ESSENTIAL SERVICES COMMISSION

Taxi Non-Cash Payment Surcharge Review 2019

Further Draft Decision

11 November 2019

An appropriate citation for this paper is:

Essential Services Commission 2019, Taxi Non-Cash Payment Surcharge Review 2019: Further Draft Decision, 11 November

Contents

Summary

Our further draft decision is that:

- the maximum amounts of non-cash payment surcharges for taxis be reduced to four per cent (incl. GST) for all non-cash payment transactions (non-cash payments)
- but commercial passenger vehicle specific payment instruments (such as Cabcharge) will have a maximum surcharge of six per cent (no GST payable)[1]
- we will delay the implementation of the changes to the maximum non-cash payment surcharge until May 2020.

Our role is to set the maximum non-cash payment surcharge in taxis

Non-cash payment surcharges are fees charged to passengers, on top of the standard taxi fare, for paying by any method other than cash.

Following reforms to commercial passenger vehicle industry legislation, we began a review of the amounts of maximum non-cash payment surcharges (maximum surcharges)[2] for taxis in late 2018.

In setting the maximum surcharge our objectives are to:

- Promote efficiency in the non-cash payment transaction industry by regulating the amount that may be imposed by way of a non-cash payment surcharge. In seeking to achieve this objective, we must ensure that persons facilitating the making of non-cash payment transactions (which include taxi drivers that accept the payment and taxi payment processors that supply the means by which transactions are processed) are able to recover the reasonable cost of accepting and processing such transactions.[3]
- Promote the long term interests of Victorian consumers. In seeking to achieve this objective we must consider the price, quality and reliability of essential services.[4]

[1] The surcharge for usage of the Cabcharge payment instrument is not subject to GST. According to Cabcharge this is because it is a financial transaction (https://accounts.cabcharge.com.au/subpages/update3_cabchargegst.htm) [last accessed 7 November 2019].

[2] For brevity, in this document we have referred to maximum non-cash payment surcharges as maximum surcharges.

[3] Commercial Passenger Vehicle Industry Act 2017 (Vic) s. 122.

[4] Essential Services Commission Act 2001 (Vic), s. 8.

We must also consider a range of other matters: such as the financial viability of the industry and the degree of and scope for competition within the industry.[5] In making a determination we must ensure that the expected costs of the proposed regulation do not exceed the expected benefits, and that the determination takes into account and clearly articulates any trade-offs between costs and service standards.[6] We must also adopt an approach and methodology which we consider will best meet the objectives set out above.[7] Appendix E has more information on our role in regulating the maximum surcharge in taxis.

Analysis suggests the current maximum surcharge is too high

To set a maximum surcharge, we must form a view on how to assess the reasonable cost of accepting and processing non-cash payment transactions (processing non-cash payments).[8] We have used benchmarking and bottom-up cost assessments to inform our view on the reasonable cost of processing non-cash payments. These assessment techniques suggest that the current five per cent maximum surcharge is above the reasonable cost of processing non-cash payments in all cases, except for non-cash payment transactions accepted and/or processed using Cabcharge when an allowance is made for issuing costs.

Our bottom-up cost assessments of the costs incurred by several taxi payment processors showed that a surcharge of between 3.3 and 4.3 per cent (including GST) would allow them to recover their actual costs. However, our bottom up cost assessment also shows that, once issuing costs are accounted for, a maximum surcharge of six per cent (no GST payable)[9] would be required to recover the reasonable costs of Cabcharge. Details of our bottom-up cost assessment can be found in chapter two.

We also undertook benchmarking analysis. It suggested that it may be possible for taxis to process most non-cash payments for as little as 2.5 per cent (including GST). Further information on our benchmarking can be found in chapter three which explains our benchmarking analysis.

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[5] Given that non-cash payment transactions are prescribed services, the maximum amounts of non-cash payment surcharges are prescribed prices and the non-cash payment transaction industry is a regulated industry for the purposes of the Essential Services Commission Act 2001 (Vic). We must also have regard to a number of other matters: Essential Services Commission Act 2001 (Vic), s 8A and s 33 (see Appendix E).

[6] Essential Services Commission Act 2001 (Vic), s 33(4).

[7] Essential Services Commission Act 2001 (Vic), s 33(2) and s. 8A(2).

[8] For brevity, in this document we have referred to accepting and processing non-cash payments as processing non-cash payments.

[9] Cabcharge payment instruments are not subject to GST.

The maximum surcharge will be four per cent for all payment instruments except commercial passenger vehicle specific instruments

Our further draft decision is that the maximum surcharge be four per cent (including GST) for all non-cash payments, except those using commercial passenger vehicle specific payment instruments. Our view is that this maximum surcharge will promote efficiency in the non-cash payment transaction industry (taxi payments industry)[10] and ensure that persons facilitating the making of non-cash payments (taxi payment processors)[11] are able to recover at least the reasonable cost of processing non-cash payments. As such it is consistent with our objectives of promoting the long term interests of Victorian consumers having regard to the price, quality and reliability of essential services.

We have reached this view because:

- our bottom-up cost assessment suggests that the reasonable cost of processing non-cash payments is currently no more than four per cent (including GST) for all payment methods except Cabcharge and
- our benchmarking also suggests that the current maximum surcharge is above the reasonable cost of processing non-cash payments in the taxi payments industry.

In our May 2019 draft decision we adopted a value from the higher end of the range of taxi payment processors' actual costs. In response to concerns raised by stakeholders that this would entrench existing inefficiencies and not reflect community expectations,[12] we further reviewed our benchmarking and bottom up cost assessment. As a result we have amended our approach.

A maximum surcharge of four per cent (including GST) will ensure that taxi payment processors can, on average, recover reasonable costs, which is also consistent with promoting the long term interests of Victorian consumers in promoting efficiency in the industry and the financial viability of the industry. 'Reasonable cost' means costs incurred in processing non-cash payments, which are moderate, not excessive, and within the limits of what it would be rational or sensible to expect for the given level of service quality and reliability. A firm incurring a cost does not, in itself, make a cost reasonable. As a result, using the upper bound of taxi payment processors' actual costs would be likely to allow taxi payment processors to recover more than the reasonable cost of processing

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[10] For brevity, in this document we have referred to the non-cash payment transaction industry as the taxi payments industry.

[11] We acknowledge that this may also be taxi drivers, operators or networks but to make reading easier we have used the term **taxi payment processors** to refer to **persons facilitating the making of non-cash payments** throughout this document.

[12] CALC, submission received 22 July 2019, p.2

non-cash payments. The exclusion of unreasonable costs in determining the maximum surcharge promotes the long term interests of Victorian consumers by promoting efficiency in the industry.

The maximum surcharge for Cabcharge instruments will be six per cent

We propose to set a maximum surcharge of six per cent (no GST payable) for the Cabcharge payment instrument. This maximum surcharge would also apply to any other new commercial passenger vehicle specific payment instruments taxi payment processors may develop.

In our draft decision we set a single maximum surcharge for all payment methods. In making that decision, we included an allowance that would enable a taxi payment processor operating a payment system, such as A2B Australia, to recover at least some of the costs of issuing payment instruments (in the case of A2B Australia, Cabcharge instruments) through the maximum surcharge. Presently, A2B Australia is the only taxi payment processor that issues a commercial passenger vehicle specific payment instrument.

In response to our draft decision A2B Australia submitted that 'all costs associated with issuing … need to be included in a cost stack when determining the reasonable level of the service fee'.[13] We have calculated that if we were to have a uniform maximum surcharge that was high enough to allow recovery of all Cabcharge issuing costs, then passengers that did not use Cabcharge instruments would have to pay more than the reasonable cost of the services they use. We do not think this approach would best achieve our objectives of promoting efficiency in the non-cash payment transaction industry and promoting the long term interests of Victorian consumers. For this reason, we have set a separate maximum surcharge for users of Cabcharge instruments – at six per cent. This allows for recovery of at least the reasonable cost of processing Cabcharge payments.

We also note that the surcharge we set is a maximum only. If A2B Australia did not want to charge a surcharge of six per cent, it would be able to recover the remainder of its issuing costs through direct fees to account holders. That is, a decision to set the maximum surcharge at six per cent for Cabcharge instruments gives A2B Australia (and other firms that wish to offer a similar product) the flexibility to determine, by reference to its commercial considerations, the proportion of issuing costs it will recover via the surcharge.

[13] A2B Australia, A2B's submission responding to the Essential Services Commission's Draft Decision, p. 13, 12 August 2019.

We will provide a transition period to allow the industry to adjust

We acknowledge that these changes are likely to require modifications to taxi payment processors' software and may affect their investment decisions. The taxi payments industry has already had notice that some changes may be made to the maximum surcharge since December last year when we released our consultation paper. It has also been aware that we might reduce the maximum surcharge since May this year. However, to reduce industry disruption caused by re-programming payment terminals, we propose that the changes to the maximum surcharge will come into effect from May 2020. We consider this provides taxi payment processors sufficient time to implement our decision given they will not have our final decision until early next year.

A further draft decision gives stakeholders a fair chance to comment

Following submissions from stakeholders on our draft decision, we have made some significant changes to our position on the maximum surcharge. In order to give all stakeholders a fair chance to comment on those changes we have issued this further draft decision.

Submissions on the further draft decision are due by 16 December 2019.

Indicative timelines

We will make our final decision early in 2020. Table 1.1 gives an indicative timeline for the remainder of the review.

Table 1.1: Indicative dates for remainder of non-cash payment surcharge review

Activity	Indicative timing
Release further draft decision	11 November 2019
Deadline for submissions on draft decision	16 December 2019
Release final decision and (if required) new price determination	February 2020
New price determination comes into effect (if required)	May 2020

How to make a submission

Please email your submission to transport@esc.vic.gov.au. You may also send submissions by mail marked:

Attention: Transport Division
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

Publication of submissions

To promote an open and transparent review process, we will make all submissions publicly available on our website www.esc.vic.gov.au.

We treat all submissions as public information unless the submitter has asked us to treat some or all of a submission as confidential or commercially sensitive. Please clearly specify any information that you do not want to be made public.[14]

Why we regulate non-cash payment surcharges in taxis

In 2012, the Taxi Industry Inquiry recommended that non-cash payment surcharges in taxis be regulated.[15] The inquiry recommended that the maximum surcharge be set at five per cent. Prior to this recommendation it was industry standard to have a surcharge of 10 or 11 per cent on non-cash payments. The inquiry also recommended that we should review the maximum surcharge.

In 2014, legislation came into effect setting the maximum surcharge for taxis at five per cent and giving the commission the power to determine the maximum surcharge.[16] While the definition of the maximum surcharge in the Commercial Passenger Vehicle Industry Act 2017 (Vic) (CPVI Act) refers to all commercial passenger vehicles, it excludes services that are regulated by the Reserve Bank of Australia (RBA).[17] The RBA regulates rideshare and hire car surcharges under the national payment systems framework,[18] as a result we do not regulate non-cash payment surcharges for rideshare and hire car services.

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[14] https://www.esc.vic.gov.au/about-us/our-submission-policy

[15] Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p. 217.

[16] Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013 (Vic), Division 5B.

[17] Commercial Passenger Vehicle Industry Act 2017 (Vic), s.112(2).

[18] RBA 2016, Standard No. 3 of 2016: Scheme Rules Relating to Merchant Pricing for Credit, Debit and Prepaid Card Transactions, May.

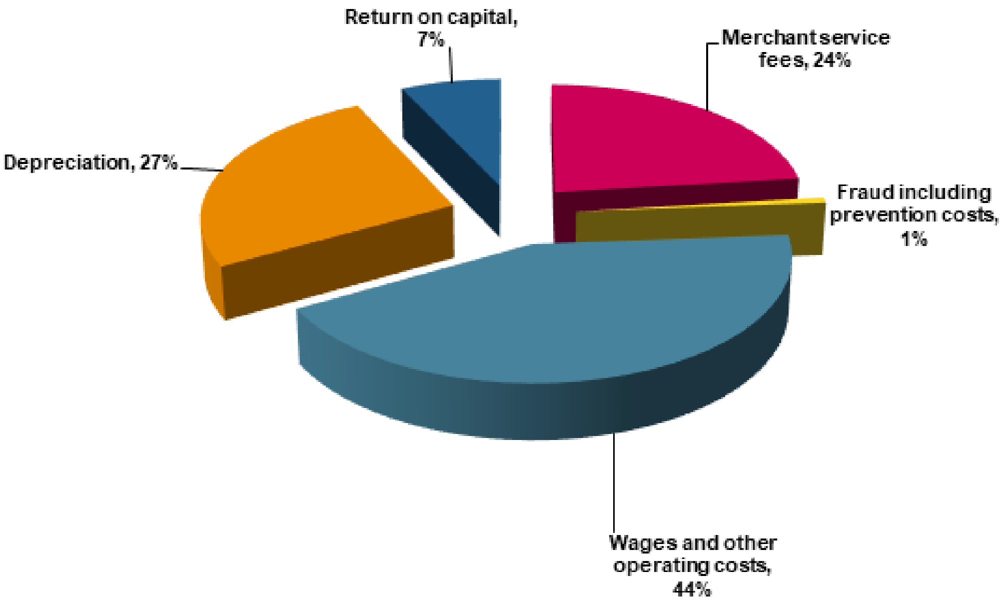
Cost analysis suggests the current maximum surcharge is too high

This chapter summarises how we carried out our bottom-up cost assessment. Appendix B provides a more detailed discussion of our bottom-up cost assessment.

> Our updated bottom-up cost assessment shows the reasonable cost of processing non-cash payments is no more than four per cent.
>
> Our analysis shows that the actual costs of processing non-cash payments for taxi payment processors ranged between 3.3 per cent and 4.3 per cent for most payment methods.
>
> However, we note that if all issuing costs are to be recovered through a surcharge, a maximum surcharge of six per cent for Cabcharge payment instruments would be required.
>
> We used information provided to us by taxi payment processors to conduct this analysis.

Figure 2.1 shows the average share of the cost categories used in our assessment. We have not presented the costs of each payment processor. Taxi payment processors claimed the dollar amounts for the cost categories they incur as commercially sensitive.

Figure 2.1: breakdown of costs associated with processing non-cash payments in taxis (averaged across processors)



Source: taxi payment processors and ESC analysis

The reasonable cost of processing non-cash payments is less than four per cent

Our bottom up cost analysis of taxi payment processors' actual costs show that their costs range from between 3.3 per cent to 4.3 per cent. As a result it is possible that, in the event some taxi payment processors' did not alter their expenditure patterns, under a maximum surcharge of four per cent some taxi payment processors may not be able to recover their actual costs.

However, our bottom-up cost analysis shows that cost reductions are possible. As a result, a maximum surcharge of four per cent will not jeopardise the financial viability of the taxi payments industry as it will allow taxi payment processors to recover the reasonable cost of processing non-cash payments. We are unable to provide further detail publicly about which specific payment processors we believe would be able to reduce their costs to a reasonable level: or which of their costs are above a reasonable level and by how much. Taxi payment processors have claimed that their cost data are commercially sensitive.

Reasonable costs and actual costs will differ

Our decision takes account of the difference between 'reasonable' costs and actual costs. In our Consultation Paper we suggested the following definition of 'reasonable costs':

> We consider the term 'reasonable cost' to mean costs incurred in accepting and processing noncash payment transactions, which are moderate, not excessive, and within the limits of what it would be rational or sensible to expect for the given level of service quality and reliability. The reasonable cost, upon which the maximum surcharge would be based, may differ to any individual firm's actual costs. A firm incurring a cost does not, in itself, make a cost reasonable.[19]

This further draft decision uses this definition.

Examples of why taxi payment processors actual costs may be higher than the reasonable cost of processing non-cash payments include:

- the payment processor's actual costs for its non-cash payments business include costs from other, non-regulated, parts of its businesses
- the payment processor's costs include various incentives provided to drivers to use their services which are not part of the non-cash payment processing service

[19] Essential Services Commission 2018, Taxi non-cash payment surcharge review 2019, Consultation paper, 11 December, p. 6.

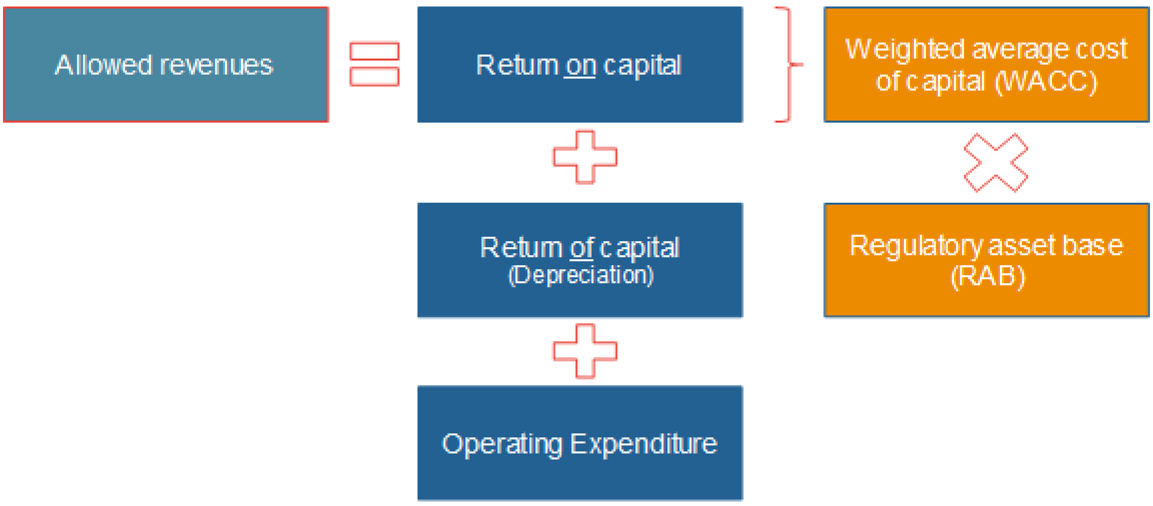
- the payment processor may be operating at such a small scale that it is not possible for it to process and accept non-cash payments at a reasonable cost.

We used a building block model to assess the costs of taxi payment processors

We used a 'building block' model for our bottom-up cost assessment of processing non-cash payments in taxis. The building block model is widely used by economic regulators in Australia to set regulated prices.

Under a 'building block' model, the allowed revenue for a regulated firm is set equal to the sum of the relevant cost components or building blocks for that firm. These building blocks commonly include allowances for a return on capital (or rate of return), return of capital (or depreciation) and operating expenditure. Figure 2.2 below is a high-level illustration of the different components of the building block methodology.

Figure 2.2: illustration of a pre-tax building block model



- **Return on capital**. This is the regulated business' allowed earnings that reflect the opportunity cost of its capital investments. It is calculated by first establishing an asset base comprising the value of the assets used in providing the service (a regulatory asset base, or RAB) and multiplying it by an estimate of the weighted average cost of capital (WACC).
- **Return of capital (also known as depreciation)**. The aim of providing this allowance is to enable the regulated business to recover the purchase price of its investments/assets over their useful life. It is usually calculated as the purchase price of assets divided by their useful life.
- **Operating expenditure**. These are the annual expenses required to run the business. In other words, any costs that can be fully allocated to a single year. Operating expenditure is often recurrent in nature.

After removing costs that are not associated with processing non-cash payments (for example driver commissions or fast food discounts), we then used the remaining costs to estimate the actual building block costs for each firm by summing up all the building blocks. This was turned into the surcharge required by each firm to recover its actual costs of processing non-cash payments by dividing the building block costs for that firm by the total value of fares it processes.

$$Implied\ surcharge = \frac{building\ block\ costs}{total\ fares\ processed}$$

We excluded costs that are not associated with processing non-cash payments

It is important that the building blocks are limited to the cost of services that are incurred in processing non-cash payments. Including other costs would overstate the required revenue and allow regulated businesses to potentially recover the costs of unregulated services from the users of its regulated service (i.e. non-cash payment transactions). In other words, passengers would be charged for services they do not use.

The Taxi Industry Inquiry, the recommendations of which were the basis for the legislation under which we regulate, identified this issue in the taxi payments industry. It noted that taxi payment processors used surcharge revenue to provide rebates to drivers, and networks, that used their systems. It also noted that these rebates, which were not linked to any identifiable cost, served to demonstrate that the surcharge exceeded the resource cost of providing the payment service.[20]

When assessing the costs submitted to us by taxi payment processors, we identified that they continued to provide rebates to drivers and networks. In addition to this they also provide additional services to drivers, funded with revenue from the non-cash payment surcharge, that are not reasonable costs of processing of non-cash payments. These include things such as: fuel discounts, immediate cash out facilities and taxi meter applications.

Where possible we excluded costs that are not reasonable costs of non-cash payments

Where possible, in our bottom-up cost assessment we have removed the cost of additional services that are not reasonable costs of processing non-cash payments. However, the level of detail in the information voluntarily provided to us by taxi payment processors does not allow us to remove all costs related to non-regulated services with accuracy. Where we have been unable to precisely identify these costs, rather than risk removing reasonable costs, we have left them in our estimate of actual building block costs. A notable example of this is the taxi meters that are part of A2B Australia's payment terminals.

[20] Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p.208.

For this reason it is possible that our bottom-up cost assessment of taxi payment processors includes some element of costs related to non-regulated services. We are in the process of developing a formal request that would seek cost data from taxi payment processors. After review of the data available to us in reaching this further draft decision, we acknowledge that tailored cost data may increase our understanding of what reasonable costs might be. We highlighted this in our May draft decision, signalling that we would consider the nature of the information provided to us and the form it is provided in. As such, we intend to use our compulsory information collection powers now, while being mindful to minimise regulatory burden. We note that disaggregated cost information has not been provided to us in an appropriate form voluntarily, and so it is appropriate for us to use our formal information gathering powers.[21]

To estimate the actual costs of taxi payment processors of processing non-cash payments, in our bottom-up cost assessment we removed the costs associated with the following services, facilities and incentives, where the data provided allowed us to isolate those costs. These are costs that we do not consider to be reasonable costs of processing non-cash payments.

- **Commissions paid to drivers**
- **Commissions paid to networks**
- **Vouchers, fuel discounts, refuelling and car wash stations, driver lounge and fast food facilities**
- **Docket cashing:** Taxi drivers can withdraw their non-cash takings immediately from taxi payment processors' cashing booths or agents. This service is not part of processing non-cash payments. Further, taxi payment processors, or their agents, sometimes charge drivers a fee for these services. These fees should recover the costs of docket cashing.
- **Booking services:** Booking services are not part of processing non-cash payments.
- **Driver payment cards:** These costs are not reasonable costs of processing non-cash payments. Taxi payment processors could avoid these costs by depositing payments directly to taxi drivers' bank accounts.
- **Lost property:** This is a business administration cost that is recovered through taxi fares.
- **Donations:** Some taxi payment processors also noted they provide donations to charities. This is not a reasonable cost of processing non-cash payments.

Another exclusion, although not in the nature of a service, facility or incentive, is an allowance for company tax. We did not include a tax building block because we have provided an allowance for tax by using a pre-tax WACC to calculate the return on capital. We have used a pre-tax WACC as

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[21] Section 37 of the Essential Services Commission Act (2001) provides for the commission to request information from a regulated entity.

this avoids the difficulties of allocating taxation costs to different parts of businesses providing different services and operating across different states.

Taxi payment processors provided further information on their costs

Following our May draft decision, taxi payment processors provided further information on their costs, which we have addressed in this further draft decision.

- **Commissions paid to networks**: A2B Australia pays networks fees to install, maintain and administer payment terminals.[22] We are uncertain whether the fees paid are entirely for these services, or include an element of commission or rebate, which are not reasonable costs of processing non-cash payments. Information from other payment processors shows that a lower fee is enough to cover the costs of administering similar services. Further, network fees paid by drivers and operators also cover some of the installation and administration cost of A2B Australia's terminals. This indicates that the payments may include an element of commission or rebate. Also in its ASX statement in response to our draft decision, A2B Australia noted that it 'can mitigate a potential $1.3m impact of the proposal by adjusting payments to other participants in the value chain, such as Taxi Networks and Drivers'.[23] This suggests that the fees paid by A2B Australia to networks are higher than what is needed for networks to maintain, repair and administer payment terminals.
- **Cashing booths (also called driver centres/lounges):** Driver centres/lounges which are used to cash dockets, are also used for driver sign ups and queries.[24] While docket cashing is not a cost of processing non-cash payments, driver sign up and queries do fall within that category. As a result, we accept some of the cost of driver centres and lounges should be covered by the maximum surcharge, which we have included in our bottom-up cost assessment.
- **Issuing costs:** A2B Australia issues its own payment instrument: Cabcharge. In response to submissions from A2B Australia,[25] we have included the cost of issuing Cabcharge products (for example: card printing, account management, working capital to fund account holder credit). Given that a share of issuing costs are recovered through merchant service fees for other payment instruments, we consider that at least a share of the Cabcharge instruments' issuing costs are a reasonable cost of processing non-cash payments. Our bottom up cost assessment shows that the reasonable cost of processing Cabcharge is at most six per cent.

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[22] CRA, Assessment of A2B's reasonable costs of processing non-cash payments, p. 19, 12 August 2019.

[23] A2B Australia, Victorian Essential Services Commission draft paper on taxi non-cash payment processing fee, 31 May 2019, available at: https://www.asx.com.au/asxpdf/20190531/pdf/445hvh8vq4kl59.pdf [last accessed 25 August 2019].

[24] Live Group, submission received 5 August 2019, p.5.

[25] A2B Australia, A2B's submission responding to the Essential Services Commission's Draft Decision, p. 13, 12 August 2019.

- **Misclassified costs:** Some payment processors submitted incorrect cost information to us while we were preparing our draft decision. We have updated our bottom-up cost assessment after considering updated information from those processors.

Benchmarking suggests the current maximum surcharge is too high

This chapter summarises how we carried out our benchmarking assessment. Appendix C provides a more detailed discussion.

As part of our benchmarking, we looked at charges from payment processors to small businesses for processing non-cash payments. Those charges represent the **cost** of processing non-cash payments for small businesses with revenues similar to those earnt by taxis. We have used those costs as our benchmarks. Our benchmarking does not include the costs of issuing payment instruments or costs of blended services (for example, providing payment processing **with** credit services).

Our benchmarking analysis suggests that the current maximum surcharge paid by passengers is higher than the reasonable cost of processing non-cash payments. It also suggests that it would be possible for taxi payment processors with actual costs of more than four per cent to reduce them to a reasonable level.

This chapter summarises our benchmarking analysis. Appendix C contains more details. All surcharges in this chapter are presented inclusive of GST.

Our benchmarking suggests the current maximum surcharge should be reduced

Our benchmarking suggests that taxis may be able to process non-cash payments for a surcharge as low as 2.5 per cent.

We consider that payment terminals from banks and merchant aggregators, in Australia, are appropriate services to consider when benchmarking the reasonable cost of processing non-cash payments. These payment terminals provide similar services to consumers that payment terminals in taxis provide to passengers: this makes the services suitable for benchmarking purposes with appropriate adjustments to reflect taxi payment specific issues.

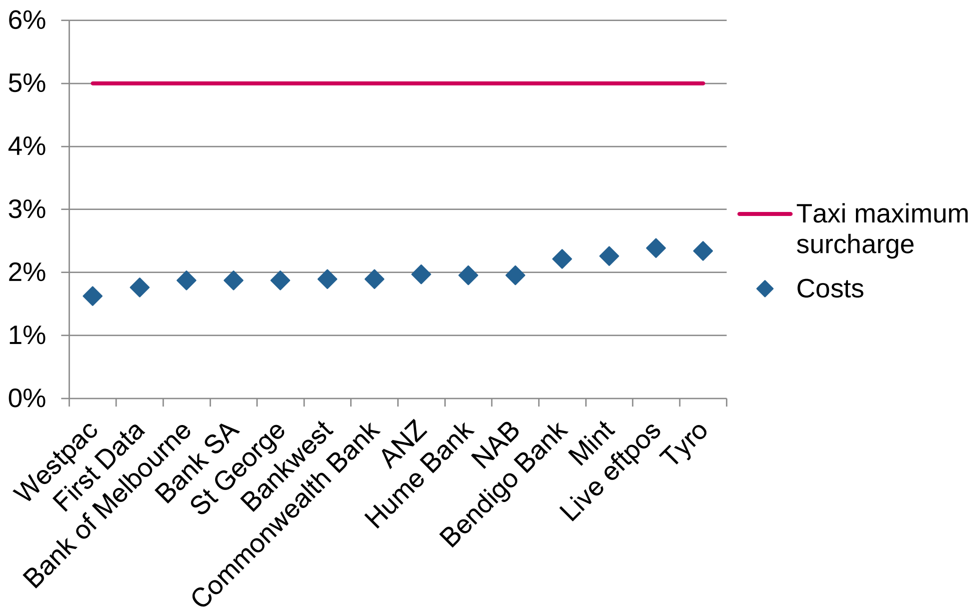
We estimated benchmarks for EFTPOS and mPOS terminals generally available to small businesses. We have not used mPOS terminals as relevant benchmarks in our assessment.

An EFTPOS terminal is a standalone terminal while an mPOS terminal is a card reader which connects to a smartphone or tablet to process non-cash payments. EFTPOS terminals can provide the same service as the terminals currently used by taxi service providers, while mPOS terminals provide a slightly different service than the EFTPOS terminals currently used by taxi service providers. The main difference is that most mPOS terminals cannot automatically calculate surcharges and some cannot print receipts. Because of this, we have not used mPOS terminals as relevant benchmarks. We consider that the costs of EFTPOS terminals are likely to be more comparable to the primary terminals used in the taxi payments industry, and so have used them for our benchmarks. All payment terminals included in our benchmarking have 3G mobile connectivity and could be used in a taxi.

The current maximum surcharge is high relative to the cost of payment processing in other industries

Our benchmarking shows that small businesses in other industries, with similar revenues to taxis, could process non-cash payments for a cost of between 1.6 and 2.3 per cent. Figure 3.1 shows a comparison of the current maximum surcharge and the costs of different offers for EFTPOS terminals from banks and other financial institutions in the broader economy.

Figure 3.1: offers for EFTPOS terminals (one terminal)



Source: payment processors' websites, taxi payment processors and ESC analysis

Of particular note is that a small business with monthly revenues similar to the typical taxi could process non-cash payments using a Live eftpos terminal at a cost of 2.4 per cent of their revenues. Live eftpos also provides a taxi non-cash payments service using exactly the same terminals. The only difference is that the terminals provided to taxis have different software. This software provides additional functionality such as automatic surcharging and specialised receipt information.

We accounted for the particular circumstances of the taxi payments industry in our benchmarking

In considering benchmark offers from other payment processors, we recognise that there are some factors that could influence the extent to which we can apply our benchmarking to the taxi payments industry. The main differences between taxis and merchants in the broader economy are that taxis often use multiple payment terminals.

As a condition of their vehicle registration, all taxis must have a terminal that can process multi-purpose taxi program (MPTP) subsidies (see appendix C for further details).[26] These primary terminals are often provided by the taxi's network. However, in discussions with drivers, networks and payment processors, we learnt that many drivers also have a secondary terminal to benefit from the better terms, including incentives and cash flow control, offered by other taxi payment processors.

We accounted for the practice of having multiple terminals by estimating the benchmark cost of processing non-cash payments for a driver possessing multiple terminals. The difference between having one terminal or multiple terminals is that with multiple terminals fewer transactions are processed through each terminal. The costs of processing non-cash payments must then be recovered from a smaller number of transactions.

Another key difference is that there is a high churn of taxi drivers and that drivers might not meet the criteria to receive a payment terminal from a traditional financial institution. We have not made an adjustment for this in our benchmarking, but cost data we collected from payment processors suggest that this is likely to lead to an increase in the required surcharge of less than a percentage point.

Our consideration of other potential differences between non-cash payments in the taxi payments industry and the broader economy are explored in detail in appendix C.

With multiple terminals non-cash payments can be processed for less than five per cent

When assuming that multiple terminals are used, our benchmarking shows that the cost of non-cash payment processing for small businesses, with similar revenues to the typical taxi, ranges from 2.4 per cent to 3.7 per cent. Figure 3.2 shows a comparison of the current maximum surcharge and non-cash payment processing offers for small businesses using multiple terminals.

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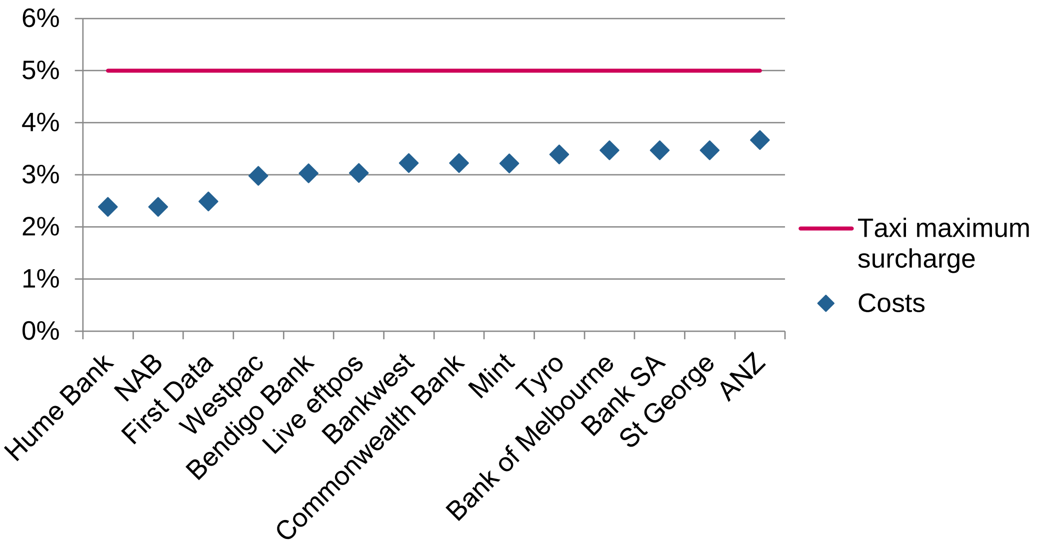
[26] CPVV, commercial passenger vehicle registration conditions – definitions, available at: https://cpv.vic.gov.au/vehicle-owners/registration-conditions/commercial-passenger-vehicle-registration-conditions-definitions (last accessed 4 April 2019).

Figure 3.2: offers for EFTPOS terminals (multiple terminals)



Source: payment processors' websites, taxi payment processors and ESC analysis

Again we note that, assuming multiple terminals are used, Live eftpos can provide non-cash payment processing at a cost of three per cent.

There were no services directly comparable to the Cabcharge payment instrument

We did not identify any benchmark services that are directly comparable to Cabcharge payment instruments. Cabcharge payment instruments provide a service similar to charge cards such as American Express and Diners Club, but they also provide account holders with additional services. In particular they allow greater control of card usage. This is done through using a combination of different payment instruments (single use cards, plastic cards, and digital passes) and geographical usage information.

For this reason our estimate of the quantum of the reasonable cost of processing non-cash payments using Cabcharge payment instruments is based mainly on our bottom-up cost assessment.

We estimated our benchmarks using EFTPOS offers and revenue data

Our benchmarks are calculated using monthly turnover for non-cash payments for the typical taxi and the monthly cost of processing non-cash payments.

Monthly turnover

The monthly revenue per taxi is derived from the data provided by taxi payment processors. It is calculated as the average fares processed per terminal multiplied by two. This assumption has been made to reflect the fact that many taxis use two (or more) payment terminals. This assumption produces a monthly non-cash payment turnover of $4,057 per taxi. Data we received from taxi payment processors showed the average monthly turnover per terminal is $2,028. This number differs to the figure we used in our May draft decision as we have received additional revenue information from taxi payment processors.

We are aware that in some cases more than two terminals may be in use in each taxi. Many drivers have their own terminal. Often these drivers do not own their own taxi and work as bailee drivers in several taxis. However, this will not affect our benchmarking results for multiple terminals (figure 3.2). Our benchmarking is based on actual monthly turnover **per terminal** as provided by taxi payment processors. This means that regardless of the number of terminals we assume are in use in the typical taxi, the monthly turnover per terminal would be the same. Only the total turnover for the typical taxi would be higher leading to even lower implied surcharges for our single terminal benchmarking (figure 3.1).

Monthly cost

The monthly cost is based on publicly available offers for EFTPOS terminals for small businesses from payment processors servicing the entire economy (including taxis if drivers chose to utilise their services). This includes monthly fees, merchant service fees, and business account fees.

There will be two maximum surcharges

Our further draft decision is that there will be two maximum surcharges: one for Cabcharge instruments (or any new taxi specific payment instruments) and one for all other payment instruments.

We have made this change after considering submissions from stakeholders. A2B Australia submitted that the maximum surcharge should be set at a level that allows it to recover the costs of issuing its Cabcharge payment instruments through the surcharge.[27] Other taxi payment processors do not incur these costs.

We accept that it is reasonable for A2B Australia to have the flexibility to recover some, or all, of the costs of Cabcharge payment instruments through a higher surcharge. However, we do not consider it reasonable to increase the maximum non-cash payment surcharges for all payment instruments to reflect Cabcharge-specific costs. Such an approach would mean that passengers that did not use Cabcharge instruments could pay more than the reasonable cost of the services they use. We do not think this approach would best achieve our objectives of promoting efficiency in the non-cash payment transaction industry and promoting the long term interests of Victorian consumers.

To provide A2B Australia with the flexibility to determine how to recover its issuing costs, we have included a separate maximum surcharge for Cabcharge instruments. At present, A2B Australia is the only taxi payment processor operating a payment scheme. In the event other taxi payment processors operate a payment scheme for taxis in the future, we would need to consider whether the same or different maximum surcharge was appropriate. Similarly, if A2B Australia were to significantly increase the fees it charges its account holders we could vary our determination to decrease the maximum surcharge for Cabcharge to reflect the increase in account fees.

The maximum surcharges

Our further draft decision is to set a:

- maximum surcharge of six per cent (no GST payable) for Cabcharge payment instruments
- maximum surcharge of four per cent (incl. GST) for all other payment instruments.

[27] A2B Australia, A2B's submission responding to the Essential Services Commission's Draft Decision, p. 13, 12 August 2019.

Our updated bottom-up cost assessment showed the actual costs of processing non-cash payments in taxis was between 3.3 per cent and 4.3 per cent. The average cost was four per cent.

However, our bottom-up cost assessment for Cabcharge payment instruments show that if it were to recover all of its issuing and reasonable acquiring costs through a surcharge, it would require a six per cent surcharge on Cabcharge payment instruments.

Reasons for the change in approach to Cabcharge instruments

In our May 2019 draft decision, we set a single maximum surcharge for all types of payment instruments. In making that decision, we did not include all issuing costs for Cabcharge instruments in our bottom-up cost assessment. However, as noted, we did make some allowance for issuing costs through the inclusion of a notional “interchange fee”, as this was consistent with how card schemes such as Visa and MasterCard operate. That is, some of the recovery of issuing costs effectively occurs on the purchasing side of transactions rather than entirely from card issuing in these card schemes, as interchange fees flow from merchants/acquirers to issuers. We considered that limiting the value of issuing costs recoverable through the surcharge to a notional interchange fee would not affect A2B Australia’s financial viability, as A2B Australia would be able to recover those costs directly from Cabcharge account holders.

In response to our draft decision, A2B Australia submitted that it should be allowed to recover a greater share of Cabcharge issuing costs through the maximum surcharge.

Following consideration of submissions on our draft report, we have decided that we should set a separate surcharge for Cabcharge payment instruments.

The two primary reasons for the change are that:

1. A2B Australia expressed concern that our proposed single maximum surcharge would not allow it to recover reasonable costs of supplying its Cabcharge payment instruments. A2B Australia was also concerned that restrictions on the share of issuing costs it can recover through the maximum surcharge could put it at a competitive disadvantage to other three party payment schemes.[28]
2. A2B Australia’s cost information indicates that if all Cabcharge issuing costs are included, the maximum surcharge would have to be much higher than it would need to be to recover the reasonable cost of processing other payment instruments commonly used in taxis, such as Visa or MasterCard.

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[28] CRA, Assessment of A2B’s reasonable costs of processing non-cash payments, pp. 14-15, 12 August 2019.

Our objectives require us to ensure that taxi payment processors can recover reasonable costs, but not to set maximum surcharges that would entrench inefficiencies or not be in the long-term interests of Victorian consumers.

If we changed our approach to use A2B's issuing costs for Cabcharge instruments to set a single maximum surcharge that covered all payment instruments, as only A2B Australia terminals process Cabcharge instruments and not all A2B terminal transactions are for Cabcharge instruments, it would mean that, in the event the maximum surcharge was applied:

- a passenger making payment through a Cabcharge terminal using another instrument (for example, American Express, Eftpos, MasterCard, or Visa) would be paying for some of the costs of supplying Cabcharge instruments
- passengers making payment through terminals that cannot process Cabcharge cards would also have to pay more than the reasonable cost of supplying acceptance and processing services
- more than reasonable costs would be recovered in total from Victorian consumers, which is inefficient and would not be in the long-term interests of those consumers.

For these reasons, setting a single maximum surcharge would not achieve our objectives of promoting efficiency in the non-cash payment transaction industry and promoting the long term interests of Victorian consumers.

Two maximum surcharges would better meet our objectives

Setting a separate surcharge for Cabcharge instruments allows surcharges for processing them to more closely reflect their costs. It will also allow A2B to determine an appropriate balance of charges to facilitate the recovery of its issuing costs in processing Cabcharge instruments. As noted, existing card schemes, such as Visa and MasterCard, facilitate the recovery of some card issuing costs from acquiring transactions, through interchange fees. Other card schemes, such as Amex and Diners, have no interchange fees because they act as both acquirers and issuers, but may recover a greater share of costs from scheme merchants and transactions than from card holders. Cabcharge is broadly similar to those card schemes as it has no interchange fees.

Cabcharge account holders are ultimately responsible for the cost of account fees and non-cash payment surcharges. In this respect, they will be no worse off if A2B Australia recovered its issuing costs though account fees or through a higher surcharge on fares. We have therefore decided that:

- we will exclude Cabcharge issuing costs from our bottom up assessment of acceptance and processing costs
- we will include issuing costs in determining a maximum surcharge for payment via Cabcharge instruments. This will allow A2B Australia to choose how it recovers its issuing

costs through the higher surcharge (up to six per cent) or, alternatively, through direct fees to account holders.

We consider that this approach will promote efficiency and the long-term interests of consumers, while ensuring the recovery of reasonable costs. It also takes into account the degree of, and scope for, competition within the industry. Our surcharge will not put Cabcharge at a disadvantage relative to other payment schemes. We note that the Taxi Industry Inquiry found that “the proposed regulation of service fees should not limit Cabcharge’s ability to compete with other payment instruments (such as Visa branded cards). Cabcharge can still compete with other non-taxi-specific instruments because it has a billing relationship with its card holders and can levy any fees associated with the provision of payments services.”

Having a different maximum surcharge for Cabcharge payments should not be confusing for passengers

In general, we would prefer having a single surcharge to avoid creating customer confusion and potential for mis-charging; a point stakeholders agreed with. As discussed in our draft decision, we consider the inconvenience of having different surcharges for each different payment method was likely to outweigh the potential benefits in most cases.

However, we do not expect that a separate maximum surcharge for Cabcharge payment instruments would create confusion among consumers. Cabcharge instruments are generally used by employees of corporations and government agencies which have corporate accounts with A2B Australia. When taking a taxi, a passenger with a Cabcharge instrument will use the instrument issued by their employer. It is their employer’s account manager who will make the decision on which payment method to use for their business: not the employee. Further, the Cabcharge payment system offers benefits to users of that system who will have an understanding of those benefits and, in turn, understand that some payment for that benefit may take the form of a higher surcharge for non-cash payment in the event A2B Australia elects to recover some or all of its issuing costs via the surcharge. Passengers that do not use Cabcharge cards will not be affected.

However, setting different maximum surcharges for each and every other payment method could lead to significant confusion and disagreement between passengers and drivers. There are many different payment methods available and, in most cases, with the exception of Cabcharge (or any new taxi-specific) instruments, differences in processing cost are relatively small.

Stakeholder views were mixed

In our May draft decision, we sought feedback on our proposed decision to reduce the maximum surcharge to 4.5 per cent and delay the implementation of any changes until 1 January 2020.

We received a total of 10 submissions from consumers, taxi operators, card scheme providers, payment processors and peak bodies. Of these, one requested anonymity, two asked that their submission not be published, and one did not identify themselves. This chapter summarises stakeholders' views. Appendix J contains more details about the submissions we received and our response.

Stakeholder views on the level of the surcharge were mixed

Taxi payment processors and the Victorian Taxi Association (VTA) stated that 4.5 per cent was too low.[29] An anonymous stakeholder stated 4.5 per cent is appropriate[30] while consumers and a payment scheme said that 4.5 per cent is too high[31].

Our benchmarking and bottom up cost assessments show that the current maximum surcharge of five per cent is above the reasonable cost of accepting and processing non-cash payments.[32] Given there are taxi payment processors that can accept and process non-cash payments for as little as 3.3 per cent we consider it is unlikely a maximum surcharge of four per cent would jeopardise the financial viability of the taxi payments industry.

[29] Live group, submission received 19 July 2019, p.3; Victorian Taxi Association, submission received 22 July 2019; A2B Australia, submission received 12 August 2018, p. 2; NBG, submission received 22 July 2019, p.1.

[30] Anonymous, submission received 19 June 2019.

[31] Janette, submission received 17 June 2019; CALC, submission received 22 July 2019, p. 2; Visa, submission received 22 July 2019, p.1

[32] Except for Cabcharge payment instruments.

Some stakeholders said we excluded some reasonable costs

Some stakeholders said that we excluded some costs, they considered to be reasonable, from our bottom up cost assessment. Submissions were made on: issuing costs, agent fees, network commissions, and cashing booths. We have assessed these submissions and where appropriate have made changes to our bottom up cost assessment. Further detail can be found in chapter 2 and appendix B.

Some stakeholders disagreed with our approach to reviewing the maximum surcharge

Two stakeholders made submissions on our interpretation of the term ‘reasonable cost’ in section 122(2) of the Commercial Passenger Vehicle Industry Act 2017 (Vic).

In our consultation paper we stated our view that the term 'reasonable cost' means costs incurred in accepting and processing non-cash payment transactions, which are moderate, not excessive, and within the limits of what it would be rational or sensible to expect for the given level of service quality and reliability. We also noted that a firm incurring a cost does not, in itself, make a cost reasonable.[33]

Cabfare submitted that the term ‘reasonable cost’ means the actual costs of taxi payment processors.[34] On the other hand, CALC submitted that ‘the better approach would be to say that it is reasonable to only recover efficient costs’ as ‘it does not align with community expectations for reasonable costs to be applied in a way that incorporates existing cost inefficiencies’.[35]

Our view is that the meaning of the term reasonable cost lies somewhere between these two proposed definitions. As a result, we have amended our approach such that our maximum surcharge now reflects the average actual costs of taxi payment processors instead of the highest actual cost. It would not be reasonable for a taxi payment processor to recover its actual costs regardless of how high those costs may be. On the other hand, if policy makers had intended for only the recovery of efficient costs to be permissible, they would have used the term ‘efficient’ instead of ‘reasonable’.

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[33] Essential Services Commission, Taxi non-cash payment surcharge review 2019: consultation paper, December 2018, p 9.

[34] Cabfare, submission received 22 July, p. 2.

[35] CALC, submission received 22 July 2019, p.2

Stakeholder views on the implementation date were mixed

One consumer agreed with the implementation date of 1 January 2020.[36] Other consumer representatives said that the 4.5 per cent maximum surcharge should come into effect sooner.[37] Taxi payment processors said that the 4.5 per cent maximum surcharge should come into effect later.[38]

The Consumer Action Law Centre was of the view that providing a transition period prefers the interests of industry over consumers and penalises consumers for delays caused by industry.[39]

On the other hand, taxi payment processors noted that a change to the surcharge will likely require modification to payment terminal software. The VTA also noted that New Year's Day is a bad time to implement software changes as many support staff will be on holiday.[40]

As we will not have made our final decision by 1 January 2020 our further draft decision is that the implementation of changes to the maximum surcharge will be implemented from May 2020. As we intend to make our final decision in February we consider this will give taxi payment processors sufficient time to implement the necessary software changes.

While this delay will mean consumers continue to pay a five per cent surcharge until May, they will also benefit from a lower surcharge than originally proposed in our May draft decision.

Confidential and anonymous submissions

A2B Australia voiced concern about the weight we place on anonymous and confidential submissions. It stated that we 'placed a very heavy reliance [on submissions provided by] persons that did not, nor are capable of providing any evidence regarding the reasonable cost of accepting and processing in-Taxi non-cash payments'.[41] It also stated that we 'not only collected very little information and evidence from those persons who are in a position to provide the most probative value and greatest potential to assist the Commission but the Commission chose to discount that evidence when it did not support their erroneous conclusion'.[42]

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[36] Janette, submission received 17 June 2019

[37] Anonymous, submission received 19 June 2019; CALC, submission received 22 July 2019, p.3

[38] A2B Australia, submission received 24 June 2019, p.4; [redacted]

[39] CALC, submission received 22 July 2019, p.3

[40] VTA, submission received 22 July 2019, [redacted]

[41] A2B Australia, submission received 12 August 2019, pp. 3-4.

[42] A2B Australia, submission received 12 August 2019, p.3.

Both statements are incorrect. A2B Australia may have come to these conclusions as taxi payment processors often provided information to us on the basis that it be kept in confidence. Due to taxi payment processors' requests (including requests from A2B) that we treat their commercially sensitive information as confidential we have been unable to publish everything we have considered in our public consultation documents. We have received information from all major merchant aggregators servicing taxis operating in Victoria that we are aware of. We have given this information appropriate consideration.

Where stakeholders have made blanket confidentiality claims over their submissions, we requested they provide redacted versions of their submissions. The purpose of this was to ensure all stakeholders can evaluate and respond to submissions: where the information in those submissions is not commercially sensitive. Not all stakeholders provided redacted submissions; so in those cases we have been unable to publicly test the veracity of the information contained in those submissions. As the information in those submissions cannot be verified we have less confidence in those submissions and, as a result, have placed less weight on them.

Inquiry into the CPVI Act

In our May draft decision we proposed that any potential changes to the maximum surcharge would commence in January 2020. A2B Australia submitted that we should defer our decision until after the Victorian Government's response to the legislative council's report on the legislated reforms affecting the Commercial Passenger Vehicle Industry (CPVI Inquiry). A2B Australia stated that 'the inquiry's findings on the impacts of the CPV reforms will be highly relevant to [our] assessment' because 'one of the key effects of the CPV reforms on the personal transport industry has been to increase substantially the costs to in-Taxi payment processors'.[43]

We will not delay our final decision until after the Victorian government's response to the CPVI Inquiry. The Victorian Government has given us the task of regulating the non-cash payment surcharge. It is not practical for regulators to cease operations while their industry is under review. They have responsibilities to fulfil under existing legislation regardless of the policy work program.

Furthermore, waiting until the government responds to the CPVI inquiry's findings would suggest we will not determine the maximum surcharge until the second half of 2020. This is based on the reporting date for the inquiry being 28 November 2019, and that government will formally respond within six months of this.

[43] A2B Australia, submission received 24 June 2019, pp. 2-3.

Appendix A: the non-cash payments supply chain

This section explains how non-cash payment systems work in general and how they are similar or different in the taxi payments industry.

Non-cash payment systems

Non-cash payment systems allow consumers to pay, and businesses to accept payment, for goods and services without using cash. There are two main elements of non-cash payment systems:

- the payment instruments consumers use: cheques, credit, debit and charge cards
- the payment arrangements or card schemes in place which would ensure funds move to and from the accounts of relevant financial institutions.

The Reserve Bank of Australia reports that between 2007 and 2016 the proportion of non-cash payments of all transactions in Australia increased from 31 per cent to 63 per cent.[44] Over the same period, the share of cash payments decreased from 69 per cent to 37 per cent.

Payment instruments

There are many different types of non-cash payment methods. These include cheque, cards and vouchers. The most commonly used form of non-cash payment in Australia is cards. In 2016 credit and debit card payments made up 83 per cent of all non-cash payments.[45] Some of the most commonly used cards are Visa, MasterCard, and eftpos.

When a credit or charge card is used, cardholders pay for goods and services using credit from the financial institution that issued the credit or charge card. They may be used by the cardholder at the point of sale (card present) or via phone or the internet (card not present).

When debit cards are used to purchase goods or services, cardholders use money they have deposited in an account. There are two types of debit cards in Australia: the eftpos system and scheme debit cards. Eftpos cards are issued by Australian banks and are mainly used domestically. Eftpos card transactions may only occur in person at the point of sale (card present). Scheme debit cards are offered by Visa and MasterCard. Scheme debit cards can be used inside and outside Australia for either card present or not present transactions.

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44 RBA (2017), How Australians Pay: Evidence from the 2016 Consumer Payments Survey, Research Discussion Paper 2017-04, July, p.2.

45 RBA (2017), How Australians Pay: Evidence from the 2016 Consumer Payments Survey, Research Discussion Paper 2017-04, July, p.2.

Payment arrangements or card schemes

A payment arrangement or a card scheme is a payment network which consumers and businesses can access to make or accept payment. The network is accessed most commonly by payment cards.

The two most common types of card schemes are four-party and three-party schemes which are discussed in detail below.

Key players

There are five main players in the non-cash payment system.[46] They are:

- **cardholders –** the person or customer who has been issued the card
- **cardholder banks (also called issuing bank or issuer) –** the bank that issues the card to the cardholder. It provides credit in the case of credit cards or access to the cardholder's funds in the case of debit cards
- **merchants –** the person or business accepting a card as payment for goods or services
- **merchant banks (also called acquiring bank or acquirer) –** the institution that provides payment to merchants who have accepted a card as payment. It is responsible for requesting authorisation of a transaction from the cardholder's bank. It also supplies the payment terminals to merchants
- **payment schemes –** these schemes provide a range of services including transaction processing and international networking.

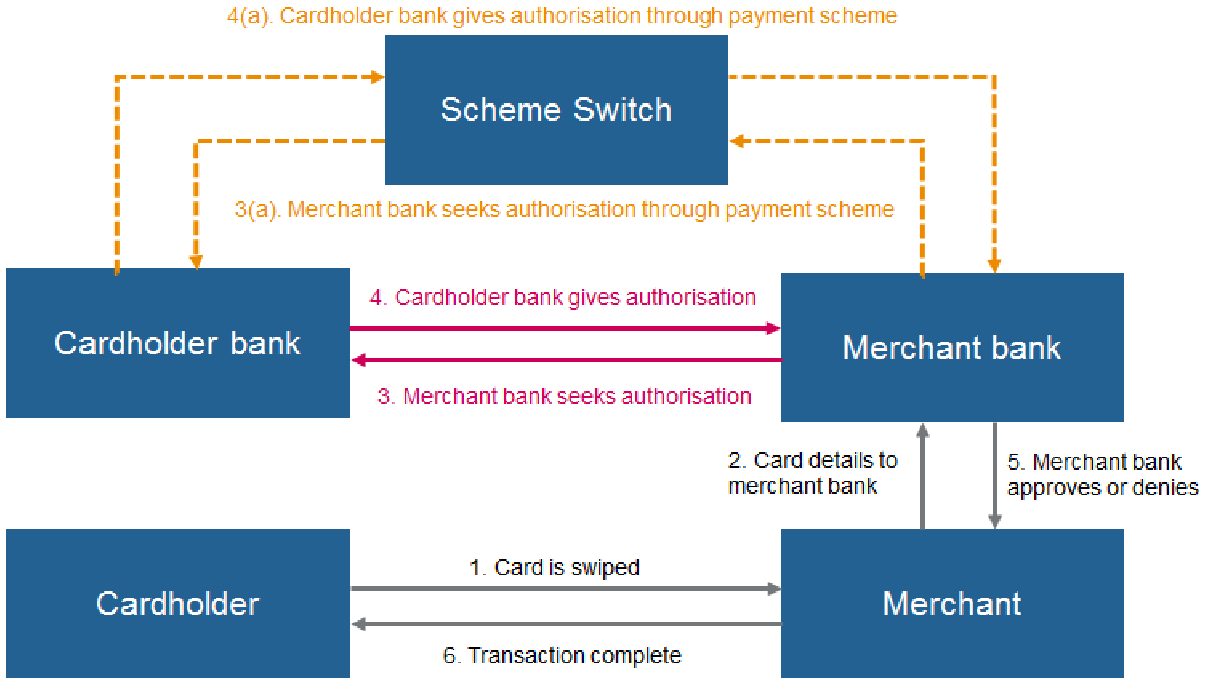
How credit, debit and charge card transactions work

Flow of information and relevant charges: four-party scheme

The parties involved in a four-party scheme are the cardholder, the cardholder's bank, the merchant, the merchant's bank and in some cases the payment scheme. Figure A.1 below describes the flow of information in a typical four-party scheme transaction.

[46] RBA (2005), Review of RBA and Payment Systems Board Annual Reports 2005 (First Report), June, p.25.

Figure A.1: Information flow for four-party scheme transactions



Notes:

1. Card is swiped through the payment terminal.
2. Transaction and cardholder details are sent to the merchant's bank.
3. If the merchant's bank is also the cardholder's bank the transaction can be authorised internally and the authorisation returned to the merchant. If the cardholder's bank is a different financial institution, the merchant's bank sends the transaction to the cardholder's bank (3) or through the payment scheme such as Visa or MasterCard (3a).
4. The cardholder's bank authorises or declines the transaction and sends the relevant message to merchant's bank (4) or via the payment scheme (4a).
5. The merchant's bank tells the merchant if the payment is authorised.
6. If the transaction is authorised, the transaction is complete.

Source: RBA (2005), Review of RBA and Payment Systems Board Annual Reports 2005 (First Report), June, p.26.

Fees paid in a four-party scheme transaction generally include an interchange fee, a merchant service fee and a surcharge.

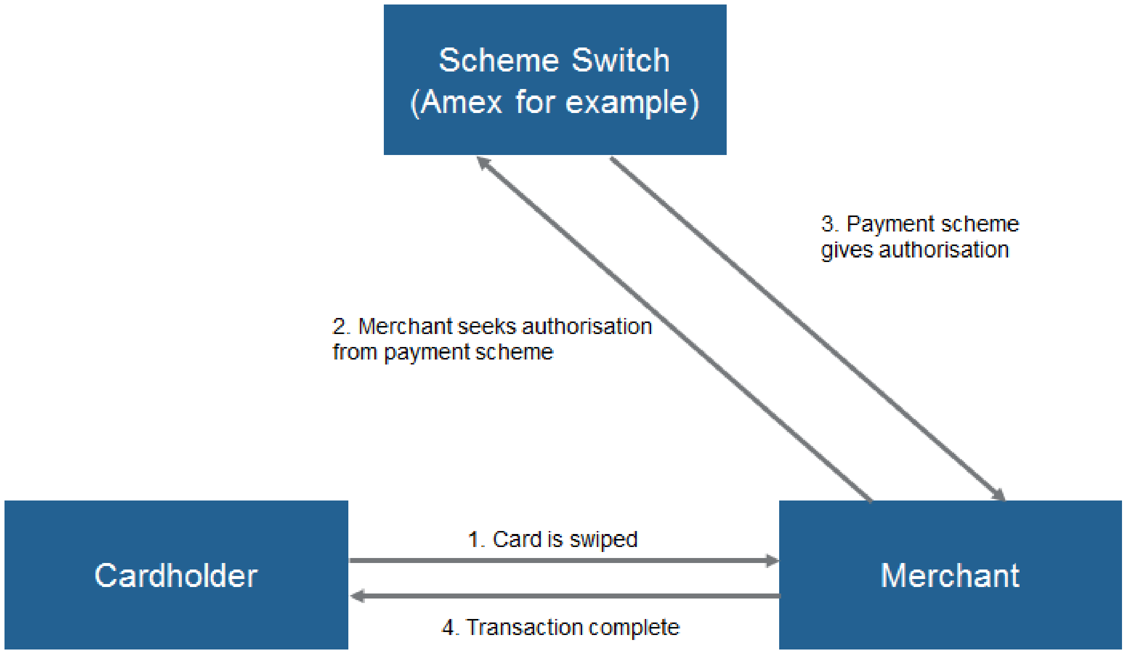
- An **interchange fee** is paid by the merchant's bank to the cardholder's bank every time a payment is made with a credit, debit and charge card. However, for eftpos transactions it is the cardholder's bank which pays the merchant's bank an interchange fee. The level of interchange fee is agreed between the cardholder's bank and the card schemes (Visa, MasterCard, eftpos) but is capped by the RBA.
- The **merchant service fee** is charged by the merchant's bank to recover the costs of providing services to merchants. The merchant service fees are not capped by the RBA.

- The **surcharge** is the charge a merchant collects from a cardholder/customer to recover the costs of accepting a non-cash payment. In most industries, under the RBA's standards, a surcharge must not exceed the merchant's costs of accepting a card, being the average cost per card transaction.

Flow of information and relevant charges: three-party scheme

In a three-party scheme, the issuer and the acquirer are the same entity, hence the name three-party. The key players are the issuer/acquirer, the cardholder and the merchant. Examples of three-party schemes are American Express and Diners Club. For example, American Express issues the card to cardholders and authorises merchants to accept or decline cardholders' American Express cards. Three-party transactions account for only about eight per cent of the number of all card transactions.[47] Figure A.2 shows a typical three-party scheme transaction.

Figure A.2: Information flow for three-party scheme transactions



Notes:

1. Card is swiped by cardholder.
2. Merchant sends card details to scheme switch (American Express for example).
3. Scheme authorises or declines the transactions and sends the relevant message to the merchant.
4. If the transaction is authorised, the transaction is complete.

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[47] RBA, Payments Data, C: 2 Market Shares of Credit and Charge Card Schemes, available at: https://www.rba.gov.au/payments-and-infrastructure/resources/payments-data.html [last accessed 20 November 2018].

Because the issuing and acquiring entities are the same, there is no interchange fee in a three-party scheme transaction. However, the issuing/acquiring entity charges the merchant a merchant service fee. Merchant service fees under three-party schemes are generally higher than merchant service fees under four-party schemes.[48] Three-party schemes are not subject to the RBA's standard on surcharging. But American Express and Diners Club each have a voluntary undertaking consistent with the RBA's surcharging standard.[49]

Non-cash payments in the taxi payments industry

Payment instrument cards

In the taxi payments industry, credit, debit, and charge cards are all accepted forms of non-cash payments. Unlike in other parts of the economy, charge cards have a significant market share of non-cash payments in the Victorian taxi payments industry. This is due to the widespread use of Cabcharge payment instruments (Cabcharge).

Four-party scheme

The flow of information described for a four-party scheme in figure A.1 also applies to the taxi payments industry but with one variation (figure A.3). An additional key player has been added: the taxi payment processor. Taxi payment processors aggregate taxi operators' non-cash transactions and act as the merchant interfacing with the acquiring bank. Instead of banks, the taxi payment processor supplies payment terminals to drivers, booking service providers or taxi operators as part of its payment services.

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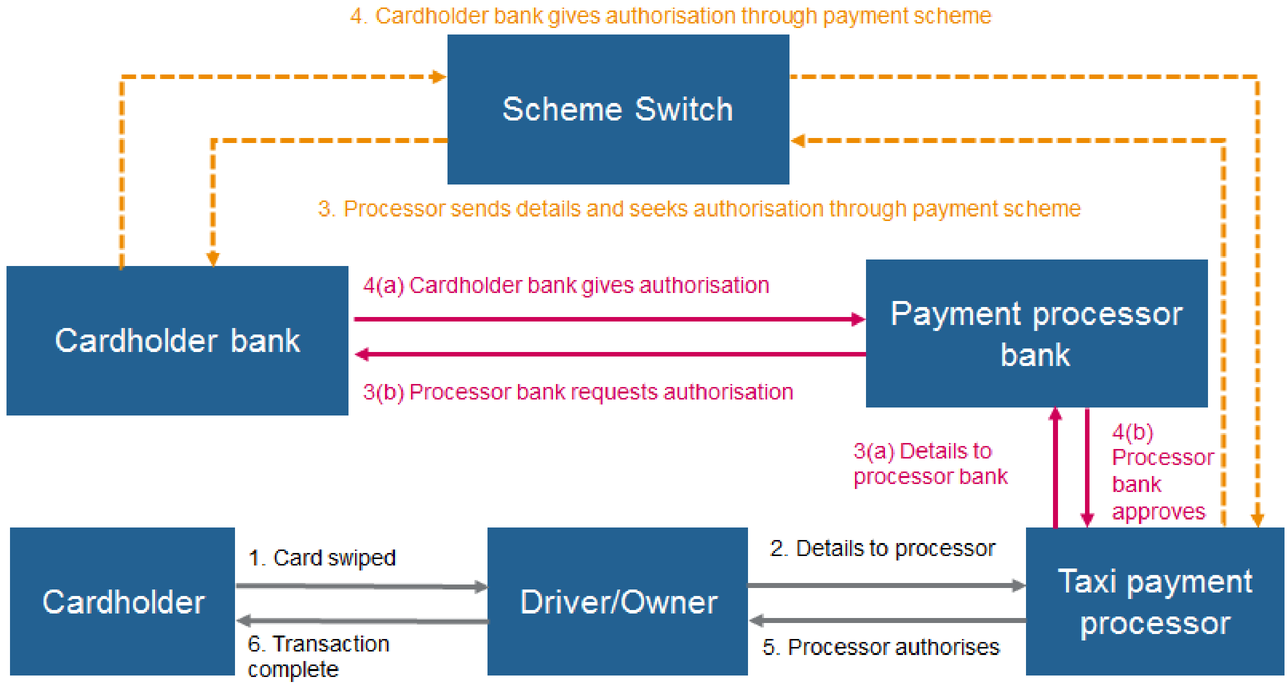
[48] RBA (2016), Review of Card Payments Regulation Conclusions Paper, May, p.8.

[49] RBA (2016), Review of Card Payments Regulation Conclusions Paper, May, p.39.

Figure A.3: Four party scheme transactions in the taxi payments industry



Unlike other industries, the maximum surcharge that may be charged for non-cash payments in taxis is not regulated by the RBA. It is regulated by state regulators. Currently in Victoria, a maximum surcharge of five per cent may be collected from cardholders.

Cabcharge

Cabcharge is a three-party scheme similar to that shown in figure A.2 above. As an issuer, A2B Australia has a relationship with the Cabcharge account holders. It issues Cabcharge cards to account holders and charges them a five per cent service fee on all payments on the card.

There is no interchange fee in the Cabcharge scheme because Cabcharge is both the issuer and acquirer.

Taxi payment processors

Taxi payment processors are a sub group of **merchant aggregators**. Merchant aggregators process transactions for multiple merchants ('sub-merchants') through a single merchant account. This means merchants can accept non-cash payments without an individual merchant account. Merchant aggregators facilitate payments between merchants and consumers.

Some stakeholders have told us that taxi payment processors provide a unique service and this is why the surcharge is higher for taxis than in other industries. However, we note that there are several merchant aggregators operating in other industries that provide the similar services as taxi payment processors at a lower cost. For example, Square charges only 1.9 per cent per transaction for card-present transactions and 2.2 per cent for card-not-present transactions.

Benefits of non-cash payments in taxis

Some stakeholders stated that encouraging use of non-cash payments delivers benefits including:

- increasing driver safety[50]
- reducing insurance and security costs by limiting potential theft and loss[51]
- reducing administrative burden of cash payments for drivers and operators.[52]

Competition in Victoria for providing payment services

Historically, there has been a high degree of market concentration in taxi payment processing, with A2B Australia holding strong positions in both taxi-specific payment instruments and payment processing.[53] There are now a number of players providing payment services in the Victorian taxi non-cash payment transaction industry such as Live taxi, CabFare, GM Cabs, and Ingogo., A2B Australia continues to be the largest provider of ***taxi*** non-cash payment transaction services (although taxis now face considerable competition from non-taxi booked commercial passenger vehicles).

A2B Australia's competitors provide mobile payment terminals to taxi drivers. To steer payments to their payment devices, taxi payment processors provide drivers different forms of incentives to encourage use of their payment terminals. Some taxi payment processors offer drivers incentives such as commissions[54], redeemable vouchers or gasoline discounts.[55] Another key benefit for many taxi drivers of using Live taxi, CabFare, GM Cabs or Ingogo is cashflow control. If a driver uses the payment terminal provided by their network, their network or operator can automatically deduct money owed from the driver's non-cash payment takings. If the driver uses their own terminal they can decide when they want to pay their network or operator.

While there are a number of firms competing for processing payment methods in general use throughout the economy, A2B Australia's competitors cannot accept Cabcharge or process MPTP subsidies. Cabcharge is a major form of payment for business and government travellers and,

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[50] Mastercard, submission received 14 February 2019.

[51] Mastercard, submission received 14 February 2019.

[52] CabFare, submission received 1 February 2019; Mastercard, submission received 14 February 2019.

[53] Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p. 208.

[54] https://www.ingogo.com.au/driver (accessed on 25 October 2018).

[55] http://www.gmcabs.com.au/eftpos-solution/ (accessed on 25 October 2018).

under state government regulation, taxis are required to have a terminal that can process MPTP subsidies.[56]

Although, historically these factors may have provided A2B Australia a significant advantage over other processors, stakeholders have told us that another third-party taxi payment processor has been processing Cabcharge on some of their terminals. Also, Oiii, a recently entered taxi network, has introduced a new technology to process MPTP cards without an A2B Australia terminal.[57] This technology is only in use on Oiii's dispatch systems.

Taxi non-cash payment surcharging in other jurisdictions

This section looks at regulation of non-cash payments in taxis in other jurisdictions. Our research suggests that the prevalence of non-cash payments is higher in jurisdictions where acceptance of non-cash payments is mandatory and non-cash payment surcharging is not allowed. This approach to regulation may encourage use of non-cash payments.

The fees charged in other jurisdictions

Table A.1 shows the non-cash payment surcharges for taxis that apply in Australia and other jurisdictions.

[56] Commercial passenger vehicle registration conditions, condition 5(1), available at: https://cpv.vic.gov.au/vehicle-owners/registration-conditions/commercial-passenger-vehicle-registration-conditions-definitions# (last accessed 23 November 2018).

[57] https://vxier.pr.co/169788-oiii-breaks-mptp-industry-monopoly-with-the-release-of-new-victorian-government-approved-technology (accessed 23 November 2018).

Table A.1 Non-cash payment surcharges in Australia and other jurisdictions

Jurisdiction	0%	≈2%	≈5%	≈7%	≈10%
Australian Capital Territory			X		
New South Wales			X		
Queensland			X		
Northern Territory			X		
South Australia			X		
Tasmania					X
Western Australia			X		
New Zealand				X	
Singapore					X
United Kingdom	X				
European Union	X				
Boston	X				
Chicago			X		
Las Vegas					X
New York	X				
San Francisco	X				
Quebec	X				

Sources: Australian Capital Territory, [58] New South Wales,[59] Queensland,[60] Northern Territory,[61] South Australia,[62] Tasmania,[63] Western Australia,[64] New Zealand,[65] Singapore,[66] United Kingdom,[67] European Union,[68] Boston,[69] Chicago,[70] Las Vegas,[71] New York,[72] San Francisco,[73] Quebec[74]

Mandatory acceptance of non-cash payments (and its impact)

There are a number of jurisdictions where acceptance of non-cash payments is mandatory. These include:

- London[75]
- Barcelona[76]
- France[77]

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[58] https://www.accesscanberra.act.gov.au/ci/fattach/get/95685/1470004531/redirect/1/filename/Taxi+drivers+-+Standard+taxis.pdf (last accessed 17 April 2019).

[59]https://www.transport.nsw.gov.au/system/files/media/.../taxi-fares-order-2018.pdf (last accessed 17 April 2019).

[60] https://personalisedtransport.tmr.qld.gov.au/Taxi-services (last accessed 17 April 2019).

[61] https://transport.nt.gov.au/transport/transport-strategies-and-plans/commercial-passenger-vehicle-reforms/electronic-payment-surcharges (last accessed 17 April 2019).

[62] https://www.sa.gov.au/topics/driving-and-transport/transport-industry-services/taxi-and-passenger-transport/taxis (last accessed on 17 April 2019).

[63] https://www.transport.tas.gov.au/__data/assets/pdf_file/0008/179513/Proposal_Paper_-_both_options.pdf (last accessed on 17 April 2019).

[64] https://www.transport.wa.gov.au/mediaFiles/taxis/Taxis_P_Electronic_payment_surcharge_reduction.pdf (last accessed on 17 April 2019).

[65] This assumes that the average fare in New Zealand is the same as that in Melbourne; https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10797806

[66] This is GST exclusive; https://premiertaxi.com.sg/commuters/taxi_fare (last accessed 26 April 2019).

[67] https://tfl.gov.uk/modes/taxis-and-minicabs/taxi-fares?intcmp=4223

[68] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L2366&from=EN

[69]https://static1.squarespace.com/static/5086f19ce4b0ad16ff15598d/t/52af61e1e4b0871946c07a41/1387225569980/Rule+403.pdf

[70] This assumes an average fare of $15; a $0.50 convenience fee applies to non-=cash payments; https://www.chicago.gov/content/dam/city/depts/bacp/rulesandregs/AldBealestransactionfeeordinance32216.pdf

[71] This assumes an average fare of $17.50; a $3.00 fee applies to credit card payments; http://taxi.nv.gov/uploadedFiles/taxinvgov/content/Rider_Info/DidYouKnow.pdf

[72] http://www.nyc.gov/html/tlc/html/passenger/taxicab_rate.shtml

[73] http://archives.sfmta.com/cms/cmta/documents/6-5-12item11creditcardfees.pdf

[74] https://www.opc.gouv.qc.ca/en/consumer/topic/price-discount/advertised-price/debit-card/

[75] https://tfl.gov.uk/info-for/taxis-and-private-hire/accepting-card-payments (last accessed 17 April 2019).

[76] http://taxi.amb.cat/s/en/usuari/formes-de-pagament.html (last accessed 17 April 2019).

[77] https://www.service-public.fr/professionnels-entreprises/vosdroits/F22127 (last accessed 17 April 2019).

- Germany[78]
- Madrid[79]
- Boston[80]
- Chicago[81]
- New York[82]
- San Francisco[83]
- Saskatoon[84]
- Quebec[85]
- Seoul[86].

These policies have been introduced on the basis of research that showed the majority of passengers would like to be able to pay by card[87] and also to increase driver safety.[88] However research has also shown that there is often driver resistance to accepting non-cash payments as drivers may be charged a fee for processing debit or credit card payments.[89] To help deal with this issue, in some cases regulators have taken action to help taxis recover the associated costs.

For example, when Transport for London introduced mandatory acceptance of non-cash payments and banned non-cash payment surcharging in taxis, it took steps to address cost pressures associated with processing card payments.

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78 https://ec.europa.eu/transport/sites/transport/files/2016-09-26-pax-transport-taxi-hirecar-w-driver-ridesharing-country-reports.pdf (last accessed 17 April 2019).

79 https://www.madrid.es/portales/munimadrid/es/Inicio/Movilidad-y-transportes/Taxi/?vgnextfmt=default&vgnextoid=4813dc0bffa41110VgnVCM1000000b205a0aRCRD&vgnextchannel=220e31d3b28fe410VgnVCM1000000b205a0aRCRD&idCapitulo=10558389 (last accessed 17 April 2019).

80 https://www.cityofboston.gov/news/uploads/6033_4_24_27.pdf (last accessed 17 April 2019).

81 https://www.chicago.gov/content/dam/city/depts/bacp/publicvehicleinfo/medallionowners/approvecreditcardprocessingequipmenttaxi03142014.pdf (last accessed 17 April 2019).

82 https://www1.nyc.gov/site/tlc/passengers/passenger-frequently-asked-questions.page (last accessed 17 April 2019).

83 https://web.archive.org/web/20180324113638/https:/taxi.vic.gov.au/__data/assets/pdf_file/0014/20831/TaxiCabRegHara-PDF.pdf (last accessed 17 April 2019).

84 https://www.saskatoon.ca/sites/default/files/documents/9070.pdf (last accessed 17 April 2019).

85 https://www.ctq.gouv.qc.ca/fileadmin/documents/secteurs/taxi/Tarification_des_services_de_transport_par_taxi_-_Aide_memoire.pdf (last accessed 17 April 2019).

86 https://www.legco.gov.hk/research-publications/english/1415in13-taxi-service-in-selected-places-20150612-e.pdf (last accessed 17 April 2019).

87 https://consultations.tfl.gov.uk/taxis/card-payment/user_uploads/paying-by-cards-in-taxis-report.pdf (last accessed 17 April 2019).

88 http://home2.nyc.gov/html/tlc/html/industry/taxicab_serv_enh_archive.shtml

89 https://www.sfmta.com/sites/default/files/Meter%20Rates%20and%20Gate%20Fees_Final.pdf (last accessed 17 April 2019).

Transport for London:

- negotiated with the credit card industry to reduce credit card transaction fees paid by drivers from up to 10 per cent to three per cent[90]
- increased the flagfall by 20 pence (about 1 per cent increase in average fare)[91] to assist drivers to cover the costs associated with processing card payments that they could no longer pass on to passengers[92] and
- mandated that all taxis must be fitted with an approved card payment device fixed within the passenger compartment, and taxi drivers must accept credit and debit card payments.[93]

In New York, the Taxi and Limousine Commission (TLC) introduced mandatory acceptance of non-cash payments in 2008. Prior to this, the TLC increased taxi fares by 26 per cent. This increase was tied to a series of technology-based customer improvements (including mandatory acceptance of non-cash payments) that would be implemented over the following years.[94] In New York, a driver may be charged $7 per shift or $49 per week for credit card processing. The TLC reviews the average credit card usage per shift every six months and adjusts the surcharge so that it is equivalent to five per cent of this.[95]

Similarly, in many other US states drivers may have to cover the costs associated with processing non-cash payments. For example, in Boston drivers may have to pay a fee of up to six per cent for processing non-cash payments.[96] In San Francisco drivers may have to pay up to 3.5 per cent.[97]

Prevalence of non-cash payments for taxis in other jurisdictions

Our research suggests that taxi regulators have typically adopted two different approaches to regulation of non-cash payments in taxis:

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[90] https://tfl.gov.uk/info-for/media/press-releases/2015/november/mayor-and-tfl-confirm-card-and-contactless-payments-will-be-accepted-by-london-taxis (last accessed 17 April 2019).

[91] This is based on the average fare in London in 2014; https://consultations.tfl.gov.uk/tph/taxi-fare-and-tariff-review-2016/results/taxi-fares-and-tariff-review-2016-report.pdf (last accessed 17 April 2019).

[92] http://content.tfl.gov.uk/09-16-changes-to-taxi-fares-and-accepting-payment-by-card-in-all-london-taxis.pdf (last accessed 17 April 2019).

[93] http://content.tfl.gov.uk/09-16-changes-to-taxi-fares-and-accepting-payment-by-card-in-all-london-taxis.pdf (accessed 2 August 2019)

[94] http://home2.nyc.gov/html/tlc/downloads/pdf/annual_report_2008.pdf

[95] http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/therulesofthecityofnewyork?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny (last accessed 17 April 2019).

[96] https://static1.squarespace.com/static/5086f19ce4b0ad16ff15598d/t/52af61e1e4b0871946c07a41/1387225569980/Rule+403.pdf (last accessed 17 April 2019).

[97] http://archives.sfmta.com/cms/cmta/documents/6-5-12item11creditcardfees.pdf (last accessed 17 April 2019).

- Acceptance of non-cash payments is mandatory and non-cash payment surcharging is not allowed.
- Acceptance of non-cash payments is optional and non-cash payment surcharging is allowed.

The prevalence of non-cash payments appears to be higher where acceptance of non-cash payments is mandatory and non-cash payment surcharging is not allowed, which suggests that this approach to regulation may encourage use of non-cash payments. For example, in New York where acceptance of non-cash payments is mandatory and non-cash payment surcharging is not allowed, 67 per cent of medallion taxi fares were paid by credit card from 2016 to 2018.[98] In contrast, in Las Vegas, where acceptance of non-cash payments is optional and non-cash payment surcharging is allowed, 25 per cent of taxi fares were paid by credit card in 2015.[99]

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[98] https://www1.nyc.gov/assets/tlc/downloads/pdf/2018_tlc_factbook.pdf (last accessed 17 April 2019).

[99] https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/9916 (last accessed 17 April 2019).

Appendix B: our bottom-up cost assessment

We used bottom-up cost assessment as one approach to inform our further draft decision on the maximum surcharge.

In this appendix, we discuss what our bottom-up cost assessment suggests about the current maximum surcharge, the methodology we used, and the costs we included and excluded.

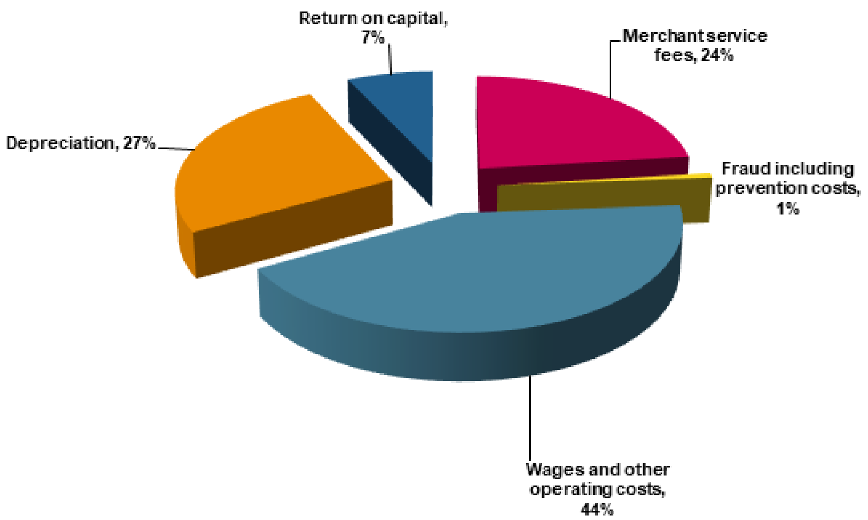
We conducted two bottom-up costs assessments for A2B Australia:

- an assessment on all payment methods except Cabcharge
- an assessment of Cabcharge

Our bottom-up cost assessment suggests that the current maximum surcharge is too high

Our updated bottom-up cost assessment suggests that the current maximum surcharge is too high – in the sense that it is higher than it needs to be in order to promote efficiency in the taxi payments industry and to ensure that persons facilitating the making of non-cash payment transactions are able to recover reasonable costs. We assessed taxi payment processors' actual costs, excluding unreasonable costs where possible, to see what surcharge would be necessary for them to recover their costs. Figure B.1 shows the average makeup of taxi payment processors' costs.

Figure B.1: Breakdown of costs associated with non-cash payment processing for taxis



Source: taxi payment processors and ESC analysis

In carrying out our bottom-up cost assessments of taxi payment processors' actual costs, we made some adjustments to exclude cost items related to non-regulated services (i.e. costs not associated with non-cash payments). The costs included and excluded are discussed in detail in the last section of this appendix. All surcharges presented in this chapter are inclusive of GST.

Our assessment of taxi payment processors shows that the actual cost of processing non-cash payments ranges from 3.3 to 4.3 per cent.

However, we have not always been able to obtain the information that we would like. How regulated businesses keep their information may not align with the information required by a regulator for the purposes of setting regulated charges. As noted in chapter two, we are preparing a formal request for data from taxi payment processors. During this process we will be able to collect more information, while also helping taxi payment processors work through the difficulties they may face in providing it to us.

For example, we have not been able to isolate all costs related to non-regulated services. The level of detail provided to us by taxi payment processors does not allow us to remove all of those costs with precision. Where we have been unable to precisely identify these costs, rather than risk removing reasonable costs, we have left them in our bottom-up cost assessments of actual costs. A notable example of this is the taxi meters that are part of A2B Australia's payment terminals.

We sent information requests to a number of taxi payment processors to better understand the costs of processing non-cash payments in taxis.[100] Compliance with this request was voluntary, and taxi payment processors did not or were unable to provide us with all of the information that we requested.

We also note that one taxi payment processor submitted costs that implied the surcharge should be increased to roughly eight per cent. These costs appear to be excessive. They are more than double the costs submitted by some other taxi payment processors. This payment processor appears to have allocated a significant amount of costs from unregulated parts of their business to the taxi payments part of their business. This taxi payment processor had also previously made representations that they subsidise unregulated parts of their business with their taxi payments processing business. For these reasons we do not consider the costs submitted by this payment processor represent reasonable costs and have excluded them from our estimate of the range of taxi payment processors' actual costs.

[100] Essential Services Commission, Information request: Taxi non-cash payment surcharge review 2019, December 2018. Source: https://www.esc.vic.gov.au/transport/commercial-passenger-vehicles/commercial-passenger-vehicle-prices/taxi-non-cash-payment-surcharge-review-2019#tabs-container2 (accessed on 14 March 2019).

We used a building block model to assess taxi payment processors' costs

This section provides some information on the composition of the building blocks used in our bottom-up cost assessment. For a brief explanation of the building block method please see chapter two.

Operating expenditure

Operating expenditure averaged around 68 per cent of taxi payment processors' total regulatory costs.

Merchant service fees

Merchant service fees are transaction based fees charged to a merchant by an acquirer. Merchant service fees will depend on the type of card used.

Merchant service fees are one of the key costs faced by taxi payment processors. They account for between 14 to 52 per cent of their operating expenditure.

Wages

Wages or employee costs are another key cost item for taxi payment processors. They account for about 26 to 55 per cent of their total operating expenditure. Wages include direct and indirect labour costs associated with processing non-cash payments.

Payment terminal maintenance and rental

Payment terminal maintenance and rental involves the ongoing costs of renting and maintaining payment terminals.

Payment processors can rent or purchase payment terminals. If they rent them they are treated as operating expenditure, but if they purchase them then they recover their costs as capital expenditure through the asset base.

Payment processors either maintain their payment terminals themselves or sub-contract to external service providers. Regardless of who undertakes the maintenance of payment terminals, we consider maintenance costs to be a cost of processing non-cash payments.

Taxi payment processors presented these costs differently, but for taxi payment processors that clearly separated these costs from their other costs they accounted for around 11 to 32 per cent of operating expenditure.

Fraud

Payment processors' fraud related costs include the costs associated with preventing fraud and chargebacks. Fraud costs account for on average about 1 per cent of processor's operating costs.

There are different types of fraud associated with using cards but taxi payment processors suggest that chargebacks are the most common in taxis.[101] A chargeback happens when a passenger contests or denies the fare or the trip.[102] If the passenger's claim is proven after an investigation, the fare will be reversed and the passenger will get a refund. Chargebacks have two components: the disputed amount and the chargeback fee.

Taxi payment processors also install specialised fraud detection systems, develop software, and provide training to help protect drivers and passengers from fraud.

Other operating expenses

Taxi payment processors have identified other operating costs necessary for processing non-cash payments in taxis. These include, among other things, administration expenses, office and warehouse rental and marketing and advertising expenses.

Return of capital (depreciation)

We have included an allowance for taxi payment processors to recover the purchase price of their non-cash payment assets. Depreciation costs for taxi payment processors averaged around 27 per cent of their total regulatory costs.

The level of depreciation costs is influenced by the assumed economic lives of the assets and the depreciation method used. From the taxi payment processors submissions, there are two main groups of assets:

- payment equipment: which includes payment terminals and associated assets and
- infrastructure assets: which are used to receive information from payment terminals.

The economic life for these assets ranged from one to five years.

Taxi payment processors generally used straight line depreciation. We have noted our preference for this method in other industries.[103]

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[101] Common causes for chargebacks: no authorisation for fares over the limit; wrong pickup or drop off details on the receipt; the passenger (cardholder) questions the fare and no record was kept by the operator, driver; the cardholder did not authorise the transaction; wrong date and time listed on the cardholder's statement for the trip. Source: Cabcharge, Fraud protection training (http://merchants.cabcharge.com.au/wp-content/uploads/2015/06/Fraud-presentation-May-2015.pdf).

[102] Cabcharge, Fraud protection training. (Source: http://merchants.cabcharge.com.au/wp-content/uploads/2015/06/Fraud-presentation-May-2015.pdf)

[103] Essential Services Commission, *2018 Water price review: Guidance paper*, p.42.

Return on capital

The return on capital on average accounted for 7 per cent of taxi payment processors' building block costs. This is low compared to most other regulated industries as taxi payments are less capital intensive than water or electricity networks.

Using available information for A2B Australia and information provided by A2B Australia's advisers, PwC, we have applied a standard weighted-average cost of capital framework to derive an estimate of 9.7 per cent (pre-tax, nominal) at the current time. This estimate is derived from:

- A risk free rate of 1.9 per cent, based on 10-year Commonwealth Government securities
- A market risk premium of 6.5 per cent
- An equity beta of between 0.7 and 0.95, depending on whether it is calculated on a weekly or monthly basis, over 5 or 10 years
- A level of gearing (debt as a proportion of debt plus equity) of between 0 and 15 per cent
- A tax rate of 30 per cent
- A debt risk premium of 2.14 per cent, based on BBB rated bonds.

Combining these inputs produces a pre-tax WACC of between 9.0 and 10.4 per cent, and we adopted the midpoint of these estimates of 9.7 per cent in our further draft decision.

A2B Australia's consultant Charles River Associates (CRA) submitted that 'the use of observed betas for a single firm for the purpose of estimating that firm's WACC has been specifically rejected by other regulators'.[104] It favoured PwC's approach of using a selection of comparator companies.

CRA suggests that our approach of estimating A2B Australia's beta directly from market information is not a common regulatory approach. Regulators ordinarily estimate beta from a range of comparable entities. We agree that this is the more conventional approach. This approach is normally adopted for two reasons.

The first reason is that regulators are often directed to use, or otherwise prefer, estimating the cost of capital for a "benchmark" firm. The approach of separating a notional benchmark efficient return from the actual costs incurred is a form of incentive regulation; using a benchmark provides incentives for regulated entities to secure lower-cost financing. We note that the CPVV Act directs us to ensure that taxi payment processors can recover the reasonable cost of processing non-cash payments. It does not direct us to estimate benchmark efficient costs.

The second reason that regulators estimate beta based on a range of comparable or benchmark companies is that beta estimates tend to be statistically "noisy" and can vary significantly over

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[104] CRA, Assessment of A2B's reasonable costs of processing non-cash payments, pp. 29-31, 12 August 2019.

different time periods or estimation windows (daily, weekly or monthly data). Averaging estimated betas across a range of comparator firms will give more stable beta results than from a single firm. However, this benefit comes at a cost, as comparator companies may share few risk characteristics with the regulated firm. A2B Australia's consultants, PwC, [redacted] In any event, the comparator set used is small and the extent of additional statistical precision gained in using a comparator approach is unclear.

In the circumstances described, we consider that it is more appropriate to consider the actual historic returns and estimated beta for A2B Australia. To minimise problems with statistical precision, estimates were prepared using different time periods and different estimation windows (including weekly and monthly returns. This provided a range of equity beta estimates between 0.7 and 0.95.

We also observe that it makes little difference to our findings whether the PwC estimate or our own is preferred. The lower WACC adopted in our decision reduces A2B Australia's total costs by less than 2.2 per cent compared to the WACC of proposed by CRA.

We undertook a bottom up cost assessment of Cabcharge

A2B Australia issues its own payment instrument: Cabcharge. Historically, A2B Australia has recovered the costs of issuing this payment instrument primarily via surcharges[106] levied on passengers. In other payment systems, participants recover costs via a combination of charges on transactions and on card holders (e.g. annual fees, interest). In four-party schemes, issuers are compensated by acquirers through per-transaction interchange fees. These fees are regulated by the RBA and are publicly available. In common three-party schemes such as Diners or Amex the notional "acquiring side" of the business may similarly fund elements of the "issuing side" of the business.

We considered three options to account for Cabcharge issuing costs:

1. To exclude specific issuing costs from our bottom up cost assessment, such that A2B Australia would only be able to recover costs specifically associated with accepting and processing in the

105 [redacted]

106 A2B Australia describes these as service fees.

surcharge. A2B Australia would therefore have to recover its direct issuing costs from account holders directly.

2. To exclude issuing costs from our bottom up cost assessment, but include a notional interchange fee to account for transfers between the acquiring sides of three party schemes and their issuing sides (this is the approach we took in our draft decision)[107]
3. allowing all issuing costs for Cabcharge to be included in a separate bottom up cost assessment.

In response to our draft decision, A2B Australia submitted that 'interchange fees are not costs that are directly incurred by in-taxi payment processors. Rather, payment processors, including A2B, pay merchant service fees'.[108] It suggested that it was difficult to establish the notional fees appropriate to include as part of A2B Australia's cost of processing non-cash payments. For all payment methods, some proportion of issuing costs are funded by acquirers. These amounts are transparent for four party schemes in Australia as they are regulated by the RBA. However, for three party schemes, like Cabcharge, there are no publicly available benchmarks. As pointed out by A2B Australia, 'the reasonableness of the merchant service fees charged in respect of a card scheme is likely to depend on the size of the scheme' ('the higher the value of transactions processed, the lower the merchant services fee') and 'the magnitude of the benefits provided to cardholders and merchants under that scheme' (more 'significant …benefits are likely to involve higher merchant services fees').[109]

We have now decided that the better approach is to use the third option. Using either the first or second options would require us to make a judgement about A2B Australia's approach to recovering issuing costs. Using the third option gives A2B Australia the choice as to how it recovers costs from Cabcharge account holders; i.e. through a fare surcharge or direct fees. We set a **maximum** surcharge. If we set a separate surcharge for A2B Australia, it may choose to charge a lower surcharge with higher account fees or vice versa.

To allow A2B Australia to recover its issuing costs through a surcharge, we have done a bottom up cost assessment for the part of A2B Australia's business that processes other payment methods, and another for the part that issues and processes Cabcharge instruments. The part that processes Cabcharge instruments includes issuing costs (for example card printing, account management, and working capital to fund account holder credit) which do not relate to processing other payment methods.

[107] In our draft decision, we used a notional interchange fee set to the RBA regulated weighted average (50 basis points) which we included as a cost of processing non-cash payments.

[108] Charles River Associates, Assessment of A2B's reasonable costs of processing non-cash payments, p.13.

[109] Charles River Associates, Assessment of A2B's reasonable costs of processing non-cash payments, p.17.

We excluded costs that are not reasonable costs of processing non-cash payments

In assessing the costs submitted to us by taxi payment processors we noticed that a number of costs were included which are not traditionally considered to be associated with processing non-cash payments. Where possible we have excluded these from our bottom-up cost analysis. However, we note that we have not excluded all of these costs as the data provided by taxi payment processors do not allow us to isolate them all.

Commissions paid to drivers

Taxi payment processors provide commissions or rebates to drivers and networks ranging from 0.5 to 2.25 per cent.[110] Commissions are provided to attract more drivers and networks to use a payment processor's services. For some taxi payment processors, commissions are subject to a threshold performance.

We do not consider commissions to be a reasonable cost of processing non-cash payments. While currently the cost of commissions provided by taxi payment processors to drivers is passed on to passengers in the maximum surcharge, we do not consider this cost to be a reasonable cost of processing non-cash payments. Taxi payment processors are paying commissions to drivers but receive no service from drivers in return.

This reflects the view of the Taxi Industry Inquiry to reduce the maximum surcharge to the resource cost of processing non-cash payments.[111] This reduction was made on the basis that half of the surcharge was being rebated to drivers as commissions in some cases. These rebates were not considered to be part of the resource cost of providing non-cash payment services.

We note that the Victorian Government accepted the Taxi Industry Inquiry's recommendation that the 10 per cent surcharge levied on the processing of electronic payments under regulation and set the surcharge at five per cent. This suggests that commissions to drivers should not be considered part of the reasonable cost of processing non-cash payments.

Other incentives provided to drivers

Some taxi payment processors also provide other incentives to drivers such as food vouchers, fuel discounts, refuelling stations, driver lounges, and car wash facilities. These incentives are effectively the same as commissions paid to drivers. These incentives payments are currently

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[110] https://www.ingogo.com.au/driver (accessed on 17 April 2019).

[111] Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p.217.

recovered from passengers through the five per cent surcharge. These are not reasonable costs of processing non-cash payments.

Fees paid to networks

We have included an allowance in our further draft decision for fees paid to networks and agents but not as much as sought by some payment processors.

A2B Australia disagreed with our draft decision to exclude an allowance for commissions paid to metropolitan taxi networks in our bottom up cost assessment. It submitted that it did not pay commissions but rather fees to networks for services they deliver. It stated it pays fees to networks to install, maintain and administer payment terminals on behalf of the payment processor.[112]

With the further information provided we agree that some of the amount paid is likely to be for services provided by networks to A2B Australia, and therefore reasonable costs of accepting and processing non-cash payment transactions. However, we consider that the amount paid is likely to be in excess of the reasonable amount required for the services provided by networks.

A2B Australia provided some description of these services but there was no evidence provided to show that the commission is at a reasonable level. We note that some other taxi payment processors have similar arrangements with third parties to:

- manage the entire day to day relationship with drivers
- distribute and maintain terminals
- distribute EFTPOS consumables such as printer rolls
- recover chargebacks from drivers.

For these services other taxi payment processors pay much lower fees. While these arrangements do not include installation, A2B Australia has separate contracts with networks for terminal installation. This makes the arrangements largely comparable.

Further, we note that, in its ASX announcement in relation to our draft decision, A2B Australia stated that it 'can mitigate a potential $1.3m impact of the proposal by adjusting payments to other participants in the value chain, such as Taxi Networks and Drivers'.[113] It appears that this may be a reference to the commissions paid to drivers and networks. This suggests that such payments may

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[112] CRA, Assessment of A2B's reasonable costs of processing non-cash payments, p. 19, 12 August 2019.

[113] A2B Australia, Victorian Essential Services Commission draft paper on taxi non-cash payment processing fee, 31 May 2019, available at: https://www.asx.com.au/asxpdf/20190531/pdf/445hvh8vq4kl59.pdf [last accessed 25 August 2019].

be higher than reasonably required to deliver maintenance repair and administration of payment terminal services.[114]

While we consider that fees paid to metropolitan networks seem higher than what is reasonable, A2B Australia has provided evidence that seems to suggest that installation, maintenance and distribution costs are higher in regional and country areas. We also note that country and regional taxis tend to rely on A2B Australia's payment terminals. In our discussions with stakeholders we have heard that taxis in those areas generally do not use secondary payment terminals. As a result, agent fees paid by other networks in metropolitan areas may not be an appropriate benchmark for the network fees paid by A2B Australia in regional and country areas.

Cashing booths, driver centres and lounges

Some taxi payment processors also provide services which allow drivers to withdraw their non-cash payment takings, in cash, immediately so they do not need to wait until the next business day to receive their funds in their bank account. Taxi payment processors have small booths and offices at Melbourne Airport and other parts of the city where drivers can withdraw their takings in cash. Some taxi payment processors also allow withdrawals from Australia Post and Western Union. Taxi payment processors sometimes charge drivers a fee to use these services to get early access to their takings via cash withdrawals.

We have excluded these costs. They are not reasonable costs of processing non-cash payments. Further, taxi payment processors can charge drivers separately for these services, and in some cases do. Any costs associated with these services should be recovered through those charges.

In response to our draft decision, Live Group noted that these centres and lounges are also used for driver sign ups and queries.[115] It also noted that about 62 per cent of Live Taxi's new driver sign ups occur at a Live Taxi lounge. Live Taxi considers that 'the cost of operating these centres, or at least 75 per cent of the cost base, is a genuine cost of providing non-cash payment services to taxis'.[116] We consider these administration costs are a reasonable cost of accepting and processing non-cash payments but cashing receipts is not.

As a result, where appropriate we have adjusted our bottom-up cost assessment for payment processors to include 75 per cent of their driver centre and lounge costs. However, we were not able to make similar adjustments for payment processors who did not separately identify these costs. This means that in those cases all costs associated with the relevant payment processors'

[114] Even if this $1.3 million is not for driver and network commissions it would suggest that in the information provided to us A2B Australia has overstated their cost of accepting and processing non-cash payments by $1.3 million per annum.

[115] Live Group, submission received 5 August 2019, p.5.

[116] Live Group, submission received 5 August 2019, p.5.

centres and lounges have been included in our bottom up cost assessment. In some cases this will lead to our bottom up cost estimate of actual costs potentially being higher than the reasonable cost of accepting and processing non-cash payments.

Driver payment cards

Some taxi payment processors provide drivers with a driver payment card. Payments to drivers from taxi payment processors are deposited on to this card.

This cost is not a reasonable cost of processing non-cash payments because taxi payment processors could avoid this cost by depositing payments directly into taxi drivers' bank accounts.

Booking services

One payment processor included the costs associated with its taxi booking services. Booking services are not part of regulated non-cash payment services.

Lost property

Some taxi payment processors provide a lost property service. We consider this service duplicates the lost property services already provided by taxi networks. This is paid for through fees drivers pay to taxi networks. As a result, this cost is already recovered through taxi fares.

Donations

Some taxi payment processors noted they provide donations to charities. Donations to charities are not a reasonable cost of processing non-cash payments.

Technology refresh costs

We have not included an additional allowance for the cost of changing payment terminals from one cellular technology to the next. When mobile networks upgrade their cellular technology from one generation to the next, eventually, they stop servicing devices using the older technology.

The cost of managing changeover costs associated with the shutdown of older cellular networks is already included in the rental or purchase cost of payment terminals and the staffing costs associated with managing terminal fleets. With proper planning there is no need for a spike in capital expenditure on terminals or associated staff costs. In the lead up to a network changeover terminals could be rented, until the next generation technology is available more cheaply. Alternatively, if terminal ownership is more economical, next generation compatible terminals could be purchased to replace older terminals before the network changeover takes place. We note that Ingenico and Verifone both already offer 4G compatible terminals to acquirers.

Some taxi payment processors stated that they needed an allowance for technology refresh costs. They stated that due to short notice from mobile networks in the past they had to incur large costs over a short period of time to upgrade their terminals.

Taxi payment processors had reasonable notice of the shutdown of cellular networks to plan how best to manage their assets. In July 2014 Telstra publicly announced that it would close its 2G network.[117] The shutdown occurred in December 2016. To the extent that this notice period is less than the expected life of payment terminals, payment processors may have had to write off roughly 20 per cent of their terminal assets (assuming they replace terminals at a relatively constant rate ordinarily). As cellular network shutdowns happen every five or six years (roughly twice the length of the average lifecycle of payment terminals), on average the impact of technology refreshes would be to increase terminal costs by 10 per cent. Some payment processors have already included these costs in the data they provided us. Where they have not we have made appropriate adjustments.

We also note that Telstra has announced that it will close its 3G network in June 2024. This is more than four years away.[118]

Tax

We have not included an allowance for tax in our bottom up cost assessment. We have already provided an allowance for tax by using a pre-tax WACC.

We updated our bottom-up cost assessment in response to submissions

Following our draft decision some taxi payment processors advised that they had previously provided us with incorrect information. One payment processor also identified an issue with our bottom-up cost model. We have considered these submissions and updated our bottom up cost assessment where appropriate.

[117] Telstra, It's time to say goodbye old friend, available at: https://exchange.telstra.com.au/its-time-to-say-goodbye-old-friend/ [last accessed 27 August 2019].

[118] Telstra, 1, 2, 3, 4 and 5: the continuing evolution of our mobile network, available at: https://exchange.telstra.com.au/1-2-3-4-and-5-the-continuing-evolution-of-our-mobile-network/ [last accessed 22 October 2019].

Appendix C: our benchmarking assessment

In our consultation paper, we said we would use benchmarking as part of our approach to determine the reasonable cost of processing non-cash payments.

Benchmarking uses information on prices or costs from comparable markets to assess reasonable costs. An obvious benchmark for the cost of processing non-cash payments in taxis is the charge for similar services outside of the taxi payments industry. The underlying cost of processing non-cash payments should be quite similar and the market in which such services are supplied is likely to be competitive. The technology in payment terminals is almost identical and (with the exception of Cabcharge payment instruments) the same kinds of payment instruments are used in taxis as for other small businesses.

In our benchmarking, we have looked at charges from payment processors to small businesses for processing non-cash payments. Those charges represent the **cost** of processing non-cash payments for small businesses with revenues similar to taxis. We have used those costs as our benchmarks. Our benchmarking does not include the costs of issuing payment instruments or costs of blended services (for example, providing payment processing **with** credit services).

Our analysis shows that the current maximum surcharge is higher than the benchmarks adjusted to take into account matters specific to accepting and processing non-cash payments for taxis. This suggests that the current maximum surcharge is too high: it is higher than it needs to be in order to promote efficiency and to ensure that persons facilitating the making of non-cash payment transactions are able to recover reasonable costs. We analysed both EFTPOS and mPOS (mobile point of sale) terminals. The main difference between these terminals is that an EFTPOS terminal is a standalone terminal, while an mPOS terminal is a card reader that connects to a smartphone or tablet to process non-cash payments.

This appendix contains our analysis of cost benchmarks for non-cash payment services on offer to small businesses across the entire Australian economy. All charges presented in this chapter are inclusive of GST.

The current maximum surcharge is high compared to our benchmark

Our benchmarking indicates that the reasonable cost of processing non-cash payments for taxis could be as low as 2.4 per cent.

Our benchmark charges include the supply of multiple terminals. In discussions with drivers, networks, and taxi payment processors we were told that many taxis have two terminals for processing non-cash payments. As a condition of their vehicle registration, all taxis must have a terminal that can process MPTP subsidies.[119] These primary terminals are provided by the taxi's network. However, many drivers also have a secondary terminal. This is often to access better terms; including incentives and commissions offered by other taxi payment processors. Drivers sometimes also choose to have a secondary terminal as a backup in case the primary terminal breaks. Some drivers also choose to use a secondary terminal so they can control their cash flows. Taxi networks can automatically deduct their fees from payments processed through primary terminals. Due to this administrative process payment through primary terminals also tends to take longer to arrive in drivers' bank accounts.

While we assessed offers for mPOS terminals we have not included these offers to estimate the reasonable cost of processing non-cash payments. EFTPOS terminals have a number of key features which mPOS terminals do not have. The most important is that the majority of mPOS terminals do not allow automatic surcharging. This is problematic because if a taxi driver were to use an mPOS terminal they would need to manually calculate the surcharge each time they used the terminal. This process would be time consuming, potentially inaccurate and could introduce opportunities for fraud.

We consider that the practice of having multiple payment terminals significantly increases the costs of the taxi payments industry. If we only allowed for a single terminal in our benchmarking then the benchmark costs would be much lower. Our benchmarking analysis suggests that with a single EFTPOS terminal it would be possible for a taxi to recover the cost of processing non-cash payments with a surcharge of as little as 1.6 per cent.

However, since we are required to ensure that taxi payment processors are able to recover reasonable costs, and on the information presently before us those reasonable costs include multiple terminals, we have accounted for the use of multiple payment terminals in our benchmarking. This is consistent with our obligation, under section 8A of the Essential Services Commission Act 2001, to have regard to the degree of and scope for competition within the taxi payments industry.

If we did not allow for multiple terminals in our benchmarking the consequences might be that taxi drivers would have no choice but to use the terminals provided by their networks. Taxis must have

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[119] CPVV, commercial passenger vehicle registration conditions – definitions, available at: https://cpv.vic.gov.au/vehicle-owners/registration-conditions/commercial-passenger-vehicle-registration-conditions-definitions (last accessed 4 April 2019).

a payment terminal that can process MPTP subsidies under their registration conditions.[120] A2B Australia provides MPTP enabled payment terminals to almost all taxis in Victoria.

As mentioned in chapter three, we are aware that in some cases more than two terminals may be in use in each taxi. Many drivers have their own terminal, and often these drivers work in more than one taxi. Additionally, phones may also be used as payment terminals in some cases. In most cases however, there will only be one primary and one secondary terminal in use in a taxi at any one time.

Regardless of whether we assume that there are two terminals or more per taxi our benchmarking results for multiple terminals would not change (figure C.2). Our benchmarking is based on actual monthly turnover **per terminal** as provided by taxi payment processors. This means that even if we assumed there were more terminals in the typical taxi, the monthly turnover per terminal would be the same. Only the total turnover for the typical taxi would be higher which would reduce the implied surcharge for our single terminal benchmarking (figure C.1).

The current maximum surcharge is high compared to the cost of EFTPOS terminals

Our analysis shows that, if there is one EFTPOS terminal per taxi, the cost of processing non-cash payments (for a small business processing $4,276 a month) ranges from 1.6 to 2.3 per cent. If there are multiple terminals per taxi costs range from 2.4 to 3.7 per cent.

Figures C.1 and C.2 show a comparison of the current maximum surcharge and offers for EFTPOS terminals available to small businesses assuming one and multiple terminals per taxi, respectively.

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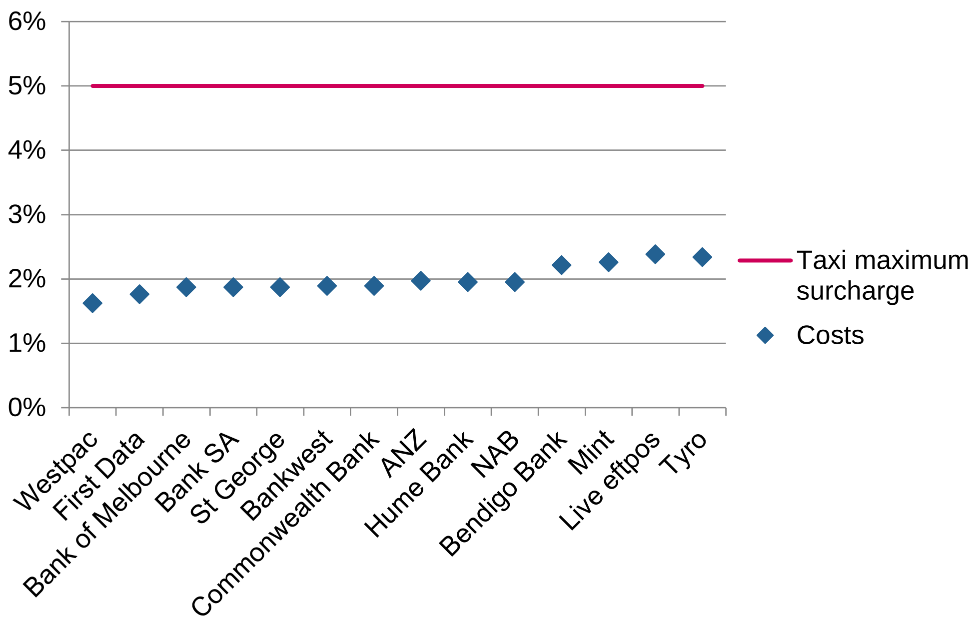
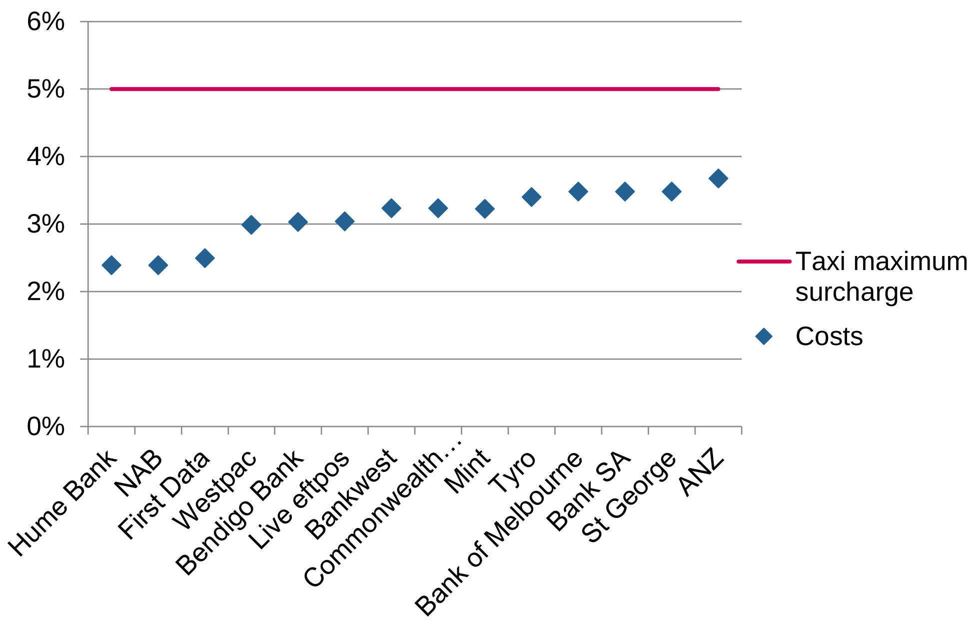
[120] CPVV, commercial passenger vehicle registration conditions – definitions, available at: https://cpv.vic.gov.au/vehicle-owners/registration-conditions/commercial-passenger-vehicle-registration-conditions-definitions (last accessed 4 April 2019).

Figure C.1: offers for EFTPOS terminals (one terminal per taxi)



Source: payment processors' websites, taxi payment processors and ESC analysis

Figure C.2: offers for EFTPOS terminals (multiple terminals per taxi)



Source: payment processors' websites, taxi payment processors and ESC analysis

The current maximum surcharge is high compared to the cost of mobile POS terminals

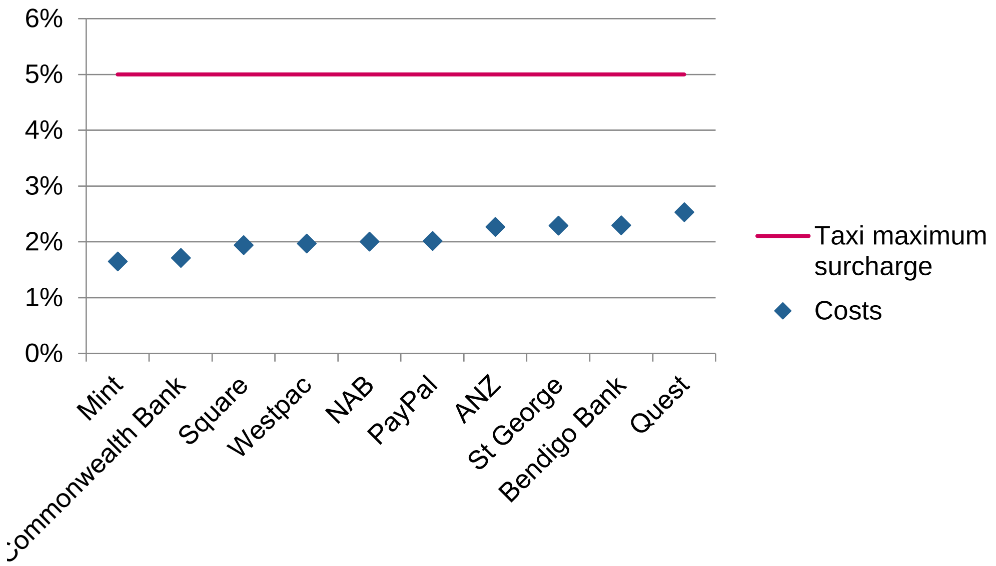
A mobile point-of-sale (mPOS) terminal is a card reader which connects to a smartphone or tablet to process non-cash payments. The merchant downloads an app on their smartphone or tablet, which may be used to manage transactions and receipts. The merchant may also send receipts via email or SMS or print receipts via a Bluetooth printer.

We have included our analysis for mPOS terminals separately as we recognise that they are not directly comparable to the service provided by the standard 3G EFTPOS terminals currently used in the taxi payments industry. While these terminals are not directly comparable to the services currently used in Australia we do note that mPOS terminals are widely used by taxis in other jurisdictions such as the United States.

Our analysis shows that, if there is one mPOS terminal per taxi, the cost of processing non-cash payments (for a business processing $4,276 a month) ranges from 1.6 to 2.2 per cent. If there are multiple terminals per taxi, the cost ranges from 1.6 to 3.2 per cent.

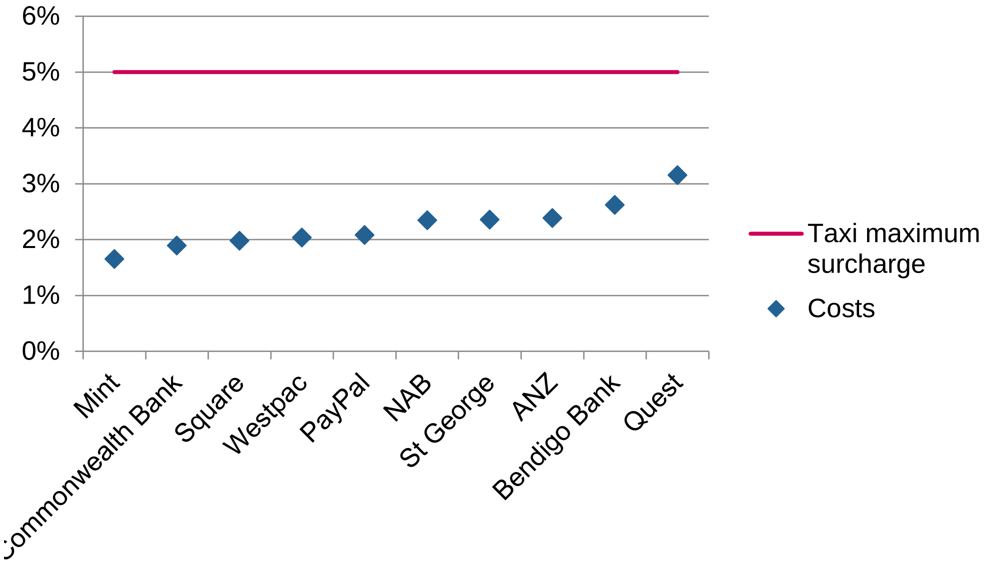
Figures C.3 and C.4 show a comparison of the current maximum surcharge and offers for mPOS terminals based on one terminal per taxi and multiple terminals per taxi, respectively.

Figure C.3: offers for mPOS terminals (one terminal per taxi)



Source: payment processors' websites, taxi payment processors and ESC analysis

Figure C.4: offers for mPOS terminals (multiple terminals per taxi)



Source: payment processors' websites, taxi payment processors and ESC analysis

We used revenue data and EFTPOS terminal offers in our benchmarks

For our benchmarking, we estimated the monthly revenue from non-cash payments and the monthly cost of processing non-cash payments for the **typical taxi**. There are often fixed monthly costs associated with payment processing. We then divided the monthly cost of processing by the monthly revenue. This provides an estimate of what percentage of monthly revenue the typical taxi would need to spend on processing non-cash payments.

To estimate the monthly cost for a typical taxi, we used publicly available information on EFTPOS terminal offers from 14 payment processors. This information includes the fees and charges that may apply to a merchant who has an EFTPOS terminal with the payment processor. We have used these payment processors because:

- they provide EFTPOS and or mPOS terminals to small businesses in Australia processing about $4,057 of non-cash payments per month, and
- information on their fees and charges is publicly available on their websites.[121]

[121] The only exception to this was ANZ. We used quotes provided over the phone. We included ANZ in our sample as we know that ANZ provides EFTPOS terminals to some taxi operators and at least one taxi payment processor in Victoria.

Some of the costs associated with processing non-cash payments vary according to the value of transactions processed (i.e. monthly revenue). It is important for us to understand the monthly revenue for the typical taxi to estimate these costs.

To estimate the monthly non-cash payment revenue for the typical taxi, we used information provided by taxi payment processors. Since releasing our draft decision, we have updated the monthly revenue per taxi to reflect additional information received from taxi payment processors.

We estimated the monthly non-cash payment revenue for the typical taxi

To estimate the monthly non-cash payment revenue for the typical taxi, we used the average monthly revenue per payment terminal provided to us by taxi payment processors. We then multiplied that figure by two to account for the fact that many taxi drivers use two payment terminals.

If the monthly revenue is higher or lower than what we have assumed, the monthly cost as a percentage of the monthly revenue may be different from our benchmarks.

The impact on the benchmark would depend on the magnitude of the change in revenue for taxis. However, our sensitivity analysis suggests that the impact on the average benchmark is likely to be minimal. For example, if the monthly revenue was 10 per cent lower than our estimate, the average benchmark cost (assuming two EFTPOS terminals) would increase by 0.3 percentage points. If the monthly revenue was 10 per cent higher than our estimate, the average benchmark cost would decrease by 0.2 percentage points.

In submissions, some stakeholders noted that the revenue for the average taxi may be decreasing.[122] As our monthly revenue calculations are based on actual fares processed per terminal our benchmarking accounts for this.

We also note that there is a trend of increasing use of non-cash payments and decreasing cash payments.[123] We expect this trend to continue. This trend is likely to decrease the impact of reduced taxi revenue on the volume of fares paid by non-cash means in taxis.

We estimated the monthly cost for the typical taxi

To estimate the monthly cost of processing non-cash payments for the typical taxi, we used the following information from EFTPOS terminal contracts:

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[122] A2B Australia, submission received 1 March 2019, p.7.

[123] RBA, Payments Data, available at: https://www.rba.gov.au/payments-and-infrastructure/resources/payments-data.html (last accessed 4 May 2019).

- Monthly fee
- Merchant service fee
- Business account fee
- Card reader fee.

We included the monthly fee, merchant service fee, business account fee and card reader fee, as we consider that these are the main costs of processing non-cash payments.

We excluded costs, such as cancellation fees and terminal replacement fees as these costs are recovered through separate charges, not standard charges related to processing non-cash payments.

We have not included chargeback fees as we do not have information on the average number of chargebacks per terminal to estimate the cost of chargebacks for the typical taxi on standard EFTPOS terminal offers. Further, the cost data we have received from taxi payment processors suggest the cost of card fraud in the taxi payments industry is not material. Therefore, even if we could, including these costs would not affect the outcome of our analysis.

Some stakeholders have also noted that other payment processors charge a number of other fees such as cancellation fees, terminal non-return fees, establishment fees, additional outlet fees, and stationary fees. These fees differ significantly in type and structure between service providers. We also note that some of these fees are not relevant to taxis and for those that are, in the context of three years of payment processing (the standard life for an EFTPOS terminal) they are not material. Nonetheless we acknowledge and have taken into consideration the fact that our benchmarking slightly underestimates the charges associated with EFTPOS terminals.

Monthly fees

The monthly fee is a flat fee charged **per month**. It covers the terminal rental[124] and administrative costs of providing the EFTPOS terminal. In some cases, the monthly fee also covers the costs of processing a certain value of non-cash payments.

Merchant service fees

The merchant service fee is a fee charged **per transaction**. This is charged by the acquiring entity for processing non-cash payments.

Some payment processors charge the merchant a percentage of dollar value per eftpos, Visa and MasterCard transaction. Other payment processors charge the merchant a flat fee per eftpos

[124] A payment processor that offers mPOS terminals may charge an upfront fee for the card reader. In this case, the monthly fee does not cover terminal rental.

transaction and percentage of dollar value per Visa and MasterCard transaction. Typically, payment processors charge the merchant a percentage of dollar value per American Express and Diners Club transaction.

Some payment processors offer **included value** which is the total maximum dollar value of eftpos, Visa and MasterCard transactions included in the monthly fee. This means that if the total dollar value of eftpos, Visa and MasterCard transactions is within the included value, the merchant is not charged merchant service fees for these transactions (in other words the incremental cost of processing a transaction is zero). If the total dollar value of eftpos, Visa and MasterCard transactions exceeds the included value, the merchant is charged merchant service fees for these transactions, however only for the transactions that exceed the included value.

Typically, the publicly available information on merchant service fees applies to eftpos, Visa and MasterCard transactions only.[125] Other card types such as American Express and Diners Club are often subject to separate pricing which is not publicly available, so we have used information from taxi payment processors on merchant service fees for American Express and Diners Club. Since releasing our draft decision, we have updated the merchant service fees for American Express and Diners Club to reflect additional information from taxi payment processors.

Based on information from taxi payment processors, we have estimated the share of the value of non-cash payments (for a typical taxi) for each payment type is:

- eftpos: 9 per cent
- Visa: 43 per cent
- MasterCard: 32 per cent
- American Express: 15 per cent
- Diners Club: 1 per cent.

Our calculations vary slightly depending on whether the payment processor charges the same or different merchant service fees for different card types, and whether the payment processor offers included value. These calculations are shown below.[126]

[125] There are some exceptions. For example, Live eftpos includes American Express and Diners Club in its flat fee and Square includes American Express in its flat fee.

[126] We note that some payment processors do not offer default acceptance of Diners Club cards. If the merchant wishes to accept Diners Club cards, the merchant must enter into an agreement with Diners Club. Our calculations reflect what the merchant service fees would be if the merchant does accept Diners Club cards.

Key calculations: merchant service fees

Merchant Service Fee type		Method of calculation
• The merchant service fee is the same for eftpos, Visa and MasterCard transactions, and • There is included value.	=	(a x b) + (c x d) + (e x f) where a = monthly revenue from eftpos, Visa and MasterCard transactions less included value b = eftpos, Visa and MasterCard merchant service fees c = monthly revenue from American Express transactions d = merchant service fee for American Express e = monthly revenue from Diners Club transactions f = merchant service fee for Diners Club
• The merchant service fee is the same for eftpos, Visa and MasterCard transactions, and • There is no included value.	=	(g x h) + (i x j) + (k x l) where g = monthly revenue from eftpos, Visa and MasterCard transactions h = eftpos, Visa and MasterCard merchant service fee i = monthly revenue from American Express transactions j = merchant service fee for American Express k = monthly revenue from Diners Club transactions l = merchant service fee for Diners Club
• The merchant service fee for eftpos transactions is different from the merchant service fee for Visa and MasterCard transactions, and • There is no included value.	=	(m x n) + (o x p) + (q x r) + (s x t) where m = number of trips paid by eftpos n = merchant service fee for eftpos transactions o = value of trips paid by Visa and MasterCard p = Visa and MasterCard merchant service fee q = value of trips paid by American Express r = merchant service fee for American Express s = value of trips paid by Diners Club t = merchant service fee for Diners Club

Where the merchant service fee is a flat fee for eftpos transactions, and a percentage of dollar value for other card types, we need to know the **number** of eftpos transactions and the **value** of other card type transactions. To estimate the number of eftpos transactions, we divided the value of transactions for eftpos by the average fare.

Business account fees

The business account fee is a flat fee charged **per month**. Payment of this fee facilitates the supply of a bank account for the payment processor to settle funds to and debit fees and charges from the merchant.

Some payment processors require the merchant to hold and settle funds to a business account with them. These payment processors typically offer more than one type of business account with varying fees and inclusions.

We have assumed that the typical taxi would choose the lowest cost option if it is required to hold a business account with the payment processor. Generally, this is a business account with no monthly fee and free online banking.

Card reader fees

The card reader fee is a flat fee charged **upfront**. It is a charge for the supply of the card reader for mPOS terminals. This fee does not apply to EFTPOS terminals. We have assumed that the typical taxi would choose the lowest cost option if the payment processor offers more than one type of card reader.

To estimate the card reader fee, we divided the card reader fee by its useful life in months. Stakeholders have reported that the useful life of a card reader is three years (i.e. 36 months).

Key calculation: card reader fees

Card reader fees	=	Upfront card reader fee ÷ 36

Monthly cost of processing non-cash payments for the typical taxi

To estimate the monthly cost of processing non-cash payments for the typical taxi, we summed the monthly fee, merchant service fees, business account fee and card reader fee.

Key calculation: monthly cost for the typical taxi

Monthly cost of processing non-cash payments for the typical taxi	=	Monthly fee + merchant service fees + business account fee + card reader fee

We calculated the monthly cost as a percentage of monthly revenue

We calculated the monthly cost as a percentage of the monthly revenue for the typical taxi. This tells us what share of monthly revenue the typical taxi would need to spend on processing non-cash payments.

Key calculation: share of monthly revenue spent on non-cash payments

Share of monthly revenue spent on non-cash payments	=	Monthly cost of processing non-cash payments x 100 ÷ monthly revenue from non-cash payments

We note that some payment processors offer more than one EFTPOS terminal contract. Generally, as the monthly fee increases, the included value increases. Sometimes, the merchant service fees may also decrease. While we have had regard to all EFTPOS terminal offers from each payment processor, in this appendix we have only presented the EFTPOS terminal offer from each payment processor that is lowest cost for the typical taxi given our estimates of monthly revenue.

We considered cost differences in processing non-cash payments in taxis and the broader economy

In submissions to our consultation paper and draft report, and in meetings, stakeholders identified a number of costs that they considered other payment processors in the broader economy do not incur. Many of the costs identified are incurred by all payment processors. However, there were some costs incurred by taxi payment processors that appeared unusual. These costs included:

- Multiple payment terminals
- Mobile payment processing

- Taxi non-cash payment surcharge record keeping requirements[127]
- Taxi receipt requirements[128]
- Integration of payment terminal and taxi meter[129]
- Multi Purpose Taxi Program subsidy processing[130]
- Providing passenger credit
- High rate of fraud in the taxi payments industry[131]
- High transaction costs of dealing with taxi drivers[132]
- High merchant fees for taxis
- Taxi payment processors do not have the scale of other payment processors
- High churn rate of users of taxi payment terminals.
- Installation of terminals.

Our consideration of whether our benchmarking requires adjustments to account for these differences is set out in the following sections.

Some of these differences are likely to increase the cost of payment processing in taxis. However, cost information provided by taxi payment processors shows that the special characteristics of taxi payment processing do not to explain the gap we have observed between the maximum surcharge and surcharges prevailing in other parts of the economy.

Cost information from taxi payment processors has allowed us to estimate the overall cost impact of the differences between standard bank terminals and taxi terminals. [redacted]

[127] CabFare, submission received 1 February 2019, p. 13.

[128] CabFare, submission received 1 February 2019, p. 13.

[129] Commercial Passenger Vehicle Association of Australia, submission received 4 February 2019.

[130] A2B Australia, submission received 1 March 2019, p. 16.

[131] CabFare, submission received 1 February 2019.

[132] A2B Australia, submission received 1 March 2019, p. 5.

[133] [redacted]

We have included an adjustment for multiple payment terminals

As discussed at the beginning of this appendix, it is common practice in the taxi payments industry for taxi drivers to have two payment terminals. For the reasons set out in that earlier section we have adjusted our benchmarking to account for this.

Mobile payment processing is a common service

In our benchmarking we have only used EFTPOS terminals with mobile network connectivity. This is a common feature of payment terminals which is used by many businesses. As a result our benchmarking already accounts for the cost of mobility enabled devices.

To the extent that taxi drivers do face cost differences, due to taking payment in places where mobile coverage is poor, these costs are not likely to be material. If a payment terminal cannot connect to its mobile network, then it takes a payment in offline mode. The consequence of this is that the terminal takes the payment without it being authorised by the issuing bank and thus there is a higher risk of the payment being declined and a chargeback occurring. The cost data that we have received from taxi payment processors show chargeback costs are not a material cost driver for taxi payment processors. As a result we have not made further adjustments for mobility costs.

CPV non-cash payment surcharge record keeping requirements and tax record keeping requirements are similar

Under the Commercial Passenger Vehicle Industry Regulations 2018 (Vic) (CPVI regulations), records of non-cash payment surcharges must be kept. These records include, among other things:

- The amount of the non-cash payment surcharge
- The amount that would have been payable by the hirer if the hiring had been paid for in cash
- The date on which the transaction was processed.[134]

The records to be kept are outlined in more detail in appendix I.

The records that taxi payment processors are required to keep under the CPVI regulations are the type of records that other payment processors keep as part of normal business management requirements for tax purposes.[135] Therefore it is unlikely that the record keeping requirements under the CPVI regulations impose material costs on taxi payment processors compared to other

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[134] Commercial Passenger Vehicle Industry Regulations 2018 (Vic), regulation 36.

[135] Transport for Victoria, Commercial Passenger Vehicles Industry Regulations 2018: Regulatory Impact Statement, March 2018, p. 15, available at: http://www.betterregulation.vic.gov.au/files/a03ee23b-d20d-4761-8d2d-a8b000fa34bb/Commercial_Passenger_Vehicle_Industry_Regulations_-_RIS.pdf (last accessed 2 April 2019).

payment processors. For this reason, we have not adjusted our benchmarking for non-cash payment surcharge record keeping requirements.

Receipts are a business administration cost

Under the CPVI regulations, the driver or booking service provider must provide the hirer with a receipt if requested. The receipt must include, among other things, the following information which is not generally included on a tax invoice:

- the registration number of the commercial passenger vehicle and
- the number of the certificate of accreditation of the driver.[136]

While these requirements may be different to those for other small businesses, providing tax invoices is a general cost associated with the administration of a business. Taxi drivers are required to produce receipts even if a customer pays in cash. The costs associated with these additional receipt requirements are not costs of processing non-cash payments. Further, any additional costs associated with the provision of registration and accreditation numbers are likely to be immaterial. As a result we have not made an adjustment to our benchmarking for differences in receipt requirements.

Taxis can process non-cash payments without taxi meter integration

Some taxi payment processing devices are physically connected to the taxi meter. This allows the payment terminal to identify where the trip began, where it ended, and how much it cost without any input from the driver.

While some taxi payment processors' terminals have this feature, many taxi payment processors' terminals do not. Also, there is no legislative requirement for taxi drivers to have a payment terminal that is integrated with their meter. As a result, meter integration is not required for drivers to process non-cash payments. The meter application is a cost of providing taxi services. It is not a cost of processing non-cash payments.

The only payment method that does require the meter and payment terminal to be integrated is the Cabcharge payment instrument. Also, it is our understanding that due to difficulties other taxi payment processors have in connecting their payment terminals to A2B Australia equipment, A2B Australia processes almost all Cabcharge payments instruments.

For these reasons we have not made an adjustment to our benchmarking to account for integration of payment terminals and taxi meters.

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[136] Commercial Passenger Vehicle Industry Regulations 2018 (Vic), regulation 22.

The Multi Purpose Taxi Program is funded by the Victorian Government

The Multi Purpose Taxi Program (MPTP) assists with the travel needs of people with severe and permanent disabilities. As part of this program, the Victorian government provides subsidised taxi travel to MPTP members. All taxis are required by Commercial Passenger Vehicles Victoria to have a payment terminal that can process MPTP subsidies.[137] As a result, taxi drivers must be able to process MPTP subsidies.

Only A2B Australia[138] and Oiii[139] have commercial agreements with the Victorian Government for the supply of MPTP services. To the extent that A2B Australia and Oiii incur costs in processing MPTP subsidies, these costs should be covered by the amount agreed with the Victorian Government. As MPTP costs should be recovered though taxi payment processors' agreements with the Victorian Government, we have not adjusted our benchmarking to reflect the additional costs associated with processing MPTP subsidies.

Although our benchmarking does not include an adjustment for the cost of MPTP subsidy processing, our bottom-up cost assessment includes those costs (and revenues). This is due to difficulties with accurately separating data associated with processing MPTP subsidies.

Provision of credit is not a standard cost of processing non-cash payments

Some taxi payment processors (for example, Ingogo and A2B Australia) provide credit to passengers that hold accounts with them. Account holders can use this line of credit to pay taxi drivers either by using an app (Ingogo and Cabcharge) or by using an account card (Cabcharge). A2B Australia and Ingogo keep track of these payments and send monthly invoices to account holders.

In a traditional four party payment system (such as Visa or MasterCard) where the card issuer extends the card holder credit (for example, bank issued credit cards), providing credit is treated as a cost of issuing a payment method and charges are levied on card holders that access credit. It is not a cost of processing non-cash payments. We also note that not all taxi payment processors provide passengers credit. For these reasons we have not made an adjustment for the cost of providing credit to passengers in our benchmarking.

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[137] CPVV, commercial passenger vehicle registration conditions – definitions, available at: https://cpv.vic.gov.au/vehicle-owners/registration-conditions/commercial-passenger-vehicle-registration-conditions-definitions (last accessed 4 April 2019).

[138] A2B Australia, submission received 1 March 2019, P. 16.

[139] Oiii, Net-cabs launches new technology for processing Multi Purpose taxi Program cards in Melbourne, available at: https://www.oiii.com/mptp.php (last accessed 3 April 2019).

The taxi payments industry has a similar fraud risk to other industries

Historically, when non-cash payments were processed manually with dockets and imprints, fraud may have been more frequent in the taxi payments industry. However, in discussions with banks, we have been told that with contemporary payments technology, payment fraud has become much less frequent in taxis. As a result, the taxi payments industry does not have a materially different risk of fraud when compared to other industries.

Further, to the extent that it is different, the cost of that difference to taxi payment processors is not material. The cost information provided to us by taxi payment processors suggest that fraud related costs make up between 0.25 and 1.7 per cent of taxi payment processors' costs. If we assume that the current maximum surcharge of 5 per cent was reflective of taxi payment processors' costs, this would mean that fraud costs account for less than one tenth of a percentage point of the surcharge (0.09%). Any difference in fraud related costs between taxi payment processors and other payment processors would only be a fraction of this.

For these reasons, we have not made an adjustment for differences in fraud risk in our benchmarking.

The big four banks service taxi drivers indirectly

Some stakeholders submitted that banks, and other payment processors operating in the broader economy, do not want to deal with taxi drivers due to the perceived risk associated with the taxi payments industry (generally attributed to fraud). A2B Australia also noted that the taxi industry is highly fragmented and the costs of servicing a large number of relatively small businesses are relatively high.[140]

As noted above, the information provided to us suggests fraud is not a material cost of processing non-cash payments in the taxi payments industry. Further, banks and merchant aggregators service many small businesses using less than four terminals. However, we accept that the major banks in Australia have not attempted to market products specifically aimed at taxi drivers. But we also note that there is little reason for the big four banks to do so while all of the major taxi payment processors use the major banks as their acquirers. Major banks effectively already serve the taxi payments industry. We also note that potential barriers to competition in the taxi payments industry noted by some stakeholders[141] might make it unattractive for banks to enter the industry.

Although major banks are not marketing products directly to taxi drivers, in meetings, banks indicated that they use the same assessment processes for taxi drivers as they do for other

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[140] A2B Australia, submission received 1 March 2019.

[141] Live group, submission received 19 June 2019, p. 3.

payment terminal applicants. They also indicated that some drivers can and do use their payment terminals.

We accept that in some, or potentially even many cases, taxi drivers might not meet a bank's criteria to be approved for a payment terminal due to their credit or work history. However, our benchmarking shows that banks do market to businesses with similar monthly non-cash payment turnover to taxis: $1500 of transactions are included as a minimum in many plans that banks offer.

Taxi payment processors are of a smaller scale than other payment processors

We acknowledge that taxi payment processors are of a smaller scale than some other payment processors included in our benchmarking, and as a result may face higher per transaction costs in some areas. We have not adjusted our benchmarking to reflect this for two main reasons:

- the purpose of our benchmarking is to understand the cost of comparable services available,
- our bottom up cost assessment accounts for scale by using taxi payment processors' actual costs as inputs and
- we do not have information on the scale of taxi payment processors compared to other payment processors.

The churn rate of taxi payment terminals is higher

In its submission to our draft decision, Live group said that the churn rate of a taxi specific payment terminal is significantly higher than an SME payment terminal: 8 months for taxi drivers and 27 months for small businesses.[142] Information that we have from payment processors suggests that driver onboarding costs may account for around 10 to 15 per cent of total costs for taxi payment processors.[redacted] If churn is three times higher for taxi payment terminals then onboarding costs would be about three times higher. As a result high driver churn may account for taxi payment processors' costs being seven to 10 per cent higher than the firms in our benchmarking. This only accounts for a small part of the observed difference between the current maximum surcharge and surcharges in the wider payments industry.

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[142] Live group, submission received 19 June 2019.

[143] [C-I-C] [redacted]

[144] [C-I-C] [redacted]

Installation of terminals

FAREWAYplus terminals are installed in vehicles. In most cases A2B Australia pays for the full cost of installation.[145] There are some advantages of installing a payment terminal in a taxi. A key advantage is that installation allows connection to an antenna on the roof of the vehicle. This improves the reliability of the terminal's connection in areas with poor mobile coverage, under awnings, or in carparks.

We have not included an adjustment to our benchmarking for installation costs. While we accept that added reliability is an advantage that A2B Australia uses to make their offering more attractive, installation is not required to process non-cash payments in taxis. Most taxi payment processors do not install their terminals in taxis.

We used benchmarks from Australian banks and merchant aggregators

Payment terminals that are generally available to small businesses provide the same service to consumers that payment terminals in taxis provide to passengers. We consider that payment terminals from banks and merchant aggregators, in Australia, are the appropriate services to consider when benchmarking drivers' reasonable cost of processing non-cash payments.

In its submission to our consultation paper, CabFare submitted that the services provided by ticketing agents and Afterpay are similar to those provided by taxi payment processors and gave some examples of the fees charged in those industries.[146]

We consider that the services provided by booking agents and Afterpay are not appropriate benchmarks for the cost to drivers of processing non-cash payments. In particular:

- The fees charged by ticketing agencies are for booking rather than for processing non-cash payments. Ticketing agencies sell tickets for events on behalf of event organisers. Ticketing agencies sometimes charge a booking fee for providing the booking service. This is different from the surcharge, which is an additional charge for processing non-cash payments.
- Afterpay is a payment system not a payment processor. This means Afterpay is not a reasonable benchmark for a taxi payment processor that accepts third party payment methods. If payment systems were good benchmarks we could equally say that eftpos (with merchant service fees of usually less than 1.25% of the average taxi fare) is an appropriate benchmark.

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[145] A2B Australia, FAREWAYplus installation policy, available at: http://merchants.cabcharge.com.au/wp-content/uploads/2016/05/FWPinstallationpolicyMay2016.pdf [last accessed 5 September 2019].

[146] CabFare, submission received 1 February 2019.

Appendix D: how we have assessed the maximum surcharge

Our approach to this review

In coming to our further draft decision on the maximum surcharge, we undertook benchmarking and bottom-up cost assessments and we also considered stakeholder submissions. This is consistent with the approach we set out in our consultation paper.[147] We consider this approach best meets our legislative objectives.

Benchmarking and bottom-up cost assessments helped us establish whether the five per cent maximum surcharge best meets our legislative objectives, including our obligation to ensure that persons facilitating the making of non-cash payment transactions are able to reasonable cost of accepting and processing such transactions, in the light of the matters we are required to ensure and have regard to (see appendix H for details). As we discussed in our consultation paper, we consider the term 'reasonable cost' to mean costs incurred in processing non-cash payments, which are moderate, not excessive, and within the limits of what it would be rational or sensible to expect for the given level of service quality and reliability.[148]

We analysed and compared the costs of payment processors in the broader economy

In our benchmarking, we looked at charges from payment processors to small businesses for processing non-cash payments. We considered the similarities and differences in processing non-cash payments between taxi payment processors and payment processors in the broader economy. Our benchmarking provided us some insight into whether the five per cent maximum surcharge was reasonable compared to costs in the broader economy. See appendix C for details.

We analysed the costs of taxi payment processors

Through information requests, we collected information from taxi payment processors about their services, assets, costs and revenues. This information allowed us to understand the types of costs taxi payment processors incur and what reasonable quanta may be.

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[147] Essential Services Commission, Taxi non-cash payment surcharge review 2019: consultation paper, December 2018, pp.11-12.

[148] Essential Services Commission, Taxi non-cash payment surcharge review 2019: consultation paper, December 2018, p.9.

For our bottom-up cost assessment, we calculated taxi payment processors' actual costs using the building block methodology. This methodology allows for operating costs, depreciation cost and a return on investment. Following our initial analysis, we used these actual costs from taxi payment processors' building block models to determine what surcharge would allow recovery of the reasonable costs of processing non-cash payments. To the extent the data available allowed us, we only included the costs and revenues of the taxi payment processors' regulated services.

This helped us to establish whether the five per cent maximum surcharge was equal to, higher than or less than the amount required for taxi payment processors to recover the reasonable costs of processing non-cash payments. See appendix B for details.

We note that not all taxi payment processors responded to our requests. Those that did respond provided us with information of varying levels of detail. While it would have been ideal to work with information from all taxi payment processors, we estimate that the data we collected covers more than 70 per cent of the market (in terms of the value of fares processed).

Our assessment approach helps us meet our legislated requirements

Our objectives

In setting the maximum non-cash payment surcharge (maximum surcharge) our objectives are to:

- Promote efficiency in the non-cash payment transaction industry by regulating the amount that may be imposed by way of a non-cash payment surcharge. In seeking to achieve this objective, we must ensure that taxi payment processors are able to recover the reasonable cost of processing non-cash payments.[149]
- Promote the long term interests of Victorian consumers. In seeking to achieve this objective we must consider the price, quality and reliability of essential services.[150]

Promoting efficiency

We signalled in our consultation paper that for the purpose of this review, efficiency means:

- the right amount of non-cash payment services are provided to consumers (that is, there is no excess demand or excess supply)
- there are the right incentives for investment and innovation by service providers and
- unnecessary costs are not incurred by customers when making non-cash payments.[151]

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[149] Commercial Passenger Vehicle Industry Act 2017 (Vic) s.122.

[150] Essential Services Commission Act 2001 (Vic), s. 8.

[151] Essential Services Commission, Taxi Non-Cash Payment Surcharge Review 2019: Consultation Paper, p.8.

To promote these outcomes the maximum surcharge should not be set too low or too high. If the maximum surcharge is set too low then taxi payment processors will not be able to recover their costs, including a reasonable return on their investment. This could lead to under-investment in payment processing services which could see passengers wanting to make non-cash payments for taxi travel finding they are unable to do so (meaning there is excess or unmet demand for these services). On the other hand, if the maximum surcharge is set too high, customers will be paying more than would otherwise be necessary. Further, it could lead to over-investment in payment processing (excess supply) which might eventually be 'stranded' if the recoverable value of the surcharge falls through regulation or competition.

Both our benchmarking and bottom-up cost assessments suggest that the current five per cent maximum surcharge is more than the amount required for taxi payment processors to recover the reasonable cost of processing non-cash payments. The bottom-up cost assessment also shows that a surcharge of four per cent (including GST) would allow taxi payment processors to recover reasonable costs.

Promoting the interests of Victorian consumers

A maximum surcharge that promotes efficiency in the non-cash payment transaction industry will also promote the long term interests of consumers. A surcharge that promotes the efficient provision of services will provide the financial incentives taxi payment processors require to provide an affordable service at the level of quality and reliability that consumers expect.

See appendices B and C for details.

Considering other relevant matters

We must also consider a range of other matters: such as the financial viability of the industry, the degree of and scope for competition within the industry, and consistency in regulation between States and on a national basis. In addition, we must ensure that the expected costs of the proposed regulation do not exceed the expected benefits, and that the determination takes into account and clearly articulates any trade-offs between costs and service standards.

Efficiency in the industry and incentives for long term investment: As mentioned earlier, we consider that a maximum surcharge of four per cent would improve efficiency, while continuing to ensure that taxi payment processors can recover at least reasonable costs.

Financial viability of the industry: Our bottom-up cost assessment shows that taxi payment processors require a surcharge of between around 3.3 and 4.3 per cent to recover their actual costs. Under our proposed maximum surcharge of four per cent the taxi payments industry would be financially viable.

Our bottom-up cost assessment also shows that a maximum surcharge of six per cent will allow A2B Australia to recover its reasonable costs of issuing and processing Cabcharge instruments.

Degree of and scope for competition within the industry: In addition to competition in the taxi non-cash payment transaction industry, competition in the wider commercial passenger vehicle market has been taken into consideration. Reduced taxi revenues were accounted for in our benchmarking and bottom-up cost assessment.

Also, our decision to allow multiple payment terminals in our benchmarking is a result of our consideration of allowing taxi payment processors to recover the reasonable costs of accepting and processing non-cash payment transactions, and the degree of and scope for competition within the taxi non-cash payment transaction industry. If we did not allow for multiple terminals in our benchmarking then taxi drivers may have no choice but to use the terminals provided by their networks. Taxi drivers must have a payment terminal that can process MPTP subsidies.[152] A2B Australia provides MPTP enabled payment terminals to almost all taxis in Victoria. See appendix C for details.

Providing a separate surcharge for Cabcharge will also help A2B Australia compete with other three party payment schemes. It will give A2B Australia choice on how to balance its charges between account fees and the surcharge.

Relevant health, safety, environmental and social legislation applying to the industry: We took into account the various regulations applying to the industry. Among other things we considered vehicle registration conditions and anti-money laundering legislation.[153]

The benefits and costs of regulation for consumers and users of the services and regulated entities: We note that the decrease in the maximum surcharge would result in a transfer of wealth from taxi payment processors to passengers, but it would also improve price signals to end users and encourage greater use of non-cash payment instruments.

The proposed reduction in the maximum surcharge will provide passengers with a saving of roughly 12 million dollars. The cost of changing the maximum surcharge will be comparatively low. Changing the maximum surcharge on payment terminals will be a straightforward change to the terminals' software that can be made via the terminals' mobile data connections. The cost of reprinting fare stickers is also likely to be immaterial compared to the total savings for passengers.

[152] CPVV, commercial passenger vehicle registration conditions – definitions, available at: https://cpv.vic.gov.au/vehicle-owners/registration-conditions/commercial-passenger-vehicle-registration-conditions-definitions (last accessed 4 April 2019).

[153] See appendix C.

We consider that the improvement in efficiency due to better price signals will outweigh the relatively small costs of changing the maximum surcharge.

Consistency in regulation between States and on a national basis and any relevant interstate and international benchmarks in comparable industries: We looked at regulation of non-cash payments in taxis on a national basis and overseas. We observed a wide range of surcharges applying from zero to 10 per cent. Except for where surcharging has been banned, little reason was given to justify the quantum of surcharges.

While most states in Australia apply a five per cent maximum surcharge in taxis, other jurisdictions have not made public why this surcharge has been adopted. We observe that these maximums were all adopted after Victoria implemented a maximum surcharge of five per cent.

The particular circumstances of the industry: Our benchmarking and bottom-up cost assessment both take into consideration the particular circumstances of the regulated industry and the services for which the determination is being made. They do so by, among other things, taking into account the cost differences between taxis and other merchants processing non-cash payments. They also take into account the actual costs and revenues of taxi payment processors.

The efficient costs of supplying regulated services and of complying with the relevant legislation: Our benchmarking and bottom up cost analysis consider the reasonable cost of providing the regulated service at length, and of complying with the relevant legislation. Further detail can be found in chapters one, two, three, and appendices B and C.

The return on assets in the regulated industry: We have considered the return on assets in the taxi payments industry. This was done implicitly through our benchmarks and explicitly in our bottom-up cost assessment. See appendices B and C for further detail.

Trade-offs between costs and service standards: Our further draft decision will allow taxi payment processors to recover reasonable costs through the maximum surcharge. As a result it is unlikely that service standards will suffer.

Appendix E: our legislative considerations

The commission's statutory power to determine the maximum surcharge

The Essential Services Commission's (the commission) power to determine the maximum amounts of non-cash payment surcharges in taxis is provided by the Essential Services Commission Act 2001 (Vic) (ESC Act) and the Commercial Passenger Vehicle Industry Act 2017 (Vic) (CPVI Act).

Section 32 of the ESC Act gives the commission the power to regulate 'prescribed prices for or in respect of prescribed goods and services supplied by or within a regulated industry'. Section 123 of the CPVI Act provides that, for the purposes of the ESC Act, 'non-cash payment transactions are prescribed services' and 'the maximum amounts of non-cash payment surcharges are prescribed prices'. Section 121 of the CPVI Act provides that, for the purposes of the ESC Act, the 'non-cash payment transaction industry is a regulated industry'.

A 'non-cash payment transaction' is defined in section 3 of the CPVI Act to mean 'the payment, other than by cash, of any amount due in respect of the hiring of a commercial passenger vehicle'.

A 'non-cash payment surcharge' is defined in section 112 of the CPVI Act as a fee or charge:

- added to the amount otherwise payable by the hirer in respect of the hiring of a commercial passenger vehicle because the payment of the amount otherwise payable is made wholly or partly by means of a non-cash payment transaction; or
- payable by the owner or driver of a commercial passenger vehicle or by all or any of them because the payment of an amount payable in respect of the hiring of the vehicle is made wholly or partly by means of a non-cash payment transaction.

The CPVI Act requires the commission to make a price determination no later than 2 July 2019.[154]

The commission's objectives

The CPVI Act states that the objective of the commission in relation to the non-cash payment transaction industry is to promote efficiency by regulating the amount that may be imposed by way of a non-cash payment surcharge. In seeking to achieve this objective, the commission must ensure that taxi payment processors are able to recover the reasonable cost of processing non-

[154] Commercial Passenger Vehicle Industry Act 2017 (Vic), s. 124.

cash payments.[155] 'Reasonable cost' is defined in the CPVI Act to include 'any fees payable for the acquisition of transactions involving the use of debit, credit or charge cards'.[156]

The ESC Act states that in performing its functions and exercising its powers, the objective of the commission is to promote the long term interests of Victorian consumers. In performing its functions and exercising its powers in relation to essential services, the commission must in seeking to achieve this objective have regard to the price, quality and reliability of essential services.[157] Without derogating from this obligation and the requirements under section 8A of the ESC Act outlined below, the commission must also when performing its functions and exercising its powers in relation to a regulated industry do so in a manner that the commission considers best achieves any objectives specified in the empowering instrument, in this case being the CPVI Act.[158]

In making a price determination, the commission must adopt an approach and methodology which the commission considers will best meet the objectives specified in the ESC Act and any relevant legislation.[159] Section 33(5) of the ESC Act states that a price determination by the commission may regulate a prescribed price for prescribed goods and services in any manner the commission considers appropriate. Section 124 of the CPVI Act provides that the commission may regulate prescribed prices by determining different prices according to the circumstances specified in the determination if it considers it necessary to do so in order for it to comply with its obligation to ensure that taxi payment processors are able to recover the reasonable cost of processing non-cash payments.

Factors the commission must have regard to

Section 8A of the ESC Act provides that in seeking to achieve the commission's objective to promote the long term interests of Victorian consumers, the commission must have regard to the following matters to the extent that they are relevant in any particular case –

- efficiency in the industry and incentives for long term investment;
- the financial viability of the industry;
- the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;
- the relevant health, safety, environmental and social legislation applying to the industry;

[155] Commercial Passenger Vehicle Industry Act 2017 (Vic), s.122(1)-(2).

[156] Commercial Passenger Vehicle Industry Act 2017 (Vic), s.122(3).

[157] Essential Services Commission Act 2001 (Vic), s. 8.

[158] Essential Services Commission Act 2001 (Vic), s. 8A(2).

[159] Essential Services Commission Act 2001 (Vic), s. 33(2).

- the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for consumers and users of products or services (including low income and vulnerable consumers) and regulated entities;
- consistency in regulation between States and on a national basis;
- any matters specified in the empowering instrument (i.e. the CPVI Act).

Section 33(3) of the ESC Act provides that in making a price determination, the commission must have regard to –

- the particular circumstances of the regulated industry (i.e. the non-cash payment transaction industry) and the prescribed goods and services (i.e. non-cash payment transactions) for which the determination is being made;
- the efficient costs of producing or supplying regulated goods or services and of complying with relevant legislation and relevant health, safety, environmental and social legislation applying to the regulated industry;
- the return on assets in the regulated industry;
- any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries;
- any other factors that the commission considers relevant.

In addition, section 33(4) of the ESC Act provides that in making a determination, the commission must ensure that –

- the expected costs of the proposed regulation do not exceed the expected benefits; and
- the determination takes into account and clearly articulates any trade-offs between costs and service standards.

We set the maximum surcharge in taxis

We determine the maximum surcharge in taxis. We do not regulate non-cash payment surcharges for rideshare and hire car services.[160] Rideshare and hire car non-cash payment surcharges are regulated by the Reserve Bank of Australia under the national payment systems framework. [161]

[160] Commercial Passenger Vehicle Industry Act 2017 (Vic), s. 112(2).

[161] RBA 2016, Standard No. 3 of 2016: Scheme Rules Relating to Merchant Pricing for Credit, Debit and Prepaid Card Transactions, May.

Appendix F: regulation of non-cash payment surcharging in other industries

The Reserve Bank of Australia is responsible for regulating non-cash payment surcharging in every industry except the taxi industry. Under the Payment Systems (Regulation) Act 1998 the RBA has the power to:

- designate payment systems, and in those designated payment systems
- impose an access regime on the participants
- determine standards to be complied with by the participants.

The RBA regulates non-cash payment surcharges through its standard on *Scheme rules relating to merchant pricing for credit, debit and prepaid card transaction*s (the standard).[162]

It is important for us to understand the RBA's role as the Commercial Passenger Vehicle Industry Act 2017 specifically states that we do not have the power to set fees and charges regulated by the RBA.[163]

Surcharging is allowed in Australia

In Australia, merchants may surcharge for non-cash payments if they choose, provided the surcharge is not excessive.[164] A surcharge is considered excessive if it exceeds the 'cost of acceptance'. The standard allows surcharging that reflects the average cost to a business of accepting different payment methods.

The Competition and Consumer Act 2010 (Cth) covers surcharges on the following card payment systems:

- eftpos (debit and prepaid)
- MasterCard (credit, debit and prepaid)
- Visa (credit, debit and prepaid), and

[162] Available at: https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/regulations.html

[163] Commercial Passenger Vehicle Industry Act 2017, s.112(2)(a-b).

[164] Competition and Consumer Act 2010 (Cth), s. 55B(1).

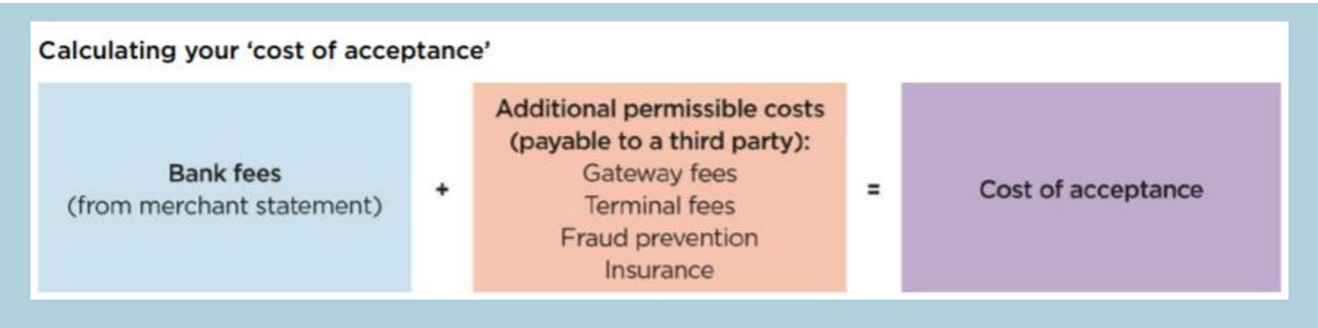
- American Express companion cards.[165]

From 1 September 2017, all businesses, except taxis, that impose surcharges on card transactions have been required to comply with the prohibitions introduced by the Competition and Consumer Amendment (Payment Surcharges) Act 2016 (Cth). Commercial passenger vehicle specific payment instruments, including Cabcharge, are not designated payment systems under the standard. The RBA excluded the taxi industry from the standard as surcharging in taxis was already regulated by state regulators.[166]

A surcharge must not exceed the average cost of acceptance

Under the RBA's standard, a merchant's surcharge for a particular type of card should not exceed the average cost of acceptance over the most recent 12 month period for that type of card. For example, if the average cost of acceptance for Visa Credit is 1 per cent then the merchant can only surcharge 1 per cent on Visa credit card payments. Box F.1 shows the allowable cost of acceptance under the RBA standards.

Box F.1: Cost of acceptance under the standard



Source: ACCC 2018, Payment surcharges: only charge what it costs you, January, p.2

Bank fees

The standard requires the merchant's acquirer (bank) or payment processors to provide an annual statement showing the average cost of acceptance for each payment method. The average cost of acceptance is expressed in percentage terms.

The statement must include:

- merchant service fees paid to an acquirer (bank) or payment processor

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[165] Issued through an Australian financial service provider, rather than directly through American Express. American Express proprietary cards (issued directly by American Express) are not presently covered by the ban. Source: ACCC 2018, Payment surcharges: only charge what it costs you, January, p.1.

[166] RBA 2016, Review of Card Payments Regulation: Conclusions Paper, May, p. 37.

- fees paid to an acquirer or payment processor for the rental and maintenance of payment card terminals
- fees paid to an acquirer or payment processors for providing gateway or fraud prevention services
- any other fees paid to an acquirer or payment processor incurred in processing card transactions, including cross-border transaction fees, switching fees and fraud related chargeback fees.[167]

Other allowable costs

There are other allowable costs paid to third parties but merchants must calculate these costs themselves. These other costs include:

- gateway fees
- the cost of fraud prevention services paid to an external provider
- any fees for the rental or maintenance of card terminals paid to a provider other than the merchant's acquirer or payment processor
- the cost of insuring against forward delivery risk.[168]

These costs must be supported by contracts, statements or invoices.

Internal costs are not allowed

Merchants' internal costs such as labour or electricity costs are not allowed to be recovered via the surcharge.[169]

The ACCC is responsible for enforcing the surcharging standard

Economy-wide concerns over excessive surcharges resulted in the Government giving the Australian Competition and Consumer Commission (ACCC) the power to enforce a ban on excessive surcharges under the Competition and Consumer Act 2010 (Cth). The ACCC has investigation and enforcement powers in cases of possible excessive surcharging. If the ACCC has

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[167] RBA 2016, Standard No. 3 of 2016: Scheme rules relating to merchant pricing for credit, debit and prepaid card transactions, May, pp.6-9.

[168] RBA 2016, Standard No. 3 of 2016: Scheme rules relating to merchant pricing for credit, debit and prepaid card transactions, May, pp.6-7. RBA, https://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/q-and-a/card-payments-regulation-qa-conclusions-paper.html (accessed on 15 October 2018); ACCC 2018, Payment surcharges: only charge what it costs you, January, p.2.

[169] RBA, https://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/q-and-a/card-payments-regulation-qa-conclusions-paper.html (accessed on 15 October 2018); ACCC 2018, Payment surcharges: only charge what it costs you, January, p.2.

reasonable grounds to believe that a merchant has breached the ban, it can issue an infringement notice or take court action against the merchant.

The RBA's guidance on surcharge rates

The RBA acknowledges that merchants have a wide range of payment costs depending on their size and which industry they belong to. But as a guide, the RBA has stated that surcharges could range from 0.5 per cent to 2 percent depending on the type of card used.

The RBA also notes that in general smaller merchants face higher payment costs than larger merchants and may also have higher costs than the above ranges.

Interchange fees are also regulated by the RBA

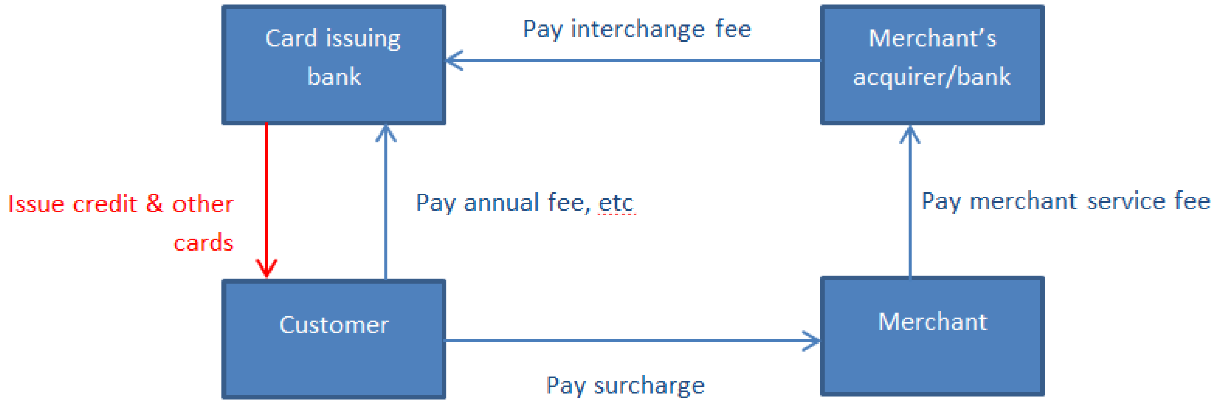
Interchange fees are paid between banks for the acceptance of card-based transactions. The merchant's acquirer or bank pays the customer's bank (the card issuing bank) an interchange fee for each card transaction. The interchange fee is relevant to surcharging because it eventually forms part of the merchant service fee paid by merchants to their acquirer or bank. On a typical credit card transaction, the interchange fee makes up roughly 60 per cent of the merchant service fee.[170]

Figure F.1 shows a simple illustration of the flow of payments between customers and merchants. Acquirers/banks pass on the interchange fees they are charged to merchants in merchant service fees.[171] Merchants may then pass merchant service fees on to customers in their non-cash payment surcharges.

[170] RBA 2018, A Journey Towards a Near Cashless Payments System: https://www.rba.gov.au/speeches/2018/sp-gov-2018-11-26.html (accessed on 4 December 2018).

[171] For eftpos transactions it is the cardholder's bank which pays the merchant's bank an interchange fee.

Figure F.1: Payment system cash flows



Interchange fees are set by card payment schemes such as MasterCard, Visa and American Express. Interchange fees might differ depending on jurisdiction,[172] the type of card used[173] and the type of transaction (e.g. card present or not present, etc.).[174]

While payment systems set interchange fees, the RBA places some limits on the interchange fees that may be charged in Australia. The limits are outlined in the RBA's standards for interchange fees on debit and credit cards.[175] These standards set weighted average benchmarks on interchange fees and also put caps on any individual interchange fee (table F.1).

Table F.1: Cap on interchange fees, RBA[176]

Type of card	Weighted average benchmark	Cap on individual interchange fee
Credit card	0.5 per cent	Should not exceed 0.8 per cent
Debit card	8 cents	Should not exceed 15 cents if levied as fixed amount or 0.2 per cent if levied as percentage amount

[172] RBA 2015, Review of Card Payments Regulation: Issues Paper, March, p. 7.

[173] RBA 2015, Review of Card Payments Regulation: Issues Paper, March, p. 6.

[174] RBA 2015, Review of Card Payments Regulation: Issues Paper, March, p. 20.

[175] RBA 2016, Standard No.1 of 2016: The setting of interchange fees in the designated credit card schemes and net payments to issuers; Standard No.2 of 2016: The setting of interchange fees in the designated debit and prepaid card schemes and net payments to issuers.

[176] RBA, https://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/q-and-a/card-payments-regulation-qa-conclusions-paper.html (accessed on 15 October 2018).

Appendix G: origin of the non-cash payment surcharge

Prior to the Victorian Taxi Industry Inquiry (the inquiry), the non-cash payment surcharge was unregulated. Standard industry practice for taxis was to add a 10 per cent surcharge (excluding GST) for non-cash payments. Following the inquiry the surcharge was regulated and the maximum non-cash payment surcharge amount was set at five per cent (including GST). It has remained at that level to this day.

The surcharge was first introduced for processing paper dockets

Prior to the introduction of electronic payments, taxi booking services provided paper-based (docket) charge account services to corporate and government customers. These services charged a 10 per cent service fee on each docket processed. In 1976 A2B Australia began offering a docket based system that could be used in any capital city in Australia. This service also charged a 10 per cent service fee. A2B Australia rebated a share of that service fee to networks. When A2B Australia began processing third-party cards such as American Express, Diners Club and MotorPass in 1982 and bank-issued cards such as Visa, MasterCard and Bankcard in the late 1990s, it extended the 10 per cent service fee to all electronic transactions processed using its facilities.[177] This 10 per cent surcharge became a standard industry practice.

The taxi industry inquiry set the maximum surcharge at five per cent

The surcharge was considered at length by the inquiry.

The inquiry identified a market failure, in that competition between taxi payment processors had failed to lead to reduced costs for customers.[178] It recommended the surcharge be regulated.

The inquiry found that the 10 per cent surcharge did not reflect the cost of service provision. Up to five per cent of the fee was rebated to operators and drivers as incentive payments. This showed that the cost of providing the service was not more than five per cent.[179] The inquiry recommended that the surcharge be set at a maximum fee that reflected the resource costs of

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[177] Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Draft Report, May 2012, p.252.

[178] Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p.208.

[179] Taxi Industry Inquiry, *Customers First: Service, Safety, Choice*, Draft Report, May 2012, pp 258-9.

providing that service, and recommended the maximum surcharge be set at five per cent of transaction value until subject to a further evaluation by the Essential Services Commission.[180]

The maximum regulated surcharge of five per cent took effect in Victoria in 2014. Any non-cash payment surcharge that exceeds the prescribed amount attracts a penalty under the Commercial Passenger Vehicle Industry Act 2017 (Vic).

Other states have followed Victoria's example on the surcharge

Following the introduction of surcharge regulation in Victoria, action was taken in other jurisdictions to regulate payment surcharges in other Australian states and territories. Currently, only in Tasmania do taxis charge a 10 per cent surcharge for non-cash payments.[181] The other states and territories have a regulated five per cent maximum.

[180] Taxi Industry Inquiry, Customers First: Service, Safety, Choice, Final Report, September 2012, p.217.

[181] Department of State Growth Transport (accessed on 10 October 2018), https://www.transport.tas.gov.au/passenger/taxi/fares

Appendix H: the legislation governing our non-cash payment surcharge role

This appendix includes the key sections of the Acts relevant to the price regulation of the non-cash payment surcharge. The legislation can be found in full online at: http://www.legislation.vic.gov.au/
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Table H.1: Relevant sections of the Commercial Passenger Vehicle Industry Act 2017

	Section detail
s. 3	**Definitions** **non-cash payment processing device** means a device— (a) used, or intended to be used, to process a non-cash payment transaction; or (b) that enables a non-cash payment transaction to be processed; **Examples** EFTPOS machine, smartphone, computer tablet. **non-cash payment processing service** means a service that facilitates the processing of a non-cash payment transaction but does not include a service relating to a fee or charge imposed in respect of the use of a credit card, charge card or debit card levied— (a) by a participant in a designated payment system within the meaning of the Payment Systems (Regulation)Act 1998 of the Commonwealth and is of a kind covered by a standard in force under section 18 of that Act; or (b) by a person who acts consistently with a voluntary undertaking given by the person to, and accepted by, the Reserve Bank of Australia; **non-cash payment transaction** means the payment, other than by cash, of any amount due in respect of the hiring of a commercial passenger vehicle; **prescribed amount** of a non-cash payment surcharge is— (a) the maximum amount of the surcharge as determined by the ESC under Division 3 of Part 6; or (b) until the first such determination, 5% of the amount that would be payable in respect of the hiring to which the surcharge relates if that amount were paid in cash**;**

	Section detail

s.112 **Meaning of non-cash payment surcharge**

(1) Subject to subsection (2), a non-cash payment surcharge is a fee or charge—

(a) added to the amount otherwise payable by the hirer in respect of the hiring of a commercial passenger vehicle because the payment of the amount otherwise payable is made wholly or partly by means of a non-cash payment transaction; or

(b) payable by the owner or driver of a commercial passenger vehicle or by all or any of them because the payment of an amount payable in respect of the hiring of the vehicle is made wholly or partly by means of a non-cash payment transaction.

(2) A non-cash payment surcharge does not include a fee or charge that is imposed in respect of the use of a credit card, charge card or debit card—

(a) by a participant in a designated payment system within the meaning of the Payment Systems (Regulation) Act 1998 of the Commonwealth and is of a kind covered by a standard in force under section 18 of that Act; or

(b) by a person consistently with a voluntary undertaking given by the person to, and accepted by, the Reserve Bank of Australia.

(3) A fee or charge may be a non-cash payment surcharge irrespective of whether it is—

(a) payable for accepting or processing, or both accepting and processing, payment made by means of a non-cash payment transaction or for any other reason; or

(b) set as a percentage of the amount otherwise payable in respect of the hiring of the commercial passenger vehicle or as a fixed amount or as an amount fixed on a sliding scale of any kind or on any other basis.

s. 113 **Cap on non-cash payment surcharges**

(1) This section applies to a non-cash payment surcharge that—

(a) exceeds the prescribed amount; or

(b) results in the prescribed amount being exceeded in the circumstances set out in subsection (2).

(2) The circumstances are that the surcharge is added to any other such surcharge charged or collected, or to be charged or collected, by the same or any other person in respect of the same hiring of a commercial passenger vehicle, irrespective of whether the surcharges are payable by the same person or by 2 or more persons.

(3) A person must not—

Section detail

(a) impose, whether directly or indirectly, a non-cash payment surcharge to which this section applies; or

(b) directly initiate the collection in the commercial passenger vehicle of a non-cash payment surcharge to which this section applies or of an amount that includes such a surcharge.

Penalty: In the case of an individual, 240 penalty units;

In the case of a body corporate, 1200 penalty units.

Notes

Section 285 (criminal liability of officers of bodies corporate—failure to exercise due diligence (evidential burden of proof)) applies to an offence against this subsection.

(4) A person does not commit an offence against subsection (3) because of a non-cash payment surcharge charged or collected, or to be charged or collected, by another person in respect of the hiring of a commercial passenger vehicle if—

(a) the person presents or points to evidence that suggests a reasonable possibility that the person did not know, and could not reasonably be expected to have known, that the other person had charged or collected, or was to charge or collect, a non-cash payment surcharge in respect of that hiring; and

(b) the contrary is not proved (beyond reasonable doubt) by the prosecution.

(5) The reference in subsection (3) to a person includes—

(a) any person who provided or maintains any equipment (whether or not installed in the commercial passenger vehicle) or any application or software that enabled the non-cash payment transaction to be made; and

(b) any person who manages or administers the whole or any part of a system under which non-cash payment transactions may be made; and

(c) the owner and driver of the commercial passenger vehicle.

s.114 **Offence to enter into certain contracts etc.**

(1) A person, including the owner or driver of the commercial passenger vehicle or a booking service provider, must not—

(a) enter into a contract, arrangement or understanding with any person that has the purpose or effect specified in subsection (2); or

(b) agree to give effect to a contract, arrangement or understanding entered into by any other persons that has that purpose or effect.

Penalty: In the case of an individual, 60 penalty units;

In the case of a body corporate, 300 penalty units.

	Section detail
	Note Section 285 (criminal liability of officers of bodies corporate—failure to exercise due diligence (evidential burden of proof)) applies to an offence against this section. (2) The purpose or effect is directly or indirectly causing a non-cash payment surcharge to which section 113 applies to be paid in respect of a hiring of a commercial passenger vehicle.
s.115	**Civil penalties** (1) The Supreme Court may order that a person pay, as a debt due to the State, a civil penalty of an amount not exceeding $1 000 000 for an individual or $5 000 000 for a body corporate. (2) The Supreme Court may make an order under subsection (1) if satisfied, on an application made by the regulator, that the person has— (a) contravened section 113(3); or (b) attempted to contravene section 113(3); or (c) aided, abetted, counselled or procured a person to contravene section 113(3); or (d) induced, or attempted to induce, whether by threats, promises or otherwise, a person to contravene section 113(3); or (e) been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 113(3); or (f) conspired with others to contravene section 113(3). (3) The regulator may make an application under this section at any time within 6 years after the contravention or other conduct covered by subsection (2). (4) The Supreme Court may relieve a person, other than a body corporate, from liability to a civil penalty in a proceeding under this section if it appears to it that— (a) the person has, or may have, engaged in conduct in contravention of section 113(3) or conduct referred to in subsection (2)(b), (c), (d), (e) or (f) that relates to a contravention of section 113(3); but (b) the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused.
s.116	**Preference must be given to compensation** The Supreme Court must give preference to making an order for compensation if it considers that—

(a) it is appropriate to order a person (the defendant) to pay a civil penalty under section 115(1) in relation to—

(i) a contravention of section 113(3); or

(ii) conduct referred to in section 115(2)(b), (c), (d), (e) or (f) that relates to a contravention of section 113(3); and

(b) it is appropriate to order the defendant to pay compensation under section 120 to a person who has suffered loss or damage because of that contravention or conduct; and

(c) the defendant does not have sufficient financial resources to pay both the civil penalty and the compensation.

s.117 **Interplay between civil penalties and criminal proceedings**

(1) An application cannot be made to the Supreme Court under section 115 in relation to a contravention of section 113(3) if the person has been convicted or acquitted of an offence constituted by conduct that is substantially the same as the conduct to which the application relates.

(2) The Supreme Court must stay a proceeding under section 115 against a person if a criminal proceeding is or has been commenced against the person for an offence constituted by conduct that is substantially the same as the conduct to which the application under that section relates.

(3) A proceeding stayed in accordance with subsection (2) must be dismissed by the Supreme Court if the person is convicted or acquitted of the offence but otherwise may be resumed by it.

(4) A criminal proceeding may be commenced against a person for conduct that is substantially the same as conduct to which an application under section 115 relates or in respect of which an order has been made under that section.

(5) Evidence of information given, or evidence of the production of documents, by a person is not admissible in a proceeding against the person for an offence if—

(a) the person previously gave the evidence or produced the documents in a proceeding against the person under section 115; and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct to which the proceeding under that section related.

(6) Subsection (5) does not apply to a criminal proceeding in respect of the falsity of evidence given in a proceeding under section 115.

s.118 **Non-cash payment surcharge may be recovered as a debt**

A person who has paid a non-cash payment surcharge to which section 113 applies may recover, as a debt in any court of competent jurisdiction, the amount of the excess over the prescribed amount from the person to whom the surcharge was payable.

Section detail	
s.119	**Proceeding for damages**

(1) This section applies if a person suffers loss or damage because of—

(a) conduct engaged in by another person in contravention of section 113(3); or

(b) conduct referred to in section 115(2)(b), (c), (d), (e) or (f) engaged in by another person that relates to a contravention of section 113(3).

(2) The person may recover the amount of the loss or damage in a proceeding commenced against that other person in any court of competent jurisdiction.

(3) A proceeding under subsection (2) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.

s.120 **Compensation orders**

(1) This section applies if a person (the injured person) suffers, or is likely to suffer, loss or damage because of—

(a) conduct engaged in by another person in contravention of section 113(3); or

(b) conduct referred to in section 115(2)(b), (c), (d), (e) or (f) engaged in by another person that relates to a contravention of section 113(3).

(2) The Supreme Court may make any other order or orders that it thinks appropriate against the person who engaged in the conduct on an application made by—

(a) the injured person; or

(b) the regulator on behalf of one or more injured persons.

(3) An order must be an order that the Supreme Court considers will—

(a) compensate the injured person, or any injured person, in whole or in part for the loss or damage; or

(b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the injured person or any injured person.

(4) An application may be made under subsection (2) at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.

(5) An application may be made under subsection (2) even if no other proceeding (whether criminal or civil) has been commenced under this Division in relation to the relevant conduct.

	Section detail
	(6) The regulator must not make an application under subsection (2)(b) on behalf of an injured person who has not consented in writing to the making of the application on their behalf.
s. 121	**Application of Essential Services Commission Act 2001**
	(1) For the purposes of the **Essential Services Commission Act 2001**— (a) this Division is relevant legislation; and (b) the non-cash payment transaction industry is a regulated industry. (2) If there is any inconsistency between a provision of this Division and a provision of the **Essential Services Commission Act 2001**, the provision of this Division prevails.
s. 122	**Objective of the ESC**
	(1) The objective of the ESC in relation to the noncash payment transaction industry is to promote efficiency by regulating the amount that may be imposed by way of a non-cash payment surcharge. (2) In seeking to achieve the objective specified in subsection (1), the ESC must ensure that persons facilitating the making of non-cash payment transactions are able to recover the reasonable cost of accepting and processing such transactions. (3) In this section— **reasonable cost** includes any fees payable for the acquisition of transactions involving the use of debit, credit or charge cards.
s. 123	**Powers in relation to non-cash payment service regulation**
	For the purposes of Part 3 of the Essential Services Commission Act 2001— (a) non-cash payment transactions are prescribed services; and (b) the maximum amounts of non-cash payment surcharges are prescribed prices.
s. 124	**Exercise of regulatory functions**
	*(*1) The ESC may regulate prescribed prices by determining different prices according to circumstances specified in the determination if it considers it necessary to do so in order for it to comply with section 122(2). (2) Subsection (1) does not limit section 33(5) of the Essential Services Commission Act 2001.

	Section detail
	(3) The ESC must make a price determination no later than 12 months after the day on which section 18 of the Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017 comes into operation. (4) The ESC must complete a review of a price determination no later than 2 years after it is made.
Schedule 2, s.25	**Subject matter for regulations** **Non-cash payment surcharges** 25. The keeping by persons who provide services for processing non-cash payment surcharges of records of, or relating to, the following— (a) non-cash payment surcharges charged or collected by persons using the services; (b) the operation and programming of equipment that enables non-cash payment transactions to be made; (c) the retention and storage of information, data and electronic communications relating to non-cash payment surcharges; (d) the structure of, setting of and receipt of non-cash payment surcharges; (e) commercial arrangements supporting non-cash payment surcharges.

Table H.2: Relevant sections of the Essential Services Commission Act 2001

	Section detail
s. 8 (1)	**Objective of the Commission** In performing its functions and exercising its powers, the objective of the Commission is to promote the long term interests of Victorian consumers.
s. 8 (2)	Without derogating from subsection (1), in performing its functions and exercising its powers in relation to essential services, the Commission must in seeking to achieve the objective specified in subsection (1) have regard to the price, quality and reliability of essential services.
s. 8A (1)	**Matters the Commission must have regard to** In seeking to achieve the objective specified in section 8, the Commission must have regard to the following matters to the extent that they are relevant in any particular case— (a) efficiency in the industry and incentives for long term investment; (b) the financial viability of the industry;

	Section detail
	(c) the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries; (d) the relevant health, safety, environmental and social legislation applying to the industry; (e) the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for— (i) consumers and users of products or services (including low income and vulnerable consumers); (ii) regulated entities; (f) consistency in regulation between States and on a national basis; (g) any matters specified in the empowering instrument.
s. 8A (2)	Without derogating from section 8 or subsection (1), the Commission must also when performing its functions and exercising its powers in relation to a regulated industry do so in a manner that the Commission considers best achieves any objectives specified in the empowering instrument.
S.32	**Price Regulation** The Commission may regulate prescribed prices for or in respect of prescribed goods and services supplied by or within a regulated industry.
S.32(2)	In this section – **prescribed goods and services** means any goods or services made, produced or supplied by or within a regulated industry which goods or services are specified in the empowering instrument as being goods or services in respect of which the Commission has power to regulate prices; **prescribed price** means the price or price-range however designated for the supply or sale of any goods or services by or within a regulated industry or particular factors used in price-fixing or terms and conditions relating to the price at which particular goods or services are supplied or sold, being a price, price-range, factor or term and condition specified in the empowering instrument as being a price, price-range, factor or term and condition which the Commission has power to regulate.
S.33(1)	**Price determinations** (1) This section is subject to anything to the contrary in the empowering instrument specifying the prescribed prices or prescribed goods and services in respect of which the Commission is exercising its power of regulation.
S.33(2)	In making a price determination, the Commission must adopt an approach and methodology which the Commission considers will best meet the objectives specified in this Act and any relevant legislation.
s. 33(3)	In making a determination under this section, the Commission must have regard to— (a) the particular circumstances of the regulated industry and the prescribed goods and services for which the determination is being made;

	Section detail
	(b) the efficient costs of producing or supplying regulated goods or services and of complying with relevant legislation and relevant health, safety, environmental and social legislation applying to the regulated industry; (c) the return on assets in the regulated industry; (d) any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries; (e) any other factors that the Commission considers relevant.
s. 33(4)	In making a determination under this section, the Commission must ensure that— (a) the expected costs of the proposed regulation do not exceed the expected benefits; and (b) the determination takes into account and clearly articulates any trade-offs between costs and service standards
s. 33(5)	A price determination by the Commission may regulate a prescribed price for prescribed goods and services in any manner the Commission considers appropriate.
s. 33(6)	Without limiting the generality of subsection (5), the manner may include— (a) fixing the price or the rate of increase or decrease in the price; (b) fixing a maximum price or maximum rate of increase or minimum rate of decrease in the maximum price; (c) fixing an average price for specified goods or services or an average rate of increase or decrease in the average price; (d) specifying pricing policies or principles; (e) specifying an amount determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factor; (f) specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the rate or supply of the goods or services; (g) fixing a maximum average revenue or maximum rate of increase or minimum rate of decrease in the maximum average revenue in relation to specified goods or services; (h) monitoring the price levels of specified goods and services.
	Collection and use of information
s.36	**Application of this Part** Subject to any provisions to the contrary in any relevant legislation, this Part applies to or in respect of any information or document that is provided to the Commission.
S.36A	**Commission must have regard to certain matters** In exercising the powers conferred on the Commission under this Part, the Commission must have regard to— (a) the relevance of the information or document; and

	Section detail
	(b) the estimated compliance costs.
S.37	**General power to obtain information and documents** (1) If the Commission considers that it is necessary to do so for the purposes of performing its functions or exercising its powers, the Commission may require a person that the Commission has reason to believe has any relevant information or document to provide that information or document to the Commission. (1A) For the purposes of subsection (1), the Commission may require the person to appear before the Commission to provide the information or document. (2) A requirement must be made in a written notice specifying— (a) the information or document required; and (b) the period of time within which the requirement must be complied with; and (c) the form in which the information or copy of the document is to be given to the Commission; and (ca) whether or not the person is required to appear before the Commission; and (d) that the requirement is made under this section. (3) The notice must include a copy of this Part. (4) A person who without lawful excuse fails to comply with any requirement made under this section in a notice given to the person is guilty of an offence. Penalty: 120 penalty units. (5) It is a lawful excuse for the purposes of subsection (4) that compliance may tend to incriminate the person or make the person liable to a penalty for any other offence. (6) A person must not, in purported compliance with a requirement, knowingly give the Commission information that is false or misleading. Penalty: 120 penalty units or imprisonment for 6 months. (7) A person must not— (a) threaten, intimidate or coerce another person; or (b) take, threaten to take, incite or be involved in any action that causes another person to suffer any loss, injury or disadvantage— because that other person complied, or intends to comply, with a requirement made under this section. Penalty: 120 penalty units. (8) A person is not liable in any way for any loss, damage or injury suffered by another person because of the giving in good faith of any information or a document to the Commission under this section.
S.37A	**Provision of information relating to regulated Entities**

Section detail

(1) A regulated entity must provide information relating to the regulated entity requested by the Commission by written notice to the Commission in the manner and form specified in the notice.

(2) If information relating to a regulated entity is held by a third party, the Commission may require the regulated entity to enter into an arrangement with the third party under which the third party is to provide the information to the Commission.

(3) The Commission may specify the kind or class of information which a regulated entity must maintain for the purposes of this section in a Code of Practice.

S.38 **Restriction on disclosure of confidential information**

(1) This section applies if—

(a) information or a document is given to the Commission under—

(i) section 37, 37A or 51; or

(ii) section 212E of the Accident Towing Services Act 2007; and

(b) at the time the information or document is given, the person giving it states that it is of a confidential or commercially-sensitive nature.

(1A) Before the Commission makes a decision under subsection (2), the Commission must—

(a) give the person giving the information or document an opportunity to make a submission to the Commission specifying—

(i) why the information or document is of a confidential or commercially sensitive nature; and

(ii) the detriment that would be caused by the disclosure of the information or document; and

(b) consider any submission made by that person.

(2) The Commission must not disclose the information or the contents of the document to any person unless—

(a) the Commission is of the opinion—

(i) that the disclosure of the information or document would not cause detriment to the person supplying it; or

(ii) that although the disclosure of the information or document would cause detriment to the person supplying it, the public benefit in disclosing it outweighs that detriment; and

(b) the Commission is of the opinion, in relation to any other person who is aware of the information or the contents of the document and who might be detrimentally affected by the disclosure—

(i) that the disclosure of the information or document would not cause detriment to that person; or

(ii) that although the disclosure of the information or document would cause detriment to that person, the public benefit in disclosing it outweighs that detriment; and

(c) the Commission gives the person who supplied the information or document a written notice—

	Section detail

(i) stating that the Commission wishes to disclose the information or contents of the document, specifying the nature of the intended disclosure and setting out detailed reasons why the Commission wishes to make the disclosure; and

(ii) stating that the Commission is of the opinion required by paragraph (a) and setting out detailed reasons why it is of that opinion; and

(iii) setting out a copy of this section and section 55, and as the case requires, section 45 of this Act or section 212F of the Accident Towing Services Act 2007; and

(d) if the Commission is aware that the person who supplied the information or document in turn received the information or document from another person and is aware of that other person's identity and address, the Commission gives that other person a written notice—

(i) containing the details required by paragraph (c); and

(ii) stating that the Commission is of the opinion required by paragraph (b) in relation to him, her or it and setting out detailed reasons why it is of that opinion; and

(e) no notice of appeal is lodged in respect of any notice given under paragraph (c) or (d) within the time permitted by section 55(3).

Penalty: 120 penalty units.

(3) Subsection (2) does not prevent the Commission—

(a) from disclosing information or the contents of a document to—

(i) an employee employed under section 24(1); or

(ii) a member of staff referred to in section 24(2); or

(iii) a consultant engaged under section 25; or

(iv) a member of a Division, committee or panel acting under a delegation under section 26; or

(b) from using information or a document for the purposes of an inquiry or investigation; or

(c) from disclosing information or the contents of a document to the Minister in a report prepared in the form required by section 45(2) of this Act or section 212F(2) of the Accident Towing Services Act 2007; or

(d) from supplying the information or document to the members of any appeal panel hearing an appeal in relation to the information or document.

(4) If an appeal is lodged under section 55 and the appeal—

(a) is withdrawn or dismissed, the Commission may disclose any information, or the contents of any document, that was the subject of the appeal in the manner set out in the notice given under subsection (2)(c);

(b) is granted, the Commission may disclose anything that the appeal panel permits it to disclose under section 56(7)(b)(ii) in the manner specified by the appeal panel.

(5) For the purposes of this section, the disclosure of anything that is already in the public domain at the time the Commission wishes to disclose it can not cause detriment to any person referred to in subsection (2)(a) or (2)(b).

S.39	**Commission must not disclose exempt freedom of information documents**

	Section detail
	(1) The Commission must not disclose to any person any document that it has obtained from any agency (as defined in the Freedom of Information Act 1982) or Minister that is an exempt document under the Freedom of Information Act 1982 in the hands of the agency or Minister. (2) Subsection (1) does not prevent the Commission from doing anything specified in section 38(3).

Appendix I: records to be kept on non-cash payment surcharges

Under the Commercial Passenger Vehicle Industry Act 2017 (Vic)[182] and the Commercial Passenger Vehicle Industry Regulations 2018 (Vic), taxi payment processors are required to keep records.

Section 36 of the Commercial Passenger Vehicle Industry Regulations 2018 sets out in detail the records to be kept for non-cash payment surcharges (see table I.1). The records must be kept for a period of at least three years.

If you have questions in relation to these requirements, you should contact Commercial Passenger Vehicles Victoria, which is responsible for the implementation of the Commercial Passenger Vehicle Industry Regulations 2018.

Table I.1: Records to be kept for non-cash payment surcharges

	Section detail
s. 36	**Records to be kept for non-cash payment surcharges**
	(1) This regulation applies to a person who provides a relevant service that facilitates the processing of a non-cash payment transaction that is a payment of an amount that includes a non-cash payment surcharge (a relevant transaction).
	(2) A person to whom this regulation applies must keep records sufficient to identify—
	(a) in respect of each relevant transaction facilitated by the relevant service— (i) the amount of the non-cash payment surcharge; and (ii) the amount that would have been payable by the hirer in respect of the hiring to which the transaction relates if the hiring had been paid for in cash; and (iii) the date on which the transaction was processed; and
	(b) in respect of each day on which the relevant service facilitated the processing of a relevant transaction— (i) the total amount of the non-cash payment surcharges that were added to the relevant transactions on that day; and (ii) the total amount that would have been payable if the relevant transactions on that day were instead paid for in cash; and

[182] Commercial Passenger Vehicle Industry Act 2017, schedule 2, section 25.

Section detail

(c) in respect of each non-cash payment processing device supplied by the person or used to process a relevant transaction—

(i) if the device is programmed to add a non-cash payment surcharge that is a fixed amount, the amount of that surcharge; and

(ii) if the device is programmed to add a non-cash payment surcharge that is not a fixed amount, the basis on which the amount of the surcharge is determined; and

(iii) any day on which the programming of the device is set or changed—

(A) to make the device add a non-cash payment surcharge; or

(B) to change the amount the device adds as a non-cash payment surcharge; and

(iv) each commercial passenger vehicle in relation to which the device is used; and

(v) the periods during which the device is used in relation to each commercial passenger vehicle; and

(vi) if the device is supplied by the person—

(A) each person to whom the device is supplied; and

(B) the period during which the device is supplied to that person.

(3) A person to whom this regulation applies must keep the records required under subregulation (2) for a period of at least 3 years after the last entries in the records are made.

Penalty: 10 penalty units.

(4) In this regulation — relevant service means a non-cash payment processing service within the meaning of section 3(1) of the Act.

Note

The Electronic Transactions (Victoria) Act 2000 provides that a requirement to keep written records is taken to have been met if the person records information in electronic form.

Appendix J: Detailed list of matters raised by stakeholders

We received a total of 55 submissions from consumers, commercial passenger vehicle owners and/or drivers, CPV associations, taxi payment processors, and card scheme providers. We considered all submissions made. The following table provides a summary of the matters raised by stakeholders in response to the draft decision paper we released in May 2019 on the maximum surcharge for taxis,[183] and our responses. We note that the public version of this document does not contain matters that were raised in confidence, or our responses to those matters.

Table J.1: Summary of stakeholder submissions and our response

Theme	Submission summary	ESC response
Level of maximum surcharge	• 4.5 per cent maximum surcharge is the right level[184] • 4.5 per cent maximum surcharge is too low[185] • 4.5 per maximum surcharge cent is too high[186]	Our further draft decision is to reduce the maximum surcharge to four per cent. See chapter one for further detail.
Viability of taxi payments industry	• ‘A maximum service fee of 4.5 per cent would threaten the viability of the taxi payments industry’[187]	Our bottom up cost assessment shows that the actual costs of taxi payment processors lie between 3.3 and 4.3 per cent of fares processed. This suggests that a maximum surcharge of four per cent is sufficient for taxi payment processors to recover the reasonable cost of processing non-cash payments (except in the case of Cabcharge payment

[183] ESC, Taxi non-cash payment surcharge review 2019: draft decision, 30 May 2019.

[184] Anonymous, submission received 19 June 2019

[185] Live group, submission received 19 July 2019, p.3; VTA, submission received 22 July 2019; A2B Australia, submission received 12 August 2019

[186] Janette, submission received 17 June 2019; CALC, submission received 22 July 2019, p.2; Visa, submission received 22 July 2019, p.1

[187] A2B Australia, submission received 12 August 2019, p.5

		instruments where a maximum surcharge of six per cent is required). See chapter three for details.
Service quality from taxi payment processors	• Some VTA members across the state fear that the current level of service will be severely affected due to this decision[188]	Our decision should not lead to a decrease in service quality as it will allow service providers to recover the reasonable cost of processing non-cash payment services.
ESC approach and methodology	• A better approach would be to say that it is reasonable to only recover efficient costs[189] • Reasonable costs are the actual costs of taxi payment processors[190]	The CPVI Act requires our decision to ensure that taxi payment processors are able to recover the 'reasonable cost' of processing non-cash payments. Reasonable costs may differ from efficient costs. As noted in our consultation paper, the reasonable cost of processing non-cash payments may be different from payment processors' actual costs. Our bottom up cost assessment shows that taxi payment processors are able to recover the reasonable cost of processing non-cash payments with a surcharge of four per cent.
	• A building block price cap is open to gaming through predatory pricing[191]	This is not the case. We have not only used the costs of the most efficient payment processor to set the maximum surcharge. Instead we have had regard to the costs of all payment processors in coming to our decision on what the reasonable cost of accepting and processing non-cash payment transactions is.
	• The draft decision does not make clear how the RBA's standard on	We had regard to the costs included in the RBA's surcharging standard. We used these costs as a starting point for considering what costs were

[188] VTA, submission received 22 July 2019

[189] CALC, submission received 22 July 2019, p.2

[190] NBG, submission received 22 July 2019, p.2

[191] NBG, submission received 22 July 2019, p. 2

	merchant surcharging has been applied as a starting point[192]	reasonable. After research and industry consultation we concluded that some other costs, not usually included in the RBA's definition of the cost of acceptance, are reasonable. See chapter three on our bottom up cost assessment for further detail.
	• 'Applying the RBA's surcharging standard is inappropriate and wholly mischaracterises the business models of in-taxi payment processors'.[193]	We did not apply the RBA's standard to set a maximum surcharge. We had regard to what costs made up the cost of acceptance in the RBA's standard, but in determining the maximum surcharge for taxis we also included other reasonable costs where appropriate.
Use of multiple surcharges	• The ESC has not addressed the moral hazard issue facing persons providing the processing services.[194] An ad valorem surcharge enables recovery of reasonable costs in some but not all transactions[195] [redacted]	We have considered all of our statutory objectives and the matters we must have regard to in legislation. We consider our further draft decision best meets our objectives taking these matters into account. We are not required to ensure that every single transaction recovers reasonable costs. [redacted]
	[redacted]	[redacted]

[192] Visa, submission received 22 July 2019, p.1

[193] A2B Australia, submission received 12 August 2019, p. 7.

[194] NBG, submission received 22 July 2019, p.2

[195] NBG, submission received 22 July 2019, pp.2-3

[196] NBG, submission received 22 July 2019, p.6

[197] NBG, email received 5 August 2019.

		[redacted]
Implementation date	• The maximum surcharge should be implemented on 1 January 2020[198] - The maximum surcharge should come into effect sooner.[199] The ESC's proposed approach appears to prefer the interests of industry over consumers and to penalises consumers for delays caused by industry.[200] • The maximum surcharge should come into effect later: - 'the implementation of any reduction to the maximum service fee should take effect from 1 July 2021 to allow sufficient time to make the necessary commercial decisions and achieve these necessary arrangements and adjustments[201] and [redacted] - New Year's Eve is one of the busiest times of the year for the	A change to the maximum surcharge to four per cent is likely to require modifications to taxi payment processors' software. To allow for this, and the fact we will not make a final decision until February 2020, our further draft decision is to delay the implementation until May 2020. Feedback from other stakeholders suggests that three months is sufficient time to implement a change to the maximum surcharge. Our further draft decision is to delay the implementation until May 2020. We also note that January is often a difficult time for businesses to implement changes as staff are often on leave over the holiday period. However, it seems excessive to delay the decision until the end of financial year 2020. Taxi payment processors have had notice that changes to the maximum surcharge might be made since we started our review. They have also had specific notice that the maximum surcharge might be reduced since May. This will have allowed taxi payment processors to make plans for potentially necessary changes.

[198] Janette, submission 17 June 2019

[199] Anonymous, submission received 19 June 2019

[200] CALC, submission received 22 July 2019, p.3

[201] A2B Australia, submission received 24 June 2019, p.4.

[redacted]

	- taxi industry so 1st January could not be recommended[204] - With any software change there is a risk of malfunction. The change should be implemented at a time when personnel are available to quickly resolve any issue that may arise[205]	
Bottom up cost assessment	• GST is a consumption tax collected by merchants and passed through to the ATO. It is never imposed on merchants as a cost except in the taxi industry.[206]	We have accounted for GST in our bottom up cost assessment.
	• The draft decision has omitted fees incurred by persons providing non-cash payments that clearly fall within the definition in the CPVI Act: agent fees[207]	We adjusted our bottom up cost assessment to include agent fees. We note that these fees were misclassified as driver incentives in the data we originally received from one payment processors.
	• [redacted]	[redacted]
	• The cost of operating lounges (cashing booths), or at a minimum 75 per cent of the cost base, is a genuine cost of providing non-cash payment services to taxis.[209]	We have made adjustments to our bottom up cost assessment to account for this where appropriate.

[204] VTA, submission received 22 July 2019

[205] VTA, submission received 22 July 2019

[206] NBG, submission received 22 July 2019, p.6

[207] NBG, submission received 22 July 2019, p.3

[208] NBG, submission received 22 July 2019, p.6

[209] Live group, submission received 19 July 2019, p.7

	• The draft decision notes that commissions of up to 2.25 per cent (incl. GST) is offered by some competitors. The only competitor which we are aware of offering such commission is Ingogo. Live taxi provides driver and operator rebates of up to one per cent (incl. GST) for high value, long term taxi payment terminals[210]	We have not assumed that all taxi payment processors offer commission of 2.25 per cent. In our bottom up cost assessments we removed only the actual amount of commissions paid by taxi payment processors.
	• The churn rate of taxi specific terminals is significantly higher than for small business payment terminals. This leads to higher on-boarding, refurbishment and distribution costs.[211]	The higher churn of drivers is accounted for in our assessment of reasonable costs. Our bottom up cost assessment uses taxi payment processors' actual costs. As a result it includes the impact of the higher costs incurred because of high churn.
	• 'A2B Australia's model is characterised as a rental model.' 'A2B Australia does not charge taxi drivers for the use of its terminals'. 'The cost of deployment of equipment should be taken into account in the commission's assessment of costs'.[212]	In our bottom up cost assessment we have allowed a reasonable allowance for the cost of deployment of equipment. For example we included a reasonable allowance for the fees A2B Australia pays networks to deploy its payment terminals.
	• A2B Australia disagreed with some aspects of our bottom up cost assessment including: [213]	

[210] Live group, submission received 19 July 2019, p.5

[211] Live group, submission received 19 July 2019, p.4; [redacted]

[212] A2B Australia, submission received 12 August 2019, p.13

[213] A2B Australia, submission received 12 August 2019, p. 2 to 3.

	– 'Excluding fees paid to taxi networks'	See chapter two for our approach to A2B Australia's network fees.
	– Excluding 'all direct and shared costs that the commission either directly attributes or allocates to A2B's activities as an issuer of Cabcharge Card products only allowing A2B to recover a notional interchange fee'	See chapters two and four.
	– Chosen to ignore the expert determination of A2B's WACC	See chapter two for our approach to WACC.
	– 'The incorrect treatment of GST'	A2B Australia originally provided us incorrect information on whether its fare turnover includes GST. After they informed us that the fare turnover does include GST we updated the data in our bottom up cost assessment.
Benchmarking assessment	• The monthly turnover per terminal is 20-30 per cent lower than what the draft decision stated[214] • 'In A2B's experience, a typical taxi has 4-5 terminals and virtual terminals across the multiple drivers across the shifts of one taxi.'[215]	Our benchmarking is based on actual monthly turnover **per terminal** as provided by taxi payment processors. This means that even if we assumed there were more terminals in the typical taxi, the monthly turnover per terminal in our multiple terminal benchmarking would be the same. Only the total turnover for the typical taxi would be higher leading to a lower implied surcharge in our single terminal benchmarking.
	• The rental fee, lower churn rate, and high turnover per terminal contribute to lower processing fees	Our benchmarking takes into account the rental fee and relatively low turnover of taxi payment processors (compared to other small businesses).

[214] Live group, submission received 19 July 2019, p.5

[215] A2B Australia, submission received 12 August 2019, p.9

	for small businesses than taxi customers[216]	We have not made any adjustments to account for the reduced attrition rate. However, based on the cost information we received from [redacted] This does not explain the observed gap between the prices we have observed and taxi payment processors' costs. See appendix C for further information.
	• 'The commission incorrectly used small businesses with revenues similar to taxis for its benchmarking.' 'Unlike traditional merchants, taxi payment processors do not determine or receive any component of the taxi fare. Taxi payment processors cannot recover their costs through means other than the service fee.'[217]	Other merchant aggregators and acquirers also derive no profit from the underlying service or product. They are still able to offer services at the charges described in the benchmarking analysis.
	• 'Failing to take into account differences in scale results in a material difference to the commission's benchmarking'[218]	We have considered the impact of economies of scale. We do not consider that it explains all of the difference observed between the current maximum surcharge and the prices offered for payment processing in other parts of the economy. Evidence of this can be found in the fact that other taxi payment processors with an even smaller scale than A2B Australia are able to process non-cash payments at a cost of as little as 3.3 per cent of taxi fares processed. We have also accounted for scale effects in our bottom up cost analysis.
	• 'The commission incorrectly used bank and other payment providers	We have accounted for the low use of terminals through our turnover

[216] Live group, submission received 19 July 2019, p.7

[217] A2B Australia, submission received 12 August 2019, pp.10-11.

[218] A2B Australia, submission received 12 August 2019, p.11.

	for its benchmarking.' 'The entire environment for taxi terminals: mobile, low usage, high maintenance, is unlike a typical customer environment for a bank benchmark product.'[219]	assumption. Also, all of the terminal offerings we have used in our benchmarking are mobile. We, and taxi payment processors, have not been able to quantify the difference in costs caused due to the higher wear and tear we would expect in a taxi compared to a typical customer environment. We accept that it is likely to lead to a modest increase in costs for taxis. We also accept that many taxi drivers may not be able to receive a terminal from a bank because of the long contract durations, lack of trading histories, or visa status. Nonetheless, the underlying services are still the same and our comparison is largely valid. [redacted]
	• 'The benchmark models are not installed in vehicles'[220]	Taxi payment processors are not required to use installed payment terminals. Cabfare, GM Cabs, Ingogo, Live Taxi, and A2B Australia provide terminals to taxi drivers that require no installation.
	• mPOS terminals leverage data costs of a mobile phone, have no printer, and are generally not compliant to service disabled passengers[221]	We acknowledge that mPOS terminals provide a slightly different service from EFTPOS terminals. For this reason, we have used EFTPOS terminals as the benchmark.

[219] A2B Australia, submission received 12 August 2019, p.11

[220] A2B Australia, submission received 12 August 2019, p.11

[221] Live group, submission received 19 July 2019, p.6

Benchmarking: other jurisdictions	• Payment systems in other jurisdictions operate differently from Victoria[222] and drivers collect additional tips in other jurisdictions[223]	Our further draft decision acknowledges that payment systems operate differently in different jurisdictions. We also note that tips are given to drivers for providing good overall service: not for processing non-cash payments.
	• The table on benchmarking analysis fails to disclose the changes that occurred when a jurisdiction moved to a zero per cent non-cash payment surcharge (e.g. London)[224]	Our draft decision explained the changes that occurred in London when it moved to a zero per cent surcharge. Our further draft decision provides further detail.
	• 'The commission incorrectly looked at and used other jurisdictions in its draft decision.' [225]	Section 33(3)(d) of the ESC Act requires us to consider any relevant interstate and international benchmarks. As part of this review we researched how payments in taxis are regulated in other jurisdictions. Due to differences between Victoria and those other jurisdictions we did not adopt the same approach as other regulators.
Benchmarking: Afterpay and Zip	• Afterpay and Zip should be considered as a reasonable benchmark for standalone non-cash payment processing services. Effectively, both services are no different to a credit or charge card.[226]	Afterpay is a payment system not a payment processor. We do not consider that it is an appropriate benchmark for the reasonable cost of processing non-cash payments. We also note that Afterpay is not used in taxis.
Banks servicing the taxi industry	• The taxi industry is highly fragmented and there is a significantly high churn rate well above that for other businesses which generally makes the segment unattractive for the banks[227]	We accept that there are cost differences between processing non-cash cash payments in taxis and in the broader economy. However, these differences do not appear to account for the difference between the current maximum surcharge of five per cent and the 2.4 per cent we observe in our

[222] Live group, submission received 19 July 2019, p.8; A2B Australia, submission received 12 August 2019, p. 12.

[223] Live group, submission received 19 July 2019, p.8

[224] NBG, submission received 22 July 2019, p.7

[225] A2B Australia, submission received 12 August 2019, p.12

[226] Live group, submission received 19 July 2019, p.8

[227] Live group, submission received 19 July 2019, p.9

	• 'A2B queries the Commission's conclusions as it is not aware of any bank which services taxis. The only bank A2B Australia is aware of that serviced taxis was Suncorp via aggregation.'[228] • 'The lack of a guaranteed revenue stream per terminal is one reason why banks do not provide in-taxi payment processing services'[229]	benchmarking. See appendix C for more detail.
Non-cash payments supply chain	• The ESC has not understood the supply chain and role of the merchant aggregator in the supply chain.[230]	Our draft and further draft decision recognise that taxi payment processors are a sub group of merchant aggregators: see appendix A.
MPTP and Cabcharge	• [redacted] • With a level playing field yet to be established, forcing the average	[redacted] We have had regard to the competitive dynamics of the market.

[228] A2B Australia, submission received 12 August 2019, p.12

[229] A2B Australia, submission received 12 August 2019, p.10

[230] NBG, submission received 22 July 2019, p.6

[231] A2B Australia, submission received 12 August 2019, p.7

		turnover per mobile taxi terminal to be significantly reduced (as both Cabcharge and MPTP cards are evidently difficult to accept) this naturally forces competitors to continue offering commission, or other value added services, to ensure that there is continued usage of their payment services.[233]	However, we are not able to make changes to the MPTP program. The MPTP program is administered by CPVV.
Timing of final decision	•	The ESC should defer its decision until after the Victorian Government's response to the legislative council's report on the legislated reforms affecting the Commercial Passenger Vehicle Industry. 'The inquiry's findings on the impacts of the CPV reforms will be highly relevant to the commission's assessment' because 'one of the key effects of the CPV reforms on the personal transport industry has been to increase substantially the costs to in-Taxi payment processors'[234]	Taxi payment processors are in possession of more detailed information on the impact of the CPVI Act on non-cash payment processing revenues and costs than is likely to be available to the legislative council inquiry. Taxi payment processors have provided us with data on their costs and revenues covering both the pre and post reform periods. Given our existing statutory role and obligations it is appropriate that we must make a decision at the completion of our review based on the data provided. We also note that the Legislative Council's inquiry is primarily focused on taxi licensing reforms.
Other	•	'The commission not only collected very little information and evidence from those persons who are in a position to provide the most probative value and greatest potential to assist the commission but the commission chose to discount that evidence when it did not support their erroneous conclusion.'[235]	We provided opportunities for taxi payment processors to provide information and evidence to inform our decision on the maximum surcharge. In particular our bottom up cost assessment, which is based on the costs submitted to us by taxi payment processors, show that the maximum surcharge is above the reasonable cost of processing non-cash payments. We also note that on several occasions taxi payment processors,

[233] Live group, submission received 19 July 2019, p.4

[234] A2B Australia, submission received 24 June 2019, pp. 2-3.

[235] A2B Australia, submission received 12 August 2019, p. 3.

		including A2B Australia, refused to provide us with information they possess that is relevant to this review.
	• 'The commission has given weight to submissions that favour the opaque cost and business model of rideshare against those operating under the taxi business model with regulated fares.'[236]	We have considered all submissions made in the process of this review.
	• 'Due to the fundamental difference, between a surcharge and a service fee, the commission should not give weight' to submissions that 'compare the service fee charged by taxi payment processors with surcharges by non-taxi payment processors'.[237]	We have acknowledged the differences between taxi payment processors and payment processors servicing other parts of the economy. However, our bottom up cost and benchmarking assessment suggest that the differences in the services provided do not explain the full difference between the current maximum surcharge and the costs of servicing merchants in other parts of the economy.
	• 'The ESC has accorded undue weight to Visa's submission'.[238]	We considered both Visa and MasterCard's submissions. Both submissions proposed either removing or reducing the maximum surcharge.[239]
	• 'A2B will be unable to continue providing [services to the rural, disadvantaged and vulnerable communities] (in their current form) if the commission were to lower the maximum non-cash payment service fee'.[240]	Our bottom up cost assessment shows that a surcharge of four per cent (for third party cards) and six per cent for (Cabcharge cards) are sufficient for A2B Australia to recover its costs: including the cost of servicing rural and vulnerable communities.
	• The commission has not isolated costs[241]	In assessing costs submitted by taxi payment processors, where there has been uncertainty around whether costs should be included or excluded

[236] A2B Australia, submission received 12 August 2019, p.4

[237] A2B Australia, submission received 12 August 2019, p.4

[238] A2B Australia, submission received 12 August 2019, p.7

[239] Essential Services Commission 2019, Taxi Non-Cash Payment Surcharge review 2019: Draft Decision, 30 May

[240] A2B Australia, submission received 12 August 2019, p.7

[241] A2B Australia, submission received 12 August 2019, p.13

	we have included costs. For example we have not made any adjustment to A2B Australia's costs to remove the costs associated with the taxi meters embedded in its payment terminals.
• 'payment processors (who are neither issuers nor acquirers in the context of card schemes) pay merchant service fees[242]	Merchant service fees are not an appropriate benchmark for the amount of Cabcharge issuing costs that should recovered through the acquiring side of A2B Australia's payment business. In three and four-party card schemes, merchant service fees facilitate the recovery of acquiring costs and a proportion of issuing costs. In four-party schemes, issuers recover costs from acquirers through interchange fees. Our bottom up cost assessment separates issuing and acquiring costs. Acquiring costs are already included in the regulated costs used to derive A2B Australia's implied surcharge. Including a benchmark to account for a transfer of issuing costs that is based on merchant service fees could double-count some of the acquiring costs already included. On the other hand, regulated interchange fees are intended to facilitate cost recovery by issuers. This is an advantage of using them as a benchmark in an assessment of taxi processors' costs. However, regulated interchange fees in Australia only apply to four party schemes, so we accept that they may not be an appropriate benchmark for three party schemes such as Cabcharge.
• 'The commission has mistaken economic efficiency for competitive efficiency'[243]	We have given appropriate consideration of the competitive environment in which taxi payment processors operate.

[242] A2B Australia, submission received 12 August 2019, p.13

[243] A2B Australia, submission received 12 August 2019, pp.13 - 14.

		We have not suggested that there are only two payment options available to passengers in taxis. We did note that in many taxis there are two payment terminals: meaning the type owned by taxi payment processors. We adjusted our benchmarking to account for that. Further, the assumed turnover that we have used in our benchmarking is based on the average turnover per payment terminal from taxi payment processors. This means that even if we assumed there were more terminals in the typical taxi, the monthly turnover per terminal would be the same.
	• The commission 'has provided no evidence that taxi payment processors have been successfully operating since 2014'.[244]	As noted in our draft decision, our benchmarking and bottom up cost assessments indicate that taxi payment processors have been operating successfully since 2014. These assessment methods show that a five per cent surcharge has allowed persons facilitating the making of non-cash payment transactions to recover more than the reasonable cost of accepting and processing non-cash payments.
	• 'The commission has not taken into account increasing costs and growth of the Australian or Victorian economies'.[245]	The bottom up cost assessment is based on recent cost and usage submitted by taxi payment processors. The benchmarking is based on that usage data and current prices from payment processors. As a result, both reflect recent input prices and service utilisation.
	• RBA data suggests small merchants have a high cost of acceptance. Five per cent is not unusual for micro merchants. Taxicab drivers are micro merchants who in this heat map	The data referred to in this submission suggests that in most cases merchants with turnover similar to taxi drivers pay less than five per cent. This is shown by the red area of the graph for merchants with turnover of

[244] A2B Australia, submission received 12 August 2019, p.14

[245] A2B Australia, submission received 12 August 2019, p.14

	will pay up to six with a range of providers.[246]	10 000 to 100 000 being centered in the area below three per cent. It also shows that for merchants with turnovers between $10 million and $1 billion, such as the merchant aggregators operating in the taxi payments industry, that in most cases the cost of acceptance is less than two per cent.

[246] Anonymous, submission received 30 August 2019, p. 1.

Glossary

Term	Definition
A2B Australia	A2B Australia is an Australian company listed on the ASX specialising in personal transport services and digital payment software. Its clients include corporate clients, passengers, drivers and booking service providers. A2B Australia also owns and operates 13cabs, Australia's largest booking service provider, which supports over 9000 taxis across Australia. A2B Australia was formerly known as Cabcharge Australia.
Australian Competition and Consumer Commission	The ACCC is an independent Commonwealth statutory authority whose role is to enforce the Competition and Consumer Act 2010 and a range of additional legislation. The ACCC is responsible for enforcing the ban on excessive surcharging on credit, debit and prepaid card payments, under the Competition and Consumer Act 2010.
Acquirer	An institution that provides a merchant with facilities to accept card payments.
Booked services	Booked services are trips booked via an application, or over the phone or website.
Booking service provider	A person, company or association who provides a service that reserves CPVs to transport passengers at a certain time, departure point, and destination. Previously called network service provider.
Cardholder	Individual who owns and uses a card in paying for goods and services. In the supply chain, a cardholder is the consumer.
Commercial Passenger Vehicle (CPV)	Any motor vehicle used or intended to be used for carrying passengers for hire or reward, excluding a bus used to provide a bus service.
Commercial Passenger Vehicles Victoria	Commercial Passenger Vehicles Victoria, formerly the Taxi Services Commission, is the new regulator of the commercial passenger vehicle industry.
Charge back	This is when the acquirer removes/holds the funds of a disputed transaction. For example a merchant

	makes a sale of $20, one month later the customer disputes the transaction and claims the credit card was stolen. The acquirer will remove the $20 from the merchant's account and apply a charge back fee. A charge back fee is usually charged at a premium.
Charge card	It is a card whose holder has been granted a non-revolving credit line enabling the cardholder to make purchases and possibly make cash advances. A charge card does not offer extended credit; the full amount of any debt incurred must be settled at the end of a specified period.
Clearing	The process of transmitting, reconciling and in some cases confirming payment instructions prior to settlement.
Credit card	It is a card whose holder has been granted a revolving credit line enabling the cardholder to make purchases and/or cash advances up to a pre-arranged limit. The credit granted can be settled in full by the end of a specified period or in part, with the balance taken as extended credit. Interest may be charged on the transaction amounts from the date of each transaction or only on the extended credit where the credit granted has not been settled in full.
Debit card	Debit card is a card that enables the holder to access funds in a deposit account at an authorised deposit-taking institution.
Direct debit	A pre-authorised debit on the payer's (cardholder) bank account initiated by the recipient (merchant).
eftpos	Electronic funds transfer at point of sale. The eftpos system is a domestic debit card system managed by eftpos Payments Australia Limited.
Financial institution	A company whose primary function is to intermediate between lenders and borrowers in the economy.
Interchange fee	A fee paid between card issuers and acquirers when cardholders make transactions.
Issuer	An institution that provides its customers with debit or credit cards.
Meter	A mechanical, electrical or electronic device that calculates, records or displays information about fares and charges for the provision of unbooked commercial passenger vehicle services. Commercial Passenger Vehicles Victoria is

	responsible for specifying the functional requirements of fare devices.
Merchant	Person or business that accepts a card for payment for goods or services.
Merchant service fee	A transaction-based fee charged to a merchant by an acquirer for acquiring, or by a payment processor for arranging the acquisition of, one or more types of card transactions from that merchant.
Multi Purpose Taxi Program (MPTP)	A government program that subsidises taxi fares for people with severe and permanent disabilities. MPTP members receive a 50 per cent subsidy on taxi fares up to a maximum of $60 per trip and $2180 per year. Some MPTP members, for example those using wheelchairs, are exempt from the annual cap.
mPOS terminal	A payment terminal which connects to a smartphone or tablet to process non-cash payments.
Non-cash payment surcharge	A non-cash payment surcharge is a fee or charge: • added to the amount otherwise payable by the hirer in respect of the hiring of a commercial passenger vehicle because the payment of the amount otherwise payable is made wholly or partly by means of a non-cash payment transaction; or • payable by the owner or driver of a commercial passenger vehicle or by all or any of them because the payment of an amount payable in respect of the hiring of the vehicle is made wholly or partly by means of a non-cash payment transaction.
Payment instrument	Payment instruments are methods which customers use to make payments or transmit money. Frequently used payment instruments include cash, cards, cheques and electronic funds transfers.
Payment processor	An entity that is not a related entity of the merchant that provides services and/or equipment to the merchant in connection with, the acceptance by that merchant of cards for payment for goods or services.

Payment terminal	Refers to the terminal or facility provided by banks to merchants to enable the latter to accept payments by cards. In the taxi payments industry, taxi payment processors supply the payment terminal to drivers, booking service providers or taxi operators.
Payment system	Refers to arrangements which allow consumers, businesses and other organisations to transfer funds usually held in an account at a financial institution to one another. It includes payment instruments like cash, cards, cheques and electronic fund transfers which customers use to make payments, and the unseen arrangements that ensure funds move from accounts at one financial institution to another.
Price determination	A price determination is the legislative instrument we use to set prescribed prices for prescribed goods and service s supplied by or within a regulated industry.
Reserve Bank of Australia	The RBA is Australia's central bank. It determines and implements monetary policy, fosters financial stability, undertakes a range of activities in financial markets, acts as a banker to the Australian Government, issues Australia's banknotes and has policy, supervisory and operational roles in the payments system. The RBA sets interchange fees in designated debit, prepaid and credit card schemes. It also regulates merchant surcharging for credit, debit and prepaid card transactions in Australia.
Rideshare services	Booked commercial passenger vehicle services that use the driver’s personal vehicle to provide a transport service. These services are offered to passengers through an accredited booking service: generally a smartphone application.
Scheme (or card scheme)	Under the RBA’s standards, scheme refers to the following designated payment systems: • MasterCard system • VISA system • American Express Companion Card system • Visa Debit system • Debit MasterCard system • eftpos system • eftpos Prepaid system

	• MasterCard Prepaid system • Visa Prepaid system.
Taxi	Taxis are commercial passenger vehicles that provide booked and unbooked services.
Taxi network	A provider of taxi booking and dispatch services, connecting passengers with taxi drivers through a booking service. Also referred to as booking service provider or network service provider.
The Commission	The Essential Services Commission — Victoria's independent economic regulator of certain prescribed services as determined by the Victorian Government. The commission is responsible for setting maximum: • charges for unbooked CPV services beginning in the metropolitan and urban zones • non-cash payment surcharge for booked and unbooked taxi services in Victoria.
Unbooked services	Unbooked services are CPV services that are provided other than as a result of the provision of a booking service. They include trips hailed from the street, hired from a recognised taxi rank or trips that have not been booked via an application, over the phone or website.