

23 March 2022

Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

13cabs' initial response to the ESC's Consultation Paper

Executive Summary

13cabs appreciates the opportunity to provide this initial submission to the Essential Services Commission (**ESC**) in response to its Unbooked Taxi Fare Review 2022 (the **Review**) dated 16 February 2022 (the **Consultation Paper**).

13cabs is committed to the longevity of a strong and vibrant Taxi industry and is committed to ensuring the Taxi industry remains an attractive option for its current and prospective Drivers.

Central to achieving this outcome is a Driver's ability to earn a reasonable income and for this to occur, Taxi Drivers must be able to increase their earnings. The only way to ensure this is for fares to rise (noting that the last fare rise in Victoria was 2014). Following the ESC's Review, the ESC determination needs to encompass an increase to unbooked taxi fares.

As detailed below, 13cabs is also concerned that:

- the proposed timetable for the Review is not sufficient;
- the ESC's public conduct to date has created an incorrect impression; and
- the ESC's proposed market outcomes approach is not appropriate.

In 13cabs' view, there is little justification for the ongoing regulation of fares for unbooked taxi services. Until such time that fares for taxi services are fully deregulated, 13cabs recommends that the ESC take a more light-handed approach to its regulatory role. In 13cabs' view, a preferable, less intrusive approach to the regulation of unbooked taxi services would be for the ESC to decline to set a maximum fare and

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instead require taxi operators to adhere to the pricing principle that unbooked fares be determined in the same manner that taxi operators estimate booked fares.

Further, the Covid-19 pandemic has not only severely impacted the taxi industry and its Drivers, but it has fundamentally altered peoples habits and behavioural patterns. This change is most acutely felt in the rank and hail space. The manner and frequency in which people attend work or travel has permanently shifted and a post Covid-19 pandemic market is likely to be very different to the pre-Covid-19 pandemic market. For example, the number of cars in 13cabs' fleet in Victoria at 28 February 2022 was 3,897 which (as at the date of this submission) has fallen to 2,573. A similar outcome is evidenced at a national level with the number of cars having reduced from 9,458 pre Covid-19 to 6,573 number of cars at present.

The ESC's approach and any recommendations must consider this.

The Covid-19 pandemic has also brought into sharp focus the viability of the taxi industry in Victoria and that Taxi Drivers need to earn more. Before the Covid-19 pandemic, the average income that drivers in 13cabs' network earned was c.13.50 per hour. At the height of the Covid-19 pandemic, it was significantly lower than that. On any metric, this is well below the current minimum wage of \$20.33 per hour. Absent any ability to raise fares, drivers are facing pressure to exit the industry.

With this in mind, a key objective in providing this submission is to advocate for higher earnings for Taxi Drivers. The maximum fare for a Taxi trip must allow for Taxi Drivers to earn an income that is fair and comparable to what other Australians are able to earn.

The ESC's Review is also at a time where the prevailing economic environment in Victoria (and Australia more generally) is characterised by falling unemployment, rising inflation, increasing operating costs and strong wage growth. The price of Taxi services must reflect these environmental factors and in 13cabs' view, fares must be adjusted to ensure the industry is able to attract and retain professional Drivers.

We have also attached (as **Annexure 1**) our submission to the 2020 ESC fare review. The issues raised in our submission remain pertinent Today. It is also important to note that the operating environment has deteriorated significantly since the time of the 2020 publication making action even more critical.

13cabs would like to draw particular attention to the section of the submission which addresses the fact that since 2014 fares have risen in real terms, despite any determination from the ESC enabling this. Rather, the price rises are the result of external parties like airports and toll road operators imposing increased charges on the Taxi meter. None of this revenue flows to the Taxi Driver.

Introduction

With reference to the discussion with the ESC on 16 March 2022, 13cabs wishes to thank the ESC for its indulgence and providing it with additional time to provide its response to the Review.¹

The ESC's primary mandate is to ensure the viability of this essential service and the purpose of the Consultation Paper is '*to provide background information to help stakeholders contribute to our review.*'² The ESC is reviewing maximum fares for unbooked taxi services that begin in the metro and urban zones, which cover most of metropolitan Melbourne, Geelong, Ballarat, Bendigo, Frankston, Dandenong, and the Mornington Peninsula.

In its Consultation Paper, the ESC indicates that it intends to adopt the same framework for setting maximum fares for unbooked taxi services as it has in previous reviews.³ The ESC refers to this framework as a 'market outcomes' approach. Under this framework, the ESC will assess whether there is an imbalance in the demand for, and supply of, taxi services (both booked and unbooked) that could be addressed by way of a change in the maximum fare for unbooked services.

The ESC considers that evidence of such a supply and demand imbalance provides it with an indication of whether fares for unbooked services should increase, decrease or remain.⁴ The ESC also has regard to evidence of the cost of providing unbooked taxi services, although it has previously considered such information to be less important than its supply and demand balance assessment for the purpose of determining whether a change in the maximum fare is warranted.⁵

Before preliminarily addressing the seven questions to stakeholders, 13cabs wishes to make the following initial overarching comments and reserve its rights to supplement its preliminary response:

A. Proposed timetable for the Review

13cabs notes the ESC's intention to complete its review and release its final decision and price determination by September 2022. This is informed by the requirement on the ESC to complete a review of maximum fares no later than two years after a price determination is made, the last one being September 2020. The ESC has already requested data from stakeholders, utilising its compulsory powers to do so.⁶

¹ The ESC has confirmed that 13cabs is able to provide its response to the Consultation Paper by Wednesday, 23 March 2022.

² <https://www.esc.vic.gov.au/transport/commercial-passenger-vehicles/commercial-passenger-vehicle-prices/maximum-taxi-fares/unbooked-taxi-fare-review-2022>.

³ ESC, Unbooked Taxi Fare Review 2022: Consultation Paper, 16 February 2022 (ESC Consultation Paper), p. 2.

⁴ ESC Consultation Paper, p. 5.

⁵ ESC, Unbooked Commercial Passenger Vehicle Fare Review 2018: Final Decision, 13 September 2018 (ESC Final Decision 2018), p. 51.

⁶ ESC Notice to A2B Australia Limited to provide information and documents under section 36 of the *Essential Services Commission Act 2001* (Vic), dated 11 March 2022.

13cabs is of the view that the current timetable does not allow the ESC sufficient time to properly consider stakeholder feedback on its proposed approach to the Review. In particular, 13cabs considers that the issue of a compulsory notice for information presupposes the approach that the ESC will adopt, prior to the receipt of stakeholder comments on the Consultation Paper. This falls short of the consultation standards articulated in ESC's *Charter of Consultation and Regulatory Practice* (dated 27 June 2018).

13cabs is also concerned more generally with the ESC's indicative timetable⁷, particularly the release of a draft decision by June 2022. 13cabs considers that this is not practicable and does not allow sufficient time for meaningful stakeholder and industry consultation, particularly in circumstances where a different approach might be preferable.

13cabs also considers the proposed due date for its response to the documents and information requested in the ESC's section 36 notice (8 April 2022) to be unworkable. In 13cabs' experience, responding to detailed requests for information and data of the type set out in the ESC's notice, for the period of time requested by the ESC (up to five years), can take months to obtain, collate and work through with the ESC, particularly in the current environment. As 13cabs has already indicated to the ESC, it does not routinely collect the data that the ESC has requested in respect of unbooked fares. Compiling such data in the form requested by the ESC will take considerable time and effort and is very unlikely to be possible by 8 April 2022.

13cabs is concerned that holding stakeholders to unworkable time frames will result in an unsatisfactory outcome for all involved. This is specifically the case in circumstances where it queries the utility of the ESC's proposed market outcomes approach (*discussed below*). Other stakeholders may hold other substantive concerns.

13cabs is concerned that should any stakeholders hold significant concerns with the ESC's proposed approach that the ESC has not provided sufficient time to consider and incorporate these changes. Further, the ESC's conduct to date suggests that it has no intention of changing its approach. The current timetable will not allow it.

A more appropriate approach would have been to allocate sufficient time to consider (and if required) adapt the approach to the Review and once this approach has been consulted on, to then seek data from stakeholders in line with the approach.

B. The ESC's public conduct to date

⁷ ESC Consultation Paper, p.3.

Associated with the current indicative timetable that does not appear to enable the ESC to alter its approach, in public comments made at the time its Consultation Paper was published (16 February 2022), the ESC put forward its view that unbooked taxi service providers face less competition than other providers of Commercial Passenger Vehicle (**CPV**) services in Victoria, which media commentators took to suggest that the regulated rank and hail fare would, following the ESC's Review, go down.⁸ In particular, in its media release in respect of its Consultation Paper, the ESC noted:⁹

“Consumers hailing a taxi in the street can't shop around for a better deal so there's less competition and fewer pricing options for passengers.”

The following day, the Herald Sun online noted:¹⁰

“Victorians could be in line for cheaper fares when hailing cabs from the street, with the Essential Services Commission reviewing maximum charges in a move that has frustrated the recovering industry.”

Nine News also reported:¹¹

“The Essential Services Commission has announced the review, which will look at lowering the cap on maximum rates so taxis at cab ranks will be restricted in how high they can charge, amid complaints the current scheme is not working.”

The ESC's public statement that there is less competition in the provision of rank and hail taxi services than there is in the provision of booked CPV services fundamentally mischaracterises the nature of the unbooked segment of the broader market for CPV services in Victoria and the competitive constraints that providers of unbooked taxi services face. With the widespread proliferation of smartphones and consumer acceptance of and experience with booking apps, there is now little distinction between a booked CPV service and an unbooked taxi service.

For consumers that require transport from the street or airport, booked services, by way of taxi or rideshare, are highly substitutable for unbooked taxi services, with many consumers opting to book a CPV service from their existing location than hail a taxi or walk to a taxi rank. Given the ease with which most consumers can switch from unbooked to booked services, it is incorrect to suggest that there is less competition in the supply of unbooked taxi services than there is for booked CPV services.

⁸ HeraldSun.com.au – ‘Taxis’ hailing storm’: Kieran Rooney, 17 February 2022 and <https://www.9news.com.au/videos/national/taxi-price-review-could-lower-the-cost-of-unbooked-services-in-victoria/ckzqnkmdz00490jpbk1ogapyq>.

⁹ ESC Media Release, Fares for rank and hail taxis to be reviewed, 16 February 2022 at: <https://www.esc.vic.gov.au/media-centre/fares-rank-and-hail-taxis-be-reviewed-2022>.

¹⁰ HeraldSun.com.au – ‘Taxis’ hailing storm’: Kieran Rooney, 17 February 2022 and <https://www.9news.com.au/videos/national/taxi-price-review-could-lower-the-cost-of-unbooked-services-in-victoria/ckzqnkmdz00490jpbk1ogapyq>.

¹¹ <https://www.9news.com.au/national/taxis-melbourne-price-review-could-lower-the-cost-of-unbooked-services-in-victoria/c2ca773d-3a8a-439c-9351-07673f8dd832>.

13cabs is concerned with the ESC's decision to go into the media and make such statements prior to the review even commencing. Not only do these public comments suggest that the ESC has formed a preliminary view that there is a problem that needs to be addressed but the implication that fares are too high comes at a time when the taxi industry and its drivers are struggling to survive.

Despite significant increases in the cost of living and the cost of operating taxi services (*discussed below*), the maximum fare for unbooked taxi services has not changed since 2014, with fares falling in real terms every year for the last eight years.

Although the ESC has tried to assure 13cabs that it has not pre-judged or formed a definitive view, it is concerned with the impression created. In 13cabs' view, competition in the CPV market is fierce such that there is no justification for the continued regulation of unbooked taxi services. Indeed, in its Consultation Paper, the only justification that the ESC could identify was that absent fare regulation, passengers that rely on taxi services to get around that do not have smartphones may be left paying more than necessary for unbooked taxi services.¹²

In 13cabs' view, only a very small proportion of taxi users do not have a smartphone, with the remainder free to make the choice to book a CPV or hail a taxi. Further, even in this instance, computers and / or landlines are available, and trips can be booked via both of these means, as well as a variety of other ways that are venue specific. For example, passengers leaving a hotel, a pub, club or a restaurant may book a taxi at the venue before departing.

As such, the cohort of potentially vulnerable passengers that the ESC is referring to in its Consultation Paper is extremely small, if not non-existent. The protection of such a small group of taxi users is no basis for the continued regulation of unbooked taxi fares.

In 13cabs' view, these passengers are already protected since market conditions dictate that taxis in the 13cabs network adopt the same pricing structure for unbooked rank and hail services as it does for booked services, with both set by reference to the ESC's regulated maximum fare. This is because passengers tend to feel aggrieved when the cost of a booked fare differs markedly from the cost of an unbooked fare for the same trip. Charging different prices for what is largely the same service creates distrust and uncertainty among passengers and would have the effect of encouraging them even more towards the use of competing rideshare services.

The only difference between the booked and unbooked fares currently charged by taxis in 13cabs' Victorian network:

¹² ESC Consultation Paper, p. 1.

- is that the booked fare is fixed based on an estimate of the trip duration and given information available about traffic conditions at the time of booking;
- whereas unbooked fares are not fixed and so may be higher or lower than the equivalent fare for a booked service depending on whether there is more or less traffic congestion than would have been anticipated at the time of booking.

Passengers that hail a taxi in 13cabs' network are therefore not systematically any worse off than those that book a taxi from 13cabs either through the contact centre, online or via their smartphone using a booking app. Given this, until such time as fare regulation of unbooked taxi services is removed in Victoria in the final move towards full fare deregulation, any regulatory framework that the ESC adopts should be proportionate to the magnitude of the perceived 'problem' that it is seeking to address.

In 13cabs' view, any such framework should be light-handed and not impose any significant regulatory burden on taxi operators, either in data collection or implementation. It should also provide efficient taxi operators with certainty that they will be able to recover their costs moving forward.

C. Continued impact of the Covid-19 pandemic and viability of the taxi industry in Victoria

The ESC has acknowledged that the Covid-19 pandemic has had a significant impact on the commercial passenger vehicle industry, including a significant decline in demand for taxi trips, and supply of drivers and vehicles.¹³ It also notes that, pursuant to recent amendments made to the *Commercial Passenger Vehicles Industry Act 2017*, in this Review it will have regard to the commercial viability of operating a taxi service.¹⁴ This is in addition to its longstanding obligation to consider the financial viability of the taxi industry.¹⁵

13cabs notes that Victorian taxi operators have faced a very challenging environment over the last two years with the demand for taxi services falling to unprecedented levels in response to the closure of country and state borders, government-initiated lockdowns and a structural shift in the work and social patterns of many Victorians.

Although demand in recent months is recovering with the relaxation of Covid-19 restrictions, demand for taxi services, both booked and unbooked, remains uncertain for the remainder of 2022 and beyond. Future outbreaks such as that anticipated over the upcoming autumn and winter period have the potential to result in rapid and significant reductions in demand with the timing and nature of any recovery to a stable level of demand highly uncertain.

¹³ ESC Consultation Paper, p. 2.

¹⁴ ESC Consultation Paper, p. 14.

¹⁵ Essential Services Commission Act 2001, s. 8A(1)(b).

In this environment, it has become increasingly difficult for taxi operators to remain commercially viable. This has been exacerbated by a tightening labour market, rising costs and the continued application of fare regulation, which is constraining the ability of taxi operators to compete with other providers of booked CPV services. With costs rising and the amount that taxi service operators can charge for processing non-cash payments having fallen, any further reduction in real fares will have a severe impact on the ability of taxi operators to meet increases in demand as we transition through the recovery phase of the Covid-19 pandemic.

13cabs provides further detail below in relation to what it considers to be the three main issues facing the taxi industry moving forward.

(a) ***Taxi operators are currently unable to attract drivers in what is a more competitive labour market***

Absent any ability to raise fares, drivers are facing pressure to exit the industry. Although average driver income is slowly returning (to pre-Covid levels) with the recent uptick in demand, the average income that drivers in 13cabs' network earned pre-Covid is around \$13.50 per hour, which is well below the current minimum wage of \$20.33 per hour.¹⁶

Unless fares increase, drivers will face continued incentives to exit the industry in favour of other employment opportunities. 13cabs notes that it is currently facing difficulties in meeting the recent increase in demand for taxi services, with the number of vehicles in its affiliated fleet having fallen during the Covid-19 lockdowns and is only beginning to recover.

With the available labour pool having shrunk over the last two years due to drivers returning to their home country, a lack of immigration and drivers choosing to exit the industry (induced by the government's JobKeeper program, the availability of other higher paying employment opportunities and due to the increased workplace risk of contracting Covid-19), 13cabs is now struggling to attract drivers in what is a more competitive labour market. For those looking for work, taxi driving is far less attractive than other options at current driver wages.

(b) ***The rising cost of fuel is further impacting driver earnings***

As reflected in the ESC's own preliminary cost analysis the cost of fuel has skyrocketed over the last year, with OPEC members routinely falling short of oil production targets.¹⁷ This has been exacerbated in recent weeks by Russia's invasion of Ukraine.

¹⁶ The minimum wage was increased by 2.5% on 16 June 2021 following the Fair Work Commission's 2021 Annual Wage Review. See: [https://www.fairwork.gov.au/newsroom/media-releases/2021-media-releases/july-2021/20210701-annual-wage-review-2021-media-release#:~:text=1%20July%202021,week%20\(up%20from%20%24753.80\).&text=a%202.5%20per%20cent%20increase.following%20its%20Annual%20Wage%20Review.](https://www.fairwork.gov.au/newsroom/media-releases/2021-media-releases/july-2021/20210701-annual-wage-review-2021-media-release#:~:text=1%20July%202021,week%20(up%20from%20%24753.80).&text=a%202.5%20per%20cent%20increase.following%20its%20Annual%20Wage%20Review.)

¹⁷ ESC Consultation Paper, p. 7 and Stanley Reed of the New York Times, Oil Producers Aren't Keeping Up With Demand, Causing Prices to Stay High, 14 January 2022 at: <https://www.nytimes.com/2022/01/14/business/energy-environment/oil-prices-opec.html>.

In its most recent petrol monitoring report, the Australian Competition and Consumer Commission noted that:¹⁸

“daily average retail petrol prices in Sydney, Melbourne, Brisbane, Adelaide and Perth hit 182.4 cents per litre (cpl) in late-February 2022, which was the highest inflation-adjusted (real) level since 2014. Prices have risen further in the first two weeks of March.”

To put this in context for drivers, the graph below¹⁹ illustrates a 12-week representation of the average fuel price in Melbourne. As at 19 December 2021, the average price of fuel was \$1.484 per litre. This has increased to \$1.978 per litre as at 13 March 2022.

For drivers over that period, the increased price of fuel has meant they incurred additional costs of around \$10 per shift (if they were driving a hybrid Camry. If they were driving a petrol or diesel vehicle the cost could be more than double). This increase in a driver's business cost significantly reduces their per hour earnings. On the data above, it would take almost an additional hour of work for a driver to recover the increased cost of fuel for their vehicles. Currently the average price of petrol in Victoria is \$2 per litre.



Experts have warned that the oil market was very tight even before the Covid-19 pandemic and that increased demand during the recovery phase combined with low incentives for investment in further exploration activity will maintain upward pressure on fuel prices for the foreseeable future.²⁰ While most analysts are forecasting oil prices to

¹⁸ ACCC Media Release, War in Ukraine and OPEC production limits pushed February petrol prices to eight-year high, 14 March 2022 at <https://www.accc.gov.au/media-release/war-in-ukraine-and-opec-production-limits-pushed-february-petrol-prices-to-eight-year-high>.

¹⁹ Source: Australian Institute for Petroleum: https://www.aip.com.au/pricing?search=&f%5B0%5D=facet_fuel_location%3A10&f%5B1%5D=facet_fuel_type%3A8&p_age=1

²⁰ Stuart Marsh, Expert 'wouldn't be surprised' if Aussie petrol prices hit \$2.50, 10 March 2022 at: <https://www.9news.com.au/national/australia-petrol-prices-could-go-as-high-as-250-as-oil-price-skyrockets/1b5627d1-1358-4d8a-8115-fae09572513d>.

rise over the next five-year period, there is a great deal of uncertainty about how high prices will rise and for how long.²¹

In response to the surge in petrol prices, Uber has very recently announced a temporary fuel surcharge, effective for a 60-day period. In a statement by Emma Foley, Uber Australia's Head of Driver Operations and Marketplace, '*record-high prices at the pump*' has resulted in the introduction of a per-km based surcharge paid by riders.²² The surcharge is hoped to "*reduce the burden of the unprecedented nature of recent fuel increases.*"²³

Other transport service providers that operate in unregulated markets have also recently introduced surcharges in the order of 20% to recover the rising cost of fuel.²⁴

Unregulated CPV service providers like Uber are able to respond to market conditions and external factors (like the war in Ukraine) in real time. However, taxis are unable to do the same in respect of fares for unbooked services due to the constraint imposed by the existence of a maximum fare.

Under the ESC's current approach of setting maximum fares for a two-year period based on historic demand, supply and cost data, the taxi industry is simply unable to respond to significant changes in market conditions. There is no apparent mechanism in place that would ensure the ongoing viability of unbooked taxi services if fuel costs were to continue to rise.

(c) ***The existence of a maximum fare for unbooked taxi services is constraining the ability of taxi operators to meet demand for such services at peak times***

The ESC's continued regulation of maximum fares for unbooked taxi services is inhibiting the ability of taxi operators to provide unbooked services at times of peak demand. 13cabs notes that its drivers are not restricted from also operating Uber services and that many choose to do so at times of peak demand when surge pricing takes the price of booked Uber services well above that of the equivalent unbooked taxi service. At peak times (from Thursday to Saturday), 13cabs' drivers have an incentive to operate Uber services rather than taxi services, which results in reduced supply of unbooked taxi services than would be the case if surge pricing was not in place.

At these times 13cabs faces a sharp increase in demand for taxi services (both booked and unbooked) but is unable to keep up with such demand absent vehicles and drivers.²⁵

²¹ John Kemp of Reuters, Oil prices expected to rise with big variation in projections, 19 January 2022 at: <https://www.reuters.com/business/energy/oil-prices-expected-rise-with-big-variation-projections-kemp-2022-01-18/>

²² Emma Foley, Temporary surcharge for trips in Australia, 11 March 2022 at: <https://www.uber.com/en-AU/newsroom/temp-fuel-surcharge-au/>

²³ Ibid.

²⁴ Jenny Wiggins, Australian Financial Review, Fuel surcharges jump to 20pc and beyond, 15 March 2022 at: <https://www.afr.com/companies/transport/fuel-surcharges-jump-to-20pc-and-beyond-20220315-p5a4q7>

²⁵ The shift in passenger preferences from Uber to taxis has been recently reported in the press. See: Henrietta Cook, Surging cost of Ubers giving taxis a chance in a fare fight, 11 February 2022 at: <https://www.theage.com.au/national/victoria/surging-cost->

As a result, many of those passengers that would prefer to book a taxi or hail a taxi from the street to avoid paying surge prices are unable to do so because of a lack of supply. The inability of 13cabs to attract drivers to operate taxi services as opposed to Uber services during such times simply increases the price that passengers ultimately end up paying for CPV services.

If the maximum fare for unbooked services was increased or removed, 13cabs would be better able to attract drivers to operate shifts at peak times so as to better meet passenger demand. This would also assist in relieving the upward pressure on prices for Uber services.

D. 13cabs' initial response to the ESC's stakeholder questions

In the sections below, 13cabs sets out its initial response to the questions raised by the ESC in its Consultation Paper.

1. What are the advantages and disadvantages of our proposed market outcomes approach?

13cabs considers the ESC's proposed market outcomes approach, which it has adopted in previous fare reviews, to be wholly inappropriate at the current time in a largely deregulated environment.

More specifically, in 13cabs' view:

- it is not the role of the ESC to address imbalances in the demand for and supply of taxi services in Victoria more generally (both booked and unbooked) – to do so represents regulatory overreach on the part of the ESC;
- contrary to the ESC's suggestion, an assessment of the balance between the demand for and supply of all taxi services (both booked and unbooked) provides no clear information on whether maximum fares for unbooked services should go up, go down or stay the same;
- the ESC's broader market outcomes framework, which also encompasses an analysis of the cost of operating unbooked taxi services, is opaque and does not provide taxi operators with any certainty that they will be capable of recovering their efficient costs; and
- the backward-looking nature of the ESC's market outcomes approach provides no indication as to whether the maximum price for unbooked taxi services is likely to promote the efficient provision of such services on a forward-looking basis.

[of-ubers-giving-taxis-a-chance-in-a-fare-fight-20220211-p59v1w.html](https://www.heraldsun.com.au/subscribe/news/1/?sourceCode=HSWEB_WRE170_a_GGL&dest=https%3A%2F%2Fwww.heraldsun.com.au%2Fnews%2Fvictoria%2Fcabs-surge-ahead-of-uber-in-price-wars%2Fnews-story%2F4f61bef87926927a968746a0aea45f4d&memtype=anonymous&mode=premium&v21=dynamic-warm-control-score&V21spcbehaviour=append) and Owen Leonard, Herald Sun, Cabs surge ahead of Uber in price wars, 11 February 2022 at: https://www.heraldsun.com.au/subscribe/news/1/?sourceCode=HSWEB_WRE170_a_GGL&dest=https%3A%2F%2Fwww.heraldsun.com.au%2Fnews%2Fvictoria%2Fcabs-surge-ahead-of-uber-in-price-wars%2Fnews-story%2F4f61bef87926927a968746a0aea45f4d&memtype=anonymous&mode=premium&v21=dynamic-warm-control-score&V21spcbehaviour=append.

13cabs elaborates on each of these points further below.

a) ***The ESC's market outcomes approach is inappropriate given its regulatory objective***

The objective of the ESC in relation to the commercial passenger vehicle industry is to promote the efficient provision and use of *applicable unbooked services*, being those services involving journey's that begin in Melbourne, the Mornington Peninsula, Geelong, Ballarat and Bendigo.²⁶

The ESC does not have a broader objective of promoting the efficient provision and use of *taxis that offer applicable unbooked services*, as suggested in its Consultation Paper.²⁷ The ESC's market outcomes approach appears to be directed at this latter aim and is inappropriate in a largely deregulated environment.

The ESC's approach to setting maximum fares for unbooked taxi services was first implemented in 2014 when the ESC regulated maximum fares for all taxi services, both booked and unbooked and since adopting this approach in 2014 the ESC has not increased the maximum fares. At this time the ESC was concerned that the level and structure of regulated fares may be impeding the efficient provision of taxi services, resulting in an imbalance of supply and demand.²⁸

Its demand/supply balance assessment, with its focus in identifying periods of unmet demand and unused capacity, was used to inform the price changes that the ESC considered necessary to achieve more market-based outcomes. These outcomes are what the ESC might expect to occur in a competitive market, absent fare regulation.

Although the ESC's 'market outcomes' approach may have been appropriate at that time, it is not appropriate in a largely deregulated, competitive environment where taxi operators are free to set their own fares for booked services and where booked services are a close substitute for unbooked services. Booked services now comprise over 58 per cent (over the past year) of all taxi trips in metropolitan Melbourne, with taxi operators making decisions as to whether to enter, exit, alter the amount of time they spend on the road or raise or reduce their prices according to demand and supply conditions. In this competitive environment, the ESC has no role in correcting any demand/supply imbalance.

13cabs notes that there are frictions within transport markets such that the supply of taxi services may not always perfectly match demand or move perfectly in line with changes in demand. For example, taxi operators cannot offer services at peak times only, with driver shifts often covering both peak and non-peak periods. There may also be times

²⁶ Commercial Passenger Vehicle Industry Act 2017, s. 110C.

²⁷ ESC Consultation Paper, p. 1.

²⁸ ESC 2014 Final Decision, p. xv to xvii.

such as during the Covid-19 pandemic when demand falls suddenly, which cannot be immediately matched by an equal and offsetting reduction in supply.

Over the course of the Covid-19 pandemic, it is reasonable to expect there to have been a higher degree of unused capacity, with some taxi operators choosing to continue operating in the absence of a clear alternative source of income and in expectation of a recovery in demand at some point in the future. Given these frictions, the ESC should not conclude that historic evidence of unused capacity at any one time is indicative that prices for taxi services are too high or not competitive. Such an imbalance is not cause for regulatory intervention.

To the extent that there is an imbalance in the demand for and supply of all taxi services, there is no justification for the ESC to attempt to address this by way of a change in the regulated maximum fare for unbooked services. Fare changes that are directed towards this broader aim would represent regulatory overreach on the part of the ESC and as discussed below, may not effectively promote the efficient provision and use of unbooked taxi services.

Any framework adopted by the ESC in the context of this Review needs to be squarely focussed on addressing impediments to the efficient provision of unbooked taxi services only.

b) The ESC's assessment of the demand supply balance provides no indication of whether the maximum fee for unbooked services should increase, decrease or remain the same

Contrary to the ESC's view, an assessment of the balance between the demand for and supply of all taxi services (both booked and unbooked) provides no clear information on whether maximum fares for unbooked services should go up, go down or stay the same.²⁹ To the extent that the ESC forms a view that taxis are operating with unused capacity, it cannot simply conclude that this is due to the level and/or structure of the maximum fare for unbooked taxi services (i.e., that the maximum fare for unbooked services is too high such that it would support above normal returns to efficient taxi operators).

Rather, the existence of some unused capacity may simply reflect the fact that it takes time for the level of supply to change in line with changes in demand and that, when the future demand outlook is uncertain, taxis may choose to operate with higher-than-average unused capacity for a period of time.

In assessing whether there is justification for changing (or eliminating) the maximum fare for unbooked taxi services the ESC should instead focus its analysis on whether there are impediments to the efficient provision of unbooked taxi services. In doing so it should

²⁹ ESC Consultation Paper, p. 5.

have regard to the current and future demand for and supply of unbooked taxi services, particularly at times of peak demand.

The purpose of such analysis should be to determine whether the minimum fare is set at a level that is creating distortions in the wider market for CPV services such that drivers are preferencing the provision of one type of service (i.e., booked rideshare services) over taxi services (which may be booked or unbooked).

In 13cabs' view, such preferencing is already occurring and is only likely to worsen going forward as fuel prices continue to rise, the maximum fare for unbooked services continues to fall in real terms and the difference between what drivers can earn operating Uber rather than a taxi service widens.

c) The ESC's framework is opaque and provides no certainty that taxi operators will recover their efficient costs

The ESC has suggested that its assessment of the balance between the demand for and supply of taxi services gives it information on whether maximum fares should go up, go down or stay the same. However, it admits that such an assessment does not tell it what the level of change in maximum fares should be (if any).³⁰

Even if the ESC's historic supply and demand balance assessment did provide it with information of the future direction of the maximum fare for unbooked taxi services (a proposition that 13cabs disagrees with), basing any such decision on the results of such analysis is, even in the ESC's view, open to regulatory error.

In previous fare reviews, the ESC has made its decision largely on the basis of whether it considers there to be unused capacity among taxis. However, the ESC has not articulated what level of capacity utilisation it considers to be efficient. It is not clear at what level of capacity utilisation the ESC would consider reducing or raising the maximum fare for unbooked taxi services.

The ESC is also silent as to how it would balance a finding of unused capacity among taxis (which it suggests implies the maximum fare for unbooked services should be reduced), with a finding that the cost of providing unbooked taxi services has risen to a level such that unbooked taxi service providers are unable to recover their costs at the maximum fare.

In previous fare reviews the ESC has indicated that it places more weight on its analysis of supply, demand and unused capacity than it does on its assessment of the cost of providing unbooked taxi services. In particular, in its 2018 Fare Review, the ESC noted:³¹

³⁰ ESC Consultation Paper, p. 5.

³¹ ESC Final Report 2018, p. 51.

“Estimating the costs of a typical operator of unbooked services is secondary to understanding how changes in fares might affect supply and demand at particular times”

Absent some clear articulation from the ESC as to how it uses the information it gathers to come to a decision, taxi operators have no certainty that they will be capable of recovering the efficient cost of providing unbooked services on a forward-looking basis.

- (d) ***The ESC’s framework is backward looking and provides little information on how the maximum fare will impact the demand for and supply of unbooked taxi services in the future***

The ESC’s market outcomes approach is backward looking in that it considers changes in the level of supply and demand in the recent past to assess whether maximum fares for unbooked taxi services to be applied in future years should go up, down or stay the same. Such an approach implicitly assumes that market conditions are otherwise stable and that a change in the maximum fare will correct any current imbalance in the demand for and supply of taxi services.

13cabs submits that such a backward-looking approach is inappropriate, particularly in a market that has been subject to significant disruption and where future demand and supply conditions are highly uncertain. In 13cabs’ view, at the present time the ESC should be adopting a more forward-looking approach that ensures that taxi operators will be capable of meeting future market challenges such that Victorians can continue to receive high quality, reliable unbooked taxi services as and when they need them.

As noted above, looking forward, two of the most significant challenges that taxi operators are facing in the provision of unbooked taxi services is:

- the ability to attract and retain drivers given current wage levels, which are a function of the maximum fare for unbooked taxi services; and
- the ability of taxi operators to recover their costs when fuel costs are rising sharply and demand remains volatile.

Further, rises in insurance premiums is also a challenge which reinforces 13cabs’ concern that the ESC’s approach to regulating the maximum fare for unbooked services is too slow to respond to changes in market conditions.

Any approach adopted by the ESC for the purpose of this Review should have regard to the significance and likely impact of these challenges.

2. Are there any other assessment approaches that we should consider? What are the advantages and disadvantages of these approaches?

Given that there is little justification for the ongoing regulation of fares for unbooked taxi services, 13cabs recommends that the ESC take a more light-handed approach to its regulatory role.

In 13cabs' view, a preferable approach to the regulation of unbooked taxi services would be for the ESC to decline to set a maximum fare and instead require taxi operators to adhere to the pricing principle that unbooked fares be determined in the same manner that taxi operators estimate booked fares. This approach has a number of advantages over the setting of a maximum fare, including that:

- it would have the effect of protecting any potentially vulnerable passengers of rank and hail services as they would not be charged considerably more than well informed passengers that booked CPV services;
- it would provide taxi operators with greater certainty that they will recover their costs as it would allow fares for both booked and unbooked taxi services to change more quickly and flexibly in line with changes in industry-wide costs;
- it would help alleviate the issue of drivers preferring the provision of rideshare over taxi services at times of peak demand by allowing taxi operators to set their fares in a manner that would better enable them to attract drivers at these times;
- it would remove the maximum fare for unbooked services as an anchor point for booked taxi services; and
- it would be less costly to implement both for taxi operators and the ESC:
 - as discussed above, 13cabs already sets its unbooked fares by reference to this pricing principle; and
 - for the ESC, there would be no need to undertake a data intensive demand/supply balance analysis or cost exercise every two years.

An alternative approach would be for the ESC to increase the maximum fare for unbooked services each year in line with the Fair Work Commission's annual wage review or, at a minimum, the CPI.

3. What costs should we include in our new taxi cost index?

13cabs agrees that the ESC's taxi cost index, which was established in 2014, is now out of date and does not reflect the cost of providing unbooked taxi services in Victoria.

13cabs broadly agrees with the scope of costs that are included in the ESC's existing taxi cost index. However, when developing a new taxi cost index, 13cabs recommends that the ESC have regard to the likely future cost outlook for and the increased risks associated with the provision of taxi services. In particular, the ESC should have regard to:

- forecast increases in fuel prices over the coming years;
- the uncertain demand outlook, including uncertainty around the potential for future lockdowns in Victoria, which may have a significant impact on fleet utilisation; and

- the increased health risks for taxi drivers in operating taxi services during a pandemic.

Each of these factors should be reflected in the ESC's revised cost index, including the industry rate of return.

In 13cabs' view, the ESC should also have regard to differences between taxi operators such that they should not be disadvantaged for their choice of operating model. For example, taxi operators that provide wheelchair accessible services should not be disadvantaged due to their inability to operate lower cost hybrid vehicles.

4. How should we use the Fair Work Commission's annual wage review in our review of fares? Should we use it to determine the change in fares? Should we use the Fair Work Commission's annual wage review to measure changes in the cost of driver labour?

13Cabs submits that should the ESC not accept its preferred and primary proposition (see *question 2 above*) and as an alternative, 13cabs would support the ESC linking changes in the maximum fare for unbooked services to the Fair Work Commission's annual wage review.

5. Are there any barriers to implementing 'time and distance' tariffs that we should consider?

13cabs notes that it currently references both time and distances in its taxi charges for both booked and unbooked trips. However, it sees no reason why the ESC should at this stage in the process of fare deregulation seek to restrict taxi operators from adopting other fare structures.

6. How has the customer experience of catching unbooked taxis changed in the past two years? How has the quality of the vehicles and service changed? How has vehicle availability changed?

As noted above, 13cabs finds it difficult to attract a sufficient number of drivers to operate shifts at times of peak demand. As a result of this and the reduced pool of drivers more generally, there is now a shortage of unbooked taxi services at peak times.

This is unfortunate given consumer dissatisfaction with the quality of service offered by Uber at these times, with cancellation of booking becoming a significant issue. In a recent newspaper article, it was noted:³²

³² Henrietta Cook, Surging cost of Ubers giving taxis a chance in a fare fight, 11 February 2022 at: <https://www.theage.com.au/national/victoria/surging-cost-of-ubers-giving-taxis-a-chance-in-a-fare-fight-20220211-p59vfw.html>

“Many consumers, including Mr Robertson, have noticed that cancellations have become a lot more prevalent on Uber and he suspects drivers are abandoning bookings to chase surge fares.

RMIT senior marketing lecturer Dr Torgier Aleti said consumers were growing tired of surge pricing and taxis were regaining many of the customers they had previously lost to the popular rideshare app.

“Uber prices change at any given time and you have to keep checking it to see if you get a better deal,” he said. “It can be very tiresome and it doesn’t give you a good user experience.”

In addition to this, the average age of vehicles in 13cabs’ affiliated fleet has increased, which may be considered a reduction in quality of service by some passengers. The ability of 13cabs to enforce strong vehicle age limits on vehicles entering the fleet have been weakened since 2020. The onset of the Covid-19 pandemic and the reduced driver and vehicle numbers as has meant that 13cabs has had to adjust its policy.

After 2018, 13cabs introduced a regime where taxi sedans could be no more than 8 years old, Silver Service vehicles 6 years and Wheelchair Accessible Taxis (**WAT**) vehicles 10 years. Over the last 18 months, this has been adjusted to 10 years for a standard sedan, 8 years for Silver Service and 12 years for WAT vehicles.

Static fares and the impact of the pandemic have meant that Taxi Drivers simply do not have the income necessary to allow them to purchase new vehicles. The rising price and scarcity of new vehicles has meant that drivers are forced to look for pre-owned vehicles. As we have seen across the economy, the scarcity of new vehicles has seen a dramatic increase in the demand for, and price of, pre-owned vehicles. Until driver earnings rise and issues in the automotive market correct it is simply not viable for 13cabs to enforce the pre-pandemic vehicle age limit policy. While 13cabs remains committed to ensuring the vehicles in its fleet are safe (via quarterly safety inspections), there is an obvious effect on vehicle quality that is hard to avoid.

7. What changes in the commercial passenger vehicle industry should we consider in setting maximum fares? What is the impact of these changes on the demand, supply, and or the cost of operating taxis?

As noted above, the three main issues that taxi operators are currently facing in the provision of unbooked services in Victoria are:

- the shrinking pool of available labour and the inability to attract drivers to a taxi network;
- the rising cost of operating taxi services, primarily the cost of fuel but also other costs such as insurance; and

- the inability to attract a sufficient number of drivers to take taxi shifts at times of peak demand due to the inability to raise fares for unbooked services above the regulated maximum, with many drivers preferring to operate Uber services at times where surge prices apply.

All three of these issues will constrain the ability of taxi operators to meet the increasing demand for unbooked services going forward as we transition through the recovery phase of the Covid-19 pandemic, particularly in times of peak demand.

13cabs recommends that in order to meet its regulatory objectives, the ESC should adopt a more forward-looking approach in this Review that is squarely focussed on addressing these three main issues. Further, 13cabs is of the strong view that the ESC's determination should lead to an increase in unbooked taxi fares.

Finally, A2B would like to reiterate that Central to achieving this outcome is a Driver's ability to earn a reasonable income and for this to occur, Taxi Drivers must be able to increase their earnings. The only way to ensure this is for fares to rise (noting that the last fare rise in Victoria was 2014). Following the ESC's Review, the ESC determination needs to encompass an increase to unbooked taxi fares.

13cabs is comfortable for the ESC to publish this version of its submission on its website.

13cabs hopes to constructively engage with the ESC on its proposals and response to the Consultation Paper. Should the ESC have any questions on the above, it is welcome to reach out to 13cabs.

Yours sincerely,

David Samuel
Head of Public Affairs