

Amendment to determination of maximum non-cash payment surcharge for taxis

3 June 2020

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Summary

This determination amends the previous determination made on 24 March 2020 on and from the date on which notice of its making is published in the Government Gazette.

On 24 March 2020, the Essential Services Commission made its second determination on the maximum amounts of non-cash payment surcharges for or in respect of non-cash payment transactions supplied by or within the non-cash payment transaction industry for taxis in Victoria. That determination was set to take effect from 1 July 2020.

This determination amends the date on which the previous determination made on 24 March 2020 takes effect from 1 July 2020 to 1 October 2020.

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Statement of purpose

The Essential Services Commission (the commission) is the independent economic regulator responsible for determining the maximum amounts of non-cash payment surcharges (maximum surcharge) for or in respect of non-cash payment transactions supplied by or within the non-cash payment transaction industry, for taxis registered to operate in Victoria.

Reasons for the making of the determination

The commission has made this amendment to the determination made on 24 March 2020 following a review of operational issues arising from COVID-19, which were raised in submissions made in response to that determination. This review included consideration of the commission's legislative objectives and requirements as set out in the Essential Services Commission Act 2001 and the Commercial Passenger Vehicle Industry Act 2017.

The commission's second determination made on 24 March 2020

On 24 March 2020, the commission made its second determination on the maximum amounts of non-cash payment surcharges for taxis following a review and consultation process. The review included consideration of the objectives and matters to which the commission must have regard as set out in the Essential Services Commission Act 2001 and the Commercial Passenger Vehicle Industry Act 2017. The commission's review of the maximum amounts of non-cash payment surcharges for taxis is detailed in its draft, further draft and final decisions available on our website: www.esc.vic.gov.au.

The changes to the maximum amounts of non-cash payment surcharges for taxis in the second determination were to come into effect from 1 July 2020. The commission assessed that this would provide taxi payment processors the necessary time to update the software on their payment terminals. That determination was made based on the information available to the commission at the time, having regard to the commission's legislative objectives and requirements. In the commission's final decision, it was noted that to the extent it became apparent that more time was required to update payment terminals as a result of COVID-19, the commission had the power to amend or replace its price determination if necessary.¹

¹ Essential Services Commission, Taxi Non-Cash Payment Surcharge review 2019: Final Decision, 24 March 2020, p. 8.

The commission consulted with taxi payment processors

Since the second determination was made, it has become apparent to the commission that more time is required to update payment terminals as a result of COVID-19.

After the second determination was published, taxi payment processors made submissions providing evidence about the impact COVID-19 has had on their ability to reprogram their payment terminals. Some of the operational issues that taxi payment processors stated might affect their ability to reprogram their payment terminals by 1 July 2020 include:

- **Reduced staff numbers** – with fewer resources taxi payment processors are focused on managing the critical parts of their day to day operations and have less resources to dedicate to reprogramming their payment terminals.
- **Information technology issues** – some taxi payment processors did not have systems in place to allow staff to work from home. This has affected their productivity, including their ability to reprogram their payment terminals by 1 July 2020.
- **Inactive taxis** – due to the decrease in the demand for taxis associated with COVID-19, a large number of taxi operators and drivers have halted trading. Taxi payment processors are currently facing difficulty contacting these operators and drivers, which is necessary for the reprogramming of payment terminals.
- **Cashflows** – due to the decrease in demand for taxis, taxi payment processors have less cash on hand to implement the terminal changes. Costs associated with reprogramming the payment terminals could include software development or wireless data transfer.

The evidence provided by taxi payment processors indicates that providing the non-cash payment transaction industry another three months to update their payment terminals would best meet the commission's legislative objectives and requirements. In particular, it will provide the non-cash payment transaction industry with ample time to work through the operational issues associated with COVID-19 and reprogram payment terminals. On that basis, the commission has decided to amend the second determination to extend the implementation date for changes to the maximum amounts of non-cash payment surcharges for taxis to 1 October 2020.

The commission consulted with relevant government bodies

In the process of considering an amendment to the second determination the commission has also been in communication with, and considered the views of, other government bodies that have a role in the commercial passenger vehicle industry, including the non-cash payment transaction industry.

The commission had regard to its legislative objectives and requirements

In making this determination to amend the second determination made on 24 March 2020, the commission had regard to its legislative objectives and requirements as set out in the Essential Services Commission Act 2001 and the Commercial Passenger Vehicle Industry Act 2017.

The commission has adopted an approach that best achieves its legislative objectives of:

- promoting 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, the commission 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.²
- promoting the long term interests of Victorian consumers. In seeking to achieve this objective, the commission must have regard to the price, quality and reliability of essential services.³

The commission is of the view that providing an extension, in this case, promotes efficiency and the long term interests of Victorian consumers. It would not be efficient to put in place regulation which regulated businesses cannot comply with: this could impose the cost of financial penalties associated with non-compliance. Promoting efficiency in the non-cash payment transaction industry is in the long term interests of Victorian consumers.

The commission has considered all of the matters it must ensure and have regard to under the Essential Services Commission Act 2001 and the Commercial Passenger Vehicle Industry Act 2017. The new information provided by taxi payment processors relates most directly to the following matters:

- the financial viability of the industry⁴
- the relevant health, safety, environmental and social legislation applying to the industry⁵
- 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)

² Commercial Passenger Vehicle Industry Act 2017, s. 122.

³ Essential Services Commission Act 2001, s. 8.

⁴ Essential Services Commission Act 2001, s. 8A(1)(b).

⁵ Essential Services Commission Act 2001, s. 8A(1)(d).

- regulated entities⁶
- the expected costs of the proposed regulation do not exceed the expected benefits⁷
- the particular circumstances of the regulated industry (ie, non-cash payment transaction industry) and the prescribed goods and services (ie, non-cash payment transactions) for which the determination is being made⁸
- 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 industry⁹
- any other factors that the commission considers relevant.¹⁰

The financial viability of the industry

Some taxi payment processors have requested the commission extend the implementation date for the second determination, due to the financial impact COVID-19 is having on them. Large decreases in taxi demand (submissions indicate taxi trip numbers are down by roughly 80 per cent) are affecting their financial position. As a result, taxi payment processors have less cash on hand to implement terminal changes. Having regard to the financial impact of COVID-19, the commission considers it appropriate to extend the implementation date of its 24 March 2020 determination to 1 October 2020.

As COVID-19 restrictions are lifted, and demand for taxis returns to normal, the surcharges contained in our second determination will provide enough revenue for the non-cash payment transaction industry to be financially viable, and in particular, for taxi payment processors to implement terminal changes. It will also ensure that persons facilitating the making of non-cash payment transactions are able to recover the reasonable cost of accepting and processing such transactions.

The relevant health, safety, environmental and social legislation applying to the industry and the particular circumstances of the regulated industry

The COVID-19 restrictions put in place by the Victorian Government (and other governments around Australia) have had an impact on the non-cash payment transaction industry and the

⁶ Essential Services Commission Act 2001, s. 8A(1)(e).

⁷ Essential Services Commission Act 2001, s. 33(4)(a).

⁸ Essential Services Commission Act 2001, s. 33(3)(a).

⁹ Essential Services Commission Act 2001, s. 33(3)(b).

¹⁰ Essential Services Commission Act 2001, s. 33(3)(e).

commercial passenger vehicle industry across Australia. These restrictions have affected their operations and demand for their services.

Having regard to the impact the restrictions have had on taxi payment processors and the non-cash payment transaction industry, the commission considers it appropriate to extend the implementation date of its 24 March 2020 determination to 1 October 2020.

The benefits and costs of regulation

The expected costs of extending the implementation period for the second determination do not exceed the expected benefits. An extended implementation period will not be materially detrimental for most consumers. With lower demand for taxis being expected in the coming months, the difference between paying a five or four per cent surcharge (as a share of the total fare paid) will be small.

Some vulnerable groups will be more affected by the delay in the reduction of the surcharge than the general population: in particular, vulnerable consumers that depend on taxis for transport and pay using non-cash payment methods. Some, but not all, vulnerable consumers that depend on taxis are multi-purpose taxi program members. As multi-purpose taxi program users receive a subsidy of up to half the value of the taxi fare from the Victorian Government the negative impact on those users will be mitigated to some extent.

On the other hand if the commission does not extend the implementation date for the second determination, and taxi payment processors are practically unable to update their payment terminals, taxi payment processors may be unable to operate without the risk of committing an offence under sections 113 and 114 of the Commercial Passenger Vehicle Industry Act 2017. Financial penalties apply to an offence against these sections.

We also note that it would not be in the interest of vulnerable groups that depend on the multi-purpose taxi program (the program) if suppliers for the program exited the Victorian market. The commission has examined this issue. A2B Australia, a major supplier to the program, has advised the Australian Stock Exchange that, during the COVID-19 downturn, it is increasing the share of the surcharge it rebates to drivers. This effectively lowers the surcharge A2B Australia receives for non-cash payment processing to two per cent. This suggests A2B Australia is determined to stay in the market, even with lower revenues in the short-term. Also, since we made our decision, neither A2B Australia nor Commercial Passenger Vehicles Victoria (which manages the program) have provided any information that suggests a longer implementation period is essential to ensure continuity of the program.

Any other factors that the commission considers relevant

Having regard to the operational issues presented to us by taxi payment processors, the commission considers that at least some taxi payment processors may have difficulty updating their payment terminals to achieve compliance with the second determination by 1 July 2020.

Nature and effect of this determination

This determination is made under Part 6 of the Commercial Passenger Vehicle Industry Act 2017 and Part 3 of the Essential Services Commission Act 2001. The determination is binding on the non-cash payment transaction industry.

This determination amends the commission's previous determination made on 24 March 2020. It amends the date on which that determination takes effect from 1 July 2020 to 1 October 2020.

This determination has effect until it is amended or revoked by a later determination.

Date at which this determination takes effect

This determination amends the previous determination made on 24 March 2020 on and from the date on which notice of its making is published in the Government Gazette.

How to obtain a copy of this determination

A copy of this determination may be downloaded from the commission's website:

www.esc.vic.gov.au

Alternatively, a copy may be requested by contacting the commission:

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P: +61 3 9032 1300 or 1300 664 969

E: publications@esc.vic.gov.au

The **Common Seal** of the
Essential Services
Commission will be affixed to
this determination with the
authority of the commission

Date: 3 June 2020



Kate Symons
Chairperson