aggressive attitude during the visit and that he Mr Kelly became angry because of the alleged threatening nature of the approach.

* The finding referred to was omitted from the final report. Therefore, in fairness to Mr Charles and the operators of Ready Towing reference to the finding in this letter has been deleted.

Your Commission has only received one side of the story and in my submission that is an insufficient basis upon which you could draw any adverse conclusion against my client.

It is noted that the witness Mr Paul Ferris does not identify Mr Charles as being the person who approached him at the end of 1992.

It is noted that the evidence given by Mr Robert John Walbridge with respect to an approach by Mr Alan Charles for business was in content similar to evidence given by Mr Kelly and Mr Ferris but substantially different in tenor and style. It is noted Mr Walbridge considered the offer made to be a "great opportunity" and further that he regarded the meeting as a normal commercial approach.

Similar comments could be made with respect to the conflicting evidence given by other persons named in the material presented to my client.

It is noted that your Commission has been unable to find sufficient evidence to enable the Trade Practices Commission to intervene and prosecute parties for breaches of Section 45 of the Trade Practices Act.

At page 178 of the material presented to me it is noted that the Trade Practices Commission has advised your Commission that:

[See now pg. 193]

> ***"as the conduct occurred some time ago, was short lived, never put into effect and there was nothing to suggest it would be repeated, the Trade Practices Commission in accordance with its usual policy decided not to pursue the matter".***

In view of that advice received by you from the Trade Practices Commission I submit that you cannot as a matter of fairness to my client make (the finding objected to) *

In my submission your Commission does not have the expertise nor the charter to make findings as suggested by you. Once you have reached the position that the evidence did not substantiate any criminal offence, you are, in my submission prohibited from making any gratuitous comment or finding.

I ask you to seriously consider the effect the release of adverse comments about my client will have on his reputation and business affairs particularly when such adverse comments are seriously disputed by my client who is without the resources and media profile you have.

The publication of adverse findings against my client is in the circumstances not only a breach of the principles of natural justice and fairness but is also a breach of Section 22 of the Criminal Justice Act 1989.

* Ibid

I therefore request that you not publish your draft adverse findings against my client Mr Allan Charles.

I return herewith the schedules attached to your notice of 7 July 1994.

Yours faithfully

KERIN & CO
LAWYERS

(32)

REV JONES SMASH REPAIRS PTY LTD
A.C.N. 010 [illegible] 525
16 COLLINGWOOD STREET, ALBION. QLD. 4010 Tel: (07) 262 2300
"Auto Robot & Bake Oven Sprayed"

Fax No. (07) 262 5252

15/07/94 REF: 0223

P M LE GRAND
DIRECTOR OFFICIAL MISCONDUCT
DIVISION
CRIMINAL JUSTICE COMMISSION
PO BOX 137
BRISBANE QLD 4002

DEAR SIR

RED: INQUIRY BY CRIMINAL JUSTIC COMMISSION INTO THE TOW TRUCK AND SMASH REPAIR INDUSTRIES

WE ACKNOWLEDGE RECEIPT OF PUBLISHED FINDINGS WITH REGARD TO THE ABOVE INQUIRY AND HEREBY SUBMIT OUR OBJECTIONS TO THE FOLLOWING SUBMISSIONS:-

Page 114, Line 9:- In my opinion the words "some time after" should read "within two weeks of".

[See now pg. 127 - the Report has been amended to read "shortly after the Ready Towing takeover in July 1990".]

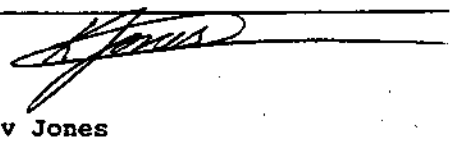
*

I HAVE READ THE REMAINDER OF THE FINDINGS AND FIND THEM TO BE A FAIR AND ACCURATE STATEMENT OF EVENTS PRECEDING THE INQUIRY AND FOLLOWING THE TAKEOVER OF ALBION AND ACTIVE TOWING BY THE READY FAMILY.

* Mr Jones here expressed an opinion about a statement made in the report. Other inquiries by the Commission did not support the opinion. Therefore, this paragraph is omitted in fairness to Mr Jones and those to whom his opinion related.

*

YOURS FAITHFULLY
KEV JONES SMASH REPAIRS PTY LTD



Kev Jones
Director

* The remainder of the letter raised matters that were not investigated by the Commission and has been deleted in fairness to persons identified therein.

AC94/1146

43 Mayrene Street
CARINA 4152

15 July 1994

CJC CLASSIFICATION
( ) Sensitive
( ) Confidential
( ) Restricted
( ) Unclassified

RECEIVED
22 JUL 1994

Criminal Justice Commission Queensland
P.O. Box 137
Albert Street
BRISBANE 4002

ATTENTION: DJ BEVAN

REFERENCE: 201/49/01/001DJB:lmt

RECFIND PENDING

Dear Sir,

RE: INQUIRY BY CRIMINAL JUSTICE COMMISSION INTO THE TOW TRUCK AND SMASH REPAIR INDUSTRIES

In reply to your letter of 6 July and accompanying extracts from the relevant report:

The opening statement "made workshop available" is misleading;

FACT: my workshop was open for business on Saturday mornings.

I very rarely went to my workshop on weekends.

My foreman/manager was totally in charge on weekends.

The very few occassions when a police officer would work on his own vehicle at my workshop would be through a "mateship" arrangement with my foreman.

This practice was not a regular event as your extract indicates.

There is an error in section 6.9.7. Gabba/Budget Towing.

My business Valley Motor Body Works was sold in January 1990, not, July 1991 as this section indicates.

Referring to storage charges: The section "Mr. Leu claimed" is misleading in the text.

FACT: Monies received from Valley Motor Body Works were in lieu of rent/storage fees. The rate Valley Motor Body Works paid for the right to store the vehicles in question, before and during repair, in Gabba/Budget Towing holding yard, was considerably less than any storage, or even parking fee charged throughout Brisbane.

My statement has been taken out of context.

Yours faithfully,
L.R.LEU

REG94/1139

DC & JA SCOTT trading as

Private 399 3151

Valley Motor Body Works

1021A Stanley St. East,
East Brisbane, 4169.

Ph. 393 0811

( ) Sensitive
( ) Confidential
( ) Restricted
( ) Unclassified

RECEIVED
21 JUL 1994

19-7-94

Mr. D. J. Bevan
Criminal Justice Commission
P.O. Box 137
Albert Street
BRISBANE. Q. 4002

RECFIND PENDING

Dear Sir,

RE: Your Ref.: 201/49/01/001 DJB:lmt

I would like to submit the following information to you for your Inquiry.

I purchased Valley Motor Body Works from Lance and Joanne Leu in January 1990 not as in report July 1991. Apart from that mistake your information is correct.

Yours faithfully,

Joan Scott

[See 6.9.7 of the Report]

COL SHIPSTONE SMASH REPAIRS
Bambank Pty Ltd A.C.N. 010 794 773 trading as
11 BOWEN STREET, WINDSOR. QLD. 4030 Tel: (07) 857 4142 Fax No.357 5848
Latest Technology - Old Fashioned Service

28/07/94

CRIMINAL JUSTICE COMMISION
557 CORONATION DRIVE
TOOWONG Q 4066

TO WHOM IT MAY CONCERN

I, COLIN LIONEL SHIPSTONE, DO HEREBY DECLARE THAT I NEVER APPROACHED OR TRIED TO PERSUADE ROBERT FRANKLIN TO SELL HIS TOWING BUSINESS ALBION/ACTIVE TOWING TO MYSELF OR READY TOWING. IN FACT, I WAS AGAINST ANY PROPOSAL TO SELL AND UNTIL I HAD NO OTHER CHOICE EVENTUALLY RELENTED. I ALSO NEVER EVER APPROACHED READY TOWING WITH ANY PROPOSITION FOR THEM TO TAKE OVER ALBION/ACTIVE TOWING.

YOURS FAITHFULLY

C. Shipstone

COL SHIPSTONE

APPENDIX 3

RACQ CIRCULAR
DATED 29 AUGUST 1991

THE ROYAL AUTOMOBILE CLUB OF QUEENSLAND (INC. IN QLD)
R.A.C.Q. INSURANCE PTY. LIMITED (INC. IN QLD)
649 LOGAN RD., EIGHT MILE PLAINS, QLD. 4123
P.O. BOX 4 SPRINGWOOD, QLD. 4127
TELEPHONE: (07) 361 2444
FACSIMILE : (07) 841 2069

DATE: 29 August 1991

MEMO TO: ALL RACQ INSURANCE SELECTED REPAIRERS AND RACQ AUTHORISED TOWING CONTRACTORS

SUBJECT: DROP FEES

It has come to our attention that some Selected Repairers have given, or agreed to offer or to give money in consideration of obtaining the work of repairing damaged motor vehicles. These are commonly referred to as "drop fees".

It has also come to our attention that some towing operators have insisted that repairers pay an amount of money (over and above the amount of money which can be legitimately charged for a tow) stating that if the money is not paid then the damaged vehicle will not be delivered to their premises.

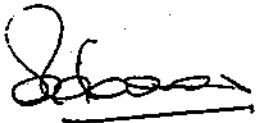
The law which creates the offence of paying or receiving a "drop fee" is set out specifically in Section 23 of the "Tow Truck Act, 1973". We have attached a copy of the relevant section so that it can be read and interpreted in context.

Let it be understood by all persons who may be involved in these illegal practices that this organisation is totally opposed to the payment of and receipt of "drop fees" and will not countenance such practices.

If we receive any information which suggests that any firm which carries our signs is involved in any illegal activities - or indeed is involved in anything other than sound ethical business practice, then as circumstances dictate: if the matter is one where alleged breach of the law is concerned the matter will be handed to the appropriate authorities for further investigation. We will also take whatever action we feel is necessary - such as the termination of any contract then existing between the offending parties and this organisation.

../2

In short, we will not tolerate any unethical business practices by companies or firms who carry the endorsement of this organisation. We will hold the directors/principals of any companies or firms accountable for the actions of their employees where we believe those directors/principals have failed to exercise the degree of responsibility which has been entrusted to them by this organisation to maintain the high standards for which we are renowned.



N J MASON
Chief Executive Officer

PART V—OFFENCES

Authority to repair [6070]

22. A person—

(*a*) shall not at the scene of an incident obtain or attempt to obtain authority from another person for the repair of a damaged motor vehicle; or

(*b*) shall not, where a damaged motor vehicle is towed by a tow-truck, obtain or attempt to obtain from another person authority for the repair of the motor vehicle before it is delivered to the address entered on the towing authority relating to the motor vehicle.

Definitions [6071]

For "damage", "motor vehicle", see s. 4.

Consideration for obtaining certain information or work [6072]

23. (1) A person—

(*a*) shall not for the purpose of obtaining a towing authority or enabling any other person to obtain a towing authority, give or receive or agree to give or receive any valuable thing in consideration of the furnishing of information or advice as to the occurrence of an incident or the presence of a damaged motor vehicle on a road;

(*b*) shall not give or agree or offer to give any valuable thing in consideration of the obtaining for himself or any other person of the work of repairing a damaged motor vehicle; or

(*c*) shall not receive or agree or offer to receive any valuable thing in consideration of the obtaining from any other person of the work of repairing a damaged motor vehicle.

(2) In this section "valuable thing" includes any money, loan, office, place, employment, benefit or advantage and any commission or rebate payment in excess of actual value of goods or service, deduction or percentage, bonus or discount or any forbearance to demand any money or money's worth or valuable thing, but does not include any reasonable charge in respect of the towing, salvage or storage of a damaged motor vehicle.

Definitions [6073]

For "damage", "motor vehicle", "towing authority", see s. 4.

False statements and representations, and coercion [6074]

24. A person shall not—

(*a*) knowingly make any false statement in any application under this Act;

(*b*) falsely advertise himself or hold himself out as being the holder of a licence, certificate or permit under this Act, or suffer or allow any such advertisement or holding out;

(*c*) falsely represent to any person that a vehicle is a tow-truck to which a licence under this Act relates;

APPENDIX 4

COMBINED TOWING CIRCULAR

13/031 B

COMBINED TOWING SERVICES

Head Office: 116 Logan Road, Woolloongabba Q 4102
Postal Address: P.O. Box 99, Woolloongabba Q 4102
Southside Ph: (07) 891 5444
Incorporating
Northside Ph: (07) 260 6700

READY & YELLOW TOWING

MEMO TO ALL INSURERS AND PANEL SHOPS..

IT HAS BEEN BROUGHT TO OUR ATTENTION THAT SOME PANEL REPAIRERS HAVE GIVEN OR AGREED TO OFFER OR TO GIVE MONEY AS COMMISSION FOR THE OBTAINING OF WORK OF SMASH DAMAGED MOTOR VEHICLES (COMMONLY REFERRED TO AS DROP FEES)

IT HAS ALSO BEEN BROUGHT TO OUR ATTENTION, THAT SOME MEMBERS OF THE TOWING INDUSTRY HAVE INSISTED THAT REPAIRERS PAY AN AMOUNT OF MONEY (OVER AND ABOVE THE AMOUNT OF MONEY, WHICH CAN LEGITIMATELY BE CHARGED FOR A TOW.) STATING IF MONEY IS NOT PAID THEN THE DAMAGED VEHICLE WOULD NOT BE DELIVERED TO THEIR PREMISES.

WE HAVE IN OUR ORGANISATION INSTRUCTED OUR EMPLOYEES THAT UNLESS THE OWNER OF A MOTOR VEHICLE HAS THEIR OWN PREFERENCE OF PANEL REPAIRER THEN ALL CARS ARE TO BE TOWED TO ONE OF OUR HOLDING YARDS AND FROM THERE WILL ONLY BE RELEASED ON THE WRITTEN AUTHORITY OF THE OWNER OR HIS AGENT OR INSURER.

LET IT BE UNDERSTOOD BY ALL PERSONS INVOLVED IN SUCH ILLEGAL PRACTICES THAT THIS ORGANISATION IS TOTALLY OPPOSED TO THE PAYMENT OR RECEIPT OF DROP FEE AND WILL NOT COUNTENANCE SUCH PRACTICES.

IF WE DISCOVER ANY INFORMATION TO SUGGEST THAT ANY EMPLOYEE IS INVOLVED IN ANY OF THE AFOREMENTIONED ILLEGAL ACTIVITIES OR INDEED INVOLVED IN ANYTHING OTHER THAN SOUND ETHICAL BUSINESS PRACTICES, THEN AS THE CIRCUMSTANCES DICTATE. IF THE MATTER IS ONE WHERE ALLEGED BREACHES OF THE LAW IS CONCERNED, THE MATTER WILL BE HANDED OVER TO THE APPROPRIATE AUTHORITY FOR FURTHER INVESTIGATION.

WE WILL ALSO TAKE WHATEVER ACTION WE FEEL IS NECESSARY SUCH AS THE TERMINATION OF EMPLOYMENT OF THE EMPLOYEE IN QUESTION OR THE REFERRAL TO THE RELEVANT AUTHORITY OF INFORMATION REGARDING THE REPAIRERS ATTEMPTS TO CORRUPT ANY OF OUR EMPLOYEES.

YOURS FAITHFULLY,

MANAGEMENT.

Published Reports/Papers of the Criminal Justice Commission

Date of Issue	Title	Availability	Price
May 1990	Reforms in Laws Relating to Homosexuality - an Information Paper	Out of Print	-
May 1990	Report on Gaming Machine Concerns and Regulations	In stock as at time of printing of this report	$12.40
September 1990	Criminal Justice Commission Queensland Annual Report 1989-1990	Out of Print	-
November 1990	SP Bookmaking and Other Aspects of Criminal Activity in the Racing Industry - an Issues Paper	Out of Print	-
February 1991	Directory of Researchers of Crime and Criminal Justice - *Prepared in conjunction with the Australian Institute of Criminology*	Out of Print	-
March 1991	Review of Prostitution - Related Laws in Queensland - an Information and Issues Paper	Out of Print	-
March 1991	The Jury System in Criminal Trials in Queensland - an Issues Paper	Out of Print	-
April 1991	Submission on Monitoring of the Functions of the Criminal Justice Commission	Out of Print	-
May 1991	Report on the Investigation into the Complaints of James Gerrard Soorley against the Brisbane City Council	Out of Print	-
May 1991	Attitudes Toward Queensland Police Service - A Report (Survey by REARK)	Out of Print	-
June 1991	The Police and the Community, Conference Proceedings - *Prepared in conjunction with the Australian Institute of Criminology following the conference held 23-25 October, 1990 in Brisbane*	Out of Print	-

Date of Issue	Title	Availability	Price
July 1991	Report on a Public Inquiry into Certain Allegations against Employees of the Queensland Prison Service and its Successor, the Queensland Corrective Services Commission	In stock as at time of printing of this report	$12.00
July 1991	Complaints against Local Government Authorities in Queensland - Six Case Studies	Out of Print	-
July 1991	Report on the Investigation into the Complaint of Mr T R Cooper, MLA, Leader of the Opposition against the Hon T M Mackenroth, MLA, Minister for Police and Emergency Services	In stock as at time of printing of this report	$12.00
August 1991	Crime and Justice in Queensland	In stock as at time of printing of this report	$15.00
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